



**CITY ZONING COMMISSION**  
**AGENDA-Tuesday, July 21, 2020, 4:30 p.m.**  
**Senior Center, Billings Community Center**  
**360 N 23rd St, Billings, Montana**

NOTICE TO THE PUBLIC

Public Comment:

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

**Call the meeting to order.**

**Introduction of City Zoning Commission Members and Planning Department Staff.**

**Public Comment**

**Regular Business:**

- A. Opening of public hearings. The public hearing will be broadcast on the Planning Community Services Department Facebook page <https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260/?ref=bookmarks>. The Public may call in during specific Public Comment periods at **(406) 237-6120**. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to 3 minutes of testimony as is customary.
- B. Reading of rules for the procedure by which the public hearings will be conducted.
- C. Reading of notices of the public hearings on the following items:
  5. **Text Amendment – Project ReCode – Proposed Draft Sections 27-300 & 27-1000 - New Neighborhood and Residential Zone Districts: Site Standards and General Uses** This is the first in a series of Public Hearings on the Public Review Draft of the City Zoning Regulations in Section 27 of the Billings Montana City Code (BMCC). This first hearing will focus on the new residential districts - Section 27-300 - and the uses allowed in the residential districts - Section 27-1000.
  6. **NOTICE:** The Zoning Commission is conducting multiple topic-focused hearings on the draft zoning codes. The Zoning Commission will meet after all hearings are completed to make formal recommendations to the City Council. Additional public hearing notices will be published for future dates, times & locations. Additional information and copies of the draft amendments are available in the Planning and Community Services Office, the County Clerk and Recorder, the County Commissioners' Office, the City Clerk's Office, and online at <https://project-recode.com/code-outline>

Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing. Please notify Robbin Bartley, Administrative Assistant, at 247-8676 or e-mail to [bartleyr@billingsmt.gov](mailto:bartleyr@billingsmt.gov)

**Adjournment**



## City Zoning Commission -ReCode

**Meeting Date:** 07/21/2020

**SUBJECT:** Public Hearing - Public Review Draft Residential Districts and Uses - Section 27-300 and 27-1000

**THROUGH:** Nicole Cromwell

**PRESENTED BY:** Nicole Cromwell

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### Information

#### REQUEST

**Text Amendment – Project ReCode – Proposed Draft Sections 27-300 & 27-1000 - New Neighborhood and Residential Zone Districts: Site Standards and General Uses** This is the first in a series of Public Hearings on the Public Review Draft of the City Zoning Regulations in Section 27 of the Billings Montana City Code (BMCC). This first hearing will focus on the new residential districts - Section 27-300 - and the uses allowed in the residential districts - Section 27-1000.

#### RECOMMENDATION

Planning staff recommends the Zoning Commission conduct the public hearing and receive public comment on the Public Review Draft of the new zoning code. No action is required at this time.

#### APPLICATION DATA

Not applicable

#### CONCURRENT APPLICATIONS

Not applicable

#### APPLICABLE ZONING HISTORY

The current zoning regulations for the City were adopted on May 3, 1972 and unified with the County zoning regulations in December 1997. Since 1972, the City has amended the text of the regulations and added several zoning districts. The city has amended the 1972 zoning code 166 times in the past 48 years since its adoption. Of those 166 amendments, six were major changes. The first occurred in 1977 when the code was updated in its entirety and re-adopted. The second major amendment added the new zoning district for the Medical Corridor in 1986. The next major amendment occurred in 1989 when the entire sign code was replaced with a new code. The combining of the City and County zoning codes took 3 years of editing and drafting and was finally adopted in 1997. In 2004 and 2005, the city adopted the Shiloh Corridor Overlay District to apply higher site design, landscaping and sign standards within this corridor. The sixth major change to the code happened in 2012 with the adoption of the new section for the East Billings Urban Renewal District (EBURD).

In 2017, in anticipation of a comprehensive code update, the City and County agreed to formally separate the zoning codes to aid in the process of the comprehensive update known as Project Re:Code.

## SURROUNDING LAND USE & ZONING

Not applicable

### BACKGROUND

In 2016, the City Council adopted a new Growth Policy that updated a 2008 policy and presented several new community goals. These goals were stated in a set of "guidelines" under the seven major themes of the policy update:

1. Essential Investments (relating public and private expenditures to public values)
2. Place Making (enhance, maintain, preserve, and improve existing public places)
3. Community Fabric (attractive, aesthetically pleasing, uniquely Billings)
4. Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods)
5. Home Base (healthy, safe and diverse housing options)
6. Mobility and Access (transportation choices in places where goods and service are accessible to all)
7. Prosperity (promoting equal opportunity and economic advancement)

The Growth Policy statement adopted by the City Council is:

*"In the next 20 years, Billings will manage its growth by encouraging development within and adjacent to the existing City limits, but preference will be given to areas where City infrastructure exists or can be extended within a fiscally constrained budget and with consideration given to increased tax revenue from development. The City will prosper with strong neighborhoods with their own unique character that are clean, safe, and provide a choice of housing and transportation options.*

The City/County Planning Board realized the existing zoning regulations, intended to implement the Billings and Yellowstone County adopted Growth Policies, were no longer effective tools for advancing these goals. The existing code was primarily based on a set of growth goals adopted before 1970 with some new code sections added to try and achieve smaller area goals. The Planning Board initiated this major code update in June 2017 and appointed an ad hoc Steering Committee to help guide the process of the code update. The City Council and Board of County Commissioners were in complete agreement with the need for a major code update.

The Steering Committee set to work and met monthly from August 2017 until December 2017. In December 2017, the Steering Committee finalized a set of Guiding Principles for the code update and appointed four Working Groups to handle the intensive, hands-on work of updating the code. Those groups included some Steering Committee members as well as interested residents. The four groups consisted of the County Issues Working Group, the Urban Issues Working Group, Sign Code Working Group and Landscaping Code Working Group. The groups met monthly from January 2018 until January of 2020 to review, draft, and accept public comment on the draft code sections.

The City and County also agreed to fund the services of a consultant team to help the Steering Committee and Working Groups evaluate the code deficiencies, analyze the character of Billings and County neighborhoods, and help draft a new set of regulations. The consultant team was hired in April 2018 and consists of Elizabeth Garvin, of Community ReCode (CO), Leslie Olberholtzer of Codometrics (IL) and Randy Hafer of High Plains Architects (MT). This team met with each Working Group through the project development and helped the local residents create a code that is uniquely crafted for our local community goals. Best practices were brought to the table from around the Rocky Mountain region as well as similar communities throughout the country. A Code Assessment was presented to the community in October 2018 that helped the Steering Committee and Working Groups create a path forward to building the new code.

The Planning Division requested and was awarded VISTA members to assist with the code analysis in particular as it related to creating new attainable housing choices in Billings. The VISTA members created a Billings Pattern Guide - an on line publication and guide to the core neighborhoods of Billings. The VISTA members analyzed Home Mortgage Data to find out if there were neighborhoods in Billings where home loans might be skewed or

denied due to race or ethnicity. Some Billings neighborhoods had much lower mortgage origination rates than others but there was no clear distinction based on the applicants race or ethnicity. The VISTA members completed special research to analyze the existing housing choices in Billings and identify gaps in market demand and housing supply. Their findings indicated a mis-match between the household size (1 & 2 person households >60% of Billings) and the housing choices available (3+ bedroom housing >60% of housing stock). We have a deficit of one and two-bedroom housing stock. A detailed research project was completed about the re-emerging housing choice of an Accessory Dwelling Unit (ADU) in the country. ADUs became very popular throughout the US in the post-WWII building boom and over 900 of these units still exist in Billings, although the 1972 zoning code made most of them non-conforming to code. All of this information and public education helped inform the work of the Urban Issues Working Group while they considered new neighborhood zone districts.

This is the first in a series of public hearings on the Public Review Draft of the new city zoning regulations will focus on the new Residential zone districts (Section 27-300) and the uses specified for these districts (Section 27-1000). The current code structure is similar - districts are described in Section 27-304, site requirements are set in Section 27-308 and uses are specified in Section 27-305. In this proposed code, each group of zone districts - Residential, Commercial/Mixed Use, Industrial, Public and EBURD - will have a code section where the district is described and the site requirements are specified. The current code section for Uses only contains a matrix table but none of the Use standards. All of the Use standards are in current code Section 27-600 and range from storage requirements, manufactured homes, alcohol service, churches, fences, home occupations to hazardous waste facilities. In the proposed code structure, Uses and Use Standards are all in one code section - Section 27-1000. This makes it easier to find any specific requirements for a particular use. The Use Table has a Use Standard reference in the right-most column of the table.

**Current Residential Districts and General Site Requirements - Section 27-300**

The current zone districts where residential uses are allowed include the following 22 zones:

- R-96 - Residential 9,600
- R-80 - Residential 8,000
- R-70R - Residential 7,000 Restricted
- R-70 - Residential 7,000
- R-60R - Residential 6,000 Restricted
- R-60 - Residential 6,000
- R-50 - Residential 5,000
- RMF - Residential Multi-Family
- RMF-R - Residential Multi-Family - Restricted
- RMH - Residential Manufactured Home
- RP - Residential Professional (single dwelling units only)
- NC - Neighborhood Commercial
- CC - Community Commercial
- HC - Highway Commercial
- CI - Controlled Industrial (Special Review - single dwelling units only)
- CBD - Central Business District
- EBURD - East Billings Urban Renewal District
- S 27th St Corridor
- Medical Corridor
- ELC - Entryway Light Commercial (Special Review in Mixed Use development)
- EGC - Entryway General Commercial (Special Review in Mixed Use development)
- EMU - Entryway Mixed Use

The **proposed** zone districts where residential uses will be primary uses will replace the above mentioned with the seven following districts:

N1	First Neighborhood Residential
N2	Mid-Century Neighborhood Residential
N3	Suburban Neighborhood Residential
NX1	Mixed Residential 1
NX2	Mixed Residential 2

NX3	Mixed Residential 3
RMH	Residential Manufactured Home

The proposed commercial, mixed use zones, the CBD and EBURD zone districts will also allow residential uses but they will need to be part of a mixed use building and not stand-alone residential developments. This structure allows more predictability in zone district designations. For example, a CC zone now could have a lumber yard and hardware store - or it could be an apartment complex - or it could be both just on different parts of the parcel. Reconfiguring the zone districts to better match the intended uses adds to the stability of the neighborhood or commercial center.

**N1 - First Neighborhood Residential**

The N1 zone district - First Neighborhood Residential - is a zone district intended to create and preserve the development style of Billings' first neighborhoods built around the turn of the last century. Here is the zone district description:

*Section 27-302.A - The N1 district is intended to continue the existing character of single-and two-family homes in the first residential neighborhoods developed in the early part of the twentieth century in the city. This district may also be used for new neighborhoods designed with similar characteristics of the first neighborhoods. These characteristics include parking/garages located in the rear of the lot, pitched roofs, and doors and windows on the front facades. Building and garage location are specified in the regulations, with basic parameters for front doors and windows.*

The zone district site requirements follow in Section 27-304 in a table and illustration format. The table describes the site requirement and the number in the left-most column of the table is matched to the opposite page illustration. See the attached Code Section 27-300.

The proposed code is different than current code requirements for residential districts. The proposed districts no longer have a minimum lot area requirement. Minimum lot area requirements lead to housing cost escalation (supply of land is limited), increases cost to provide city services (area/length of road greater than required to accommodate lot area minimums), and makes it more difficult to fund and develop necessary neighborhood amenities such as parks, trails, and transportation options. Minimum lot area is also a vestige of out-dated exclusionary zoning policies intended to make certain neighborhoods off limits to minorities and people from lower socio-economic classes. Most code built on a neighborhood type and style exclude lot area minimums and rely on lot width to establish the character of the street and neighborhood.

For example, the N1 zone district proposes a minimum 20 feet of lot width (measured at the street front) per principal building on the parcel. We have kept some lot setbacks (side and rear) but to preserve the character of these areas, we are proposing a "build-to" range along the street front. For the N1 district the front build-to range is 8 feet to 20 feet from the front property line. This means new structures cannot be setback more than 20 feet from the street frontage. This is a defining characteristic of the N1 neighborhoods in Billings. In addition, pulling the buildings forward, helps facilitate sociability of the residents, increases the "eyes on the street" (reducing crime) and frames the street so traffic tends to slow down (perception of safe travel speed). The Urban Issues Working Group found these regulations to be in line with the 2016 Billings Growth Policy Guidelines and the 2018 Guiding Principles adopted by the Steering Committee.

The N1 zone district will replace the various zone designations in Billings core neighborhoods except where there are multi-family developments or zoning and where there are neighborhood service businesses (e.g. Harper Madison, Kionona Laundry, Poet Street Market, Green leaf Jewelry etc). There are a range of zone districts N1 will replace that exist now, including R-60, R-70, to R-96. The map update will be presented at a future Zoning Commission hearing but a side-by-side comparison map is available on-line at <https://project-recode.com/zoning-map-comparison>.

**N2 - Mid-Century Neighborhood Residential**

The N2 zone district is intended to preserve and create the character of neighborhoods built around the middle of the last century. These neighborhoods feature wider lots and ranch-style homes with 1 or 2-car attached garages. Also, two family duplex buildings were frequently interspersed in these neighborhoods. The N2 zone requires a different set of site development characteristics but does not rely on minimum lot area requirements. The lot width

is greater than the N1 zone district, but building heights are less and the build-to range at the street frontage is a little narrower. Also, the garage doors on the front building facade is an important feature. The district is described as:

***Section 27-304.B - The N2 district is intended to continue the existing character of the residential neighborhoods with single-and two-family homes developed during the middle of the twentieth century. This district may also be used for new neighborhoods designed with similar characteristics of the mid-century neighborhoods. These characteristics include homes wide on the lot, single garages located in the front facade though less than 35% of the facade, low pitched roofs, and doors and windows on the front facades. Building and garage location are specified in the regulations, with basic parameters for front doors and windows.***

The district requirements are in the same format as the N1 district with a Table and Illustrations page.

The N2 zone district also allow one and two family dwellings by right and applies the lot width minimum per principal building in the same way as the N1 zone district. The Maximum Front Building Width refers to the width of the structure within the build-to area at the street front. Buildings can be wider than the maximum - but the longer portion of the building has to be further setback than the build-to area. The proposed code also dials up the allowed amount of lot coverage for every residential zone district. The current code requirement of 30% maximum lot coverage in almost all residential zone districts hampers the ability to make efficient use of land. Thirty percent of a 1/4-acre lot is only a little over 3,000 square feet. There is increasing demand for single-level living space along with increasing storage demand (garage space). This has resulted in literally hundreds of zoning variances for a few percent increase in lot coverage to accommodate a third stall for a garage or a covered patio. The N1 zone is proposed to have a 60% lot coverage allowance and the N2 and N3 zones a 40% lot coverage. The 60% lot coverage in the N1 will accommodate the smaller lots that are common in the zone district and the 40% lot coverage will allow a reasonable amount of living space on the larger lots found in the N2 and N3 zone districts.

The N2 zone district replaces a variety of existing zone districts in Billings but mostly R-70, and R-80 zone districts. There were some mid-century neighborhoods mis-zoned as R-96 where duplexes were prevalent and those were updated to the N2 zone district as well.

### **N3 - Suburban Neighborhood Residential**

The proposed N3 zone is written to describe most of the single-family only zone districts developed since the mid to late 1960s. Here is the zone district description:

***Section 27-304.C - The N3 district is intended for residential neighborhoods primarily with single-family homes. Characteristics include wide lots and attached garages typically located on the front building façade, often greater than 35% of the façade. Basic setback and height parameters apply.***

The proposed zone district requirements closely resemble the existing R-96, R-70-R and R-60-R zone districts. There are some site requirements added to ensure walkability in neighborhoods such as limiting the percentage of a front facade with garage openings to 50% or less of the total building frontage and setting the minimum lot width at 65 feet - except for cul-de-sac lots or flag lots.

The N3 zone also has a the table and illustration page for basic site requirements. The proposed N3 zone will be limited to single-family detached buildings as a primary use.

### **The Mixed Residential zone districts - NX1, NX2, NX3**

These districts are intended to put finer detail in place for our existing and proposed multi-family developments. In Billings, we found through our character analysis of neighborhoods, there are three basic types of multi-family developments - a one to four-family small apartment house style (NX1) throughout many of the neighborhoods, a two to eight-family apartment building or group of buildings (NX2) in some newer neighborhoods, and the larger multi-family buildings (five or more units/building) or groups of apartment buildings (NX3) built as a stand alone neighborhood. Here are the district descriptions:

***Section 27-304.D - The NX1 district is intended to continue the character of the first neighborhoods with single family, two-family, and small-scale multiple-family homes with 3 to 4 units. Multiple-family homes are intended to match the scale of the neighborhood single-family homes with characteristics such as building width, parking and garages location, roof design, and doors and windows on the front facades.***

***Section 27-304.E - The NX2 district is intended for small- and mid-scale multiple-family homes with 2 to 8 units, in small neighborhood nodes. The buildings are oriented to the streets in walkable blocks with doors and windows on front facades and parking/garages located behind the buildings.***

***Section 27-304.F - The NX3 district is intended for large-scale multiple-family homes in larger neighborhood nodes. The buildings may include larger apartment buildings with more than eight units per structure. The development may have an internal private street system for access throughout the larger node with walkable blocks. Buildings are oriented to the street with doors and windows on front facades and parking/garages located behind the buildings. Covered parking may include rows of canopies or enclosed garages. Common open space, shared recreational facilities, or central gathering spaces are generally provided for residents.***

Each one of these zone districts is similar in the site requirements but the NX3 allows more building stories than the NX1. Each district is allowed 60% lot coverage. The NX2 and NX3 zone districts do require a minimum lot area of 7,000 square feet when a principal building has three or more dwelling units. In order to increase walkability in these multi-family developments, the code is proposing to that all garage parking be accessed from the rear of the building.

The RMH zone district is remaining a zone district specifically for manufactured homes and manufactured home parks. As part of this update, we surveyed all the existing manufactured home parks and site designs. The quality of a manufactured home park is primarily based on the quality of its local management team but certain amenities and site requirements increase the quality from the start. These include open space for a neighborhood playground, sidewalks, community storage spaces and landscaping. The RMH zone district description is as follows:

***Section 27-304.G - The RMH district is intended to provide stable environments for individual manufactured homes, manufactured home parks, and compatible accessory uses.***

The proposed site development requirements for the RMH district allow one dwelling unit per 3,000 square feet of lot area, allows up to 50% lot coverage, requires a 20 foot front setback, eight feet from the side and rear lot lines, and re-aligns the definition of a manufactured home with the state law definition in Municipal Zoning (MCA-76-2-304). The site requirements also include setting aside an area for a neighborhood park for manufactured home developments of three or more acres.

### **Uses and Use Standards - Section 27-1000**

The existing uses allowed in Billings residential zones will continue forward in the proposed Neighborhood zones. The types of dwellings will be tailored to the seven proposed zone districts with single family dwellings allowed in the N1, N2, N3, NX1 and RMH zone districts. Two family dwellings will be allowed in the N1, N2, NX1, and NX2 zones and multi-family (more than 2 attached dwelling units) will be allowed in the NX2 and NX3 zones. The N3 and RMH zone districts will be restricted to single family dwellings only.

Home occupations currently allowed in the residential zones will continue to be allowed in the new zone districts. These occupations are typically office based businesses or on line businesses. There are a few additional stipulations on home occupations in Section 27-1008.M including prohibited businesses such as engine repair or maintenance, businesses that have employees reporting to the residence and similar "non-residential" activities.

Churches and day care centers can be proposed in the neighborhood zone districts but will still require special review approval by the City Council. The Primary Use Table starts on page -9- and the Accessory Use Table starts on page -62- of the attached draft Section 27-1000.

Residential accessory garages will still be regulated in the same manner as the current code at Section 27-310.i. There will be limitations on the floor area, wall height and the siding of the detached garage will need to match the primary residence. The current formula for determining the maximum floor area is being removed and replaced with a maximum area that does not exceed the first floor area of the main residence.

## **RECOMMENDATION**

Staff recommends the Zoning Commission open the public hearing and receive public comment and testimony. After all the hearings are complete, the Zoning Commission will conduct a final meeting and vote on a recommendation to the City Council.

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### **Attachments**

Steering Comm Guiding Principles

2016 Billings Growth Policy Statement and Guidelines

Steering Committee Members

Working Group members

Section 27-300

Section 27-1000

Existing Zone Section 27-305 - Residential Uses

Existing Zone Section 27-308 - Residential Site Requirements

Existing Zone Section 27-304 - Residential Zone District Descriptions

Existing Zone Section 27-600 - Use Specific Standards

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# Project Re:Code

## Billings | Yellowstone County

**Mission Statement – To create a zoning code that allows for efficient and intelligent growth while meeting the goals of the community today and into tomorrow. As the Steering Committee, working groups, City & County staff review, revise and draft new zoning regulations, we will adhere to the following Guiding Principles:**

- **CLARIFY AND SIMPLIFY** - All new regulations will be written in Plain English to maximize readers' ability to find what they need, understand what they find, and use what they find to meet their needs.
- **REGULATE WHAT MATTERS** - The regulations will have a clear alignment with community goals today while allowing for changing goals in the future.
- **PRESERVE AND PROTECT THE RIGHTS OF OWNERS AND RESIDENTS** - The regulations will recognize and incorporate clear and well defined processes that uphold property rights and access to housing choices.
- **PREVENT CONFLICTS** - The regulations will be internally consistent and will not create direct or un-reconcilable conflicts.
- **OPTIONS AND CONTEXT** - The regulations will provide a range of site development options with clear criteria and guidelines for allowing alternatives to future development as well as changes to existing neighborhoods as the community's goals change.
- **MAINTAIN WHAT WE CARE ABOUT** - The regulations will encourage stability of existing neighborhoods while allowing for changes over time.
- **FILL THE VOID** – The regulations will consider and include land uses and combinations of land uses that have been overlooked or not considered in the current code and methods for accommodating new use options.
- **PROSPERITY** – The regulations will serve to support the community's need and desire to remain regionally competitive in the recruitment of businesses, expansion of existing business, and private investment in the economy, all to promote job creation.

## **2016 BILLINGS GROWTH POLICY STATEMENT AND GUIDELINES**

**Statement:** In the next 20 years, Billings will manage its growth by encouraging development within and adjacent to the existing City limits, but preference will be given to areas where City infrastructure exists or can be extended within a fiscally constrained budget and with consideration given to increased tax revenue from development. The City will prosper with strong neighborhoods with their own unique character that are clean, safe, and provide a choice of housing and transportation options.

### **Growth Guidelines:**

#### **Essential Investments (relating public and private expenditures to public values)**

- The safety of all users and the connectivity of the transportation system are important criteria to consider in roadway designs and transportation plans
- Public transit and commercial air service are critical to ensure access to and around the City
- Planning and construction of safe and affordable interconnected sidewalks and trails are important to the economy and livability of Billings.
- Developed parks that provide recreation, special amenities (community gardens, dog parks, viewing areas), and active living opportunities are desirable for an attractive and healthy community
- Natural landscapes are important because they define the uniqueness of Billings and help protect the environment
- Landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors
- Public health and safety and emergency service response are critical to the well-being of Billings' residents, businesses, and visitors
- Infill development and development near existing City infrastructure may be the most cost effective
- Accessible, friendly and cost-effective government are important public values
- The history and heritage of Billings are cornerstones of our community
- Neighborhoods that are safe and attractive and provide essential services are much desired
- Infrastructure and service investments that stabilize or improve property values, secure future utility costs, consider maintenance costs, and improve our environmental quality far into the future (i.e. energy efficient) are desirable
- It is important to factor in maintenance costs when programming public spaces and infrastructure
- Integrated, long range water planning that better utilizes existing resources and treatment options, and when necessary acquires new ones, is vital.
- Regulatory compliant water and wastewater treatment plants that provide sufficient capacity will help sustain community growth
- A supportive school system that inspires, motivates, and prepares students for meaningful employment is important for ensuring a high quality, competitive community
- A cost/benefit study is important to make cost effective land use decisions

### **Place Making (Enhance, maintain, preserve, and improve existing public places)**

- A multi-use community recreation facility is desirable
- Enhancement and maintenance of public spaces and buildings through City stewardship is integral to a vibrant community
- Park master plans and transportation plans are important to facilitate the preservation and improved public access to the Yellowstone River and the Rims
- Public and private partnerships are valuable for creating enhanced entryways into Billings
- Locally grown foods help sustain agriculture, provide healthy options, and support local businesses
- The history and heritage of Billings are cornerstones of our community
- Natural landscapes are important because they define the uniqueness of Billings and help protect the environment and beautify neighborhoods
- Encouraging the installation of art in public spaces enhances the places and showcases the talents and diversity of the community
- Enhancing public buildings and spaces to be more efficient in their uses of energy, money, and space is important to having a vibrant and livable City

### **Community Fabric (attractive, aesthetically pleasing, uniquely Billings)**

- Developed landscape areas in commercial areas encourage more pedestrian activity and vibrant commercial activity
- Attractive streetscapes provide a pleasant and calming travel experience in urban and suburban neighborhoods
- Outdoor public spaces provide casual and relaxing gathering areas for people
- Planning and construction of interconnected sidewalks and trails are important to the livability of Billings
- Developed parks that provide recreation, special amenities, and active living opportunities are desirable for an attractive and healthy community
- Natural landscapes and parks are important because they define the uniqueness of Billings and help protect the environment
- Cost-effective landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors

### **Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods)**

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels
- Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, good will and social interaction
- Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale street lights, street trees and walkable access to public spaces

- Neighborhoods that are safe and attractive and provide essential services are much desired
- Zoning and subdivision regulations that utilize Crime Prevention Through Environmental Design (CPTED) strategies result in safer neighborhoods
- Implementation of the Infill Policy is important to encourage development of underutilized properties
- Public safety and emergency service response are critical to the well-being of Billings' residents and businesses

### **Home Base (healthy, safe and diverse housing options)**

- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
- Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings
- Public safety and emergency service response are critical to the well-being of Billings' residents
- Homes that are safe and sound support a healthy community
- Accessory dwellings units provide an important type of affordable housing options if compatible
- Energy efficient housing can reduce energy consumption

### **Mobility and Access (transportation choices in places where goods and services are accessible to all)**

- Connecting people to places with transportation choices is vital to the well-being of Billings' residents, businesses and visitors
- Safe and accessible transportation systems benefit everyone's quality of life
- Affordable public transit is much desired
- Development oriented to transit routes will provide more transportation choices and is preferred
- "Safe Routes to Schools" promotes physical health and reduces vehicle trips, earning parents more time and less costs for transportation
- Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings
- On-street bike facilities promote predictability for all users
- Expanded air service ensures that Billings remains a competitive and an accessible destination
- Technology can reduce congestion and facilitate emergency vehicle travel at railroad crossings

### **Prosperity (promoting equal opportunity and economic advancement)**

- Predictable, reasonable City taxes and assessments are important to Billings' taxpayers
- A diversity of available jobs can ensure a strong Billings' economy

- Successful businesses that provide local jobs benefit the community
- Community investments that attract and retain a strong, skilled and diverse workforce also attracts businesses
- Retaining and supporting existing businesses helps sustain a healthy economy
- Continued workforce training benefits the community and helps attract and retain businesses
- Strategically placed industrial parks will encourage a more diverse city economy, and will better help manage effluent and emission from industrial processes

<b>Name</b>	<b>Organization</b>
Darell Tunnickliff	City/County Planning Board
David Goodridge, Chair	City/County Planning Board
Troy Boucher	City/County Planning Board
Woody Woods	City/County Planning Board
John Ostlund	BOCC
Shaun Brown	City Council
Tyler Bush	County Zoning Commission
Carlotta Hecker	County BOA
Mike Boyett	City Zoning Commission
Mark Noennig	City BOA
Kolten Knatterud	Territorial Landworks
Pat Davies	Sanderson Stewart
Jan Rehberg	Rehberg Ranch
Greg McCall	McCall Development
Virgil Middendorf	Heights Comm. Task Force
Marty Connell	Kairos Inc.
Steve Arveschoug	BSEDA
Melissa Henderson	Riverstone Health
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## Article 27-300 Neighborhood Districts

### SECTION 27-301 DISTRICTS ESTABLISHED

The neighborhood zoning districts are established in Table 27-300.1. When this zoning code refers to “neighborhood” zoning districts, it is referring to these districts.

**TABLE 27-300.1 NEIGHBORHOOD DISTRICTS**

Symbol	Neighborhood District Name
N1	First Neighborhood Residential
N2	Mid-Century Neighborhood Residential
N3	Suburban Neighborhood Residential
NX1	Mixed Residential 1
NX2	Mixed Residential 2
NX3	Mixed Residential 3
RMH	Residential Manufactured Home

### SECTION 27-302 DISTRICT DESCRIPTIONS

Neighborhood districts are primarily intended to allow a mix of residential uses within appropriately scaled buildings to maintain and promote the desired physical character of neighborhoods within the city.

#### A. N1: FIRST NEIGHBORHOOD RESIDENTIAL

The N1 district is intended to continue the existing character of single-and two-family homes in the first residential neighborhoods developed in the early part of the twentieth century in the city. This district may also be used for new neighborhoods designed with similar characteristics of the first neighborhoods. These characteristics include parking/garages located in the rear of the lot, pitched roofs, and doors and windows on the front facades. Building and garage location are specified in the regulations, with basic parameters for front doors and windows.

#### B. N2: MID-CENTURY NEIGHBORHOOD RESIDENTIAL

The N2 district is intended to continue the existing character of the residential neighborhoods with single-and two-family homes developed during the middle of the twentieth century. This district may also be used for new neighborhoods designed with similar characteristics of the mid-century neighborhoods. These characteristics include homes wide on the lot, single garages located in the front facade though less than 35% of the facade, low pitched roofs, and doors and windows on the front facades. Building and garage location are specified in the regulations, with basic parameters for front doors and windows.

**C. N3: SUBURBAN NEIGHBORHOOD RESIDENTIAL**

The N3 district is intended for residential neighborhoods primarily with single-family homes. Characteristics include wide lots and attached garages typically located on the front building façade, often greater than 35% of the façade. Basic setback and height parameters apply.

**D. NX1: MIXED RESIDENTIAL 1**

The NX1 district is intended to continue the character of the first neighborhoods with single-family, two-family, and small-scale multiple-family homes with 3 to 4 units. Multiple-family homes are intended to match the scale of the neighborhood single-family homes with characteristics such as building width, parking and garages location, roof design, and doors and windows on the front facades.

**E. NX2: MIXED RESIDENTIAL 2**

The NX2 district is intended for small- and mid-scale multiple-family homes with 2 to 8 units, in small neighborhood nodes. The buildings are oriented to the streets in walkable blocks with doors and windows on front facades and parking/garages located behind the buildings.

**F. NX3: MIXED RESIDENTIAL 3**

The NX3 district is intended for large-scale multiple-family homes in larger neighborhood nodes. The buildings may include larger apartment buildings with more than eight units per structure. The development may have an internal private street system for access throughout the larger node with walkable blocks. Buildings are oriented to the street with doors and windows on front facades and parking/garages located behind the buildings. Covered parking may include rows of canopies or enclosed garages. Common open space, shared recreational facilities, or central gathering spaces are generally provided for residents.

**G. RMH: RESIDENTIAL MANUFACTURED HOME**

The RMH district is intended to provide stable environments for individual manufactured homes, manufactured home parks, and compatible accessory uses.

**SECTION 27-303 REGULATIONS APPLICABLE TO ALL NEIGHBORHOOD DISTRICTS**

All buildings must comply with the general regulations and the specific regulations per each district, unless otherwise expressly stated in this ordinance. See Article 27-1600. Nonconformities for existing buildings that do not fully conform to the district regulations.

**A. ALLOWED USES**

Allowed uses are provided in Article 27-1000.

**B. EXISTING BUILDINGS**

Existing buildings are not required to meet these regulations except as defined in Article 27-1500. Nonconformities.

**C. SITE ACCESS FOR LOTS**

Access to residences must be from any public or approved private street right-of-way. All lots shall have one lot line located fully on a public or private street right-of-way, except one of every four lots in the development may be located on a shared open space.

**D. PERMANENT STRUCTURES**

All buildings constructed in any neighborhood district, except the RMH district, must be of permanent construction without a chassis, hitch, or wheels, or other features that would make the structure mobile, unless otherwise expressly stated in this code. Modular construction that meets state adopted building code is allowed.

**E. ACCESSORY STRUCTURE REGULATIONS**

1. Accessory structures are subject to Article 27-1000 Uses, except as defined in the district site and structure regulations.
2. Façade siding on accessory structures over 200 square feet in footprint must match the façade material and design of the principal structure to the maximum extent practicable.

**F. EXCEPTIONS AND EXEMPTIONS**

The following exceptions and exemptions may apply to the district site and structure regulations. Use specific standards in Article 27-1000 are still applicable.

1. Utility Installations. The following structures are not required to comply with site and structure regulations applicable to a specific district.
  - (a) Wireless communications facilities and uses
  - (b) Public and private utility stations, substations, and associated utility station facilities
2. Civic and Institutional Uses. Civic and institutional uses allowed in the district are required to meet the district site and structure regulations, except the following applies:
  - (a) The minimum dimension of any build-to zone shall be treated as a minimum setback.

- (b) Minimum heights are not required. Heights above the maximum allowed may be approved through an Administrative Relief, based upon similar civic structures on similar lots in the surrounding neighborhood. See Article 27-1600 for Administrative Relief procedure.
- (c) Window, front door, and roof regulations are not required.

**G. TRASH, RECYCLING, REFUSE LOCATIONS**

For all buildings with five or more units, all trash, recycling, and other refuse areas must be located and treated as follows:

1. Trash, recycling, and other refuse areas must be located in the rear yard of the lot.
2. When no rear yard exists or when the rear yard is less than 10 feet in depth, trash, recycling, and other refuse areas may be located in the rear portion of an interior side yard.
3. Trash, recycling, and other refuse areas may be located inside the building with access doors off the rear or interior side facade. Access doors may be located off a non-primary frontage facade with a design exception per Article 27-1600. Access doors must be opaque, screening a minimum of 80 percent of the opening.
4. See Article 27-1200 for required screening of trash, recycling, and other refuse areas.

**H. ALLOWED ENCROACHMENTS**

The following encroachments are permitted within setbacks as defined in Table 27-300.2. Encroachments are not allowed where a build-to zone is required.

**TABLE 27-300.2 TABLE OF ALLOWED ENCROACHMENTS**

Type of Encroachment	Front Setback	Side Setback	Rear Setback	Street-Side Setback	Additional Info
<b>Eaves, gutters, cornices, other arch features</b>	2 feet	2 feet	2 feet	2 feet	Projections over 2 feet in any yard count as lot coverage
<b>Fireplaces Bay Windows</b>	2 feet	2 feet	2 feet	2 feet	
<b>Open or Enclosed Porches, Stoops</b>	8 feet (N3, RMH) All others not less than 5 feet to front P/L	None	2 feet	2 feet	
<b>Open decks, Stairways &amp; Landings</b>	8 feet (N3 & RMH) All others not less than 5 feet to front P/L	2 feet	2 feet	2 feet	Ramps providing an accessible way are exempt from these requirements

**I. YARD TREATMENT**

Build-to zones, and front, side and rear yards shall be a minimum of 60 percent landscape area. Driveways are not permitted within the minimum side setbacks.

**J. FRONT ENTRANCES**

The following applies only when required by the site and structure regulations for the district. Front building entrances shall be emphasized, adding interest to the building façade, through one or more of the following design features:

1. **Roof or Canopy.** The entrance is covered by a roof or canopy differentiating it from the overall building roof type.
2. **Porch.** The entrance is through a porch.
3. **Sidelights and Transom.** Sidelights and/or transom windows are included abutting the entrance door.
4. **Recessed or Projecting Bay.** The entrance is located in a separate bay of the building that is either recessed or projected from the front façade.
5. **Other Design.** Other designs adding emphasis and drawing attention to the entrance on the facade may be approved with Administrative Relief (Art. 27-1600).

**K. ARTERIAL SETBACKS**

Minimum arterial setbacks as follows apply to all neighborhood districts:

1. No building or structure shall be erected or maintained within 50 feet of the centerline of an arterial street. In addition, no required parking area or portion thereof, including driving aisles, shall be constructed or located within 40 feet of the centerline of an arterial street. Any new construction that increases the number of required off-street parking spaces, must locate these additional required parking spaces in areas that comply with these locational standards.
2. Approved signs and public use controls and systems, trees trimmed up eight feet and canopies with at least eight feet clearance, shall be permitted in this setback area. For the purpose of this subsection, canopies shall be defined as covers that are solely attached to and supported by the structure on which it is attached to and which can be removed without destroying any part of that supporting structure. This shall only apply to canopies attached to the principal structure.
3. The designation of a street as an arterial shall be recommended by the city engineer, or in conformity with the most recent urban transportation plan.

## SECTION 27-304 N1 DISTRICT

The following site and structure regulations apply to any lot in the N1 district. Refer to 27-303 for general regulations applicable to all districts and Table 27-300-3, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(1). See Article 27-1800 for definitions and information on how to measure the following regulations.

TABLE 27-300.3 SITE AND STRUCTURE REGULATIONS

A. BUILDING SITING		REFERENCES
<b>1</b>	Minimum Lot Width (feet) per principal building Maximum Lot Width (feet) per principal building	20 80 See 27-304.D for 2-unit buildings. See Article 27-1500 existing lots of record.
<b>2</b>	Maximum Front Building Width (feet)	65 per principal building
<b>3</b>	Front Build-to Zone (feet)	8-20; match block face average
<b>4</b>	Street-Side Build-to Zone (feet)	5-15 See Article 27-1800 for block face averaging instructions.
<b>5</b>	Side Setback (feet) Space Between Principal Buildings on Lot (feet)	5 minimum 10 minimum See 27-304.D for side street lots
<b>6</b>	Rear Setback (feet)	5 minimum
<b>7</b>	Accessory Building Yard Location	Rear
<b>8</b>	Accessory Building: Min. Rear Setback (feet)	3, except 0 at alley
<b>9</b>	Maximum Building Coverage (%)	60
<b>10</b>	Permitted Driveway Access Location	Alley, side street if no alley
<b>11</b>	Attached Garage Entrance Location	Rear, side, or street-side façade; front façade allowed maximum 15 feet in width and no more than 30% of façade See Article 27-1305 for driveway access.
B. HEIGHT		
<b>12</b>	Principal Building: Maximum Height (stories) Maximum Height (feet)	2.5 34 See Article 27-1800 for instructions for measuring height
<b>12</b>	Accessory Building: Maximum Height (stories) Maximum Height (feet)	2; not taller than the principal structure 27 Accessory roof pitch shall match principal building
C. WINDOWS, FRONT DOOR, ROOF		
<b>14</b>	Minimum Window & Door Coverage: Front Façade (%)	15 measured per story of all full stories Measured per each full and half story. See Article 27-1800 for information on measuring front façade window & door coverage
<b>15</b>	Front Door Location Entrance Treatment	Front Façade See 27-303.J for Front Entrance See 27-304.D for 2-unit buildings.
<b>16</b>	Permitted Roof Types Minimum pitch, less than 2 stories Minimum pitch, 2 or more stories	Pitched, tower permitted 4:12 (rise:run) 3:12 (rise:run) See Article 27-1800 for definition of roof types and exception for other allowed roof types. See Article 27-1500 for existing buildings

SINGLE-UNIT OR TWO-UNIT HOME

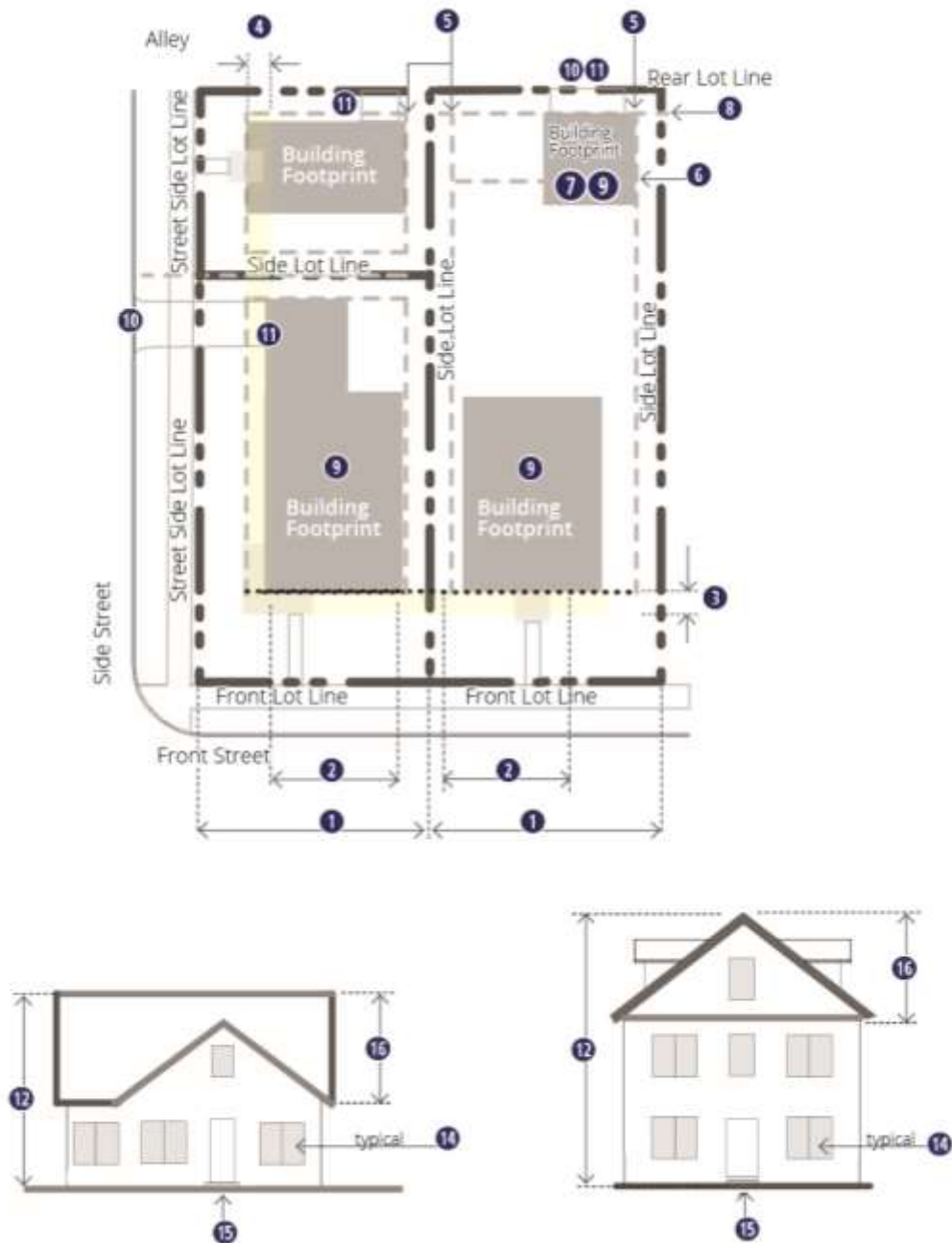


Figure 27-300(1). N1 district diagrammatic plans and elevations.

D. Supplemental Regulations

1. Side Street Lots. Side street lots are those lots located along the short end of blocks, where the front of the lot faces the side street and the depth of the lot is generally the width of most of the lots on the block. Lots with only side street frontage are allowed maximum building coverage of 80%.
2. The following applies to 2-unit buildings:

- (a) Configuration. Allowed configurations include the following: side-by-side units, stacked units, front and rear units, all located in the principal building; two principal buildings on one lot; or a principal building with an accessory building (see Article 27-1000). For side-by-side units, the lot may be split to allow a fee simple configuration with a zero side yard setback and shared wall between the two units.
- (b) Entrance. One entrance is permitted per street facade, except for side-by-side units on separate lots.

## SECTION 27-305 N2 DISTRICT

The following site and structure regulations apply to any lot in the N2 district. Refer to 27-303 for general regulations applicable to all districts and Table 27-300-4, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(2). See Article 27-1800 for definitions and information on how to measure the following regulations.

TABLE 27-300.4 SITE AND STRUCTURE REGULATIONS

A. BUILDING SITING		REFERENCES	
<b>1</b>	Minimum Lot Width(feet) per principal building	50	See 27-305.D for 2-unit buildings. See Article 27-1500 existing lots of record.
	Maximum Lot Width (feet) per principal building	120	
<b>2</b>	Maximum Front Building Width (feet)	80 per principal building	
<b>3</b>	Front Build-to Zone (feet)	10-20; match block face average	See Article 27-1800 for block face averaging instructions
<b>4</b>	Street-Side Build-to Zone (feet)	10-15	
<b>5</b>	Side Setback (feet)	5 minimum	
	Space Between Principal Buildings on Lot (feet)	10 minimum	
<b>6</b>	Rear Setback (feet)	5 minimum	See 27-305.D for side street lots
<b>7</b>	Accessory Building Yard Location	Rear	
<b>8</b>	Accessory Building: Rear Setback (feet)	3 minimum, except 0 at alley	
<b>9</b>	Maximum Total Building Coverage (%)	40	
<b>10</b>	Permitted Driveway Access Location	Any	See 27-1305 for driveway access exceptions
	Attached Garage Entrance Location	Any façade; front façade limited to no more than 35% of façade	
B. HEIGHT			
<b>12</b>	Principal Building: Maximum Height (stories).	1.5; 2 stories on maximum 60% of footprint	
	Maximum Height (feet)	27	
<b>12</b>	Accessory Building: Maximum Height (stories)	1.5 stories, no taller than the principal building	Accessory roof pitch shall match principal building
C. WINDOWS, FRONT DOOR, ROOF			
<b>14</b>	Minimum Window & Door Coverage: Front Façade (%)	15 per story	Measured per each full and half story. See Article 27-1800 for information on measuring window and door facade coverage
<b>15</b>	Front Door Location	Street Façade	See 27-305.D for 2-unit buildings.
<b>16</b>	Permitted Roof Types	Low pitched, flat	See Article 27-1800 for definition of roof types and exception for other allowed roof types.
	Minimum pitch	3:12 (rise:run)	
	Maximum pitch	6:12 (rise:run)	

SINGLE-UNIT OR TWO-UNIT HOME

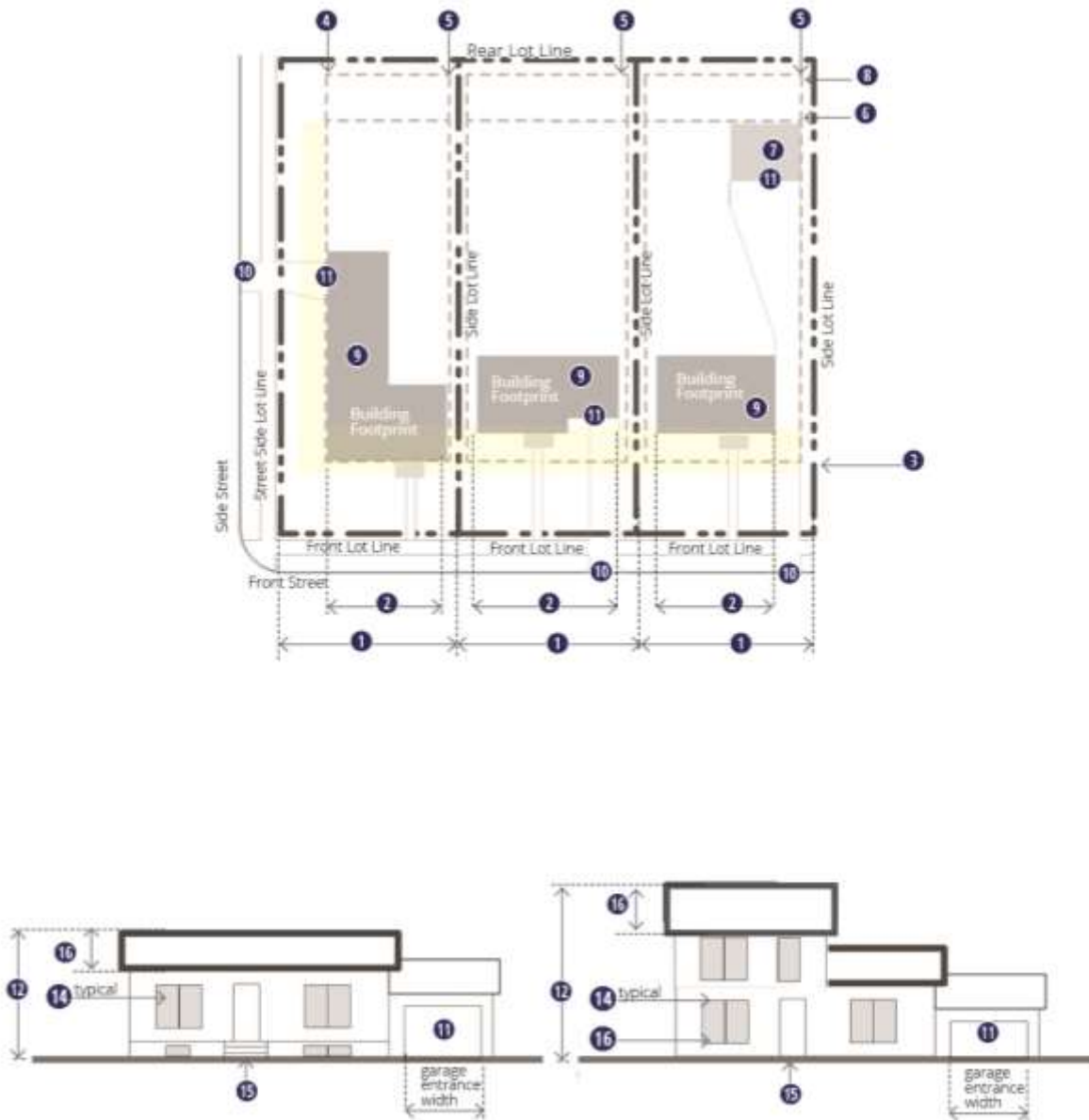


Figure 27-300(2). N2 district diagrammatic plans and elevations.

D. Supplemental Regulations

1. Side Street Lots. Side street lots are those lots that along the short end of blocks, where the front of the lot faces the side street and the depth of the lot is generally the width of most of the lots on the block. Lots with only side street frontage are allowed maximum building coverage of 80%.
2. The following applies to 2-unit buildings:

- (a) Configuration. Allowed configurations include the following: side-by-side per below, stacked units, front and rear units, all located in the principal building; two principal buildings on one lot; or a principal building with an accessory building (see Article 27-1000).
- (b) Side-by-side units in N2 shall be located perpendicular to the street in a U-shaped configuration with a courtyard or shared yard. The lot may be split to allow a fee simple configuration with a zero side yard setback and shared wall between the two units. Two units attached end to end are permitted with a maximum width along the street of 60 feet.
- (c) Entrance. One entrance is permitted on the street, except for side-by-side units on separate lots, the entrances may be located off the courtyard.

SECTION 27-306 N3 DISTRICT

The following site and structure regulations apply to any lot in the N3 district. Refer to 27-303 for general regulations applicable to all districts and Table 27-300-5, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(3). See Article 27-1800 for definitions and information on how to measure the following regulations.

TABLE 27-300.5 SITE AND STRUCTURE REGULATIONS

A. BUILDING SITING		REFERENCES	
1	Minimum Lot Width (feet) per principal building	65	See Article 27-1500 existing lots of record. See 27-306.C for exemption from minimum lot widths.
	Minimum Lot Size (square feet) per principal building	none	
2	Maximum Building Width (feet)	None	
3	Front Setback (feet)	20 minimum	
4	Street-Side Setback (feet)	10 minimum	
5	Side Setback (feet)	5 minimum	
	Space Between Principal Buildings on Lot (feet)	10 minimum	
6	Rear Setback (feet)	5 minimum	
7	Accessory Building Yard Location	Rear	
8	Accessory Building: Rear Setback (feet)	5 minimum, except 0 at alley	
9	Maximum Total Building Coverage (%)	40	
10	Permitted Driveway Access Location	Any	
11	Attached Garage Entrance Location	Any façade; front façade limited to no more than 50% of façade	
B. Height			
Principal Building:	Maximum Height (stories)	3	See Article 27-1800 for instructions for measuring height.
	Maximum Height (feet)	34	
Accessory Building:	Maximum Height (stories)	1.5 stories, no taller than the principal building	Accessory roof pitch shall match principal building

SINGLE-UNIT HOME

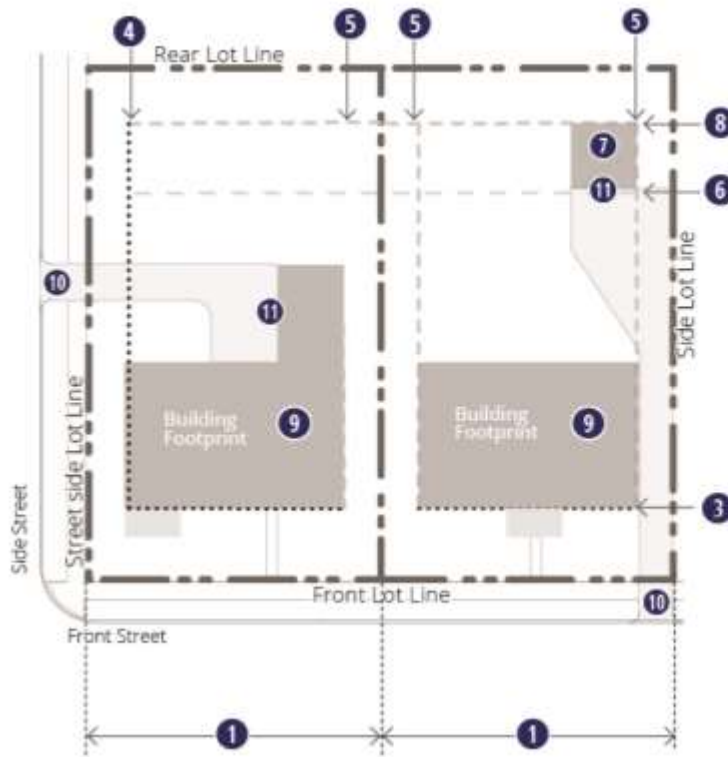


Figure 27-300(3). N3 district diagrammatic plan.

C. Supplemental Regulations

1. Lots on cul-de-sacs and flag lots are exempt from minimum lot width regulations. See also Article 27-1500 for existing lots of record.

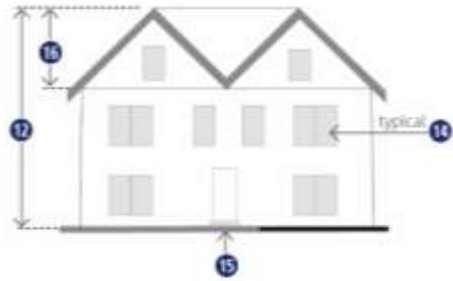
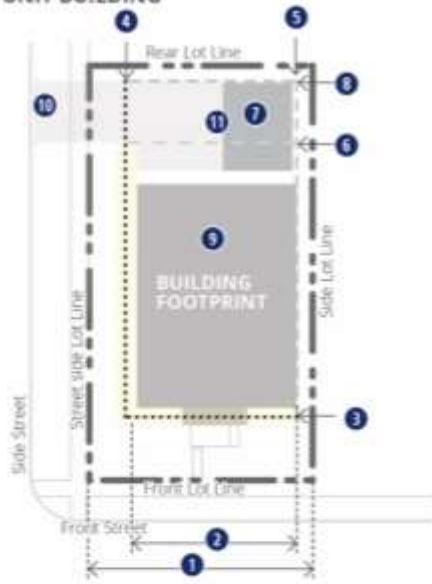
SECTION 27-307 NX1 DISTRICT

The following site and structure regulations apply to any lot in the NX1 district. Refer to 27-303 for general regulations applicable to all districts and Table 27-300-6, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(4). See Article 27-1800 for definitions and information on how to measure the following regulations.

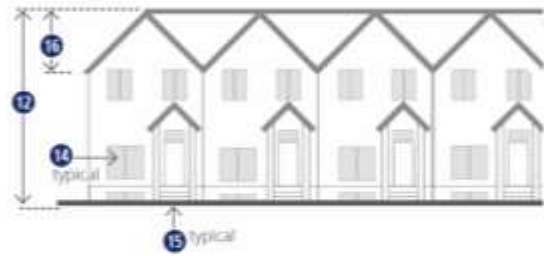
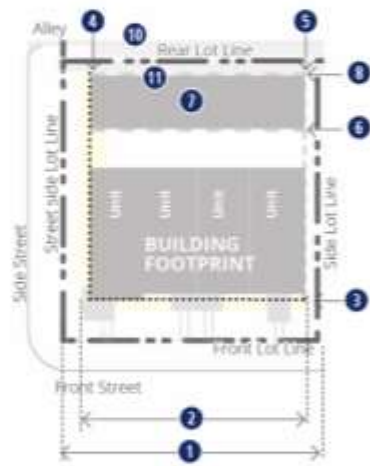
TABLE 27-300.6 SITE AND STRUCTURE REGULATIONS

A. BUILDING SITING		Single or Multi-Unit Building	Side-by-Side Attached Units	REFERENCES
1	Minimum Lot Width (feet) per principal building	20 for 1 or 2 units; 50 for 3 or more units	50	See Article 27-1500 for existing lots of record. Side-by-side means units attached along front façade. See 27-307.D for fee simple side-by-side attached units.
2	Maximum Front Building Width (feet)	60	80, 4 units; 120, 4 units on side street	See 27-307.D for fee simple side-by-side attached units.
3	Front Build-to Zone (feet)	8-20; match block face average		See Article 27-1800 for block face averaging instructions. See definitions for front and street-side.
4	Street-Side Build-to Zone (feet)	8-15		See 27-307.D for through lots. Refer to 27-700 for visibility at intersections. See 27-303.K for arterial setback regulations.
5	Side Setback (feet) Space Between Principal Buildings on Lot (feet)	5 minimum 10 minimum		See 27-307.D for side street lots.
6	Rear Setback (feet)	5 minimum		See 27-307.D for side street lots.
7	Accessory Building Yard Location	Rear	Rear	See Article 27-1800 for explanation of yards.
8	Accessory Building: Rear Setback (feet)	5 minimum or 0 at alley		
9	Maximum Building Coverage (%)	60		See 27-307.D for side street lots.
10	Permitted Driveway Access Location	Alley, side street; front street if no side street is available		See 27-1305 for driveway access exceptions.
11	Attached Garage Location Allowed Garage Entrance	Rear half of the building; Rear or side adjacent to street façade only		
B. HEIGHT				
12	Principal Building: Maximum Height (stories) Maximum Height (feet)	2.5 27	2.5 27	See Article 27-1800 for definition half story.
12	Accessory Building: Maximum Height (stories)	1.5, no taller than the principal building		Accessory roof pitch shall match principal building
C. WINDOWS, FRONT DOORS, ROOF				
14	Minimum Window & Door Coverage: Front Façade (%)	15 per story	15 per story	Measured per each full and half story. See Article 27-1800 for information on measuring door & window coverage.
15	Front Door Façade Location & Number of Doors	1 on street façade per building	1 per unit on street facade	See 27-307.D for multiple buildings on a courtyard.
	Entrance Treatment	See 27-303.J for Front Entrance		
16	Permitted Roof Types	Parapet, pitched; tower permitted		See Article 27-1800 for definition of roof types and exception for other allowed roof types.

**MULTI-UNIT BUILDING**



**SIDE-BY-SIDE ATTACHED**



**COTTAGE COURT**



Figure 27-300(4). NX1 district diagrammatic plan.

## D. Supplemental Regulations

1. Courtyard Configuration. For multiple buildings and side-by-side attached units with a courtyard, entrances may be located off the courtyard, except every unit abutting a street frontage must include the principal entrance on the street.
2. Through Lots. For developments on lots that extend through a block and addresses on two streets, buildings must front both streets and entrances provided on each street.
3. Fee Simple Side-by-Side Units. For fee simple side-by-side units, the lot width may be smaller; however, the building, comprised of multiple units, shall total meet the minimum regulations.
4. Side Street Frontage. For corner lots, all lot lines other than the front and street-side are side lot lines and, for parking and accessory buildings, the director shall determine where the rear of the lot is located.
5. Open Space. One of the following open space types must be provided for every three contiguous acres of NX1 district:
  - (a) Parklet. A parklet is a landscaped open space with a minimum 70% living plant material and a minimum of 20,000 square feet in area, with at least 100 feet of street frontage.
  - (b) Green. A green is a larger, landscaped space, a minimum of one acre in size, with at least 200 feet of street frontage.
  - (c) Natural Area. A natural area is a large area, a minimum two acres in size, defined to conserve a natural feature, such as a stream, wetland or woodland. At least 50 feet of street frontage is required for a natural area.

## SECTION 27-308 NX2 AND NX3 DISTRICT

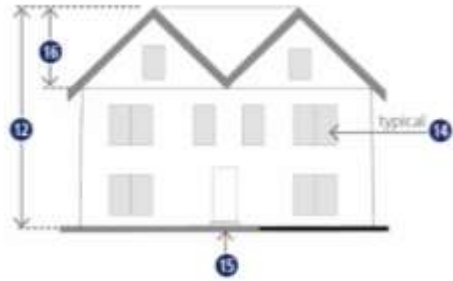
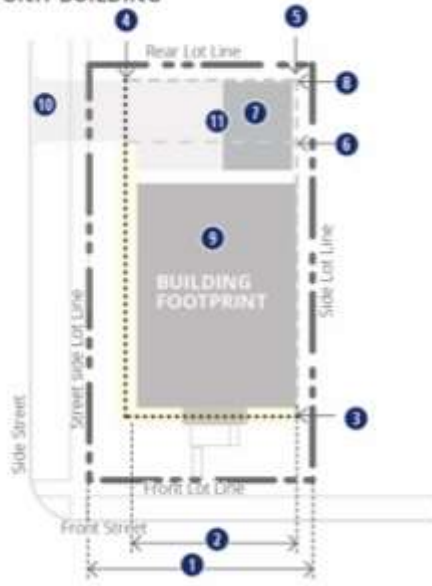
The following site and structure regulations apply to any lot in the NX2 and NX3 district. Refer to 27-303 for general regulations applicable to all districts and Table 27-300-7, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(5). See Article 27-1800 for definitions and information on how to measure the following regulations.

TABLE 27-300.7 SITE AND STRUCTURE REGULATIONS

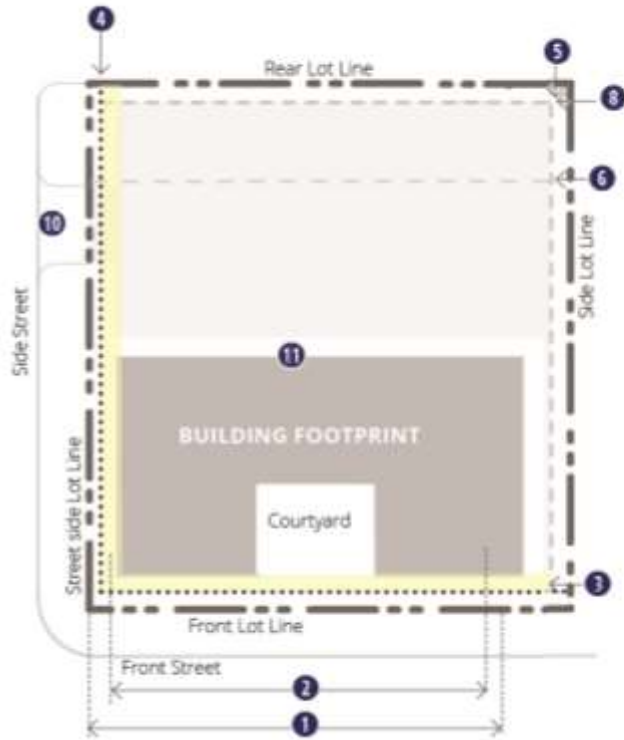
A. BUILDING SITING		Multi-Unit Building	Side-by-Side Units	REFERENCES
1	Minimum Lot Width (feet) per principal building	20 for 2 units; 50 for 3 or more units	50	See Article 27-1500 for existing lots of record.
	Minimum Lot Area (square feet)	7000; None for 2 units	None	
2	Maximum Building Width (feet)	16 ft per ground floor unit	8 units/172 feet on any frontage	See 27-307.D for fee simple row building units.
3	Front Build-to Zone (feet)	10-20		See definitions for front and street-side. See 27-303.K for arterial setback regulations. See 27-307.D for through lots. Refer to 27-700 for visibility at intersections.
4	Street-Side Build-to Zone (feet)	5-15		
5	Side Setback (feet)	5 minimum; 15 abutting N1, N2, N3, or RMH districts		
	Space Between Principal Buildings on Lot (feet)	10 minimum		
6	Rear Setback (feet)	10 minimum; 20 abutting N1, N2, N3, or RMH districts		
7	Accessory Building Yard Location	Rear		See Article 27-1800 for definition of yards.
8	Accessory Building: Rear Setback (feet)	7.5		
9	Maximum Building Coverage (%)	60		
10	Permitted Driveway Access Location	Alley, side street; front street if no side street is available		
11	Attached Garage Location Allowed Garage Entrance	Rear half of the building; Rear or street-side façade only		
B. HEIGHT				
12	Principal Building: Minimum Height (stories)	2	1.5 for NX2; 2 for NX3	See Article 27-1800 for definition of half story.
	Maximum Height (stories)	3 for NX2; 4 for NX3	2.5 for NX2; 3 for NX3	
12	Accessory Building: Maximum Height (stories) Maximum Height (feet)	1.5 27	1.5 27	Accessory roof pitch shall ma principal building
C. WINDOWS, FRONT DOOR, ROOF				
14	Minimum Window & Door Coverage: Front Façade (%)	15 per story	15 per story	Measured per each full and half story. See Article 27-1800 for information on measuring door & window coverage.
15	Front Door Façade Location & Number of Doors	1 per building on street façade	1 per unit on street facade	See Article 27-1800 for multiple buildings on a courtyard
	Entrance Treatment	See 27-303.J for Front Entrance		
16	Permitted Roof Types	Parapet, pitched, flat; tower permitted		See Article 27-1800 for definition of roof types and exception for other allowed roof types.

## 2-4 UNIT BUILDING

MULTI-UNIT BUILDING



5+ UNIT BUILDING



SIDE-BY-SIDE ATTACHED

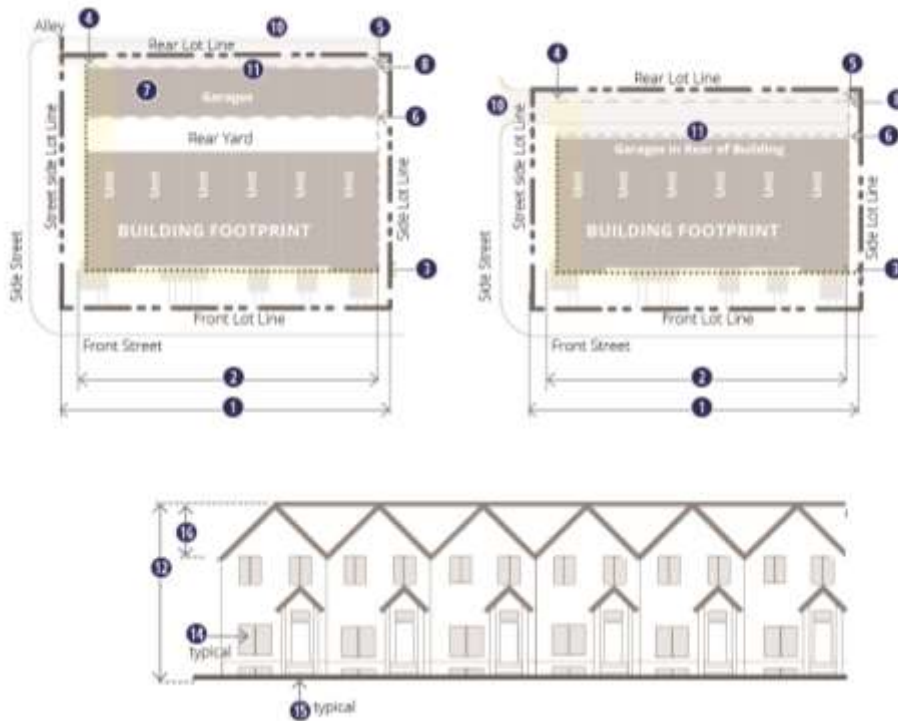


Figure 27-300(5). NX2 and NX3 district diagrammatic plans.

D. Supplemental Regulations

1. Courtyard Configuration. For multiple buildings and side-by-side attached units with courtyards, entrances may be located off a courtyard, except every unit abutting a street frontage must include the principal entrance on the street.
2. Through Lots. For developments on lots that extend through a block and addresses on two streets, buildings must front both streets and entrances provided on each street.
3. Fee Simple Side-by-Side Units. For fee simple side-by-side units, the lot width may be smaller; however, the building, comprised of multiple units, shall total meet the minimum regulations.
4. Side Street Frontage. For corner lots, all lot lines other than the front and street-side are side lot lines and, for parking and accessory buildings, the director shall determine where the rear of the lot is located.
5. Open Space. One of the following open space types must be provided for every three contiguous acres of NX2 district:
  - (a) Parklet. A parklet is a landscaped open space with a minimum 70% living plant material and a minimum of 20,000 square feet in area, with at least 100 feet of street frontage.
  - (b) Green. A green is a larger, landscaped space, a minimum of one acre in size, with at least 200 feet of street frontage.

- (c) Natural Area. A natural area is a large area, a minimum two acres in size, defined to conserve a natural feature, such as a stream, wetland or woodland. At least 50 feet of street frontage is required for a natural area.

## SECTION 27-309 RMH DISTRICTS

The following site and structure regulations apply to any lot in the RMH district. Refer to 27-303 for general regulations applicable to all districts and Table 27-310-8, below, for regulations specific to this district. See Article 27-1800 for definitions and information on how to measure the following regulations.

TABLE 27-300.8 SITE AND STRUCTURE REGULATIONS

A. BUILDING SITING		REFERENCES
Minimum Lot Size (square feet)	3,000 per principal building	
Front Setback (feet)	20 minimum	
Street-Side Setback (feet)	10 minimum	
Side Setback (feet)	8 minimum	See 27-310.C for site built structures.
Rear Setback (feet)	8 minimum	
Accessory Building Yard Location	Rear and side yard	
Maximum Total Building Coverage (%)	50	
B. HEIGHT		
Principal Building: Maximum Height (feet)	34	See Article 27-1800 for instructions for measuring height
Accessory Building: Maximum Height (feet)	40 and no taller than principal building	Accessory Roof Pitch shall match Principal Building

## C. Supplemental Regulations

1. Open Space. One of the following open space types must be provided for every 3 acres of RMH district:
  - (a) Parklet. A parklet is a landscaped open space with a minimum 70% living plant material and a minimum of 20,000 square feet in area, with at least 100 feet of street frontage.
  - (b) Green. A green is a larger, landscaped space, a minimum of one acre in size, with at least 200 feet of street frontage.
  - (c) Natural Area. A natural area is a large area, a minimum two acres in size, defined to conserve a natural feature, such as a stream, wetland or woodland. At least 50 feet of street frontage is required for a natural area.
2. Manufactured home, Type 1: A manufactured home that was certified on or after January 1, 1990, and that satisfies each of the following additional criteria:
  - (a) The pitch of the home's roof has a minimum vertical rise of three inches for each 12 inches of horizontal run (3:12), and the roof is finished with a type of shingle that is commonly used in standard residential construction;
  - (b) The exterior siding consists of wood, hardboard, aluminum or vinyl siding comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction;

- (c) A continuous, permanent perimeter foundation is installed under the home; and
- 3. Manufactured home, Type 2: A manufactured home that does not satisfy the criteria necessary to qualify the house as a Type 1 manufactured home.
- 4. Site-Built Structure. A site-built structure complying with the State Building Code may be setback a minimum of 5 feet from the side lot line.

**ARTICLE 1000: USE-SPECIFIC STANDARDS**

When reference is made to a group of zone districts, the following individual districts shall be included:

<b>District Groupings Used in this Section</b>	
Residential	All N districts, RMH, All NX districts
Mixed-Use	All NX districts, NO, NMU, All CMU districts
Commercial	C3, CX
EBURD	EBURD
Industrial	I1, I2
Public	P2, P3 (P1 is open space only)

**SECTION 27-1001 GENERAL PROVISIONS****A. GENERALLY APPLICABLE STANDARDS**

The following general standards apply to the uses identified in this article.

1. A lot may contain more than one use.
2. Each of the uses may function as either a principal use or accessory use on a lot, unless otherwise specified.
3. Uses are either: permitted by-right (P) in a district, permitted by-right with use-specific standards, that may include separation requirements that are applicable across multiple districts as described in this code section (PR) or design parameters defined in specific zone districts (PL), or require special review (SR) in order to be developed.
4. Each use may have both indoor and outdoor facilities, unless otherwise specified.

**B. USE TABLE ORGANIZATION**

1. This section identified the uses that are permitted on a lot or in a development for three categories of uses:
  - (a) Table 27-1000.1 identifies the primary uses permitted in each zone district.
  - (b) Table 27-1000.6 identifies the accessory uses permitted in each zone district.
2. Definitions for individual uses are provided in Section 27-1800, Definitions.

**C. PRIMARY USE CLASSIFICATION GENERAL DESCRIPTIONS****1. Organization**

- (a) To organize the uses in the Table 27-1000.1, Permitted Primary Uses, land uses and activities are classified into general “use categories” that are based on common functional, product, or physical characteristics, such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and site conditions. The use categories in Table 27-1000.1 are:
  - (1) Residential
  - (2) Public, Civic, and Institutional

- (3) Commercial
  - (4) Industrial, Wholesale, and Storage
  - (5) Agriculture
- (b) Where there are also groups of uses with a use type, the use type may also be organized into “use groups” and “use type subgroups” where there are a number of possible variations of a use type, such as residential dwellings or group living. This classification provides a systematic basis for assigning present and future land uses into appropriate zoning districts.
- (c) The use categories and use groups are described below for the purpose of providing a general description of each use category and use group along with examples of primary and some accessory uses that might be permitted within the category or group. Not all of these uses are permitted in every zone district. Accessory uses described in this section may also be allowed as primary uses in some zone districts. To determine which uses are permitted in which district, see Table 27-1000.1.

## 2. Residential Uses

- (a) **Use Category Description:** This is a category of uses offering habitation on a continuous basis of at least 30 days. The continuous basis is established by tenancy with a minimum term of one month or property ownership. This use category also includes group residential facilities.
- (b) **Use Types**
- (1) **Household Living:** This use type is characterized by residential occupancy of a dwelling unit by one or more persons. Uses where tenancy may be arranged for a shorter period are not considered residential; they are considered to be a form of transient lodging.
  - (2) **Group Living:** This use type is characterized by residential occupancy of a structure by a group of people who do not meet the definition of "Household Living". Generally, group living structures have a common eating area for residents. The residents may receive care, training, or treatment, and caregivers may also reside at the site.

## 3. Public, Civic, and Institutional Uses

- (a) **Use Category Description:** This is a use category for public, quasi-public, and private uses that provide unique services that are of benefit to the public at-large.
- (b) **Use Types**
- (1) **Assembly:** Civic and cultural assembly uses are permanent places where persons regularly assemble for religious worship or secular activities, and which are maintained and controlled by a body organized to sustain the religious or public assembly. Civic assembly uses include civic and social organizations such as private lodges, clubs, fraternities, and similar private membership organizations, as well as places of community assembly such as libraries and museums.
  - (2) **Education:** This use type includes institutions of learning that provide educational instruction to students. Accessory uses include play areas, cafeterias, recreational and sport facilities, auditoriums, and before- or after-school day care.

- (3) **Health Care and Social Assistance:** This use type is characterized by activities focusing on medical services, particularly licensed public or private institutions that provide primary health services and medical or surgical care to persons suffering from illness, disease, injury, or other physical or mental conditions. Accessory uses may include laboratories, outpatient, or training facilities, and parking, or other amenities primarily for the use of employees in the firm or building.
- (4) **Parks and Recreation:** This use type includes uses that focus on natural areas, large areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, or public squares. These lands tend to have few structures. Accessory uses may include clubhouses, playgrounds, maintenance facilities, concessions, caretaker's quarters, and parking for cars and RVs as permitted by the City.

#### 4. Commercial Uses

- (a) **Use Category Description:** This is a use category for any retail, consumer service, or office use.
- (b) **Use Types**
  - (1) **Amusement and Recreation:** This use type includes a broad array of commercial establishments that operate indoor or outdoor facilities or provide services to meet varied artistic, cultural, entertainment, and recreational interests of their patrons. Excluded are restaurants and bars that provide live entertainment in addition to the sale of food and beverages, which this Zoning Code categorizes as “eating and drinking establishments.”
  - (2) **Animal Sales and Services:** This use category groups uses related to animal care.
  - (3) **Assembly, Entertainment and Trade:** These commercial assembly uses include convention centers, theaters, stadiums, arenas, and wedding venues.
  - (4) **Adult and Child Care:** This use type includes adult day care and the range of child care services permitted by Montana law.
  - (5) **Commercial Services:** This use category includes uses that provide for consumer or business services and for the repair and maintenance of a wide variety of products. Personal services are also included, characterized by establishments that provide individual services related to personal needs such as barber shops or dry cleaners.
  - (6) **Eating and Drinking Establishment:** This is a use category for businesses that prepare or serve food or beverages for consumption on or off the premises, such as restaurants and bars, along with specialty food and beverage production such as coffee roasting and craft alcohol. Accessory uses may include outdoor seating, offices and parking.
  - (7) **Financial Services:** This use category includes establishments that have a primary purpose of: providing custody, loans, exchange, or issuance of money; extending credit; and transmitting funds, including via drive-in facilities and automatic teller machines.
  - (8) **Lodging:** Uses in this use type provide customers with temporary housing for an agreed upon term of less than 30 consecutive days; any use where temporary housing is offered to the public for compensation and is open to transient rather than permanent

guests. This use type includes hotels, motels, short-term rentals, and bed and breakfast inns.

- (9) **Office:** This type includes uses where people are engaged primarily in on-site administrative, business, or professional activities. These uses are characterized by activities in an office setting that focus on the provision of off-site sale of goods or on-site information-based services, usually by professionals. Typical examples include real estate, insurance, property management, investment, employment, travel, advertising, law, architecture, design, engineering, accounting, call centers, and similar offices. This category may also include laboratory services that are conducted entirely within an office-type setting. Accessory uses may include cafeterias, health facilities, parking or other amenities primarily for the use of employees in the firm or building.
- (10) **Parking, Commercial:** A use type that distinguishes primary commercial parking facilities from accessory parking.
- (11) **Retail Sales:** This is a use type for businesses involved in the sale, lease, or rental of new or used products to the general public. Such uses may include, but are not limited to: convenience food store, drug store, grocery store, hardware store, general merchandise store, garden supplies, furniture, home furnishings and equipment. Accessory uses may include offices, parking, storage of goods, and assembly, repackaging or repair of goods for in-site sales.
- (12) **Vehicle and Sales and Services, Personal:** This use type includes a broad range of uses for the maintenance, sale, or rental of passenger motor vehicles and related equipment. Accessory uses may include incidental repair and storage and offices.

## 5. Industrial, Wholesale, and Storage

- (a) **Use Category Description:** This is a use category including uses that produce goods from extracted and raw materials or from recyclable or previously prepared materials, including the design, storage, and handling of these products and the materials from which they are produced.
- (b) **Use Types**
  - (1) **Industrial and Construction Services:** This use type is characterized by companies that are engaged in the repair or servicing of heavy machinery, equipment, products, or by-products, or the provision of heavy services including construction or contracting. Accessory activities and uses may include sales, offices, parking, and storage.
  - (2) **Industrial Manufacturing, Assembly, or Processing:** A use type including establishments involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, constructed, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished, and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, such activity is a subordinate part of sales. Relatively few customers come to the manufacturing site. Accessory activities may include retail sales, offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, repair facilities, truck fleets, and caretaker's quarters.

- (3) Natural Resource Extraction: This use type includes removal of resources from the ground.
- (4) Warehousing and Wholesale Sales and Distribution: This use type includes facilities used for the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or order taking, and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited as a result of the way in which the firm operates. Products may be picked up on site or delivered to the customer. Warehousing does not include establishments that are retail membership clubs or that are predominately retail uses with associated warehouse storage space.
- (5) Waste and Salvage: This is a use category for uses that collect, store, process, or sell waste or salvage materials, or collect and process recyclable material, for the purpose of marketing or reusing the material in the manufacturing of new, reused, or reconstituted products.

#### **6. Transportation, Utilities, and Communication**

- (a) Use Category Description: This use group includes providers and uses that provide public and quasi-public services to individuals and the community in the following categories.
- (b) Use Types
  - (1) Alternative Energy Production: this is a use category that includes energy produced from resources that are regenerative, such as wind and solar energy.
  - (2) Transportation: this is a use category that includes uses involving public and private modes of transportation.
  - (3) Utilities and Public Facilities: This use type includes structures and locations for public or private lines and facilities related to the provision, distribution, collection, transmission, or disposal of water, storm and sanitary sewage, oil, gas, power, information, telecommunication and telephone cable, and facilities for the generation of electricity. Utility uses may or may not have regular employees at the site and the services may be public or privately provided.
  - (4) Wireless Communication Facilities: This use type includes structures, locations, and equipment for the transmission of voice, data, image, or video programming.

#### **7. Agricultural Uses**

Use Category Description: This is a category of uses characterized by active and on-going agricultural uses, activities, and related uses. Not all uses listed here are allowed within the city limits. An agricultural use, in general, means the use of land for the growing and production of field crops, livestock, aquatic, and animal products for the production of income. Other agricultural uses might include fruit and vegetable stands, livestock sales, wholesale nurseries, and stables. Lands in agricultural uses and districts may also be held for preservation and conservation purposes. The sale or service of agricultural products and equipment included in similar commercial use categories.

### **SECTION 27-1002 USES BY DISTRICT**

#### **A. USE TABLE**

Table 27-1000.1, Permitted Primary Uses, identifies the permitted primary uses in each zoning district. Each use is given one of the following designations for each zoning district in which that use is permitted.

1. Permitted /P/. These uses are permitted by-right in the zone districts in which they are listed. Permitted uses are required to comply with applicable use-specific standards identified in this article.
2. Permitted in a specified location, such as on upper stories or in the back of a structure /PL/. These uses are permitted by-right in the districts in which they are listed, provided that the uses are located in the upper stories of a structure. These uses may also be located in the ground story provided that they are located beyond a depth of at least 30 feet from the front facade.
3. Permitted with use restrictions /PR/. These uses must comply with the use restrictions identified in this Zoning Code, including those restrictions included in this article and any use restrictions identified in the zone district where the uses is proposed to be located.
4. Requires a special review /SR/. These uses require special review by the city zoning commission are not permitted uses in the districts in which they are listed but may be allowed as special exceptions subject to specific conditions. Uses permitted by special review must follow any applicable development standards associated with the use as well as meet the requirements of the special review.
5. Uses that are not permitted are indicated by a blank space.

## B. INTERPRETATION

### 1. Classification of New or Unlisted Uses

Every type of potential use cannot be addressed or foreseen in this Zoning Code. When a use is proposed that is not specifically listed in the applicable use table, the following procedures shall be applied.

### 2. Uses Not Subject to Use Interpretation

The following categories of uses typically impose substantial impacts on a site, adjacent sites and structures, pedestrians or cyclists, the road network, or public infrastructure. Where a new use is proposed that is not identified in the applicable use table and that can be categorized into one of these categories, the applicant shall file an application for code amendment to determine if the use will be permitted. Through this process, the City will have the opportunity to review and determine the impacts of the proposed use and establish any prescribed conditions that may be appropriate to allowing the use.

- (a) Agricultural Uses
- (b) Industrial Services
- (c) Manufacturing, Processing, and Assembly
- (d) Waste and Salvage

**3. Request for Use Interpretation**

Requests for a use not prohibited in the previous section and not specifically addressed in any zoning district shall be submitted to the Zoning Coordinator for review, based on the following standards.

- (a) The Zoning Coordinator shall determine whether the proposed use is listed in the applicable use table as a use permitted by right, with prescribed conditions, or as a special use in any zoning district.
- (b) If the use is not addressed in the appropriate use table, the Zoning Coordinator shall select the use listed which most closely approximates the proposed use, using criteria such as:
  - (1) Appropriate use category in Section 27-1001.C;
  - (2) Conformance with the currently adopted growth policy and purpose of the zoning district in which the use is proposed;
  - (3) Types of equipment and/or processes to be used;
  - (4) Number of employees, visitors, or customers generated;
  - (5) Parking demands associated with the use; and
  - (6) Special public utility requirements for serving the proposed use type, including, but not limited to, electricity, water supply, wastewater output, pre-treatment of wastes and emissions required or recommended, and any significant power structures or infrastructure and communications towers or facilities;
- (c) Once a similar use is determined, the Zoning Coordinator shall issue a zoning determination letter and the proposed use shall comply with any conditions and review procedures that may apply to that use.
- (d) If, based on the criteria identified above, the Zoning Coordinator determines that a use can reasonably be determined to be similar to more than one use or category of uses, the Zoning Coordinator shall select the use or category of uses that provides the most exact, narrowest, and appropriate fit.
- (e) The determination as to whether a proposed use is similar in nature and class to another use within a district shall be considered an expansion of the use regulations, not a variance applying to a particular situation. The Zoning Coordinator shall keep a log of use interpretations and shall periodically submit zoning code amendments to revise this Zoning Code in keeping with the use interpretations.

**4. Determination of Non-Similarity**

- (a) The Zoning Coordinator may determine that a proposed use is not substantially similar to any use identified in Table 27-1000.1 because either:
  - (1) The potential impacts of the use, as identified in Section 27-1001.C.3, are significantly more impactful on the site, street, or neighborhood, than other permitted uses in the same use category and that the use would not otherwise be permitted without prescribed conditions or through a public review process; or
  - (2) There are no similar uses permitted on the site or in the applicable zone district;

- (b) When this is the case, the Zoning Coordinator shall provide the applicant with a written determination of non-similarity within 14 business days of the request for interpretation.

**5. Post-Decision Actions**

The Zoning Coordinator's decision may be appealed to the Board of Adjustment.

**C. TABLE 27-1000.1 BILLINGS PRIMARY USE TABLE**

Table 27-1000.1: Permitted Primary Uses	Residential							Mixed-Use and Commercial						Indust.		EBURD					Public							
	Key: P = Permitted, PL = Location Limits in Zone District, PR – Applicable Use Restrictions, SR = Special Review																											
Use Table	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSV MS	RSV	CW	I3	IS	P1	P2	P3Civ	P3 Ed	P3 Med	Additional Standards	
<b>RESIDENTIAL</b>																												
<b>Households Living (du/structure)</b>																												
1 du	P	P	P	P			P	P	PL	PL	PL	PL	PL				PL	P	P	PL				PR	PR	PR	PR	27-1003
2 dus		P	P	P	P			P	PL	PL	PL	PL	PL				PL	P	P	PL				PR	PR	PR	PR	27-1003
3-4 dus				P	P			P	PL	PL	PL	P	P				PL	P	P	PL				PR	PR	PR	PR	27-1003
5-8 dus					P	P			PL	PL	PL	P	P				PL	P	P	PL				PR	PR	PR	PR	27-1003
9+ dus						P						P	P				PL	P	P	PL				PR	PR	PR	PR	27-1003
<b>Manufactured Home</b>																												
Type 1 (Jan 1, 1990 or newer)							P																					27-1003, RMH: 27-310
Type 2 (all other)							P																					
<b>Group Household Living</b>																												
<b>Groups Recognized by Montana Statute</b>																												
Comm. Res. Facility, Large (> 8 res.)	SR	SR	SR	SR	SR	P	SR	P	PL	PL	PL	P	PL				PL	P	P	PL	PL		P			P	27-1003	
Comm. Res. Facility, Small (8 or fewer res.)	P	P	P	P	P	P	P	P	PL	PL	PL	P	PL				PL	P	P	PL	PL		P			P	27-1003	
<b>Independent Groups</b>																												
Fraternity/ Sorority House						P			P	P	P	P	P													P		27-1003
Long-Term Care Facility										P	P	P	P	P			P	P								P		27-1003
Retirement Home or Village	SR	SR	SR	SR	SR	P	SR	P	PL	PL	PL	P	P				PL	P	P	PL	PL					P	P	27-1003
<b>PUBLIC, CIVIC, AND INSTITUTIONAL</b>																												
<b>Assembly</b>																												
Civic Assembly	SR	SR	SR	SR	SR	SR	SR	SR	P	P	P	P	P		P	P	P	P	P	P	P	PR	P	PR	PR	PR	PR	27-1004
Religious Assembly	SR	SR	SR	SR	SR	SR	SR	SR	P	P	P	P	P	SR	SR	SR	P	P	P	P	P		P	PR	PR	PR	PR	27-1004
<b>Campus</b>																												
Planned Civic Campus																										P		P3: 27-500
Planned Educational Campus																										P		P3: 27-500
Planned Medical Campus																										P		P3: 27-500

Table 27-1000.1: Permitted Primary Uses	Residential							Mixed-Use and Commercial							Indust.		EBURD					Public						
	Key: P = Permitted, PL = Location Limits in Zone District, PR – Applicable Use Restrictions, SR = Special Review																											
Use Table	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSV MS	RSV	CW	I3	IS	P1	P2	P3Civ	P3 Ed	P3 Med	Additional Standards	
<b>Educational</b>																												
School, College or University								SR	SR	P	P	P	P	P			PL	P	P	PL	P		P	P	P			
School, Primary and Secondary	P	P	P	P	P	P	P	P	P	P	P	P	P	P			PL	P	P	PL	P		P	P	P			
School, Trade, Business, Vo/Tech								P	PL	PL	PL	P	P	P	P		PL	P	P	PL	P		P		P	PR		27-1004
<b>Government and Public Safety</b>																												
Correctional Facilities															SR								SR					
Emergency Services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Government Buildings and Offices								P	P	P	P	P	P	P	P	P	P	P	P	P	PR	P	P		P		27-1004	
Government Facilities, Yards, and Storage														P	P	P			P	P	P	PR	P	P				
<b>Health Care and Social Assistance</b>																												
Hospice Facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P			PL			PL			P	P		P		
Hospital or Health Care Facility								P	P	P	P	P	P	P			P	P	P	PL	P		P			P		
Office and Clinical Services									P	P	P	P	P	P			P	P	P	P	PL		P			P	P	
Outpatient Surgical Services										P	P	P	P	P													P	
Shelter								SR	P	P	P	P	P	SR	SR	SR	P	P	P	P	P		PR	PR	PR	PR		27-1004
<b>Parks and Recreation</b>																												
Arboretums/Botanic Gardens																						P	P					
Zoo																							PR					27-1004
<b>COMMERCIAL</b>																												
<b>Adult and Child Day Care</b>																												
Adult Day Care Center	SR	SR	SR	SR	SR	SR	SR	P	P	P	P	P	P	P			PL			PL			P	P	P	P		27-1005
Day Care Center	SR	SR	SR	SR	SR	SR	SR	P	P	P	P	P	P	P			P	P	P	P	P		P	P	P	P		27-1005
Family Day Care Home	P	P	P	P	P	P	P	P	PL	PL	PL	PL	PL	PL			P	P	P	P	P			P	P	P		27-1005
Group Day Care Home	P	P	P	P	P	P	P	P	PL	PL	PL	PL	PL	PL			P	P	P	P	P			P	P	P		27-1005

Table 27-1000.1: Permitted Primary Uses	Residential							Mixed-Use and Commercial						Indust.		EBURD					Public							
	Key: P = Permitted, PL = Location Limits in Zone District, PR – Applicable Use Restrictions, SR = Special Review																											
Use Table	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSV MS	RSV	CW	I3	IS	P1	P2	P3Civ	P3 Ed	P3 Med	Additional Standards	
<b>Amusement and Recreation</b>																												
Adult Entertainment														PR	PR	PR	PR											27-1005
<b>Amusement &amp; Recreation, Indoor</b>																												
Large (50,000 sf GFA or more)											P	P	P	P	P				P	P	P	P	P					27-1005
Small (less than 50,000 sf GFA)									P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	27-1005
<b>Amusement &amp; Recreation, Outdoor</b>																												
Large (1 acre or more)											P	P	P	P	P				P	P	P	P	P					27-1005
Small (less than 1 acre)									P	P	P	P	P	P			P	P	P	P	P	P	P	P	P	P	P	27-1005
Casino, Large (10 or more gambling devices)										SR PR	SR PR	PR	P	SR PR	P		P	P	P	P	P							27-1005
<b>Animal Sales and Services</b>																												
Boarding/Kennel									PR	P	P	P	PR	P	P	P	PR	PR	PR	PR	PR							27-1005
General Sales and Services									P	P	P	P	P	P	P	P	P	P	P	P	P							27-1005
Shelter, Animal											P			P	P	P							P	P				27-1005
Small Animal Veterinary								P	P	P	P	P		P	P	P	P	P	P	P	P							27-1005
With boarding										P	P	P		P	P	P	P	P	P	P	P							27-1005
Large Animal Veterinary (with or w/o boarding)														P	P	P					P	P						27-1005
<b>Assembly, Entertainment and Trade</b>																												
Large (125,000 or more sf of exhibit space)											P	P	P	P	P	P	PL	P	P	P	P	PL	SR	P	P	P	P	27-1005
Small (up to 125,000 sf of exhibit space)									P	P	P	P	P	P	P	P	PL	P	P	P	P	PL	SR	P	P	P	P	27-1005
<b>Commercial Service</b>																												
Broadcasting Stations and Studios								SR	SR	P	P	P	P	P	P	P	P	P	P	P	P							
Business Service								P	P	P	P	P	P	P			P	P	P	P	P							
Crematory, Funeral Services										P	P	P	P	P	P		P	P	P	P	P			P				
Cemetery																								P				

Table 27-1000.1: Permitted Primary Uses	Residential							Mixed-Use and Commercial						Indust.		EBURD					Public							
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Use Table	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSV MS	RSV	CW	I3	IS	P1	P2	P3Civ	P3Ed	P3Med	Additional Standards	
Consumer Maintenance and Repair								P	P	P	P	P	P	P	P		P	P	P	P	P							
Personal Service								P	P	P	P	P	P	P			P	P	P	P	P				PR	PR	PR	27-1005
Studio or Instruction Service								P	P	P	P	P	P	P			P	P	P	P	P				PR	PR	PR	27-1005
<b>Eating and Drinking Establishment</b>																												
<b>No Alcohol</b>																												
Restaurant									P	P	P	P	P	P	P		P	P	P	P	P				P	P	P	27-1005
with drive-thru									SR	P	P	SR		P	P			P	P	P	P				P	P	P	27-1009
<b>Beer and Wine License, On-Premises Consumption</b>																												
Bar or Tavern										SR PR	SR PR	P	P	SR PR	P		P	P	P	P	P							27-1005
Craft Alcohol										P	P	P	P	P	P		P	P	P	P	P				P	P	P	27-1005
Restaurant									P	P	P	P	P	P	P		P	P	P	P	P				P	P	P	27-1005
<b>All-Beverage License, On-Premises Consumption</b>																												
Bar or Tavern										SR PR	SR PR	P	P	SR PR	P		P	P	P	P	P							27-1005
Craft Alcohol										P	P	P	P	P			P	P	P	P	P				P	P	P	27-1005
Restaurant									P	P	P	P	P	P	P		P	P	P	P	P				P	P	P	27-1005
<b>Financial Services</b>																												
Financial Institution								P	P	P	P	P	P	P			P	P	P	P	P				P	P	P	27-1005
with drive-thru									P	P	P	P	P	P				P	P	P	P							27-1005
Alternative Financial Services										P	P	P	P	P			P	P	P	P	P							
<b>Lodging</b>																												
Boarding House	SR	SR	SR	SR	SR	SR			PL	PL	PL	PL	PL	PL			P	P	P	P	P							
Bed and Breakfast Inn	SR	SR	SR	SR	SR	SR	SR	P	P	P		P	P				P	P	P	P	P				P	P	P	27-1005
Campground/RV Park														P					P			SR	SR					27-1005
Hotel/Motel									SR	P	P	P	P	P			P	P	P	P	P				P	P	P	

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Short-Term Rental (Tourist Home)	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR			PR	PR	PR	PR	PR		PR	PR	PR	PR	PR	27-1005
<b>Office</b>																												
Business or Professional								P	P	P	P	P	P	P			P	P	P	P	P				P	P	P	
Research and Testing Laboratories											SR	P	P	P	P	P			P		P				P	P	P	
<b>Parking, Commercial</b>																												
Structured Parking, primary use													PR	PR														
Surface Parking, primary use								SR	SR	SR	SR	SR	SR	P	P	P		P	P	P	P							
<b>Retail Sales</b>																												
Agricultural														P	P				P	P	P							
Commercial Greenhouse/Nursery									SR	P	P			P	P		P	P	P	P	P							
Liquor Sales									P	P	P	P	P	P	P		P	P	P	P	P							
Retail, Limited with drive-thru									SR	P	P			P				P	P	P	P							27-1009
without drive-thru									P	P	P	P	P	P			P	P	P	P	P				P	P	P	
Retail, General with drive-thru									SR	P	P			P				P	P	P	P							27-1009
without drive-thru										PR	P	P	P	P			P	P	P	P								
Retail, Large-Format											SR			P				P	P	P	P							
<b>Vehicle Sales and Service, Personal</b>																												
Car Wash										SR	P			P	P	P			P	P	P							27-1005
Vehicle Sales and Rental											P	P	SR	P	P	P		P	P	P	P							
Outdoor Sales Lot											PR	SR	SR	P	P	P		PR	P	P	P							27-1009
Vehicle Maintenance and Repair, Minor (5,000 SF or less)											P	P	P	SR	P	P		P	P	P	P							
Vehicle Maintenance and Repair, Major (>5,000 SF)											SR			P	P	P			P	P	P							

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Vehicle Service Station										PR	PR	PR	PR	P	P	P		PR	PR	PR	PR			P	P	P	27-1005	
with Convenience Store									SR	PR	PR	PR	PR	P				PR	PR	PR	PR			P	P	P	27-1005	
<b>INDUSTRIAL, WHOLESALE, AND STORAGE</b>																												
<b>Industrial and Construction Services</b>																												
Auction House														P	P	P												
Contractor Yard, General/Trade														P	P	P			P	P	P							
Heavy															P	P			P		P							
Grain Elevator															P	P												
Industrial Sales and Services														P	P	P												
Manufactured Home Sales and Service														P	P	P												
RV and Trailer Rental, Sales and Service											P	P		P	P	P			P	P	P							
Truck and Heavy Equip Rental, Sales, and Service														P	P	P			P	P	P							
Truck Stop/Wash														P	P	P												
<b>Manufacturing, Assembly, or Processing</b>																												
Artisan/Craft									PL	PL	PL	P	P	P	P	P	PR PL	PR PL	PR PL	PR PL	PR PL							27-1006
Limited - Special Order												P	P	P	P	P			P	P	P							
General														P	P	P			P	P	P							
Heavy															SR	P										PR		27-1006
<b>Natural Resource Extraction</b>																												
Mining; Oil and Gas Field Services															P	P											P	
Construction Sand and Gravel Mining														SR	P	P												
<b>Warehouse and Storage Services</b>																												
Outdoor Storage														PR	P	P			P	P	P	P						27-1006

Table 27-1000.1: Permitted Primary Uses	Residential							Mixed-Use and Commercial							Indust.		EBURD					Public						
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Personal Self-Service Storage										PRPL	PRPL	PR		P	P	P		PR	PR	PR	PR						27-1006	
Trucking and Transportation Service														P	P	P			P			P						
Warehouse														P	P	P		PL	PL	PL	PL						27-1006	
Wholesale and Distribution (general)														P	P	P		P	P	P	P							
Agricultural Products														P	P	P		P	P	P	P							
Chemical Products															SR	P												
Petroleum Products																P												
<b>Waste and Salvage</b>																												
Junk or Salvage Yard															SR	SR												
Household Hazardous Waste Collection Facility																							P				27-1006	
Recycling Processing Facility															P	P			P	P	P		P					
Refuse/Waste Transfer Facility															SR	SR							P					
Solid Waste Facility/Landfill																SR							P					
<b>TRANSPORTATION, UTILITIES, AND COMMUNICATIONS</b>																												
<b>Transportation</b>																												
Bus or Taxi Maintenance and Parking Shed										P				P	P	P	P											
Airport Passenger Terminal																							P					
Bus/Public Transit Terminal										P	P	P	P	P	P	P							P					
Train Passenger Terminal										P	P	P	P	P	P	P							P					
Train/Railroad Freight Terminal, Switching Yard															P	P												
<b>Utilities and Public Facilities</b>																												
Major															SR	SR		SR	P	SR	P		P					
Minor (e.g., lift stations, substations)	SR	SR	SR	SR	SR	SR	SR	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P					

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Offices, Buildings, Yards, and Land														P	P	P		SR	P	SR	P		P					
<b>Solar Energy Facilities (SEFs)</b>																												
Tier 2														P	P	P							P					27-1007
Tier 3														P	P	P												27-1007
Transmission and Distribution Lines	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P					
<b>Wind Energy Conversion Facilities (WECs)</b>																												
Tier 2														P	P	P												27-1007
Tier 3														P	P	P												27-1007
<b>Wireless Communication Facilities</b>																												
Land Mobile Radio and Broadcast Antennae	PR	PR	PR	PR	PR	PR	PR	PR SR	PR SR	PRS R	PRS R	PR SR	PR SR	PRS R	PRS R	PRS R	PR SR	PRS R	PR SR	PR SR	PR SR					SR		27-1007
Wireless Communication Facilities	PL PR	PL PR	PL PR	PL PR	PL PR	PL PR	PL PR	PR	PR	PR	PR	PR	PR	PR	PR	P	PR	PR	PR	PR	PR	PR	PL PR	PL PR	P	P	P	27-1007
<b>AGRICULTURE</b>																												
<b>Agriculture</b>																												
Auction Yard, Livestock														P	P	P												
Commercial Feeding Yard, Livestock															SR	SR												No dairy or poultry
Farm Stand									P	P	P	P	P	P	P		P	P	P	P	P							
Greenhouse, Non-Commercial	P	P	P	P	P	P	P																					
Milling: Lumber, Plywood, and Shingles															P	P												

**SECTION 27-1003 STANDARDS FOR RESIDENTIAL USES****A. COMMUNITY RESIDENTIAL FACILITIES**

1. Community residential facilities shall comply with all applicable Montana statutory requirements.
2. In Mixed Use and Commercial districts, the use will follow the guidelines for site development within those zone districts and shall be located either above the ground floor or on the ground floor at least 20 feet from the front façade.

**B. FRATERNITY/SORORITY HOUSE**

In Mixed Use and Commercial districts, the use will follow the guidelines for site development within those zone districts and is exempt from the requirement that residential uses shall be located either above the ground floor or on the ground floor at least 20 feet from the front façade.

**C. HOUSEHOLD LIVING**

1. In Mixed-Use and Commercial and EBURD districts, dwelling units shall be located either above the ground floor or on the ground floor at least 20 feet from the front façade,
2. Where permitted in any P2 or P3 district, dwelling unit availability, regardless of ownership, is limited to residents associated with the district's primary institution. For example, a medical campus could provide dwelling units for patient families, visiting medical staff, and hospital employees.
3. Residential dwellings in a P3 district that are located within 150 feet of the campus perimeter shall meet the site design standards for the appropriate NX zone based on the number of units.

**D. MANUFACTURED HOMES**

1. Type 1 or Type 2 manufactured homes shall not be used for any commercial use.
2. Type 1 and Type 2 manufactured homes may be used as an on-premise office in connection with a manufactured home sales area.

**E. RETIREMENT HOME OR VILLAGE**

In Mixed Use and Commercial districts, the use will follow the guidelines for site development within those zone districts and shall be located either above the ground floor or on the ground floor at least 20 feet from the front façade.

**SECTION 27-1004 STANDARDS FOR PUBLIC, CIVIC, AND INSTITUTIONAL USES****A. CIVIC ASSEMBLY**

In P2 and P3 districts the following standards apply:

1. The use shall be either secondary to or accessory to the primary use on the site or campus.
2. The civic assembly facility may be leased or loaned to off-site users or for activities that are not directly supportive of the site or campus function.

**B. GOVERNMENT BUILDINGS AND OFFICES; GOVERNMENT FACILITIES, YARDS, AND STORAGE**

In P1 districts, the government building, office, facility, yard, or storage shall be either secondary to or accessory to the primary open space and recreation uses.

**C. RELIGIOUS ASSEMBLY**

1. Supplemental Special Review Standards:

- (a) Religious assembly uses shall be reviewed as a special review use in all residential zones.
  - (b) Access shall be provided as follows: 1-200 seats shall have access from local or residential streets; 201-1000 seats shall have access from a collector street or higher; 1001 seats and over shall have access from an arterial street.
2. The following exemptions from the special review requirements shall only apply to those religious assembly uses that have previously been approved pursuant to a special review or that existed prior to November 3, 1972:
- (a) A religious assembly shall be allowed to remodel or expand without an additional special review provided that:
    - (1) The number of potential occupants is not increased by more than 10 percent, than the number that is currently allowed as measured by building occupancy rating;
    - (2) The gross floor area of the facility after such remodeling or expansion is not over 10 percent greater than the gross floor area originally occupied by the facility;
    - (3) The number of new parking stalls is not more than 10 percent greater than the original number of spaces; and
    - (4) All other applicable code requirements are met.
  - (b) If, at the time the original or subsequent special review was conducted and approved, the applicant submitted a master plan showing: (a) future additions to the structure(s); (b) future structure(s); and/or (c) future parking area(s), those future improvements may be constructed without additional special review where the improvements comply with the requirements of this Zoning Code. Minor modifications and expansions to the future improvements identified on the master plan may also be constructed without additional special review provided that such modifications and/or expansions to the master plan meet the provisions of subsection (a).
3. Site Standards
- (a) Uses accessory to the religious assembly shall meet the standards applicable to the use as if the use is a principal use. Uses accessory to a religious assembly use in a residential district, other than shelter facilities, may only operate between 7:00 AM and 10:00 PM by right.
  - (b) Parking for the religious assembly use, and any accessory use, shall be for the use that has the greatest parking requirement.

4. Shelter

Religious institutions may provide temporary shelter as an accessory use that does not exceed 50% of the gross floor area of the primary structure.

**D. SCHOOL: TRADE, BUSINESS, VOCATIONAL/TECHNICAL**

In the P3-Med districts, trade, business, vocational/technical schools shall offer instruction related to medical careers and professions.

**E. SHELTER**

In all P3 zone districts, a temporary or permanent shelter may be established within the campus. If the shelter is located within 150 feet of the campus perimeter, the shelter site and buildings will conform to the CMU site design requirements.

**F. ZOO**

1. Minimum parcel size: 60 acres
2. Minimum buffer between adjacent uses: 100 feet

**SECTION 27-1005 STANDARDS FOR COMMERCIAL USES****A. ADULT AND CHILD DAY CARE**

Day care facilities, including day care centers, family day care homes, and group day care homes both for adults and children, shall comply with all applicable Montana statutory requirements. Site development shall comply with the design requirements in the zone districts.

**B. ADULT ENTERTAINMENT****1. Purpose and Intent**

It is the purpose of this section to regulate sexually oriented businesses to promote the health, safety, morals, and the general welfare of the citizens of the city and to establish reasonable uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the city. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of these regulations to restrict or deny access by adults to distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene materials.

**2. Findings and Determinations**

The City Council hereby finds and determines that:

- (a) The establishment of adult uses in commercial districts that are immediately adjacent to and which serve residential neighborhoods has a deleterious effect on both the business and residential segments of the neighborhood, causing or contributing to blight and a downgrading of property values.
- (b) The establishment of more than two adult uses within 600 feet of each other has a deleterious effect on surrounding residential and business areas and the fostering of such businesses within a close proximity tends to create a "skid row" atmosphere.
- (c) The location of several adult uses in the same neighborhood tends to attract an undesirable quantity and quality of transients, a circumstance which adversely affects property values, causes an increase in crime and encourages residents and businesses to move elsewhere.
- (d) Concern for, and pride in, the orderly planning and development of a neighborhood should be encouraged and fostered in those persons comprising residential and business segments of that neighborhood.

**3. Classification**

Sexually oriented businesses are classified as follows:

- (a) Adult arcades;
- (b) Adult book stores or adult video stores;
- (c) Adult cabarets;
- (d) Adult motels; and

(e) Adult motion picture theaters.

**4. Location of Sexually-Oriented Businesses**

(a) A sexually oriented business shall not be operated within 1,000 feet of any of the following:

- (1) A neighborhood, residential, or mixed-use zone.
- (2) Any planned development zone that allows residential uses unless such zone is separated from the location of a sexually oriented business by an interstate highway.
- (3) Land uses:
  - (i) Public library;
  - (ii) Public playground or park (for purposes of this section, publicly owned multiuse trails shall be deemed to be a park);
  - (iii) Public or private school and its grounds, from pre-school through twelfth grade;
  - (iv) A state licensed community residential facility, family day care home, group day care home, day care center, religious assembly, or
  - (v) A cemetery.

(b) A sexually oriented business shall not be located within 600 feet of another sexually oriented business.

**5. Measurement of Distances**

For purposes of this section, specified distances will be measured in a straight line, without regard to intervening structures, from the property line of the sexually oriented business to the property line of the preceding land uses or zoning districts.

**6. Permitted Zones**

(a) In addition to the preceding requirements, sexually oriented businesses are permitted in the following zones only:

- (1) Central business district (CBD),
- (2) Heavy commercial (CX),
- (3) Controlled industrial (I1), or
- (4) Heavy industrial (I2).

(b) Sexually-oriented businesses may be proposed for approval in some EBURD districts, as shown in Table 27-1000.1, through the special review process.

**C. AMUSEMENT AND RECREATION**

**1. Size**

Amusement and recreation facilities shall be regulated by size as follows:

Indoor	Large	50,000 sf GFA or more
	Small	Less than 50,000 sf GFA
Outdoor	Large	1 acre or more
	Small	Less than 1 acre

**2. P1 District**

- (a) Amusement and recreation facilities located in P1 districts may be in either public or private ownership and may charge appropriate fees.
- (b) P1 district uses are limited to:
  - (1) Golf courses and driving ranges
  - (2) Sports fields
  - (3) Aquatic facilities

### 3. P2 and P3 District

Amusement and recreation facilities and uses shall meet the following standards:

- (a) The use shall be either secondary to or accessory to the primary use on the site or campus.
- (b) The amusement or recreation use may be leased or loaned to off-site users or activities that are not directly supportive of the site or campus function.

## D. ANIMAL SALES AND SERVICES WITH OUTDOOR FACILITIES

Any outdoor activity areas such as kennels, runs, or exercise areas shall be subject to the following:

### 1. General Requirements

The facilities shall:

- (a) Only be used between the hours of 7:00 AM and 10:00 PM, and
- (b) Be located at least 25 feet from any residential district.

### 2. Kennel

- (a) All facilities, including pens, kennels, cages and exercise runs in NMU, CBD, and EBURD districts shall be maintained within a completely enclosed, soundproof building so that, to the maximum extent feasible, noise and odor are not detectable off-premises.
- (b) Facilities in the CMU1, CMU2, DX, CX, I1, and I2 districts may have outdoor facilities, including runs and exercise areas, but such facilities shall meet the standards of Subsection C.2.a if they are located within 25 feet of any residential district.

### 3. Veterinary Services (with Boarding)

Small Animal Veterinary clinics or hospitals in the CMU1, CMU2, DX, CX, EBURD, I1, and I2 districts may have outdoor facilities, including runs and exercise areas, but such outdoor facilities must be completely screened with a sight-obscuring fence. Boarded animals and animals under veterinary care must be accompanied at all times by staff while in the outdoor facility.

## E. ASSEMBLY, ENTERTAINMENT AND TRADE

### 1. Size

- (a) Large entertainment and trade assembly facilities shall have 125,000 or more square feet of exhibit space.
- (b) Small entertainment and trade assembly facilities shall have no more than 124,999 square feet of exhibit space.

### 2. P1 District

Entertainment and trade assembly facilities located in P1 districts may be in either public or private ownership and may charge appropriate fees. These facilities require special review approval.

### 3. P2 and P3 District

Entertainment and trade assembly facilities shall meet the following standards:

- (1) The facility and use of the facility shall be either secondary to or accessory to the primary use on the site or campus.
- (2) The entertainment and trade assembly facility may be leased or loaned to off-site users or activities that are not directly supportive of the site or campus function.

## F. BANK OR FINANCIAL INSTITUTION

Banks or financial institutions that are located within 100 feet of a residential zoning district and have drive-through services shall meet the following requirements:

1. The drive-through area shall be screened either by site perimeter landscaping or a landscape buffer, whichever is applicable pursuant to Section 27-1200, Landscaping.
2. Access to or across an alley shared by a mixed-use or commercial district and a residential district shall comply with the zone district site development requirements.

## G. BAR AND TAVERN

### 1. Separation

(a) Bars and taverns shall be separated from religious institutions, primary and secondary educational facilities, and public parks that contain a children's playground or playfield ("protected use") as follows:

- (1) There are no separation requirements in the CBD, DX, EBURD, and I1 districts.
- (2) In all other districts, there shall be a separation of at least 600 feet, measured from the exterior of the occupied building space of the bar or tavern to the property line of the lot that contains the protected use.

(b) Bars or taverns shall also be separated from any residential neighborhood zone (N1, N2, N3, N4, NX1, NX2, NX3, and RMH) by at least 150 feet, measured from the exterior of the occupied building space of the bar or tavern to the property line of the lot in the residential neighborhood zone.

(c) Required separations are not subject to reduction, adjustment, or variance, and bars or taverns shall not be approved within the distances specified.

### 2. Outdoor Seating

Outdoor seating may be permitted as an accessory use regulated by Section 27-1009.O.

### 3. Maximum Floor Area

The maximum floor area for a bar or tavern in a CMU1 district is 1,500 sf. This is the maximum size for a stand-alone structure or the maximum floor area for the bar or tavern use when located within a mixed-use structure. Floor area does not include outdoor seating unless the outdoor seating area is larger than 375 square feet.

## H. BED AND BREAKFAST INN

1. The owner-operator shall reside on the premises.

2. The bed and breakfast shall be located within a structure that was originally permitted within the district.
3. There shall be no more than 18 guests at any one time.
4. The individual guest rooms shall have no cooking implements, including, but not limited to, stoves, grills, or ovens.
5. Parking shall not be allowed in any front yard.

#### **I. CAMPGROUND/RV PARK**

1. The intent of these standards is to enable the orderly, safe, and nuisance-free development and use of campgrounds and RV parks.
2. The overall campground/RV park lot or parcel shall be not less than two acres, inclusive of rights-of-way, easements or dedications, and shall observe the minimum area standards set forth herein.
3. Site Layout
  - (a) The minimum distance between recreational vehicles in the same park shall be 15 feet.
  - (b) The campground/RV park shall be screened from adjoining lots or parcels, not in a campground/RV park use, by a solid fence or wall of not less than four feet in height nor more than six feet in height. The screening fence or wall shall be constructed within six months from date of approval of the campground/RV park plans.
  - (c) RV sites shall be designed to be interchangeable with campsites.
4. Operation
  - (a) Commercial service and retail service uses may be permitted as accessory uses. These uses shall not occupy more than five percent of the total gross area of the campground/RV park.
  - (b) A responsible caretaker, owner, or manager shall be placed in charge of any campground/RV park to keep all grounds, facilities and equipment in a clean, orderly, and sanitary condition, and shall be answerable to the owner for any violation of the provisions of this or any other applicable code or ordinance.

#### **J. CASINO**

1. **Determination of Casino Use**
  - (a) An establishment will be considered to either be a casino or have an accessory casino for the purpose of these regulations if any of the following characteristics apply:
    - (1) The establishment is referenced as a casino by signage, advertisement, or by name;
    - (2) A live card table is on the premises; and/or
    - (3) A gambling machine is on the premises.
  - (b) Uses with specialty liquor licenses, such as fraternal organizations, golf courses, and non-profit arts organizations are not casinos pursuant to this category.
2. **Casino Classification**
  - (a) Casinos shall be classified based on the total number of gaming machines, as follows:

- (1) Accessory Limited: 1 to 3 gaming machines located in the structure or on the site.
  - (2) Accessory Small: 4 to 9 gaming machines located in the structure or on the site.
  - (3) Primary/Large: 10 or more gaming machines located in the structure or on the site.
- (b) Accessory Limited or Accessory Small casinos may have or add one table game without changing the classification. Primary/Large casinos may include any number of table games.

### 3. Separation Distances

- (a) Primary/Large casinos shall be separated from religious institutions, primary and secondary educational facilities, and public parks that contain a children's playground or playfield ("protected use") as follows:
- (1) There are no separation requirements in the CBD, EBURD, and I1 districts.
  - (2) In all other districts, there shall be a separation of at least 600 feet, measured from the exterior of the occupied building space of the casino to the property line of the protected use.
- (b) Primary use casinos shall also be separated from any residential neighborhood zone (N1, N2, N3, N4, NX1, NX2, NX3, and RMH) by at least 350 feet, measured from the exterior of the occupied building space of the casino to the property line of the residential neighborhood district.
- (c) Required separations are not subject to reduction, adjustment, or variance and casinos shall not be approved within the distances specified.
- (d) A primary use casino may not be added to a site with other primary uses, such as a bar or restaurant where the casino separation requirements cannot be met.

### 4. Landscaping

A B3 bufferyard, identified in Section 27-1200, shall be provided along all internal property lines where a casino is the primary use on the site.

## K. CRAFT ALCOHOL (MICROBREWERY, MICRODISTILLERY, WINERY, CIDERY)

1. A craft alcohol establishment may not add another primary use, such as a casino, where the additional use's separation requirements cannot be met.
2. Outdoor seating may be permitted as an accessory use regulated by Section 27-1009.O.

## L. PERSONAL SERVICE

In a P3 Campus district, personal services shall be limited to those provided in support of the primary campus use and offered for the benefit of campus users.

## M. OUTDOOR SALES LOT

An outdoor sales lot as a primary use shall be designed and used in compliance with Section 27-1009.N, Outdoor Display and Sales.

## N. RESTAURANT

1. Drive-Thru Service. Any persons desiring to use any premises or to erect, construct, or alter any new or existing building or structure for a restaurant drive-thru service shall satisfy the following criteria, based upon the adjoining zoning district(s).

- (a) A drive-thru establishment that adjoins, including any location across an alley, residentially zoned property, is subject to special review.
  - (b) All other drive-thru establishments, including those which are located across a public street from residentially-zoned property, shall meet the following criteria:
    - (1) A traffic accessibility study shall be completed and approved by the City engineer; and
    - (2) The use shall comply with all other sections of this Zoning Code.
2. Outdoor Seating
- (a) Accessory outdoor seating is regulated in Section 27-1009.O.
  - (b) An eating or drinking establishment that was approved by special review that seeks to remodel or expand to add outdoor seating shall be required to meet the standards of Section 27-1009.O and obtain a separate special review approval.

**O. SHORT-TERM RENTALS**

[draft provided in separate document]

**P. STUDIO OR INSTRUCTION SERVICE**

In a P3 Campus district, studio or instruction services shall be limited to those provided in support of the primary campus use and offered for the benefit of campus users.

**Q. VEHICLE SERVICE STATION**

The following standards apply in the CMU1, CMU2, DX, CBD, and EBURD districts:

- 1. Service bays. Vehicular service bays, including garages and car wash bays, shall not be located on the front facade, unless otherwise permitted by the frontage type.
- 2. Outdoor storage. Disabled or inoperable vehicles and those awaiting pick-up may be stored outdoors if:
  - (a) The vehicles are not stored for more than two days.
  - (b) The storage area is located in the rear yard screened from view of the front lot line.
  - (c) The storage area is screened using the side and rear yard buffer outlined in Section 27-1200.
- 3. Outdoor activities
  - (a) All repairs or washing activities must occur inside a structure.
  - (b) Vacuuming activities may occur in open air but must be located in the side or rear yards, screened from the front lot line.
  - (c) Temporary outdoor display of seasonal items, such as windshield wiper fluid or salt, is permitted during business hours under the canopy and adjacent to the principal structure.

**SECTION 27-1006 STANDARDS FOR INDUSTRIAL, WHOLESALE, AND STORAGE USES****A. ARTISAN MANUFACTURING**

In the EBURD districts where an artisan industrial use is permitted with development standards, the following apply:

- 1. 20,000 square feet is the maximum permitted overall gross floor area.

2. A minimum 20 percent of gross floor area shall be dedicated to a showroom located at the front of the space.
3. Outdoor activities and storage of goods are not permitted.

## **B. HEAVY MANUFACTURING**

In the EBURD where a heavy manufacturing use is permitted with development standards, the following apply:

1. Noise, odor, and other noxious by-products shall not be measurable on adjacent properties.
2. Waste products shall be disposed of off-site, without entering the sanitary sewer system.

## **C. PERSONAL SELF-SERVICE STORAGE**

### **1. Generally Applicable Standards**

- (a) No business activity other than rental of storage units shall be conducted within a self-service storage unit.
- (b) In CMU1, CMU2, and EBURD-CW, individual self-storage units, unit doors, loading areas or other service areas shall be screened from a public right-of-way and any adjacent non-industrial districts.
- (c) Security fencing or gates shall be located behind any required landscaping area.
- (d) Security gates shall be located so that two vehicles awaiting entry do not stack into the public right of way or any pedestrian path. This may be reduced to one vehicle for facilities with fewer than 25 units or where security gates are only locked outside of normal business hours.
- (e) Exterior doors serving individual units shall not be oriented towards a public right of way unless located behind other structures.
- (f) Individual units accessed from outdoors shall be located at least 100 feet from a front or street side property line.
- (g) No self-service storage facility shall exceed 3 acres in size.

### **2. DX Standards**

In DX districts this use is limited to existing structures that have been converted to personal storage.

### **3. EBURD Standards**

These standards are applicable in addition to the general standards:

- (a) Individual storage units or areas shall be located completely within an enclosed structure and shall not be individually accessed from the outside.
- (b) No more than 2 garage or overhead doors providing access to the individual storage areas shall be permitted. The intent is to permit a secure interior area for the loading and unloading of material to be stored.
- (c) Individual structures shall not exceed 250 feet on any side.
- (d) All facade elevations for self-service storage facilities shall comply with the design requirements for the district.

**D. OUTDOOR STORAGE**

1. All outside storage areas, whether permitted as a principal or accessory use, shall comply with the following standards. Outdoor storage does not include outdoor display and sales, which are addressed in Section 27-1009.
  - (a) Type of Materials: Storage shall be limited to goods and materials customarily stored outside and resistant to damage and deterioration from exposure to the elements. Outside storage shall include the parking/storage of vehicles to be serviced at a collision service or towing/wrecker service use and all parking/storage of vehicular equipment, such as farm or construction machinery or equipment and commercial delivery vehicles. The placement of storage vaults or shipping containers shall be regarded as outside storage, except as may be otherwise permitted by this Zoning Code.
  - (b) Location: When permitted as a principal or accessory use, outside storage shall comply with the following locational standards:
    - (1) Outside storage shall not be located in a front yard or street side yard between a primary structure and the street.
    - (2) Outside storage shall not obstruct or eliminate any required parking or loading space, access drive or fire lane; nor occupy any street right-of-way.
    - (3) Outside storage shall not be located within any required or established landscape area.
  - (c) Secured Storage: All outside storage, except for the storage of operable vehicles, shall be located within a secured area.
  - (d) Screening: Screening of all outdoor storage areas from right of way and adjacent properties shall be provided according to Section 27-1207, Utility and Service Area Screening.
  - (e) Height: Storage of stacked materials shall not exceed the height of the screening fence or eight feet, whichever is less. Individual items of greater height may be stored but may not exceed one-half the height of the principal building.
  - (f) Surfacing: Storage areas shall be surfaced as follows:
    - (1) Storage of goods and materials shall be conducted only on a paved surface or a city-approved all-weather surface that is maintained in a dust-free condition.
    - (2) The storage of vehicles, trailers, and equipment, which is normally intended to be mobile, whether self-propelled or towed, shall be conducted only on a surface that is provided in accordance with the requirements for parking areas.
2. Shipping Containers Permanent Off-Chassis and On-Site
  - (a) Permanent use, defined as placement for more than one year, is restricted to the following zoning districts: CX, I1, I2, C3 and EBURD.
  - (b) Use
    - (1) Permanent shipping containers shall be used for storage purposes only.
    - (2) Permanent shipping containers shall not be permitted as a principal building.
    - (3) Permanent shipping containers shall not be permitted to be rented or leased to a use not located on the same lot.

- (c) Quantity
  - (1) A maximum of one permanent shipping container per site shall be permitted on lots of one acre or less.
  - (2) One additional permanent shipping container per acre may be permitted for lots greater than one acre.
- (d) Dimensions: Permanent shipping containers shall not exceed the dimensions of 40 feet in length, eight feet in width, and 10 feet in height.
- (e) Exterior Appearance
  - (1) Permanent shipping containers shall be maintained in good condition free from structural damage, rust, and deterioration.
  - (2) Permanent shipping containers shall not be stacked vertically.
- (f) Signs: No signs or lettering shall be permitted on permanent shipping containers.
- (g) Location
  - (1) Permanent shipping containers shall meet all building setback requirements and shall be located on the rear half of the lot.
  - (2) Permanent shipping containers shall not be permitted in any parking areas, required buffers or setbacks.
  - (3) No permanent off-chassis shipping containers shall be permitted in loading areas.
- (h) Screening: All permanent shipping containers shall be screened from view from any public right-of-way or private street, and any residential use or residential zoning district according to Section 27-1207, Utility and Service Area Screening.
- (i) Site Plan: Businesses shall submit a site plan showing any permanent container and its relationship to the overall site. The plan shall indicate how the container meets all permanent requirements, including stormwater, traffic circulation, screening requirements, other development codes and technical standards, and inspection requirements.

## **E. WAREHOUSING**

Where warehousing is permitted in the EBURD with development standards, the following apply:

1. Truck access is permitted only off a boulevard street type (refer to BMCC Section 27-906, Street Types).
2. Loading bays, if permitted by frontage type, shall be located directly off a boulevard street type.

## **SECTION 27-1007 STANDARDS FOR TRANSPORTATION, UTILITIES, AND COMMUNICATIONS**

### **A. LAND MOBILE RADIO AND BROADCAST ANTENNAS AND ANTENNA SUPPORT STRUCTURES**

1. Purpose. The purpose of this section is to establish regulations for the siting of broadcast facilities, including land mobile radio services and radio and television broadcast antennas, antenna support structures and associated equipment and buildings on public and private

property. The goals of this section, developed with the assistance and participation of the Broadcast and Land Mobile Radio industry, are to:

- (a) Encourage the location of broadcast facilities in non-residential areas and minimize the total number of antenna support structures throughout the community;
- (b) Strongly encourage the joint use of new and existing broadcast antenna support structures;
- (c) Require broadcast facilities to be located, to the extent possible, in areas where the adverse impact on the community is minimal;
- (d) Require broadcast facilities to be configured in a way that minimizes the adverse visual impact of antenna support structures and antennas; and
- (e) Enhance the ability of the providers of land mobile radio services and radio and television broadcast services to provide such services to the community, as quickly, effectively, and efficiently as possible.

## **2. Applicability**

- (a) All land mobile radio service and radio and television broadcast antenna and antenna support structures located within the city zoning jurisdiction whether upon private or public lands shall be subject to this section. This section shall apply to broadcast antenna and antenna support structures upon state and federal lands to the extent of the City's jurisdiction by way of law, pursuant to any memoranda of understanding or otherwise.
- (b) Pre-existing land mobile radio and radio and television broadcast antenna support structures and antennas shall not be required to meet the requirements of this section, except as provided under Subsection 27-1007.A.5, Nonconforming Broadcast Facilities.

## **3. Broadcast Antenna Support Structures and Antennas Located in Residential Zoning Districts**

Land mobile radio and radio and television broadcast antenna support structures and antennas shall be permitted as an allowed use in all residential zoning districts provided they meet all of the following criteria:

- (a) Alternative broadcast antenna support structures conforming to all applicable provisions of this Zoning Code and roof-mounted antennas that do not add more than 20 feet to the total height of the building on which it is mounted shall be permitted as an allowed use only when located on school, government-owned utility, and other government sites.
- (b) Proposed antennas or antenna support structures that are contrary to this section are considered a land use contrary to zoning and are subject to the special review process, or may be submitted to the board of adjustment for a hearing, whichever is the preference of the owner/agency. The board of adjustment shall forward comments and recommendations to the affected government agency for their consideration.
- (c) Antennas co-located on existing or approved alternative broadcast antenna support structures or existing or approved broadcast antenna support structures, which have previously received, all required approvals and permits shall be permitted as an allowed use.

## **4. Broadcast Antenna Support Structures and Antennas Located in Mixed-Use, Commercial, EBURD, and Industrial Zoning Districts**

- (a) Broadcast antenna support structures 50 feet in height or less shall be permitted as an allowed use.
- (b) Broadcast antenna support structures that exceed 50 feet in height or the maximum height limitations in the underlying zoning district, whichever is greater, may be permitted through special review.
- (c) Broadcast antenna or tower farms may be permitted by special review as shown in Table 27-1000.1, Permitted Uses.
- (d) All broadcast antenna support structures located in heavy industrial (I2) districts shall be permitted as an allowed use, including broadcast antenna or tower farms.
- (e) All broadcast facilities located within the boundaries of an approved or preexisting broadcast antenna or tower farm shall be permitted as an allowed use.

#### 5. General Requirements

The requirements set forth in this section shall govern the location and construction of all land mobile radio service and radio and television transmission facilities governed by this section.

- (a) Building codes and safety standards: To ensure the structural integrity of broadcast facilities, the owner of a facility shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for such facilities.
- (b) Regulatory compliance: All broadcast facilities must meet current standards and regulations of the FAA, the FCC, and other local, state or federal agencies with the authority to regulate facilities governed by this section.
- (c) Setbacks
  - (1) Broadcast antenna support structures adjacent to residential uses or zoning: Broadcast antenna support structures must be set back, from all property lines, a distance equal to one-half (½) the height of the structure from any off-site residential structure or residentially zoned lot. Accessory structures, such as equipment enclosures or transmitter buildings, must maintain a minimum of a 15-foot setback from any lot line adjacent to a residential structure or residentially zoned lot, or the required setback of the zoning district where the antenna support structure is located, whichever is greater.
  - (2) Mixed-Use, commercial, EBURD and industrial zoning setbacks: Broadcast antenna support structures and accessory facilities must meet the minimum yard setback requirements, including arterial setbacks, for the zoning district in which they are located.
  - (3) Broadcast facilities in broadcast antenna or tower farms: Antenna support structures and accessory facilities located in antenna or tower farms must meet the minimum yard setback requirements, including arterial setbacks, for the zoning district in which they are located.
- (d) Lot coverage and height: Broadcast antenna support structures and accessory structures shall not exceed lot coverage requirements for the zoning district in which they are located. Building and equipment enclosures shall not exceed the height restrictions for the zoning district in which they are located.

- (e) Fencing and Buffering
- (1) Fencing. A solid wood fence or masonry wall at least six feet in height (eight feet if razor or barbed wire is to be used) shall be constructed and maintained around the perimeter of the broadcast antenna support structure site. Climb-proof shields can be substituted for a fence or wall around the structure. Solid fences, at least 6 feet in height are required adjacent to residences and residentially zoned property. All AM broadcast antenna support structures must be surrounded by a suitable fence as required by FCC regulations.
  - (2) Landscaping adjacent to residential uses and/or residential zoning.
    - (i) For broadcast facilities located in a residential zoning district, adjacent to a residential use, or adjacent to a residentially zoned parcel, the following will be required: a continuous evergreen hedge at least 4 feet in height when planted, shall be planted and maintained around the perimeter of the antenna support structure outside of the required fencing and spaced close together to provide a continuous visual screen. Shrubs shall also be planted and maintained around the guy anchors for visual screening purposes. AM Broadcast stations are exempt from this requirement due to overriding FCC regulations regarding vegetation in ground radial systems.
    - (ii) A performance bond or letter of credit for 150 percent of the landscaping and fencing materials and labor costs shall be posted with the planning division to ensure the placement of required landscaping and fencing in accordance with section 27-1200.
  - (3) Commercial landscaping. Landscaping requirements shall not apply to broadcast antenna support structures located in commercial or industrial zoning districts or approved broadcast antenna or tower farms.
  - (4) Exceptions for city airport airfield area: If federal safety and security standards within the city airport's airfield area prevent a broadcast antenna support structure from being fenced or landscaped, items 5(e)(1) and 5(e)(2) will not apply. Documentation of these standards must be submitted with the building permit or special review applications.
- (f) Lighting: Broadcast antenna support structures shall not be artificially lighted unless required by the FAA or other local, state, or federal agency. Security lighting may be placed on a support structure no higher than 20 feet above ground. Cut-off security lights must be used in or adjacent to residential areas to prevent light spillage onto adjacent property.
- (g) Signage: Signage shall be limited to non-illuminated warning and equipment identification signs unless otherwise required by the FAA and/or FCC.
- (h) Maintenance
- (1) Equipment at a broadcast facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a collector or local street, access for maintenance vehicles shall be exclusively by means of the collector or local street.
  - (2) All property used for the siting of a broadcast antenna support structure or antenna shall be maintained, without expense to the City, so as to be safe, orderly, attractive,

and in conformity with City codes including those regarding the removal of weeds and trash and landscape maintenance.

(i) Visual impact/aesthetics

- (1) Broadcast antenna support structures shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable local, state, or federal agency, be painted a neutral color or painted and/or textured to match the existing structure so as to reduce visual obtrusiveness.
- (2) If a broadcast antenna is installed on a structure other than a tower, the associated electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the related equipment as visually unobtrusive as possible. Broadcast antennas and antenna support structures may be mounted on existing buildings that are 30 feet or more in height above the street grade.
- (3) Roof-mounted antennas and antenna support structures shall not add more than 20 feet to the total height of the building on which they are mounted. Roof-mounted equipment shall be made visually unobtrusive to match existing air conditioning units, stair, elevator towers or other background. Crow's nest antenna arrays are prohibited on rooftop structures.
- (4) Broadcast antennas or antenna support structures attached to new or existing structures shall be designed to blend with the structure's architecture and should be placed directly above, below or incorporated with vertical design elements of a structure.

**6. Nonconforming Broadcast Facilities**

Broadcast facilities in existence on the date of the adoption of these regulations, that do not comply with the requirements of these regulations, are subject to the following provisions:

- (a) Nonconforming broadcast facilities may continue their present use but may not be expanded without complying with these regulations, except as further provided in this section.
- (b) Nonconforming broadcast antenna support structures which are hereafter damaged and destroyed, by less than 50 percent of its replacement value, due to any reason or cause may be repaired and restored to their former use, location, and physical dimensions subject to obtaining a building permit and other necessary approvals thereof, but without otherwise complying with these regulations. If a broadcast antenna support structure is destroyed or damaged by 50 percent or more of its replacement the broadcast antenna support structure must be brought into compliance with these regulations.
- (c) The owner of any nonconforming broadcast antenna support structure may make minor modifications, as described in Subsection 7, in order to improve the structural integrity of the structure, to allow the structure to accommodate co-located antennas, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of these regulations.

**7. Classification of Modifications**

Modifications of existing or broadcast facilities that meet the requirements of these regulations.

- (a) Minor modifications. Minor modifications to facilities permitted under these regulations shall be approved by the planning division so long as they comply with the original approved design. Minor modifications are as follows:
  - (1) The addition of one or more antenna arrays to any existing antenna support structure, so long as the addition of the antenna arrays add no more than 20 feet in height to the facility and the increase in height of the support structure is no greater than 10 percent.
  - (2) Placement of additional antennas, up to the number the antenna support structure was originally designed to accommodate, shall be considered a minor modification.
  - (3) Repairs to or replacement of existing antennas or feedlines or support members (such as guy wires) are not considered modifications under this part.
- (b) Major modifications. Major modifications to antenna support structures permitted under these regulations shall be approved through a special review. Major modifications are any that exceed the definition of minor modifications.

#### **8. Abandonment**

Broadcast facilities will be considered abandoned if they are unused by all providers at the facility for a period of 6 months. Determination of abandonment shall be made by the planning division which shall have the right to request documentation from the facility owner regarding support or antenna usage. Upon abandonment, the facility owner shall have 90 days to:

- (a) Re-use the facility or transfer the facility to another owner who will re-use it; or
- (b) Dismantle the facility. If the facility is not removed within 90 days of abandonment, the City may remove the facility at the facility at the property owner's expense. If the facility is removed, City approval of the facility will expire. If the facility owner is unable to remove the facility within the 90 days due to unusual circumstances, the planning division may grant the facility owner an additional 90 days in which to comply with the requirements of this section.

#### **9. Nuisances**

Broadcast facilities, including, without limitation, power source, ventilation and cooling, shall be operated at all times within the City noise regulations, shall not be operated so as to cause the generation of heat that adversely affects a building occupant and shall not be maintained or operated in such a manner as to be a nuisance.

### **B. SOLAR ENERGY FACILITIES**

#### **1. Applicability**

- (a) These standards apply to the establishment of any new photovoltaic or solar thermal SEF within the City. Concentrated solar power systems are prohibited.
- (b) An SEF established prior to the effective date of this Zoning Code shall not be required to meet the requirements of this Zoning Code, however:
  - (1) Physical modification or alteration to an existing SEF that materially alters the size, type or components of the SEF shall be subject to this Zoning Code. Only the modification or alteration is subject to this Zoning Code;
  - (2) Substantial conformance review determinations are not major amendments to a project's existing permits; and

- (3) Routine operation and maintenance or like-kind replacements do not require a zoning compliance permit.

## 2. Tier Descriptions

Solar energy facilities are divided into three tiers that describe the intensity and impact of the use on the property and adjacent properties.

- (a) Tier 1: Accessory Solar Energy Facilities meet the following criteria:

- (1) Is an accessory use on the site that provides energy primarily for on-site use; and
- (2) Can be building-mounted or ground-mounted, which may include: rooftop systems, building-integrated solar (e.g., shingle, hanging solar, canopy, new technology), or covered permanent parking or other hardscape areas.

- (b) Tier 2: Intermediate Solar Energy Facilities meet the following criteria:

- (1) Is the primary use on the site or a secondary use that exceeds the size criteria for a Tier 1 SEF.
- (2) Provides energy for on-site or off-site use, and
- (3) Can be building-mounted or ground-mounted and may include rooftop systems, building-integrated solar, and covered permanent parking or other hardscape areas.

- (c) Tier 3: Large-Scale Solar Energy Facilities are large-scale, primary or secondary SEFs that provide energy for on-site or off-site use.

## 3. Standards for Ground-Mounted SEFS

- (a) Size: The maximum footprint for a ground-mounted SEF shall be as follows:

- (1) Tier 1:

- (i) Residential and mixed-use districts: 2,000 sf or 25% of the lot size, whichever is less.
- (ii) Agricultural, commercial, industrial, and public districts: 4,000 sf or 25% of the lot size, whichever is less.

- (2) Tier 2:

- (i) I1 district: up to 10 acres.
- (ii) I2 district: up to 20 acres.

- (3) Tier 3: Maximum size determined through special review process.

- (b) Height: The maximum height for a ground-mounted SEF shall be as follows:

- (1) Residential districts: 10 feet
- (2) All other districts: 20 feet

- (c) Setbacks: Ground-mounted SEFs shall comply with the following setback standards:

- (1) All SEFs shall meet the setback requirements of the individual zone district where located.
- (2) Tier 2 SEFs in commercial and industrial districts shall provide 100-foot minimum setback between the edge of the SEF installation boundary and any residential district.

- (3) Tier 1 and Tier 2 SEFs may not be located between the front building line and the street.

**4. Standards for Building-Mounted SEFS**

(a) Height

- (1) Tier 1 SEFs shall be subject to the maximum height for zone district or a maximum of five feet above the height of the roofline, whichever is less. Additional height may be requested through the special review process.
- (2) Tier 2 SEFS shall be subject to the maximum height for the zone district or a maximum of 10 feet above the height of the building, whichever is greater. Additional height may be requested through the special review process.

**5. Permit Required**

- (a) The following permit requirements are applicable to SEF systems. Complete permit submission requirements and processes are provided in Section 27-1600.
  - (1) /P/ Permitted Use
  - (2) /SR/ Special Review
  - (3) /X/ Prohibited

**Table 27-1000.2: SEF Permit Requirements**

Zone District	Tier 1 Accessory	Tier 2 Intermediate	Tier 3 Large-Scale
N1-4, NX1-3	P	X	X
RMH	P	X	X
NO, NMU	P	X	X
CMU1, CMU2	P	X	X
CX	P	X	X
I1-2	P	P	SR
P1	P	X	X
P2, P3	P	X	X

- (b) Submission Requirements for Tier 2 and Tier 3 SEFs: Tier 2 zoning compliance permit and Tier 3 special review SEF applications shall include the following information:
  - (1) A landscape plan showing that all areas occupied by the facility that are not utilized for access to operate and maintain the installation shall be planted and maintained with a naturalized grass or other vegetation for the purpose of soil stabilization or other methods approved by the zoning coordinator.
  - (2) A storm water management plan showing existing and proposed grading and drainage demonstrating no net increase in runoff.
  - (3) A maintenance plan for the continuing maintenance of the SEF, which may include, but not be limited to, planned maintenance of vegetation or ground cover, equipment maintenance, and plans for cleaning of solar panels if required.

- (4) A decommissioning plan with the information required in Section 27-1007.B.8.
- (c) Following approval, all permit holders are required to submit an annual compliance statement that confirms that the system is still active and compliant with the permit and that provides current owner and emergency contact information. This requirement shall not preclude the City from undertaking a separate compliance report, where confirmation of data provided by the facility's operator is desired.
- 6. Generally Applicable Standards**
- (a) Off-Site Facilities: When the SEF is located on more than one parcel, there shall be proper easement agreement or other approved methods for the notification of all impacted parties.
- (b) Septic System Avoidance: The SEF shall not be located over a septic system, leach field area or identified reserve area unless approved by the Department of Environmental Quality;
- (c) Conform to Development Standards for Underlying Zone: The SEF shall be ground mounted, or when located on structures, the SEF shall conform to the development standards for a principal structure in the zone in which such facilities and structures are to be located, except as otherwise provided herein.
- (d) If lighting is required, it shall be activated by motion sensors, fully shielded and downcast type where the light does not spill onto the adjacent parcel or the night sky.
- (e) The site shall comply with Section 27-1200, Landscaping.
- (f) The facility shall be enclosed by a six-foot tall fence (eight feet if razor or barbed wire is to be used), barrier, or other appropriate means designed to prevent or restrict unauthorized persons or vehicles from entering the parcel(s). Fences or barriers shall incorporate wildlife friendly design. No barrier shall be required where projects employ full-time security guards or video surveillance.
- (g) Signs: Signs on SEFs are prohibited. Permanent or temporary commercial signs (including flags, streamers, or decorative items), are prohibited from being displayed on any SEF equipment. As appropriate and for emergency and safety purposes, SEF equipment shall display identification of the manufacturer, facility owner and/or operator, and an emergency contact number.
- 7. Abandonment**
- (a) Applicability
- (1) An SEF, other than a Tier 1 system, that ceases to produce electricity on a continuous basis for 12 months shall be considered abandoned unless the property owner or facility operator demonstrates by substantial evidence satisfactory to the City that there is no intent to abandon the facility.
- (2) A property owner or facility operator with an abandoned system shall follow the decommissioning plan to remove the system. If the system was approved without a decommissioning plan, the property owner or facility operator shall remove all equipment and facilities and restore the site to original condition upon abandonment.
- (3) Facilities deemed by the City to be unsafe and facilities erected in violation of this section shall also be subject to this section.

## (b) Determination of Abandonment

- (1) Based on the information provided in an annual compliance statement or verified zoning complaint, the zoning coordinator shall have the right to request documentation and/or affidavits from the property owner regarding the system's usage and shall make a determination as to the date of abandonment or the date on which other violation(s) occurred. The zoning coordinator shall submit the documentation and coordinator's findings to the city council, property owner, and facility operator and schedule a public hearing for a determination of abandonment.
- (2) Upon a determination of abandonment or other violation(s), the City shall send a notice to the property owner and facility operator, indicating that the responsible party shall remove the SEF and all associated facilities, and remediate the site to its approximate original condition within a reasonable timeframe established by the City, unless the City determines that the facilities must be removed in a shorter period to protect public safety. Alternatively, if the violation(s) can be addressed by means short of removing the SEF and restoration of the site, the City may advise the property owner and facility operator of such alternative means of resolving the violation(s).
- (3) If the property owner or facility operator does not comply, the City may remove the SEF and restore the site and may thereafter:
  - (i) Draw funds from the bond, security, or financial assurance that was established during permitting, and
  - (ii) Initiate judicial proceedings or take other steps authorized by law against the responsible parties to recover only those costs associated with the removal of structures deemed a public hazard.

**8. Decommissioning**

- (a) A decommissioning plan, compliant with MCA 75-26-301 where applicable, shall be prepared for Tier 2 and Tier 3 applications and submitted with zoning compliance permit or special review application. The plan shall address the following:
  - (1) Defined conditions upon which decommissioning will be initiated (e.g., end of land lease, no power production for 12 months, etc.)
  - (2) Removal of all non-utility owned equipment, conduit, structures, fencing, roads, and foundations, and restoration of property to condition prior to development of the SEF. This shall include a revegetation plan. The applicant may propose retaining some site improvements, such as roads and infrastructure, subject to landowner consent and City approval.
  - (3) Timeframe for completion of decommissioning activities, not to exceed one year.
  - (4) Description and copy of any lease or any other agreement with landowner regarding decommissioning.
  - (5) Name and address of person or party responsible for decommissioning.
  - (6) Plans and schedule for updating this decommissioning plan.
  - (7) A professional engineer's estimated cost of decommissioning, the financial resources to be used to accomplish decommissioning, and the escrow agent with which the

resources shall be deposited. The decommissioning plan shall also include an agreement between the applicant and the City that:

- (i) The financial resources for decommissioning shall be in the form of a surety bond or letter of credit and shall be deposited in an escrow account with an escrow agent acceptable to the City.
  - (ii) The City shall have access to the escrow account funds for the expressed purpose of completing decommissioning if decommissioning is not completed by the applicant within one year of the end of project life, inoperability of individual WECS turbine, or facility abandonment. Escrow funds may be used for administrative fees and costs associated with decommissioning.
  - (iii) The City is granted the right of entry onto the site, pursuant to reasonable notice, to effect or complete decommissioning.
  - (iv) The City is granted the right to seek injunctive relief to effect or complete decommissioning, as well as the City's right to seek reimbursement from applicant, operator, or their successor(s) for decommissioning costs in excess of the amount deposited in escrow and to file a lien against any real estate owned by applicant, operator, or their successor(s), or in which they have an interest, for the amount of the excess, and to take all steps allowed by law to enforce the lien.
- (8) Before final electrical inspection, provide evidence that the decommissioning plan was recorded with the Billings City Clerk

## C. WIRELESS COMMUNICATION FACILITIES

### 1. Purpose

The purpose of this section is to establish regulations for the siting of antenna support structures and antennas on public and private property. The goals of this section are to:

- (a) Provide for the managed development and installation, maintenance modification, and removal of wireless communications infrastructure with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate, and remove WCFs;
- (b) Promote and protect the public health, safety, and welfare by reducing the visibility of WCFs to the fullest extent possible through techniques including but not limited to camouflage design techniques and undergrounding of the equipment associated with WCFs;
- (c) Encourage the deployment of smaller, less intrusive WCFs to supplement existing larger WCFs;
- (d) Encourage the use of wall-mounted panel antennas;
- (e) Encourage roof-mounted antennas only when wall-mounted antennas will not provide adequate service or are not otherwise feasible;
- (f) Encourage the location of antennas and towers in non-residential areas and minimize the total number of antenna support structures throughout the community;
- (g) Strongly encourage the co-location of WCFs on new and existing antenna support structures;

- (h) Require wireless communication facilities to be located, to the extent possible, in areas where the adverse impact on the community is minimal;
- (i) Require wireless communication facilities to be configured in a way that minimizes the adverse visual impact of the towers and antennas; and
- (j) Enhance the ability of the providers of wireless communication services to provide such services to the community, as quickly, effectively, and efficiently as possible.

## 2. Applicability

All wireless communication facilities located on private land within the city zoning jurisdiction shall be subject to this section. This section shall apply to wireless communication facilities upon state and federal lands to the extent of the City's jurisdiction by way of law, pursuant to any memoranda of understanding or otherwise. Only the following facilities shall be exempted from the application of this section.

- (a) Amateur radio stations and antenna support structures that are owned and operated by a federally licensed amateur radio station operator or are exclusively receive-only antennas, provided that the requirements that the height be no more than the distance from the base of the antenna to the property lines is met.
- (b) Antennas and antenna support structures for land mobile radio and radio and television, regulated in Section 27-1007.A.
- (c) Pre-existing WCFs:
  - (1) Any WCF for which a permit has been properly issued prior to the adoption of this Zoning Code (\_\_\_\_, \_\_, 2020) and for which no changes will be made shall not be required to meet the requirements of this section.
  - (2) Changes and additions to pre-existing WCFs (including trading out of antennas for an equal number of antennas) shall meet applicable requirements of Section 27-1007.C.5, General Requirements.

## 3. Criteria for Major and Minor Modifications and Substantial Change

- (a) Major WCF Modification:
  - (1) An alteration of an existing WCF for any purpose that meets the criteria for substantial change.
  - (2) The calculation for modifications shall be cumulative over time following the initial approval of the WCF. No such modification shall be permitted if the support structure will exceed 50 feet or the zoning district height, whichever is applicable.
- (b) Minor WCF Modification:
  - (1) An alteration of an existing exterior telecommunications facility or co-location of additional facilities with an existing exterior telecommunications facility in any zone that does not meet or exceeds the thresholds for a major modification, the calculation for which shall be cumulative over time, following the initial approval of the telecommunications facility.
  - (2) No such modification shall be permitted if the modification to the structure will cause the structure to exceed the height limit for the zoning district by more than 10 percent.

- (c) Substantially Change: a modification that changes the physical dimensions of an eligible support structure so that after the modification the structure meets any of the following criteria:
- (1) For towers:
    - (i) Other than alternative tower structures, the modification increases the height of the tower by more than 10 percent; for other eligible support structures, it increases the height of the structure by more than 10 percent or more than 10 feet, whichever is greater;
    - (ii) The modification involves adding an appurtenance to the body of the tower that would protrude from the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance to the body of the structure that would protrude from the side of the structure by more than six feet;
  - (2) For any eligible support structure:
    - (i) The modification involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
    - (ii) The modification entails any excavation or deployment outside the current site;
    - (iii) The modification would defeat the concealment elements of the eligible support structure. A change that would undermine the concealment elements of this structure will be considered to defeat the concealment elements of the structure;
    - (iv) The modification does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (I), (II), and (III) of this definition.
  - (3) For base stations that are not surrounded by a screening wall, the modification involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other existing, individual ground cabinet associated with the structure;
  - (4) For purposes of determining whether a substantial change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

#### 4. General Requirements

The requirements set forth in this section shall govern the location and construction of all wireless communications facilities governed by this section.

- (a) Building codes and safety standards. To ensure the structural integrity of wireless communication facilities, the owner of a facility shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for such wireless communication facilities, as amended from time to time. If upon inspection, the City concludes that a WCF fails to comply with such codes and constitutes

a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have 30 days from the date of notice to bring such WCF into compliance. Upon good cause shown by the owner, the zoning coordinator may extend such compliance period not to exceed 90 days from the date of said notice. If the owner fails to bring such WCF into compliance within said time period, the City may remove such WCF at the owner's expense.

- (b) Regulatory compliance. All wireless communication facilities must meet or exceed current standards and regulations of the FAA, the FCC, and other local, state or federal agencies with the authority to regulate facilities governed by this section. All wireless communication facilities must comply with all revised standards and regulations within the date established by the agency promulgating the standards or regulations. Failure to meet such revised standards and regulations shall constitute grounds for the removal of the WCF at the WCF owner's expense.
- (c) Setbacks
  - (1) Antenna support structures adjacent to residential uses or zoning. Antenna support structures must be set back, from all property lines, a distance equal to one-half ( $\frac{1}{2}$ ) the height of the structure from any off-site residential structure or residentially zoned lot. Accessory structures must maintain a minimum of a 15-foot setback from any lot line adjacent to a residential structure or residentially zoned lot, or the required setback of the zoning district where the antenna support structure is located, whichever is greater.
  - (2) Mixed Use, commercial, EBURD and industrial zoning setbacks antenna support structures and accessory facilities must meet the minimum yard setback requirements, including arterial setbacks, for the zoning district in which they are located.
- (d) Lot coverage and height. Antenna support structures and accessory structures shall not exceed lot coverage requirements for the zoning district in which they are located. Accessory structures shall not exceed the height restrictions for the zoning district in which they are located.
- (e) Fencing and buffering.
  - (1) Fencing. A chain link or solid wood fence, or masonry wall at least six feet in height (eight feet if razor or barbed wire is to be used) shall be constructed and maintained around the perimeter of the antenna support structure site. Climb-proof shields can be substituted for a fence or wall around the structure. Solid fences, at least six feet in height are required adjacent to residential uses and residentially zoned property.
  - (2) Landscaping. For all facilities the following will be required: a continuous evergreen hedge at least four feet in height when planted, shall be planted and maintained around the perimeter of the antenna support structure outside of the required fencing and spaced close together to provide a continuous visual screen. Shrubs shall also be planted and maintained around the guy anchors for visual screening purposes. This requirement may be waived through Section 27-16xx, Administrative Relief, where the site does not have access to water.

A performance bond or letter of credit for 150 percent of the landscaping and fencing materials and labor costs shall be posted with the planning division, prior to building

permit approval, to ensure the placement of required landscaping and fencing in accordance with Section 27-1200.

- (3) Commercial landscaping. Landscaping requirements shall not apply to antenna support structures located in the Heavy Industrial (HI) zoning district.
  - (4) Exceptions for city airport airfield area. If federal safety and security standards within the city airport's airfield area prevent an antenna support structure from being fenced or landscaped, Subsections 4(e)(1) and 4(e)2 will not apply. Documentation of these standards must be submitted with the building permit or special review applications.
- (f) Lighting. Antenna support structures shall not be artificially lighted unless required by the FAA or other local, state, or federal agency. If the FAA requires safety lighting, the use of red beacons is preferred to flashing strobe lights. Security lighting on site may be mounted up to 20 feet high on the tower and shall be directed towards the ground to reduce light pollution, prevent off-site light spillage, and avoid illuminating the tower.

Cut-off security lighting must be used adjacent to residential uses or residentially zoned lots. When incorporated into the approved design of the facility, light fixtures used to illuminate sports fields, parking lots, or similar areas may be included in the facility.

- (g) Signage. Signage shall be limited to non-illuminated warning and equipment identification signs.
- (h) Co-location
- (1) Antenna support structures should be designed in all respects to accommodate multiple antennas. If the antenna support structure is over 100 feet in height, it should be designed to include both the applicant's antenna(s) and at least two additional comparable antennas. If the tower is between 50 and 100 feet tall it should be designed for at least one additional comparable antenna.
  - (2) All new antennas must co-locate on existing or approved antenna support structures or stealth communication facilities. Applicants may request a waiver from the co-location requirement through the special review process. Applicants must demonstrate that co-location is not feasible because there is no existing or approved antenna support structure within the required separation distance of the proposed site can accommodate the applicant's proposed antenna or a critical need exists for the proposed location and it is technically infeasible to locate or co-locate structures at or beyond the required separation distance.
- (i) Maintenance
- (1) Equipment at a wireless communication facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a collector or local street, access for maintenance vehicles shall be exclusively by means of the collector or local street.
  - (2) All property used for the siting of an antenna support structure or antenna shall be maintained, without expense to the city, so as to be safe, orderly, attractive, and in conformity with city codes including those regarding the removal of weeds, trash and landscape maintenance.
- (j) Visual impact/aesthetics

- (1) Wireless communication facilities shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable local, state, or federal agency, be painted a neutral color or painted and/or textured to match the existing structure so as to reduce visual obtrusiveness.
  - (2) If an antenna is installed on a structure other than a tower, the antenna and associated electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible. Antennas and antenna support structures may be mounted on existing buildings that are 30 feet or more in height above the street grade.
  - (3) Roof-mounted antennas and antenna support structures shall not add more than 20 feet to the total height of the building on which they are mounted. Roof-mounted equipment shall be made visually unobtrusive to match existing air conditioning units, stair, elevator towers or other architectural elements. Only monopole antenna support structures with omni-directional (whip) or low profile single-directional (panel) shall be installed on building roofs. Examples of acceptable designs are shown in subsection (o) of this section. Crow's nest antenna arrays are prohibited on roof-top structures.
  - (4) Wireless communication facilities attached to new or existing structures shall be designed to blend with the structure's architecture and should be placed directly above, below or incorporated with vertical design elements of a structure.
  - (5) Wireless communication facilities shall be located as to minimize their visibility and not be placed within historic or scenic view corridors as designated by the city council, or by any state or federal law or agency.
- (k) Antenna support structure separation: All antenna support structures over 50 feet in height, regardless of the zoning district in which the structure is located, shall be located at least one mile from any other antenna support structure that is over 50 feet. Up to three antenna support structures located within an approved wireless communication facility tower farm shall be located at least one mile from any other tower farm.
- (l) Abandonment and Removal: If a WCF has not been in use for a period of three months, the owner of the WCF shall notify the City of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is not operated for a continuous period of six months shall be considered abandoned. The City, in its sole discretion, may require an abandoned WCF to be removed. The owner of the WCF shall remove the same within 30 days of receipt of written notice from the City. If the WCF is not removed within 30 days, the City may remove it at the owner's expense and any approved permits for the WCF shall be deemed to have expired. Additionally, the City, in its sole discretion, shall not approve any new WCF application until the applicant who is also the owner or operator of any such abandoned WCF has removed such WCF or payment for such removal has been made to the City.
- (m) Hazardous Materials
- No hazardous materials shall be permitted in association with WCFs, except those necessary for the operation of the WCF and only in accordance with all applicable law governing such materials.

- 5. Commercial Antenna Support Structures and Antennas Located in Residential Zoning Districts**
- (a) Minor modifications: Antennas co-located on existing or approved stealth communication facilities or existing or approved antenna support structures which have previously received all required approvals and permits shall be permitted as an allowed use.
  - (b) New support structures and major modifications: antenna support structures and antennas shall be permitted as an allowed use in all residential zoning districts provided they meet all of the following criteria:
    - (1) Stealth communication facilities conforming to all applicable provisions of this Zoning Code and roof-mounted antennas that do not add more than 20 feet to the total height of the building on which they are mounted shall be permitted as an allowed use only when located on school, government-owned utility, and other government sites. Proposed antennas or antenna support structures that are contrary to this section must be requested as a land use contrary to zoning through the special review process or may be submitted to the board of adjustment for a hearing, whichever is the preference of the owner/agency.
- 6. Commercial Antenna Support Structures and Antennas Located in Commercial Zoning Districts.**
- (a) Minor modifications: Antennas co-located on existing stealth communication facilities or existing antenna support structures which have previously received all required approvals and permits shall be permitted as an allowed use in all commercial zones.
  - (b) New support structures and major modifications shall be considered as follows:
    - (1) Stealth communication facilities shall be permitted as an allowed use in all commercial zoning districts.
    - (2) Antenna support structures shall be permitted as an allowed use in all commercial and mixed-use zoning districts when located on school, government-owned utility, and other government sites. Proposed antennas or antenna support structures that are contrary to this section must be requested through the special review process.
    - (3) Antenna support structures and antennas located in NO, NC, and DX that do not meet the requirements of subsections 7(b)(1) or 7(b)(2) shall be required to obtain special review approval. Wireless communication facility tower farms are not allowed in these zoning districts.
    - (4) Antenna support structures and antennas located in CMU1, CMU2, CX, I1, EBURD, CBD, and P zoning districts shall be permitted as an allowed use provided that the towers meet the requirements subsections 6(b)(1) or 6(b)(2) or the following:
      - (i) Roof-mounted antenna that do not add more than 20 feet to the total height of the building on which it is mounted shall be permitted as an allowed use. See additional requirements for roof-mounted antenna in Subsection 4(j)(2).
      - (ii) Antenna support structures 50 feet in height or less shall be permitted as an allowed use.
      - (iii) Antenna support structures that are greater than 50 feet in height shall be required to obtain special review approval.

- (iv) Wireless communication facility tower farms are permitted with special review approval, except in the CBD and P3 zoning districts.
- (5) All antenna support structures located in I2 shall be permitted as an allowed use, including tower farms.

**7. Antenna Support Structures Located in Parks**

The presence of certain wireless communication facilities may conflict with the purpose of some city owned parks. Wireless communication facilities will be considered only following a recommendation by the city planning division; the city parks, recreation, and cemetery advisory board, and approved by the city council. Factors that will be considered include:

- (a) Public parks of a sufficient scale and character that are adjacent to an existing commercial or industrial use;
- (b) Commercial recreation areas and major playfields; and,
- (c) Park maintenance facilities.

**8. Small Cell WCF**

The following standards apply in those zones where small cell telecommunications facilities are allowed as a permitted use.

- (a) An antenna may be installed on existing exterior support structures, but the installation of taller poles or new overhead wiring to accommodate the antennas will not be permitted without a special review approval.
  - (1) An antenna may be installed at least 20 feet from the ground in a residential zone or on an existing residential support structure or support structure on privately owned land, or 15 feet from the ground in a commercial or mixed-use zone or on an existing commercial structure or support structure on privately owned land.
  - (2) An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least 20 feet in a residential zone or when mounted on a residential building, or 15 feet in a commercial or mixed-use zone or when mounted to a commercial building.
- (b) An antenna must not be installed on or within 60 feet of a single-family or two-family dwelling unit and must not be installed on the front façade of any residence.
- (c) Cable connecting the antennas to the equipment box shall be contained inside the pole or Support Structure or shall be flush mounted and covered with a metal, plastic or similar material cap matching the color of the pole or structure on which it is installed, properly secured and maintained by the applicant.
- (d) Related unstaffed equipment cabinets may be located within a building, an equipment cabinet outside a building, an equipment cabinet on a rooftop, or an equipment room within a building.
  - (1) Such related equipment shall have a maximum square footage of 10 square feet with a maximum height of two feet and must be so located and installed in accordance with the applicable setback and other requirements of the zone in which the property is classified.

- (2) A related unstaffed equipment cabinet may be installed on a rooftop of a building on privately owned land which is at least 15 feet in height, provided it and all other roof structures do not occupy more than 25 percent of the roof area.
- (e) The applicant shall provide proof that it is a licensed provider and will comply with all applicable federal, state and City laws and regulations, including those regarding wireless communications services.
- (f) An antenna and equipment box must be installed as a Stealth Telecommunications Facilities on a property within a Historic District or that has been designated by the City as a Historic Resource, and the Historic District Commission must review such an application.
- (g) Public property. A private small cell telecommunications antenna may be located on the exterior of public property or attached to an existing support structure owned or operated by the City and shall be a permitted use in all zones.
- (h) All such small cell telecommunications antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
- (i) No signs are permitted in connection with any small cell telecommunications antenna.
- (j) No lights are permitted on any monopole or antenna unless required by the FCC, the FAA, or the City.
- (k) No more than one building, pole or other support structure containing a small cell telecommunications facility or co-located facility is permitted on a lot or parcel of land, or for parcels larger than a half-acre, per half-acre of land.

#### **9. Nonconforming Wireless Communication Facilities**

Antenna support structures and/or facilities in existence on the date of the adoption of these regulations, that do not comply with the requirements of these regulations, (nonconforming antenna support structures) are subject to the following provisions:

- (a) Nonconforming antenna support structures may continue their present use but may not be expanded or increased in height without complying with these regulations, except as further provided in this section.
- (b) Nonconforming antenna support structures which are hereafter damaged and destroyed, by less than 50 percent of its replacement value, due to any reason or cause may be repaired and restored to their former use, location, and physical dimensions subject to obtaining a building permit and other necessary approvals, but without otherwise complying with these regulations. If an antenna support structure is destroyed or damaged by more than 50 percent of its replacement the antenna support structure must be brought into compliance with these regulations.
- (c) The owner of any nonconforming antenna support structure may make minor modifications in order to improve the structural integrity of the facility, to allow the facility to accommodate co-located antennas or facilities, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of these regulations.

#### **10. Abandonment**

Wireless communications facilities will be considered abandoned if they are unused by all providers at the facility for a period of six months. Determination of abandonment shall be made

by the planning division, which shall have the right to request documentation from the facility owner regarding support or antenna usage. Upon abandonment, the facility owner shall have 90 days to:

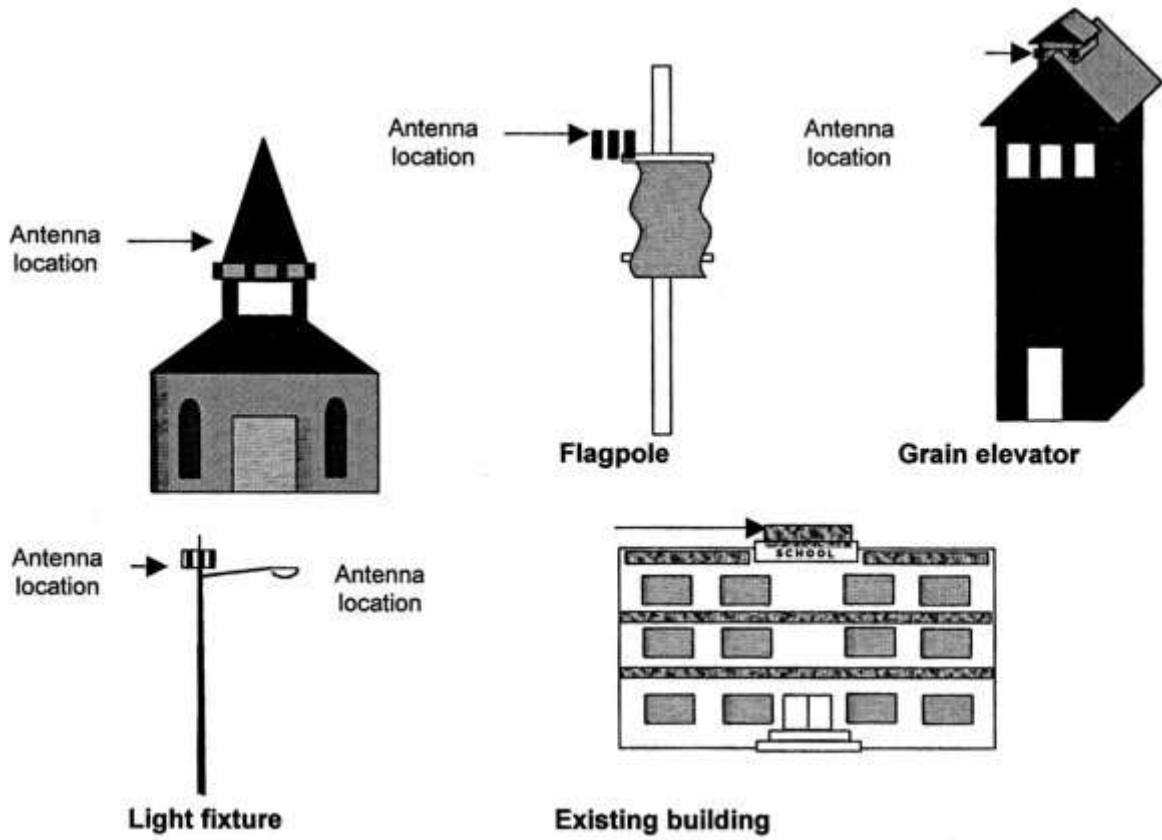
- (a) Re-use the facility, or transfer the facility to another owner who will re-use it; or
- (b) Dismantle the facility. If the facility is not removed within 90 days of abandonment, the city may remove the facility at the facility and/or property owner's expense. If the facility is removed, city approval of the facility expires.
- (c) If the facility owner is unable to remove the facility within the 90 days due to unusual circumstances, the planning division may grant the facility owner an additional 90 days in which to comply with the requirements of this section.

#### **11. Nuisances**

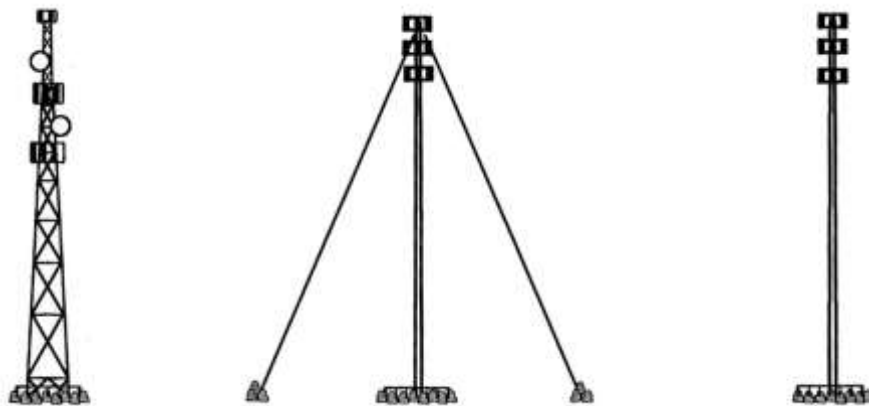
Wireless communication facilities, including, without limitation, power source, ventilation and cooling, shall be operated at all times within the City noise regulations, shall not be operated so as to cause the generation of heat that adversely affects a building occupant and shall not be maintained or operated in such a manner as to be a nuisance.

12. Wireless Communication Facilities, Illustrated Examples

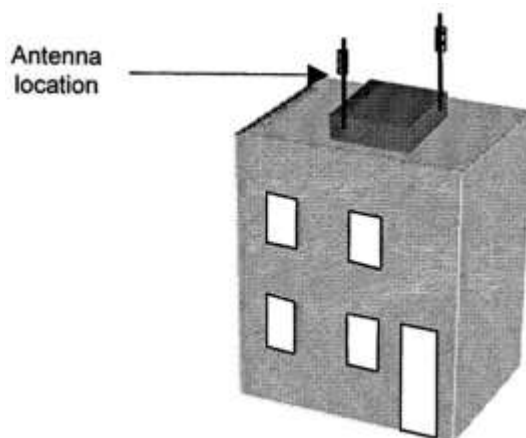
(a) Stealth communication facilities:



(b) Antenna support structures:



- (c) Roof-mounted antenna support structures and antennas:



### 13. Minor Modification Procedures

- (a) Minor modifications to facilities permitted under these regulations shall be approved by the planning division so long as they comply with the original approved design.
- (b) Timeframe for Review. Subject to the tolling provisions of subparagraph (c). below, within 60 days of the date on which an applicant submits an application seeking approval under this section, the City shall approve the application unless it determines that the application is not covered by this subsection, or otherwise in non-conformance with applicable codes.
- (c) Tolling of the Timeframe for Review. The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement of the City and the applicant, or in cases where the zoning coordinator determines that the application is incomplete:
- (1) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application;
  - (2) The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the City's notice of incompleteness; and
  - (3) Following a supplemental submission, the City will notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in Subsection 14.(c)(1). In the case of a second or subsequent notice of incompleteness, the City may not specify missing information or documents that were not delineated in the original notice of incompleteness.
  - (4) Failure to Act. In the event the City fails to act on a request for minor modification, within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The request becomes effective when the applicant notifies the City in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

- (5) Interaction with Telecommunications Act Section 332(c)(7). If the City determines that the applicant's request is not a request for minor modification, the presumptively reasonable timeframe under Section 332(c)(7), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a request for minor modification. To the extent such information is necessary, the City may request additional information from the applicant to evaluate the application under Section 332(c)(7) reviews.
- (d) In the event that after submittal of the application, or as a result of any subsequent submittals, applicant modifies the proposed facilities modification described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period; provided that, applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the City to request additional submittals and additional time that may be reasonably necessary for review of the modified application.
- (e) Decision
- The approval authority shall review a minor modification application to determine if the proposed facilities modification is subject to this section, and if so, if the proposed facilities modification will result in a substantial change to the physical dimensions of an eligible support structure.
- (1) Within 60 days of the date on which the City receives a minor modification application, less any time period that may be excluded under the tolling provisions of this section or a tolling agreement between the applicant and the approval authority, the approval authority shall approve the application and contemporaneously issue a minor modification permit unless the approval authority determines that the application is not subject to this section, or the proposed facilities modification will substantially change the physical dimension of an eligible support structure.
- (2) Denial. A minor modification application shall be denied upon determination by the approval authority that the proposed facilities modification is not subject to this section or will substantially change the physical dimensions of an eligible support structure. A proposed facilities modification will substantially change the physical dimensions of an eligible support structure if it meets any of the substantial change criteria. A denial of a minor modification application shall set forth in writing the reasons for the denial and shall be provided to the applicant.
- (3) Deemed Approved Application. An application that has been deemed approved shall be and constitute the equivalent of a minor modification permit, except as may be otherwise determined by a court of competent jurisdiction, and shall be subject to generally applicable enforcement and compliance requirements in the same manner as a minor modification permit issued pursuant to this section.
- (f) Term of Minor Modification Permit. A minor modification permit issued pursuant to this section, and any deemed approved application, shall be valid for a term of 180 days from the date of issuance, or the date the application is deemed approved.

#### **14. New Support Structure and Major Modification Procedures**

Applications for new support structures and major modifications to existing antenna support structures permitted under these regulations shall be approved through a special review. Major

modifications are any modifications that exceed the definition of minor modifications and constitute a substantial change per Section 27-1007.C.3.

#### **D. WIND ENERGY CONVERSION SYSTEMS (WECS)**

##### **1. Applicability**

- (a) These standards apply to the construction of any new WECS within the City.
- (b) A WECS legally established or permitted prior to the effective date of this Zoning Code shall not be required to meet the requirements of this Zoning Code, however:
  - (1) Physical modification or alteration to an existing WECS that materially alters the size, type or components of the WECS shall be subject to this Zoning Code. Only the modification or alteration is subject to this Zoning Code;
  - (2) Substantial conformance review determinations are not major amendments to a project's existing permits; and
  - (3) Routine operation and maintenance or like-kind replacements do not require a permit.

##### **2. Wind Energy Conversion System Tier Descriptions**

- (a) Tier 1: Accessory Wind Energy Conversion Systems meet the following criteria:
  - (1) Is designed to supplement other electricity sources as an accessory use to existing facilities, wherein the power generated is used primarily for on-site consumption, and
  - (2) Consists of one or more wind turbines, which may be roof-mounted;
- (b) Tier 2: Intermediate Wind Energy Conversion Systems meet the following criteria:
  - (1) Is the primary use on the site or is a secondary use that exceeds the criteria for a Tier 1 WECS,
  - (2) Consists of one or more wind turbines, all of which are ground-mounted, and
  - (3) Is designed primarily to serve a local load.
- (c) Tier 3: Large-Scale Wind Energy Conversion Systems for Commercial Generation meet the following criteria:
  - (1) Consists of one or more wind turbines, and
  - (2) Has a total facility rated capacity of greater than 1 MW.

##### **3. Standards for Ground-Mounted WECS**

- (a) Size: The maximum footprint for a ground-mounted WECS shall be as follows:
  - (1) Tier 1:
    - (i) Residential and mixed-use districts: 2,000 sf or 25% of the lot, whichever is less
    - (ii) Agricultural, commercial, industrial, and public districts: 4,000 sf or 25% of the lot, whichever is less.
  - (2) Tier 2:
    - (i) I1 district: up to 10 acres
    - (ii) I2 district: up to 20 acres

(3) Tier 3: Maximum size determined through special review process.

(b) Height

(1) Towers: The following height standards are applicable to WECS towers:

**Table 27-1000.4: WECS Tower Height, Maximum**

Zone District	Lot Size	Tier 1	Tier 2	Tier 3
N1-3, NX1-3, RMH, P2, P3	Up to 20,000 sf	Height determined by available setback	Not permitted	Not permitted
	20,000 to 43,560 sf	80 feet	80 feet	Not permitted
	Over 1 acre	100 feet	100 feet	Not permitted
NO, NMU, CMU1, CMU2, C3, CX	All	80 feet	Not permitted	Not permitted
I1, I2, EBURD	Up to 20,000 sf	Height determined by available setback	Not permitted	Not permitted
	20,000 to 43,560 sf	80 feet	200 feet	Not permitted
	1 to 4.99 acres	200 feet	200 feet	Not permitted
	5 acres or more	200 feet	No limit [1]	No limit [1]

(c) Setbacks

(1) Tower locations shall comply with zone district setbacks and any of the additional setback standards identified in this section. Ground-mounted Tier 1 and Tier 2 WECS may not be located between the front building line and the street.

- (i) Towers shall be setback a minimum of 0.5 x total height from any primary structure.
- (ii) The owner of a primary structure on the same lot as a Tier 1 or Tier 2 tower may waive this setback as applied to that lot and apply a reduced setback of 0.25 x total height.
- (iii) The setback may not be waived for primary structures on an adjacent lot.
- (iv) All new primary structures shall be located at least 0.5 x total height from an existing tower.
- (v) No further setback waivers are permitted, nor may this requirement be waived or varied by the zoning coordinator or board of adjustment.

(2) Towers shall be setback a minimum distance equal to 500 feet or 0.5 x the total height (tower plus extended blade), whichever is higher, from:

- (i) All property lines,
- (ii) Any overhead utility lines, and
- (iii) Any public roadway right-of-way.

- (3) Guy cables and other support devices shall be setback at least 10 feet from all property lines and occupied buildings. Guy cables must be marked and clearly visible to a height of six feet above the guy cable anchors.
- (4) The setback shall be measured from the centerline of the turbine and applied in a diameter around the tower.
- (d) Tower Separation: At a minimum, there shall be a separation between towers of not less than 3 times the rotor diameter.
- (e) Clearance: The minimum height of the lowest position of the rotor blade shall be at least 30 feet above the ground and 30 feet above the highest existing structure or tree within a 250 foot radius.

#### 4. Standards for Building-Mounted WECS

- (a) A Tier 1 building-mounted WECS shall be subject to the maximum building height specified for the district or a maximum of 30 feet above the height of the building to which it is attached, whichever is greater. Additional height may be requested through the special review process.
- (b) The maximum number of Tier 1 building-mounted WECS permitted by district type is:
  - (1) Residential, mixed-use, commercial, EBURD, and public districts: Two per primary structure, one per accessory structure
  - (2) Industrial districts: no limit, may be mounted on primary or accessory structures.

**5. Permit Required**

- (a) Applicable Permit Types: The following permit requirements are applicable to WEC systems. Complete permit submission requirements and processes are provided in Section 27-1600.
- (1) /P/ Permitted Use
  - (2) /SR/ Special Review
  - (3) /X/ Prohibited

**Table 27-1000.5: WECS Permit Requirements**

Zone District	Tier 1 (Accessory)	Tier 2 (Primary Use)	Tier 3 (Large Commercial)
<b>N1-3, NX1-3</b>	P	X	X
<b>RMH</b>	P	X	X
<b>NO, NMU</b>	P	X	X
<b>CMU1, CMU2</b>	P	X	X
<b>CBD, DX</b>	P	X	X
<b>CX</b>	P	X	X
<b>I1-2</b>	P	P	SR
<b>EBURD</b>	P	X	X
<b>P1</b>	P	X	X
<b>P2, P3</b>	P	X	X

- (b) Submission Requirements for Tier 2 and Tier 3 WECS
- (1) Tier 2 zoning compliance permit and Tier 3 special review WECS applications shall include the following information:
  - (2) Approved net metering agreement(s) and copies of applications to or approved permit from applicable state and federal agencies.
  - (3) A landscape plan showing that all areas occupied by the facility that are not utilized for access to operate and maintain the installation shall be planted and maintained with a native shade tolerant grass or other vegetation for the purpose of soil stabilization or other methods approved by the zoning coordinator.
  - (4) A storm water management plan showing existing and proposed grading and drainage demonstrating no net increase in runoff.
  - (5) A preliminary transportation plan describing ingress and egress to the proposed project site to deliver equipment and provide access during and after construction. Such plan shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, as well as measures which will be taken to restore damaged or disturbed access routes following construction.
  - (6) An environmental assessment that analyzes the impact of the proposed project regarding on-site and site-adjacent floodways, riparian corridors, open water, wildlife

migration routes, protected habitat, protected plant species, and other environmentally sensitive areas as identified by the County, City, State, or federal government, along with proposed mitigation recommendations.

- (7) A decommissioning plan per Section 27-1007.D.11.
- (c) Following approval, all permit holders are required to submit an annual activity statement that confirms that the system is still active and compliant with the permit and that provides current owner and emergency contact information. This requirement shall not preclude the City from undertaking a separate compliance report where confirmation of data provided by the facility's operator is desired.
- 6. Safety and Installation**
- WECS facilities shall be developed in a manner that utilizes sound engineering practices and considers public safety in regard to the potential hazards that may be created to adjacent properties, public infrastructure, communities, aviation, etc. The following lists public safety matters that shall be addressed and implemented in the development of the WECS facility:
- (a) WECS facilities shall conform to applicable industry standards, including those of the American National Standards Institute ("ANSI") and the Institute of Electrical and Electronics Engineers ("IEEE") and the National Electrical Code (NEC). Concurrently with permits for construction, the Applicant(s) shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories ("UL"), Det Norske Veritas ("DNV"), Germanischer Lloyd Wind Energie ("GL"), or an equivalent third party.
- (b) WECS facilities shall comply with applicable FAA regulations and comply with conditions regarding WECS facility installation established by affected airports. If approved by the FAA, all WECS facilities shall implement a FAA approved Aircraft Visual Warning System (AVWS) that allows for the use of aircraft warning lights to be minimized.
- (c) Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No WECS shall be permitted which lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
- (d) All WECS structures must be unclimbable by design or protected by anti-climbing devices. All climbing apparatus shall be removed from the lower 10 feet of the tower, or ladder access shall be restricted.
- (e) Appropriate warning signage (e.g., "Danger, High Voltage") shall be placed where it is clearly visible by persons standing near the tower base or other ground-mounted electrical equipment.
- (f) All electrical and control equipment shall be safely and appropriately enclosed from unintentional access by means such as lockable equipment cabinetry, enclosed tower with lockable access door, or similar.
- (g) All access doors on towers shall be locked or fenced.

**7. Design**

- (a) Color: When not conflicting with colors required by the Federal Aviation Administration or other federal agencies, the WECS facility shall remain painted or finished in the color that was originally applied by the manufacturer. Bright, luminescent, or neon colors are prohibited.
- (b) Signal Interference
  - (1) No WECS facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antennas for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception.
  - (2) No WECS facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
- (c) Location and Views: WECS Facility structures shall be located to make maximum use of existing terrain, vegetation and structures for the purposes of maintaining the viewshed. The site shall comply with Section 27-1200, Landscaping.
- (d) Lighting: WECS Facilities, including buildings and structures, shall not be artificially lighted except to the extent requires by FAA regulations. Minimal ground level security lighting is permitted.
- (e) Shadow Flicker: WECS facilities shall be designed so that there is no significant shadow flicker at an adjacent property, measured at the nearest wall of inhabited structures, unless waived in writing and recorded against the property by the landowner in the Yellowstone County Clerk's office.
- (f) Sound:
  - (1) Sound produced by the turbine under normal operating conditions, as measured at the property line of any adjacent property improved with a dwelling unit at the time of the issuance of the zoning certificate, shall not exceed 55 dBA for any period of time.
  - (2) The 55 dBA sound level may be exceeded during short-term events out of the owner's control such as utility outages and/or severe wind storms.
  - (3) The noise level generated by a WECS must also not increase ambient sound levels by more than 3 dBA at any sensitive noise receptors, including residences, hospitals, libraries, schools, and places of worship, within 2,500 feet of the site property line.
- (g) Signs: WECS facilities shall not display commercial permanent or temporary signs (including flags, streamers, or decorative items) on any WECs equipment. As appropriate for emergency and safety purposes, WECs equipment shall display identification of the turbine (or other equipment) manufacturer, facility owner and/or operator, and an emergency contact number.
- (h) Outdoor Storage: Except during construction, re-construction or decommissioning, outdoor storage is not permitted within the project boundary.
- (i) Underground Lines: Intra-project power lines having a voltage of 34,500 volts or less shall be buried unless the applicant can sufficiently demonstrate that burying the lines will violate other guidelines, standards or applicable law. The actual installed burial depth of

underground wiring shall be verified by the developer of the WECS facility. The developer shall provide certification from the installing contractor of the actual installed burial depth of all underground wiring. Such certification shall be under the penalty of perjury. The collection system may be placed overhead adjacent to County roadways, near substations or points of interconnection to the electric grid or in other areas as necessary.

#### **8. Maintenance and Inspections**

- (a) All WECS must be maintained in operational condition meeting all of the requirements of this section and other permit conditions at all times, subject to reasonable maintenance and repair outages.
- (b) The City may elect to have a WECS inspected for structural and operational integrity by a Montana licensed professional engineer. The City has the right to enter the premises of the wind energy facility at any reasonable time to inspect the WECS. The City will give at least 24 hours' notice of its intent to inspect the WECS.

#### **9. Transfer and Replacement**

- (a) If ownership or operation of a WECS changes, the new owner or facility operator must present full contact information and proof to the City that all required bonds and insurance policies remain in full force a minimum of 30 days prior to the transfer of ownership.
- (b) Any replacement of or modification or alteration to a WECS, excluding regular maintenance and repair, requires an amendment to the original approval, which amendment shall not be unreasonably withheld.
- (c) Replacement of a WECS may occur without City approval when there will be:
  - (1) No increase in the total height of the WECS,
  - (2) No change in the location of the WECS,
  - (3) No additional lighting on the WECS, except to the extent required by the FAA, and
  - (4) No increase in noise produced by the WECS.

#### **10. Abandonment**

- (a) Applicability
  - (1) A WECS, other than a Tier 1 system, that ceases to produce electricity on a continuous basis for 12 months shall be considered abandoned unless the property owner or facility operator demonstrates by substantial evidence satisfactory to the City that there is no intent to abandon the facility.
  - (2) A property owner or facility operator with an abandoned system shall follow the decommissioning plan to remove the system. If the system was approved without a decommissioning plan, the property owner or facility operator shall remove all equipment and facilities and restore the site to original condition upon abandonment.
  - (3) Facilities deemed by the City to be unsafe and facilities erected in violation of this section shall also be subject to this section.
- (b) Determination of Abandonment

- (1) Based on the information provided in an annual compliance statement or verified zoning complaint, the zoning coordinator shall have the right to request documentation and/or affidavits from the property owner or facility operator regarding the system's usage and shall make a determination as to the date of abandonment or the date on which other violation(s) occurred. The zoning coordinator shall submit the documentation and coordinator's findings to the property owner, facility operator, and county commission and schedule a public hearing for a determination of abandonment.
  - (2) Upon a determination of abandonment or other violation(s), the City shall send a notice hereof to the property owner and facility operator, indicating that the responsible party shall remove the WECS and all associated facilities, and remediate the site to its approximate original condition within a reasonable timeframe established by the City, unless the City determines that the facilities must be removed in a shorter period to protect public safety. Alternatively, if the violation(s) can be addressed by means short of removing the WECS and restoration of the site, the City may advise the property owner and facility operator of such alternative means of resolving the violation(s).
- (c) If the property owner or facility operator does not comply, the City may remove the WECS and restore the site and may thereafter:
- (1) Draw funds from any bond, security or financial assurance established as part of the permitting process, or
  - (2) Initiate judicial proceedings or take other steps authorized by law against the responsible parties to recover only those costs associated with the removal of structures deemed a public hazard.

#### 11. Decommissioning

- (a) A decommissioning plan, compliant with MCA 75-26-301 where applicable, shall be prepared and submitted with zoning compliance permit or special review application. The plan shall address the following:
- (1) Defined conditions upon which decommissioning will be initiated (e.g., end of land lease, no power production for 12 months, etc.)
  - (2) Removal of all non-utility owned equipment, conduit, structures, fencing, roads, and foundations and restoration of property to condition prior to development of the WECS. This shall include a revegetation plan. The applicant may propose retaining some site improvements, such as roads and infrastructure, subject to landowner consent and City approval.
  - (3) Timeframe for completion of decommissioning activities, not to exceed one year.
  - (4) Description and copy of any lease or any other agreement with landowner regarding decommissioning.
  - (5) Name and address of person or party responsible for decommissioning.
  - (6) Plans and schedule for updating this decommissioning plan.
  - (7) A professional engineer's estimated cost of decommissioning, the financial resources to be used to accomplish decommissioning, and the escrow agent with which the

resources shall be deposited. The decommissioning plan shall also include an agreement between the applicant and the City that:

- (i) The financial resources for decommissioning shall be in the form of a surety bond or letter of credit to be deposited in an escrow account with an escrow agent acceptable to the City.
  - (ii) The City shall have access to the escrow account funds for the expressed purpose of completing decommissioning if decommissioning is not completed by the applicant within one year of the end of project life, inoperability of individual WECS turbine, or facility abandonment. Escrow funds may be used for administrative fees and costs associated with decommissioning.
  - (iii) The City is granted the right of entry onto the site, pursuant to reasonable notice, to effect or complete decommissioning.
  - (iv) The City is granted the right to seek injunctive relief to effect or complete decommissioning, as well as the City's right to seek reimbursement from applicant, operator, or their successor(s) for decommissioning costs in excess of the amount deposited in escrow and to file a lien against any real estate owned by applicant, operator, or their successor(s), or in which they have an interest, for the amount of the excess, and to take all steps allowed by law to enforce the lien.
- (b) Before final electrical inspection, provide evidence that the decommissioning plan was recorded with the Billings City Clerk.

**SECTION 27-1008 ACCESSORY USES****A. GENERAL PROVISIONS****1. Time of Construction or Establishment**

No accessory structure or use shall be constructed or established more than 180 days prior to the time of completion of the construction or establishment of the principal structure or use to which it is accessory.

**2. Interpretation of Unidentified Accessory Uses and Structures**

The zoning coordinator shall evaluate applications for accessory uses that are not identified in this section on a case-by-case basis. If the request meets the criteria identified below, the zoning coordinator is authorized to determine the most similar, and thus most appropriate accessory use category and apply the regulations for the similar accessory use to the application.

- (a) The definition of "accessory use" in this section, and the general accessory use standards and limitations established in this section;
- (b) The purpose and intent of the district in which the accessory use is located;
- (c) Potential adverse impacts the accessory use or structure may have on other lots, compared with other accessory uses permitted in the district; and
- (d) The compatibility of the accessory use with other principal and accessory uses permitted in the district.

**B. COMPLIANCE WITH THIS ZONING CODE**

1. All accessory uses and structures shall be subject to the dimensional requirements of the zone district in which they are located except as specifically provided in this section. In the case of any conflict between the accessory use/structure standards of this section and any other requirement of this Zoning Code, the more restrictive standards shall control.
2. Accessory uses shall comply with all standards of this Zoning Code applicable to the principal use with which they are associated. Parking requirements shall be met for both the principal use and any accessory use when operating at the same time.

**C. LOCATION**

1. The accessory use or structure shall be conducted or located on the same lot(s) as the principal use.
2. No accessory building shall be erected in any required setback nor within five feet of any other building except as specified in this section.

**D. DETACHED ACCESSORY RESIDENTIAL STRUCTURES**

1. Detached buildings for accessory residential uses (see 27-1008.G for Accessory Dwelling Unit requirements) greater than 200 square feet in size shall not exceed the principal building first story gross floor area on the lot or 1,500 square feet, whichever is less.
2. The maximum total square footage in detached accessory structures in the N1, N2, N3 and RMH zone districts shall not exceed 2,000 square feet or the total principal building first story gross floor area on the lot, whichever is less.
3. These limitations do not apply in the NX districts or MU districts except where those lots are developed with one or two-family dwellings.

**E. ACCESSORY USE TABLE**

Table 27-1000.6, Accessory Uses, identifies the accessory uses that may be permitted in each district subject to applicable standards.

1. Permitted /P/. These accessory uses are permitted by-right in the zone districts in which they are listed. Permitted accessory uses are required to comply with applicable use-specific standards identified in this article.
2. Permitted in upper stories/back of structure /PL/. These accessory uses are permitted by-right in the districts in which they are listed, provided that the accessory uses are located in the upper stories of a structure. These accessory uses may also be located in the ground story provided that they are located beyond a depth of at least 20 feet from the front facade.
3. Permitted with use restrictions /PR/. These accessory uses must comply with the use restrictions identified in this Zoning Code, including those restrictions included in this article and any use restrictions identified in the zone district where the uses is proposed to be located.
4. Requires a special review /SR/. These accessory uses are not allowed in the district but may be allowed through the special review process. Special review uses must follow any applicable development standards associated with the accessory use as well as meet the requirements of the special review.
5. Accessory uses that are not permitted are indicated by a blank space.

Table 27-1000.6: Accessory Uses	Residential							Mixed-Use and Commercial							Ind.		EBURD					Public						
	Key: P = Permitted, PL = Location Limits in Zone District, PR –Use Restrictions, SR – Special Review																											
Use Table	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSV MS	RSV	CW	I3	I5	P1	P2	P3 Civ	P3 Ed	P3 Med	Additional Standards	
<b>Residential</b>																												
Accessory Dwelling Unit	SR	PR PL	PR PL	PR PL			PR PL																					27-1008
Employee/Caretaker Unit														PR	PR	PR						PR		P	P	P	P	27-1008
Home Occupation	P	P	P	P	P	P	P	P	P	P	P	P	P	P														27-1008
Short-Term Rental (Guest Home)	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR			PR	PR	PR				PR	PR	PR	PR	27-1005	
Shelter (accessory to religious institution)												PR	PR				PR	PR	PR	PR	PR						27-1004	
<b>Casino</b>																												
Limited (1-3 gambling devices)									P	P	P	P	P	P	P	P	P	P	P	P	P							27-1005
Small (4-9 gambling devices)									P	P	P	P	P	P	P	P	P	P	P	P	P							27-1005
<b>Communication and Satellite Facilities</b>																												
Amateur Radio Support Towers	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PR	PL	PL	P												27-1008
Satellite Antenna and Dishes	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	27-1008
<b>Day Care Facilities</b>																												
Day Care Center								P	P	P	P	P	P	P			P	P	P				P	P	P	P	P	27-1008
Family Day Care Home	P	P	P	P	P	P	P																					

Table 27-1000.6: Accessory Uses	Residential							Mixed-Use and Commercial						Ind.		EBURD					Public					Additional Standards		
	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSVMS	RSV	CW	I3	IS	P1	P2	P3 Civ	P3 Ed		P3 Med	
Use Table	Key: P = Permitted, PL = Location Limits in Zone District, PR –Use Restrictions, SR – Special Review																											
Group Day Care Home	P	P	P	P	P	P	P																					
Drive-Through (Thru) Facility									SR	P	P	SR		P	P								P	P	P	P		27-1008
Electric Vehicle Charging Facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	27-1008	
<b>Eating and Drinking Establishment</b>																												
<b>No Alcohol</b>																												
Restaurant, no drive thru									P	P	P	P	P	P	P		P	P	P			P	P	P	P	P		
With drive-thru									SR	P	P	SR		P	P								P	P	P	P		
<b>Beer and Wine, On-Premises Consumption</b>																												
Bar or Tavern										SR	SR	PR	P	P	P		P	P	P	P	P						27-1005	
Craft Alcohol										P	P	P	P	P	P		P	P	P	P	P		P	P	P	P	27-1005	
Restaurant									P	P	P	P	P	P	P		P	P	P	P	P		P	P	P	P	27-1005	
<b>All Beverage, On-Premises Consumption</b>																												
Bar or Tavern										SR	SR	P	P	SR	P		P	P	P	P	P						27-1005	
Craft Alcohol										P	P	P	P	P	P		P	P	P	P	P		P	P	P	P	27-1005	
Restaurant									P	P	P	P	P	P	P		P	P	P	P	P		P	P	P	P	27-1005	
Kennel, Private	P	P	P	PR	PR	PR	PR																				27-1008	
Outdoor Sales Lot												SR	SR	P	P												27-1008	

Table 27-1000.6: Accessory Uses	Residential							Mixed-Use and Commercial						Ind.		EBURD					Public							
	Key: P = Permitted, PL = Location Limits in Zone District, PR –Use Restrictions, SR – Special Review																											
Use Table	N3	N2	N1	NX1	NX2	NX3	RMH	NO	NMU	CMU1	CMU2	DX	CBD	CX	I1	I2	RSVMS	RSV	CW	I3	IS	P1	P2	P3 Civ	P3 Ed	P3 Med	Additional Standards	
Outdoor and Sidewalk Seating									P R	P R	P R	P R	P R	P R			P R	P R	P R	P R	P R	P R	P R	P R	P R	P R	27-1008	
Outdoor Storage														P R	P R				P R	P R							27-1008	
Park/Playground	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	P					P	P	P	P	P	
Parking, Structured											P	P																
Shipping Container									P R	P R	P R	P R		P R	P R		P R	P R	P R	P R	P R						27-1008	
Solar Energy Facility, Tier 1	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P		P	P	P	P	P	27-1007
Wind Energy Conversion System, Tier 1	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P		P	P	P	P	P	27-1007
<b>Urban Agriculture</b>																												
Beekeeping																												
Community Gardens	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P		P R	P R	P R	P R	P R	27-1008
Crops	P	P	P	P	P	P	P																					
Fowl (chicken hens)	P R	P R	P R	P R	P R	P R	P R																					27-1008

**F. ACCESSORY DAY CARE FACILITY**

A child or adult day care facility, including nursery and preschool, may be permitted as an accessory use to a Public, Civic, and Institutional Use, subject to compliance with applicable state and city regulations.

**G. ACCESSORY DWELLING UNITS****1. Applicability**

- (a) Accessory dwelling units (ADUs) are permitted by right in the N1 and N2 zone districts and are allowed by special review in the N3 zone district.
- (b) Accessory dwelling units in applicable zones are permitted on any parcel where a single dwelling unit is permitted or currently exists.
- (c) The minimum lot size for a lot that has both a primary dwelling unit and an accessory dwelling unit is 3,000 sq. ft.

**2. Ownership and Occupancy**

- (a) The property owner shall live in either the primary or accessory dwelling unit, with one of the units serving as their principal residency for at least six months in a year. No third-party rentals shall occur in the owner-occupied unit.
- (b) The property owner shall record a deed restriction with the Yellowstone County Recorder requiring owner-occupancy of the property. Evidence of recordation of the deed restriction shall be provided to the City of Billings Planning & Community Services Department.
- (c) Conditions of approval, as determined by the Director, shall be filed for record with the County Recorder as deed restrictions within 30 days of approval of the accessory dwelling unit. Evidence of such filing shall be submitted to the Director within 30 days of approval.
- (d) The accessory dwelling unit shall not be sold separately or subdivided from the primary dwelling unit or lot.

**3. Dimensional Standards and Location**

- (a) One accessory dwelling unit is permitted per residential lot. The ADU shall be located on the same lot as the primary unit.
- (b) Unless specifically addressed in this section, accessory dwelling units are subject to the dimensional regulations for a principal building of the underlying zone district; e.g., setback/yard requirements and building coverage.
  - (1) A detached accessory dwelling unit shall not cover more than 30 percent of the available rear yard between the primary structure building line and the rear yard setback line.
  - (2) These standards do not apply to legally established detached garages that contain an accessory dwelling unit. Any expansion of a detached garage for conversion into an ADU shall comply with the appropriate setback and yard requirements for the detached garage.
  - (3) Maximum height for a new, detached accessory dwelling unit shall not exceed the height of the principal dwelling unit.

- (4) The footprint of a detached accessory dwelling unit shall not exceed the footprint of the principal dwelling unit.
    - (c) An existing accessory structure whose height or setback(s) does not meet the requirements for a dwelling in the zone district may be converted into an accessory dwelling unit, but the structure may not be altered in any manner that would increase the degree of non-conformity.
4. **Size**
  - (a) The gross floor area of an accessory dwelling unit attached or internal to the primary dwelling unit shall not exceed the gross floor area of the primary dwelling unit.
  - (b) The maximum gross floor area of a detached accessory dwelling unit shall be no more than 80 percent of the gross floor area of the principal dwelling unit or 750 square feet, whichever is less.
5. **Construction**
  - (a) Accessory dwelling units must contain a kitchen or a food prep area, bathroom, and sleeping area for the sole use of the unit.
  - (b) Water and sewer service shall be provided. The principal unit and accessory unit may share utilities.
  - (c) Mobile homes, manufactured housing, recreational vehicles, travel trailers, and any other wheeled or transportable structure shall not be used as accessory dwelling units.
  - (d) A new street address for a new ADU is required to assist in emergency response.
6. **Design**
  - (a) Accessory dwelling units may be incorporated within or added onto a principal dwelling unit, garage, or other accessory structure, or may be built as a separate, detached structure on a lot where a single-family dwelling exists or will exist.
  - (b) An ADU, either detached or an extension of an existing structure, shall be designed to maintain the architectural design, style, appearance, and character of the primary structure, including compatibility with the neighborhood.
  - (c) Accessory dwelling units shall have a separate entrance with a clearly labeled street address. Houses with an incorporated accessory dwelling unit may not create additional entrances facing the same street.
7. **Parking**

The accessory dwelling unit shall have at least one dedicated off-street parking space in addition to the parking required for the primary dwelling unit. An exception to the parking requirement may be granted if it is demonstrated to planning staff that the additional parking space for the ADU is not feasible and/or on-street parking is available.
8. **Home Occupations**

Home occupations are permitted in an accessory dwelling unit.

## H. AMATEUR RADIO SUPPORT TOWERS

### 1. Applicability

- (a) All amateur radio antenna support structures and antennas located within the city zoning jurisdiction whether upon private or public lands shall be subject to this section. This section shall apply to amateur radio antenna support structures and antennas upon state and federal lands to the extent of the city's jurisdiction by way of law, pursuant to any memoranda of understanding or otherwise. Only the following facilities shall be exempted from the application of this section.
- (b) Pre-existing amateur radio antenna support structures and pre-existing amateur radio antennas shall not be required to meet the requirements of this section, so long as said pre-existing antenna support structures and antennas have received all required approvals, permits and exceptions prior to adoption of this section.

## 2. Standards

- (a) Amateur radio antenna support structures and antennas shall be located only within the rear yard and shall not be placed within any required setback and shall be located so as to minimize their impact on adjacent residential properties and adjacent rights-of-way while maintaining acceptable signal quality.
- (b) Amateur radio antenna support structures and antennas exceeding six feet in height above grade (if ground-mounted) or above the roof or ridge of the building on which they are located (if building-mounted), shall require a building permit. With each building permit, the applicant shall submit evidence as is required to show that the device is adequately anchored, designed and/or constructed so as to safeguard the general public and/or adjacent property from damage in the event of failure of the device.
- (c) It is recommended that amateur radio antenna support structures be designed, installed, and maintained to blend into the surrounding environment through the use of color and alternative designs, except in instances where the color is dictated by the FAA.
- (d) In accordance with the FCC's preemptive ruling PRB1, 101 FCC 2d 952 (1985), antenna support structures erected for the primary purpose of supporting amateur radio antennas may exceed the height limitations of the underlying zoning as indicated in Table 27-1000.1, Primary Uses.
- (e) Attachments to amateur radio antenna support structures, such as guy wires and antenna wires, shall not cross any property line or any existing or proposed easement.
- (f) No lighting shall be permitted on any amateur radio antenna support structures except as mandated by the FAA.
- (g) No signage, other than required warning signs, or displays of any type shall be permitted on any amateur radio antenna support structure.

## I. COMMUNITY GARDENS

### 1. Locations

- (a) Community gardening is permitted on rooftops that are structurally capable of supporting the garden.
- (b) Community gardening is permitted in public parks and P districts.

### 2. Use Standards

- (a) The site shall be designed and maintained so that water and fertilizer will not drain to adjacent property.
- (b) A minimum three-foot wide, clearly marked entrance path shall be provided from a public right-of-way to the garden.
- (c) The on-site sale of community garden products is prohibited except when permitted as an approved temporary use.
- (d) The use of motorized equipment is restricted to hours beginning at 7:00 AM and ending at 9:00 PM.
- (e) An on-site trash storage container must be provided and located as close as practicable to the rear lot line or, when located on a lot with other uses, the rear side of the community garden. Compost bins or piles must also be located in the same location. Trash must be removed from the site at least once a week.
- (f) The keeping of animals is prohibited unless the community garden is located in a zone district that permits animals.
- (g) Within a residential zoning district, operating hours for community garden activities are restricted to between 5:00 AM and 11:00 PM daily.
- (h) Customary accessory uses are regulated in the accessory use section.

### 3. Signs

Community gardens in residential zones shall be restricted to one, non-illuminated identification sign not exceeding eight square feet and eight feet in height, and set back a minimum of five feet from the front and side property lines. In all other zoning districts, signs shall comply with the permanent sign standards for the applicable zoning district.

## J. DRIVE-THROUGH (THRU) FACILITY

The following standards shall apply to businesses that contain a drive-through establishment, regardless if the drive-through is part of another use (e.g., restaurant or financial institution) or if it is a stand-alone use (e.g., automatic teller machine).

### 1. Location of Services Areas and Use of Audible Electronic Devices

- (a) Audible electronic devices such as loudspeakers, automobile service order devices, and similar instruments located within 50 feet of any residential zone district shall not be audible beyond the subject property line.
- (b) All drive-through areas, including but not limited to menu boards, stacking lanes, trash receptacles, loudspeakers, drive up windows, and other objects associated with the drive-through area shall be located in the side or rear yard of a property to the maximum extent feasible, and shall not cross, interfere with, or impede any public right-of-way.

## K. ELECTRIC VEHICLE CHARGING STATION

- 1. This section is not intended to regulate the charging of electronic vehicles within a personal garage associated with a dwelling unit or charging stations that may be placed within the public right of way by the City.
- 2. An electric vehicle charging station shall comply with the following use-specific standards:
  - (a) The charging station shall be associated with an approved off-street parking space.

- (b) Equipment associated with a charging station shall be located to not impede pedestrian movement or create trip hazards within the right of way or any pedestrian pathway.

#### **L. EMPLOYEE/CARETAKER UNIT**

Employee/caretaker units in CX, I1, I2, and EBURD shall be limited to no more than two residential units per 10,000 square feet of gross building floor area.

#### **M. HOME OCCUPATIONS**

The planning division recognizes that the restrictions set forth in this section do not anticipate all possible types of home occupations. Therefore, the following policies have been adopted to guide the planning division in the enforcement of this section:

##### **1. Standards of Operation**

- (a) The home occupation should not generate traffic before 7:30 a.m. or after 8:00 p.m.
- (b) The occupation should not generate, on average, more than four vehicle trips to the residence during any hour.
- (c) Uses not listed may be allowed with written approval from the Zoning Coordinator if they meet the intent of this section and will conform to all of the restrictions of this section.
- (d) No person shall be employed other than the residents of the dwelling.
- (e) The occupation shall be conducted entirely within the dwelling or an accessory building.
- (f) The floor area devoted to the occupation shall not exceed 500 square feet or 25 percent of the total ground area occupied by the buildings, whichever is less.
- (g) The occupation shall not produce light, noise, vibration, glare, fumes, odors, electrical interference, etc., which is inconsistent with the character of the residential area.
- (h) There shall be no sign advertising or calling attention to the home occupation on the premises.
- (i) There shall be no display, evidence or activity apparent from the exterior of the lot which would indicate that the premises are being used for any purpose other than that of a dwelling.
- (j) There shall be no group instruction, assembly or activity for greater than five persons.
- (k) One business vehicle that is associated with the home occupation may be parked or stored on the premises. Vehicles rated at more than 12,000 GVW must be stored in a different location.
- (l) There shall be no outside storage of materials or equipment related to the home occupation, except the one allowed business vehicle.

##### **2. Uses Permitted with Business License**

- (a) Home Office
  - (1) Administrative or professional offices
  - (2) Internet or direct sales distribution
- (b) Home Instruction

Individual tutoring or lessons in art, dance, music, swimming, or similar activities are permitted, provided that a maximum of six students per day shall be permitted at the premises.

**3. Uses Permitted with Planning Administrative Review**

The preparation of items for off-site display and sale, including, for example, ceramics dressmaking/sewing, jewelry, food products, printmaking, and other types of individual, small-scale craft or artisan manufacturing.

**4. Prohibited Uses**

The following types of uses will not be approved as home occupations:

- (a) Uses involving large or oversized goods or materials;
- (b) Automobile, lawn mower, or other engine repair, welding, or machine shops unless the service is offered only at the customer's location (mobile service);
- (c) Uses where other employees visit the site, such as operating/dispatch offices for contractors, offices for businesses having employees who are not occupants;
- (d) Uses involving more than household quantities of volatile liquids or materials; or
- (e) Uses involving the grooming, breeding, or boarding of animals.

**N. KENNEL, OUTDOOR (PRIVATE)**

**1. Accessory Use**

- (a) All outdoor kennels must be established as an accessory use to a single-family residential use.
- (b) In multifamily and RMH districts, outdoor kennels shall only be allowed when accessory to a single or two-unit development that is permitted within the district.

**2. Location**

Accessory structures or enclosures used for the kennel must be located only in the rear yard of the site.

**3. Setback**

The setback of any accessory structure or enclosure associated with the kennel shall be no closer than 5 feet to any side or rear property line.

**4. Maximum Area**

The area of the outdoor kennel site shall be limited to 10 percent of the total area of the lot.

**O. LIVESTOCK AND FOWL**

1. Livestock shall not be maintained in any zoning district located within the limits of the City except as provided in Table 27-1000.2 Accessory Uses.
2. Horses may be permitted in the City when located within a planned development that was specifically designed and approved to accommodate horses and/or equestrian centers.
3. Fowl, except chicken hens, shall not be maintained in any zoning district located within the City limits. Chicken hens may be kept within the limits of the City in residential zoning districts or on property used for single family residential purposes as provided in Table 27-1000.6, Accessory Uses, subject to limitations and permitting requirements in BMCC Section 4-303, Rabbitry and Chickens.

**P. OUTDOOR DISPLAY AND SALES****1. General Provisions**

- (a) Outside display and sale of merchandise is permitted only if the merchandise is related to the principal use of the property. Merchandise shall be removed each night into an enclosed structure except that the continuous outside display of merchandise is permitted when the principal use of property is:
  - (1) Lumber and construction materials,
  - (2) Vehicle and heavy equipment sales and rentals,
  - (3) RV and manufactured home sales and service,
  - (4) Wholesale and retail nurseries,
  - (5) Lawn and garden supply,
  - (6) Fueling stations,
  - (7) Retail or wholesale open 24 hours, or
  - (8) Temporary uses and structures regulated by Section 27-1008.
- (b) Display areas shall be located outside of drive aisles; required parking areas, including access; required landscape areas; and pedestrian ways.
- (c) In addition to the outdoor display and sales area, store front sidewalks excluding any public sidewalks, shall be allowed for outdoor display and sales provided these outdoor display and sales areas comply with all provisions of applicable zoning ordinances, building codes, and other city codes and regulations.
- (d) All outdoor display and sales areas shall be maintained in a neat, clean, orderly fashion to avoid pedestrian hazards and ensure personal safety.
- (e) Display areas shall not exceed eight feet in height unless a single unit of the merchandise exceeds eight feet (e.g., RVs, manufactured homes, or trucks).

**2. EBURD**

Outdoor sales are limited to lots fronting on Boulevard Street Types (1st Avenue N, 4th Avenue N, and 6th Avenue N).

**Q. OUTDOOR AND SIDEWALK SEATING**

- 1. Eating and drinking establishments may provide accessory outdoor seating areas, including rooftop seating, that meet the following generally applicable criteria:
  - (a) Outdoor seating areas outside of the CBD may not occupy required landscape area, required parking spaces, or required parking area access aisles.
  - (b) An outdoor seating area exceeding 25% of the indoor building floor area is counted as floor area for purposes of determining off-street parking and loading requirements.
  - (c) The use of mechanically produced sound, amplified sound, or live music shall only be permitted in conformity with the City's noise standards. Waivers or variances to the City's noise standards are not allowed for property within 50 feet of any residential zone.
  - (d) All outdoor uses shall be maintained free of garbage and other debris.

- (e) The hours of operation for the outside seating shall be consistent with the hours of operation of the inside use.
  - (f) The outdoor seating area shall not obstruct any fire exit, fire escape, or other required ingress or egress.
2. Public sidewalk seating may be permitted by City Engineering in compliance with the following conditions:
- (a) The area of occupancy must be abutting and contiguous to the restaurant in which food preparation, sanitation and related services for the sidewalk cafe will be performed.
  - (b) Sidewalk seating may not be enclosed by fixed walls, unless such walls are necessary to comply with requirements to serve alcohol, and shall be open to the air, except that it may have a canopy.
  - (c) There shall be a minimum width of four feet of clear, unimpeded sidewalk remaining for pedestrians between the curb and the area of sidewalk seating.
  - (d) The sidewalk seating shall be located a minimum of five feet from driveway and alleys, and ten feet from intersections.
  - (e) All curbs, alleys, sidewalks and public rights-of-way adjacent to the sidewalk seating shall be kept in a clean and orderly condition.
  - (f) All outdoor seating shall be maintained free of garbage and other debris.
  - (g) An encroachment permit may be required, as provided for in BMCC 22-400.

## **R. OUTSIDE STORAGE**

### **1. Intent**

Any use requiring accessory outside storage of material, equipment, or business-related supplies shall comply with the following standards. . Outdoor storage does not include outdoor sales lots as regulated in Section 27-1009.O.

### **2. Generally Applicable Standards**

- (a) Any permitted outside storage shall be within an area enclosed with a sight obscuring fence at least six feet in height that is architecturally compatible in color and design with the building.
- (b) Storage areas shall be located outside of drive aisles; fire lanes; required parking areas, including access; required landscape areas; and pedestrian ways.
- (c) Chain link or other type of wire fencing is prohibited unless durable sight-obscuring inserts are installed. Fabric or cloth inserts are not permitted.

### **3. Junk Storage**

Junk, partially or completely dismantled vehicles, or salvaged materials shall not be stored in any commercial zone outside a building; except that automobile repair shops may store such materials either enclosed within a building or an area having a sight obscuring fence at least six feet in height. Chain link or other type of wire fencing is prohibited unless durable sight-obscuring inserts are installed. Fabric or cloth inserts are not permitted.

### **4. EBURD**

- (a) Within the Central Works and 13th Street Main Street Districts:

- (1) Outdoor storage areas shall be located in the rear or side yard of the lot.
- (2) Loose materials shall not be stacked higher than six feet.
- (3) Loose materials shall at a minimum be stored in a three-sided shelter and shall be covered.
- (4) Materials shall be set back a minimum of five feet from any lot line.
- (5) All outdoor storage areas shall be screened from view of adjacent parcels and vehicular rights-of-way using the side or rear buffer.

#### **S. SATELLITE ANTENNAS AND DISHES**

Before any satellite antenna is erected in any zoning district, the property owner(s) shall first obtain the applicable permits from the Building Official.

1. A building permit is not required for installation of satellite dish antennas which are four feet or less in diameter.
2. All satellite dish antennas and the construction and installation thereof shall conform to the building and electrical codes adopted by the building division.
3. Satellite dish antennas shall meet all manufacturer's specifications, be of noncombustible and corrosive-resistant material, and be erected in a secure, wind-resistant manner.

#### **T. SHIPPING CONTAINER STORAGE**

##### **1. Site Requirements**

All accessory shipping container storage shall meet the following site standards:

- (a) There shall be a principal structure on the property.
- (b) The shipping containers are stored either:
  - (1) Behind the principal structure, or
  - (2) Shielded from view by a permanent enclosure that is at least eight feet in height and sight-obscuring.

##### **2. Permanent Accessory Use**

In the CX, I1, I2, and EBURD districts, shipping containers may be used for permanent accessory storage for a period of more than one year.

##### **3. Temporary Accessory Use**

- (a) In the NMU, CMU1, CMU2, and DX districts, shipping containers may be used for temporary accessory storage for a period of time not to exceed one year.
- (b) Shipping containers may be used for accessory storage for a period not to exceed three months for business relocations and new business stocking.
- (c) Shipping containers may be used for accessory storage for a period of time not to exceed nine months following a fire or other disaster,

**U. SOLID WASTE**

1. Solid waste storage facilities in mixed use, commercial, EBURD and industrial zone districts shall be located within an area enclosed with a sight obscuring fence or wall that is architecturally compatible in color and design with the building. Solid waste storage in public alleys is not subject to this requirement.
2. Chain link or other type of wire fencing is prohibited unless durable sight-obscuring inserts are installed. Fabric or cloth inserts are not permitted.
3. The city public works department shall approve the solid waste storage facility for minimum opening, accessibility, and other criteria deemed necessary for the removal of solid waste from the site.

**SECTION 27-1009 TEMPORARY USES****A. TEMPORARY USES IN NONRESIDENTIAL ZONING DISTRICTS****1. Group 1 Temporary Uses**

This group shall be defined as temporary uses of property continuing for less than 72 hours. Group 1 uses do not require a temporary use/structure permit from planning and community development. Uses in this group shall comply with the following:

- (a) Such use shall be an allowed use in the underlying zoning district;
- (b) Any temporary structure must be setback five feet behind all property lines;
- (c) No part of the temporary use or temporary structure shall block any defined clear vision area (Section 27-1802.H) for driving aisles, drive approaches from streets, or at the intersection of streets or alleys;

**2. Group 2 Temporary Uses**

This group shall be defined as temporary uses of property continuing for longer than 72 hours but less than 91 days and are required to obtain a temporary use/structure permit from the planning and community services department.

- (a) The following temporary uses may be allowed in this temporary use group: carvinal, circus, seasonal sales, or other similar uses.
- (b) Supplemental Standards

Uses in this group shall comply with the following:

- (1) Such use shall be an allowed use in the underlying zoning district;
- (2) Any temporary structure must be setback five feet behind all property lines;
- (3) No part of the temporary use or temporary structure shall block any defined clear vision area per Section 27-1802.H for driving aisles, drive approaches from streets, or at the intersection of streets or alleys;
- (4) New access drives to public right-of-ways must be approved by the City Engineering division.
- (5) A business license for temporary uses located within the City limits must be obtained if required by BMCC Chapter 13-400, Finance and Revenue.

**3. Group 3 Temporary Uses**

This group shall be defined as temporary uses of property continuing for longer than 90 days but less than one year and are required to obtain a temporary use permit from the planning and community services department.

- (a) The following temporary uses may be allowed in this temporary use group, but must be located in a district that allows the use, as specified in Table 27-1000.1, Primary Uses:
  - (1) Greenhouses or other similar seasonal-oriented uses, as determined by the zoning coordinator;
  - (2) Portable classrooms;
  - (3) Portable offices; or
  - (4) Other uses, such as carry-out food and/or beverage service.

## (b) Location restrictions:

- (1) Any group 3 temporary use/structure existing upon adoption of this chapter, which does not comply, depending upon its location, with the applicable City site development regulations, shall comply with such standards within one year from the date of the enactment of this section or any amendment thereto;
- (2) Any new or relocated temporary use must be located on a site which complies, depending upon its location, with the applicable city site development regulations, including landscaping, surfacing and number of required off-street parking spaces;
- (3) The structure shall be a factory-built structure and shall not have an axle(s). Temporary structures which do not comply with one or both of these requirement(s) and which exist as of \_\_\_\_\_ [insert date], shall be deemed legal nonconforming structures and may continue to be used as a temporary structure, provided the temporary use and structure complies with all other requirements of this section; and
- (4) Temporary uses as listed in subsection 3(a)(4) shall also comply with the following criteria:
  - (i) Maximum size of the structure shall be 10 x 12 feet or 120 square feet;
  - (ii) Site circulation shall be approved by the city traffic engineer, along with the location of any drive-in window. This group of temporary uses shall be exempt from any special review requirements for drive-in service;
  - (iii) The temporary use must provide the required number of paved off-street parking spaces. In addition, the temporary use shall not utilize any parking spaces that would make the principal use deficient in the required number of off-street parking spaces;
  - (iv) Utilities to serve the temporary use shall be located underground or suspended overhead, in compliance with all applicable codes; and
  - (v) All structures are subject to local, and state requirements and must obtain all relevant licenses before a temporary use/structure permit is issued.

## (c) Supplemental standards:

- (1) When submitting for a temporary use/structure permit, a group 3 use shall provide the following:
  - (i) Existing site plan, including parking stalls and buildings;
  - (ii) Proposed site plan, including location of temporary use and its relationship to existing site circulation and off-street parking spaces and driving aisles, including existing and proposed surfacing;
  - (iii) Location of drive-in service, if applicable;
  - (iv) Setbacks from property lines and arterial streets;
  - (v) Size of temporary structure; and
  - (vi) Proposed use of the temporary structure.
- (2) The temporary use must provide sufficient space to accommodate the structure and paved off-street parking for customer and use-related vehicles;
- (3) Clear vision standards set forth in section 27-615 shall be followed;

- (4) Access to any public right-of-way must be approved by the city engineering division;
- (5) It shall be the responsibility of the owner of the temporary structure to ensure that the structure is secured to withstand an 80 miles per hour (m.p.h.) wind load and to meet all applicable Americans with Disabilities Act (A.D.A.) and accessibility standards;
- (6) All group 3 temporary structures, regardless of size, which contain electrical wiring, and are placed on property within the city limits, shall have such electrical wiring permitted, inspected and approved by the city building division. All temporary structures that exceed 120 square feet, except greenhouses, shall have the structure permitted, inspected and approved by the city building division or labeled as a factory-built structure by the State Building Codes Bureau prior to issuance of a temporary use/structure permit. A temporary use/structure permit shall be obtained by the owner and a business license, if required, shall be obtained by the operator. Such temporary use/structure permit shall be valid for a period of not more than one year. An annual renewal may be given by the zoning coordinator, provided that the use complies with the above requirements..

## **B. TEMPORARY USES IN RESIDENTIAL ZONING DISTRICTS**

In any residential district, the temporary use of land for uses listed below may be allowed for a period not to exceed 61 days and are required to obtain a temporary use permit from the planning and community services department.

### **1. Seasonal Sales**

The sales of seasonal items including but not limited to holiday decorations in residential zoning districts shall be allowed when all of the following restrictions are met:

- (a) The sale must be conducted on the premises of a religious institution, school, or other tax exempt organization; and
- (b) The site shall provide sufficient space to accommodate the seasonal sales and off-street parking for customer and other sale related vehicles.

### **2. Roadside Stands**

The sale of flowers or produce at temporary roadside stands shall be allowed when all of the following restrictions are met:

- (a) Only items which are produced on the premises may be sold on the premises;
- (b) Any structure used must be portable and removed after the temporary use/structure has ceased operation.
- (c) The use must provide sufficient space to accommodate the stand and off-street parking for customer and other sale related vehicles;
- (d) No structure, either temporary or permanent, nor any parking area shall be located within any public right-of-way and shall meet the clear vision standards set forth in Section 27-1802.H;
- (e) New access to any public right-of-way must be approved by the city engineering division; and
- (f) All signage and temporary structures must be removed at the time the temporary use has ceased on the property.

**C. TEMPORARY USES AND STRUCTURES****1. Construction Equipment, Sheds, and Materials**

The temporary staging and storage of equipment and materials and use of buildings or modular structures for offices or equipment sheds during construction projects may be permitted in any zoning district. A temporary use/structure permit is not required if the equipment, materials and structures are part of an approved construction project. In addition, all equipment, materials and structures shall meet the following criteria:

- (a) Equipment, materials and structures include any items procured by a contractor that are necessary to complete the approved construction project including, but not limited to:
  - (1) Heavy equipment, pipe, fittings, manholes, and the appurtenances;
  - (2) Gravel, sand, soil, concrete mix, forms, lumber and similar materials;
  - (3) Traffic control devices and stacked pallets of materials; and
  - (4) Modular offices and equipment sheds.
- (b) Staging and storage of equipment and materials shall be conducted in a safe, neat and orderly manner at all times;
- (c) Any such equipment, materials and structures shall be removed upon completion of the construction project; and
- (d) No such structure shall be used for living or sleeping purposes.

**2. Other Temporary Structures**

Temporary structures not used for construction or equipment sheds may be allowed when the following criteria are met:

- (a) For group 3 uses, the structure shall meet the applicable setbacks for the zone in which it is located, including arterial setbacks as found in section 27-XXX;
- (b) The structure shall meet the clear vision standards set forth in section 27-1802.H;
- (c) No such structure shall be used for living or sleeping purposes; and
- (d) The use of the structure shall comply with subsections 27-1010.A.3(b) and 27-1010.A.3(c), whichever is applicable.
- (e) A temporary use/structure permit shall be obtained for each location by the owner for group 2 and group 3 uses as defined in subsection 27-1010.A.3(b).
- (f) A temporary use/structure permit shall be obtained for each location by the owner for seasonal sales and roadside stands in residential and noncommercial zoning districts as defined in subsection 27-1010.B.

**3. Time Limit Established**

The zoning coordinator shall establish the time period that a building or modular structure can be used on a temporary basis. This time period shall coincide with the temporary use/structure permit time period established under above subsection (b) or (c), whichever is applicable. The structure shall be removed when the temporary use is discontinued or the permit has expired. An extension for the renewal of the temporary structure permit only, may be granted by the zoning coordinator, if it is found that unusual and/or extraordinary circumstances exist.

**D. TEMPORARY USE/STRUCTURE PERMIT REQUIRED**

1. Before any group 2 or group 3 temporary use or structure is established, the property owner shall obtain a temporary use/structure permit for each location from the zoning coordinator or his/her designee.
2. For group 3 temporary uses, the temporary use permit holder shall post a \$1,500.00 bond for each location with the planning and community services department to ensure timely removal of the use and/or structure.



**ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP**

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>  <b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
– ROOF-MOUNTED ANTENNAE LOCATED ON SCHOOL, GOVERNMENT-OWNED UTILITY AND OTHER GOVERNMENT SITES. – ANTENNAE CO-LOCATED ON EXISTING OR APPROVED ALTERNATIVE ANTENNA SUPPORT STRUCTURES OR ANTENNA SUPPORT STRUCTURES. – ANTENNA SUPPORT STRUCTURES 50 FEET OR LESS IN HEIGHT (SEE ADDITIONAL REQUIREMENTS IN SECTION 27-621). – ANTENNA SUPPORT STRUCTURES GREATER THAN 50 FEET IN HEIGHT – BROADCAST ANTENNA OR TOWER FARM	A  A  A  SR  SR	A  A  A  A  A	A  A  A  A  A	A  A  A  A  A	A  A  A  A  A	A  A  A  A  A	A  A  A  A  A	A  A  A  A  A	A  A  A  A  A	A  A  A  A  A	A  A  A  A  A	A  A  A  A  A	A  A  A  A  A
CAMPGROUNDS, PUBLIC OR PRIVATE	SR	SR											
CEMETERIES	A	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
CHILD CARE FACILITIES: – Family day care home – Group day care home – Day care center	A A SR	A A SR	A A SR	A A SR	A A SR	A A SR	A A SR	A A SR	A A SR	A A SR	A A SR	A A SR	A A SR
CHURCHES AND OTHER PLACES OF WORSHIP, INCLUDING SUNDAY SCHOOL BUILDINGS	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
COMMUNITY RESIDENTIAL FACILITIES SERVING EIGHT (8) OR FEWER PERSONS, PROVIDING CARE ON A 24-HOUR-A-DAY BASIS	A	A	A	A	A	A	A	A	A	A	A	A	A







**ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP**

<b>TITLES AND DESCRIPTION OF INDUSTRIES</b>  <b>SR - SPECIAL REVIEW</b> <b>A - ALLOWED</b>	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
RODEOS AND INDOOR AND/OR OUTDOOR ROPING ARENAS	SR												
SCHOOLS (PUBLIC OR PRIVATE): – Preschool, elementary, junior or senior high – Colleges and universities – Trade or vocational-technical	SR SR SR	SR SR SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
STABLES: – Commercial – Private *  * See BMCC Section 27-607 for minimum Area Requirements	A A*	SR A*	A*	A*			A*						A*
TRANSMISSION AND DISTRIBUTION LINES (ELECTRIC) AND ACCESSORY STRUCTURES	SR												
TRAVEL TRAILER PARKS	SR	SR											
UTILITIES (PUBLIC SERVICE INSTALLATIONS): – Station only – Storage yard	A SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
VETERINARY CLINICS: – Boarding – Outpatient only	A A	SR SR											

**ARTICLE 27-300 ZONING DISTRICTS AND OFFICIAL MAP**

**SEC. 27-308. AREA, YARD AND HEIGHT REQUIREMENTS – RESIDENTIAL**

<b>ZONING CLASSIFICATION DISTRICTS</b>													
<b>ZONING REQUIREMENTS</b>	Agricultural- Open Space	Agricultural- Suburban	Residential- 15,000	Residential- 9,600	Residential- 8,000	Residential-7,000 Restricted	Residential- 7,000	Residential-6,000 Restricted	Residential- 6,000 (c)	Residential- 5,000	Residential Multi- Family	Residential Multi- Family – Restricted	Residential Manufactured Home
<b>MINIMUM LOT AREA PER DWELLING UNIT: (a) (b)</b>													
One Unit	10A	1A	15,000	9,600	8,000	7,000	7,000	6,000	6,000	5,000	6,000		6,000
Two Units (attached or detached)					10,000		9,600		7,000	8,000	7,000		
Three Units (attached)									8,500		8,500		
Four Units (attached)									10,000		10,000		
Five Units (attached)									11,500		11,500		
Six Units (attached)									13,000		13,000		
Seven Units (attached)									14,500		14,500		
Eight Units (attached)									16,000		16,000		
Nine Units (attached)									17,500				
Ten Units (attached)									19,000		400 each add. (attached) unit	1,500 each add. (attached) unit	
<b>MINIMUM YARD REQUIREMENTS: (d) (e)</b>													
Front (f)(g)	35	25	25	20	20	20	20	15	15	15	15		20
Side (h) (k)	15	10	10	5	5	5	5	5	5	5	5		8
Side Adjacent to Street (l)	35	25	25	10	10	10	10	10	10	10	10		10
Rear	35	25	25	20	20	20	20	20	20	20	15		20
<b>MAXIMUM HEIGHT (m) (n)</b>	34	34	34	34	34	34	34	34	34	34	N/A	40	34
<b>MAXIMUM LOT COVERAGE IN PERCENT</b>	15	25	30	30	30	30	30	40	40	40	55		30

## ARTICLE 27-300 ZONING DISTRICTS AND OFFICIAL MAP

### SEC. 27-308. AREA, YARD AND HEIGHT REQUIREMENTS – RESIDENTIAL

- (a) In the A-1 & A-S districts, minimum lot area figures are in Acres. All other minimum lot area figures denote square footage.
- (b) The above requirements are applicable to all structures located on a single lot. For building groups see BMCC Section 27-310(B).
- (c) In the Residential-6,000 zone, three-plexes up through ten-plexes up require Special Review approval, see BMCC Section 27-1503 or 27-1509.
- (d) For arterial setback and watercourse setback requirements, See BMCC Sections 27-602 and 27-616, respectively.
- (e) For yard setbacks on corner lots, refer to definitions of lot frontage and yard (side) in BMCC Section 27-201.
- (f) Block frontages which have buildings constructed prior to the effective date of this Resolution/Ordinance shall have a minimum twenty (20) foot front setback for all districts.
- (g) Garages and carports that have their approach from a street shall be setback a minimum of twenty (20) feet.
- (h) Required side yards shall be increased to eight (8) feet in distance from the nearest second story portion of the building, plus one (1) foot for each story in excess of two (2).
- (k) In the Residential Manufactured Home district, a site built structure complying with the CABO One and Two Family Dwelling code, may be setback a minimum of five (5) feet from the side property line, unless the structure contains two (2) or more stories.
- (l) Front yard setbacks as required in the district shall be provided on side streets when a side street frontage exceeds one hundred and fifty (150) feet.
- (m) In the A-1 district, maximum height restrictions apply to buildings designed and constructed for human occupancy.
- (n) Where there is a change in the adjacent grade of three (3) feet or more the maximum height will be increased one (1) foot for each two (2) feet of grade change

#### NOTE:

- All height and setback requirements denote feet.
- For height exceptions, see BMCC Section 27-310(F).
- For permitted projections, see BMCC Section 27-310(G)
- For setbacks for detached accessory structures, see BMCC Section 27-310(I)
- N/A = Not Applicable

## ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP

### SEC. 27-301. ZONING DISTRICTS.

It is the intent of this Section to establish zones wherein compatible uses of land may be located to create, protect and maintain a desirable living environment, to stabilize and protect residential harmony and to conduct profitable businesses. It is also the intent of this Chapter to make it possible to efficiently and economically design and install public facilities in terms of size and capacity to adequately meet the needs resulting from a defined intensity of land use.

To carry out the provisions of this Resolution/Ordinance, the City and County 4½ Mile Jurisdictional Area is hereby divided into the following zoning districts in which the erection, construction, alteration, reconstruction, repair or use of buildings, structures and land shall be regulated and restricted. The regulations in each district shall be uniform throughout each district but may differ from those in other districts.

A-1	Agricultural-Open Space (County Only)
A-S	Agricultural-Suburban (County Only)
R-150	Residential 15,000 (County Only)
R-96	Residential 9,600
R-80	Residential 8,000
R-70R	Residential 7,000 Restricted
R-70	Residential 7,000
R-60R	Residential 6,000 Restricted
R-60	Residential 6,000
R-50	Residential 5,000
RMF	Residential Multi-Family
RMF-R	Residential Multi-Family - Restricted
RMH	Residential Manufactured Home
RP	Residential Professional
NC	Neighborhood Commercial
CC	Community Commercial
HC	Highway Commercial
CBD	Central Business District
CI	Controlled Industrial
HI	Heavy Industrial
P	Public
ELC	Entryway Light Commercial
EGC	Entryway General Commercial

**ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP**

- EMU      Entryway Mixed Use
- ELI      Entryway Light Industrial
- South 27th Street Corridor Zoning District
- Medical Corridor Permit Zoning District
- Shiloh Corridor Overlay District
- 
- A-1      AGRICULTURAL-OPEN SPACE (COUNTY ONLY):* A district to protect and preserve agricultural lands for the performance of a wide range of agricultural functions. The intent is to limit the scattered intrusion of uses not compatible with an agricultural environment; to encourage agricultural pursuits and protect environmental concerns.
- A-S      AGRICULTURAL-SUBURBAN (COUNTY ONLY):* A district to protect and preserve agricultural lands for the performance of limited agricultural functions and to provide a buffer between urban and unlimited agricultural uses and to encourage concentration of such uses in areas so that potential conflict between uses will be minimized.
- R-150    RESIDENTIAL 15,000 (COUNTY ONLY):* A zone intended to provide for low density, single-family residential developments in areas which may or may not be serviced by a public water and/or sewer system.
- R-96      RESIDENTIAL 9,600:* A zone intended to promote primarily a single-family residential environment on lots that are served by public water and sewer service.
- R-80      RESIDENTIAL 8,000:* A residential zone intended to primarily provide a single-family residential environment with provisions for duplexes that are served by public water and sewer service.
- R-70R    RESIDENTIAL 7,000 RESTRICTED:* A residential zone intended to primarily provide a single family residential environment on smaller lots at a medium density that are served by a public water and sewer service.
- R-70      RESIDENTIAL 7,000:* Primarily a single-family residence district, with provisions for duplexes on lots that are served by public water and sewer services.
- R-60R    RESIDENTIAL 6,000 RESTRICTED:* A residential zone intended to primarily provide a single family residential environment on smaller lots at a medium density that are served by a public water and sewer service.
- R-60      RESIDENTIAL 6,000:* A zone intended to provide for medium density residential dwellings on lots served by public water and sewer services, with provisions for multi-family dwellings with a maximum of ten (10) dwelling units per structure.
- R-50      RESIDENTIAL 5,000:* A primarily single-family district provides for higher density development on lots served by public water and sewer services, with provisions for duplexes.
- RMF      RESIDENTIAL MULTI-FAMILY:* A residential classification intended to provide adequate sites for multi-family developments including high-rise apartment complexes. Dwelling unit density is increased in this classification to encourage development in areas where it will complement existing developments. Land within the classification

## ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP

should be located with access to major arterial transportation routes plus financial, cultural and retail stores and be served by public water and sewer services.

- RMF-R RESIDENTIAL MULTI-FAMILY - RESTRICTED:* A residential classification intended to provide adequate sites for multi-family developments. The classification is intended to provide higher density apartment development, which may establish a buffer between single-family residence areas and other zoning classifications. Lots are to be served by public water and sewer services.
- RMH RESIDENTIAL MANUFACTURED HOME:* A zone intended to provide stable environments for individual manufactured homes, manufactured home parks and compatible accessory uses.
- RP RESIDENTIAL PROFESSIONAL:* A zone intended to accommodate limited commercial and professional offices as would be compatible with adjoining residential districts and consistent with the objectives of the comprehensive plan.
- NC NEIGHBORHOOD COMMERCIAL:* A zone for commercial centers and limited retail activities conducted in a unified development designed to serve the surrounding neighborhood with shopping facilities consisting of convenience retail and personal service establishments which secure their principal trade by supplying the daily needs of the neighboring population. Only uses serving the above purpose without undue detriment to surrounding residences should be permitted.
- CC COMMUNITY COMMERCIAL:* The Community Commercial zone is intended primarily to accommodate community retail, service and office facilities offering a greater variety than would normally be found in a neighborhood or convenience retail development. Facilities within the classification will generally serve the community, and is commensurate with the purchasing power and needs of the present and potential population within the trade area. It is intended that these business facilities be provided in business corridors or in islands (thirty (30) acres) centrally located in the trade area rather than a strip development along arterials.
- HC HIGHWAY COMMERCIAL:* The Highway Commercial zone is intended to provide areas for commercial and service enterprises which are intended primarily to serve the needs of the tourist, traveler, recreationist or the general traveling public. Areas designated as Highway Commercial should be located in the vicinity of, and accessible from interstate interchanges, intersections on limited access highways, or adjacent to primary or secondary highways. The manner in which the services and commercial activities are offered should be carefully planned in order to minimize the hazard to the safety of the surrounding community and those who use such facilities.
- CBD CENTRAL BUSINESS DISTRICT:* The Central Business District classification is intended to primarily accommodate stores, hotels, governmental and cultural centers and service establishments at the central focal point of the city's arterial and transportation system, where the C.B.D. can conveniently serve the population of the entire urban area with a varied and specialized selection of goods and services. In order to protect the public interest and welfare and facilitate an attractive, efficient and prosperous C.B.D., the emphasis is on larger scale building and specialty shops.

## ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP

- CI CONTROLLED INDUSTRIAL:* The Controlled Industrial zone is intended to accommodate a variety of business, warehouse and light industrial uses related to wholesale plus other business and light industries not compatible with other commercial zones, but which need not be restricted in industrial or general commercial zones, and to provide locations directly accessible to arterial and other transportation systems where they can conveniently serve the business and industrial centers of the city and county.
- HI HEAVY INDUSTRIAL:* A zone intended to accommodate manufacturing, processing, fabrication, and assembly of materials and products. Areas designated as Heavy Industrial should have access to two (2) or more major transportation routes, and such sites should have adjacent space for parking and loading facilities.
- P PUBLIC:* The Public zone is intended to reserve land exclusively for public or semi-public uses in order to preserve and provide adequate land for a variety of community facilities which serve the public health, safety and general welfare.
- ELC Entryway Light Commercial:* See BMCC Section 27-1004.
- EGC Entryway General Commercial:* See BMCC Section 27-1004.
- EMU Entryway Mixed Use:* See BMCC Section 27-1004.
- SOUTH 27th STREET CORRIDOR ZONING DISTRICT:* See BMCC Sections 27-801, et seq.
- MEDICAL CORRIDOR PERMIT ZONING DISTRICT:* See BMCC Sections 27-901, et seq.

### SEC. 27-302. OFFICIAL ZONING MAP.

- (a) The City and County are hereby divided into zoning districts as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Resolution/Ordinance.
- (b) The Official Zoning Map shall be identified by the signature of the Mayor attested by the City Clerk and also by the County Commissioners attested by the County Clerk and Recorder and shall bear the words "The Official Zoning Map of the City of Billings and Yellowstone County, Montana 4 ½ Mile Jurisdictional Area". Regardless of the existence of purported copies of the Official Zoning Map which from time to time may be made or published, a copy of the Official Map shall be located in the offices of both the Yellowstone County Board of Planning and the Yellowstone County Clerk and Recorder.
- (c) Changes made in district boundaries shall be promptly entered on the Official Zoning Map after amendment by either Governing Body. Amendments to the Official Zoning Map shall not become effective until entered on the map.
- (d) No changes of any nature shall be made in the Official Zoning Map or matter shown thereon except in conformity with the provisions set forth in this chapter. In the event the Official Zoning Map is damaged or destroyed, the City Council and County Commissioners may, by Resolution/Ordinance, adopt a new Official Zoning Map.

## **ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP**

No such map shall have the effect of amending the Official Zoning Map or any subsequent amendment thereof.

### **SEC. 27-303. RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES.**

- (a) Boundaries indicated as appearing to follow the centerline of streets, highways or alleys shall be construed to follow such centerlines;
- (b) Boundaries indicated as appearing to follow platted lot lines shall be construed as following such lot lines;
- (c) Boundaries indicated as appearing to follow City Limits shall be construed as following City Limits;
- (d) Boundaries indicated as appearing to follow 4 ½ Mile Jurisdictional Limits shall be construed as following 4 ½ Mile Jurisdictional Limits;
- (e) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
- (f) Boundaries indicated as following shore lines shall be construed to follow such shore lines. In the event of change in the shore line, they shall be construed as moving with the actual shore line. Boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such centerlines. In the event of change in the location of streams, rivers, canals, lakes or other bodies of water, the boundaries shall be construed as moving with the actual body of water and following the centerlines; and
- (g) Boundaries indicated as parallel to or extensions of features indicated in above Subsections A. through F. above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map or by specific distances enumerated in a Resolution/Ordinance amending the Official Zoning Map.

### **SEC. 27-304. APPLICATION AND GENERAL RULES.**

Within the various zoning districts as hereinbefore defined and as indicated on the Official Zoning Map and subject to the requirements of BMCC Sections 27-301 through 27-1511, no building or structure shall be erected, reconstructed or structurally altered, nor shall any land, building or structure be used for any purpose except as they are allowed in the district in which such building, land or use is located. The regulations set forth by this chapter within each zone shall be minimum regulations and shall apply uniformly to each class or type of structure or land except as hereinafter provided:

- (a) No building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered after the effective date of this chapter unless in conformity with

## ARTICLE 27-300. ZONING DISTRICTS AND OFFICIAL MAP

all of the regulations herein specified for the zone in which it is located except nonconforming uses and structures as provided in BMCC Sections 27-401, et seq.;

- (b) No building or other structure shall hereafter be erected or altered:
1. To exceed the height limitation;
  2. To accommodate or house a greater number of families;
  3. To occupy a greater percentage of lot area; or
  4. To have a narrower or smaller rear yard, front yard, side yard or other open space than herein required, or in any manner contrary to the provisions of this chapter.
- (c) *Temporary Suspension of Various Zoning and other regulations.* Upon approval by resolution, the City Council may temporarily suspend the requirements and restrictions imposed by Sections 7-603, 15-602, 27-304, 27-305, 27-601 and 27-606 of the City Code in order to accommodate the temporary increase in visitor population created by large special events held within the City of Billings when the City's public lodging capability is actually or predicted to be at or near maximum capacity. The City Council may suspend ordinances related to the following general areas of regulation in any combination deemed appropriate under the circumstances created by a special event. The resolution of suspension shall become effective forty-eight (48) hours prior to the official start of the scheduled event and shall terminate forty-eight (48) hours after official conclusion of the event.<sup>1</sup>
1. Parking
  2. Camping
  3. Business licensing and/or health department inspections.

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(Ord. No. 97-5048, § 3, 12-12-97; Ord. No. 98-5058, § 1, 6-8-98; Ord. No. 98-5064, § 1, 7-27-98; Ord. No. 01-5165, § 1, 8-13-01; Ord. No. 04-5292, § 1, 7-26-04)

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-601. PARKING AND STORAGE RESTRICTIONS.

- (a) **Residential.** The following standards for off-street parking and storage shall apply in all residential zoning districts and on property that is developed for residential use.
- (1) Open storage and off-street parking of licensed and operable motor vehicles is an allowed accessory use as defined in Section 27-201.
  - (2) Open storage and off-street parking of inoperable motor vehicles for more than five (5) consecutive days is a prohibited use.
  - (3) Within the Billings city limits open storage and off-street parking of licensed and operable motor vehicles in any front or side yard shall be on a surface prepared with asphalt or concrete. Open storage and off-street parking of licensed and operable motor vehicles in any rear yard may be on any type of surface. (See also BMCC Sections 6-1203, 24-401 and 27-1201)
  - (4) Open storage and off-street parking of one (1) licensed and operable motor vehicle used for commercial or business purposes is an allowed accessory use provided it does not exceed twelve thousand (12,000) pounds in G.V.W. (gross vehicle weight). Outside the Billings city limits on property zoned Agriculture Open Space or Agriculture Suburban this motor vehicle weight limitation shall not apply.
  - (5) Display of merchandise other than for a garage sale or a use allowed by permit under the Temporary Use section of this code (Section 27-614) is prohibited.
  - (6) Open storage and off-street parking of licensed and operable recreational vehicles including but not limited to snowmobiles, boats, and campers, all-terrain vehicles, off-road motorcycles, and sport/utility trailers is an allowed accessory use in any rear yard. Open storage and off-street parking of licensed and operable recreational vehicles is an allowed accessory use in a front or side yard only if there is no access to a rear yard. Within the Billings city limits open storage and off-street parking of licensed and operable recreational vehicles in a front or side yard shall be on a surface prepared with asphalt or concrete. Open storage of licensed and operable recreational vehicles in a rear yard may be on any type of surface. Open storage and off-street parking of licensed and operable recreational vehicles in any yard shall provide at least a five (5) foot separation between such recreational vehicle and any door, window or other opening of a dwelling or accessory building that provides ventilation or access to the structure. Open storage and off-street parking of licensed and operable recreational vehicles in any yard shall provide setbacks to property lines at a minimum of three (3) feet to a side or rear property line and eight (8) feet from the back of a sidewalk. If no sidewalk exists, all measurements shall be made from the front and side adjacent to street property lines.
  - (7) The use of any recreational vehicle for living or sleeping purposes for more than five (5) consecutive days is prohibited when parked off-street or stored in any residential zoning district or in an area developed for residential use.
  - (8) Open storage for more than five (5) consecutive days of junk, salvage and trash is prohibited.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (b) **Commercial and Industrial** The following standards for off-street parking and storage shall apply in all commercial and industrial zoning districts.
- (1) Open storage for more than five (5) consecutive days of junk, salvage and trash is prohibited.
  - (2) Open storage for more than five (5) consecutive days of material collected as salvage for recycling, re-use, dismantling to remove parts for re-use or for separation prior to recycling or destruction is a Special Review use of property only in Highway Commercial (SIC 5015), Controlled Industrial (SIC 5093) and Heavy Industrial (SIC 5093).
  - (3) Open storage and off-street parking of inoperable motor vehicles for more than five (5) consecutive days is a Special Review use of property only in Highway Commercial (SIC 5015), Controlled Industrial (SIC 5093) and Heavy Industrial (SIC 5093).
  - (4) Open storage and off-street parking of inoperable motor vehicles for more than five (5) consecutive days is an allowed accessory use of property for principal uses classified as Automotive Repair Shops (SIC 753). The open storage and off-street parking area shall be located in the rear or side yard, and inoperable motor vehicles or vehicle parts shall not be visible from any right of way or adjoining property. A sight obscuring fence of at least six (6) feet in height from grade shall be required to enclose the storage or off-street parking area for inoperable motor vehicles. Chain link fence may be allowed as a sight obscuring fence if opaque slat inserts are used.
  - (5) Outside display of merchandise is permitted in residential professional, neighborhood commercial, community commercial, highway commercial, and controlled industrial zoning districts only if the merchandise is related to the principal use of the property, and such merchandise is removed each night into an enclosed structure. The continuous outside display of merchandise is permitted when the principal use of property is for lumber and construction materials (SIC 503, 521 and 525), wholesale and retail nurseries, lawn and garden supply (SIC 078, 081, 5191, 5193, and 526) or for temporary uses and structures regulated by section 27-614.
  - (6) Bufferyards and required landscaping shall not be used for the displaying of merchandise in any commercial or industrial zoning district.
  - (7) Outside the city limits, the use of any recreational vehicle for living or sleeping purposes for more than five (5) consecutive days is prohibited when parked off-street or stored on property zoned for commercial or industrial uses or on property developed for commercial or industrial uses.
  - (8) Open storage of equipment and supplies is an allowed accessory use of property as limited in Section 27-306. Any property where open storage of equipment and supplies is an allowed accessory use, the open storage area shall be located in the rear or side yard. A sight obscuring fence of at least six (6) feet in height from finished grade shall be required to enclose the storage area. Chain link fence may be allowed as a sight obscuring fence if opaque slat inserts are used.
- (c) Penalties. A violation of this section is designated as a municipal infraction, and punishable by civil penalties as specified in Section 18-1304.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-602. ARTERIAL SETBACKS.

- (a) In any residential or public zoning district, no building or structure shall be erected within eighty (80) feet of the centerline of a principal arterial street, or within seventy (70) feet of the centerline of a minor arterial street. In addition, within any such residential or public zoning district, no required parking area or portion thereof, shall be constructed or located within seventy (70) feet of the centerline of a principal arterial street or within sixty (60) feet of the centerline of a minor arterial street.
- (b) In any commercial or industrial zoning district located within the Billings City Limits, no building or structure shall be erected or maintained within sixty (60) feet of the centerline of an arterial street. In addition, within any such commercial or industrial zoning district, no required parking area or portion thereof, including driving aisles, shall be constructed or located within fifty (50) feet of the centerline of a principal arterial street or within forty (40) feet of the centerline of a minor arterial street. The Central Business District (CBD) zoning district shall be exempt from this section.

In any commercial or industrial zoning district located outside the Billings City Limits, but within the County Zoning Jurisdiction, no building or structure shall be erected or maintained within eighty (80) feet of the centerline of a principal arterial street, or within seventy (70) feet of the centerline of a minor arterial street. In addition, within any such commercial or industrial zoning district, no required parking area or portion thereof, including driving aisles, shall be constructed or located within seventy (70) feet of the centerline of a principal arterial street or within sixty (60) feet of the centerline of a minor arterial street.
- (c) Any new construction that increases the number of required off-street parking spaces, must locate these additional required parking spaces in areas that comply with above subsections (A) and (B). The term "new construction" shall be defined as construction on a previously vacant lot or parcel, construction of new structures after existing structures are demolished or removed, or expansion of existing structures.
- (d) Approved advertising signs and public use controls and systems, trees trimmed up eight (8) feet and canopies with at least eight (8) feet clearance, shall be permitted in this setback area. For the purpose of this subsection, canopies shall be defined as covers that are solely attached to and supported by the structure on which it is attached to and which can be removed without destroying any part of that supporting structure. This shall only apply to canopies attached to the principal structure.
- (e) The designation of a street as an arterial shall be recommended by the City Engineer, County Public Works Director or in conformity with the most recent Urban Transportation Plan.
- (f) The centerline of such arterials shall be established by the City of Billings or Yellowstone County:
  - (1) By actual physical establishment by the City Engineer's or County Public Works Office, and approval thereof by the City Council or Board of County Commissioners; or

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (2) If not possible to establish the centerline by physical establishment, then the centerline shall be established by resolution/ordinance.
- (g) Permitted Projections. The following projections shall be permitted within the setback areas on arterial streets in residential districts:
- (1) Fireplaces and bay windows not to exceed two (2) feet;
  - (2) Roof overhangs, eaves, gutters, cornices or other architectural features not to exceed two (2) feet;
  - (3) Open exterior stairways or decks not to exceed two (2) feet in side yards, four (4) feet in front yards, nor eight (8) feet in rear yards;
  - (4) Covered unenclosed porches over front steps or walkways not to exceed four (4) feet;
  - (5) Ramps that provide accessibility; and
  - (6) The above projections are not permitted if they protrude into or hang over the public right-of-way.

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

**SEC. 27-603. BUILDING PERMITS ISSUED PRIOR TO ADOPTION.**

Where construction has started pursuant to a building permit validly issued by the City of Billings Building Division prior to the effective date of Ord. No. 97-5048, adopted 12/22/97, it may be completed (under the regulations in effect at the time of issuance) thereunder without regard to this resolution/ordinance.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-604. FENCES, WALLS AND HEDGES.

(a) Fences, walls and hedges may be erected or maintained in any zoning district provided the height, setback, and material provisions outlined below are followed and a permit is secured. "Fence" for the purposes of this section means any fence wall or hedge. No fence shall be erected or maintained in a public right-of-way.

(b) *Height.* Height for the purposes of this section shall be defined as the vertical distance from the top rail, board or wire to the ground directly below.

(c) Setbacks required. Fences, walls or hedges of up to four (4) feet may be erected or maintained in the required front yard setback as defined in sections 27-308 or 27-309. Fences, walls or hedges between a height of four (4) and six (6) feet may be erected or maintained anywhere outside of the front yard setback, except as described in subsection (d) below. (see figure 6, section 27-618). Any fence, wall or hedge in excess of six (6) feet shall meet all of the yard setback requirements for structures as defined in sections 27-308 or 27-309. None of the above setback requirements shall apply to lands located in the agricultural-open space (A-1), central business district (CBD), controlled industrial (CI), or heavy industrial (HI) zones.

(d) Setbacks for clear vision zones. No fence, wall or hedge greater than thirty (30) inches in height may be erected or maintained in any zoning district within a clear vision zone pursuant to Section 27-615 and as illustrated in figures 1, 2, and 3 of section 27-618.

(e) Material permitted--residential and commercial zones. All fences in residential, agricultural and commercial zoning districts shall be constructed from materials which are commonly used for fencing and shall not be constructed from railroad ties, wood pallets, tires, rubble or salvaged material. Commonly used fence materials include wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work. Materials not listed are subject to special review.

(f) Material permitted--Industrial zones. All fences in industrial zoning districts shall be constructed from materials commonly used for fencing and shall not be constructed from railroad ties, wood pallets, rubble, or salvaged material. Commonly used fence materials include wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work, finished or coated steel or aluminum building panels. Materials not listed are subject to special review.

(g) Material exception--Barbed wire or electric fence. In the Billings City Limits, no barbed wire or electrical fencing shall be permitted in any residential zoning district. Barbed wire and electrically charged fencing is allowed in the A-1 and A-S districts within Yellowstone County. When electrically charged fences are used in an A-1 or A-S district, such fences shall be posted with warning signs or fluorescent markings at intervals not to exceed one hundred fifty (150) feet, where such fences are adjacent to public rights-of-way.

In the Billings City Limits, no electrical fencing shall be permitted in any commercial or industrial zoning district. Electrically charged fencing is allowed in commercial or industrial districts within Yellowstone County provided that such fences shall be posted with warning signs or fluorescent markings at intervals not to exceed one hundred and fifty (150) feet, where such fences are adjacent to public rights-of-way. Barbed wire fencing is allowed in commercial or industrial zoning districts both within the city limits and Yellowstone County when such material is located not less than eight (8) feet above grade.

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

(h) Permit required. Any fence between a height of four (4) feet and six (6) feet shall require a permit from the planning department. Any retaining wall exceeding a height of four (4) feet or any fence exceeding a height of six (6) feet shall require a permit from the building department.

(i) Penalties. A violation of this section is designated as a municipal infraction, and punishable by civil penalties as specified in Section 18-1304.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-605. HAZARDOUS WASTE FACILITIES.

- (a) Intent. The purpose and intent of this section is to establish review criteria for the citing of any new hazardous waste facility as defined herein, in order to prevent any significant threat to human health or the environment. When used in citing new hazardous waste facilities, the criteria shall:
  - (1) Protect the residents of the City of Billings and Yellowstone County;
  - (2) Ensure the structural stability of the new hazardous waste facility;
  - (3) Protect surface water;
  - (4) Protect groundwater;
  - (5) Provide for the safe transportation of hazardous waste to new hazardous waste facilities;
  - (6) Protect environmentally sensitive areas; and
  - (7) Protect air quality.
- (b) Definitions. For the purposes of this Section, the following definitions shall apply:
  - (1) HAZARDOUS WASTE: Means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:
    - (a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness;
    - (b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed; or
    - (c) A material which is classified by the Environmental Protection Agency (EPA) as being Hazardous or Extremely Hazardous.
  - (2) FACILITY (HAZARDOUS WASTE MANAGEMENT FACILITY): Means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous wastes. A facility may consist of several treatment, storage or disposal operational units.
  - (3) TRANSFER FACILITY: Means any transporter-owned or operated land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are held temporarily for a period of ten (10) days or less during the normal course of transportation, up to but not including the point of ultimate treatment, storage, or disposal.
  - (4) LONG-TERM STORAGE FACILITY: This facility is the same as a "transfer facility", except that it is designed to store hazardous wastes for a period longer than ten (10) days.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (c) Use Allowed. Any hazardous waste facility shall only be allowed in the Heavy Industrial (HI) zoning district and must be approved through the Special Review procedure as outlined in BMCC Section 27-1501, et seq.
- (d) Supplemental Requirements. Any hazardous waste facility shall, in addition to meeting all other requirements of this resolution/ordinance, comply with the following supplemental requirements:
  - (8) Submit with the required Special Review application, twenty (20) copies of a community and environmental impact statement which shall include the following elements:
    - a. Description of impact of proposal upon existing environmental conditions:
      - 1. Population and Land Use
      - 2. Soils
      - 3. Drainage
      - 4. Vegetation
      - 5. Topography
      - 6. Wildlife
      - 7. Air Quality
      - 8. Surface Water Quality
      - 9. Ground Water Quality
      - 10. Floodplain Data
      - 11. Scenic Vistas
      - 12. Historic and Cultural Sites
    - b. Description of Impact of Proposal Upon Existing and Required Services:
      - 1. Public Utilities
        - i. Water
        - ii. Sewer
        - iii. Drainage
        - iv. Electric
        - v. Gas
        - vi. Telephone
      - 2. Schools
    - c. The applicant(s) shall document the adequacy and availability of fire, police, medical and other emergency management facilities and services in the area, as well as, their familiarity with the substance(s) being treated, disposed or stored. Documentation shall also be required as to the adequacy and availability of transportation means and routes for the purposes of evacuation of the population at risk in the event of an accident. Evacuation methods and routes shall be indicated. In addition, information shall be provided on spill mitigation measures and pollution risk analysis.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

Applicants requesting Special Review for a hazardous waste facility shall address each element of the community and environmental impact statement, indicating what impacts are foreseen. Methods shall be proposed to avoid or to mitigate any potential adverse impacts. Failure to provide sufficient documentation for each element or failure to demonstrate effective avoidance or mitigation techniques shall be considered sufficient grounds for denial of the application.

Statements in writing which grant preliminary, tentative or conditional approvals as required by any local, county, state, federal, or public authority shall be submitted to the Planning Department along with all other materials as required by this resolution/ordinance. These documents shall be submitted along with the information required through the Special Review process.

The applicant shall submit any information or documentation, in addition to the above, that the Planning Department deems necessary to fully evaluate the proposal.

- (e) Review Criteria. The Planning Department, Zoning Commission and Governing Body, shall, at every step of the review process, take into consideration the following:
- (1) The density of population in proximity to the facility;
  - (2) The size and type of the facility;
  - (3) The type of waste expected to be present at the facility;
  - (4) The transportation means and routes available to evacuate the population at risk in an accident, including both spills and fires;
  - (5) The size and types of other hazardous waste facilities and facilities that handle hazardous waste materials in the adjacent area; and
  - (6) The availability of fire, police, and other emergency management personnel and medical facilities in the area.
- (f) Citing Criteria. Any new hazardous waste facility shall, in addition to all other requirements of this resolution/ordinance, meet the following citing criteria:
- (1) No hazardous waste treatment facility shall be located any closer than two thousand (2,000) feet from any residence, school, playground, public park, public recreation area, church or other public building.
  - (2) No hazardous waste disposal or long-term storage facility, as defined in this section, shall be located any closer than two thousand and six hundred (2,600) feet from any residence, school, playground, public park, public recreation area, church or other public building.

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

**SEC. 27-606. HOME OCCUPATIONS.**

A *Home Occupation* is defined as an occupation carried on by an occupant of a dwelling, which is located in a residential zoning district, as an accessory and incidental activity to the main residential use of the building.

The Planning Department recognizes that the restrictions set forth in this section do not anticipate all possible types of Home Occupations. Therefore, to guide the Planning Department in the enforcement of this section, the department has adopted the following policies:

- (1) The Home Occupation should not generate traffic before 7:30 a.m. or after 6:00 p.m.
- (2) The occupation should not generate, on average, more than four (4) vehicle trips to the residence during any hour.

The Home Occupation shall comply with all of the following restrictions:

- (a) The occupation to be performed must be a use which is allowed outright in the Residential Professional (RP) zoning district. In addition, the following uses, listed by Standard Industrial Classification (S.I.C.), may also be allowed:

<u>S.I.C. Number</u>	<u>Description</u>
7231	Beauty Shops
7241	Barber Shops
7251	Shoe Repair Shops
7291	Tax Return Preparation Services
7631	Watch, Clock and Jewelry Repair
76--	Office Only for Miscellaneous Repair Services
7911	Dance Studios, Schools and Halls

Uses not listed above may be allowed with written approval from the Zoning Coordinator, if they meet the spirit and intent of this section and will conform to all of the restrictions of this section.

- (b) No person shall be employed other than the residents of the dwelling.
- (c) The occupation shall be conducted entirely within the dwelling or an accessory building.
- (d) The floor area devoted to the occupation shall not exceed five hundred (500) square feet or twenty-five (25) percent of the total ground area occupied by the buildings, whichever is less.
- (e) The occupation shall not produce light, noise, vibration, glare, fumes, odors, electrical interference, etc., which is inconsistent with the character of the residential area.

## **ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

- (f) There shall be no sign advertising or calling attention to the home occupation on the premises.
- (g) There shall be no display, evidence or activity apparent from the exterior of the lot which would indicate that the premises are being used for any purpose other than that of a dwelling.
- (h) There shall be no group instruction, assembly or activity for greater than five (5) persons.
- (i) One (1) business vehicle that is associated with the Home Occupation and which does not exceed eight thousand (8,000) pounds Gross Vehicle Weight (G.V.W.), may be parked or stored on the premises. In addition, there shall be no outside storage of materials or equipment related to the Home Occupation, except the one (1) allowed business vehicle.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-607. LIVESTOCK AND FOWL.

Livestock, as defined in BMCC Section 27-201, shall not be maintained in any zoning district located within the limits of the City of Billings (see also BMCC Sections 4-501 through 4-505). However, horses may be permitted in the City when located within a Planned Development, as described in Section 27-1303, that is specifically designed to accommodate horses and/or equestrian centers

Areas located outside the limits of the City of Billings, but within certain Agricultural or Residential zoning districts, as shown in the Residential District Regulations (see BMCC Section 27-305), shall be permitted to have livestock and/or fowl. In addition, livestock and/or fowl may be permitted as part of a Planned Development, as described in Section 27-1303, and are also exempt from the following animal unit standards, unless specifically referenced within the Planned Development Agreement. However, the standards outlined below must be satisfied, depending upon the size of the property.

The allowance of livestock and/or fowl in commercial or industrial zoning districts, situated outside the limits of the City of Billings, may be permitted when the regulations established in below subsection (b) are met, regardless of the lot size. However, if the number of animals requested exceeds the allowed limit in below subsection (b), then the property must conform to the uses allowed by right or through Special Review, as shown in the Commercial/Industrial District Regulations matrix in BMCC Section 27-306.

- (a) Lots which are 2.5 net acres or less in size are allowed to have livestock and/or fowl provided that all of the following regulations are satisfied.
  - (1) One (1) livestock and/or fowl unit is allowed per twenty thousand (20,000) square feet of land devoted exclusively to the raising of the animal(s). Livestock or fowl that are listed in the livestock and/or fowl unit table(s) below are allowed types of animals under this subsection, with the exception of bison.
  - (2) Supplemental feeding of the animal(s) is required.
  - (3) Any keeping of animal(s) in this section shall be secondary and accessory to the primary residential use of the property. Commercial breeding and/or commercial raising of any type of animal or fowl shall be prohibited, except as allowed by right or through Special Review in the Residential District Regulations matrix located in BMCC Section 27-305.
  - (4) In addition to the above regulations, project animal(s), as defined in BMCC Sections 27-201, are allowed, but shall be limited to one (1) livestock or fowl unit (as defined below) per youth actively enrolled in F.F.A., 4-H or other similar types of programs. In addition, project animals are required to be supplementally fed and shall only be allowed to remain on the property for no more than six (6) months during any twelve (12) month period. Breeding projects shall be exempt from the above time limit.

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

- (5) All accessory structures used for the purpose of housing, keeping or sheltering livestock or fowl shall be setback a distance of fifty (50) feet from any property line and fifty (50) feet from any dwelling.
  - (6) No accessory building or structure used for the housing of livestock or fowl shall occupy any portion of a required front yard in any district, except in the Agricultural-Open Space (A-1) zoning district. See BMCC Section 27-310, for the allowed maximum size of detached accessory structures.
- (b) Lots which are 2.51 to 9.99 net acres in size are allowed to have livestock and/or fowl provided that all of the following regulations are met.
- (1) One (1) livestock and/or fowl unit per one (1) acre of land devoted exclusively to the raising of the animal(s), in which the animal(s) is supplementally fed and/or is on irrigated pasture land.
  - (2) One (1) livestock and/or fowl unit per four (4) acres of land devoted exclusively to the raising of the animal(s), in which there is no supplemental feeding and/or the animal is on unirrigated pasture land.
  - (3) In addition to the above regulations, project animal(s), as defined in BMCC Section 27-201, are allowed, but shall be limited to one (1) livestock or fowl unit (as defined below) per youth actively enrolled in F.F.A., 4-H or other similar types of programs. In addition, project animals are required to be supplementally fed and shall only be allowed to remain on the property for no more than six (6) months during any twelve (12) month period. Breeding projects shall be exempt from the above time limit.
  - (4) All accessory structures used for the purpose of housing, keeping or sheltering livestock or fowl shall be setback a distance of one-hundred (100) feet from any property line and fifty (50) feet from any dwelling.
  - (5) No accessory building or structure used for the housing of livestock or fowl shall occupy any portion of a required front yard in any district, except in the Agricultural-Open Space (A-1) zoning district. See BMCC Section 27-310, for the allowed maximum size of detached accessory structures.
- (c) Lots which are greater than 9.99 net acres shall be exempt from this section.
- (d) Livestock and fowl units, for the purpose of this section, shall be defined as follows:

<u>Livestock Class</u>	<u>Livestock Units</u>
Cow – mature	1.00
Cow with calf	1.00
Bull – mature	1.00
Bull – yearling	0.50
Calf – weaned or under 6 months	0.50
Steer – one year or older	1.00
Heifer – one year or older	1.00
Horse – mature	1.50
Horse with colt	1.50

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

Colt – weaned	1.00
Ewe – mature	0.25
Ewe with lamb	0.25
Lamb – weaned or under 6 months	0.25
Ram – mature	0.25
Goat – mature	0.25
Goat with kid	0.25
Kid – weaned or under 6 months	0.25
Bison – mature	2.00
Bison with calf	2.00
Bison calf – weaned or under 6 months	1.50
Hog – mature	0.25
Hog – weaned	0.10
Llama	1.00

Fowl Class

Hens, roosters or ducks	.25 each
Turkeys or geese.	.50 each

Livestock and/or fowl units for animals not listed herein shall be determined by the Zoning Coordinator.

- (e) Penalties. A violation of this section is designated as a municipal infraction, and punishable by civil penalties as specified in Section 18-1304.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-608. MANUFACTURED HOME PARKS AND INDIVIDUAL MANUFACTURED HOMES

For the purposes of this Section, the following definitions shall be utilized in determining the appropriate classification of manufactured homes and modular homes:

- (1) **MANUFACTURED HOME:** A dwelling unit that: (a) is constructed in accordance with the standards set forth by the U.S. Department of Housing and Urban Development, (b) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis, and (c) exceeds forty (40) feet in length and eight (8) feet in width.
- (2) **MANUFACTURED HOME, CLASS A:** A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies each of the following additional criteria:
  - (a) The home has a length not exceeding four (4) times its width;
  - (b) The pitch of the home's roof has a minimum vertical rise of three (3) inches for each twelve (12) inches of horizontal run (3:12), and the roof is finished with a type of shingle that is commonly used in standard residential construction;
  - (c) The exterior siding consists of wood, hardboard, aluminum or vinyl siding comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction;
  - (d) A continuous, permanent perimeter foundation, which complies with the Uniform Building Code, is installed under the home; and
  - (e) The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.
- (3) **MANUFACTURED HOME, CLASS B:** A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction but that does not satisfy the criteria necessary to qualify the house as a Class A manufactured home.
- (4) **MANUFACTURED HOME CLASS C:** Any manufactured home that does not meet the definitional criteria of a Class A or Class B manufactured home.
- (5) **MANUFACTURED HOME PARK:** A residential use in which more than one manufactured home is located on a single lot. Manufactured home parks must also comply with the subdivision regulations for the jurisdiction in which it is located and when located within the limits of the City of Billings, Article 15-500 of the Billings, Montana City Code.

## **ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

- (6) **MODULAR HOME:** A dwelling unit constructed in accordance with the standards set forth in the Uniform Building Code and bearing the insignia of the State of Montana, applicable to site-built homes, and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two sections transported to the site in a manner similar to a manufactured home (except that the modular home meets the Uniform Building Code Standards applicable to site-built homes), or a series of panels or room sections transported on a truck and erected or joined together on the site.
- (7) **COMMERCIAL USE:** Trailers or manufactured homes shall not be used for any commercial use other than an on-premise office in connection with a trailer or manufactured home sales area.

## **ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

### **SEC. 27-609. PLATS RECORDED AFTER EFFECTIVE DATE.**

Notwithstanding any other provisions of this resolution/ordinance, any subdivision or certificate of survey, where a completed application has been received by the Planning Department before the effective date of this resolution/ordinance, shall be required to comply with the minimum lot area requirements which were in effect at the time the completed application is received. Said lot(s) or tract(s) shall be deemed nonconforming for the purpose of this resolution/ordinance.

Any subdivision, resubdivision, or certificate of survey, where a completed application was not received by the Planning Department before the effective date of this resolution/ordinance shall be required to comply with the minimum lot area requirements of this resolution/ordinance, depending upon the zone within which it is located.

Nothing in this section shall be interpreted to grant relief from any requirement of the State of Montana regarding minimum lot or tract area for sanitary restrictions.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-610. SATELLITE ANTENNAS AND DISHES.

- (a) For the purpose of this Section, the following definitions shall apply:
- (1) **SATELLITE DISH ANTENNA:** A device incorporating a reflective surface that is solid, open mesh or bar configured and is in the shape of a shallow dish, cone, horn or cornucopia. Such device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based uses. This definition shall include but not be limited to what are commonly referred to as satellite earth stations, TVROs (television reception only satellite dish antennas), Direct Satellite Systems (D.S.S.) and satellite microwave antennas.
  - (2) **SATELLITE SIGNAL, USABLE:** That level of signal received via the satellite dish antenna which will run the television and/or radio with a minimum level of distortion, a distortion level that is barely discernible to the naked eye and a picture quality consistent with other reception in the area.
- (b) Residential Districts. The following setbacks and height restrictions shall apply in residential zoning districts:
- (1) Satellite dish antennas shall be placed only in the rear yard.
  - (2) In the event that a usable satellite signal cannot be obtained from the rear yard, the satellite dish antenna may be located on the side or front yard provided that no satellite dish antenna shall be placed in a required front or side setback or arterial setback.
  - (3) In the event that a usable satellite signal cannot be obtained by locating the satellite dish antenna on the rear, side or front yard of the property, such satellite dish antenna may be placed on the roof of the dwelling structure. These satellite dish antennas or pole mounted antennas shall not extend more than ten (10) feet above the height limit established for the zone in which the structure is located.
  - (4) In either above subsections (2) or (3), it is the responsibility of the owner to provide proof, satisfactory to the Zoning Coordinator, that a usable satellite signal cannot be obtained from the required location.
  - (5) No satellite dish antenna shall exceed a diameter of twelve (12) feet.
  - (6) No satellite dish antenna may be installed on a portable or movable device except as a temporary means (not to exceed 30 days) to test for a usable satellite signal.
- (c) Commercial and Industrial Districts. The following setbacks and height restrictions shall apply in commercial and/or industrial zoning districts:
- (1) No satellite dish antenna shall be placed in any required front yard, side adjacent to street or arterial setback.
  - (2) No satellite dish antenna shall be placed in any required side setback when contiguous to residentially zoned property.

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

- (3) A satellite dish antenna may be permanently mounted or may be installed on a portable or movable device.
  - (4) No satellite dish antenna (whether permanent or portable) shall be installed in a required parking space.
  - (5) No satellite dish antenna shall exceed the maximum height of the zoning district.
- (d) Permit Required. Before any satellite antenna is erected in any zoning district, the property owner(s) shall first obtain the applicable permits from the Building Official.
- (1) A building permit is not required for installation of satellite dish antennas which are four (4) feet or less in diameter.
  - (2) All satellite dish antennas and the construction and installation thereof shall conform to the building and electrical codes adopted by the Building Division.
  - (3) Satellite dish antennas shall meet all manufacturer's specifications, be of noncombustible and corrosive-resistant material, and be erected in a secure, wind-resistant manner.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-611. SEXUALLY ORIENTED BUSINESSES. (CITY ONLY)

(a) Purpose and Intent. Purpose and Intent. It is the purpose of this section to regulate sexually oriented businesses to promote the health, safety, morals, and the general welfare of the citizens of the City of Billings, and to establish reasonable uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the City. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly it is not the intent or effect of these regulations to restrict or deny access by adults to distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene

(b) Findings and Determinations. The Billings City Council hereby finds and determines that:

The establishment of adult uses in business districts which are immediately adjacent to and which serve residential neighborhoods has a deleterious effect on both the business and residential segments of the neighborhood, causing or contributing to blight and a downgrading of property values.

The establishment of more than two (2) adult uses within six hundred (600) feet of each other has a deleterious effect on surrounding residential and business areas and the fostering of such businesses within a close proximity tends to create a "skid row" atmosphere.

The location of several adult uses in the same neighborhood tends to attract an undesirable quantity and quality of transients, a circumstance which adversely affects property values, causes an increase in crime and encourages residents and businesses to move elsewhere.

Concern for, and pride in, the orderly planning and development of a neighborhood should be encouraged and fostered in those persons comprising residential and business segments of that neighborhood.

(c) Definitions. Terms used in this section, that are not specifically defined below, may be found in Section 27-201 BMCC. Where other definitions are necessary and are not defined in this Section or Section 27-201, the dictionary may define such terms.

(1) Adult Arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(2) Adult Book Store or Adult Video Store means a commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, or other visual representations which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- b. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."
- (3) Adult Cabaret means a commercial establishment which regularly features:
- a. Persons who appear nude or in a state of nudity or semi-nudity; or
  - b. Live performances which are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities;
- (4) Adult Motel means a hotel, motel, or similar commercial establishment which:
- a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by an emphasis on the depiction or description or "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
  - b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
  - c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- (5) Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (6) Church or Other Place of Worship means a building which is used primarily for religious worship and related religious activities, including but not limited to churches, convents, monasteries, shrines, and temples.
- (7) City means the City of Billings, Montana.
- (8) Establishment means and includes any of the following:
- a. The opening or commencement of any sexually oriented business as a new business;
  - b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
  - c. The additions of any sexually oriented business to any other existing sexually oriented business; or
  - d. The relocation of any sexually oriented business.
- (9) Nudity or a state of nudity means (a) the appearance of a human bare buttock, anus, male genitals, female genitals, or areola or nipple of the female breast, or (b) a state of dress which fails to opaquely and fully cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.
- (10) Sexually Oriented Business means an adult arcade, adult book store, adult cabaret, adult video store, adult motel, or adult motion picture theater.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (11) Specified Anatomical Area means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.
- (12) Specified Sexual Activities means and includes any of the following:
- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
  - b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
  - c. Masturbation, actual or simulated; or
  - d. Excretory functions as part of or in connection with any of the activities set forth in above (a) through (c).
- (13) Transfer of Ownership or Control of sexually oriented business means and includes any of the following:
- a. The sale, lease, or sublease of the business;
  - b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
  - c. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
- (d) Classification. Sexually oriented businesses are classified as follows:
- (1) Adult Arcades;
  - (2) Adult Book Stores or Adult Video Stores;
  - (3) Adult Cabarets;
  - (4) Adult Motels; and
  - (5) Adult Motion Picture Theaters.
- (e) Location of Sexually Oriented Business.
- (1) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any sexually oriented business within one thousand (1,000) feet of the following residential zones:
    - a. Agricultural Suburban (A-S) Zone;
    - b. Agriculture Open-Space (A-1) Zone;
    - c. Residential 15,000 (R-150) Zone;
    - d. Residential 9,600 (R-96) Zone;
    - e. Residential 8,000 (R-80) Zone;
    - f. Residential 7,000 Restricted (R-70R) Zone;
    - g. Residential 7,000 (R-70) Zone;
    - h. Residential 6,000 Restricted (R-60R) Zone;

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- i. Residential 6,000 (R-60) Zone;
  - j. Residential 5,000 (R-50) Zone;
  - k. Residential Multi-Family (RMF) Zone;
  - l. Residential Multi-Family - Restricted (RMF-R) Zone;
  - m. Residential Manufactured Home (RMH) Zone;
  - n. Entryway Mixed Use (EMU) Zone; or
  - o. Any Planned Development Zone that allows residential uses unless such zone is separated from the location of a sexually oriented business by an Interstate Highway.
- (2) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own, or operate any sexually oriented business within one thousand (1,000) feet of the following land uses:
- a. Public library;
  - b. Public playground or park(for purposes of this section, publicly owned multiuse trails shall be deemed to be a park);
  - c. Public or private school and its grounds, from Pre-school through twelfth grade;
  - d. A state licensed Community Residential Facility, family day care home, group day care home, or day care center;
  - e. Church or other place of worship; or
  - f. A cemetery.
- (3) No person, whether as a principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own or operate any sexually oriented business within six hundred (600) feet of another sexually oriented business.
- (4) For purposes of this section, specified distances will be measured in a straight line, without regard to intervening structures, from the property line of the sexually oriented business to the property line of the preceding land uses or zoning districts.
- (5) In addition to the preceding requirements, sexually oriented businesses are permitted in the following zones only:
- a. Central Business District (CBD) Zone;
  - b. Highway Commercial (HC) Zone;
  - c. Controlled Industrial (CI) Zone; or
  - d. Heavy Industrial (HI) Zone.
- (f) Nonconforming Use - Amortization period established. (Refer to BMCC Section 27-405(G))

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

**SEC. 27-612. SUPPLEMENTAL COMMERCIAL DEVELOPMENT STANDARDS.**

Certain commercial uses shall be specifically restricted as follows:

(a) **Eating and Drinking Places.** The use of any premises or the construction or alteration of any new or existing building or structure where alcoholic beverages are served for on-premise consumption as a primary or accessory use shall only be allowed in commercial or industrial zoning districts as regulated by Section 27-306. No building, structure or premises shall be used for the on-premise consumption of alcoholic beverages unless:

- (1) A distance of six hundred (600) feet between property lines, measured in a straight line, is maintained from any building that is predominantly used as a church or school or from a public park that contains a children's playground or playfield.
  - a. Properties or establishments which are located in the Central Business District zoning district are exempt from subsection 1.
  - b. Properties may be granted a waiver from the 600 foot separation required in subsection 1. if the governing body finds that a physical barrier exists between the proposed use and the use requiring the 600 foot separation. These barriers include, but are not limited to, the following:
    1. An arterial street with no existing or proposed signalized pedestrian crossing;
    2. A building or buildings that entirely obstruct the view between the separated uses; and/or
    3. No direct physical access exists between the separated uses. The person applying for the Special Review must provide the governing body with proof that the proposed property or establishment meets one of the above described physical barriers or that other types of physical barriers exist that warrant the waiving of the 600-foot separation.

Exemptions to above subsection A. for establishments previously granted a Special Review are located in BMCC Section 27-613.

(b) **Drive-in Service.** Any persons desiring to use any premises or to erect, construct or alter any new or existing building or structure for a drive-in service as defined in BMCC Section 27-201 shall satisfy the following criteria, based upon the adjoining zoning district(s).

- (1) When a drive-in establishment adjoins (including any location across an alley) residentially zoned property, the use shall obtain approval of a Special Review as outlined in BMCC Sections 27-1503 and 27-1509. The application will conform to all the standards within subsection 27-612(e).
- (2) All other drive-in establishments, including those which are located across a public street from residentially-zoned property, shall meet the following criteria:

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- a. A traffic accessibility study shall be completed and approved by the City Engineer or County Public Works Director; and
- b. The use shall comply with all other sections of this code.

(c) **Gambling Operation.** Any gambling operation as defined in Article 7-1100 of the Billings, Montana City Code, other than for nonprofit organizations, shall be allowed only in those zones specified in BMCC Section 27-306, and shall meet all of the rules, regulations and requirements of this resolution/ordinance pertaining to bars, taverns and lounges, except that this provision shall not apply to bingo.

(d) **Neighborhood Convenience Store (County Only).** Any person desiring to construct or remodel an existing structure for use as a Neighborhood Convenience Store in a residential zoning district shall apply for special review approval as shown in Section 27-305 of this chapter. In RMF-R and RMF districts a special review approval is not required to establish a Neighborhood Convenience Store. In addition to conditions that maybe imposed as part of a special review approval the following standards shall apply to every Neighborhood Convenience Store in a residential zoning district:

- (1) Limited to 3,000 square feet or less of gross floor area not including any outdoor seating area.
- (2) Located no closer than 1,500 feet from another Neighborhood Convenience Store.
- (3) Comply with the underlying zoning district setbacks, building height and lot area per dwelling unit if dwelling units are included as part of the store development.
- (4) Lot coverage may be up to 55% regardless of the underlying zoning district.
- (5) Shall include one off-street parking space per 500 square feet of gross floor area of retail space, one of which will be a handicapped accessible space.
- (6) If a dwelling unit is included in a store development, one additional off-street parking space shall be provided per dwelling unit.
- (7) The off-street parking requirements in subsections d(5) and d(6) supersedes and replace the off-street parking standards in Section 6-1203 and Sections 27-1202 through 27-1211 of the BMCC. Design and construction standards for curb cuts, driveways, size of off-street parking spaces, storm water control and paving standards shall otherwise apply.
- (8) No such store shall take delivery of goods before 8:00 am or after 8:00 pm.
- (9) At least two trash receptacles shall be provided per store that are accessible to the public on the store property. These trash receptacles will be emptied daily near the time of close of business.
- (10) Lighting on the building, in the parking lot or other yard area shall have full cut-off shields.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (11) No light fixture shall exceed 15 feet in height from grade to the top of the fixture.
  - (12) Signage shall be limited to one non-illuminated wall sign of 24 square feet or less per retail business.
  - (13) No store shall have an outdoor announcement or music system.
- (e) Commercial and Industrial Uses within the City of Billings. All Commercial and Industrial Uses, as listed within Section 27-306, within 50 feet of any Residential zoning district, including a Planned Development that allows residential use, shall comply with these site development standards:
- (1) All buildings in excess of 30 feet in height shall be setback a minimum of 30 feet from a property line that adjoins a residential zone and a minimum of 10 feet from a property line that parallels but does not adjoin a residential zone.
  - (2) All outdoor lighting, with the exception of signage, shall have full cutoff shields so no part of the fixture or lens projects below the cutoff shield. Light pole standards must be 20 feet in height or less.
  - (3) Mechanical equipment, including but not limited to air conditioning units, air handling units, back-up power generators, installed at ground level or on a roof must be fully screened from view. The screening shall be at least the height of the mechanical equipment. Mechanical equipment that generates or is expected to generate noise in excess of 55 decibels (DbA) within three (3) feet of the equipment location must provide sound abatement or suppression which may require the equipment to be enclosed in a structure.
  - (4) Loading docks, if necessary or required by the operation, must be located the farthest distance practicable from the residential zone. However, if the property adjoins an arterial street, the loading dock must be set back far enough such that no trucks will be loading, unloading, or backing within the street. Loading shall be done from alleys when possible.
  - (5) Outdoor storage of merchandise or equipment must be within an area enclosed with a sight obscuring fence at least six (6) feet in height that is architecturally coordinated in color and design with the building. Vehicle sales lots and plant materials may be displayed outside of an approved building or enclosed area so long as they are on the same site wherein the business displays the bulk of its goods for sale. Outside promotional displays are allowed during business hours only.
  - (6) No fascia of a building or canopy may be internally illuminated.
  - (7) No signs may be placed on a building wall that parallels a residential zone. No freestanding advertising signs may be placed within 30 feet of a property line that adjoins a residential zone or within 10 feet of a property line that parallels a residential zone.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (8) No outdoor waste storage on the commercial or industrial property shall be located within 30 feet of a property line that adjoins a residential zone or within 10 feet of a property line that parallels a residential zone. This requirement shall not apply where the property is separated from a residential zone or residential use by an alley or street. All on-site solid waste storage shall be located within an area enclosed with a solid, masonry wall that is architecturally coordinated in color and design with the building.
- (9) No outdoor announcement system or music system, whether permanent or temporary, is allowed.
- (10) Existing developments that do not conform to one or more of these development standards, may continue unless the site is re-developed for a new use, a new building is added to the existing development, or the floor area of the existing structures is increased by more than 10% of the gross floor area. At the time of re-development, change in use or expansion, the property will conform to these standards.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-613. SUPPLEMENTAL SPECIAL REVIEW STANDARDS.

(a) Eating and Drinking Places. The following exemptions from the Special Review requirements, as regulated by Section 27-306, shall apply to those establishments where alcoholic beverages are served for on-premise consumption, which have previously been approved pursuant to a Special Review by the City Council or Board of County Commissioners:

1. Such an establishment shall be allowed to remodel, expand or relocate within the same structure without an additional Special Review, as regulated by Section 27-306 provided that:
  - a. The gross floor area of the remodeled, expanded or relocated establishment is not over ten (10) percent greater than the gross floor area originally occupied by the establishment;
  - b. The number of potential occupants is not increased by more than ten (10) percent, than the number that is currently allowed;
  - c. The number of new parking stalls is not more than ten (10) percent greater than the original number of spaces; and
  - d. All other requirements of this resolution/ordinance and/or the Billings, Montana City Code are met.
2. Such an establishment in which additions and/or remodels include an outdoor patio lounge shall be required to obtain Special Review approval, as regulated by Section 27-306 and as outlined in BMCC Sections 27-1503 and 27-1509.

(b) Churches. Churches and other places of worship shall be reviewed as a Special Review use in all residential zones pursuant to BMCC Section 27-305. The following exemptions from the Special Review requirements shall only apply to those churches and other places of worship which have previously been approved pursuant to a Special Review by the City Council or Board of County Commissioners or which are legal nonconforming uses:

1. Such a church or place of worship shall be allowed to remodel or expand without an additional Special Review provided that:
  - a. The number of potential occupants is not increased by more than ten (10) percent, than the number that is currently allowed;
  - b. The gross floor area of the facility after such remodeling or expansion is not over ten (10) percent greater than the gross floor area originally occupied by the facility;
  - c. The number of new parking stalls is not more than ten (10) percent greater than the original number of spaces; and
  - d. All other requirements of this resolution/ordinance and/or the Billings, Montana City Code are met.
2. If, at the time the original or subsequent Special Review was conducted and approved, the applicant submitted a master plan showing: (a) future additions to

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

the structure(s); (b) future structure(s); and/or (c) future parking area(s), those future improvements may be constructed without additional Special Review provided that these future improvements were considered in the Special Review approval and all other requirements of this resolution/ordinance and/or the Billings, Montana City Code are met. Minor modifications and expansions to the future improvements identified on the master plan may also be constructed without additional Special Review provided that such modifications and/or expansions to the master plan meet the provisions of above subsection (1).

(c) Other Special Review Uses. Uses not listed in above subsections (a) or (b), which have been approved pursuant to a Special Review by the City Council or Board of County Commissioners, may be allowed to expand or remodel without an additional Special Review, provided that the expansion or remodeling meets all of the following criteria:

1. The gross floor area of the remodeled or expanded establishment is not over ten (10) percent greater than the gross floor area originally occupied by the establishment;
2. The number of potential occupants is not increased by more than ten (10) percent, than the number that is currently allowed;
3. The number of new parking stalls is not more than ten (10) percent greater than the original number of spaces; and
4. All other requirements of this resolution/ordinance and/or the Billings, Montana City Code are met.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-614. TEMPORARY USES AND STRUCTURES.

(a) *Definitions.* For the purposes of this Section, the definitions found in BMCC section 27-201 for both temporary uses and temporary structures shall be used in the regulation of such uses and structures. In addition, all uses contained in temporary structures shall be considered temporary uses of property and therefore must comply with the provisions of this section. All temporary uses and structures shall also comply with the Uniform Fire Code.

This section shall not apply to sidewalk vendors governed by Article 7-1200 of the Billings, Montana City Code.

(b) *Temporary uses in nonresidential zoning districts.*

(1) *Group 1 temporary uses.* This group shall be defined as temporary uses of property continuing for less than seventy-two (72) hours. Group 1 uses do not require a temporary use/structure permit from Planning & Community Development. Uses in this group shall comply with the following:

- a. Such use shall be an allowed use in the underlying zoning district;
- b. Any temporary structure must be setback five (5) feet behind all property lines;
- c. No part of the temporary use or temporary structure shall block any defined clear vision area (BMCC27-615) for driving aisles, drive approaches from streets, or at the intersection of streets or alleys;
- d. Signs advertising the temporary use or activity are allowed at the same location as the temporary use. Signage may not exceed one-hundred (100) square feet in area and may be displayed while the temporary use is on the property. Wall signs affixed to temporary structures and freestanding signs are allowed. The maximum height of any freestanding sign is eight (8) feet from finished grade. Paper or cardboard signs are prohibited. Banner signs are exempt from the limitations found in the City Sign Code {Section 27-700(b)(1)(b)}.
- e. All signage and temporary structures must be removed at the time the temporary use has ceased on the property.

(2) *Group 2 temporary uses.* This group shall be defined as temporary uses of property continuing for longer than seventy-two (72) hours but less than sixty-one (61) days and are required to obtain a temporary use/structure permit from the Planning & Community Services Department.

- a. The following temporary uses may be allowed in this temporary use group:
  1. Carnival, circus, seasonal sales or other uses as allowed in the district regulations in BMCC section 27-306.
- b. Supplemental standards.

Uses in this group shall comply with the following:

1. Such use shall be an allowed use in the underlying zoning district;

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

2. Any temporary structure must be setback five (5) feet behind all property lines;
  3. No part of the temporary use or temporary structure shall block any defined clear vision area (BMCC27-615) for driving aisles, drive approaches from streets, or at the intersection of streets or alleys;
  4. Signs advertising the temporary use or activity are allowed at the same location as the temporary use. Signage may not exceed one hundred (100) square feet in area and may be displayed while the temporary use is on the property. Wall signs affixed to temporary structures and freestanding signs are allowed. The maximum height of any freestanding sign is eight (8) feet from finished grade. Paper or cardboard signs are prohibited. . Banner signs are exempt from the limitations found in the City Sign Code {Section 27-700(b)(1)(b)}.
  5. All signage and temporary structures must be removed at the time the temporary use has ceased on the property.
  6. New access drives to public right-of-ways must be approved by the City of Billings Engineering Division or County Public Works Department as required.
  7. A business license for temporary uses located within the city limits must be obtained if required by Billings Municipal City Code (BMCC) Chapter 13-400 (Finance and Revenue).
- (3) *Group 3 temporary uses.* This group shall be defined as temporary uses of property continuing for longer than sixty-one (61) days but less than one (1) year and are required to obtain a temporary use permit from the Planning & Community Services Department.
- a. The following temporary uses may be allowed in this temporary use group, but must be located in a district that allows the use, as specified in the district regulations in BMCC sections 27-305 and 27-306:
    1. Greenhouses or other similar seasonal-oriented uses, as determined by the zoning coordinator;
    2. Portable classrooms;
    3. Portable offices; or
    4. Other uses, such as carry-out food and/or beverage service.
  - b. Location restrictions.
    1. Any Group 3 temporary use/structure existing upon adoption of this chapter, which does not comply, depending upon its location, with the applicable city or county site development regulations, shall comply with such standards within one (1) year from the date of the enactment of this section or any amendment thereto;
    2. Any new or relocated temporary use must be located on a site which complies, depending upon its location, with the applicable city or county

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- site development regulations, including landscaping, surfacing and number of required off-street parking spaces;
3. The structure shall be a factory-built structure and shall not have an axle(s). Temporary structures which do not comply with one or both of these requirement(s) and which exist on the date of adoption of these regulations, shall be deemed legal nonconforming structures and may continue to be used as a temporary structure, provided the temporary use and structure complies with all other requirements of this section; and
  4. Temporary uses as listed in above subsection (3)a.4. shall also comply with the following criteria:
    - a. Maximum size of the structure shall be ten (10) feet by twelve (12) feet or one hundred twenty (120) square feet;
    - b. Site circulation shall be approved by the city traffic engineer or county public works director, along with the location of any drive-in window. This group of temporary uses shall be exempt from any special review requirements for drive-in service;
    - c. The temporary use must provide the required number of paved off-street parking spaces. In addition, the temporary use shall not utilize any parking spaces that would make the principal use deficient in the required number of off-street parking spaces;
    - d. Utilities to serve the temporary use shall be located underground or suspended overhead, in compliance with all applicable codes; and
    - e. All structures are subject to local, county and state requirements and must obtain all relevant licenses before a temporary use/structure permit is issued.
- c. Supplemental Standards.
1. When submitting for a temporary use/structure permit, a Group 3 use shall provide the following:
    - a. Existing site plan, including parking stalls and buildings;
    - b. Proposed site plan, including location of temporary use and its relationship to existing site circulation and off-street parking spaces and driving aisles, including existing and proposed surfacing;
    - c. Location of drive-in service, if applicable;
    - d. Setbacks from property lines and arterial streets;
    - e. Size of temporary structure; and
    - f. Proposed use of the temporary structure.
  2. Signs advertising the temporary use or activity are allowed at the same location as the temporary use. Signage may not exceed one-hundred (100) square feet in area and may be displayed while the temporary use

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

is on the property. Wall signs affixed to temporary structures and freestanding signs are allowed. The maximum height of a freestanding sign is eight (8) feet from finished grade. Banner signs, paper or cardboard signs are prohibited.

3. The temporary use must provide sufficient space to accommodate the structure and paved off-street parking for customer and use-related vehicles;
4. Clear Vision Standards set forth in BMCC section 27-615 shall be followed;
5. Access to any public right-of-way must be approved by the City of Billings Engineering Division or County Public Works Department;
6. It shall be the responsibility of the owner of the temporary structure to ensure that the structure is secured to withstand an eighty (80) miles per hour (m.p.h.) wind load and to meet all applicable Americans with Disabilities Act (A.D.A.) and accessibility standards;
7. All Group 3 temporary structures, regardless of size, which contain electrical wiring, and are placed on property within the Billings city limits, shall have such electrical wiring permitted, inspected and approved by the City of Billings Building Division. All temporary structures that exceed 120 square feet, except greenhouses, shall have the structure permitted, inspected and approved by the City of Billings Building Division or labeled as a factory-built structure by the State of Montana Building Codes Bureau prior to issuance of a temporary use/structure permit; and. A temporary use/structure permit shall be obtained by the owner and a business license, if required, shall be obtained by the operator. Such temporary use/structure permit shall be valid for a period of not more than one (1) year. An annual renewal may be given by the Zoning Coordinator, provided that the use complies with the above requirements. However, permits for portable offices or classrooms may be renewed only one time per location.

(c) *Temporary uses in residential or agricultural zoning districts.* In any residential district, the temporary use of land for uses listed below may be allowed for a period not to exceed sixty-one (61) days and are required to obtain a temporary use permit from the Planning & Community Services Department.

- (1) *Seasonal sales.* The sales of seasonal items including but not limited to holiday decorations in residential zoning districts shall be allowed when all of the following restrictions are met:
  - a. The sale must be conducted on a church, school or other tax exempt premises which provides sufficient space to accommodate the seasonal sales and off-street parking for customer and other sale related vehicles;
  - b. Signs advertising the temporary use or activity are allowed at the same location as the temporary use. Signage may not exceed thirty-

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

two (32) square feet in area and may be displayed while the temporary use is on the property. Wall signs affixed to temporary structures and freestanding signs are allowed. The maximum height of any freestanding sign is eight (8) feet from finished grade. Banner signs, paper or cardboard signs are prohibited.

- c. Clear Vision Standards set forth in BMCC section 27-615 shall be followed; and
- d. All signage and temporary structures must be removed at the time the temporary use has ceased on the property.

(2) *Roadside stands.* The sale of flowers or produce at temporary roadside stands shall be allowed when all of the following restrictions are met:

- a. Only items which are produced on the premises may be sold on the premises;
- b. Any structure used must be portable and removed after the temporary use/structure has ceased operation. However, structures which are located in the agricultural-open space (A-1) zoning district may be used even if they are permanent;
- c. Signs advertising the temporary use or activity are allowed at the same location as the temporary use. Signage may not exceed thirty-two (32) square feet in area and may be displayed while the temporary use is on the property. Wall signs affixed to temporary structures and freestanding signs are allowed. The maximum height of any freestanding sign is eight (8) feet from finished grade. Banner signs, paper or cardboard signs are prohibited.
- d. The use must provide sufficient space to accommodate the stand and off-street parking for customer and other sale related vehicles;
- e. No structure, either temporary or permanent, nor any parking area shall be located within any public right-of-way and shall meet the Clear Vision Standards set forth in BMCC section 27-615;
- f. New access to any public right-of-way must be approved by the City of Billings Engineering Division or County Public Works Department; and
- g. All signage and temporary structures must be removed at the time the temporary use has ceased on the property.

(d) *Fireworks stands.* The erection of a temporary fireworks stand may be permitted if it meets the following restrictions:

- (1) The stand is located outside the limits of the City of Billings and is situated in one of the following zoning districts:
  - a. Public (P) zone;
  - b. Community commercial (CC) zone;

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- c. Highway commercial (HC) zone;
  - d. Controlled industrial (CI) zone;
  - e. Heavy industrial (HI) zone; or
  - f. Agricultural-open space (A-1) zone.
- (2) No fireworks stand shall be allowed to operate within five hundred (500) feet of any other structure. Nor shall any fireworks stand be allowed to operate within one thousand five hundred (1,500) feet of structures which have any flammable or combustible liquid handling, distribution or sales (including gas pumps);
- (3) All fireworks stands shall display warning signs in red letters on white background with letters not less than three (3) inches in height and one-half ( 1/2) inch in stroke. Such signs shall state:
- a. Danger - Explosives
  - b. No smoking
  - c. No discharge of fireworks within five hundred (500) feet
  - d. No parking of flammable or combustible liquid transportation vehicles within five hundred (500) feet
- (4) There must be a minimum of fifty (50) feet clear cut radius measured from the corner of each exterior wall. Vegetation within this radius shall be a maximum of two (2) inches in height and shall be raked clean of any dead vegetation. Any trees within this radius will be subject to review and approval by the county fire marshal;
- (5) Each fireworks stand shall have a minimum of two (2) pressurized water extinguishers (class 2A or approved equivalent) on premises at all times;
- (6) Location of each stand shall also be approved by the county fire marshal;
- (7) Each fireworks stand shall be setback a minimum of fifty (50) feet from any public right-of-way;
- (8) All fireworks stands shall receive fire protection from a fire protection service licensed or registered in the State of Montana;
- (9) An application for a permit must be submitted a minimum of fifteen (15) working days prior to the fireworks season, as defined by M.C.A. 50-37-106. The sale of fireworks shall only be allowed within this time period. However, the fireworks stand, without any sales occurring, may be allowed to be erected between June 17 through July 12;
- (10) Signs advertising the temporary use or activity are allowed at the same location as the temporary use. Signage may not exceed one hundred (100) square feet in area and may be displayed while the temporary use is on the property. Wall signs affixed to temporary structures and freestanding signs are allowed. The maximum height of any freestanding sign is eight (8) feet from finished grade. Banner signs, paper or cardboard signs are prohibited. All signage and temporary structures must be removed at the time the temporary use has ceased on the property.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (11) The fireworks stand must provide sufficient space to accommodate the stand and off-street parking for customer and other sale-related vehicles;
  - (12) An "Application For Sale of Fireworks" must be obtained and signed by the planning department, county fire marshal, Yellowstone county treasurer and the applicant. In addition, the applicant must obtain "Proof of Fire Protection";
  - (13) No structure, either temporary or permanent, nor any parking area shall be located within any public right-of-way; and
  - (14) Access to any public right-of-way must be approved by the county public works office.
- (e) Temporary uses and structures.
- (1) Construction equipment, sheds and materials. The temporary staging and storage of equipment and materials and use of buildings or modular structures for offices or equipment sheds during construction projects may be permitted in any zoning district. A temporary use/structure permit is not required if the equipment, materials and structures are part of an approved construction project. In addition, all equipment, materials and structures shall meet the following criteria:
    - a. Equipment, materials and structures include any items procured by a contractor that are necessary to complete the approved construction project including, but not limited to:
      - 1. heavy equipment, pipe, fittings, manholes, and the appurtenances;
      - 2. gravel, sand, soil, concrete mix, forms, lumber and similar materials;
      - 3. traffic control devices and stacked pallets of materials; and
      - 4. modular offices and equipment sheds.
    - b. Staging and storage of equipment and materials shall be conducted in a safe, neat and orderly manner at all times;
    - c. Any such equipment, materials and structures shall be removed upon completion of the construction project; and
    - d. No such structure shall be used for living or sleeping purposes.
  - (2) *Other temporary structures.* Temporary structures not used for construction or equipment sheds may be allowed when the following criteria are met:
    - a. For Group 3 uses, the structure shall meet the applicable setbacks for the zone in which it is located, including Arterial Setbacks as found in BMCC section 27-602;
    - b. The structure shall meet the Clear Vision Standards set forth in BMCC section 27-615;
    - c. No such structure shall be used for living or sleeping purposes; and
    - d. The use of the structure shall comply with BMCC sections 27-614(b) and 27-614(c), whichever is applicable.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- e. A temporary use/structure permit shall be obtained for each location by the owner for Group 2 and Group 3 uses as defined in Sec. 27-614(b).
  - f. A temporary use/structure permit shall be obtained for each location by the owner for Seasonal Sales and Roadside Stands in Residential and Noncommercial zoning districts as defined in Sec. 27-614(c).
- (3) *Time limit established.* The zoning coordinator shall establish the time period that a building or modular structure can be used on a temporary basis. This time period shall coincide with the temporary use/structure permit time period established under above subsections (b) or (c), whichever is applicable. The structure shall be removed when the temporary use is discontinued or the permit has expired. An extension for the renewal of the temporary structure permit only, may be granted by the zoning coordinator, if it is found that unusual and/or extraordinary circumstances exist.

(f) *Temporary use/structure permit required.* Before any Group 2 or Group 3 temporary use or structure is established, the property owner shall obtain a temporary use/structure permit for each location from the zoning coordinator or his/her designee. For Group 3 temporary uses, the temporary use permit holder shall post a one thousand five hundred (\$1,500) bond, money order or cashiers check for each location with the Planning & Community Services Department to ensure timely removal of the use and/or structure. Before any Seasonal Sale or Roadside Stand is established in a Residential or Noncommercial zoning district, the property owner shall obtain a temporary use/structure permit for each location from the zoning coordinator or his/her designee.

(Ord. No. 97-5048, § 5, 12-22-97)

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

**SEC. 27-615. VISIBILITY AT INTERSECTIONS.**

- (a) On corner lots at the intersection of all streets, except those intersections which are controlled by stop signs, yield signs or traffic signals, no fence, hedge, wall, shrub, structure or vision impediment over thirty (30) inches in height above an established top-of-curb grade shall be located within a triangular area formed by the intersecting street centerlines and a straight line joining such intersecting lines at points measured back from the point where the centerlines or the extension of the centerlines intersect a distance as shown in Table 1 (See BMCC Section 27-618, Figures 3a, 3b, and 3c).

**Table 1—Clear Vision Areas at Intersections**

<b>INTERSECTION TYPE</b>	<b>Clear Vision Area Required:</b>	<b>Reference Figure in Sec. 27- 618</b>
Minor Street Stop	Entering a Local Street—10' x 55' (along property lines) Entering Collector Street—10' x 75' (along property lines) Entering Arterial Street—10' x 95' (along property lines)	Fig. 2a
All-Way Stop	20' x 20' along property lines	Fig. 2b
Yield	25' x 60' along property lines	Fig. 2c
Traffic Signal	Same as minor street stop looking toward approaching traffic in nearest travel lanes  Same as all-way stop looking opposite direction	Fig. 2d
<b>--Open (uncontrolled)</b>		
4-legged	110' x 110' along street centerline	Fig. 3a
2-legged (right angle curve with street centerline radius of 100 feet or less)	80' x 80' along street centerlines (extended)	Fig. 3b
"T" intersection	25' along stem x 60' along top of "T" measured along property lines (see Note 1)	Fig 3c

**Notes & Exceptions for Table 1:**

- 1) Only applies to "permanent" T-intersections where there is no chance of the street extending through. Intersections where the property along the top of the "T" is not subdivided or is split into lots significantly larger than the majority of lots in the subdivision, or where there is a private street extending into the adjacent property opposite the stem of the "T" will be treated as a 4-legged intersection
- 2) In cases where there is a curve coming into the intersection or the street alignment near the intersection deviates by more than 5 degrees from tangent may be subject to increased (additional) restrictions based on technical review by the City Traffic Engineer.

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

- 3) Along arterial and collector streets where the “major” street curbline is more than 20 feet from the property line, the clear vision area may be reduced to that provided for a stop controlled local street intersection
  - 4) For minor street stop (case 2a) entering a street with a posted speed limit greater than 45 MPH, the required clear vision area will be based on an engineering review subject to approval by the City Traffic Engineer.
  - 5) Along private streets where there is no property line, controlled intersection areas shall be measured as though there is a property line 12 feet behind the curbline of the private street.
- (b) On corner lots at intersections where one (1) or more approaches are controlled by a stop sign, yield sign, or a traffic signal, no fence, hedge, wall, shrub, structure or vision impediment over thirty (30) inches in height above an established top-of-curb grade shall be located within a triangular area formed by the intersecting lines measured along the property lines as provided in Table 1 (See BMCC Section 27-618, Figures 2a, 2b, 2c, and 2d).
  - (c) On the street side of all lots where an alley or private driveway enters the street right-of-way, a triangular clear vision area shall be maintained. Such area shall be measured as defined in Table 2. No fence, hedge, wall, shrub or structure over thirty (30) inches in height above an established top-of-curb grade shall be erected or maintained within the above defined this clear vision area (See BMCC Section 27-618, Figure 1a). If no sidewalk exists, all measurements shall be made from and along the property line.

**Table 2—Clear Vision Area at Driveways and Alley Approaches**

Approach Type	Clear Vision Area Required
-- Vehicular Traffic	<p>Entering local street—Triangle measured along centerline of the driveway or alley 14 feet from back of curb by 175 feet along the curb line or the extension of the curb line on the cross street</p> <p>Entering collector street— Triangle measured along centerline of the driveway or alley 14 feet from back of curb by 250 feet along the curb line or the extension of the curb line on the cross street</p> <p>Entering arterial street— Triangle measured along centerline of the driveway or alley 14 feet from back of curb by 315 feet along the curb line or the extension of the curb line on the cross street (See Note 1)</p>
Pedestrian Traffic	Triangle 10 feet from back of walk into property measured along the edge of the drive, and 20 feet along the back of sidewalk measured from the edge of the driveway

Notes for Table 2:

- 1) For commercial driveways the point of reference for “centerline” shall be the actual marked centerline separating inbound and outbound traffic when there are two (2) or more exit lanes.

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

- 2) For driveways entering a street with a posted speed limit greater than 45 MPH, the required clear vision area will be based on an engineering review subject to approval by the City Traffic Engineer.
- (d) Central Business District. On corner lots at intersections within the Central Business District no fence, hedge, wall, shrub, structure or vision impediment over thirty (30) inches in height above an established top-of-curb grade shall be located within a triangular area formed by the intersecting lines measured along the street centerline and the back of curblines as provided in Table 3 (See BMCC section 27-618, Figures 2e). In cases where the clear vision area at intersections extends 2 feet or less on to private property, the City Engineer is authorized to review and may waive the clear vision area.

On the street side of all lots within the Central Business district where an alley or driveway enters the street right-of-way, a vehicular and pedestrian clear vision area shall be maintained. Such areas shall be as defined in Table 4. No fence, hedge, wall, or shrub over thirty (30) in height above an established top-of-curb grade shall be erected or maintained within these clear vision areas (See BMCC section 27-618, Figure 1b). The clear vision area for alleys and driveways shall not apply to buildings or pertinent parts thereof within the Central Business District.

**TABLE 3 CBD Clear Vision Areas at Intersections**

<b>INTERSECTION TYPE</b>	<b>Clear Vision Area Required:</b>	<b>Reference Figure in Sec. 27- 618</b>
Stop Sign or Traffic Signal	<p>Entering 25 MPH Street—Triangle 14 feet along centerline on the stop controlled approach measured from back of curb on the intersecting street by 205 feet along the curblines or the extension of the curb on the cross street</p> <p>Entering 35 MPH Street— Triangle 14 feet along centerline on the stop controlled approach measured from back of curb on the intersecting street by 290 feet along the curblines or the extension of the curb on the cross street</p> <p><i>Entering street with speed limit above 35 mph—the required clear vision area will be based on an engineering review subject to approval by the City Traffic Engineer</i></p>	Fig. 2e
Yield	<i>The required clear vision area will be based on a site specific engineering review subject to approval by the City Traffic Engineer</i>	none
<b>Open (uncontrolled)</b>	<i>The required clear vision area will be based on a site specific engineering review subject to approval by the City Traffic Engineer</i>	none

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

**TABLE 4 CBD Clear Vision Areas at alleys and driveways**

<b>Clear Vision area for:</b>	<b>Clear Vision Area Required:</b> <i>The clear vision area for alleys and driveways shall not apply to buildings or pertinent parts thereof within the Central Business District.</i>	<b>Reference Figure in Sec. 27- 618</b>
Vehicular traffic	<p>Entering 25 MPH Street—Triangle measured along centerline of the driveway or alley 14 feet from back of curb by 175 feet along the curbline or the extension of the curbline on the cross street</p> <p>Entering 35 MPH Street— Triangle measured along centerline of the driveway or alley 14 feet from back of curb by 250 feet along the curbline or the extension of the curbline on the cross street</p> <p><i>Entering street with speed limit above 35 mph—the required clear vision area will be based on an engineering review subject to approval by the City Traffic Engineer</i></p>	Fig. 1b
Pedestrian Traffic	The clear vision area is defined by a triangle 10 feet along edge of alley or driveway and 20 feet along back of sidewalk	Fig 1b

- (e) Approved advertising signs, and public use controls and systems may be permitted in any of the above defined clear vision areas. In addition, trees with a maximum trunk diameter of one (1) foot measured four (4) feet above the ground line, and trimmed of all branches between the ground line and eight (8) feet in height, may be permitted in the above defined clear vision areas.
- (f) Penalties. A violation of this section is designated as a municipal infraction, and punishable by civil penalties as specified in Section 18-1304.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-616. WATERCOURSE SETBACKS.

- (a) The following watercourse standards have been established to help minimize or prevent any destruction of improvements when flood events occur in areas which do not have a delineated floodplain. This section shall only apply to areas which are outside the limits of the City of Billings and which lie on a watercourse listed in below subsection (c).
- (b) Any newly constructed structure, addition to an existing structure or other similar improvements shall meet one of the following watercourse standards when located adjacent to a watercourse, as defined in BMCC Section 27-201, which does not have a floodway/floodplain delineated by the Federal Emergency Management Agency (FEMA).
  - (1) The structure, addition or similar improvement shall be setback fifty (50) feet from the centerline of the watercourse; or
  - (2) The structure, addition or similar improvement shall have a finished floor level which is located two (2) feet in elevation, above the highest point on the adjacent watercourse bank (See BMCC Section 27-618, Figure 4).

The Yellowstone County Floodplain Administrator shall make any required determinations regarding the location of the watercourse centerline or its bank elevation, whether by physical inspection and/or submittal of survey documents.

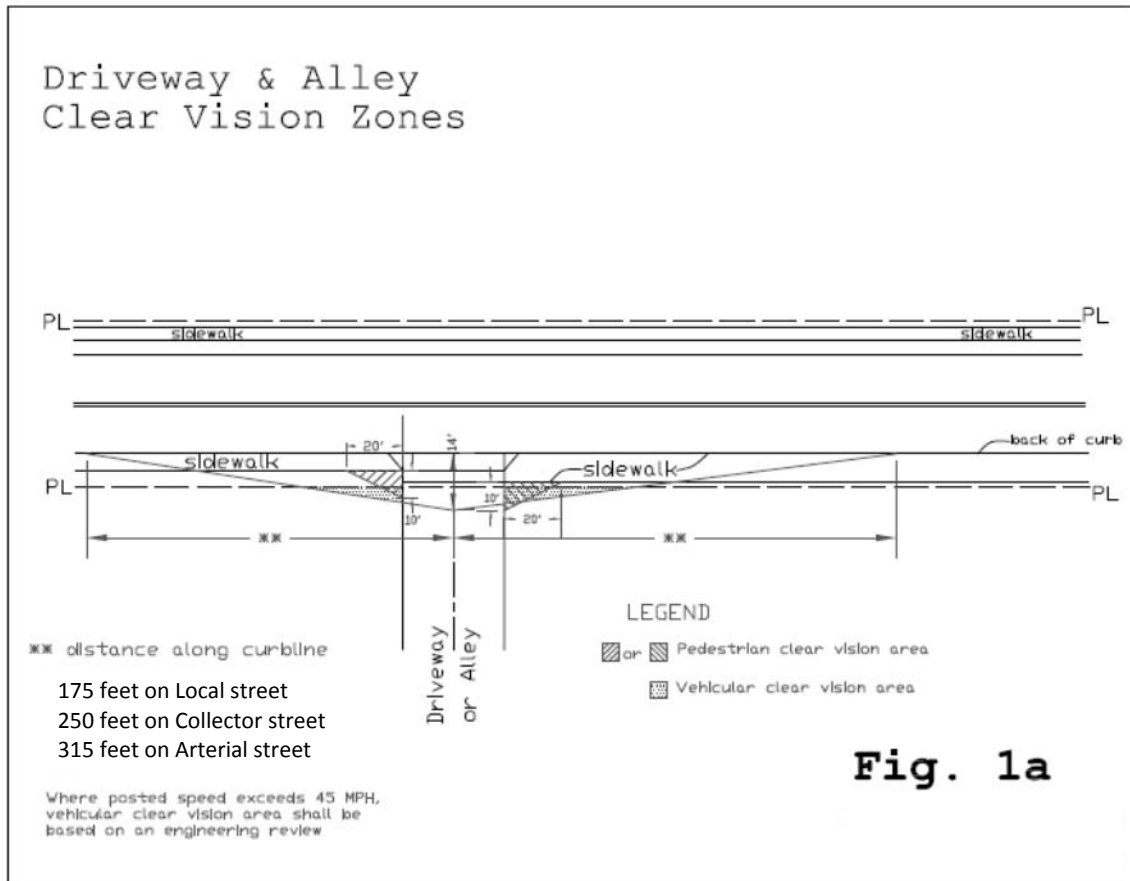
- (c) For the purposes of this section, the following creeks and drainages shall be classified as "watercourses" and shall conform to the restrictions in above subsection (B). These "watercourses" include: the South Fork of Alkali Creek, Basin Creek, Bitter Creek, Brockway Coulee, Dirt Creek, Five Mile Creek, Hogan's Slough and the undelineated portions of Dry Creek and Unnamed Creek.

ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

SEC. 27-618. ILLUSTRATIONS.

FIGURE 1a. VISIBILITY AT ALLEY AND DRIVE APPROACHES

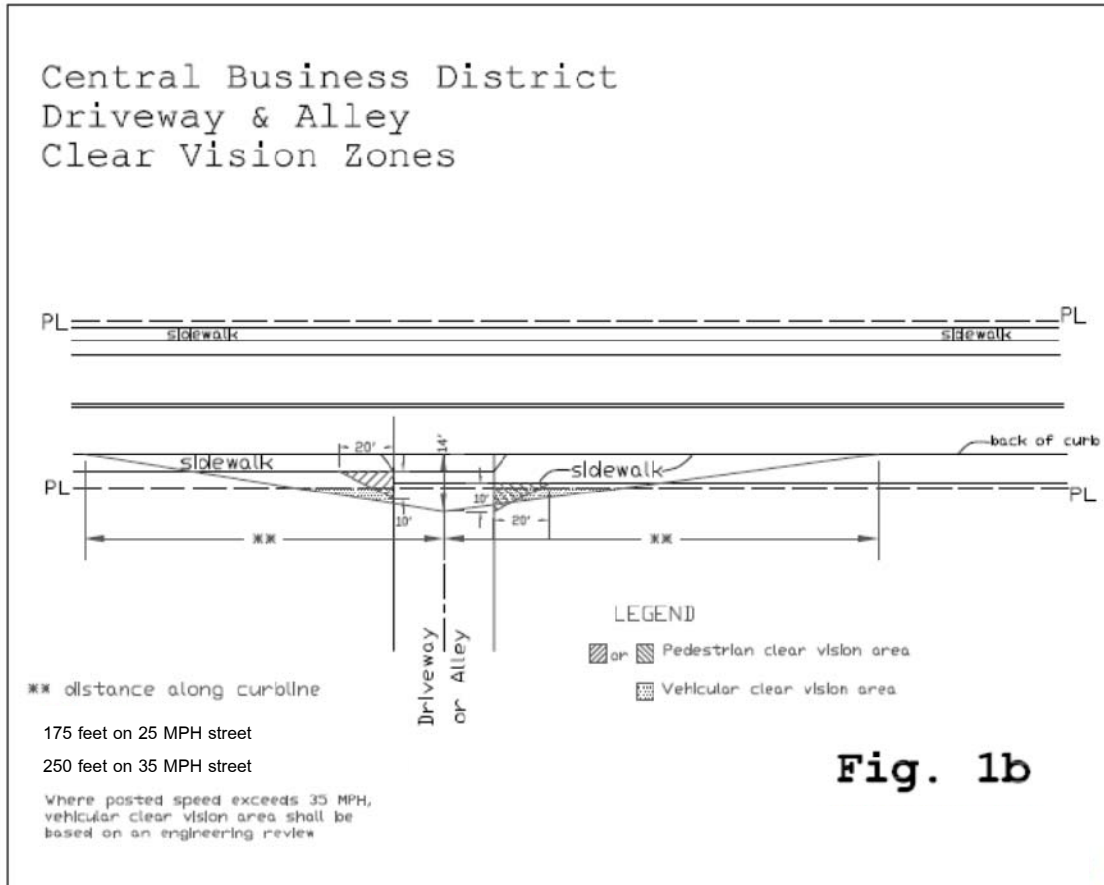
At the intersection of any alley or any driveway and a public street outside of the Central Business District, the illustrated clear vision area shall be maintained.



**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

**FIGURE 1b. VISIBILITY AT ALLEY AND DRIVE APPROACHES**

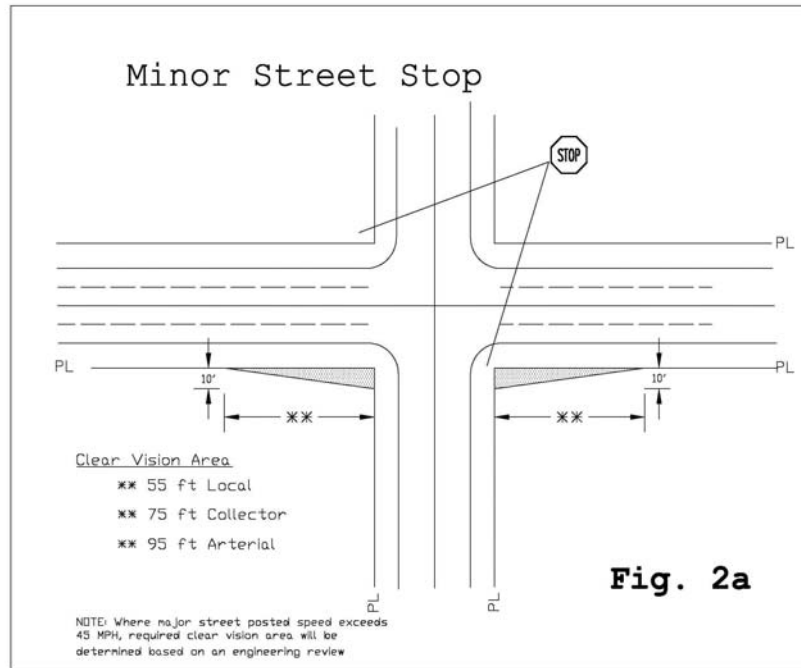
At the intersection of any alley or any driveway and a public street within the Central Business District, the illustrated clear vision areas shall be maintained. The clear vision area for alleys and driveways shall not apply to buildings or pertinent parts thereof within the Central Business District.



**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

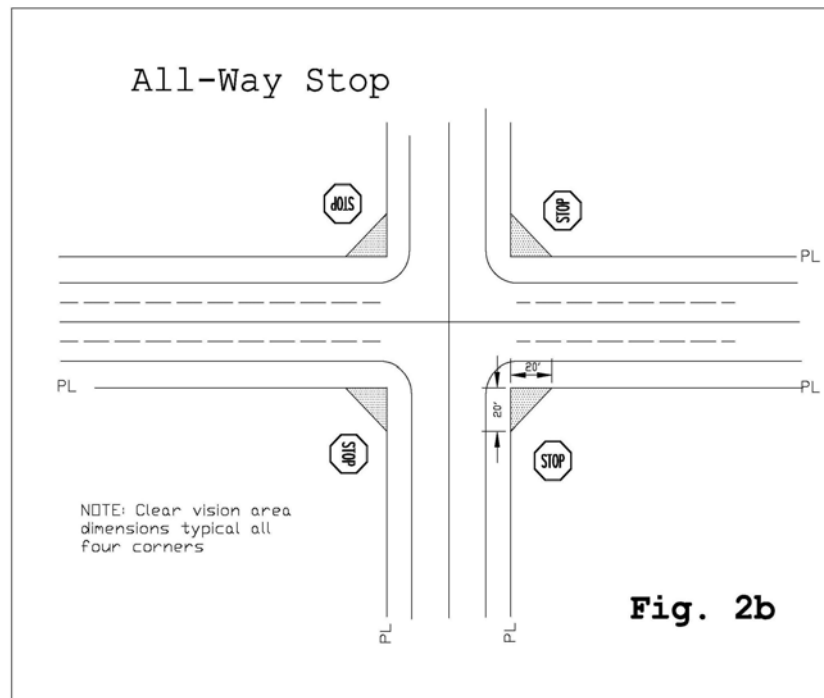
**FIGURE 2a. VISIBILITY AT INTERSECTIONS: MINOR STREET STOP CONTROL**

At any intersection where one (1) or more approaches are controlled by a stop sign, the illustrated clear vision area shall be maintained.



**FIGURE 2b. VISIBILITY AT INTERSECTIONS: ALL-WAY STOP CONTROL**

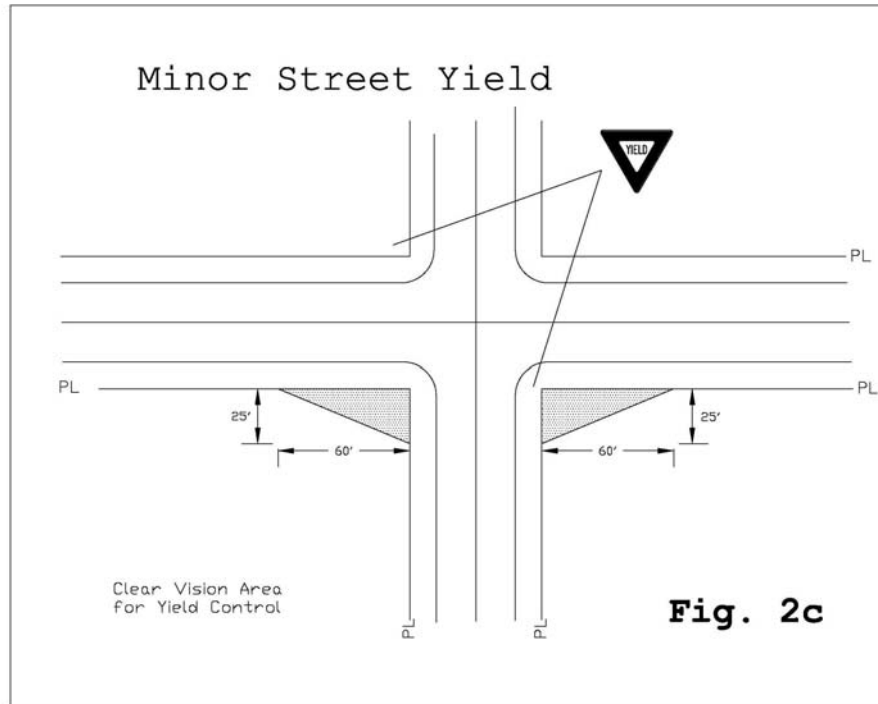
At any intersection where all approaches are controlled by stop signs the illustrated clear vision area shall be maintained.



**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

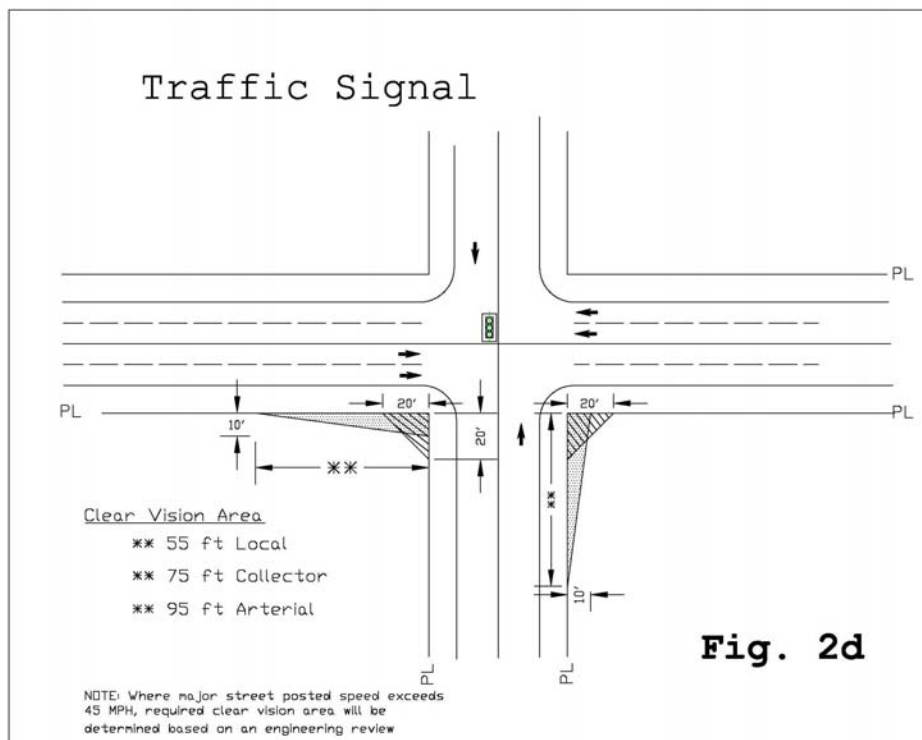
**FIGURE 2c. VISIBILITY AT INTERSECTIONS: YIELD CONTROL**

At any intersection where one (1) or more approaches is controlled by a yield sign the illustrated clear vision area shall be maintained.



**FIGURE 2d. VISIBILITY AT INTERSECTIONS: TRAFFIC SIGNAL CONTROL**

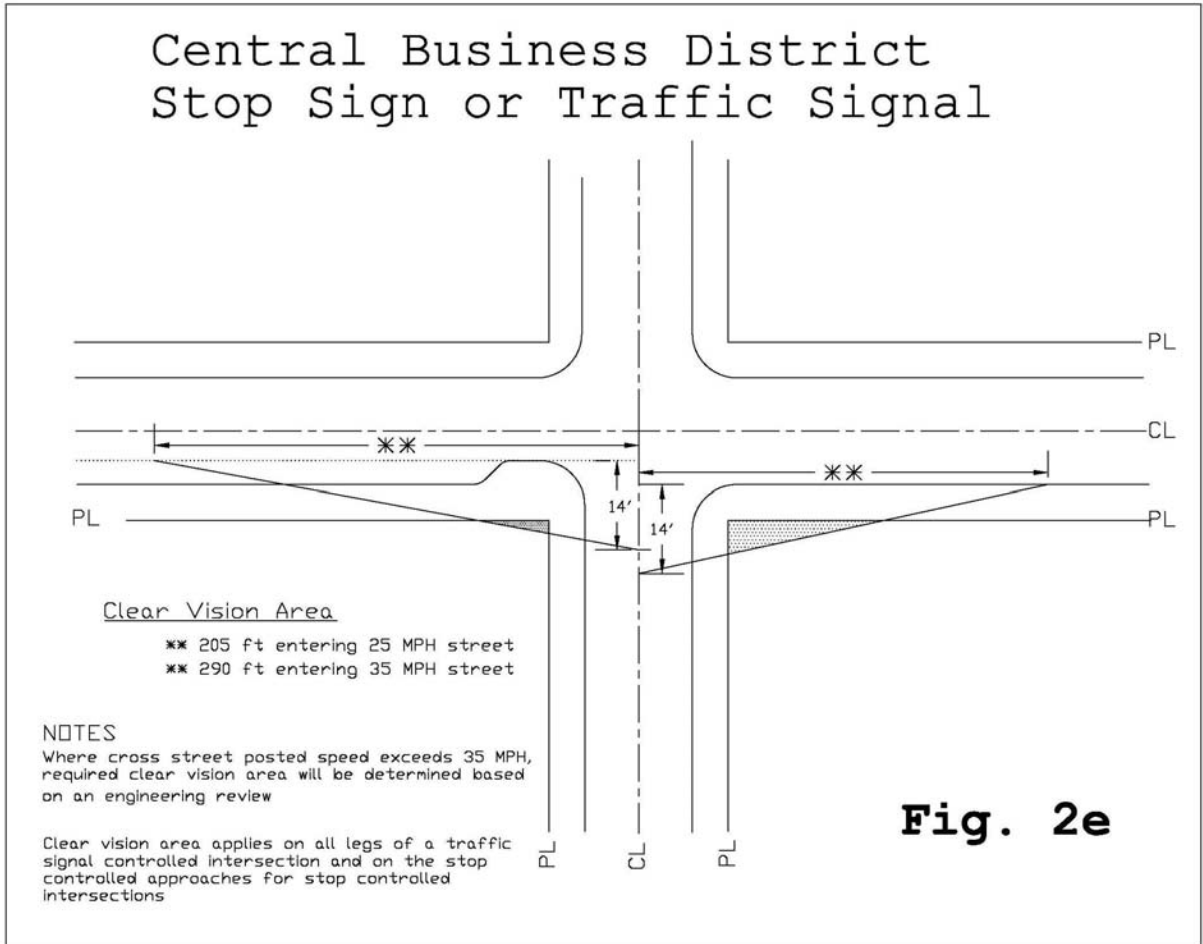
At any intersection where traffic is controlled by traffic signals the illustrated clear vision area shall be maintained.



**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

**FIGURE 2e. VISIBILITY AT STOP SIGN AND TRAFFIC SIGNAL CONTROLLED INTERSECTIONS IN THE CENTRAL BUSINESS DISTRICT**

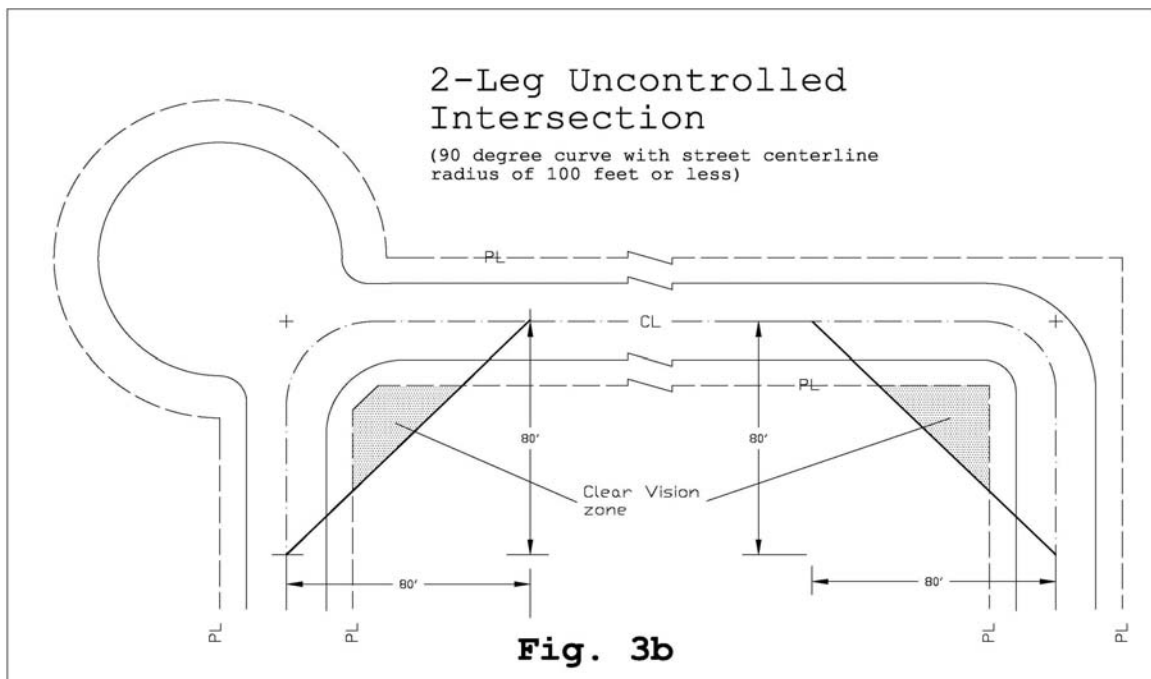
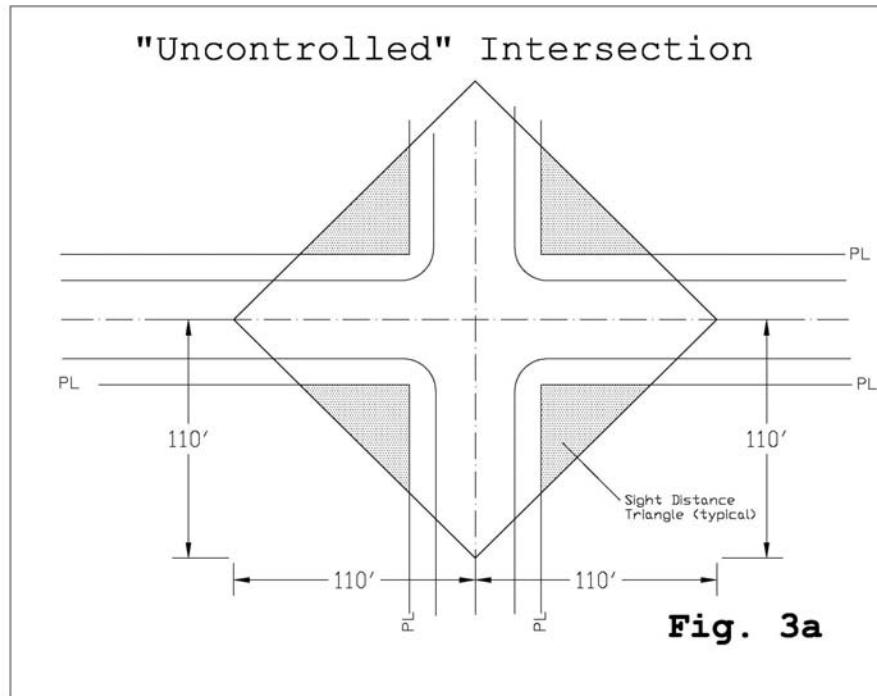
At any intersection within the Central Business District where traffic is controlled by stop signs or traffic signals the illustrated clear vision area shall be maintained.



**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

**FIGURES 3a, 3b, and 3c. VISIBILITY AT INTERSECTIONS: UNCONTROLLED**

At any intersection where none of the approaches are controlled by a stop sign, yield sign, or traffic signal, the illustrated clear vision areas shall be maintained.



ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

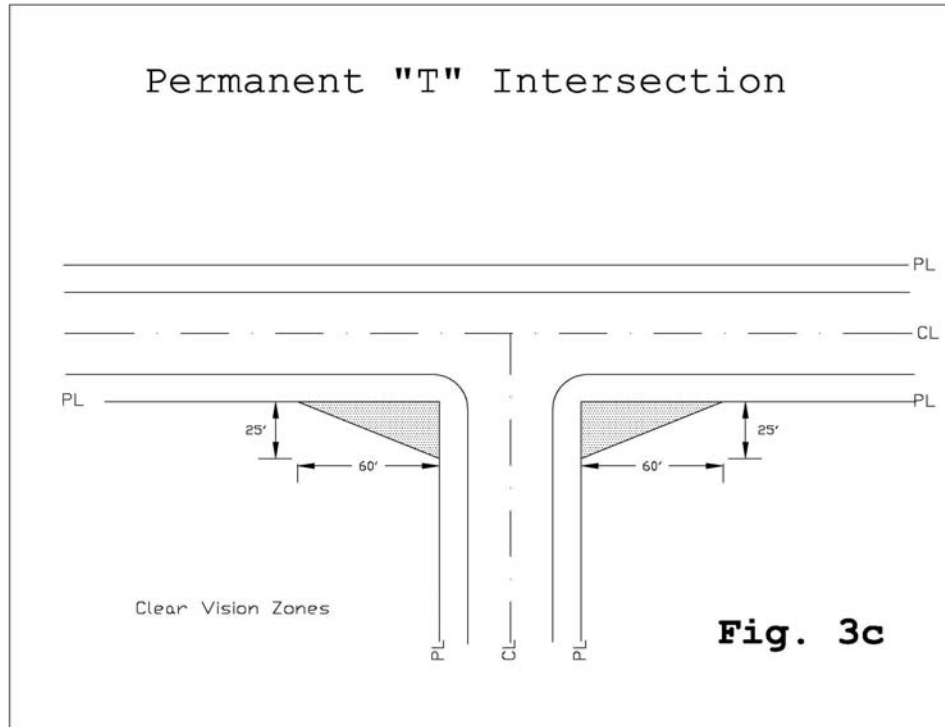
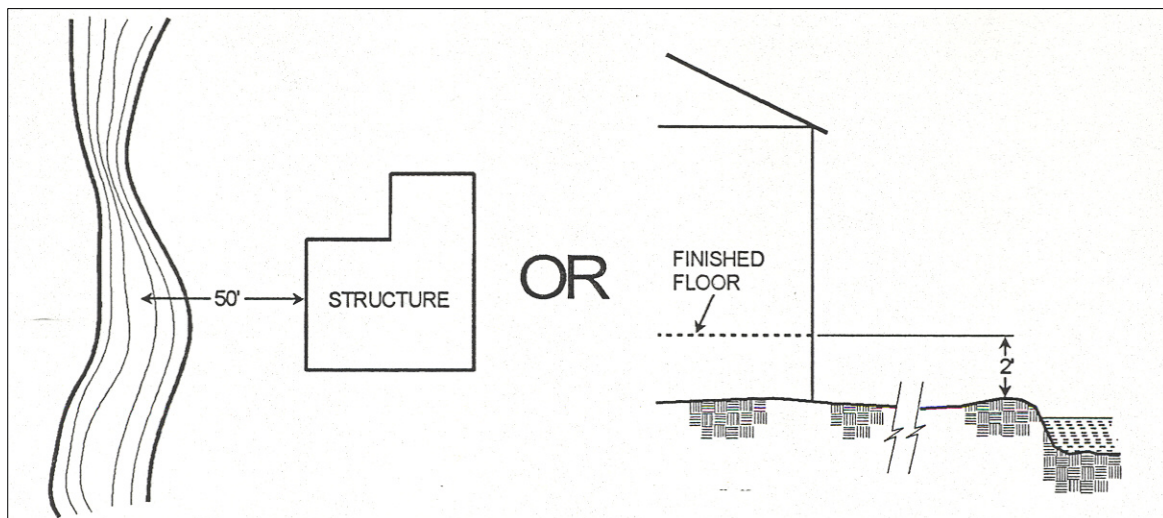


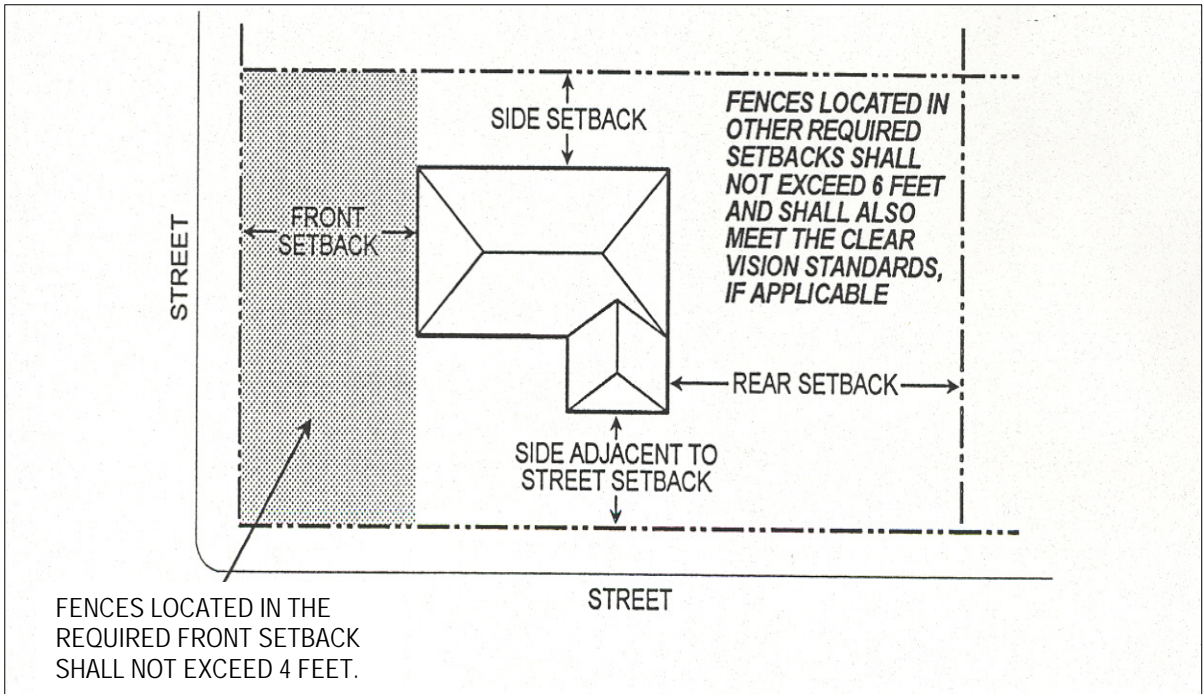
FIGURE 4. WATERCOURSE SETBACKS

Any new structure, addition to an existing structure or similar improvements, located adjacent to a watercourse not delineated with a floodway/floodplain by FEMA, shall either be setback 50' from the watercourse centerline or have a finished floor level which is 2' in elevation above the highest point of the adjacent watercourse bank (See also BMCC Section 27-616).



ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

FIGURE 6. FENCE

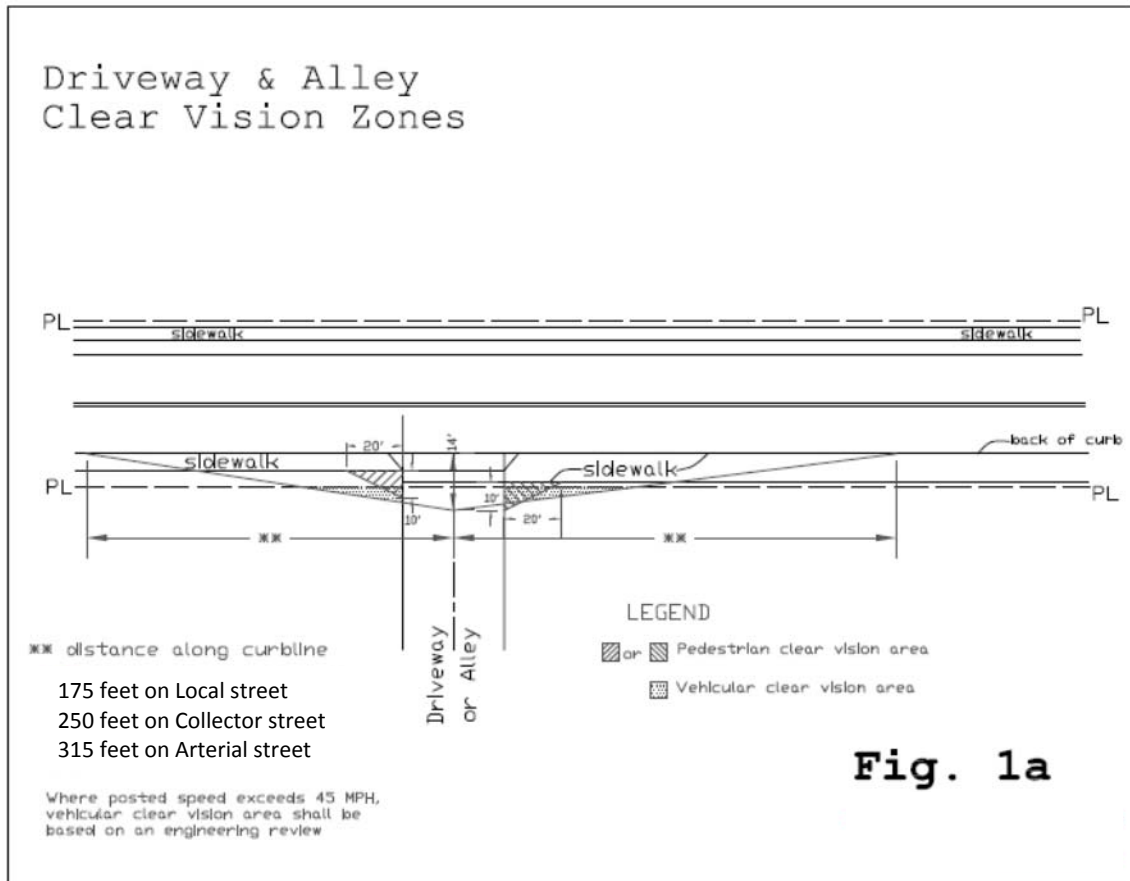


ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

SEC. 27-618. ILLUSTRATIONS.

FIGURE 1a. VISIBILITY AT ALLEY AND DRIVE APPROACHES

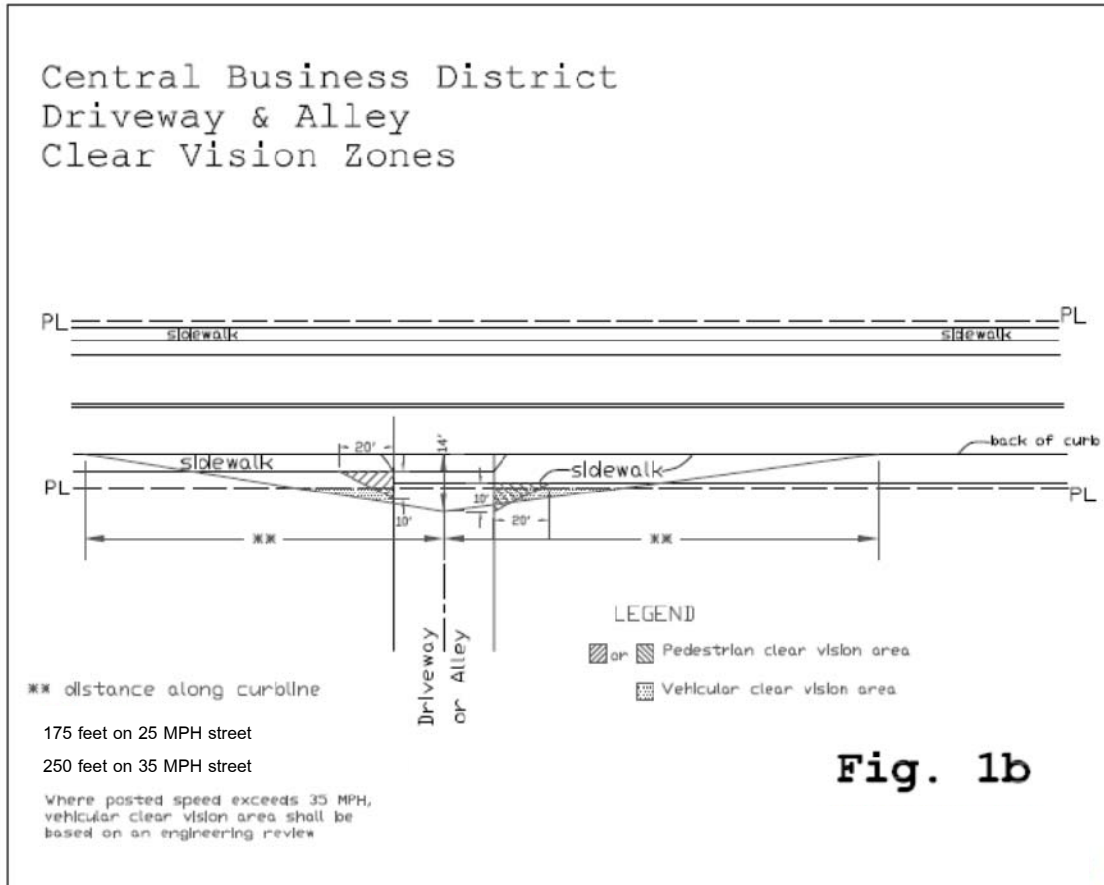
At the intersection of any alley or any driveway and a public street outside of the Central Business District, the illustrated clear vision area shall be maintained.



**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

**FIGURE 1b. VISIBILITY AT ALLEY AND DRIVE APPROACHES**

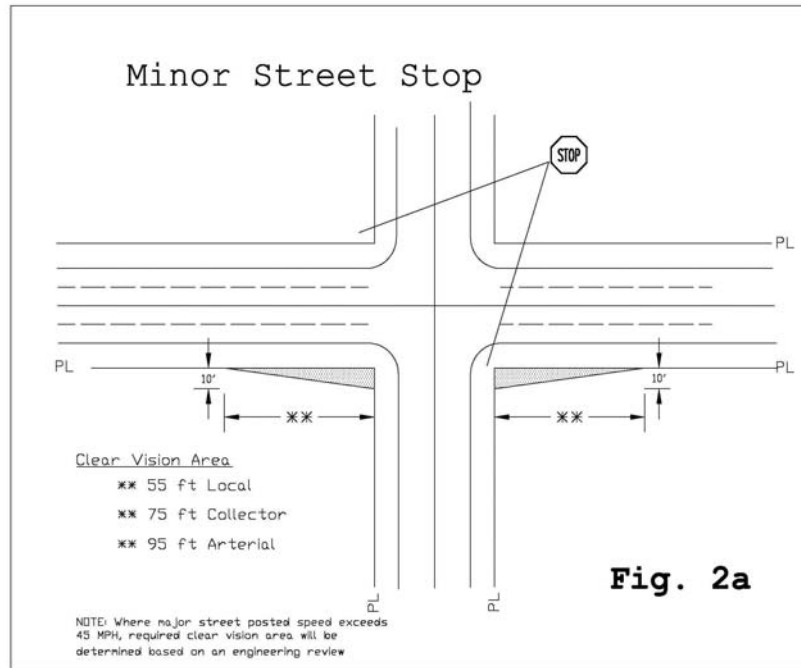
At the intersection of any alley or any driveway and a public street within the Central Business District, the illustrated clear vision areas shall be maintained. The clear vision area for alleys and driveways shall not apply to buildings or pertinent parts thereof within the Central Business District.



**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

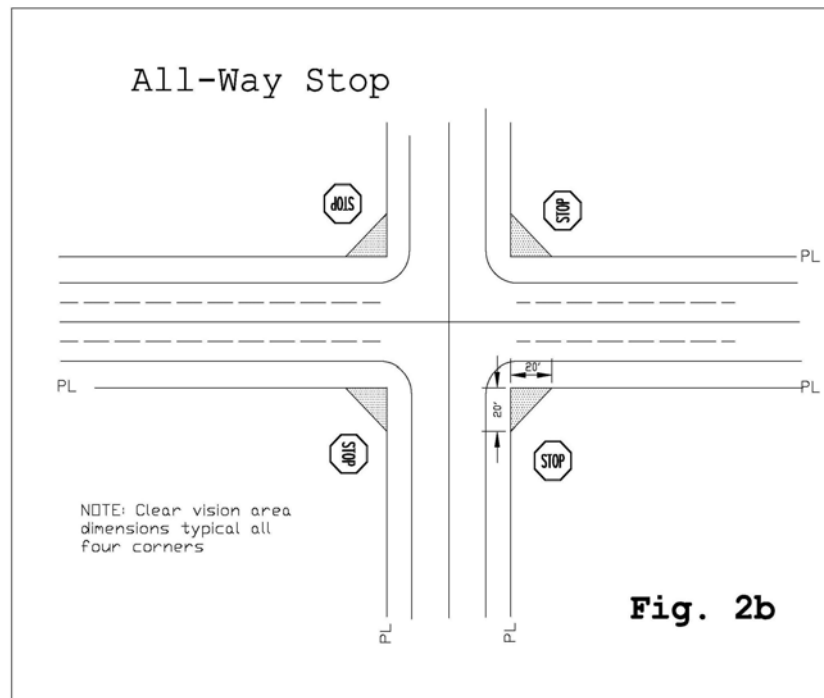
**FIGURE 2a. VISIBILITY AT INTERSECTIONS: MINOR STREET STOP CONTROL**

At any intersection where one (1) or more approaches are controlled by a stop sign, the illustrated clear vision area shall be maintained.



**FIGURE 2b. VISIBILITY AT INTERSECTIONS: ALL-WAY STOP CONTROL**

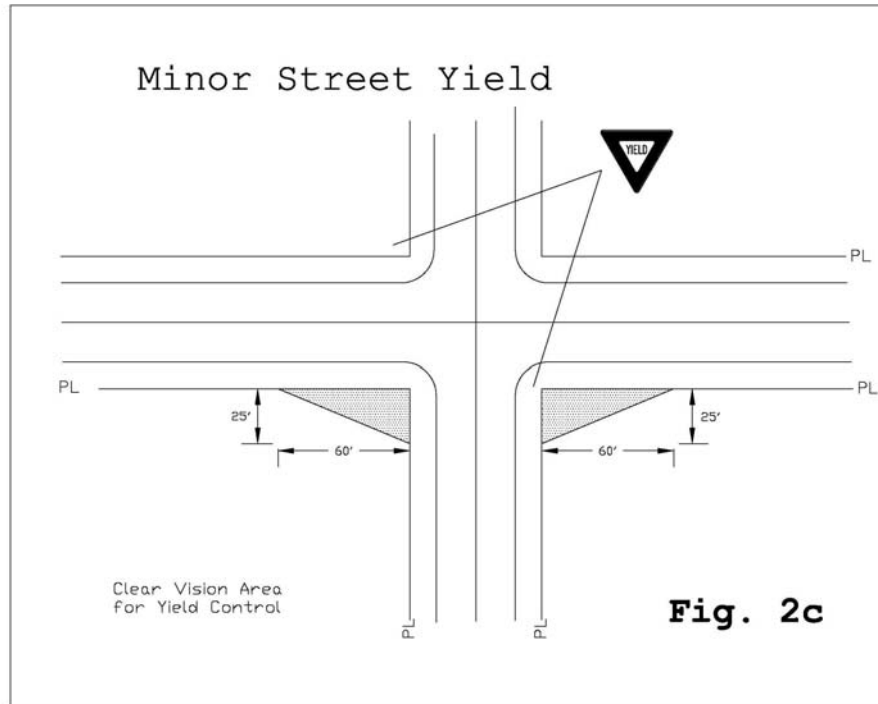
At any intersection where all approaches are controlled by stop signs the illustrated clear vision area shall be maintained.



**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

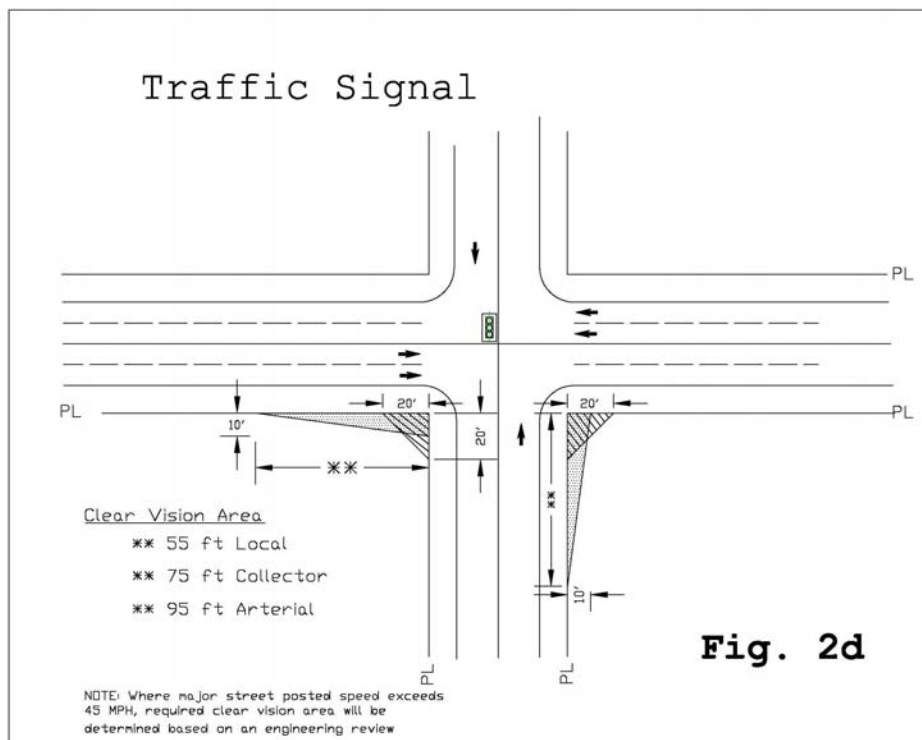
**FIGURE 2c. VISIBILITY AT INTERSECTIONS: YIELD CONTROL**

At any intersection where one (1) or more approaches is controlled by a yield sign the illustrated clear vision area shall be maintained.



**FIGURE 2d. VISIBILITY AT INTERSECTIONS: TRAFFIC SIGNAL CONTROL**

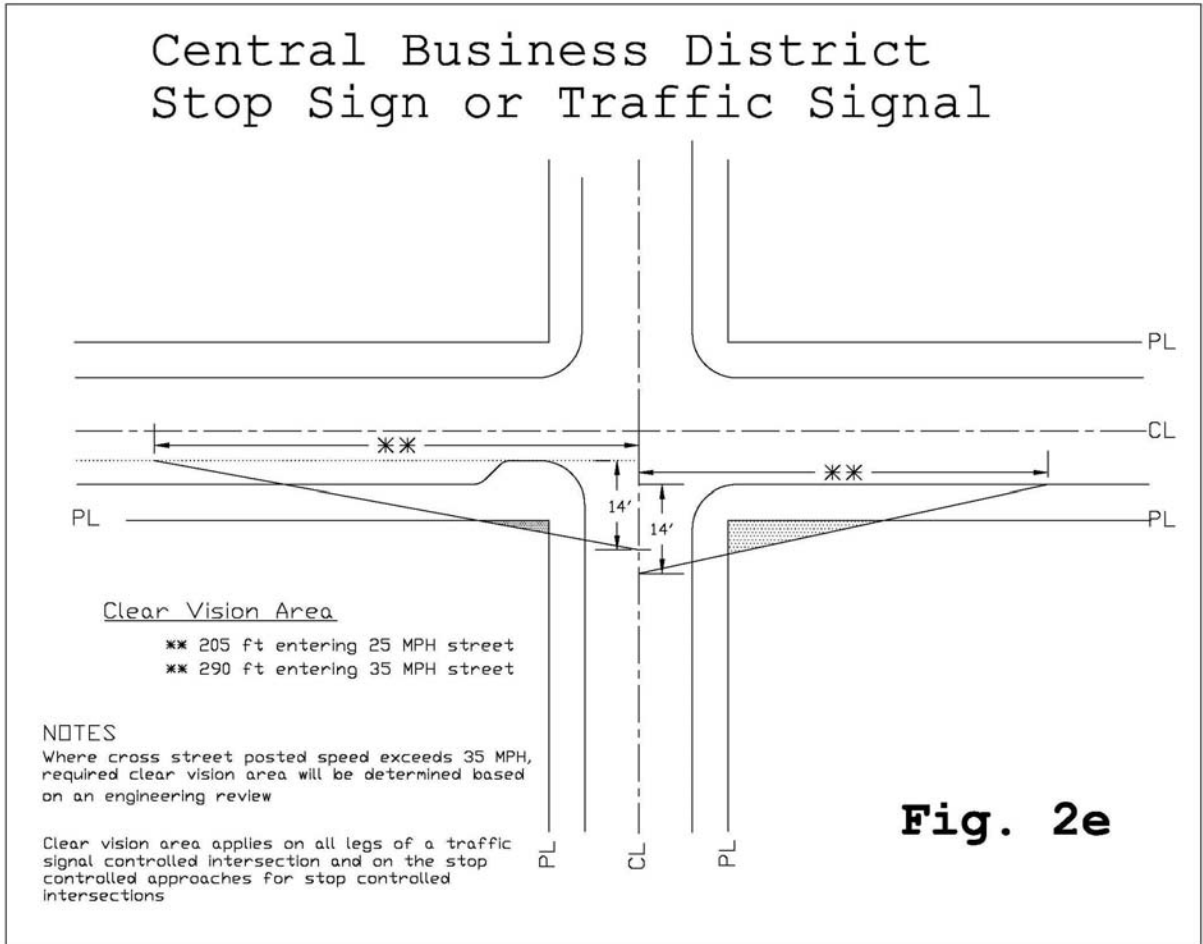
At any intersection where traffic is controlled by traffic signals the illustrated clear vision area shall be maintained.



ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

FIGURE 2e. VISIBILITY AT STOP SIGN AND TRAFFIC SIGNAL CONTROLLED INTERSECTIONS IN THE CENTRAL BUSINESS DISTRICT

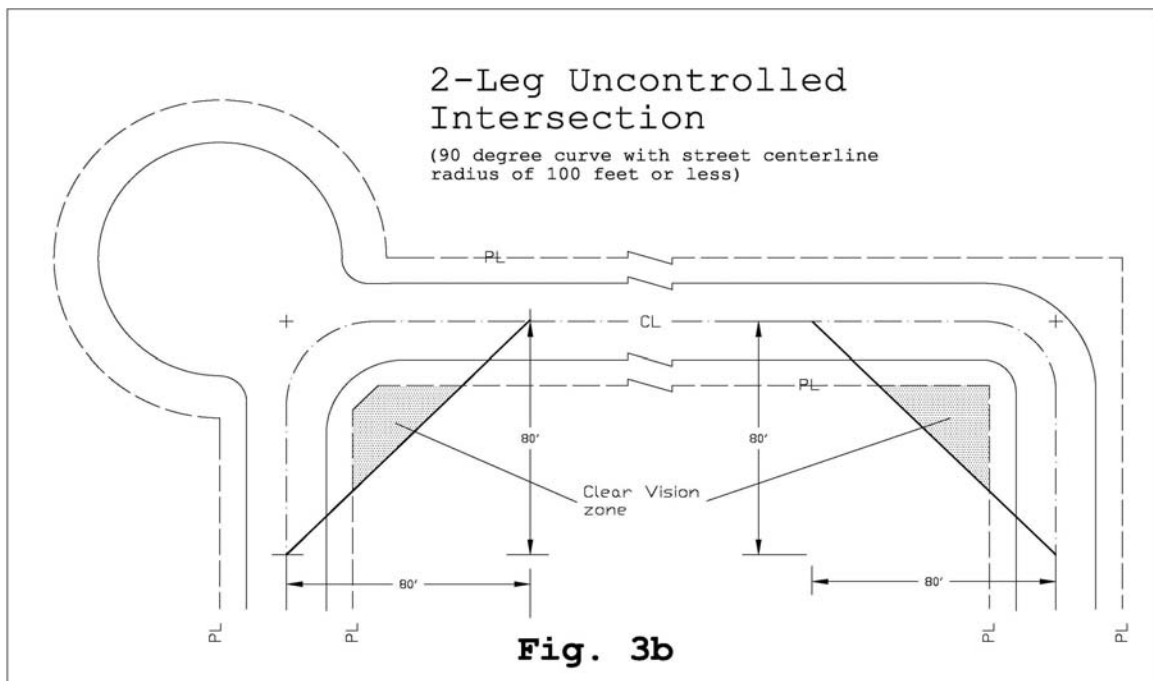
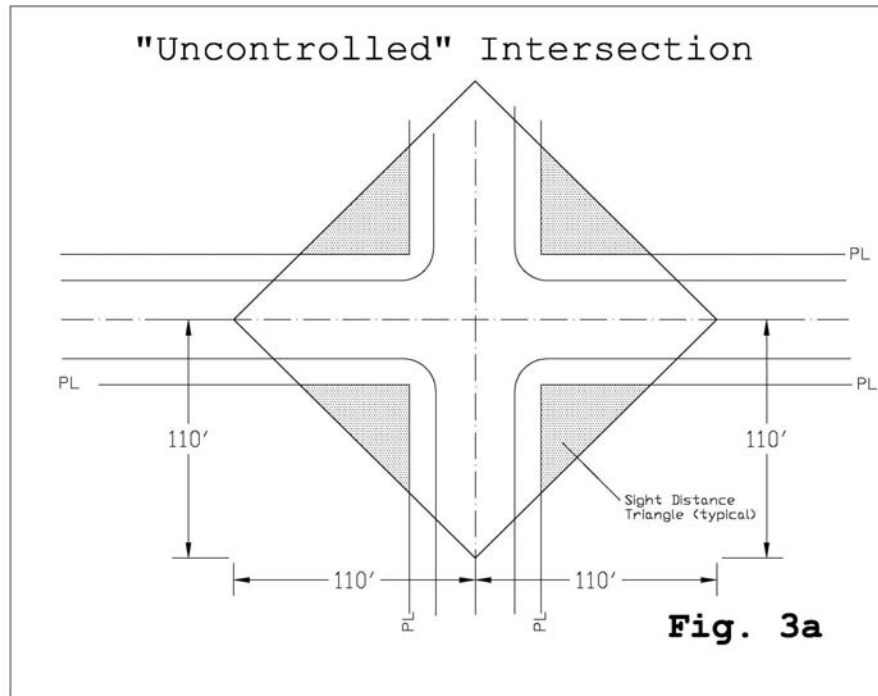
At any intersection within the Central Business District where traffic is controlled by stop signs or traffic signals the illustrated clear vision area shall be maintained.



**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

**FIGURES 3a, 3b, and 3c. VISIBILITY AT INTERSECTIONS: UNCONTROLLED**

At any intersection where none of the approaches are controlled by a stop sign, yield sign, or traffic signal, the illustrated clear vision areas shall be maintained.



ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

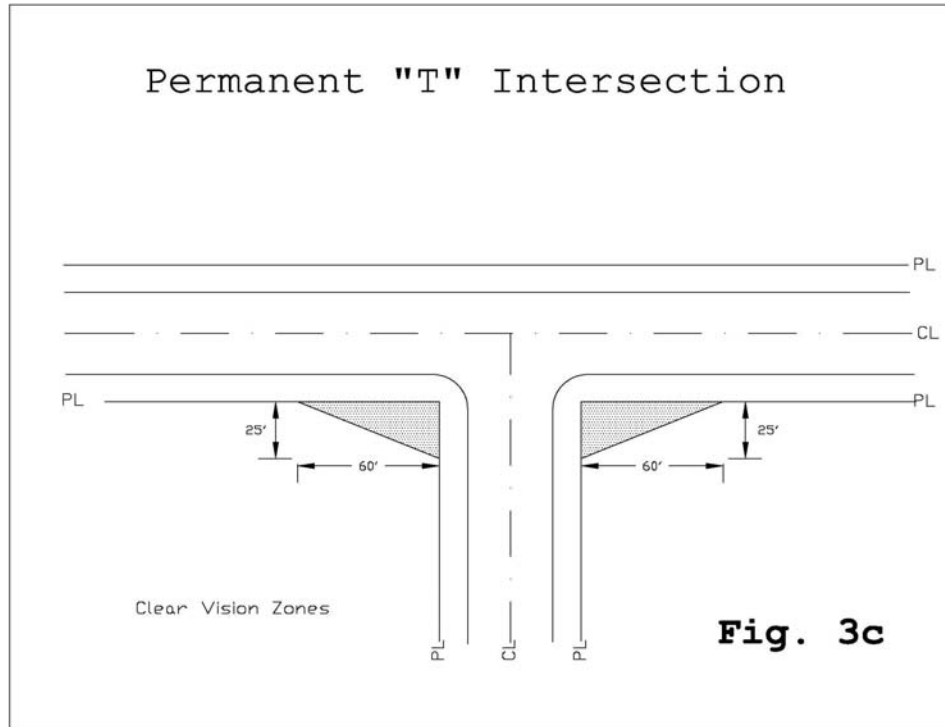
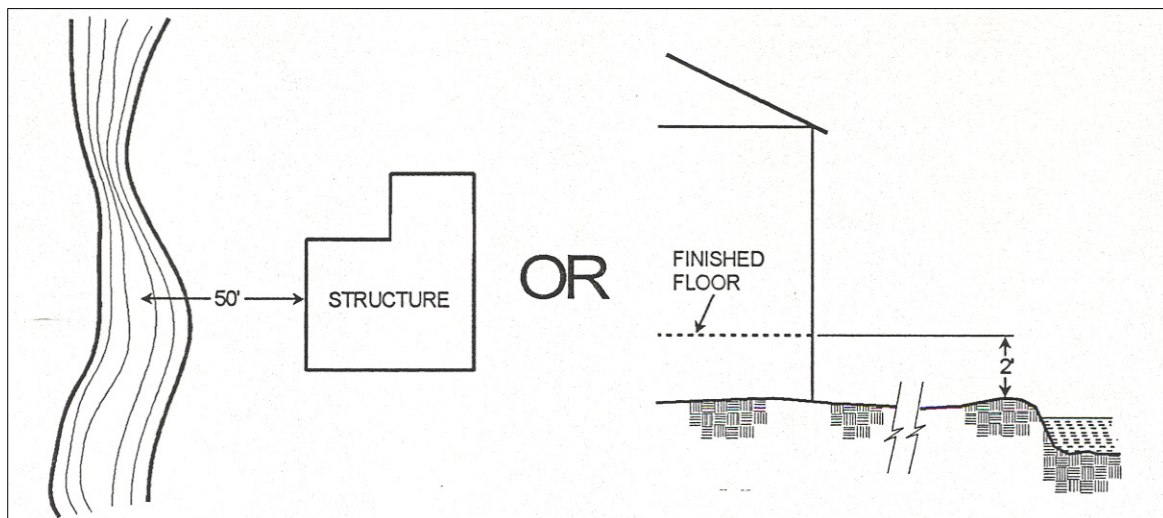


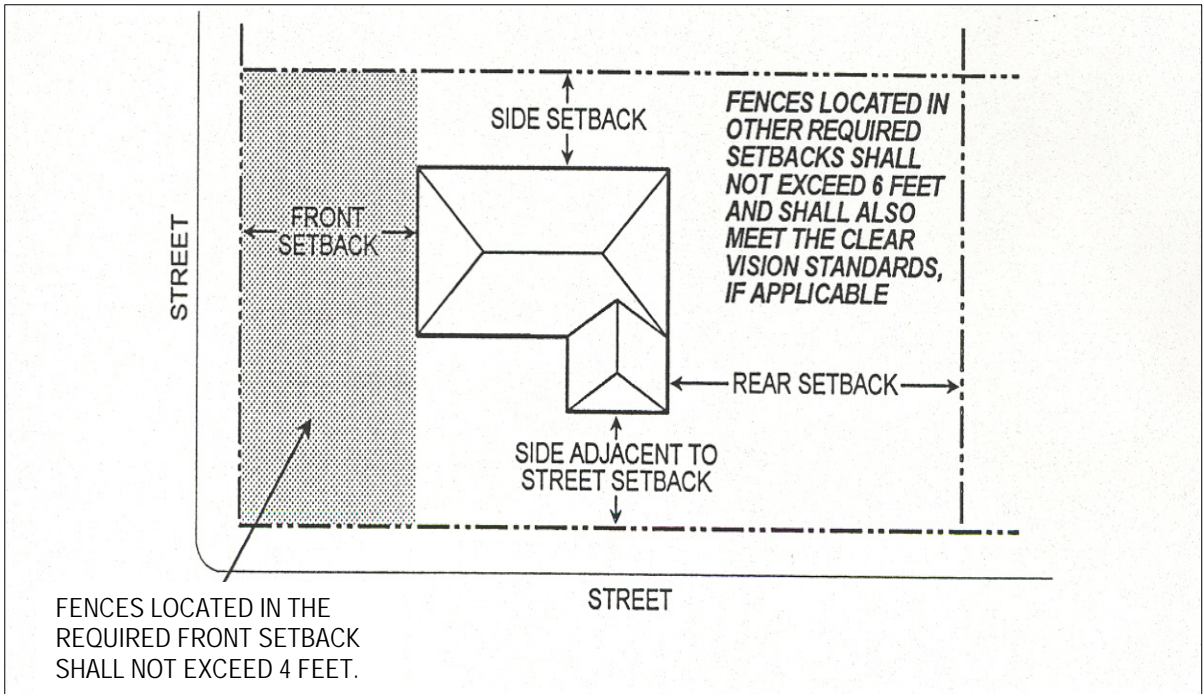
FIGURE 4. WATERCOURSE SETBACKS

Any new structure, addition to an existing structure or similar improvements, located adjacent to a watercourse not delineated with a floodway/floodplain by FEMA, shall either be setback 50' from the watercourse centerline or have a finished floor level which is 2' in elevation above the highest point of the adjacent watercourse bank (See also BMCC Section 27-616).



ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

FIGURE 6. FENCE



## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-619. STANDARDS FOR AMATEUR RADIO ANTENNA SUPPORT STRUCTURES

- (a) Definitions. For the purposes of this section, the terms used shall be defined as follows:
- (1) **Amateur Radio Antenna:** A ground-, building- or tower-mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, 49 CFR § 97 and as designated by the Federal Communications Commission (FCC).
  - (2) **Amateur Radio Antenna Support Structure:** Any structure or device specifically designed, constructed and/or erected for the purpose of attaching, mounting or otherwise affixing amateur radio antennae. The term includes the structure and any support thereto.
  - (3) **Antenna/Tower Antenna Support Structure Height:** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure including any attached antennae. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.
- (b) General Provisions. All amateur radio towers shall comply with the following requirements:
- (1) Amateur radio antenna support structures and antennae shall be located only within the rear yard and shall not be placed within any required setback and shall be located so as to minimize their impact on adjacent residential properties and adjacent rights-of-way while maintaining acceptable signal quality.
  - (2) Amateur radio antenna support structures and antennae exceeding six (6) feet in height above grade (if ground-mounted) or above the roof or ridge of the building on which they are located (if building-mounted), shall require a building permit. With each building permit, the applicant shall submit evidence as is required to show that the device is adequately anchored, designed and/or constructed so as to safeguard the general public and/or adjacent property from damage in the event of failure of the device.
  - (3) It is recommended that amateur radio antenna support structures be designed, installed, and maintained so as to blend into the surrounding environment through the use of color and alternative designs, except in instances where the color is dictated by the Federal Aviation Administration (FAA).
  - (4) In accordance with the FCC's preemptive ruling PRB1, 101 FCC 2d 952 (1985), antenna support structures erected for the primary purpose of supporting amateur radio antennae may exceed the height limitations of the underlying zoning as indicated in section 27-305, BMCC.
  - (5) Attachments to amateur radio antenna support structures, such as guy wires, shall not cross any property line or any existing or proposed easement.
  - (6) No lighting shall be permitted on any amateur radio antenna support structures except as mandated by the FAA.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (7) No signage, other than required warning signs, or displays of any type shall be permitted on any amateur radio antenna support structure.
- (c) **Applicability.** All amateur radio antenna support structures and antennae located within the City of Billings and/or the Yellowstone County zoning jurisdiction whether upon private or public lands shall be subject to this section. This section shall apply to amateur radio antenna support structures and antennae upon state and federal lands to the extent of the city's and/or county's jurisdiction by way of law, pursuant to any memoranda of understanding or otherwise. Only the following facilities shall be exempted from the application of this section.

Pre-existing amateur radio antenna support structures or antennae. Pre-existing amateur radio antenna support structures and pre-existing amateur radio antennae shall not be required to meet the requirements of this section, so long as said pre-existing antenna support structures and antennae have received all required approvals, permits and exceptions prior to adoption of this section.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-620. STANDARDS FOR WIRELESS COMMUNICATION FACILITIES

- (a) **Purpose.** The purpose of this section is to establish regulations for the siting of antenna support structures and antennae on public and private property. The goals of this section are to:
- (1) Encourage the location of antenna support structures in non-residential areas and minimize the total number of antenna support structures throughout the community;
  - (2) Strongly encourage the joint use of new and existing antenna support structures;
  - (3) Require wireless communication facilities to be located, to the extent possible, in areas where the adverse impact on the community is minimal;
  - (4) Require wireless communication facilities to be configured in a way that minimizes the adverse visual impact of the towers and antennae; and
  - (5) Enhance the ability of the providers of wireless communication services to provide such services to the community, as quickly, effectively, and efficiently as possible.
- (b) **Definitions.**
- (1) **Abandoned Antenna Support Structures:** Any antennae or antenna support structures that are not utilized or the provision of wireless communications services for a continuous period of six (6) months shall be considered abandoned.
  - (2) **Alternative antennae support structure:** An antenna support structure designed to shield, conceal or disguise the presence of antennae or towers and blend with the surrounding setting. Alternative structures may include, but are not limited to, unobtrusive architectural features on new or existing structures, utility poles, clock towers, flagpoles and church steeples. Examples of alternative antenna support structures are illustrated in subsection (o) of this Section.
  - (3) **Antenna:** Any structure or device used for the purpose of collecting or transmitting electromagnetic waves, including but not limited to directional antennae, such as panels, microwaves dishes, and satellite dishes, and omnidirectional antennae, such as whip antennae but not including satellite earth stations.
  - (4) **Antenna support structure:** Any structure or device specifically designed, constructed and/or erected for the purpose of attaching, mounting or otherwise affixing antennae. Antenna support structures may include, but are not limited to, self-supporting lattice towers, guyed towers, or monopole towers. The term also includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative antenna support structures, and the like. The term includes the structure and any support thereto. Types of antenna support structures are illustrated in subsection (o) of this

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

Section. Land mobile radio and radio and television antenna support structures are regulated under section 27-621 of these regulations.

- (5) **Antenna Support Structure Height:** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure including any attached antennae. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height. The height of roof-mounted antenna support structure height does not include the height of building on which they are mounted.
  - (6) **Wireless Communication Facility Antenna or Tower Farm:** An antenna or tower farm is a tract of land that contains no more than three (3) antenna support structures within seven hundred fifty (750) linear feet of each other. No antenna support structures located in tower farms shall exceed two hundred fifty (250) feet in height. Legal tracts must be adjacent to each other to be included in this definition.
  - (7) **Co-location:** The use of a wireless communications facility by more than one wireless communications provider.
  - (8) **Commercial Wireless Communications Services:** Licensed commercial wireless telecommunication services including cellular, personal communications services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.
  - (9) **Equipment enclosure:** A structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals. Associated equipment may include air conditioning, backup power supplies, and emergency generators.
  - (10) **Wireless Communication Facility:** An unstaffed facility for the transmission and/or reception of radio frequency (RF), microwave or other signals for commercial communications purposes, typically consisting of an equipment enclosure, an antenna support structure and one or more antennae. Amateur radio, land mobile radio, and commercial radio and television facilities are excluded from this definition.
  - (11) **FAA:** Federal Aviation Administration.
  - (12) **FCC:** Federal Communications Commission.
- (c) **Applicability.** All wireless communication facilities located within the City of Billings and/or the Yellowstone County zoning jurisdiction whether upon private or public lands shall be subject to this section. This section shall apply to wireless communication facilities upon state and federal lands to the extent of the city's and/or county's jurisdiction by way of law, pursuant to any memoranda of understanding or otherwise. Only the following facilities shall be exempted from the application of this section.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (1) Amateur radio stations and antenna support structures (See sections 27-305; 27-306 and 27-619, BMCC.)
  - (2) Antennae and antenna support structures for land mobile radio and radio and television (See sections 27-305, 27-306 and 27-621 BMCC).
  - (3) Pre-existing antenna support structures or antennae. Pre-existing antenna support structures and pre-existing antennae shall not be required to meet the requirements of this section, so long as said pre-existing antenna support structures have received all required approvals, permits and exceptions prior to adoption of this section. (See subsection H of this Section.)
- (d) **Commercial antenna support structures and antennae located in residential zoning districts.**
- (1) Antenna support structures and antennae shall be permitted as an allowed use in all residential zoning districts provided they meet all of the following criteria:
    - a. Alternative antenna support structures conforming to all applicable provisions of this Code and roof-mounted antennae that do not add more than twenty (20) feet to the total height of the building on which they are mounted shall be permitted as an allowed use only when located on school, government-owned utility, and other government sites.

Proposed antennae or antenna support structures that are contrary to this section are subject to the special review requirements as provided in Sections 27-1503 and 27-1509 of these zoning regulations, or may be submitted to the Board of Adjustment for a hearing, whichever is the preference of the owner/agency. The Board of Adjustment shall hold a public hearing at a time requested by the owner/agency, in accordance with Sections 27-1505(c) or 27-1510(c), BMCC. The Board of Adjustment shall forward comments and recommendations to the affected government agency for their consideration.
    - b. Antennae co-located on existing or approved alternative antenna support structures or existing or approved antenna support structures that have previously received all required approvals and permits shall be permitted as an allowed use.
  - (2) Antenna support structures and antennae shall be permitted in the Agricultural-Open Space (AO) zoning district provided the following conditions and all applicable setback, lot coverage, and building (commercial equipment enclosures) height requirements are met:
    - a. Antenna support structures conforming to all applicable provisions of this Code shall be permitted when:
      - (1) Located on school, government-owned utility, and government sites and alternative antenna support structures or roof-mounted antennae are used. Proposed antennae or antenna support structures that are contrary to this section are subject to the special review requirements as provided

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

in Sections 27-1503 and 27-1509 of these zoning regulations, or may be submitted to the Board of Adjustment for a hearing, whichever is the preference of the owner/agency. The Board of Adjustment shall hold a public hearing at a time requested by the owner/agency, in accordance with Sections 27-1505(c) or 27-1510(c), BMCC. The Board of Adjustment shall forward comments and recommendations to the affected government agency for their consideration.

(2) Antenna support structures fifty (50) feet or less in height.

- b. Antenna support structures that are greater than fifty (50) feet in height shall be required to obtain special review approval.
- c. Antennae co-located on existing or approved alternative antenna support structures or existing or approved antenna support structures that have previously received all required approvals and permits shall be permitted as an allowed use.
- d. Wireless communication facility tower farms are permitted by special review.

(e) **Commercial antenna support structures and antennae located in commercial zoning districts**

- (1) Alternative antenna support structures shall be permitted as an allowed use in all commercial zoning districts.
- (2) Antenna support structures shall be permitted as an allowed use in all commercial zoning districts when located on school, government-owned utility, and other government sites.

Proposed antennae or antenna support structures that are contrary to this section are subject to the special review requirements as provided in Sections 27-1503 and 27-1509 of these zoning regulations, or may be submitted to the Board of Adjustment for a hearing, whichever is the preference of the owner/agency. The Board of Adjustment shall hold a public hearing at a time requested by the owner/agency, in accordance with Sections 27-1505(c) or 27-1510(c), BMCC. The Board of Adjustment shall forward comments and recommendations to the affected government agency for their consideration.

- (3) Antennae co-located on existing alternative antenna support structures or existing antenna support structures which have previously received all required approvals and permits shall be permitted as an allowed use in all commercial zones.
- (4) Antenna support structures and antennae located in Residential Professional (RP), Neighborhood Commercial (NC), and Entryway Mixed Use (EMU) that do not meet the requirements of subsections 1, 2, and 3 shall be required to obtain special review approval. Wireless communication facility tower farms are not allowed in these zoning districts.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (5) New antenna support structures erected in the Medical Corridor shall be required to follow the permit zoning approval procedures in Section 27-901, BMCC. Antennae may be placed on existing antenna support structures and alternative antenna support structures that have previously received all required approvals and permits and meet the provisions and requirements of these regulations, without obtaining permit zoning approval.
- (6) Antenna support structures and antennae located in Community Commercial (CC), Highway Commercial (HC), Controlled Industrial (CI), South 27<sup>th</sup> Street, Central Business District (CBD), Entryway Light Commercial (ELC), Entryway General Commercial (EGC), Entryway Light Industrial (ELI) and Public (P) zoning districts shall be permitted as an allowed use provided that the towers meet the requirements subsections 1, 2, and 3, or:
  - a. Roof-mounted antenna that do not add more than twenty (20) feet to the total height of the building on which it is mounted shall be permitted as an allowed use. See additional requirements for roof-mounted antenna in (g)(10)b. of this section.
  - b. Antenna support structures fifty (50) feet in height or less shall be permitted as an allowed use.
  - c. Antenna support structures that are greater than fifty (50) feet in height shall be required to obtain special review approval.
  - d. Wireless communication facility tower farms are permitted with special review approval, except in the CBD and South 27<sup>th</sup> Street zoning districts.
- (7) All antenna support structures located in Heavy Industrial (HI) shall be permitted as an allowed use, including tower farms.
- (f) **Antenna support structures located in parks.** The presence of certain wireless communication facilities may conflict with the purpose of some city and county owned parks. Wireless communication facilities will be considered only following a recommendation by the City-County Planning Department; the City Parks, Recreation, and Cemetery Advisory Board or County Parks Board, and approved by the City Council or County Commission. Factors that will be considered include:
  - (1) Public parks of a sufficient scale and character that are adjacent to an existing commercial or industrial use;
  - (2) Commercial recreation areas and major playfields; and,
  - (3) Park maintenance facilities.
- (g) **General requirements.** The requirements set forth in this section shall govern the location and construction of all wireless communications facilities governed by this section.
  - (1) *Building codes and safety standards.* To ensure the structural integrity of wireless communication facilities, the owner of a facility shall ensure that it is maintained in compliance with standards contained in applicable local building

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

codes and the applicable standards for such wireless communication facilities, as amended from time to time.

- (2) *Regulatory compliance.* All wireless communication facilities must meet or exceed current standards and regulations of the FAA, the FCC, and other local, state or federal agencies with the authority to regulate facilities governed by this ordinance. All wireless communication facilities must comply with all revised standards and regulations within the date established by the agency promulgating the standards or regulations.
- (3) *Setbacks:*
  - a. Antenna support structures adjacent to residential uses or zoning. Antenna support structures must be set back, from all property lines, a distance equal to one-half (½) the height of the structure from any off-site residential structure or residentially zoned lot. Accessory structures must maintain a minimum of a fifteen (15) foot setback from any lot line adjacent to a residential structure or residentially zoned lot, or the required setback of the zoning district where the antenna support structure is located, whichever is greater.
  - b. Commercial and industrial zoning setbacks. Antenna support structures and accessory facilities must meet the minimum yard setback requirements, including arterial setbacks, for the zoning district in which they are located.
- (4) *Lot coverage and height:* Antenna support structures and accessory structures shall not exceed lot coverage requirements for the zoning district in which they are located. Accessory structures shall not exceed the height restrictions for the zoning district in which they are located.
- (5) *Fencing and buffering.*
  - a. Fencing. A chain link or solid wood fence, or masonry wall at least six (6) feet in height (eight (8) feet if razor or barbed wire is to be used) shall be constructed and maintained around the perimeter of the antenna support structure site. Climb-proof shields can be substituted for a fence or wall around the structure. Solid fences, at least six (6) feet in height, are required adjacent to residential uses and residentially zoned property.
  - b. Landscaping. For all facilities the following will be required: a continuous evergreen hedge at least four (4) feet in height when planted, shall be planted and maintained around the perimeter of the antenna support structure outside of the required fencing and spaced close together to provide a continuous visual screen. Shrubs shall also be planted and maintained around the guy anchors for visual screening purposes.

A performance bond or letter of credit for one hundred fifty percent (150%) of the landscaping and fencing materials and labor costs shall be posted with the Planning Department, prior to building permit approval,

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

to ensure the placement of required landscaping and fencing in accordance with Section 27-1110, BMCC.

- c. *Commercial landscaping.* Landscaping requirements shall not apply to antenna support structures located in the Heavy Industrial (HI) zoning district.
  - d. *Exceptions for City Airport Airfield Area.* If federal safety and security standards within the city airport's airfield area prevent an antenna support structure from being fenced or landscaped, items (5)(a) and (5)(b) will not apply. Documentation of these standards must be submitted with the building permit or special review applications.
- (6) *Lighting.* Antenna support structures shall not be artificially lighted unless required by the FAA or other local, state, or federal agency. If the FAA requires safety lighting, the use of red beacons is preferred to flashing strobe lights. Security lighting on site may be mounted up to twenty (20) feet high on the tower, and shall be directed towards the ground to reduce light pollution, prevent off-site light spillage, and avoid illuminating the tower. Cut-off security lighting must be used adjacent to residential uses or residentially zoned lots. When incorporated into the approved design of the facility, light fixtures used to illuminate sports fields, parking lots, or similar areas may be included in the facility.
- (7) *Signage.* Signage shall be limited to non-illuminated warning and equipment identification signs.
- (8) *Co-location.*
- a. Antenna support structures should be designed in all respects to accommodate both the applicant's antennae and antennae for at least two (2) additional comparable antennae if the antenna support structure is over one hundred (100) feet in height or for at least one (1) additional comparable antennae if the tower is between fifty (50) feet and one hundred (100) feet in height.
  - b. All new antennae must co-locate on existing or approved antenna support structures or alternative antenna support structures unless it can be demonstrated co-location is not feasible as provided for in (k)(7) of this section.
- (9) *Maintenance.*
- a. Equipment at a wireless communication facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a collector or local street, access for maintenance vehicles shall be exclusively by means of the collector or local street.
  - b. All property used for the siting of an antenna support structure or antenna shall be maintained, without expense to the city and/or county,

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

so as to be safe, orderly, attractive, and in conformity with city and/or county codes including those regarding the removal of weeds, trash, and landscape maintenance.

(10) *Visual impact/aesthetics.*

- a. Wireless communication facilities shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable local, state, or federal agency, be painted a neutral color or painted and/or textured to match the existing structure so as to reduce visual obtrusiveness.
- b. If an antenna is installed on a structure other than a tower, the antenna and associated electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible. Antennae and antenna support structures may be mounted on existing buildings that are thirty (30) feet or more in height above the street grade.
- c. Roof-mounted antennae and antenna support structures shall not add more than twenty (20) feet to the total height of the building on which they are mounted. Roof-mounted equipment shall be made visually unobtrusive to match existing air conditioning units, stair, elevator towers or other architectural elements. Only monopole antennae support structures with omni-directional (whip) or low profile single-directional (panel) shall be installed on building roofs. Examples of acceptable designs are shown in subsection (o) of this section. Crow's nest antennae arrays are prohibited on roof-top structures.
- d. Wireless communication facilities attached to new or existing structures shall be designed to blend with the structure's architecture and should be placed directly above, below or incorporated with vertical design elements of a structure.
- e. Wireless communication facilities shall be located as to minimize their visibility and not be placed within historic or scenic view corridors as designated by the Billings City Council or the Yellowstone County Commission, or by any state or federal law or agency.

(11) *Antenna support structure separation.* All antenna support structures over fifty (50) feet in height, regardless of the zoning district in which the structure is located, shall be located at least one (1) mile from any other antenna support structure that is over fifty (50) feet. Up to three (3) antenna support structures located within an approved wireless communication facility tower farm shall be located at least one (1) mile from any other tower farm.

Exceptions to the terms of subsection (g)(11) may be granted by the governing body during the special review process when it is found that no existing or approved antenna support structure within the required separation distance of

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

the proposed site can accommodate the applicant's proposed antenna or a critical need exists for the proposed location and it is technically infeasible to locate or co-locate structures at or beyond the required separation distance.

- (h) *Nonconforming wireless communication facilities.* Antenna support structures and/or facilities in existence on the date of the adoption of these regulations, that do not comply with the requirements of these regulations, (nonconforming antenna support structures) are subject to the following provisions:
  - (1) Nonconforming antenna support structures may continue their present use, but may not be expanded or increased in height without complying with these regulations, except as further provided in this section.
  - (2) Nonconforming antenna support structures which are hereafter damaged and destroyed, by less than fifty (50) percent of its replacement value, due to any reason or cause may be repaired and restored to their former use, location, and physical dimensions subject to obtaining a building permit and other necessary approvals thereof, but without otherwise complying with these regulations. If an antenna support structure is destroyed or damaged by more than fifty (50) percent of its replacement the antenna support structure must be brought into compliance with these regulations.
  - (3) The owner of any nonconforming antenna support structure may make minor modifications in order to improve the structural integrity of the facility, to allow the facility to accommodate co-located antennae or facilities, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of these regulations.
- (i) *Modifications of existing wireless communication facilities that meet the requirements of these regulations.*
  - (1) *Minor modifications.* Minor modifications to facilities permitted under these regulations shall be approved by the City-County Planning Department so long as they comply with the original approved design. Minor modifications are as follows: the addition of more antenna arrays to any existing antenna support structure, so long as the addition of the antenna arrays add no more than twenty (20) feet in height to the facility and the increase in height of the support structure is no greater than ten (10) percent. Placement of additional antennae, up to the number the antenna support structure was originally designed to accommodate, shall be considered a minor modification.
  - (2) *Major modifications.* Major modifications to antenna support structures permitted under these regulations shall be approved through a special review. Major modifications are any that exceed the definition of minor modifications.
- (j) *Abandonment.* Wireless communications facilities will be considered abandoned if they are unused by all providers at the facility for a period of six (6) months. Determination of abandonment shall be made by the City-County Planning Department, which shall have the right to request documentation from the facility owner regarding

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

support or antenna usage. Upon abandonment, the facility owner shall have ninety (90) days to:

1. Re-use the facility, or transfer the facility to another owner who will re-use it; or
2. Dismantle the facility. If the facility is not removed within ninety (90) days of abandonment, the city and/or county may remove the facility at the facility and/or property owner's expense. If the facility is removed, city and/or county approval of the facility will expire.

If the facility owner is unable to remove the facility within the ninety (90) days due to unusual circumstances, the City-County Planning Department may grant the facility owner an additional ninety (90) days in which to comply with the requirements of this section.

(k) *Special Review submittal requirements.* The applicant of new wireless communication facilities shall provide the following documentation for review by the City-County Planning Department:

- (1) A map to scale showing the service area of the proposed wireless communication facility and an explanation of the need for that facility.
- (2) A site/landscaping plan showing the following items:
  - a. North arrow.
  - b. The location and dimensions of all vehicular points of ingress and egress, drives, alleys and streets.
  - c. Property boundaries and lot line dimensions.
  - d. The locations and dimensions of all existing and proposed buildings, structures, and improvements including those that will be removed. All information must be labeled.
  - e. Setbacks from all property boundaries for existing and proposed structures and buildings.
  - f. Centerline and names of major and minor arterial streets relevant to the application.
  - g. Elevation drawing of proposed wireless communication facility including the antenna support structure, antenna platforms and associated equipment enclosures. Also indicate the maximum number of antenna platforms that can be supported.
  - h. Detailed landscaping plan of the site.
  - i. Location of artificial light sources and the areas of illumination.
  - j. Applications for tower farms shall include items a. through i. of this subsection (k)(2) and an overall development plan showing the location of future structures and equipment enclosures.
  - k. Latitude, longitude and height of proposed antenna support structures.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

1. Other pertinent features as determined by the Zoning Coordinator or Development Review Committee.
- (3) Area map showing the property boundaries of adjacent property and the location of existing buildings.
- (4) Inventory of existing and approved sites. Each applicant for one or more antenna support structure shall provide to the City-County Planning Department a map showing the locations and service area of existing and approved antenna support structures operated or utilized by the applicant, including specific information on the location, height, and design of each antenna support structure. The City-County Planning Department shall maintain an inventory of existing and approved antenna support structures, including specific information about the location, height, and design of each antenna support structures. The city may share such information with other persons, organizations or governmental authorities.
- (5) Documentation of minimum light requirements from the FAA or other local, state or federal agency for the antenna support structure and/or antennae. Where applicable, applicant will provide documentation of the FAA airspace review and a copy of comments from the FAA.
- (6) When the applicant is a wireless service provider, proof that the applicant is licensed by the FCC to provide the wireless communication services that the proposed facility is designed to support.
- (7) Availability of suitable existing or approved antenna support structures. No new antenna support structure shall be permitted unless the applicant clearly demonstrates, in writing, to the reasonable satisfaction of the City-County Planning Department that no existing or approved antenna support structure within the required separation distance of the proposed site can accommodate the applicant's proposed antenna. Closer separation distances may be approved if the applicant clearly demonstrates a critical need for the alternative location and the infeasibility of locating or co-locating wireless communication facility at or beyond the required separation distance. Evidence submitted to demonstrate that no existing or approved structure can accommodate the applicant's proposed antenna must include a discussion of the following items, if relevant.
  - a. No existing or approved antenna support structures are located within the geographic area required to meet the applicant's engineering requirements.
  - b. Existing or approved antenna support structures are not of sufficient height to meet the applicant's engineering requirements.
  - c. Existing or approved antenna support structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment and cannot be reinforced to provide sufficient structural strength.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

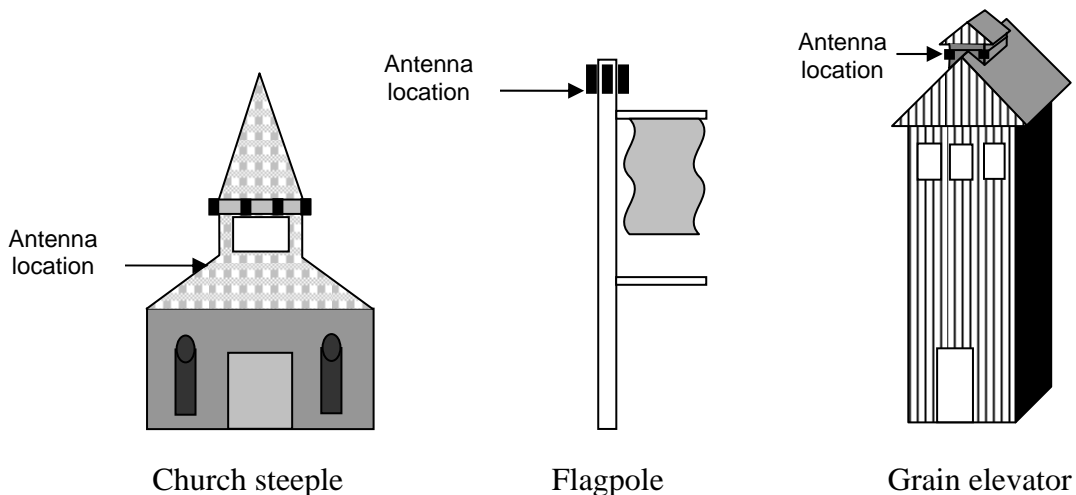
- d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing or approved antenna support structures, or the antenna on the existing or approved antenna support structures would cause interference with the applicant's proposed antenna.
  - e. The fees or costs required to share an existing or approved antenna support structure or to adapt an existing or approved antenna support structures for sharing are unreasonable. Costs below new tower development are presumed reasonable.
  - f. Property owners or owners of existing or approved antenna support structures are unwilling to accommodate the applicant's needs.
  - g. The applicant demonstrates that there are other limiting factors that render existing or approved antenna support structures unsuitable.
- (8) Co-location agreement. If co-location is feasible, the owner of the antenna support structure shall certify, prior to permit approval, that the owner will accept for co-location any FCC licensed wireless communication provider using compatible technology on commercially reasonable terms up to the antenna support structure's capacity to accommodate additional antennae. The applicant shall also include a statement on how requests for co-locators will be processed.
- (9) Effect of surrounding property values. The applicant must submit information that substantiates there will be no adverse effects on surrounding property values resulting from the proposed facility.
- (1) Special review uses.
- (1) A request for a special review shall be initiated by application to the City-County Planning Department and handled in accordance with the special review procedure provided in section 27-1503 and 27-1509 of these zoning regulations. The Billings City Council or Yellowstone County Commission may issue special review approval under these sections provided they have determined that the requirements of these regulations have been satisfied and, further, that the benefits of and need for the proposed wireless communication facilities are greater than possible depreciating effects and damage to neighboring properties.
  - (2) In granting special review approval, the Billings City Council or Yellowstone County Commission may impose additional conditions to the extent determined necessary to buffer or otherwise minimize adverse effects of the proposed wireless communication facilities on surrounding properties.
  - (3) Expiration of special review approval.
    - a. A building permit must be applied for within six (6) months of special review approval and the project shall be completed within one (1) year from the date the special review is granted by the City Council or County Commission. For the purpose of these regulations, the term standard of construction shall be defined as the installation of a

**ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

permanent foundation for the antenna support structure. The City Council and/or County Commission may grant one (1) six (6) month extension of the period to start construction upon written request by the applicant.

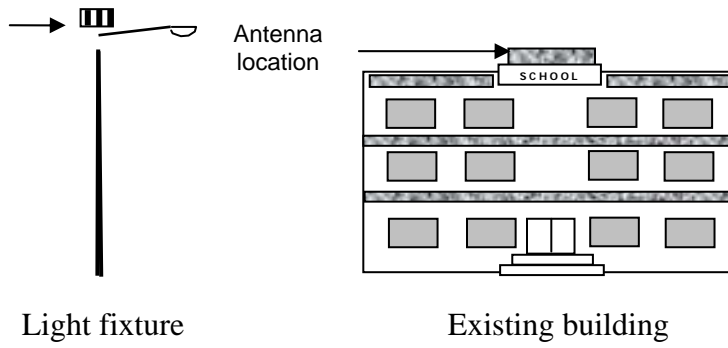
- b. The City Council or County Commission shall not approve an extension unless the development plan is brought into conformance with any relevant zoning regulations that have been amended subsequent to the original approval and unless the applicant provides adequate evidence that construction is able to begin within the time period sought. This evidence shall include, but not be limited to, the acquisition of any or all required government approvals and project financing, the City Council or County Commission may as a condition of approval of a special review establish the period of time such special review may remain in effect.
- (m) Appeals. Appeals from any decision of the City-County Planning Department may be taken by any person aggrieved or any official of the city or county affected by the decision of the City-County Planning Department. Such appeal shall be to the City and/or County Board of Adjustment pursuant to Section 27-1506 or Section 27-1511 of the City of Billings and Yellowstone County Unified Zoning Regulations.
- (n) Nuisances. Wireless communication facilities, including, without limitation, power source, ventilation and cooling, shall be operated at all times within the city and/or county noise regulations, shall not be operated so as to cause the generation of heat that adversely affects a building occupant and shall not be maintained or operated in such a manner as to be a nuisance.
- (o) Wireless Communication Facilities. Illustrated examples.

(1) Alternative Antenna Support Structures

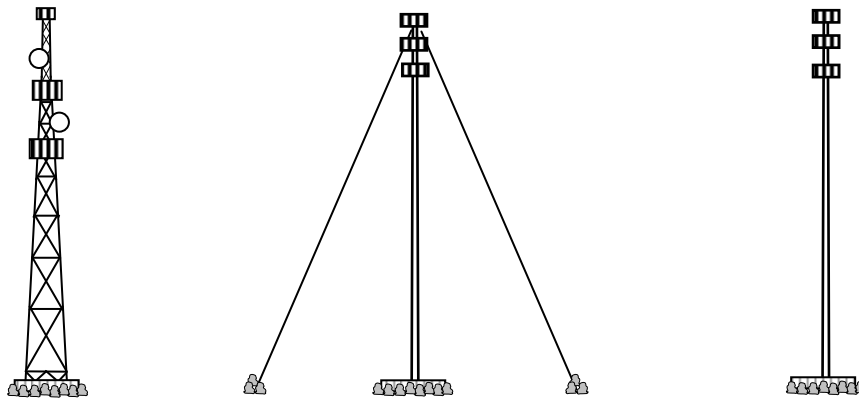


Antenna location

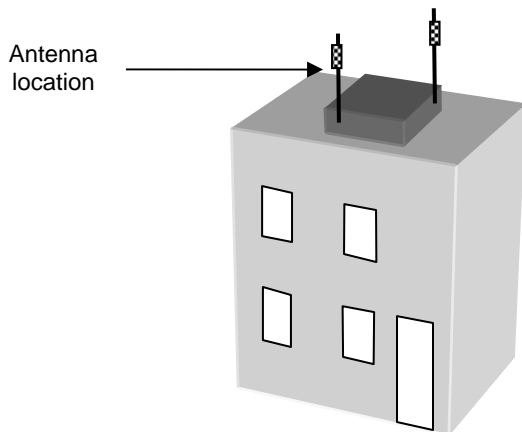
ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS



(2) Antenna Support Structures



(3) 3. Roof-mounted Antenna Support Structures and Antennae



## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

### SEC. 27-621 STANDARDS FOR LAND MOBILE RADIO AND RADIO AND TELEVISION BROADCAST ANTENNAE AND ANTENNA SUPPORT STRUCTURES

- (a) *Purpose.* The purpose of this section is to establish regulations for the siting of broadcast facilities, including land mobile radio services and radio and television broadcast antennae, antenna support structures and associated equipment and buildings on public and private property. The goals of this section, developed with the assistance and participation of the Broadcast and Land Mobile Radio industry in Yellowstone County, are to:
- (1) Encourage the location of broadcast facilities in non-residential areas and minimize the total number of antenna support structures throughout the community;
  - (2) Strongly encourage the joint use of new and existing broadcast antenna support structures;
  - (3) Require broadcast facilities to be located, to the extent possible, in areas where the adverse impact on the community is minimal;
  - (4) Require broadcast facilities to be configured in a way that minimizes the adverse visual impact of antenna support structures and antennae; and
  - (5) Enhance the ability of the providers of land mobile radio services and radio and television broadcast services to provide such services to the community, as quickly, effectively, and efficiently as possible.
- (b) *Definitions.* For the purposes of this section, the terms used shall be defined as follows:
- (1) **AM:** Amplitude-modulated broadcasting in the frequency band 535-1, 705 Kilohertz.
  - (2) **Antenna/ antenna support structure height:** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure including any attached antennae. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.
  - (3) **Broadcast antenna:** A ground-, building- or tower-mounted antenna operated as a land mobile radio service or as a broadcast radio and/or television service as defined by the Federal Communications Commission (FCC) under Code of Federal Regulations and subsequent title amendments;
    - Title 47, PART 90 (47 CFR § 90) – PRIVATE LAND MOBILE RADIO SERVICES,
    - Title 47, PART 73 (47 CFR § 73) - RADIO BROADCAST SERVICES, which includes AM, FM, and Television Services, and
    - Title 47, PART 74 (47 CFR § 74) - EXPERIMENTAL RADIO, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (4) **Broadcast antenna support structure:** Any structure or device specifically designed, constructed and/or erected for the purpose of attaching, mounting or otherwise affixing antennae. Antenna support structures may include, but are not limited to, self-supporting lattice towers, guyed towers, or monopole towers. In this section, the term applies to land mobile radio service and broadcast radio and television transmission antenna support structures. The term includes the structure and any support thereto.
  - (5) **Broadcast antenna or tower farm:** A tract of land that contains three (3) or more broadcast or land mobile radio service antenna support structures, any two are spaced no more than seven hundred fifty (750) linear feet of each other. Legal tracts must be adjacent to each other to be included in this definition. The term is inclusive of all antenna support structures, equipment enclosures, buildings and any additions thereto.
  - (6) **Broadcast facilities** An unstaffed facility for the transmission and/or reception of radio signals for communications purposes, typically consisting of an equipment building or enclosure, an antenna support structure and one or more antennae. This definition applies exclusively to land mobile radio fixed systems, and radio and television broadcast transmission facilities.
  - (7) **FAA:** Federal Aviation Administration.
  - (8) **FCC:** Federal Communications Commission.
  - (9) **Land Mobile Radio Service (LMRS):** A mobile service between base stations and land mobile stations or between land mobile stations as defined in Title 47, PART 90 (47 CFR § 90) – Private Land Mobile Radio Services.
- (c) *Applicability.* All land mobile radio service and radio and television broadcast antenna and antenna support structures located within the City of Billings and/or the Yellowstone County zoning jurisdiction whether upon private or public lands shall be subject to this ordinance/resolution. This ordinance/resolution shall apply to broadcast antenna and antenna support structures upon state and federal lands to the extent of the city's and/or county's jurisdiction by way of law, pursuant to any memoranda of understanding or otherwise.
- Pre-existing land mobile radio and radio and television broadcast antenna support structures and antennae shall not be required to meet the requirements of this ordinance/resolution, except as provided under section 27-621 G, "Nonconforming broadcast facilities".
- (d) *Broadcast antenna support structures and antennae located in residential zoning districts.*
- (1) Land mobile radio and radio and television broadcast antenna support structures and antennae shall be permitted as an allowed use in all residential zoning districts provided they meet all of the following criteria:
    - a. Alternative broadcast antenna support structures conforming to all applicable provisions of this Code and roof-mounted antennae that do

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

not add more than twenty (20) feet to the total height of the building on which it is mounted shall be permitted as an allowed use only when located on school, government-owned utility, and other government sites. Proposed antennae or antenna support structures that are contrary to this section are subject to the special review requirements as provided in Sections 27-1503 and 27-1509 of these zoning regulations, or may be submitted to the Board of Adjustment for a hearing, whichever is the preference of the owner/agency. The Board of Adjustment shall hold a public hearing at a time requested by the owner/agency, in accordance with Sections 27-1505(c) or 27-1510(c), BMCC. The Board of Adjustment shall forward comments and recommendations to the affected government agency for their consideration.

- b. Antennae co-located on existing or approved alternative broadcast antenna support structures or existing or approved broadcast antenna support structures, which have previously received, all required approvals and permits shall be permitted as an allowed use.
- (2) Broadcast antenna support structures and antennae shall be permitted in the agricultural-open space (AO) zoning district provided the following conditions and all applicable setback, lot coverage, and building (commercial equipment enclosures) height requirements are met:
- a. Broadcast antenna support structures conforming to all applicable provisions of this Code shall be permitted when:
    - (1) Located on school, government-owned utility, and government sites and alternative antenna support structures or roof-mounted antennae are used. Proposed antennae or antenna support structures that are contrary to this section are subject to the special review requirements as provided in Sections 27-1503 and 27-1509 of these zoning regulations, or may be submitted to the Board of Adjustment for a hearing, whichever is the preference of the owner/agency. The Board of Adjustment shall hold a public hearing at a time requested by the owner/agency, in accordance with Sections 27-1505(c) or 27-1510(c), BMCC. The Board of Adjustment shall forward comments and recommendations to the affected government agency for their consideration.
    - (2) Broadcast antenna support structures fifty (50) feet or less in height.
  - b. Broadcast antenna support structures that are greater than fifty (50) feet in height shall be required to obtain special review approval.
  - c. Broadcast antennae co-located on existing or approved alternative broadcast antenna support structures or existing or approved broadcast antenna support structures that have previously received all required approvals and permits shall be permitted as an allowed use.
  - d. Broadcast antenna or tower farms are permitted by special review.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (e) Broadcast antenna support structures and antennae located in commercial zoning districts.
  - (1) Broadcast antenna support structures fifty (50) feet in height or less shall be permitted as an allowed use.
  - (2) Broadcast antenna support structures that exceed 50 feet in height or the maximum height limitations in the underlying commercial and industrial zoning districts as indicated in section 27-306, BMCC (whichever is greater) are permitted by special review.
  - (3) Broadcast antenna or tower farms are permitted by special review, except in the CBD and South 27th Street zoning districts.
  - (4) All broadcast antenna support structures located in heavy industrial (HI) shall be permitted as an allowed use, including broadcast antenna or tower farms.
  - (5) All broadcast facilities located within the boundaries of an approved or preexisting broadcast antenna or tower farm shall be permitted as an allowed use.
- (f) *General requirements.* The requirements set forth in this section shall govern the location and construction of all land mobile radio service and radio and television transmission facilities governed by this section.
  - (1) Building codes and safety standards. To ensure the structural integrity of broadcast facilities, the owner of a facility shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for such facilities.
  - (2) Regulatory compliance. All broadcast facilities must meet current standards and regulations of the FAA, the FCC, and other local, state or federal agencies with the authority to regulate facilities governed by this section.
  - (3) *Setbacks:*
    - a. Broadcast antenna support structures adjacent to residential uses or zoning. Broadcast antenna support structures must be set back, from all property lines, a distance equal to one-half ( $\frac{1}{2}$ ) the height of the structure from any off-site residential structure or residentially zoned lot. Accessory structures, such as equipment enclosures or transmitter buildings, must maintain a minimum of a fifteen (15) foot setback from any lot line adjacent to a residential structure or residentially zoned lot, or the required setback of the zoning district where the antenna support structure is located, whichever is greater.
    - b. Commercial and industrial zoning setbacks: Broadcast antenna support structures and accessory facilities must meet the minimum yard setback requirements, including arterial setbacks, for the zoning district in which they are located.
    - c. Broadcast facilities in broadcast antenna or tower farms: Antenna support structures and accessory facilities located in antenna or tower

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

farms must meet the minimum yard setback requirements, including arterial setbacks, for the zoning district in which they are located.

- (4) *Lot coverage and height:* Broadcast antenna support structures and accessory structures shall not exceed lot coverage requirements for the zoning district in which they are located. Building and equipment enclosures shall not exceed the height restrictions for the zoning district in which they are located.
- (5) *Fencing and buffering.*
  - a. *Fencing.* A chain link or solid wood fence, or masonry wall at least six (6) feet in height (eight (8) feet if razor or barbed wire is to be used) shall be constructed and maintained around the perimeter of the broadcast antenna support structure site. Climb-proof shields can be substituted for a fence or wall around the structure. Solid fences, at least six (6) feet in height are required adjacent to residences and residentially zoned property. All AM broadcast antenna support structures must be surrounded by a suitable fence as required by FCC regulations.
  - b. *Landscaping adjacent to residential uses and/or residential zoning.* For broadcast facilities located in a residential zoning district, adjacent to a residential use, or adjacent to a residentially zoned parcel, the following will be required: a continuous evergreen hedge at least four (4) feet in height when planted, shall be planted and maintained around the perimeter of the antenna support structure outside of the required fencing and spaced close together to provide a continuous visual screen. Shrubs shall also be planted and maintained around the guy anchors for visual screening purposes. AM Broadcast stations are exempt from this requirement due to overriding FCC regulations regarding vegetation in ground radial systems.

A performance bond or letter of credit for one hundred fifty percent (150%) of the landscaping and fencing materials and labor costs shall be posted with the Planning Department to ensure the placement of required landscaping and fencing in accordance with Section 27-1110, BMCC.
  - c. *Commercial landscaping.* Landscaping requirements shall not apply to broadcast antenna support structures located in Agricultural-Open Space, commercial or industrial zoning districts or approved broadcast antenna or tower farms.
  - d. *Exceptions for City Airport Airfield Area.* If federal safety and security standards within the city airport's airfield area prevent a broadcast antenna support structure from being fenced or landscaped, items (5)(a) and (5)(b) will not apply. Documentation of these standards must be submitted with the building permit or special review applications.
- (6) *Lighting.* Broadcast antenna support structures shall not be artificially lighted unless required by the FAA or other local, state, or federal agency. Security

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

lighting may be placed on a support structure no higher than twenty feet above ground. Cut-off security lights must be used in or adjacent to residential areas to prevent light spillage onto adjacent property.

- (7) *Signage.* Signage shall be limited to non-illuminated warning and equipment identification signs unless otherwise required by the FAA and/or FCC.
- (8) *Maintenance.*
  - a. Equipment at a broadcast facility shall be automated to the greatest extent possible to reduce traffic and congestion. Where the site abuts or has access to a collector or local street, access for maintenance vehicles shall be exclusively by means of the collector or local street.
  - b. All property used for the siting of a broadcast antenna support structure or antenna shall be maintained, without expense to the city and/or county, so as to be safe, orderly, attractive, and in conformity with city and/or county codes including those regarding the removal of weeds, trash and landscape maintenance.
- (9) *Visual impact/aesthetics.*
  - a. Broadcast antenna support structures shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable local, state, or federal agency, be painted a neutral color or painted and/or textured to match the existing structure so as to reduce visual obtrusiveness.
  - b. If a broadcast antenna is installed on a structure other than a tower, the associated electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the related equipment as visually unobtrusive as possible. Broadcast antennae and antenna support structures may be mounted on existing buildings that are thirty (30) feet or more in height above the street grade.
  - c. Roof-mounted antennae and antenna support structures shall not add more than twenty (20) feet to the total height of the building on which they are mounted. Roof-mounted equipment shall be made visually unobtrusive to match existing air conditioning units, stair, elevator towers or other background. Crow's nest antennae arrays are prohibited on rooftop structures.
  - d. Broadcast antenna or antenna support structures attached to new or existing structures shall be designed to blend with the structure's architecture and should be placed directly above, below or incorporated with vertical design elements of a structure.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (g) *Nonconforming broadcast facilities.* Broadcast facilities in existence on the date of the adoption of these regulations that do not comply with the requirements of these regulations, are subject to the following provisions:
- (1) Nonconforming broadcast facilities may continue their present use, but may not be expanded without complying with these regulations, except as further provided in this section.
  - (2) Nonconforming broadcast antenna support structures which are hereafter damaged and destroyed, by less than fifty (50) percent of its replacement value, due to any reason or cause may be repaired and restored to their former use, location, and physical dimensions subject to obtaining a building permit and other necessary approvals thereof, but without otherwise complying with these regulations. If a broadcast antenna support structure is destroyed or damaged by fifty (50) percent or more of its replacement the broadcast antenna support structure must be brought into compliance with these regulations.
  - (3) The owner of any nonconforming broadcast antenna support structure may make minor modifications in order to improve the structural integrity of the structure, to allow the structure to accommodate co-located antennae, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of these regulations.
- (h) *Modifications of existing or broadcast facilities that meet the requirements of these regulations.*
- (1) *Minor modifications.* Minor modifications to facilities permitted under these regulations shall be approved by the City-County Planning Department so long as they comply with the original approved design. Minor modifications are as follows:
    - a. The addition of one or more antenna arrays to any existing antenna support structure, so long as the addition of the antenna arrays add no more than twenty (20) feet in height to the facility and the increase in height of the support structure is no greater than ten (10) percent.
    - b. Placement of additional antennae, up to the number the antenna support structure was originally designed to accommodate, shall be considered a minor modification.
    - c. Repairs to or replacement of existing antennae or feedlines or support members (such as guy wires) are not considered modifications under this part.
  - (2) *Major modifications.* Major modifications to antenna support structures permitted under these regulations shall be approved through a special review. Major modifications are any that exceed the definition of minor modifications.
- (i) *Abandonment.* Broadcast facilities will be considered abandoned if they are unused by all providers at the facility for a period of six (6) months. Determination of abandonment shall be made by the City-County Planning Department which shall have

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

the right to request documentation from the facility owner regarding support or antenna usage. Upon abandonment, the facility owner shall have ninety (90) days to:

- (1) Re-use the facility or transfer the facility to another owner who will re-use it;  
or
  - (2) Dismantle the facility. If the facility is not removed within ninety (90) days of abandonment, the city and/or county may remove the facility at the facility and/or property owner's expense. If the facility is removed, city and/or county approval of the facility will expire. If the facility owner is unable to remove the facility within the ninety (90) days due to unusual circumstances, the City-County Planning Department may grant the facility owner an additional ninety (90) days in which to comply with the requirements of this section.
- (j) *Special Review Submittal requirements.* The applicant of new broadcast facilities shall provide the following documentation for review by the City-County Planning Department:
- (1) A map to scale showing the service area of the proposed broadcast facility.
  - (2) A site/landscaping plan showing the following items:
    - a. North arrow.
    - b. The location and dimensions of all vehicular points of ingress and egress, drives, alleys and streets.
    - c. Property boundaries and lot line dimensions.
    - d. The locations and dimensions of all existing and proposed buildings, structures, and improvements including those that will be removed. All information must be labeled.
    - e. Setbacks from all property boundaries for existing and proposed structures and buildings.
    - f. Centerline and names of major and minor arterial streets relevant to the application.
    - g. Elevation drawing of proposed broadcast facility including the antenna support structure, antenna platforms and associated equipment enclosures.
    - h. Latitude, longitude and height of proposed antenna support structures.
    - i. Location of artificial light sources and the areas of illumination.
    - j. Applications for tower farms shall include items a through h and a general overall development plan showing the location of future structures and equipment enclosures.
    - k. Detailed landscaping plan of the site when applicable.
    - l. Other pertinent features as determined by the Zoning Coordinator or Development Review Committee.

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

- (3) Area map showing adjoining property boundaries and the location of existing buildings within a distance equal to the required setbacks as set forth in section (f)(3).
  - (4) Documentation of minimum light requirements from the FAA or other local state or federal agency for the antenna support structure and/or antennae. Where applicable, applicant will provide documentation of the FAA airspace review and a copy of the comments provided by the FAA. Where an application has been filed with the FAA for the services proposed and decision on minimum light requirements by the FAA is still pending, submittal of a copy of the proposed application shall be sufficient to meet the requirements of this paragraph.
  - (5) When the applicant is a land mobile radio service provider, or a radio or television broadcaster, proof must be provided that the applicant is licensed by the FCC to provide the services that the proposed facility is designed to support or the applicant must prove the necessary application have been filed with the FCC and/or FAA for the services proposed, together with proof all filing fees have been paid.
- (k) *Special review uses*
- (1) A request for a special review shall be initiated by application to the City-County Planning Department and handled in accordance with the special review procedure provided in section 27-1503 and 27-1509, BMCC of these zoning regulations. The Billings City Council or Yellowstone County commission may issue special review approval under these sections provided they have determined that the requirements of these regulations have been satisfied.
  - (2) In granting special review approval, the Billings City Council or Yellowstone County Commission may impose additional conditions to the extent determined necessary to buffer or otherwise minimize adverse effects of the proposed broadcast facilities on surrounding properties.
  - (3) Expiration of special review approval.
    - a. A building permit must be applied for within six (6) months of a special review approval and the project shall be completed within one (1) year from the date the special review is granted by the city council or county commission. For the purpose of these regulations, the term standard of construction shall be defined as the installation of a permanent foundation for the antenna support structure. The city council and/or county commission may grant one (1) six (6) month extensions of the period to start construction upon written request by the applicant.
    - b. The city council or county commission shall not approve an extension unless the development plan is brought into conformance with any relevant zoning regulations that have been amended subsequent to the original approval and unless the applicant provides adequate evidence that construction is able to begin within the time period sought. This

## ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS

evidence shall include, but not be limited to, the acquisition of any or all required government approvals and project financing, the city council or county commission may as a condition of approval of a special review establish the period of time such special review may remain in effect.

- c. Small increases in the height of existing antenna support structures approved by special review may be approved by the City-County Planning Department on an administrative basis provided that the increase in the height of the antenna support structure is ten (10) percent or less.
  - d. Special review approvals for broadcast antenna or tower farms shall not expire until such time as all facilities within the boundaries of the antenna or tower farm have been abandoned.
- (l) *Appeals.* Appeals from any decision of the City-County Planning Department may be taken by any person aggrieved or any official of the city affected by the decision of the City-County Planning Department. Such appeal shall be to the city and/or county board of adjustment pursuant to section 27-1506 and/or section 27-1511 BMCC.
- (m) *Nuisances.* Broadcast facilities, including, without limitation, power source, ventilation and cooling, shall be operated at all times within the city and/or county noise regulations, shall not be operated so as to cause the generation of heat that adversely affects a building occupant and shall not be maintained or operated in such a manner as to be a nuisance.

## **ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

### **Sec. 27-622. NEW CONDOMINIUMS, TOWNHOMES, TOWNHOUSES AND MULTI-UNIT DEVELOPMENTS**

New Condominiums, Townhouse, Townhome and Multi-Unit Developments are allowed in all zoning districts if they meet all applicable zoning district requirements, and supplementary general provisions, site development, building and fire safety regulations as per Sections 6-1200, 14-300, 27-622 and 27-623 of the Billings Municipal Code. Projects subject to these regulations include condominium, townhome, townhouse or commercial development projects that include common, private facilities shared by buildings or lots, and residential developments that have more than two dwelling units and include common, private facilities shared by buildings or lots.

Prior to filing a condominium, townhome, townhouse Declaration of Unit Ownership with the County Clerk and Recorder, or applying for building permits for the multi-unit development, the owner(s) shall submit to the Planning Division:

- (1) A City approved master site plan showing the dimensions of the lot(s) containing the condominium, townhome, townhouse units or multiple commercial units and the location and dimensions of all buildings containing the units.
- (2) A copy of the Declaration of Unit Ownership if creating a condominium, townhome or townhouse.

Only after determining that the condominium, townhome or townhouse or multi-unit development project has a City approved master site plan, as required in Section 1 above, that complies with the applicable zoning district requirements, and supplementary general provisions, site development, building and fire safety regulations as per Sections 6-1200, 14-300, 27-622, and 27-623 of the Billings Municipal Code will the Planning Division issue a condominium Certificate of Compliance or approve a building permit.

For condominiums, townhome or townhouse the Certificate of Compliance will be filed with the County Clerk and Recorder prior to recording the Declaration of Unit Ownership. The Certificate shall state:

- (1) The legal description of the property.
- (2) The condominium, townhome or townhouse units are exempt from 76-3-203, MCA because they comply with zoning, or in the case of new development, comply with zoning based on the City approved master site plan.
- (3) Any changes to the City approved Master Site Plan must be reviewed by the City through the Planning Division.

## **ARTICLE 27-600. SUPPLEMENTARY GENERAL PROVISIONS**

### **SEC. 27-623. COUNTY ZONING COMPLIANCE PERMIT**

A Zoning Compliance Permit is only required for properties that are located outside the limits of the City of Billings but within the Unincorporated Jurisdictional Area.

No change of land use may be made; or no building or other structure shall be erected, moved, enlarged, rebuilt, added to, or structurally altered without first having received a Zoning Compliance Permit issued by the Zoning Coordinator or his/her designee, who shall determine that the permit is issued in compliance with the regulations set forth in this Resolution/Ordinance. The review of a Zoning Compliance Permit application shall be limited only to a review of the applicable zoning regulations and shall not constitute a review of compliance with any applicable building codes. A separate sign permit is required prior to the erection of any sign.

Each application for a Zoning Compliance Permit shall be accompanied by a site plan, building elevations and any other information requested by the Zoning Coordinator to adequately review the proposed project. Additionally, commercial projects require submittal of a landscaping plan and a site plan showing off-street parking, loading, etc. The Board of County Commissioners may set an application fee by Resolution for review of a Zoning Compliance Permit. The Zoning Coordinator or his/her designee may waive the submittal requirements for some of the above mentioned plans. Zoning Compliance Permits are valid for a period of six (6) months from the date of approval and may be extended for an additional six (6) months with written approval from the Zoning Coordinator.