ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 23-201, 23-302, 23-303, 23-305, 23-413, 23-704, 23-708, 23-801, 23-802, 23-803, 23-902, 23-1101, and 23-1105; PROVIDING UPDATES TO THE SUBDIVISION REGULATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That Section 23-201 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-201. Definitions.

CONDOMINIUM: ~~A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use by owners of the units (~~The ownership of single units with common elements located on property submitted to the provisions of 70-23-101, et seq., MCA~~)~~. The term does not include a townhome or townhouse.

SUBDIVISION, FIRST MINOR: A subdivision of a parcel that has never been subdivided or created by a subdivision, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA since July 1, 1973 (76-3-609(2), MCA). Furthermore the first minor subdivision contains five or fewer lots, and legal and physical access to all lots is provided~~ and no land is required to be dedicated to public use for parks or playgrounds~~.

TOWNHOME/TOWNHOUSE: ~~A building or structure that has two (2) or more one (1) family dwelling units erected as a single building, each being separated from the adjoining unit or units by an approved fire wall or walls along individual property lines and providing for fee simple ownership of land and dwelling unit.~~ Property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities (70-23-102(14), MCA).

TRACT OF RECORD: An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the County Clerk and Recorder's office (76-3-103(~~17~~16)(a), MCA).

TRANSPORTATION PLAN: Billings Urban Area ~~2005~~ Transportation Plan 2009 Update, or any newer transportation planning document adopted by the Billings City Council and Board of County Commissioners for the Billings urban area.

WILDLAND-URBAN INTERFACE: Areas where wildland vegetation meets urban developments, or where forest fuels meet urban fuels (such as homes). These areas encompass not only the interface (areas immediately adjacent to urban development) but also the continuous slopes and fuels that lead directly to a risk to urban developments, and are generally mapped in the Yellowstone County WUI Community Wildfire Protection Plan.

Section 2. That Section 23-302 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-302. Major Subdivisions.

D. Major Preliminary Plat Application Submittal.

3. **Review period.** Upon receipt of a complete and sufficient application, the governing body has sixty (60) working days to approve, conditionally approve, or deny the preliminary plat application. For subdivisions containing fifty (50) or more lots the review period is eighty (80) working days. The review period may be extended upon written consent from the subdivider.

G. Staff and Agency Review.

2. **Submittal distribution.** Planning staff shall distribute the application to all affected City Departments, local, state, and federal agencies, school districts and public utilities for review, and include a copy of the review procedure schedule. These affected entities shall determine what effect the proposed subdivision may have on their ability to provide services and submit recommendations for mitigation of those impacts. The affected entities shall respond to the Planning staff within approximately ten (10) working days. A public utility or agency review may not delay the governing body's action on the plan beyond the sixty (60) or eighty (80) working day review period. Failure of any agency to complete a review of a plat will not be the basis for denial of the plat by the governing body (76-3-504(1)(i), MCA).

H. Planning Board Plat Review. The Planning Board, as the authorized agent of the governing body shall conduct a plat review of the major preliminary plat application at a regularly scheduled meeting prior to the scheduled public hearing. The purpose of the plat review meeting is to consider the following relevant review criteria:

1. The environmental assessment and all criteria discussed therein, unless the plat is exempted from the requirement of submitting an environmental assessment pursuant to 76-3-~~210(1)~~616, MCA; and

2. The effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety (76-3-608(3)(a), MCA); and

J. Subsequent Hearing. Before acting on the subdivision application, the governing body shall determine whether public comments or documents presented at the Planning Board public hearing constitute:

1. Information that the public has not had a reasonable opportunity to examine and comment, or

2. New information never submitted or considered by the Planning Board or staff.

   If the governing body determines that public comments or documents meets at least one (1) of the criteria listed above, it may act on the subdivision application in accordance with this Article or schedule a subsequent public hearing for consideration of the new information only. The subsequent public hearing shall be held by the Planning Board at the Planning Board's next scheduled meeting for which proper notice for the public hearing on the subdivision application can be provided.

   If a subsequent hearing is held, the sixty (60) <u>or eighty (80)</u> working day review period is suspended and the new hearing must be noticed and held within forty-five (45) days of the governing body's determination to hold a subsequent public hearing. The sixty (60) <u>or eighty (80)</u> working day review period will resume from the date of the subsequent public hearing. The governing body may not consider any information that is presented after the subsequent hearing (76-3-615, MCA).

L. Governing Body Action. The governing body's decision to approve, conditionally approve, or deny a subdivision is based on the preliminary plat, applicable environmental assessment, public hearing, Planning Board recommendations, or additional information that demonstrates the development of the subdivision meets the requirements of the Montana Subdivision and Platting Act and these Regulations. A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services, <u>or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145, MCA</u> (76-3-608(1), MCA), or solely on compliance with a Growth Policy (76-1-605(2)(b), MCA).

The governing body shall issue written findings of fact that weigh the criteria as listed in Section 23-302.H. of this Article. The governing body shall determine if there are any significant adverse impacts the subdivision may have based on its review of this information and formulate conditions to reasonably minimize those impacts (76-3-608(4), MCA).

In reviewing a subdivision and when requiring mitigation, the governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat (76-3-608(5)(a), MCA).

The governing body shall approve, conditionally approve or deny the preliminary plat within sixty (60) <u>or eighty (80)</u> working days of the submittal deadline and when the application was considered complete and sufficient. The governing body shall send the subdivider a

letter within thirty (30) working days of its decision stating the reasons for the denial or enumerating the conditions which must be met to assure approval of the final plat along with written findings of fact (76-3-608(4), MCA).

M. Preliminary Plat Approval Period. The approval or conditional approval shall be valid for not more than three (3) calendar years. At the end of this period the governing body may, at the request of the subdivider, extend its approval for ~~a period of one (1) year. The governing body may extend the approval for more than one (1) year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, according to Article 23-500 of these Regulations (76-3-610(1), MCA).~~a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

When considering a request for an extension of the preliminary plat approval period, the governing body may use the following criteria to evaluate the request:

1. Changes to the subdivision regulations since the original approval and whether the subdivision as originally approved is essentially compliant with the new regulations;

2. Progress to date in completing the subdivision as a whole and any phases;

3. Phasing of the subdivision and the ability for the existing development to operate without the delayed development;

4. Dependence of infrastructure development on the subdivision;

5. Duration of the requested extension;

6. Demonstrated ability of the subdivider to complete the subdivision;

7. Such other factors or criteria as deemed material in the discretion of the governing body.

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above (76-3-610(2), MCA).

Section 3. That Section 23-303 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-303. First Minor Subdivisions from a Tract of Record.

H. Governing Body Action. At a regularly scheduled meeting the governing body shall consider the following information in deciding whether to approve, conditionally approve, or deny a preliminary plat:

1. Unless the subdivision is proposed in an area that is zoned, the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety (76-3-608(3)(a), MCA); and

2. Compliance with:
   a. The Montana Subdivisions and Platting Act (76-3-101 et seq., MCA) (76-3-608 (3)(b), MCA); and

   b. The provision of easements for the location and installation of any planned utilities (76-3-608(3)(c), MCA); and

   c. The provision of legal and physical access to each parcel within the subdivision (76-3-608(3)(d), MCA); and

   d. The required notation of that access on the applicable plat and any instrument of transfer concerning the parcel (76-3-608(3)(d), MCA); and

   e. Local zoning requirements; and

3. Consistency with the adopted Growth Policy, Transportation Plan, and the Heritage Trail Plan (76-1-606, MCA); and

4. A summary of probable impacts prepared in accordance with Section 23-904 of these Regulations.

5. The governing body shall give due weight and consideration to the subdivider's expressed preferences (76-3-608(5)(b), MCA). The governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services, or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145, MCA (76-3-608(1), MCA), or solely on compliance with the Growth Policy (76-3-605(2)(b), MCA).

6. The governing body shall issue written findings of fact that weigh the criteria listed in this section. The governing body shall determine if there are any significant adverse impacts the subdivision may have based on its review of this information and formulate conditions to reasonably minimize those impacts (76-3-608(4), MCA).

7. In reviewing a subdivision and when requiring mitigation, the governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat (76-3-608(5)(a), MCA).

8. The governing body shall approve, conditionally approve or deny the preliminary plat within thirty-five (35) working days of the submittal deadline and when the application was considered complete and sufficient. The governing body shall send to the subdivider a letter within thirty (30) working days of its decision stating the reasons for the denial or

enumerating the conditions which must be met to assure approval of the final plat, along with written findings of fact (76-3-608(4), MCA).

I. Preliminary Plat Approval Period. The approval or conditional approval shall be valid for not more than three (3) calendar years.~~; a~~ At the end of this period the governing body may, at the request of the subdivider, extend its approval for a ~~period of one year. The governing body may extend the approval for more than one (1) year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, according to Article 23-500 of these Regulations (76-3-610(1), MCA).~~ mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

When considering a request for an extension of the preliminary plat approval period, the governing body may use the following criteria to evaluate the request:

1. Changes to the subdivision regulations since the original approval and whether the subdivision as originally approved is essentially compliant with the new regulations;

2. Progress to date in completing the subdivision as a whole and any phases;

3. Phasing of the subdivision and the ability for the existing development to operate without the delayed development;

4. Dependence of infrastructure development on the subdivision;

5. Duration of the requested extension;

6. Demonstrated ability of the subdivider to complete the subdivision.

7. Such other factors or criteria as deemed material in the discretion of the governing body.

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above (76-3-610(2), MCA).

Section 4. That Section 23-305 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-305. Subdivisions Qualifying for Expedited Review.

F. Governing Body Action. At a regularly scheduled meeting, the governing body shall consider the following information in deciding whether to approve or deny a final plat:

1. The effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety (76-3-608(3)(a), MCA); and

2. Compliance with:

    a. The Montana Subdivisions and Platting Act (76-3-101 et seq., MCA) (76-3-608 (3)(b), MCA); and

    b. The provision of easements for the location and installation of any planned utilities (76-3-608(3)(c), MCA); and

    c. The provision of legal and physical access to each parcel within the subdivision (76-3-608(3)(d), MCA); and

    d. The required notation of that access on the applicable plat and any instrument of transfer concerning the parcel (76-3-608(3)(d), MCA); and

    e. Local zoning requirements; and

3. Consistency with the adopted Growth Policy, Transportation Plan, and the Heritage Trail Plan (76-1-606, MCA).

4. The governing body shall give due weight and consideration to the subdivider's expressed preferences (76-3-608(5)(b), MCA). The governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services, or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145, MCA (76-3-608(1), MCA), or solely on compliance with the Growth Policy (76-3-605(2)(b), MCA).

5. In the event the governing body denies the final plat, it shall send a letter to the subdivider stating the reasons for the denial along with written findings of fact (76-3-608(4), MCA).

Section 5. That Section 23-413 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-413. Fire Protection Requirements.

To ensure a reasonable level of fire protection and life-safety for the public and firefighters, fire apparatus access roads and an approved water supply capable of providing the required water flow for fire protection shall be provided in accordance with this section and the adopted fire code to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction.

Section 6. That Section 23-704 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-704. Design Standards and Applications for Cluster Developments.

D. Instrument of Permanent Protection Required. An ~~instrument of permanent protection as detailed in Title 76, Chapter 6, MCA, the Open-Space Land and Voluntary Conservation Easement Act,~~ irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels as provided in 70-17-201, et seq., MCA, shall be placed on the open space concurrent with the application for final plat approval.

Section 7. That Section 23-708 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-708. Legal Instrument for Permanent Protection of Open Space.

A. Legal Instrument. Privately owned open space shall be protected in perpetuity by an irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels as provided in 70-17-201, et seq., MCA, ~~binding legal instrument~~ that is recorded with the deed. The instrument for permanent protection shall include clear restrictions on the use of the open space. These restrictions shall include all restrictions contained in this Chapter, as well as any further restrictions the applicant chooses to place on the use of the open space.

Section 8. That Section 23-801 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-801. Condominium and Townhome or Townhouse Development.

A. Exemptions. All condominium, townhome, or townhouse developments are subdivisions subject to the terms of these Regulations and the Montana Subdivision and Platting Act (MSPA), except those exempted by 76-3-203, MCA, as described below.

1. The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses, and any applicable park dedication requirements in 76-3-621, MCA are complied with; or

2. The condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations ~~where~~ when local zoning regulations are in effect.

B. Procedures. All condominium, townhome, or townhouse developments which are not exempt from subdivision review, are subject to the applicable procedures contained in Article 23-300, Subdivision Review Procedures or Article 23-600, Subdivisions for Rent or Lease. The applicable subdivision procedure will be based on:

1. Whether a division of land is to be created.

2. The number of proposed units.

3. Whether the land is a first or subsequent minor subdivision.

Section 9. That Section 23-802 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-802.~~ Townhome Development.~~ Condominium and Townhome Standards

~~All townhome developments are subject to the applicable procedures contained in Article 23-300. The applicable subdivision procedure will be based on:~~

~~A. The number of proposed units; and~~

~~B. Whether the land is a first or subsequent minor subdivision.~~

A. Condominium and townhome developments shall comply with those standards contained in Article 23-400, Development Requirements and Article 23-1000, Parks, Trails and Open Space.

B. All buildings and structures in a condominium or townhome development shall meet the minimum setback requirements of Article 27-308, BMCC from all perimeter boundary lines. In the case where a boundary line is adjacent to an arterial street, all homes and accessory structures must meet setbacks as required in Article 27-602, BMCC.

C. Condominium, townhome, and townhouse developments shall comply with all applicable provisions of the Unit Ownership Act – Condominiums, Title 70, Chapter 23, MCA, as amended.

Section 10. That Section 23-803 of the Billings, Montana, City Code be amended so that such section shall read as follows:

~~**Section 23-803. Condominium and Townhome Standards.**~~

~~A. Condominium and townhome developments shall comply with those standards contained in Article 23-400, Development Requirements and Article 23-1000, Parks, Trails and Open Space.~~

~~B. All buildings and structures in a condominium or townhome development shall meet the minimum setback requirements of Article 27-308, BMCC from all perimeter boundary lines. In the case where a boundary line is adjacent to an arterial street, all homes and accessory structures must meet setbacks as required in Article 27-602, BMCC.~~

~~C. Condominium developments shall comply with all applicable provisions of the Unit Ownership Act – Condominiums, Title 70, Chapter 23, MCA, as amended.~~

Section 11. That Section 23-902 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-902. General Requirements.

C. Exemptions. The following subdivisions shall not be required to submit an environmental assessment:

1. A first minor subdivision from a tract of record (76-3-609(3), MCA).

2. A subdivision qualifying for expedited review as described in Section 23-305 of these Regulations.

3. Other subdivisions that satisfy all of the following criteria (76-3-~~608(7)~~616(2), MCA):

   a. The proposed subdivision is completely within an area adopted by the Growth Policy pursuant to 76-1-601, et seq., MCA~~.~~;

   b. The proposed subdivision is located within zoning pursuant to 76-2-~~201 through 76-2-328, MCA~~203 or 76-2-304, MCA, that avoids significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of 76-1-601(4)(c); and~~.~~

   c. The proposed subdivision is located within an area where a long-range public works development program (i.e. Capital Improvements Plan) has been adopted pursuant to 76-1-601(4), MCA.

Section 12. That Section 23-1101 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-1101. Variances.

A. Requesting a Variance. The subdivider shall include with the submission of the variance request, a written statement describing the facts of hardship upon which the request for the variance is based. Each requested variance shall be deemed a separate application, for which a fee ~~of $325~~ shall be required.

Section 13. That Section 23-1105 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-1105. Appeals.

B. A party who is aggrieved by a decision of the City Council to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within thirty (30) days after the date of the written decision, appeal to the district court. The petition must specify the grounds upon which the appeal is made.

Section 14. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 15. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 16. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 11th day of October, 2011.

PASSED, ADOPTED and APPROVED on second reading this 24th day of October, 2011.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk