

****ATTENTION****

The City Council meeting will be held in a hybrid format that may include both in-person AND virtual attendance via Zoom. Unless they have cause to appear virtually, Councilmembers will attend the meeting in person in Council Chambers, second floor of City Hall, 220 N. 27th Street. In order to honor the Right of Participation and the Right to Know in Article II, Sections 8 and 9, of the Montana Constitution, the City of Billings and City Council are making every effort to meet the requirements of the open meeting laws.

Citizens are invited to:

- . Review the Agenda Packet on the City's website at: www.billingsmt.gov and click on "Your Government," "City Council," and "Agendas & Minutes".
- . View the meeting:
 - . On Community 7 TV - Channel 7 or Channel 507 -- Spectrum Cable. *(On evenings when there is a conflict with School District No. 2 Board meetings, the City Council meeting will be broadcast on Channel 8 - Spectrum Cable.)* Channel 7 or Channel 978 - TDS Fiber.
 - . Online at www.comm7tv.com and click on the "Watch Live" icon. Community 7 also has links to their Facebook page and YouTube channel.
 - . On the City's website at www.billingsmt.gov and click on "Watch Meetings Online" on the homepage.
 - . In-Person.
 - . Virtually via Zoom (see the link below).

Citizens may submit public comment via the following methods:

- . Mail: City Clerk, P.O. Box 1178, Billings, MT 59103
- . Email: Council@billingsmt.gov.
 - . Emails received after 3:00 PM on the day of the meeting, may be posted on the Council's webpage the following day for public viewing.
- . Attend the meeting in person.
- . **Please note that citizens wishing to observe or participate in providing public comment virtually through Zoom, MUST PRE-REGISTER BY NOON on the day of the meeting. Citizens will need to enter the Webinar ID and Passcode indicated below for that meeting to gain access.** Click on *Zoom Meeting Instructions* and *Zoom Hybrid Meeting Details* below for more information. The link will allow you to attend, view and participate in the meeting on your computer, laptop or smart phone. (You must have the Zoom App on your device [Click Here to Download Zoom App](#)) To provide public comment at the appropriate time, click on the "raise hand" icon located at the bottom of the screen and the moderator will unmute your device.
 - o **Don't have a smart phone, computer or laptop?** That's okay -- you can attend a Zoom meeting using your **landline phone**. Call the Zoom phone number, **1.253.215.8782** to join the meeting and follow the operator's instructions. Want to give public comment? Simply "*raise your hand*" by pressing *9 and the moderator will give you permission to speak when it is your turn. **Note this is a long distance toll number and charges may apply depending on your plan.*
- . Click Here for [Zoom Meeting Webinar IDs and Passcodes](#)
- . Click Here for [Zoom Meeting Instructions for Attendees \(as guests\)](#)

Please contact Denise Bohlman, City Clerk, at bohlmand@billingsmt.gov, or at 406.657.8210, with any questions.



VISION STATEMENT:
"The Magic City: A diverse,
welcoming community
where people prosper and
business succeeds."

**WORK SESSION AGENDA
FEBRUARY 20, 2024**

COUNCIL CHAMBERS

5:30 P.M.

CALL TO ORDER: Mayor Cole

PUBLIC COMMENT ON ALL ITEMS. This is the time to comment on any matter (Agenda or Non-Agenda) falling within the scope of the Billings City Council. There will also be time in conjunction with each agenda item for public comment relating to that item. You may only speak once for each item during the meeting.

Please note, the City Council cannot take action on any item of significant interest to the public that does not appear on the agenda. Comments are limited to three (3) minutes during each public comment period or as set by the Mayor. **Speaker sign-in required.** Please sign the roster at the cart located at the back of the Council chambers or at the podium.

- 1. Code Enforcement Ordinance Amendments.**
-Public Comment
- 2. Montana Land Use Planning Act.**
-Public Comment
- 3. PMD Assessment Discussion.**
-Public Comment
- 4. County Short Term Jail Request.**
-Public Comment
- 5. City Council Retreat Discussion.**
-Public Comment
- 6. Highlight Upcoming Agenda Items of Council Interest.**
-Public Comment

COUNCIL DISCUSSION:

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required. *(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)*

ADJOURN:

Note:

- This meeting is an "informal" meeting of the City Council. The content of the Agenda is subject to change at the meeting.
- In the event there is a Closed Executive Session, the sole purpose is to discuss litigation strategy. The other parties to the case(s) discussed are not public bodies or associations as described in Section 2-3-203(1) and (2), MCA. The meeting is closed, as allowed by Section 2-3-203(4) (a), MCA, "to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position" of the City of Billings.

City Council Work Session

Date: 02/20/2024
Title: Proposed City Ordinance Amendments - Code Enforcement
Presented by: Wyeth Friday
Department: Planning & Community Services
Presentation: Yes
Legal Review: Yes
Project Number: NA

RECOMMENDATION

There is no formal action expected on this item since it is being presented at a Work Session. Staff is seeking Council direction and input so that these ordinance amendments may be placed on a Regular Council Meeting agenda in March for Council to take formal action.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Code Enforcement Division works with many sections of the Billings Municipal Code daily and is continuing to see where code amendments will make its job easier in terms of enforcement, communication with the public and moving cases smoothly through Municipal Court. Staff also has heard from City Council members that there is interest in providing further help and support from Council to continue to improve the quality of life, safety and neighborhood stability efforts that Code Enforcement is part of. Making some changes to our City ordinances is a very effective way of helping to achieve these goals. CE Manager Tina Hoeger, Deputy City Attorney Todd Corne, PCSD Director Wyeth Friday, and City Attorney Gina Dahl have worked over the past several months to draft preliminary changes to three different City ordinances: Nuisance, Graffiti, and Boarded Structures. Red-lined versions of all three of these ordinances are attached to this memo for your review. In addition, a set of Powerpoint slides describing the three ordinances and the reasons for the proposed changes is also attached. Staff will walk the City Council through these proposed changes at the meeting to receive feedback so that we can finalize the ordinance amendments and bring them to Council for a public hearing and formal action in March.

Staff was able to coordinate a meeting with City Administration, City Legal, Council Member Rupsis, and Council Member Owen on February 6 (Council Member Shaw and Council Member Joy were invited but unable to attend) to review the three draft ordinances before we brought them to the full Council. They provided important feedback which we were able to address in the drafts provided for this Work Session. They also were supportive of bringing these changes forward to the full Council for review and discussion.

It is important to note that the nuisance ordinance is updated with language to make it the foundation for the other two ordinances. The nuisance ordinance provides instructions on how cases will be handled, the notification processes, abatement, collection of costs, court process, etc. By doing this, we have significantly shortened the other two ordinances because they refer to sections in the nuisance code. So, when large sections are shown as crossed out, this is related to the consolidation of processes into the nuisance section of the code. We are excited to share the proposed drafts and the reasons behind the work we have done, and to have Council help make some of these ordinances stronger for our community.

STAKEHOLDERS

The residence of Billings will ultimately benefit from making these ordinance amendments as the changes will increase efficiency of enforcement, better clarity of the codes so people understand their rights and obligations under the City code, and easier application of the codes by the City Code Enforcement Division. There will be opportunity for public comment on these ordinance amendments when the proposed changes are brought to City Council for First Reading a Public Hearing is conducted.

ALTERNATIVES

At this point this item is informational so there are not really alternatives at this time. If the Council were to direct staff not to move this item forward at this meeting, then we would follow that direction.

FISCAL EFFECTS

There are no direct fiscal impacts from reviewing and discussing these ordinance amendments. If the Council does move forward and approve the ordinances changes, there could be some advantages of efficiency and process that might be fiscally beneficial. However, it would be difficult to measure them given the overall complexity of some of

these enforcement processes.

Attachments

Explanation of Ordinance Amendments
Nuisance Ordinance Draft
Graffiti Ordinance Draft
Boarded Up Structures Ordinance Draft



Ordinance Revisions Work Session

18-300 Nuisance

18-1400 Boarded Up Structures

18-1100 Graffiti

February 20, 2024



18-300 Nuisance

- Establishes this ordinance as the foundation to enforcing other ordinances in city code
 - Allows council to make changes/updates in one ordinance instead of many
 - Code violations would be deemed a public nuisance and would follow the same process consistently throughout code
 - Provides procedure on notification, service, abatements, assessments, etc.
- The two additional ordinances tonight are revised to refer back to the nuisance ordinance



18-302 Definitions

- Combined abandoned or decaying and dangerous into a singular definition of nuisance structure.
- Within the nuisance structure definition, we added language:
 - Commercial structure
 - Floor
- Definitions now alphabetized in section:
 - Nuisance structure
 - Inoperable vehicles
 - Junk



18-303 Prohibitions

- (2) changed from 3 vehicles to 1 vehicle
- (5) updated language to nuisance structure
 - Removed dangerous, abandoned, decaying
 - Now under one definition
- (5) listed conditions to be combined into one complete list:
 - Becomes section (5) removing subsection letters (a) and (b)
 - Allows for one checklist when inspecting these properties
 - Some cases could not be opened under the two-checklist system
 - Being maintained changed to the word present
 - New combined list of conditions to be renumbered (some of the items were duplicates)
 - Updated roofing criteria
- (6) new section added to include other conditions not described as well as unlawful/criminal conduct (MCA 45-8-111)
 - Safe routes to schools
 - Crime data / calls for service
 - Market analysis information – property values



18-304 Enforcement and Penalties

- (A) Language borrowed from graffiti ordinance and reworked
 - Added or when referring to responsible person
 - Added language regarding what the notice shall contain.
 - (A)(3) includes language about second/final notice
 - Mirrors current procedures
- (B) New language for service of notice methods
- (C)&(D) New language regarding proof of service
- (E) Updated existing language and added new language
- (F) Updated and added language



18-305/18-306

Abatement/Costs/Remedies

- Entire section rewritten to reflect:
 - Current process in municipal court
 - Coordination of abatement
 - Itemized expense report / billing process
 - Assessment to the property if unpaid
 - Option to file a judgement if necessary
 - Most of this language already existed in section. It was easier to rewrite it to clean it up.
- 18-306 allows city to file in District Court if abatement costs exceed statutory amount as set in MCA 3-6-103 (\$25,000)



18-1400 Boarded Up Structures

- Revise the language to address boarded structures that are occupied or being used
- Address the 180-day time frame to a single time event
- Require some kind of permanent fix once the 180-day limit expires



18-1401 Purpose.

- Removed the wording “and intent”
 - Section titles in all ordinances should be consistent
- Removed wording referring to abandoned
- Added language to deem boarded structures a public nuisance
 - Ties this ordinance to the nuisance ordinance and therefore is enforced in the same manner



18-1402 Definitions

- Removed abandoned structure in its entirety
- Revised boarded up structure definition



18-1403 Temporary Boarding as a public nuisance

- Updated section title
- (a) temporary boarding:
 - removed language regarding abandoned
 - added new language reference the 180 days
 - added non-tampering screws for fasteners
- (b) board replacement:
 - added language that the 180 days from initial installation is a single event
 - New installation, replacement, or covered/closed in opening triggers a building permit and is subject to review and inspections
- (c) new language deeming violations to be a public nuisance (18-301)



18-1404 Enforcement and Penalties

- Added language to section title to make it consistent
- Reduced the language to a single sentence
 - Enforceable under section 18-304

- Section 18-405 Violations
 - Removed. Covered under section 18-404.



18-1400 Boarded Up Structures

- **Input we need from council:**
 - Decision on how to address grandfathering and how that language should read.
 - Language to address structures under construction and/or which have building permits.
- A Vacant Property Registry Ordinance will be addressed in the future.
 - Anaconda-Deer Lodge VPRO No. 256, effective date July 5, 2019



18-1100 Graffiti

- Updated this article to split enforcement:
 - Perpetrator still held to a misdemeanor (possible jail and/or fine)
 - Property owner not in compliance held to a municipal infraction (was a misdemeanor)
- Removed unnecessary language
 - Deemed a public nuisance
 - Nuisance code procedures would then commence
- Removed sections that are no longer needed / public nuisance code



18-1101 Purpose

- Removed existing language. Not necessary as council authority is addressed elsewhere in code.
- New language – simple statement, deeming graffiti as a public nuisance



18-1102 Definitions

- Removed old language
- Added new language to match other ordinances
- Added public nuisance language to graffiti definition



18-1103 Prohibitions

- Section title changed to be consistent with other updated ordinances
- Removed old language and replaced with a single statement.



18-1104 Enforcement and Penalties

- Section title changed to address only the perpetrator
- Punishment remains a misdemeanor (possible jail and/or fine)
- Added new language for clarity in section (a)



18-1105 Rewards and Reimbursements for info

- Updated language and added new language for sections (b) through (e).
- Sections (a) and (e):
 - Language seems to be repetitive, but not exactly. Section (a) provides that the minor's parents only reimburse if its public property, while section (e) provides for all property.
 - Discussion points with council:
 - Do we need to combine or further clarify language in (a) and (e)?
 - Do we want to keep "legal guardians" (which includes foster parents, etc) or strike it? Should grandparents/other relatives be included?
 - Need to address claim amount/resolution/graffiti fund.



18-1106 Graffiti as a public nuisance

- Updated section name to refer to property owners not in compliance
- Property owners would be held to a municipal infraction rather than a misdemeanor
- Allows quicker enforcement through the nuisance code procedures, i.e. notices, court, abatement, etc.
- Sections (a) and (b) added language for private property
- Section (c) language added for municipal infraction
 - Reference to section 18-1304 uses the terms “may cite” allowing for enforcement discretion, i.e. the ability to work with property owners like we do in other situations.



Deleted sections

- 18-1107 – removed. Does not allow for due process (removal by perpetrator 24 hours after notice)
- 18-1108 – removed. Now addressed under 18-1106 graffiti as a public nuisance
- 18-1109 – removed. Now addressed under 18-1106 graffiti as a public nuisance.
- 18-1110 – removed. Now addressed under 18-1104 enforcement and penalties – perpetrator.
- 18-1111 – removed. Part of the court process to prove lack of financial ability or to present an active removal/prevention program.
- 18-1112 and 18-1113 – removed. Addressed under 18-1106 graffiti as a public nuisance and abatement process.
- 18-1115 – removed.



18-1114 Ease of Removal Provisions

- Added designee language
- Added language to allow for wraps around boxes
- Public works will add language to the conditional encroachment permits to align with this section.

(18-1115 was addressed in previous slide.)



18-1116 Anti-graffiti Fund

- Updated language
- Resolution pending and will be brought before council



ARTICLE 18-300. NUISANCES¹

Sec. 18-301. Purpose.

The purpose of this article is to regulate conditions in the city that may constitute public nuisances, are injurious to public health, safety and welfare, obstruct the free use of property or interfere with the comfortable enjoyment of life or property and to provide for the remediation of such nuisances, to protect the public health, safety and welfare and to promote the economic stability of neighborhoods and areas within the city. It is also the purpose of this article to prevent and prohibit those conditions which reduce the value of private property, interfere with the enjoyment of public and private property, create and constitute public nuisances and contribute to the degradation of the character of neighborhoods and the depreciation of property values.

(Ord. No. 04-5280, § 1, 5-10-04; Ord. No. 19-5721, § 1, 1-14-19)

Sec. 18-302. Definitions.

For the purposes of this article the following definitions shall apply:

~~*Abandoned or decaying structure* means a structure that exhibits objectively determinable signs of deterioration specified in section 18-303(5)(B) sufficient to constitute a public nuisance.~~

Abate means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means, in such a manner and to such an extent that is determined necessary in the interest of the health, safety and general welfare of the effected community.

Creating a hazard means a dangerous condition existing on property that would be attractive to children, including such things as an unfenced swimming pool, a refrigerator or other container that could trap a child inside, and an un-barricaded construction site.

~~*Dangerous structure* means any dangerous, falling or damaged residential dwelling or other structure excluding any structure related to an agricultural or farming operation. Openings in the walls or roof that allow unrestricted access by humans, animals or weather to the interior of the structure shall constitute a presumption that the structure is dangerous.~~

Enforcement officer means a code enforcement officer, police officer, or other city employee designated by the city council or the city administrator. *Inoperable vehicle* means any discarded, ruined, wrecked, or dismantled motor vehicle or motor vehicle parts or components. Any vehicle not capable of immediate and legal operation on public roads shall be considered an inoperable vehicle for purposes of this section.

¹Editor's note(s)—Ord. No. 04-5280, §§ 1—8, adopted May 10, 2004, amended article 18-300 in its entirety to read as herein set out. Formerly, article 18-300 pertained to similar subject matter and derived from the Code of 1967, §§ 10.40.010(a), (c), (d), (f), 10.40.020, and Ord. No. 86-4714, § 1, adopted September 8, 1986.

Cross reference(s)—Health and sanitation generally, Ch. 15.

State law reference(s)—Public nuisance, MCA 45-8-111 et seq.

Inoperable vehicle means any discarded, ruined, wrecked, or dismantled motor vehicle or motor vehicle parts or components. Any vehicle not capable of immediate and legal operation on public roads shall be considered an inoperable vehicle for purposes of this section.

Junk means any worn out, cast off or unusable article or material which is ready for destruction or has been collected or stored as salvage, for conversion to some other use or for reduction into components. Junk includes but is not limited to old or scrap metal, rope, rags, household goods, appliances, furniture, vehicle parts or components, batteries, paper, tires, rubber debris or waste, iron, steel and other old or scrap ferrous or non-ferrous material.

Nuisance structure means a structure that exhibits objectively determinable signs of deterioration such as those set forth in section 18-303(5) which are sufficient to constitute a public nuisance and includes any dangerous, falling, or damaged residential dwelling, commercial structure, or other structure excluding any structure related to an agricultural or farming operation. Openings in the walls, roof or floor that allow unrestricted access by humans, animals, or weather to the interior of the structure shall constitute a presumption that the structure is dangerous a nuisance structure.

Public nuisance means a situation created or allowed to continue by the owner or occupant of real property which may endanger or be injurious to public safety or health, is offensive to the senses, renders any public right-of-way dangerous for passage, adversely affects the property values of adjacent properties, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance. A public nuisance is one which affects, at the same time, an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Open storage means exposed to the elements or not stored inside an enclosed structure which includes walls on all sides and a roof.

Person means any individual, firm, association, partnership, corporation or any entity, public or private.

Premises means any lot, parcel of land, building, parcel, real estate, land or portion of land whether improved or unimproved including any portion of any street, right-of-way or alley lying between such lot or parcel of land and the center of such street, right-of-way or alley.

Responsible person means any agent, lessee, owner or other person occupying or having charge or control of any premises.

(Ord. No. 04-5280, § 2, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 2, 1-14-19)

Sec. 18-303. Prohibitions.

It is unlawful for any person to create or maintain on any premises or adjacent to a public right-of-way within the incorporated area of the city any condition that contributes to the creation of a public nuisance. Public nuisances include but are not limited to the following:

- (1) Creating a hazard on any premises for more than twenty-four (24) hours.
- (2) The open storage of ~~more than three (3)~~ one (1) or more inoperable vehicles on any premises for more than five (5) consecutive days.
- (3) The open storage of a collection of junk (see definition) on any premises for more than five (5) consecutive days.
- (4) Creating or maintaining on any premises an amount of decaying matter, animal or vegetable, that is not part of an agricultural or farming operation, so as to contaminate the atmosphere and be offensive to the senses and obstruct the free enjoyment of life and property.

(5) Maintaining a dangerous nuisance structure (see definition) ~~or an abandoned or decaying structure~~ for more than ten (10) days without abating the ~~dangerous or~~ nuisance condition. ~~of such structure.~~

~~a.~~ A dangerous nuisance structure is being maintained present if three (3) or more of the following listed conditions exist:

- i. Broken, boarded, or missing windows and/or doors;
- ~~ii. Broken or missing doors;~~
- iii. Broken or missing attic vent(s);
- iv. Broken or missing under-floor vent(s);
- v. Building exteriors with substantially deteriorating or peeling paint ~~which allows the exterior building coverings to significantly deteriorate;~~
- vi. Building exteriors with visible signs of decay such as siding with dry rot, warping or cracking;
- vii. Building with missing or severely damaged finish siding materials;
- viii. Buildings with missing or substantially damaged exterior walls;
- ~~ix. Buildings with missing or severely damaged roofs; or~~
- x. Buildings with missing or severely damaged foundations.

~~b.~~ ~~An abandoned or decaying structure is being maintained if three (3) or more of the following listed conditions exist:~~

- ~~i. Buildings with substantially deteriorating or peeling paint which allows the exterior building coverings to significantly deteriorate;~~
- ~~ii. Building exteriors with visible signs of decay such as siding with dry rot, warping or cracking;~~
- iii. Two (2) or more reports to the police department or code enforcement division of building exteriors, walls, fences, driveways, or walkways which has been defaced by "graffiti" within a 12-24 month period;
- iv. Two (2) or more reports to the police department or code enforcement division of unauthorized persons (trespassing) on the property within a 12-24 month period;
- v. Has one or more essential utilities turned off for a period of 30 days or more;
- vi. Dead, dying or diseased trees, shrubs and other desired vegetation;
- ~~vii. Dead, dying or diseased shrubs and other desired vegetation;~~
- viii. Dead, dying or diseased lawn area(s) due to lack of water or other necessary maintenance;
- ix. Neglected trees and shrubs growing uncontrolled without proper pruning;
- x. Building walls which are broken, defective, or significantly deteriorated; or
- xi. Building appurtenances such as railings, gutters, fences, gates or exterior light(s) are broken, fallen, or significantly damaged.
- xii. Damaged roofing to include missing shingles or roofing materials; warped shingles; or deteriorating roofing materials;

(6) Creating or maintaining on any premises:

(a) a condition constituting a public nuisance not otherwise described, or

(b) any premises where persons gather for the purpose of engaging in unlawful conduct.

(Ord. No. 04-5280, § 3, 5-10-04; Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 3, 1-14-19)

Sec. 18-304. Enforcement and penalties.

A. Upon written or oral complaint of any citizen so affected by an alleged public nuisance, or if an enforcement officer becomes aware of a condition or situation that may constitute a public nuisance, the enforcement officer shall investigate the condition or situation within a reasonable period of time. The enforcement officer shall determine whether such condition or situation constitutes a public nuisance. If the officer finds there exists a public nuisance as defined herein, such officer shall give written notice to the owner of the premises and/or the responsible person who is maintaining or creating such public nuisance of the specific nature of the violation. The notice shall contain the following information:

- 1) The street address and legal description of the property sufficient for identification of the property;
- 2) A statement that the property is a potential public nuisance with a concise description of the conditions leading to the finding;
- 3) A statement that the public nuisance must be abated no less than ten (10) days after receipt of the notice. If the public nuisance is not abated within that time, the city may send a second/final ten (10) day notice.
- 4) If the public nuisance is still not abated after the second/final notice, the city may declare the property to be a public nuisance subject to the abatement procedures in section 18-305. In cases of emergency or exigent circumstances, the officer shall have the discretion to abate the public nuisance within less than the ten (10) days from receipt of the first notice.

B. Service of a notice of violation shall be made on the owner of the premises and/or the person responsible for the code violation by one or more of the following methods:

- 1) Personal service of the notice of violation.
- 2) By leaving a copy of the notice of violation at the person's residence with a person of suitable age and discretion who resides there and concurrently mailing notice as provided for herein.
- 3) By posting the notice of violation in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for herein.
- 4) For the owner of the premises, service by mail may be made by mailing a copy, postage prepaid, by ordinary first-class mail, to the person's residential address. The taxpayer's address as shown on the tax records of Yellowstone County for the property where the violation occurred shall also be deemed to be a proper address for the purpose of mailing such notice.
- 5) For the responsible person, service by mail may be made for a notice of violation by mailing a copy, postage prepaid, by ordinary first-class mail, to the person's residential address or at the address of the violation. The person's address as shown on the records of the Montana Motor Vehicle Division shall also be deemed to be a proper address for the purpose of mailing such notice.
- 6) In all cases, service by mail shall be presumed effective upon the third business day following the day upon which the notice of violation was placed in the mail.
- 7) If either the owner of the premises or the responsible person cannot be personally served within the City of Billings, and if an address for mailed service cannot reasonably be determined, then service may be made upon that person by posting the notice of violation in a conspicuous place on the property where

the violation occurred. Service by posting in this instance shall be presumed effective upon the seventh day following the day upon which the notice was posted.

C. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service declaring the time and date of service, the manner by which the service was made, and, if by posting, the facts showing the attempts to serve the person personally or by mail.

D. Failure to make or attempt service on any person named in the notice of violation shall not invalidate any proceedings as to any other person duly served.

~~(b)~~ E. If the public nuisance is not abated within the time period specified in the notice of violation then the owner of the premises and/or the responsible person ~~Violations of this article~~ may be cited for the violation into municipal court as a municipal infraction citations and shall be are subject to civil penalties as specified in section 18-1304. Each day that a violation occurs is a separate offense.

~~(c)~~ F. The city may also pursue civil remedies provided by law including seeking injunctive relief or a court order to allow the city to enter the property for the purposes of abating such public nuisance.

(Ord. No. 04-5280, § 4, 5-10-04; Ord. No. 19-5721, § 4, 1-14-19)

Editor's note(s)—Ord. No. 19-5721, § 4, adopted Jan. 14, 2019, amended the title of § 18-304 to read as herein set out. The former § 18-304 title pertained to enforcement.

Sec. 18-305. Abatement and collection of costs.

~~The remedies specified in this section shall be in addition to all other remedies provided by law. When a public nuisance has not been abated by the responsible party within the time specified in the notice of violation and after a first municipal infraction citation has been issued, the following procedure applies:~~

~~(1) The city may bring a civil action in the municipal court to have the nuisance declared as such by the court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement.~~

~~(2) The action to declare and abate a public nuisance shall be brought by the city in the name of the people of the city, by the filing of a complaint, which shall be verified or supported by an affidavit. Summons shall be issued and served as provided by state law for civil cases. If the owner or responsible person cannot be personally served after good faith efforts, service may be made by publication as provided in state law for matters concerning real property.~~

~~(3) The respondent shall file a response as provided by state law for civil cases and as set forth in sections 18-1302 and 18-1303. Within thirty (30) days of the response being filed, the court shall set the matter for scheduling conference and/or trial. Failure to appear on any other date set for trial shall be grounds for entering a default and judgment thereon against a non-appearing party.~~

~~(4) If the respondent has filed no response as required in section 18-305(3) and the city proves that proper service was made on the respondent, the court may enter judgment against the respondent as provided by state law for civil cases and as set forth in section 18-1303. For good cause shown, and prior to enforcement, the court may set aside an entry of default and the judgment entered thereon.~~

~~(5) The judgment of the municipal court may be appealed to the district court.~~

~~(6) The procedure for determining the cost of abatement of a public nuisance will be as follows:~~

~~a. The enforcement officer will secure a good faith estimate of the costs to abate the public nuisance prior to or coincidentally with the civil action filed in municipal court. The enforcement officer may utilize city resources, including staff and equipment, to complete some or all~~

~~components of a court ordered abatement, and the value of utilization of staff and equipment shall be assessed in accordance with this section.~~

- ~~b. The enforcement officer will forward the good faith estimate of the costs to abate the public nuisance to the municipal court and the city's legal staff.~~
- ~~c. The municipal court may assess as a judgment the good faith estimate of the costs of abatement.~~
- ~~d. The municipal court may allow the property owner a period of time, not to exceed forty five (45) days, to abate the public nuisance prior to assessing the good faith estimate in a judgement.~~
- ~~e. At the expiration of the period of time allowed by the municipal court, the city may proceed to enter the property and abate the nuisance as ordered and in accordance with the good faith estimate.~~
- ~~f. The enforcement officer will coordinate the abatement project and oversee the work as it is being performed.~~
- ~~g. After the planning director and the enforcement officer have approved the final bill it will be forwarded to the city finance department for payment by the property owner.~~
- ~~h. A copy of approved bill(s) and proof of disbursement is placed in the enforcement agency file maintained by enforcement officer. These documents, along with the itemized abatement expense report are used to determine the total cost of abatement for the property. The abatement expense report is then certified and transmitted to the finance department for approval of assessment on the real property being abated.~~
- ~~i. The property owner will then be sent an abatement expense report for the subject property and be given notice that any assessment that is not paid shall become a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes. The interest fee will be waived for any payments made within thirty (30) days of notice.~~
- ~~j. A summary listing of the assessments, tax codes, and property owners will be kept by the clerk and recorder through August 31 of each year, and the list shall be presented to the department of revenue for billing on the next real property tax statement.~~
- ~~k. A special abatement fund will be established to account for costs, collections, and transactions necessary to the efficient operation of the program. Assessment funds collected are returned to the designated abatement account for future use on other involuntary property abatements or for transfer back to the city general fund.~~
- ~~l. Any judgment assessed by the municipal court may not exceed the statutory amount as set in MCA 3-11-103, as amended. The portion of a good faith estimate that exceeds this statutory amount may not be assessed as a judgment by the municipal court.~~

~~(Ord. No. 04-5280, § 8, 5-10-04, Ord. No. 13-5604, § 1, 5-28-13; Ord. No. 19-5721, § 6, 1-14-19)~~

~~Editor's note(s) — Ord. No. 19-5721, §§ 5, 6, adopted Jan. 14, 2019, repealed § 18-305 and renumbered § 18-308 as § 18-305 as set out herein. The historical notations have been retained with the amended provisions for historical purposes. The former § 18-305 pertained to right of entry, and derived from Ord. No. 04-5280, § 5, adopted May 10, 2004.~~

[The procedure for abatement and collection of costs of a public nuisance shall be as set forth in Sec. 18-1304 and the following:](#)

-
1. Upon finding a violation of Sec. 18-303 has been proven, the municipal court may either order the defendant to abate or cease the violation, or authorize the city to abate or correct the violation. The municipal court may allow the property owner of the premises and/or the responsible party up to thirty (30) days to abate the public nuisance upon the expiration of which the city shall be authorized by the court to enter the property and abate the nuisance.
 2. The enforcement officer will coordinate any abatement project conducted by the city and oversee the work as it is being performed. The enforcement officer may utilize city resources, including staff and equipment, to complete some or all of the components of a court ordered abatement, and the value of utilization of staff and equipment shall be assessed in accordance with this section.
 3. Upon completion of an abatement project, the enforcement officer shall prepare an itemized abatement expense report and final bill for approval by the Code Enforcement Division Manager. Upon the Code Enforcement Division Manager's approval, the final bill will be forwarded to the city finance department for payment by the property owner.
 4. A copy of approved bill(s) and proof of disbursement shall be placed in the enforcement agency file maintained by the enforcement officer. These documents, along with the itemized abatement expense report, shall be used to determine the total cost of abatement for the property. The abatement expense report shall be transmitted to the finance department for approval of assessment on the real property being abated.
 5. The property owner of the premises will then be sent an abatement expense report for the subject property and be given notice that any assessment that is not paid shall become a lien upon the property that is enforceable in the same manner as the nonpayment of property taxes. The interest fee will be waived for any payments made within thirty (30) days of notice.
 6. A summary listing of the assessments, tax codes, and property owners will be kept by the clerk and recorder through August 31 of each year, and the list shall be presented to the department of revenue for billing on the next real property tax statement.
 7. A special abatement fund will be established to account for costs, collections, and transactions necessary to the efficient operation of the program. Assessment funds collected are returned to the designated abatement account for future use on other involuntary property abatements or for transfer back to the city general fund.
 8. The municipal court may also order the city's costs for abatement or correction of the violation be entered as a judgment against the defendant. A request for judgment shall be accompanied by an itemized abatement expense report and final bill which have been approved by the Code Enforcement Division Manager.
 9. Any judgment assessed by the municipal court may not exceed the statutory amount as set in MCA 3-6-103.

Sec. 18-306. Authority of the city to seek other remedies.

This section is not the exclusive remedy for any nuisance action brought by the City of Billings. Nothing in this section prohibits or precludes the City of Billings from filing an action in ~~D~~istrict ~~C~~ourt under state law.

(Ord. No. 19-5721, § 6, 1-14-19)

Editor's note(s)—Ord. No. 19-5721, § 6, adopted Jan. 14, 2019, repealed the former § 18-306 and enacted a new § 18-306 as set out herein. The former § 18-306 pertained to emergency abatement and derived from Ord. No. 04-5280, § 6, adopted May 10, 2004 and Ord. No. 13-5604, § 1, adopted May 28, 2013.

Sec. 18-307. Reserved.

Editor's note(s)—Ord. No. 19-5721, § 6, adopted Jan. 14, 2019, repealed § 18-307, which pertained to voluntary abatement and derived from Ord. No. 04-5280, § 7, adopted May 10, 2004 and Ord. No. 13-5604, § 1, adopted May 28, 2018. Rnbd 18-308 as 18-305

Sec. 18-308. Reserved.

Editor's note(s)—See the editor's note to § 18-305.

Sec. 18-309. Reserved.

Editor's note(s)—See the editor's note to § 18-103.

ARTICLE 18-1100. GRAFFITI

Sec. 18-1101. Purpose and intent.

Graffiti presents a threat to the health, safety and welfare of the community and reduces the value of adjoining properties. Graffiti is deemed a public nuisance in accordance with Sec. 18-301. Standards for graffiti abatement established in this section will help improve the appearance of these structures and preserve neighborhood property values.

~~The city council is enacting this article to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The council is authorized to enact this article pursuant to its police powers, as specified in Section 1.01 of the City Charter and MCA §§ 7-1-101, 7-5-4101, and 7-5-4104 that authorize the city to have all power possible for a self-government city as fully and as completely as though they were fully enumerated in the Charter, to exercise any power not prohibited by the Constitution or laws of the state, to make and pass all laws not repugnant to the Constitution or laws of the state necessary for the government or management of the affairs of a city or town, and to define and abate nuisances and impose fines on persons guilty of creating, continuing or suffering nuisances to exist on premises they occupy or control.~~

~~The council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless the city acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the city.~~

~~The city council intends, through the adoption of this article, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The council does not intend for this article to conflict with any existing anti-graffiti state laws.~~

(Ord. No. 05-5332, § 1, 7-11-05)

Sec. 18-1102. Definitions.

~~For the purposes of this article, the following words shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:~~

For the purposes of this article the following definitions shall apply:

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, ~~is otherwise deemed a public nuisance by the city council.~~ constitutes a public nuisance as defined in Section 18-302

Graffiti implement means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

Owner means any entity or entities have a legal or equitable interest in real or personal property including but not limited to the interest of a tenant or lessee.

Paint stick or graffiti stick means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth (1/8) of an inch in width.

Person means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Property means any real or personal property and that which is affixed, incidental or appurtenant to real property including but not limited to any structure, fence, wall, sign or any separate part thereof whether permanent or not.

Responsible party means an owner or entity or person acting as an agent for an owner by agreement who has authority over the property or is responsible for the property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each owner shall always be a responsible party for the purposes of this chapter. There may be more than one responsible party for a particular piece of property.

Unauthorized means without the consent of the responsible party.

(Ord. No. 05-5332, § 2, 7-11-05)

Sec. 18-1103. ~~Prohibited acts.~~ Prohibitions.

~~Defacement. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any city-owned property or, without the permission of the owner or responsible party, on any non-city-owned property.~~

It shall be unlawful for any person to apply graffiti to or on any property located within the City of Billings.

(Ord. No. 05-5332, § 3, 7-11-05)

Sec. 18-1104. Enforcement and Penalties - Perpetrator.

- (a) *Fines and imprisonment.* Any person violating this article by applying graffiti to any property shall be punished as provided in section 1-110.
- (b) *Restitution.* In addition to any punishment specified in this section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court.
- (c) *Community service.* In-lieu of, or as part of, the penalties specified in this section, an offender may be required to perform community service as described by the court based on the following minimum requirements:
 - (1) The offender shall perform at least thirty (30) hours of community service.
 - (2) The entire period of community service shall be performed under the supervision of a community service provider approved by the municipal court.
 - (3) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the offender, including community service that involves graffiti removal.

(Ord. No. 05-5332, § 4, 7-11-05)

Sec. 18-1105. Rewards and reimbursements for information.

- (a) The city may offer a reward in an amount to be established by resolution of the city council for information leading to the identification and apprehension of any person who willfully damages or destroys any public or private property by the use of graffiti. In the event of damage to public property, the offender or the parents or legal guardian of any unemancipated minor must reimburse the city for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the city in the manner it shall deem appropriate.
- (b) Claims for rewards under this section shall be filed in writing, with the city ~~in the manner specified by the city council.~~ clerk. Each claim should:
 - (1) Specifically identify the date, location, and kind of property damaged or destroyed;
 - (2) Identify by name the person who was convicted; and
 - (3) Identify the court and the date upon which the conviction occurred.
- (c) The City Administrator shall review each claim for reward submitted pursuant to this chapter and either accept, accept in part, or deny the claim. No claim for a reward shall be accepted by the City Council unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied. The investigation must determine that the claimant's information was relevant and directly responsible for the arrest and conviction of the suspect.
- (d) The offer of a reward is made to members of the public generally. However, no law enforcement officer, municipal officer, employee of the City, or person(s) apprehended shall be eligible for such a reward.
- (e) Any person committing graffiti vandalism shall be civilly liable for any reward paid pursuant to this section. If said person is an unemancipated minor, then the parent or lawful guardian of said minor shall be civilly liable for any reward paid pursuant to this section.
- ~~(c) — No claim for a reward shall be allowed unless the city investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied.~~

(Ord. No. 05-5332, § 5, 7-11-05)

Sec. 18-1106. Graffiti as a public nuisance.

- (a) The existence of graffiti on ~~public or~~ private property in violation of this article is expressly declared to be a public nuisance and, therefore, is subject to the ~~removal and~~ abatement provisions specified in Section 18-305. in this article.
- (b) It is the duty of both the owner of the private property to which the graffiti has been applied and any responsible party to at all times keep the private property clear of graffiti.
- (c) Failure to remove graffiti by the private property owner or any responsible party shall be punished as a municipal infraction and shall be subject to civil penalties as specified in section 18-1304.

(Ord. No. 05-5332, § 6, 7-11-05)

Sec. 18-1107. Removal of graffiti by perpetrator.

Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty four (24) hours after notice by the city or private owner of the property involved. Such removal shall be done in a manner prescribed by the chief of police, the director of the department of public works, or any additional city department head, as authorized by the city council. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this article.

(Ord. No. 05-5332, § 7, 7-11-05)

Sec. 18-1108. Removal of graffiti by property owner or city.

If graffiti is not removed by the perpetrator according to section 18-1107, graffiti shall be removed pursuant to the following provisions:

Property owner responsibility. It is unlawful for any person who is the owner or responsible party of property to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after service by first class mail of notice of the defacement. The notice shall contain the following information:

- (1) The street address and legal description of the property sufficient for identification of the property;
- (2) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;
- (3) A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the city will declare the property to be a public nuisance, subject to the abatement procedures in section 18-1114.
- (4) An information sheet identifying any graffiti removal assistance programs available through the city and private graffiti removal contractors.

(Ord. No. 05-5332, § 8, 7-11-05)

Sec. 18-1109. Failure to comply.

Upon first failure, neglect or refusal to remove the graffiti during the prescribed period, the city shall give notice to the noncomplying owner, agent or occupant thereof. Such notice shall provide as a minimum:

- (1) That the noncomplying owner, or agent thereof, is allowed ten (10) days from the date of notice of noncompliance to remove;
- (2) That upon failure to comply the city may by its own work forces or by contract cause the graffiti to be removed and the cost thereof shall be assessed against the noncomplying real property together with an additional administrative cost equal to twenty five (25) percent of the cost of removal and a twenty five dollar (\$25.00) penalty;
- (3) If the owner or agent of the property continues to neglect to maintain the property free from graffiti, the city may at its sole discretion remove the graffiti again as needed without additional notice of any kind. Charges as in subsection (2), including penalty, will be assessed for each time the city removes the graffiti;
- (4) That the assessed amount together with costs and penalties shall constitute a lien on the noncomplying real property and will be taxed as a special assessment against the real property.

~~(5) Appeal. The owner or agent may appeal any determination that they have failed to comply with the requirements of any order to the director of the city county planning department.~~

~~(6) Notice. Notice under this article is sufficient if served upon the owner or responsible person personally or mailed regular mail to the last known address owner or responsible person or the last address of the owner shown on the tax rolls of the county. Upon mailing, the city clerk shall execute an affidavit of mailing. Notice shall be deemed given when deposited in a United States Postal Service receptacle.~~

~~(Ord. No. 05-5332, § 9, 7-11-05)~~

Sec. 18-1110. Failure to comply misdemeanor.

~~Any person who willfully fails to comply with the provisions of this article is guilty of a misdemeanor and upon a signed complaint shall be punished as provided in section 1-110.~~

~~(Ord. No. 05-5332, § 10, 7-11-05)~~

Sec. 18-1111. Exceptions to property owner responsibility.

~~The removal requirements of section 18-1108 shall not apply if the property owner or responsible party can demonstrate that:~~

~~(1) The property owner or responsible party lacks the financial ability to remove the defacing graffiti; or~~

~~(2) The property owner or responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of ten (10) days after service by first class mail of notice of the defacement.~~

~~(Ord. No. 05-5332, § 11, 7-11-05)~~

Sec. 18-1112. right of city to remove.

~~(a) Use of public funds. Whenever the city becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the city shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the city administrator, or the designee of the city administrator, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.~~

~~(b) Right of entry on private property. Prior to entering upon private property or property owned by a public entity other than the city for the purpose of graffiti removal the city shall attempt to secure the consent of the property owner or responsible party and a release of the city from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this article, or if the city has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the city and consistent with the terms of this section, the city shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.~~

~~(Ord. No. 05-5332, § 12, 7-11-05)~~

Sec. 18-1113. Abatement and cost recovery proceedings.

~~(a) Annually the city shall prepare a list of all lots, tracts and parcels of real property within the city from which and adjacent to which graffiti was removed by the city and for which such charges and penalties have not yet been paid, the list shall include as a minimum the following:~~

- ~~(1) Name as shown by the tax rolls, common address if known;~~
- ~~(2) Tax code of the property;~~
- ~~(3) Legal description of the lot, tract or parcel;~~
- ~~(4) Cost of the graffiti removal for that property;~~
- ~~(5) Administrative costs;~~
- ~~(6) Penalty assessed.~~

~~(b) The assessment list shall be incorporated into a special assessment resolution in proper form which resolution shall be presented to the city council for consideration. From and after passage of the resolution, the assessments stated therein, together with administrative costs and penalty shall constitute a special assessment, as provided in MCA §§ 7-1-101 and 7-5-4123 and a lien on the real property shown on the assessment list. A copy of the resolution after passage shall be certified to the official collecting the city taxes and assessments.~~

~~(Ord. No. 05-5332, § 13, 7-11-05)~~

Sec. 18-1114. Ease of removal provisions.

(a) *Common utility colors and paint-type.* Any gas, electric, telephone, water, sewer, cable, telephone and other utility operating in the city shall paint its above-surface metal fixtures with a uniform paint type and color, [or wrap](#), that meets with the approval of the city administrator [or the city administrator's designee](#).

(b) *Conditional encroachment permits.* All encroachment permits issued by the city shall, among such other things, be conditioned on:

- (1) The permittee's application of an anti-graffiti material to the encroaching object of a type and nature that is acceptable to the city administrator, or the city administrator's designee;
- (2) The permittee's immediate removal of any graffiti;
- (3) The city's right to remove graffiti or to paint the encroaching object; or
- (4) The permittee's providing the city with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of the encroaching object containing graffiti.

(Ord. No. 05-5332, § 14, 7-11-05)

Sec. 18-1115. Prevention provisions.

~~*Retro-fit existing graffiti attracting surfaces; non-residential structures.* The following provisions may be incorporated in a graffiti eradication order:~~

- ~~(1) At owner's expense. Any surface of a structure on a parcel of land used for non-residential purposes that has been defaced with graffiti more than five (5) times in twelve (12) months shall be declared a public nuisance and required to be retrofitted, at the cost of the property owner, with features or~~

~~qualities as may be established by the city as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal of graffiti. In exercising the authority hereunder, the city may not impose a cost on the property owner of greater than three thousand dollars (\$3,000.00).~~

~~(2) At city's cost. If the property owner or responsible party of property used for non-residential purposes on which is located a surface of a structure that has been defaced with graffiti more than five (5) times in twelve (12) months lacks the financial ability to make modifications, the owner or responsible party shall permit the city to enter the property and, at the city's cost, make modifications as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal of graffiti.~~

~~(3) Appeal. The owner or agent may appeal any determination that they are required to retrofit the property with features or qualities necessary to reduce the attractiveness of the surface for graffiti or to permit more convenient or efficient removal of graffiti to the director of the city-county planning department.~~

~~(Ord. No. 05-5332, § 15, 7-11-05)~~

Sec. 18-1116. Anti-graffiti fund.

The city council ~~may at its discretion hereby~~ creates the city anti-graffiti fund. Costs recovered for graffiti removal and penalties assessed in municipal court against violators of this article shall be placed in the fund, along with any monetary donations received from persons wishing to contribute to the fund. The council, ~~or its designee,~~ shall direct the expenditures of monies in the fund. Such expenditures shall be limited to the payment of the cost of ~~labor and materials for~~ graffiti removal, the payment, at the discretion of the city council, ~~or its designee,~~ of rewards for information leading to the conviction of violation of the article, the costs of administering the article, and such other public purposes ~~pertaining to graffiti~~ as may be approved by the council by resolution.

(Ord. No. 05-5332, § 16, 7-11-05)

ARTICLE 18-1400. BOARDED UP STRUCTURES

Sec. 18-1401. Purpose ~~and intent.~~

~~Abandoned-s~~ Structures left boarded up over a significant period present a threat to the health, safety and welfare of the community and reduce the value of adjoining properties. Boarded structures are deemed a public nuisance in accordance with Section 18-301. Standards for long term security of ~~abandoned,~~ boarded up structures established in this section will help improve the appearance of these structures and preserve neighborhood property values.

(Ord. No. 12-5584, § 1, 9-24-12)

Sec. 18-1402. Definitions.

For the purposes of this article the following definitions shall apply:

~~Abandoned structure: A structure that has remained unoccupied and one or more utilities, including but not limited to gas, electricity, and water, have been disconnected for a period of at least one hundred eighty (180) days.~~

Abate: To repair, replace, remove, destroy or otherwise remedy the condition in question by such means, in such a manner and to such an extent that is determined necessary in the interest of the health, safety and general welfare of the affected community.

Boarded up structure: The use of materials unrelated to the structure's exterior finish, such as plywood, oriented-strand board, plastic, metal, or canvas, to secure or cover openings in a ~~n-abandoned~~ structure.

Owner: The title owner(s), contract purchaser, or any other person or representative of any entity which holds a legal or equitable interest in any parcel.

Owner's agent: A statutory agent such as, but not limited to a legal guardian, conservator, person with durable power of attorney, or property manager.

(Ord. No. 12-5584, § 1, 9-24-12)

Sec. 18-1403. ~~Abandoned structure—~~Temporary boarding as a public nuisance.

- (a) *Temporary boarding of window, doors openings.* Window or door openings on a ~~n-abandoned~~ structure may be boarded up for no more than one hundred eighty (180) total days from initial installation. Boards shall consist of a single sheet of oriented strand board (OSB) or plywood large enough to completely cover the window or door opening. The boards shall be attached with ~~wood screws that are not common Phillips-head or slotted-head screws, such as hex or beveled-head~~ non-tampering screws.
- (b) *Boarded window and door openings—Board replacement.* The boards on window and door openings shall be replaced within a single one hundred eighty (180) days period from of the initial installation with properly installed, tight-fitting, and secure windows and doors. For any window or door installation, or replacement, or if a door or window is to be covered or closed in, a building permit must be secured and all permit review and inspection processes completed per City requirements.

(c) A structure in violation of subsection a and/or b will be deemed a public nuisance per Section 18-301.

(Ord. No. 12-5584, § 1, 9-24-12)

Sec. 18-1404. Enforcement and penalties.

~~Upon written or oral complaint of any citizen so affected by an alleged~~ A violation of the provisions in this article, or if a code enforcement officer becomes aware of a condition or situation that may constitute a violation of the provisions in this article, the officer shall investigate the condition or situation within a reasonable period of time. The officer shall determine whether such condition or situation violates the provisions of this article. If the officer finds that there exists a violation, such officer shall be enforced and shall be subject to the penalties as provided in Section 18-304. give written notice to the owner of the premises and the owner's agent of the specific nature of the violation. Unless a violation is determined to exist such that the abatement procedure is described elsewhere in the City Code, the code enforcement officer shall afford the owner of the premises or the owner's agent thirty (30) days to voluntarily abate the violation. The officer must give written notice in person or by certified mail of the specific condition to be abated and the specific abatement required to the owner of the premises and the owner's agent.

(Ord. No. 12-5584, § 1, 9-24-12)

Sec. 18-1405. Violations.

~~When an abandoned, boarded up structure has not been voluntarily abated within the time specified in the notice to abate it is a violation of this article, a municipal infraction, and is punishable by civil penalties as specified in section 18-1304. Each day that the violation continues is a separate offense and shall be punished accordingly.~~

(Ord. No. 12-5584, § 1, 9-24-12)

City Council Work Session

Date: 02/20/2024
Title: MT Land Use Planning Act - Background and Implementation Information
Presented by: Wyeth Friday
Department: Planning & Community Services
Presentation: Yes
Legal Review: Not Applicable
Project Number: NA

RECOMMENDATION

No formal action is needed as this is an information item. If City Council has any concerns or suggestions on the direction staff is taking with the process, providing input at this meeting will help staff with next steps.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Montana Land Use Planning Act (LUPA) was passed by the Montana Legislature in 2023 and is aimed at fostering the well-being of Montana's residents by implementing comprehensive land use planning (See Senate Bill 382 attached). The Act emphasizes coordinated and planned growth to ensure adequate housing, public services, and infrastructure. The legislation underscores the importance of broad public participation in the development, adoption, and amendment of land use plans, zoning regulations, and subdivision regulations. The intent is to create a framework that facilitates data collection, analysis, and inclusive decision-making to guide development in alignment with the overall land use plan, ensuring the protection of citizens, property, and the environment.

Billings Planning Division staff has been working since mid 2023 to become familiar with the new law, communicate with other cities in Montana that also are subject to the new law, develop a scope of work that would include consultant support to implement the new law, and begin preparing elements of the law, like a public participation plan. There has been some high level discussion with City Council about the new law at a few meetings, but nothing in depth. It is important to note that staff does not have all the answers to this process even after extensive work and planning to launch the effort. There are still unknowns and issues we will have to work out as we move forward. Since the law was passed, a lawsuit also has been filed to challenge it and the Legislature has been monitoring the implementation efforts of communities across the state to understand the challenges and strategies being implemented to carry it out.

Staff at this Work Session is presenting an overview of the new law and also next steps it and the City Council must take to begin active implementation. The current deadline to operate under the new law is May 2026. Staff has provided a detailed presentation (attached to this memo) to walk the City Council through the background and initial steps to launch implementation in the next month. This is just the beginning of a multi-year process that the City Council, staff and the community will be involved in.

Please note that the presentation attached references Sections of the new law (Senate Bill 382 attached) so that Council is able to see where the various implementation elements are coming from out of the law. For example, Section 5 noted on slide 5 of the presentation is referring to Section 5 of SB 382 that describes what communities the law applies to. This is done throughout the presentation.

STAKEHOLDERS

The implementation of the Montana Land Use Planning Act will ultimately affect the entire Billings community at some level. However, this informational presentation is to provide the City Council with the staff plan to implement the new law and understand the steps and process involved to move ahead with action steps. Public input may be received at this meeting, but the real public engagement for this process comes as implementation starts.

ALTERNATIVES

There are no specific alternatives for this item as it is a new state law that Billings must eventually put in place. For this Work Session, this item is for information only.

FISCAL EFFECTS

The City Council budgeted \$200,000 in FY24 to fund implementation of the Montana Land Use Planning Act. Staff also recently applied for an additional MT Department of Commerce grant for \$30,000 to further supplement this effort. While the City resources for this effort appear to be adequate for this multi-year implementation, staff expects that

when it puts out the RFP for consultant services to help with implementation it will have a sense of the overall budget to complete this work. The City also is moving ahead with the West Billings Neighborhood Plan and Heights Neighborhood Plan updates and also has integrated elements of the Montana Land Use Planning Act requirements into those projects to be proactive and strategic about the deliverables and implementation for the larger effort, especially in areas of land use, housing and public participation.

Attachments

Presentation Slides
Senate Bill 382

MT Land Use Planning Act (SB 382) Background and Implementation

City Council Work Session

February 20, 2024

Why the MT Land Use Planning Act is Law

- Montana's land use and planning statutes are outdated, inconsistent with each other and duplicative in some areas
- Cities, staff, developers, consultants, and public have been frustrated with elements of the process
- Lack of alignment between growth policy elements, zoning criteria, or subdivision criteria – repetitive review processes
- Administrative review and other more streamline processes were prohibited under current statutes
- No ability to rely on previous planning – zoning, master plans, etc.
- Housing crisis in MT and nationally pushed the issue of better regulatory processes to the forefront in the last few years

Who law applies to/when do we comply?

➤ WHO does it apply to? (*Section 5*) Municipality with population => 5,000 in a county with a population => 70,000

➤ Belgrade

➤ Billings

➤ Bozeman

➤ Columbia Falls

➤ Great Falls

➤ Helena

➤ Kalispell

➤ Laurel

➤ Missoula

➤ Whitefish

All other jurisdictions may OPT IN – Yellowstone County not opting in at this time

➤ Must adopt land use plan, zoning, and subdivision regulations that meet the new framework within 3 years from effective date of the Act – May 2026 (*Section 5*)

What Does Implementation Look Like?

- Form Planning Commission (Section 4, SB 382)
- Adopt Public Participation Plan (Section 6)
- Develop Land Use Plan (Sections 9-16)
 - Housing (Big Deal)
 - Local Services and Facilities
 - Economic Development
 - Natural Resources and Hazards
 - Future Land Use Map
- Implementation (Section 17)
- Zoning and Subdivision Regulation Alignment (Section 21 and 25)

What Does Implementation Look Like?

- Broad Implementation Outcomes
 - Planning Commission has significant responsibility
 - Public participation must be woven through process
 - Public participation is “up front”
 - Not at future zone change application
 - Not at future subdivision application
 - Future Zoning and Subdivision processes are administrative
 - Everything ties back to Land Use Plan and Future Land Use Map
 - where public participation occurred
 - This is new to Montana, but not new to other states
 - We do similar processes with our LRTP, CIP, City Budget

Planning Commission Formation

- Consolidates City boards and commissions
- Responsible for recommendations on all legislative land use and planning decisions:
 - Land Use Plan and Future Land Use Map
 - Zoning regulations and map
 - Subdivision regulations
 - Any other legislative land use planning document the local governing body designates
- Hears appeals from administrative decisions
- Planning Commission decisions appealed to City Council

Planning Commission Formation

- Must consist of an odd number (no fewer than 3) – Initially planning to utilize 5 City Wards
- Must meet at least every 6 months
- May form Commission by Resolution – includes requirements of commission members and operations
- Initial plan to form Commission and run it parallel to YC Planning Board, City Zoning Commission and City Board of Adjustment
- Ultimately, operate under new law and all City land use activity will fall under Planning Commission
- Will maintain County Planning Board and must address MPO operations – reorganize PCC?

Public Participation Plan

- Staff modified Federally required PPP for our MPO to meet requirements of SB 382 for public participation – 1 PPP
- Public Participation Plan (*Section 6*) - Used throughout the framework. Must identify how Billings will provide:
 - Dissemination of documents
 - Opportunity for comments
 - Public meetings
 - Electronic communication and access
 - Analysis of and response to public comments
 - Emphasize public comment will narrow as the process moves to site-specific development

Housing Analysis and Criteria to Meet

- Population projections for 20 years
- Number of housing units needed for that population
- Develop an inventory of sites for housing development, analyzing constraints such as zoning, development standards, and infrastructure needs
- Complete a regulatory audit to ensure zoning regulations can accommodate the identified housing types
- Propose a list of recommendations to be implemented by the governing body in order to accommodate the projected housing needs

Lawsuit Update and Implications

- Currently in Bozeman Court
- Injunction is for:
 - SB 323 – duplex units in all residential districts
 - SB 528 – Removing local control of ADUs
- SB 245 and SB 382 not halted but still in lawsuit
- Billings can and should proceed with SB 382 implementation
- Billings retains its local zoning authority – it can adopt new zoning regulations; if injunction lifted, it must at a minimum meet SB 323 and SB 528 requirements

Next Steps

- Bring Planning Commission Formation Resolution to Council
- Bring Public Participation Plan Adoption to Council
- Launch RFP for Consultant Services for new Law
- West Billings and Heights neighborhood plan scopes designed to inform elements of new process
- Monitor lawsuit
- Continue Interim Legislative Engagement



AN ACT CREATING THE MONTANA LAND USE PLANNING ACT; REQUIRING CITIES THAT MEET CERTAIN POPULATION THRESHOLDS TO UTILIZE THE LAND USE PLAN, MAP, ZONING REGULATIONS, AND SUBDIVISION REGULATIONS PROVIDED IN THE ACT; ALLOWING OTHER LOCAL GOVERNMENTS THE OPTION TO UTILIZE THE PROVISIONS OF THE ACT; REQUIRING PUBLIC PARTICIPATION DURING THE DEVELOPMENT, ADOPTION, OR AMENDMENT OF A LAND USE PLAN, MAP, ZONING REGULATION, OR SUBDIVISION REGULATION; PROVIDING STRATEGIES TO MEET POPULATION PROJECTIONS; PROVIDING FOR CONSIDERATION OF FACTORS SUCH AS HOUSING, LOCAL FACILITIES, ECONOMIC DEVELOPMENT, NATURAL RESOURCES, ENVIRONMENT, AND NATURAL HAZARDS WHEN DEVELOPING A LAND USE PLAN, MAP, AND ZONING REGULATION; PROVIDING FOR A PROCEDURE TO REVIEW SUBDIVISIONS AND APPROVE FINAL PLATS; PROVIDING FOR A LOCAL GOVERNING BODY TO COLLECT FEES; PROVIDING AN APPEALS PROCESS, ENFORCEMENT MECHANISMS, AND PENALTIES; PROVIDING DEFINITIONS; REPEALING SECTIONS 7-21-1001, 7-21-1002, AND 7-21-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short Title. [Sections 1 through 38] may be cited as the "Montana Land Use Planning Act".

Section 2. Legislative purpose, findings, and intent. (1) It is the purpose of [sections 1 through 38] to promote the health, safety, and welfare of the people of Montana through a system of comprehensive planning that balances private property rights and values, public services and infrastructure, the human environment, natural resources, and recreation, and a diversified and sustainable economy.

- (2) The legislature finds that coordinated and planned growth will encourage and support:
- (a) sufficient housing units for the state's growing population that are attainable for citizens of all income levels;
 - (b) the provision of adequate public services and infrastructure in the most cost-effective manner possible, shared equitably among all residents, businesses, and industries;
 - (c) the natural environment, including wildlife and wildlife habitat, sufficient and clean water, and healthy air quality;
 - (d) agricultural, forestry, and mining lands for the production of food, fiber, and minerals and their economic benefits;
 - (e) the state's economy and tax base through job creation, business development, and the revitalization of established communities;
 - (f) persons, property, infrastructure, and the economy against natural hazards, such as flooding, earthquake, wildfire, and drought; and
 - (g) local consideration, participation, and review of plans for projected population changes and impacts resulting from those plans.
- (3) It is the legislature's intent that the comprehensive planning authorized in [sections 1 through 38]:
- (a) provides the broadest and most comprehensive level of collecting data, identifying and analyzing existing conditions and future opportunities and constraints, acknowledging and addressing the impacts of development on each jurisdiction, and providing for broad public participation;
 - (b) serves as the basis for implementing specific land use regulations that are in substantial compliance with the local land use plan;
 - (c) provides for local government approval of development proposals in substantial compliance with the land use plan, based on information, analysis, and public participation provided during the development and adoption of the land use plan and implementing regulations; and
 - (d) allows for streamlined administrative review decisionmaking for site-specific development applications.

Section 3. Definitions. As used in [sections 1 through 38], unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

(2) "Applicant" means a person who seeks a land use permit or other approval of a development proposal.

(3) "Built environment" means man-made or modified structures that provide people with living, working, and recreational spaces.

(4) "Cash-in-lieu donation" is the amount equal to the fair market value of unsubdivided, unimproved land.

(5) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(6) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(7) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to [sections 1 through 38]. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(8) "Dwelling " means a building designed for residential living purposes, including single-unit, two-unit, and multi-unit dwellings.

(9) "Dwelling unit" means one or more rooms designed for or occupied exclusively by one household.

(10) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(11) "Final plat" means the final drawing of the subdivision and dedication required by [sections 1

through 38] to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in [sections 1 through 38] and in regulations adopted pursuant to [sections 1 through 38].

(12) "Four-unit dwelling" or "fourplex" means a building designed for four attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(13) "Immediate family" means a spouse, children by blood or adoption, and parents.

(14) "Irrigation district" means a district established pursuant to Title 85, chapter 7.

(15) "Jurisdictional area" or "jurisdiction" means the area within the boundaries of the local government. For municipalities, the term includes those areas the local government anticipates may be annexed into the municipality over the next 20 years.

(16) "Land use permit" means an authorization to complete development in conformance with an application approved by the local government.

(17) "Land use plan" means the land use plan and future land use map adopted in accordance with [sections 1 through 38].

(18) "Land use regulations" means zoning, zoning map, subdivision, or other land use regulations authorized by state law.

(19) "Local governing body" or "governing body" means the elected body responsible for the administration of a local government.

(20) "Local government" means a county, consolidated city-county, or an incorporated municipality to which the provisions of [sections 1 through 38] apply as provided in [section 5].

(21) "Manufactured housing" means a dwelling for a single household, built offsite in a factory that is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(22) "Ministerial permit" means a permit granted upon a determination that a proposed project complies with the zoning map and the established standards set forth in the zoning regulations. The determination must be based on objective standards, involving little or no personal judgment, and must be

issued by the planning administrator.

(23) "Multi-unit dwelling" means a building designed for five or more attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(24) "Permitted use" means a use that may be approved by issuance of a ministerial permit.

(25) "Planning administrator" means the person designated by the local governing body to review, analyze, provide recommendations, or make final decisions on any or all zoning, subdivision, and other development applications as required in [sections 1 through 38].

(26) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(27) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(28) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of [sections 1 through 38], the term includes a county water or sewer district as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

(29) "Single-room occupancy development" means a development with dwelling units in which residents rent a private bedroom with a shared kitchen and bathroom facilities.

(30) "Single-unit dwelling" means a building designed for one dwelling unit that is detached from any other dwelling unit.

(31) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(32) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or

mobile homes will be placed.

(33) "Subdivision guarantee" means a form of guarantee that is approved by the commissioner of insurance and is specifically designed to disclose the information required in [section 34].

(34) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(35) "Three-unit dwelling" or "triplex" means a building designed for three attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

(36) "Two-unit dwelling" or "duplex" means a building designed for two attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway.

Section 4. Planning commission. (1) (a) Each local government shall establish, by ordinance or resolution, a planning commission.

(b) Any combination of local governments may create a multi-jurisdiction planning commission or join an existing commission pursuant to an interlocal agreement.

(c) (i) Any combination of legally authorized planning boards, zoning commissions, planning and zoning commissions, or boards of adjustment existing prior to [the effective date of this act] may be considered duly constituted under [sections 1 through 38] as a planning commission by agreement of the governing bodies of each jurisdiction represented on the planning commission.

(ii) If more than one legally authorized planning board, zoning commission, or planning and zoning commission exists within a jurisdiction, the governing bodies of each jurisdiction may agree to:

(A) designate, combine, consolidate, or modify one or more of the authorized boards or commissions as the planning commission; or

(B) create a new planning commission pursuant to this section and disband the existing boards and commissions.

(2) (a) (i) Each planning commission must consist of an odd number of no fewer than three voting

members who are confirmed by majority vote of each local governing body.

(ii) Each jurisdiction must be equally represented in the membership of a multi-jurisdiction planning commission.

(b) The planning commission shall meet at least once every 6 months.

(c) Minutes must be kept of all meetings of the planning commission and all meetings and records must be open to the public.

(d) A majority of currently appointed voting members of the planning commission constitutes a quorum. A quorum must be present for the planning commission to take official action. A favorable vote of at least a majority of the quorum is required to authorize an action at a regular or properly called special meeting.

(e) The ordinance, resolution, or interlocal agreement creating the planning commission must set forth the requirements for appointments, terms, qualifications, removal, vacancies, meetings, notice of meetings, officers, reimbursement of costs, bylaws, or any other requirement determined necessary by the local governing body.

(3) (a) Except as set forth in subsection (3)(b), the planning commission shall review and make recommendations to the local governing body regarding the development, adoption, amendment, review, and approval or denial of the following documents:

(i) the land use plan and future land use map as provided in [section 7];

(ii) zoning regulations and map as provided in [sections 18 through 24];

(iii) subdivision regulations as provided in [sections 25 through 34]; and

(iv) any other legislative land use planning document the local governing body designates.

(b) In accordance with [section 37], the planning commission shall hear and decide appeals from any site-specific land use decisions made by the planning administrator pursuant to the adopted regulations described in subsection (3)(a). Decisions of the planning commission may be appealed to the local governing body as provided in [section 37].

(4) The planning commission may be funded pursuant to 76-1-403 and 76-1-404.

Section 5. Applicability and compliance. (1) A municipality with a population at or exceeding 5,000 located within a county with a population at or exceeding 70,000 in the most recent decennial census shall

comply with the provisions of [sections 1 through 38].

(2) (a) Except as provided in subsection (2)(b), any municipality that meets the population thresholds of subsection (1) on [the effective date of this act] shall comply with the provisions of [sections 1 through 38] within 3 years of [the effective date of this act].

(b) A municipality that has adopted a growth policy within 5 years prior to [the effective date of this act] shall comply with the provisions of [sections 1 through 38] within 5 years of the date that the growth policy was adopted or within the deadline established in subsection (2)(a), whichever occurs later.

(c) A municipality that meets the population thresholds of subsection (1) on any decennial census completed after [the effective date of this act] shall comply with the provisions of [sections 1 through 38] by December 31 of the third year after the date of the decennial census.

(3) (a) A local government that is not required to comply with the provisions of [sections 1 through 38] may decide to comply with the provisions of [sections 1 through 38] by an affirmative vote of the local governing body. After an affirmative vote, the governing body shall comply with the provisions of [sections 1 through 38] by December 31 of the fifth year after the date of the vote.

(b) A local government that votes pursuant to subsection (3)(a) to comply with the provisions of [sections 1 through 38] may subsequently decide to not comply with the provisions of [sections 1 through 38] by an affirmative vote.

(4) A local government that complies with [sections 1 through 38] is not subject to any provision of Title 76, chapters 1, 2, 3, or 8.

Section 6. Public participation. (1) (a) A local government shall provide continuous public participation when adopting, amending, or updating a land use plan or regulations pursuant to [sections 1 through 38].

(b) Public participation in the adoption, amendment, or update of a land use plan or implementing regulations must provide for, at a minimum:

- (i) dissemination of draft documents;
- (ii) an opportunity for written and verbal comments;
- (iii) public meetings after effective notice;

(iv) electronic communication regarding the process, including online access to documents, updates, and comments; and

(v) an analysis of and response to public comments.

(2) A local government shall document and retain all public outreach and participation performed as part of the administrative record in accordance with the retention schedule published by the secretary of state.

(3) (a) A local government may decide the method for providing:

(i) general public notice and participation in the adoption, amendment, or update of a land use plan or regulation; and

(ii) notice of written comment on applications for land use permits pursuant to [sections 1 through 38].

(b) All notices must clearly specify the nature of the land use plan or regulation under consideration, what type of comments the local government is seeking from the public, and how the public may participate.

(c) The local government shall document what methods it used to provide continuous participation in the development, adoption, or update of a land use plan or regulation and shall document all comments received.

(d) The department of commerce established in 2-15-1801 and functioning pursuant to 90-1-103 shall develop a list of public participation methods and best practices for use by local governments in developing, adopting, or updating a land use plan or regulations.

(4) Throughout the adoption, amendment, or update of the land use plan or regulation processes, a local government shall emphasize that:

(a) the land use plan is intended to identify the opportunities for development of land within the planning area for housing, businesses, agriculture, and the extraction of natural resources, while acknowledging and addressing the impacts of that development on adjacent properties, the community, the natural environment, public services and facilities, and natural hazards;

(b) the process provides for continuous and extensive public notice, review, comment, and participation in the development of the land use plan or regulation;

(c) the final adopted land use plan, including amendments or updates to the final adopted land use plan, comprises the basis for implementing land use regulations in substantial compliance with the land use plan; and

(d) the scope of and opportunity for public participation and comment on site-specific development in substantial compliance with the land use plan must be limited only to those impacts or significantly increased impacts that were not previously identified and considered in the adoption, amendment, or update of the land use plan, zoning regulations, or subdivision regulations.

(5) The local governing body shall adopt a public participation plan detailing how the local government will meet the requirements of this section.

Section 7. Adoption or amendment of land use plan and future land use map. (1) The local governing body shall adopt or amend by resolution a land use plan and future land use map in accordance with [sections 7 through 17] only after consideration by and on the recommendation of the planning commission.

(2) Prior to making a recommendation to the governing body to adopt or amend a land use plan and future land use map, the planning commission shall:

(a) provide public notice and participation in accordance with [section 6]; and

(b) accept, consider, and respond to public comment on the proposed land use plan and future land use map. All public comment must be part of the administrative record transmitted to the governing body.

(3) After meeting the requirements of subsection (2), the planning commission shall make a final recommendation to the governing body to adopt, modify, or reject the proposed land use plan and future land use map or any amendment to the proposed land use plan and future land use map.

(4) The governing body shall incorporate any existing neighborhood, area, or plans adopted pursuant to Title 76, chapter 1, that meet the requirements of [sections 1 through 38] into the land use plan and future land use map.

(5) (a) The governing body shall consider the recommendation of the planning commission to adopt, modify, or reject the proposed land use plan and future land use map or any amendment to the proposed land use plan and future land use map.

(b) After providing public notice and participation in accordance with [section 6], the governing

body may adopt, with any revisions the local governing body considers appropriate, or reject the land use plan and future land use map or any amendment to the proposed land use plan and future land use map proposed by the planning commission.

(6) An amendment to a land use plan or future land use map may be initiated:

(a) by majority vote of the governing body;

(b) on petition of at least 15% of the electors of the local government jurisdiction to which the plan applies, as registered at the last general election; or

(c) by a property owner applying for a zoning, subdivision, or other land use permit.

(7) (a) After the initiation of an amendment to a land use plan or future land use map allowed in subsection (6), the planning commission shall make a preliminary determination of whether the proposed land use plan or future land use map amendment results in new or increased impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed in the assessment conducted in the development of the land use plan.

(b) If the planning commission finds new or increased impacts from the proposed land use plan or future land use map amendment, the local government shall collect additional data and conduct additional analysis necessary to provide the planning commission with the opportunity to consider all potential impacts resulting from the amendment before proceeding under subsection (2).

(8) The governing body may not amend the land use plan or future land use map unless:

(a) the amendment is found in substantial compliance with the land use plan; and

(b) the potential impacts resulting from development in substantial compliance with the proposed amendment have been made available for public review and comment and have been fully considered by the governing body.

Section 8. Update of land use plan or future land use map. (1) After a local government adopts a land use plan and future land use map in accordance with [section 7], the land use plan and future land use map must be reviewed by the planning commission every fifth year after adoption to determine whether an update to the land use plan and future land use map must be performed. The planning commission shall:

(a) make a preliminary determination regarding the existence of new or increased impacts to or

from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed when the land use plan and future land use map were previously adopted;

(b) provide public notice and participation in accordance with [section 6]; and

(c) accept, consider, and respond to public comment on the review of the land use plan and future land use map. All public comment must be part of the administrative record transmitted to the governing body.

(2) (a) If the planning commission finds new or increased impacts under subsection (1), the planning commission shall recommend an update to the land use plan, future land use map, or both.

(b) If the planning commission finds no new or increased impacts under subsection (1), the planning commission shall make a recommendation to the governing body that no update to the land use plan or future land use map is necessary.

(3) After receiving the recommendation of the planning commission, the governing body may direct that an update of the land use plan, future land use map, or both be completed or may readopt the current land use plan, future land use map, or both.

(4) (a) In developing, drafting, and considering an update to the land use plan or future land use map, the planning commission shall follow the process set forth in [section 7] with respect to the changes proposed to the land use plan or future land use map.

(b) If the planning commission finds new or increased impacts resulting from the land use plan or future land use map, the local government shall collect additional data and conduct additional analysis necessary to provide the governing body and the public with the opportunity to comment on and consider all potential impacts resulting from an update to the land use plan or future land use map.

(5) At any time before an update is required after a review under subsection (1), the local governing body may direct that an update to the land use plan or future land use map be prepared for consideration by the planning commission and for recommendation to the governing body.

(6) Once an update to the land use plan or future land use map is adopted or the land use plan or future land use map is readopted, the information and analysis contained within the land use plan and future land use map must be considered accurate for the purposes of making site-specific development decisions in substantial compliance with the land use plan and future land use map.

Section 9. Existing conditions and population projections. (1) The land use plan must include, at a minimum, inventories and descriptions of existing conditions of housing, local services and facilities, economic development, natural resources, environment, and hazards, and land use within the jurisdictional boundaries of the land use plan.

(2) As set forth in [sections 10 through 17], the land use plan must include, at minimum, a description, map, and analysis of how the jurisdiction will accommodate its projected population over the next 20 years and the expected impacts of the development in the areas of housing, local services and facilities, economic development, natural resources, environment, and hazards.

(3) The inventories and descriptions in the plan must be based on up-to-date surveys, maps, diagrams, charts, descriptive material, studies, and reports necessary to explain and supplement the analysis of each section of the land use plan.

(4) (a) A jurisdiction shall use demographics provided by:

- (i) the most recent decennial census or census estimate of the United States census bureau; and
- (ii) population projections for a 20-year period based on permanent and seasonal population

estimates:

- (A) provided by demographics published by the department of commerce;
- (B) generated by the local government; or
- (C) produced by a professional firm specializing in projections.

(b) When a population projection is not available, population projections for the jurisdiction must be reflective of the area's proportional share of the total county population and the total county population growth.

Section 10. Housing. (1) A local governing body shall identify and analyze existing and projected housing needs for the projected population of the jurisdiction and provide regulations that allow for the rehabilitation, improvement, or development of the number of housing units needed, as identified in the land use plan and future land use map, including:

(a) a quantification of the jurisdiction's existing and projected needed housing types, including location, age, condition, and occupancy required to accommodate existing and estimated population projections;

- (b) an inventory of sites, including zoned, unzoned, vacant, underutilized, and potential redevelopment sites, available to meet the jurisdiction's needed housing types;
- (c) an analysis of any constraints to housing development, such as zoning, development standards, and infrastructure needs and capacity, and the identification of market-based incentives that may affect or encourage the development of needed housing types; and
- (d) a detailed description of what actions the jurisdiction may take to accommodate the projected needed housing types identified in subsection (1)(a).

(2) The housing section of the land use plan and future land use map may incorporate by reference any information or policies identified in other housing needs assessments adopted by the governing body.

(3) If, after performing the analysis required in subsection (1), the local government determines that the total needed housing types may not be met due to lack of resources, development sites, infrastructure capacity, or other documented constraints, the local government shall establish the minimum number of housing units that may be rehabilitated, improved, or developed within the jurisdiction over the 20-year planning period and the actions the local government may take to remove constraints to the development of those units over that period.

(4) Progress toward the construction of the housing units identified as needed to meet projected housing needs during the 20-year planning period of the land use plan must be documented at each fifth year review of the land use plan as required in [section 8].

(5) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

Section 11. Local services and facilities. (1) The land use plan must:

- (a) determine the existing and anticipated levels of public safety and emergency services necessary to serve the projected population of the jurisdiction, including law enforcement, fire protection, emergency management system agencies, and local health care organizations;
- (b) contain an inventory and map of existing fire protection, law enforcement, and emergency service jurisdictional areas and anticipated response times, a description of mutual aid or cooperative service

agreements, and the location of hospitals or clinics in the jurisdiction;

(c) identify capital and service improvements for fire, law enforcement, emergency services, and health services for the jurisdictional area necessary to meet the projected population;

(d) determine the existing capacity, existing deficiencies, planned expansion, and anticipated levels of utility services necessary to serve the projected population in the jurisdiction, including water, wastewater, and storm water systems, solid waste disposal, and other utility services, as identified by the local government;

(e) contain an inventory and map of all utility service areas, system networks, and facilities;

(f) identify local utility capital and service improvements for the jurisdictional area necessary to meet the projected population;

(g) determine the existing capacity, existing deficiencies, planned expansion, and anticipated improvements to the transportation network serving the jurisdictional area necessary to serve the projected population in the jurisdiction;

(h) contain an inventory and classification map of all existing and planned roads within the jurisdictional area, including major highways, secondary highways, and local routes, all non-motorized routes, including bike lanes and pedestrian thoroughfares, and all public transit systems and facilities; and

(i) identify planned capital and service transportation improvements necessary to serve the projected population.

(2) The local government shall:

(a) coordinate with school districts within the jurisdiction to determine the existing capacity of, planned expansion of, and anticipated improvements necessary for the local K-12 school system to serve the projected population in the jurisdiction; and

(b) request that the local school district provide any inventory and maps of existing K-12 educational facilities within the jurisdictional area and identify any capital and service improvements necessary to meet the projected population.

(3) The local government may include an analysis of existing capacity and service levels, planned expansions of, and anticipated improvements necessary to provide other services to the projected population in the jurisdiction.

(4) The local government may incorporate by reference any information or policies identified in other relevant local services or facilities assessments adopted by the local governing body, such as a capital improvements plan or an impact fee study.

(5) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

Section 12. Economic development. (1) The land use plan must:

(a) assess existing and potential commercial, industrial, small business, and institutional enterprises in the jurisdiction, including the types of sites and supporting services needed by the enterprises;

(b) summarize job composition and trends by industry sector, including existing labor force characteristics and future labor force requirements, for existing and potential enterprises in the jurisdiction;

(c) assess the extent to which local characteristics, assets, and resources support or constrain existing and potential enterprises, including access to transportation to market goods and services, and assess historic, cultural, and scenic resources and their relationship to private sector success in the jurisdiction;

(d) inventory sites within the jurisdiction, including zoned, unzoned, vacant, underutilized, and potentially redeveloped sites, available to meet the jurisdiction's economic development needs;

(e) assess the adequacy of existing and projected local facilities and services, schools, housing stock, and other land uses necessary to support existing and potential commercial, industrial, and institutional enterprises; and

(f) assess the financial feasibility of supporting anticipated economic growth in the jurisdiction.

(2) The local government may incorporate by reference any information or policies identified in other relevant economic development assessments.

(3) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

Section 13. Natural resources, environment, and hazards. (1) The land use plan must:

(a) include inventories and maps of natural resources within the jurisdiction, including but not limited to agricultural lands, agricultural water user facilities, minerals, sand and gravel resources, forestry

lands, and other natural resources identified by the local government;

(b) describe the natural resource characteristics of the jurisdictional area, including a summary of historical natural resource utilization, data on existing utilization, and projected future trends;

(c) include an inventory, maps, and description of the natural environment of the jurisdictional area, including a summary of important natural features and the conditions of and real and potential threats to soils, geology, topography, vegetation, surface water, groundwater, aquifers, floodplains, scenic resources, wildlife, wildlife habitat, wildlife corridors, and wildlife nesting sites within the jurisdiction; and

(d) include maps of, identify factors related to, and describe natural hazards within the jurisdictional area, including flooding, fire, earthquakes, steep slopes and other known geologic hazards and other natural hazards identified by the jurisdiction, with a summary of past significant events resulting from natural hazards that includes:

(i) a description of land use constraints resulting from natural hazards;

(ii) a description of the efforts that have been taken within the local jurisdiction to mitigate the impact of natural hazards; and

(iii) a description of the role that natural resources and the environment play in the local economy.

(2) The local government may incorporate by reference any information or policies identified in other relevant assessments of natural resources, environment, or hazards.

(3) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

Section 14. Land use and future land use map. (1) A land use plan must include a future land use map and a written description of the proposed general distribution, location, and extent of residential, commercial, mixed, industrial, agricultural, recreational, and conservation uses of land and other categories of public and private uses, as determined by the local government.

(2) The future land use map must reflect the anticipated and preferred pattern and intensities of development for the jurisdiction over the next 20 years, based on the information, analysis, and public input collected, considered, and relevant to the population projections for and economic development of the jurisdiction and the housing and local services needed to accommodate those projections, while acknowledging

and addressing the natural resource, environment, and natural hazards of the jurisdiction.

(3) The future land use map may not confer any authority to regulate what is not otherwise specifically authorized in [sections 1 through 38].

(4) The future land use map and the written description must include:

(a) a statement of intent describing the jurisdiction's applicable zoning, subdivision, and other land use regulations;

(b) descriptions of existing and future land uses, including:

(i) categories of public and private use;

(ii) general descriptions of use types and densities of those uses;

(iii) general descriptions of population; and

(iv) other aspects of the built environment;

(c) geographic distribution of future land uses in the jurisdiction, anticipated over a 20-year planning period that specifically demonstrate:

(i) adequate land to support the projected population in all land use types in areas where local services can be adequately and cost-effectively provided for that population;

(ii) adequate sites to accommodate the type and supply of housing needed for the projected population; and

(iii) areas of the jurisdiction that are not generally suitable for development and the reason, based on the constraints identified through the land use plan analysis;

(d) a statement acknowledging areas within the jurisdiction known to be subject to covenants, codes, and restrictions that may limit the type, density, or intensity of housing development projected in the future land use map; and

(e) areas of or adjacent to the jurisdiction subject to increased growth pressures, higher development densities, or other urban development influences.

(5) To the greatest extent possible, local governments shall create compatibility in the land use plans and future land use map in those areas identified in subsection (4)(e).

(6) The land use plan may:

(a) provide information required by a federal land management agency for the local governing

body to establish or maintain coordination or cooperating agency status; and

(b) incorporate by reference any information or policies identified in other relevant assessments adopted by the local governing body, such as a pre-disaster mitigation plan or wildfire protection plan.

(7) The amount of detail provided in the analysis beyond the minimum criteria established in this section is at the discretion of the local governing body.

Section 15. Area plans. (1) A local governing body may adopt area plans for a portion of the jurisdiction to provide a more localized analysis of all or any part of a land use plan. An area plan may include but is not limited to a neighborhood plan, a corridor plan, or a subarea plan.

(2) The adoption, amendment, or update of an area plan must follow the same process as a land use plan provided for in [sections 7 through 17] and may be adopted as an amendment to the land use plan.

(3) The area plan must be in substantial compliance with the land use plan. To the extent an area plan is inconsistent with the land use plan, the land use plan controls.

Section 16. Issue plans. (1) A local governing body may adopt issue plans for all or part of a jurisdiction that provide a more detailed or thorough analysis for any component of the land use plan.

(2) The adoption, amendment, or update of an issue plan must follow the same process as a land use plan provided for in [sections 7 through 17].

(3) If an issue plan covers the jurisdictional area of the land use plan, the issue plan may serve as the detailed analysis required in the land use plan.

Section 17. Implementation. (1) The land use plan and future land use map is not a regulatory document and must include an implementation section that:

(a) establishes meaningful and predictable implementation measures for the use and development of land within the jurisdiction based on the contents of the land use plan and future land use map;

(b) provides meaningful direction for the content of more detailed land use regulations and future land use maps; and

(c) requires identification of those programs, activities, actions, or land use regulations that may be

part of the overall strategy of the jurisdiction for implementing the land use plan.

(2) The implementation section of the land use plan must include:

(a) if the local jurisdiction does not have current zoning regulations, a schedule by which zoning regulations and a zoning map will be adopted in accordance with the deadlines set forth in [section 5];

(b) if the local jurisdiction has current zoning regulations, an analysis of whether any inconsistencies exist between current zoning regulations and the land use plan and future land use map, including a map of the inconsistencies. If inconsistencies exist, the local government shall identify:

(i) specific implementation actions necessary to amend the zoning regulations and the zoning map to bring the zoning regulations and zoning map into substantial compliance with the land use plan and future land use map;

(ii) a schedule for amending the zoning regulations and zoning map to be in substantial compliance with the land use plan and future land use map, in accordance with the deadlines set forth in [section 5];

(iii) a schedule for adopting a capital improvements program or for amending an existing capital improvements program to be in substantial compliance with the land use plan and future land use map;

(iv) a schedule for expanding or replacing public facilities and the anticipated costs and revenue sources proposed to meet those costs, which must be reflected in a jurisdiction's capital improvement program;

(v) if applicable, a schedule for updating the plan for extension of services required in 7-2-4732 to be in substantial compliance with the land use plan; and

(vi) a schedule for implementing any other specific actions necessary to achieve the components of the land use plan, including a timeframe or prioritization of each specific public action; and

(c) procedures for monitoring and evaluating the local government's progress toward meeting the implementation schedule.

Section 18. Authority to adopt local zoning regulations. (1) (a) A local government subject to [sections 1 through 38], within its respective jurisdiction, has the authority to and shall regulate the use of land in substantial compliance with its adopted land use plan by adopting zoning regulations.

(b) The governing body of a county or city has the authority to adopt zoning regulations in

accordance with [sections 18 through 24] by an ordinance that substantially complies with 7-5-103 through 7-5-107.

(c) A municipality shall adopt zoning regulations for the portions of the jurisdictional area outside of the boundaries of the municipality that the governing body anticipates may be annexed into the municipality over the next 20 years. Unless otherwise agreed to by the applicable jurisdictions, zoning regulations on property outside the municipal boundaries may not apply or be enforced until those areas are annexed or are being annexed into the municipality.

(2) Local zoning regulations authorized in subsection (1) include but are not limited to ordinances prescribing the:

- (a) uses of land;
- (b) density of uses;
- (c) types of uses;
- (d) size, character, number, form, and mass of structures; and
- (e) development standards mitigating the impacts of development, as identified and analyzed during the land use planning process and review and adoption of zoning regulations pursuant to [sections 1 through 38].

(3) The local government shall incorporate any existing zoning regulations adopted pursuant to Title 76, chapter 2, into the zoning regulations meeting the requirements of [sections 1 through 38].

(4) The local government shall adopt a zoning map for the jurisdiction in substantial compliance with the land use plan and future land use map and the zoning regulations adopted pursuant to this section, graphically illustrating the zone or zones that a property within the jurisdiction is subject to.

(5) The local government may provide for the issuance of permits as may be necessary for the implementation of [sections 1 through 38].

(6) (a) The zoning regulations and map must identify areas that may necessitate the denial of a development or a specific type of development, such as unmitigable natural hazards, insufficient water supply, inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds for the supply of the services.

(b) The regulations must prohibit development in the areas identified in subsection (6)(a) unless

the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the zoning regulations.

(c) Approved construction techniques or other mitigation measures described in subsection (6)(b) may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(7) The zoning regulations and map must mitigate the hazards created by development in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body. If the hazards cannot be mitigated, the zoning regulations and map must identify those areas where future development is limited or prohibited.

(8) The zoning regulations must allow for the continued use of land or buildings legal at the time that any zoning regulation, map, or amendment thereto is adopted, but the local government may provide grounds for discontinuing nonconforming uses based on changes to or abandonment of the use of the land or buildings after the adoption of a zoning regulation, map, or amendment.

Section 19. Encouragement of development of housing. (1) The zoning regulations authorized in [section 18] must include a minimum of five of the following housing strategies, applicable to the majority of the area, where residential development is permitted in the jurisdictional area:

- (a) allow, as a permitted use, for at least a duplex where a single-unit dwelling is permitted;
- (b) zone for higher density housing near transit stations, places of employment, higher education facilities, and other appropriate population centers, as determined by the local government;
- (c) eliminate or reduce off-street parking requirements to require no more than one parking space per dwelling unit;
- (d) eliminate impact fees for accessory dwelling units or developments that include multi-unit dwellings or reduce the fees by at least 25%;
- (e) allow, as a permitted use, for at least one internal or detached accessory dwelling unit on a lot with a single-unit dwelling occupied as a primary residence;
- (f) allow for single-room occupancy developments;
- (g) allow, as a permitted use, a triplex or fourplex where a single-unit dwelling is permitted;

- (h) eliminate minimum lot sizes or reduce the existing minimum lot size required by at least 25%;
 - (i) eliminate aesthetic, material, shape, bulk, size, floor area, and other massing requirements for multi-unit dwellings or mixed-use developments or remove at least half of those requirements;
 - (j) provide for zoning that specifically allows or encourages the development of tiny houses, as defined in Appendix Q of the International Residential Code as it was printed on January 1, 2023;
 - (k) eliminate setback requirements or reduce existing setback requirements by at least 25%;
 - (l) increase building height limits for dwelling units by at least 25%;
 - (m) allow multi-unit dwellings or mixed-use development as a permitted use on all lots where office, retail, or commercial are primary permitted uses; or
 - (n) allow multi-unit dwellings as a permitted use on all lots where triplexes or fourplexes are permitted uses.
- (2) If a local government's existing zoning ordinance adopted pursuant to Title 76, chapter 2, before [the effective date of this act] does not contain a zoning regulation that is listed as a regulation to be eliminated or reduced in subsection (1), that strategy is considered adopted by the local government.
- (3) If the adoption of a housing strategy allowed in subsection (1) subsumes another housing strategy allowed in subsection (1), only one strategy may be considered to have been adopted by the local government.

Section 20. Limitations on zoning authority. (1) A local government acting pursuant to [sections 18 through 24] may not:

- (a) treat manufactured housing units differently from any other residential units;
- (b) include in a zoning regulation any requirement to:
 - (i) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or
 - (ii) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices, including a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices;
- (c) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to

accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(d) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground;

(e) subject to subsection (2) and outside of incorporated municipalities, prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources identified in the land use plan, except that the use, development, or recovery may be reasonably conditioned or prohibited within residential zones;

(f) except as provided in subsection (3), treat the following differently from any other residential use of property:

(i) a foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623, if the home or facility provides care on a 24-hour-a-day basis;

(ii) a community residential facility serving eight or fewer persons, if the facility provides care on a 24-hour-a-day basis; or

(iii) a family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7;

(g) except as provided in subsection (3), apply any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children; or

(h) prohibit any existing agricultural activities or force the termination of any existing agricultural activities outside the boundaries of an incorporated city, including agricultural activities that were established outside the corporate limits of a municipality and thereafter annexed into the municipality.

(2) Regulations that condition or prohibit uses pursuant to subsection (1)(e) must be in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to 82-4-432.

(3) Except for a day-care home registered by the department of public health and human services,

a local government may impose zoning standards and conditions on any type of home or facility identified in subsections (1)(f) and (1)(g) if those zoning standards and conditions do not conflict with the requirements of subsections (1)(f) and (1)(g).

Section 21. Adoption and amendment of zoning regulations. (1) (a) The governing body shall adopt or amend a zoning regulation or map only after consideration by and on the recommendation of the planning commission.

(b) An amendment to an adopted zoning regulation or map may be initiated:

(i) by majority vote of the governing body;

(ii) on petition of at least 15% of the electors of the local government jurisdiction to which the regulations apply, as registered at the last general election; or

(iii) by a property owner, as related to an application for any zoning, subdivision, or other land use permit or approval.

(2) Prior to making a recommendation to the governing body to adopt or amend a zoning regulation or map, the planning commission shall:

(a) provide public notice and participation in accordance with [section 6];

(b) accept, consider, and respond to public comment on the proposed zoning regulation, map, or amendment. All public comment must be part of the administrative record transmitted to the governing body.

(c) make a preliminary determination as to whether the zoning regulation and map as proposed or as amended would be in substantial compliance with the land use plan, including whether the zoning regulation or map:

(i) accommodates the projected needed housing types identified in [section 10];

(ii) contains five or more specific strategies from [section 19] to encourage the development of housing within the jurisdiction;

(iii) reflects allowable uses and densities in areas that may be adequately served by public safety, emergency, utility, transportation, education, and any other local facilities or services identified by the local government in [section 11];

(iv) allows sufficient area for existing, new, or expanding commercial, industrial, and institutional

enterprises the local government has identified in [section 12] for targeted economic growth in the jurisdiction;

(v) protects and maximizes the potential use of natural resources within the area, as identified in [section 13];

(vi) minimizes or avoids impacts to the natural environment within the area, as identified in [section 13]; and

(vii) avoids or minimizes dangers associated with natural hazards in the jurisdiction, as identified in [section 13]; and

(d) preliminarily determine whether the proposed zoning regulation, map, or amendment results in new or increased impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed in the assessment conducted for the land use plan.

(3) If the planning commission finds new or increased impacts from the proposed regulation, map, or amendment, as provided in subsection (2)(d), the local government shall collect additional data and conduct additional analysis necessary to provide the planning commission and the public with the opportunity to comment on and consider all potential impacts resulting from adoption of the zoning regulation, map, or amendment.

(4) After meeting the requirements of subsections (2) and (3), the planning commission shall make a final recommendation to the governing body to approve, modify, or reject the proposed zoning regulation, map, or amendment.

(5) (a) The governing body shall consider each zoning regulation, map, or amendment that the planning commission recommends to the governing body.

(b) After providing public notice and participation in accordance with [section 6], the governing body may adopt, adopt with revisions the governing body considers appropriate, or reject the zoning regulation, map, or amendment as proposed by the planning commission.

(c) The governing body may not condition an amendment to a zoning regulation or map.

(d) The governing body may not adopt or amend a zoning regulation or map unless the governing body finds that:

(i) the regulation, map, or amendment is in substantial compliance with the land use plan; and

(ii) the impacts resulting from development in substantial compliance with the proposed zoning

regulation, map, or amendment have been made available for public review and comment and have been fully considered by the governing body.

(6) After the zoning regulation, map, or amendment has been adopted by the governing body, there is a presumption that:

(a) all permitting in substantial compliance with the zoning regulation, map, or amendment is in substantial compliance with the land use plan; and

(b) the public has been provided a meaningful opportunity to participate.

Section 22. Effect on zoning regulations and map. (1) After the adoption of a zoning regulation, map, or amendment pursuant to [section 21], any application proposing development of a site is subject to the process set forth in this section.

(2) (a) When a proposed development lies entirely within an incorporated city, or is proposed for annexation into the city, the application must be submitted to and approved by the city.

(b) Except as provided in subsections (2)(a) or (2)(c), when a proposed development lies entirely in an unincorporated area, the application must be submitted to and approved by the county.

(c) If a proposed development lies within an area subject to increased growth pressures, higher development densities, or other urban development influences identified by either jurisdiction in [section 14], the jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

(d) If the proposed development lies partly within an incorporated city, the application and materials must be submitted to and approved by both the city and the county governing bodies.

(3) Zoning compliance permits and other ministerial permits may be issued by the planning administrator or the planning administrator's designee without any further review or analysis by the governing body, except as provided in [section 37].

(4) If a proposed development, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning regulations or map and all impacts resulting from the development were previously analyzed and made available for public review and comment prior to the adoption of the land use plan, zoning regulation, map, or amendment thereto, the application must be approved, approved with conditions, or denied by the planning administrator and is not subject to any further public review or comment,

except as provided in [section 37].

(5) (a) If a proposed development, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning regulations and map but may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan or zoning regulations, the planning administrator shall proceed as follows:

(b) request that the applicant collect any additional data and perform any additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the impacts identified in subsection (5)(a);

(c) collect any additional data or perform additional analysis the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the impacts identified in subsection (5)(a); and

(d) provide notice of a 15-business day written comment period during which the public has the reasonable opportunity to participate in the consideration of the impacts identified in subsection (5)(a).

(6) (a) Any additional analysis or public comment on a proposed development described in subsection (5) must be limited to only any new or significantly increased impacts potentially resulting from the proposed development, to the extent the impact was not previously identified or considered in the adoption or amendment of the land use plan or zoning regulations.

(b) The planning administrator shall approve, approve with conditions, or deny the application. The planning administrator's decision is final and no further action may be taken except as provided in [section 37].

(7) If an applicant proposes to develop a site in a manner or to an extent that the development is not in substantial compliance with the zoning regulations or map, the applicant shall propose an amendment to the regulations or map and follow the process provided for in [section 21].

Section 23. Zoning and annexation. (1) A municipality shall review and consider a proposed annexation in conjunction with the zoning regulations for the property to be annexed adopted pursuant to [section 18(1)(c)] following the procedures set forth in [section 22].

(2) The joint public process authorized in subsection (1) fulfills the notice and public hearing requirements for a proposed annexation required in Title 7, chapter 2, parts 42 through 47.

Section 24. Interim zoning ordinances. (1) A local government, to protect the public safety, health, and welfare and without following the procedures otherwise required prior to adopting a zoning regulation, may adopt an interim zoning ordinance as an urgency measure to regulate or prohibit uses that may conflict with a zoning proposal that the governing body is considering or studying or intends to study within a reasonable time.

(2) Before adopting an interim zoning ordinance, the governing body shall first hold a public hearing upon notice reasonably designed to inform all affected parties. A notice must be published in a newspaper of general circulation at least 7 days before the public hearing.

(3) An interim zoning ordinance takes effect immediately on passage and approval after first reading

and may be in effect no longer than 1 year from the date of its adoption.

(4) A local government may not act under the authority provided for in this section until the local government has adopted a land use plan and zoning regulations pursuant to [sections 1 through 38].

Section 25. Authority to adopt local subdivision regulations -- limitations. (1) Within its respective jurisdiction, a local government shall regulate the creation of lots in substantial compliance with its adopted land use plan and zoning regulations by adopting subdivision regulations.

(b) The governing body of a county or city has the authority to adopt subdivision regulations in accordance with [sections 25 through 34] by an ordinance that substantially complies with 7-5-103 through 7-5-107.

(c) A municipality shall adopt subdivision regulations for those portions of the jurisdictional area outside the boundaries of the municipality that the governing body anticipates may be annexed into the municipality over the next 20 years. Unless otherwise agreed to by the applicable jurisdictions, subdivision regulations on property outside the municipal boundaries may not apply or be enforced until the areas are annexed or being annexed into the municipality.

(2) The subdivision regulations must provide a process for the application and consideration of subdivision exemptions, certificates of survey, preliminary plats, and final plats as necessary for the implementation of [sections 1 through 38].

(3) (a) A local governing body may not require, as a condition for approval of a subdivision under this [sections 25 through 34]:

(i) the payment of a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(ii) the dedication of real property for the purpose of providing housing for specified income levels or at specified sale prices.

(b) A dedication of real property prohibited in subsection (3)(a)(ii) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

(4) The local governing body may not change, in the subdivision regulations or in the process for subdividing, any timelines or procedural requirements for an application to subdivide other than provided for in [sections 25 through 34].

Section 26. Exemptions to subdivision review. (1) The following divisions of land, if made in substantial compliance with zoning regulations adopted pursuant to [sections 18 through 24], are not subject to the requirements of [sections 1 through 38]:

(a) subject to subsection (2), the creation of four or fewer new lots or parcels from an original lot or parcel:

(i) by order of a court of record in this state;

(ii) by operation of law; or

(iii) that, in the absence of agreement between the parties to a sale, could be created by court order in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), the creation of a lot to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing, if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture;

(c) the creation of an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

- (d) the creation of cemetery lots;
 - (e) the reservation of a life estate on a portion of a tract of record;
 - (f) the lease or rental of a portion of a tract of record for farming and agricultural purposes;
 - (g) the division of property over which the state does not have jurisdiction;
 - (h) the creation of rights-of-way or utility sites;
 - (i) the creation of condominiums, townhomes, townhouses, or conversions, as those terms are defined in 70-23-102, when any applicable park dedication requirements as set forth in [sections 18 through 24] are complied with;
 - (j) the lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority;
 - (k) subject to subsection (4), a division of state-owned land, unless the division creates a second or subsequent residential parcel from a single tract for sale, rent, or lease after July 1, 1974;
 - (l) the creation of lots by deed, contract, lease, or other conveyance executed prior to July 1, 1974;
 - (m) the relocation of common boundary lines between or aggregations of adjoining properties that does not result in an increase in the number of lots;
 - (n) a single gift or sale in each county to each member of the landowner's immediate family; or
 - (o) subject to subsection (5), the creation of lots by deed, contract, lease, or other conveyance in which the landowner enters into a covenant with the governing body that runs with the land that provides that the divided land must be used exclusively for agricultural purposes.
- (2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.
- (3) A transfer of divided land by the owner of the property at the time that the land was divided to any party other than those identified in subsection (1)(b) subjects the division of land to the requirements of [sections 1 through 38].
- (4) Instruments of transfer of land that is acquired for state highways may refer by parcel and project number to state highway plans that have been recorded in compliance with 60-2-209 and are exempted

from the surveying and platting requirements of [sections 1 through 38]. If the parcels are not shown on highway plans of record, instruments of transfer of the parcels must be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) The governing body, in its discretion, may revoke the covenant provided for in subsection (1)(o) without subdivision review if the original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant.

Section 27. Adoption and amendment of subdivision regulations. (1) (a) The governing body shall adopt or amend subdivision regulations only after consideration by and on the recommendation of the planning commission.

(b) An amendment to adopted subdivision regulations may be initiated:

(i) by majority vote of the governing body;

(ii) on petition of at least 15% of the electors of the local government jurisdiction to which the regulations apply, as registered at the last general election; or

(iii) by a property owner, as related to an application for any zoning, subdivision, or other land use permit or approval.

(2) Prior to making a recommendation to the governing body to adopt or amend subdivision regulations, the planning commission shall:

(a) provide public notice and participation in accordance with [section 6];

(b) accept, consider, and respond to public comment on the proposed subdivision regulation or amendment to a subdivision regulation. All public comment must be part of the administrative record transmitted to the governing body.

(c) make a preliminary determination as to whether the subdivision regulation or amendment to a subdivision regulation is in substantial compliance with the land use plan and zoning regulations, including whether the regulation or amendment:

(i) enables the development of projected needed housing types identified in the land use plan and zoning regulations;

(ii) reflects applicable strategies from the land use plan and zoning regulations to encourage the

development of housing within the jurisdiction;

(iii) facilitates the adequate provision of public safety, emergency, utility, transportation, education, and any other local facilities or services for proposed development, as identified in the land use plan and zoning regulations;

(iv) reflects standards that provide for existing, new, or expanding commercial, industrial, and institutional enterprises identified in the land use plan and zoning regulations for economic growth;

(v) protects and maximizes the potential use of natural resources within the area, as identified in the land use plan and zoning regulations;

(vi) contains standards that minimize or avoid impacts to the natural environment within the area, as identified in the land use plan and zoning regulations; and

(vii) contains standards that avoid or minimize dangers associated with natural hazards in the jurisdiction, as identified in the land use plan and zoning regulations; and

(d) preliminarily determine whether the proposed subdivision regulation or amendment to a subdivision regulation results in new or increased potential impacts to or from local facilities, services, natural resources, natural environment, or natural hazards from those previously described and analyzed in the assessments conducted for the land use plan and zoning regulations.

(3) If the planning commission finds new or increased potential impacts from the proposed regulation or amendment to a regulation pursuant to subsection (2)(d), the local government shall collect additional data and conduct additional analysis necessary to provide the planning commission and the public with the opportunity, pursuant to [section 6], to comment on and consider all potential impacts resulting from adoption of the subdivision regulation or amendment to a subdivision regulation.

(4) After meeting the requirements of subsection (2), the planning commission shall make a final recommendation to the governing body to approve, modify, or reject the proposed subdivision regulation or amendment to a subdivision regulation.

(5) (a) The governing body shall consider each subdivision regulation or amendment to a subdivision regulation that the planning commission recommends to the governing body.

(b) After providing public notice and participation in accordance with [section 6], the governing body may adopt, adopt with revisions that the governing body considers appropriate, or reject the subdivision

regulation or amendment to a subdivision regulation as proposed by the planning commission.

(c) The governing body may not adopt or amend a subdivision regulation unless the governing body finds:

(i) the subdivision regulation or amendment to a subdivision regulation is in substantial compliance with the land use plan and zoning regulations; and

(ii) the impacts resulting from development in substantial compliance with the proposed subdivision regulation or amendment to a subdivision regulation have been made available for public review and comment, which have been fully considered by the governing body.

(6) After the subdivision regulation or amendment to a subdivision regulation has been adopted by the governing body, there is a presumption that:

(a) all subdivisions in substantial compliance with the adopted regulation or amendment are in substantial compliance with the land use plan and zoning regulations; and

(b) the public has been provided a meaningful opportunity to participate.

Section 28. Contents of local subdivision regulations. (1) The subdivision regulations adopted under [sections 25 through 34] are limited to the following requirements:

(a) the date the regulations initially become effective under [sections 1 through 38] and the effective dates and the ordinance numbers for all subsequent amendments;

(b) design standards for all subdivisions in the jurisdiction, which may be incorporated by reference or may be based on the information and analysis contained in the land use plan and zoning regulations, including:

(i) standards for grading and erosion control;

(ii) standards for the design and arrangement of lots, streets, and roads;

(iii) standards for the location and installation of public utilities, including water supply and sewage and solid waste disposal;

(iv) standards for the provision of other public improvements; and

(v) legal and physical access to all lots;

(c) when a subdivision creates parcels with lot sizes averaging less than 5 acres, a requirement

that the subdivider:

- (i) reserve all or a portion of the appropriation water rights owned by the owner of the subject property, transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water, and reserve and sever any remaining surface water rights from the land;
- (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement that is administered through a single entity and that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
- (iii) reserve and sever all surface water rights from the land;
- (d) except as provided in subsection (2), a requirement that the subdivider establish ditch easements that:
 - (i) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - (ii) unless otherwise provided for under a separate written agreement or filed easement, provide for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;
 - (iii) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - (iv) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner;
 - (e) criteria that the planning administrator must use to determine whether a proposed method of disposition using the exemptions provided in [sections 1 through 38] is an attempt to evade the requirements of [sections 1 through 38];
 - (f) a list of the materials that must be included in order for the application to be determined

complete;

(g) subject to subsection (4), identification of circumstances or conditions that may necessitate the denial of any or specific types of development, such as unmitigable natural hazards, insufficient water supply, inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds for the supply of the services;

(h) subject to subsection (5), a list of public utilities and agencies of local, state, and federal government that the local government must seek input from during review of an application and for what information or analysis; or

(i) subject to subsection (6), requirements for the dedication of land, cash-in-lieu thereof, or a combination of both for parks and recreation purposes, not to exceed 0.03 acres per dwelling unit.

(2) A land donation under this section may be inside or outside of the subdivision.

(3) The regulations may not require ditch easements if:

(a) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land that the lots may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(b) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(4) (a) The regulations must prohibit development in circumstances or conditions identified in subsection (1)(g) unless the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the subdivision regulations.

(b) Approved construction techniques or other mitigation measures described in subsection (4)(a) may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(5) If a proposed subdivision is situated within a rural school district, as described in 20-9-615, the

local government shall provide a copy of the application and preliminary plat to the school district.

- (6) (a) A park dedication may not be required for:
 - (i) land proposed for subdivision into parcels larger than 5 acres;
 - (ii) subdivision into parcels that are all nonresidential;
 - (iii) a subdivision in which parcels are not created, except when that subdivision provides multiple permanent spaces for recreational camping vehicles, mobile homes, or condominiums; or
 - (iv) a subdivision in which only one additional parcel is created.
- (b) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (6)(a) to a school district to be used for school facilities or buildings.

Section 29. Local review procedure for divisions of land. (1) An applicant may request a preapplication submittal and response from the planning administrator prior to submitting a subdivision application. The preapplication review must take place no more than 30 business days from the date that the planning administrator receives a written request for a preapplication review from the subdivider.

(2) On receipt of an application for an exemption from subdivision review under [section 26] that contains all materials and information required by the governing body under subsection (5), the local government:

- (a) shall approve or deny the application within 20 business days;
- (b) may not impose conditions on the approval of an exemption from subdivision review except for conditions necessary to ensure compliance with the survey requirements of [section 33(1)]; and
- (c) may require the certificate of survey to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the certificate of survey. A professional land surveyor may not act as an examining land surveyor in regard to a certificate of survey in which the surveyor has a financial or personal interest.

(3) (a) When a proposed subdivision lies entirely within an incorporated city or is proposed for annexation into the city, the application and preliminary plat must be submitted to and approved by the city.

(b) Except as provided in subsection (3)(c), when a proposed subdivision lies entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the county.

(c) If the proposed subdivision lies within an area subject to increased growth pressures, higher development densities, or other urban development influences identified by either jurisdiction in [section 14], the jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

(d) If the proposed subdivision lies partly within an incorporated city, the application and preliminary plat must be submitted to and approved by both the city and the county governing bodies.

(4) A subdivision application is considered received on the date the application is delivered to the reviewing agent or agency if accompanied by the review fee.

(5) (a) The planning administrator has 20 business days to determine whether the application contains all information and materials necessary to complete the review of the application as set forth in the local subdivision regulations.

(b) The planning administrator may review subsequent submissions of the application only for information found to be deficient during the original review of the application under subsection (5)(a).

(c) A determination that an application contains sufficient information for review as provided in subsection (5)(a) does not ensure approval or conditional approval of the proposed subdivision and does not limit the ability of the planning administrator to request additional information during the review process.

(6) A subdivider may propose a phasing plan for approval with a preliminary plat. The phasing plan must include a phasing plan and map that demonstrates what lots will be included with each phase, what public facilities will be completed with each phase, and the timeline for the proposed phases.

(7) (a) If an application proposes a subdivision of a site that, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning and subdivision regulations and all impacts resulting from the development were previously analyzed and made available for public review and comment prior to the adoption of the land use plan, zoning regulations, and subdivision regulations, or any amendment thereto, the planning administrator shall issue a written decision to approve, approve with conditions, or deny the preliminary plat.

(b) The application is not subject to any further public review or comment, except as provided in [section 37].

(c) The decision by the planning administrator must be made no later than 15 business days from the date the application is considered complete.

(8) (a) If an application proposes subdivision of a site that, with or without variances or deviations from adopted standards, is in substantial compliance with the zoning and subdivision regulations but may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan, zoning regulations, or subdivision regulations, or any amendments thereto, the planning administrator shall proceed as follows:

(i) request the applicant to collect additional data and perform additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the impacts identified in this subsection (8)(a);

(ii) collect additional data or perform additional analysis that the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the impacts identified in this subsection (8)(a); and

(iii) provide notice of a written comment period of 15 business days during which the public must have a reasonable opportunity to participate in the consideration of the impacts identified in this subsection (8)(a).

(b) Any additional analysis or public comment on the proposed development is limited to only new or significantly increased potential impacts resulting from the proposed development to the extent that the impact was not previously identified in the consideration and adoption of the land use plan, zoning regulations, subdivision regulations, or any amendments thereto.

(9) Within 30 business days of the end of the written comment period provided in subsection (8)(a)(iii), the planning administrator shall issue a written decision to approve, conditionally approve, or deny a proposed subdivision application.

(10) The basis of the decision to approve, conditionally approve, or deny a proposed preliminary plat is based on the administrative record as a whole and a finding that the proposed subdivision:

(a) meets the requirements and standards of [sections 1 through 38];

(b) meets the survey requirements provided in [section 33(1)];

(c) provides the necessary easements within and to the proposed subdivision for the location and

installation of any planned utilities; and

(d) provides the necessary legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(11) (a) The written decision must identify each finding required in subsection (10) that supports the decision to approve, conditionally approve, or deny a proposed preliminary plat, including any conditions placed on the approval that must be satisfied before a final plat may be approved.

(b) The written decision must identify all facts that support the basis for each finding and each condition and identify the regulations and statutes used in reaching each finding and each condition.

(c) When requiring mitigation as a condition of approval, a local government may not unreasonably restrict a landowner's ability to develop land. However, in some instances, the local government may determine that the impacts of a proposed development are unmitigable and preclude approval of the subdivision.

(12) The written decision to approve, conditionally approve, or deny a proposed subdivision must:

(a) be provided to the applicant;

(b) be made available to the public;

(c) include information regarding the appeal process; and

(d) state the timeframe the approval is in effect.

(13) The planning administrator's decision is final, and no further action may be taken except as provided in [section 37].

(14) Any changes to an approved preliminary plat that increases the number of lots or redesigns or rearranges six or more lots must undergo consideration and approval of an amended plat following the requirements of this section.

Section 30. Effect of preliminary plat approval. (1) (a) An approved or conditionally approved preliminary plat must be in effect for not more than 5 calendar years and not less than 1 calendar year.

(b) At the end of the period, the planning administrator may, at the request of the subdivider, extend the approval once by written agreement.

(c) On receipt of a request for an extension, the planning administrator shall determine whether

the preliminary plat remains in substantial compliance with the zoning and subdivision regulations. If the preliminary plat is no longer in substantial compliance with the zoning or subdivision regulations, the extension may not be granted.

(d) After a preliminary plat is approved, the local government may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period.

(e) Any subsequent requests by the subdivider for extension of the approval must be reviewed and approved by the governing body.

(2) An approved or conditionally approved phased preliminary plat must be in effect for 20 calendar years.

Section 31. Local review procedure for final plats. (1) The following must be submitted with a final plat application:

(a) information demonstrating the final plat conforms to the written decision and all conditions of approval set forth on the preliminary plat;

(b) a plat that meets the survey requirements provided in [section 33(1)]; and

(c) confirmation the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

(2) The final plat may be required to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the final plat. A professional land surveyor may not act as an examining land surveyor in regard to a plat in which the surveyor has a financial or personal interest.

(3) A final plat application is considered received on the date the application is delivered to the governing body or the agent or agency designated by the governing body if accompanied by the review fee.

(4) (a) Within 10 business days of receipt of a final plat, the planning administrator shall determine whether the final plat contains the information required under subsection (1) and shall notify the subdivider in writing.

(b) If the planning administrator determines that the final plat does not contain the information required under subsection (1), the planning administrator shall identify the final plat's defects in the notification.

(c) The planning administrator may review subsequent submissions of the final plat only for information found to be deficient during the original review of the final plat under subsection (4)(a).

(d) A determination that the application for a final plat contains sufficient information for review as provided in subsection (4)(a) does not ensure approval of the final plat and does not limit the ability of the planning administrator to request additional information during the review process.

(5) Once a determination is made under subsection (4) that the final plat contains the information required under subsection (1), the governing body shall review and approve or deny the final plat within 20 business days.

(6) The subdivider or the subdivider's agent and the governing body or its reviewing agent or agency may mutually agree to extend the review periods provided for in this section.

(7) (a) For a period of 5 years after approval of a phased preliminary plat, the subdivider may apply for final plat of any one or more phases following the process set forth in subsections (1) through (6).

(b) After 5 years have elapsed since approval of a phased preliminary plat, the planning administrator shall review each remaining phase to determine if a phase may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan, zoning or subdivision regulations, or review and approval of the phased preliminary plat. If the planning administrator identifies any new or significantly increased potential impacts not previously identified and considered, the planning administrator shall proceed as set forth in [section 29(8)].

(c) If necessary to mitigate impacts identified in subsection (7)(b), the planning administrator may impose conditions on any phase before final plat approval is sought.

Section 32. Filing and recordation of plats and certificates of survey. (1) (a) Except as provided in subsection (1)(b), every final plat or certificate of survey must be filed for record with the county clerk and recorder before title to the land may be sold or transferred in any manner. The clerk and recorder of the county may not accept any final plat or certificate of survey for record that has not been approved in accordance with [sections 25 through 34] unless the final plat or certificate of survey is located in an area over which the state

does not have jurisdiction.

(b) After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following contract conditions are imposed and met:

(i) the purchasers of lots in the proposed subdivision make payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the state of Montana;

(ii) the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(iii) if the final plat of the proposed subdivision is not filed with the county clerk and recorder within the approval period of the preliminary plat, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract;

(iv) the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(v) the following language is conspicuously set out in each contract: "The real property that is the subject of this contract has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property may not be transferred in any manner".

(2) (a) Subject to subsection (2)(b), no division of land may be made unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (2)(b) as a partial payment of the total tax that is due.

(3) (a) The county clerk and recorder shall maintain an index of all recorded and filed subdivision

plats and certificates of survey.

(b) The index must list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and must list the recording or filing numbers of all plats or certificates of survey depicting lands lying within each quarter section. Each quarter section list must be definitive to the exclusion of all other quarter sections. The index must also list the names of all subdivision plats in alphabetical order and the place where filed.

(4) The recording of any plat made in compliance with the provisions of [sections 1 through 38] must serve to establish the identity of all lands shown on and being part of the plat. When lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof must be regarded as incorporated into the instrument of conveyance and must be received in evidence in all courts of this state.

(5) (a) Any plat prepared and recorded as provided in [sections 25 through 34] may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration:

- (i) the previous platting;
- (ii) the manner in which the right-of-way was originally dedicated, granted, or conveyed;
- (iii) the reasons stated in the petition requesting the vacation;
- (iv) the parties requesting the vacation; and
- (v) any agreements between the adjacent property owners regarding the use of the vacated area.

The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(b) Notwithstanding the provisions of subsection (5)(a), when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

Section 33. Survey requirements. (1) Divisions of land under [sections 1 through 38] must follow the uniform standards governing monumentation, certificates of survey, and subdivision plats prescribed and adopted by the board of professional engineers and professional land surveyors.

(2) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Title 70, chapter 22, part 1. Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with [sections 25 through 34] and regulations adopted pursuant to [sections 25 through 34].

(3) All divisions of land for sale other than a subdivision created after July 1, 1974, divided into parcels that cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of subsection (8).

(4) Except as provided in 70-22-105, within 180 days of the completion of a survey, the professional land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

- (a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;
- (b) reveals a material discrepancy in the map;
- (c) discloses evidence to suggest alternate locations of lines or points; or
- (d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations.

(5) A certificate of survey is not required for any survey that is made by the United States bureau of land management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of [sections 1 through 38].

(6) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

- (7) (a) A registered land surveyor may administer and certify oaths when:
- (i) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;
 - (ii) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated; or
 - (iii) the importance of the survey makes it desirable to administer an oath to the surveyor's assistants for the faithful performance of their duty.
- (b) A record of oaths must be preserved as part of the field notes of the survey and noted on the certificate of survey filed under subsection (4).
- (8) (a) (i) A surveyor who completes a survey identified in subsection (8)(b) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than one section shall note on the survey the acreage of the farm unit or created parcel in each section.
- (ii) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.
- (b) The requirements of subsection (8)(a) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:
- (i) traversed by a canal or ditch owned by an irrigation district; or
 - (ii) included in an irrigation district.

Section 34. Public improvements and extension of capital facilities. (1) Except as provided in subsections (1)(a) and (1)(c), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(a) (i) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall, at the subdivider's option, allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce

bond or security requirements commensurate with the completion of improvements. Failure of the local government to require the renewal of a bond does not waive the subdivider's responsibility to complete the required improvements prior to the approval of the final plat.

(ii) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a)(i), the governing body may enter into a subdivision improvements agreement with the subdivider that provides for an incremental payment, guarantee plan, or other method of completing the necessary improvements to serve the development as set forth in the preliminary plat approval.

(b) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (1)(a) is not an act of a legislative body for the purposes of 2-9-111.

(c) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding, other reasonable security, or entering into a subdivision improvements agreement for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.

(2) (a) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(b) All fees, costs, or other money paid by a subdivider under this subsection (2) must be expended on the capital facilities for which the payments were required.

Section 35. Variances. (1) All land use regulations must include a process for the submission and review of variances.

(2) The application for a variance must be for relief from land or building form design standards or subdivision design and improvement standards.

- (3) Variance applications must be considered and approved or approved with conditions before application or in conjunction with application for a zoning permit or subdivision approval.
- (4) The granting of a variance must meet all of the following criteria:
 - (a) the variance is not detrimental to public health, safety or general welfare;
 - (b) the variance is due to conditions peculiar to the property, such as physical surroundings, shape, or topographical conditions;
 - (c) strict application of the regulations to the property results in an unnecessary hardship to the owner as compared to others subject to the same regulations and that is not self-imposed;
 - (d) the variance may not cause a substantial increase in public costs; and
 - (e) the variance may not place the property in nonconformance with any other regulations.
- (5) Additional criteria may apply if the variance is associated with a floodplain or floodway pursuant to the requirements of Title 76, chapter 5.
- (6) Variance requests must be reviewed and determined by the planning administrator. The planning administrator's decision is final and no further action may be taken except as provided in [section 37].

Section 36. Fees. The governing body may establish reasonable fees to be paid by an applicant for a zoning permit, subdivision application, appeals, or any other review performed by the local government pursuant to [sections 1 through 38] to defray the expense of performing the review.

Section 37. Appeals. (1) Appeals of any final decisions made pursuant to [sections 1 through 38] must be made in accordance with this section.

(2) For a challenge to the adoption of or amendment to a land use plan, zoning regulation, zoning map, or subdivision regulation, a petition setting forth the basis for the challenge must be presented to the district court within 30 days of the date of the resolution or ordinance adopted by the governing body.

(3) (a) Any final administrative land use decision, including but not limited to approval or denial of a zoning permit, preliminary plat or final plat, imposition of a condition on a zoning permit or plat, approval or denial of a variance from a zoning or subdivision regulation, or interpretation of land use regulations or map may be appealed by the applicant or any aggrieved person to the planning commission.

(b) An appeal under subsection (3)(a) must be submitted in writing within 15 business days of the challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

(c) The planning commission shall hear the appeal de novo. The planning commission is not bound by the decision that has been appealed, but the appeal must be limited to the issues raised on appeal. The appellant has the burden of proving that the appealed decision was made in error.

(e) A decision of the planning commission on appeal takes effect on the date when the planning commission issues a written decision.

(4) (a) Any final land use decision by the planning commission may be appealed by the applicant, planning administrator, or any aggrieved person to the governing body.

(b) An appeal under subsection (4)(a) must be submitted in writing within 15 business days of the challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

(c) The governing body shall hear the appeal de novo. The governing body is not bound by the decision that has been appealed, but the appeal must be limited to the issues raised on appeal. The appellant has the burden of proving that the appealed decision was made in error.

(d) A decision of the governing body on appeal takes effect on the date when the governing body issues a written decision.

(5) (a) No person may challenge in district court a land use decision until that person has exhausted the person's administrative appeal process as provided in this section.

(b) Any final land use decision of the governing body may be challenged by presenting a petition setting forth the grounds for review of a final land use decision with the district court within 30 calendar days after the written decision is issued.

(c) A challenge in district court to a final land use decision of the governing body is limited to the issues raised by the challenger on administrative appeal.

(6) Every final land use decision made pursuant to this section must be based on the administrative record as a whole and must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(7) Nothing in [sections 1 through 38] is subject to any provision of Title 2, chapter 4.

Section 38. Enforcement and penalties. (1) A local government may, by ordinance, establish civil penalties for violations of any of the provisions of [sections 1 through 38] or of any ordinances adopted under the authority of [sections 1 through 38].

(2) Prior to seeking civil penalties against a property owner, a local government shall provide:

(a) written notice, by mail or hand delivery, of each ordinance violation to the address of the owner of record on file in the office of the county recorder;

(b) a reasonable opportunity to cure a noticed violation; and

(c) a schedule of the civil penalties that may be imposed on the owner for failure to cure the violation before expiration of a time certain.

(3) A local government may, in addition to other remedies provided by law, seek:

(a) an injunction, mandamus, abatement, or any other appropriate action provided for in law;

(b) proceedings to prevent, enjoin, abate, or remove an unlawful building, use, occupancy, or act;

or

(c) criminal prosecution for violation of any of the provisions of [sections 1 through 38] or of any ordinances adopted under the authority of [sections 1 through 38] as a misdemeanor punishable by a fine not to exceed \$500 per day for each violation.

(4) In any enforcement action taken under this section or remedy sought thereunder, the parties shall pay their own costs and attorney fees.

Section 39. Repealer. The following sections of the Montana Code Annotated are repealed:

7-21-1001. Legislative findings and purpose.

7-21-1002. Definitions.

7-21-1003. Local government regulations -- restrictions.

Section 40. Codification instruction. [Sections 1 through 38] are intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 38].

Section 41. Effective date. [This act] is effective on passage and approval.

Section 42. Applicability. [This act] applies to local governments that currently meet the population thresholds in [section 5].

- END -

I hereby certify that the within bill,
SB 382, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2023.

Speaker of the House

Signed this _____ day
of _____, 2023.

SENATE BILL NO. 382

INTRODUCED BY F. MANDEVILLE, D. FERN, S. VINTON, M. BERTOGLIO, L. BREWSTER, M. HOPKINS, E.
BOLDMAN, G. HERTZ, C. FRIEDEL, J. KARLEN

AN ACT CREATING THE MONTANA LAND USE PLANNING ACT; REQUIRING CITIES THAT MEET CERTAIN POPULATION THRESHOLDS TO UTILIZE THE LAND USE PLAN, MAP, ZONING REGULATIONS, AND SUBDIVISION REGULATIONS PROVIDED IN THE ACT; ALLOWING OTHER LOCAL GOVERNMENTS THE OPTION TO UTILIZE THE PROVISIONS OF THE ACT; REQUIRING PUBLIC PARTICIPATION DURING THE DEVELOPMENT, ADOPTION, OR AMENDMENT OF A LAND USE PLAN, MAP, ZONING REGULATION, OR SUBDIVISION REGULATION; PROVIDING STRATEGIES TO MEET POPULATION PROJECTIONS; PROVIDING FOR CONSIDERATION OF FACTORS SUCH AS HOUSING, LOCAL FACILITIES, ECONOMIC DEVELOPMENT, NATURAL RESOURCES, ENVIRONMENT, AND NATURAL HAZARDS WHEN DEVELOPING A LAND USE PLAN, MAP, AND ZONING REGULATION; PROVIDING FOR A PROCEDURE TO REVIEW SUBDIVISIONS AND APPROVE FINAL PLATS; PROVIDING FOR A LOCAL GOVERNING BODY TO COLLECT FEES; PROVIDING AN APPEALS PROCESS, ENFORCEMENT MECHANISMS, AND PENALTIES; PROVIDING DEFINITIONS; REPEALING SECTIONS 7-21-1001, 7-21-1002, AND 7-21-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

City Council Work Session

Date: 02/20/2024
Title: PMD Assessment Discussion
Presented by: Pigg Michael, Superintendent
Department: Parks/Rec/Public Lands
Presentation: No
Legal Review: No
Project Number: N/A

RECOMMENDATION

No recommendation, just a discussion topic.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Last September, councilman Rupsis requested a discussion about a program where an HOA, if one exists, can take over the maintenance of a PMD and the impacts that would have.

STAKEHOLDERS

City of Billings and the Home owners Associations in Park Maintenance Districts.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

Park Maintenance Districts pay a charge to the General Fund to cover operations and maintenance costs. Those charges are approximately \$250,000 this fiscal year.

SUMMARY

There is a fiscal impact on the general fund if Home Owners Associations choose to assume responsibility for the maintenance of a Park Maintenance District.

Date: 02/20/2024
Title: County Short Term Jail Request
Presented by: Chris Kukulski, City Administrator
Department: City Hall Administration
Presentation: Yes
Legal Review: Yes
Project Number: N/A

RECOMMENDATION

Council review the main components described below in the background in response to Yellowstone County's request to contribute financially to the construction of a short-term detention facility.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

A lack of incarceration space in the Yellowstone County Detention facility continues to cause significant problems for safety in our community. The improvement of safety remains the City's top priority. Attached are two letters. The first is from the city to the county asking the county to consider a temporary solution to bridge the gap to a permanent expanded jail. The second is the County's response dated January 30, 2024.

As understood, the proposed project will primarily hold low-risk offenders who pose a risk to the community but have not been charged with a crime severe enough to warrant detention in the limited space currently available at the main Yellowstone County Detention Facility (YCDF). This short-term holding facility will be a pre-arraignment hold only, with most inmates being released on a bond and/or GPS monitoring after seeing a judge and some being remanded to the main YCDF. Right now, many of these offenses are going without consequence in our community, due to overcrowding at YCDF and a flagrant disregard of the criminal justice system by persons accused of these crimes.

To expedite the short-term holding facility project and ensure it can be constructed quickly, the City of Billings is prepared to offer the following:

- Immediate transfer to the county of \$500,000, as included in our FY24 budget. These dollars will come primarily from the City's allocation of marijuana tax revenues.
- An additional transfer of [XXX] in fiscal year 2025 and XXX in fiscal year 2026. These dollars will likely come primarily from a combination of marijuana tax revenues and general fund appropriations.

In exchange, we request the following:

- The City and County will work to develop a written agreement spelling out mutual expectations as soon as possible. Neither party will have any obligations until the agreement is signed. In addition to other issues, the agreement will address the following.
 - The County and the Yellowstone County Sheriff's Office (YCSO) will be solely responsible for the construction, operation, and maintenance of the facility. Any unexpected construction costs would be borne by the County.
 - The County and YCSO will indemnify and hold harmless the City of Billings for any claims, errors, or omissions that may arise from the construction, operation, and maintenance of the facility.
 - The County and YCSO will ensure that the Billings Police Department has available to it, for short-term detention, at least 30 beds every 24 hours averaged over time. The beds may be used for the pre-arraignment holding of any non-violent or low-risk offender, without regard to the exact type of charge. These beds are intended to add capacity for this class of offenders, and more serious offenders of the type already being incarcerated shall not count towards this minimum allocation. We understand that the County has concerns about the enforcement of municipal infractions and are happy to discuss a reasonable limitation. The YCSO would retain reasonable discretion to refuse any offender who could not be safely housed in the facility based on normal YCSO operating policies (e.g., due to medical reasons, etc.).
 - The County and YCSO will work diligently to have the short-term holding facility open, for at least 30 beds, no later than June 1, 2025. If the facility is not available for use by July 1, 2015, the City of Billings will reduce its contribution by \$50,000 per month until the facility is operational.
 - The County and YCSO will not, at any time now or in the future, seek payment or contribution from the City of Billings for costs related to occupancy, operations, or maintenance. Neither party will have any liability for costs or charges related to occupancy, operations, or maintenance incurred before the agreement is signed.

We also want to express that while this short-term holding facility is an important and necessary strategy for reducing crime in our community, it is no replacement for an expansion of capacity at YCDF. That being said, the City greatly

appreciates the productive conversations with the County to develop a planning process and proposal for jail expansion and we look forward to continuing that partnership to bring forward a larger jail expansion project.

ALTERNATIVES

City Council may make changes to the above identified language.

FISCAL EFFECTS

The fiscal effects depend on the conversation. Yellowstone County has requested \$3,000,000.

SUMMARY

The Council will discuss their response to the County's request for financial support to build a short-term detention facility.

Attachments

City Letter to Yellowstone County
County Proposal to the City



November 7, 2023

P.O. Box 1178
Billings, MT 59103
P 406.657.8433

Yellowstone County Commissioners
Attn: John Ostlund, Chair
316 North 26th Street, Room 3101
P.O. Box 35000
Billings, MT 59107

Yellowstone County Sheriff
Mike Linder
2323 2nd Avenue North
P.O. Box 35017
Billings, MT 59107

Re: Proposal for a temporary misdemeanor pre-arraignment detention facility

Dear Commissioners and Sheriff Linder,

As stated in our April 2023 letter to you regarding a jail needs assessment, the City of Billings stands ready to partner with Yellowstone County to address overcrowding at the Yellowstone County Detention Facility (YCDF), as well as inefficiencies throughout the local criminal justice system. We know that a multi-pronged approach will be needed to move cases more quickly, support effective prosecution, and bring down barriers between jurisdictions. We applaud the efforts of county leaders to establish a working group to evaluate needs at YCDF and make recommendations to the Criminal Justice Coordinating Committee. We appreciate the opportunity to participate in the working group and would like to continue identifying areas of collaboration that enhance public safety.

Specifically, in the Fiscal Year 2024 budget, City Council voted to allocate funds to enter into an agreement with the Yellowstone County Sheriff's Office (YSCO) to develop a temporary, pre-arraignment misdemeanor detention facility. As you know, our community and the surrounding areas are plagued with individuals who commit crimes – often multiple infractions in short periods of time – and flagrantly defy the criminal justice system. They disrespect police officers, fail to appear in court, avoid warrants, and continue to walk free in the community without consequence. This situation must come to an end. Importantly, we must give officers tools to ensure that individuals are held accountable for their first offense, before criminal behaviors escalate into more violent crimes.

Municipalities in Montana have limited authority to operate detention facilities, but Council recognizes the need for additional system capacity. At the same time, we believe that innovation and expediency are important as well. City Council has discussed the issue many times during its meetings and voted to set aside an initial \$500,000 to demonstrate our seriousness in working with both the Commission and YCSO. At the direction of City Council, I offer the following proposal for your consideration:

- The City of Billings would like to enter an Interlocal Agreement, pursuant to §7-32-2243 and Title 7, Chapter 11, Part 1, MCA, to establish a temporary, secure facility designated to hold low-risk misdemeanor offenders prior to arraignment.
- The City will contribute an initial \$500,000 to Yellowstone County in FY24 for the development and operation of a temporary/modular structure[s] for use as secure inmate housing.
- Contract amounts for subsequent fiscal years to be negotiated, based on an initial projected annual operating cost of \$700,000-\$800,000 per year;
- Funds will be provided on a lump sum basis, rather than a per-bed or occupancy basis.
- The term of the agreement will be negotiated, but is anticipated to be between 3-5 years, subject to appropriations.
- Yellowstone County Sheriff's Office is solely responsible for the erection, operation, staffing, maintenance, inspecting, repairing, and security of the facility.
- Yellowstone County Sheriff's Office is solely responsible for the health, safety, and security of the inmates housed in the facility.
- At least 20 beds will be designated for misdemeanor offenders arrested within the city limits of Billings and must be available for holding those offenders upon being presented to the facility by law enforcement until an arraignment is held on the charges for which the person was arrested.
- No person will be held at the facility after an arraignment on the charges for which the person was arrested and YCSO will ensure that individuals remanded to YCDF following arraignment will be held at the main detention facility, not the pre-arraignment facility.

The City understands the County is currently evaluating systematic changes to alleviate jail overcrowding, but we believe it is worthwhile to explore this option as a stop-gap measure to address the immediate need for housing criminal offenders until a more permanent solution is found. Therefore, this proposal is intended to be temporary and not a permanent solution to the jail overcrowding, providing an opportunity for the City and County to test the idea and determine the actual need for secure beds to hold misdemeanor offenders.

There are different options for modular/temporary facilities that could be utilized for this proposed purpose. For example, Sprung Structures provides temporary structures that can be used as temporary holding cells or secure housing units. (For more information, please see <https://www.sprung.com/structures/commercial-buildings/correctional-facilities/>.) Attached is a preliminary estimate for a 50' W x 155' L structure and, although this may not include all

necessary specifications or information, it is provided to give an idea of what may be available within the budget proposed by the City.

I am sure there are other points that will need to be included. I would like to invite you and your key staff to meet with me and other city representatives to discuss this matter with the hope of drafting an Interlocal Agreement to memorialize this commitment. It is our hope to commence negotiations as soon as possible. Please reach out to me with any questions, as well as your availability, to further discuss this issue.

Sincerely,

A handwritten signature in black ink that reads "GDahl for". The signature is written in a cursive, somewhat informal style.

Chris Kukulski
City Administrator

Enc.

cc: Mayor and Council
Chief of Police
City Attorney
Municipal Court Judge

Yellowstone County



COMMISSIONERS
(406) 256-2701
(406) 256-2777 (FAX)

P.O. Box 35000
Billings, MT 59107-5000
bocc@yellowstonecountymt.gov

January 30, 2024

Billings City Council
Attn: Bill Cole, Mayor/Chair
210 N. 27th Street
Billings, MT 59101

RE: Temporary Detention Facility

Mayor Cole & Members of the City Council:

In your letter dated November 7, 2023 concerning a Short-Term Detention Facility (STDF), you expressed the desire to partner with Yellowstone County and enter into an interlocal agreement to develop and operate a STDF. Your letter stated there are individuals committing crimes, often multiple infractions in short periods of time, who flagrantly defy the criminal justice system. They disrespect law enforcement, fail to appear in court, avoid warrants and continue to walk free in the community without consequence. A STDF will give law enforcement a powerful tool in making sure individuals are held accountable for their first offense, before criminal behaviors escalate into violent felony offenses. An additional benefit will be the boost in morale for law enforcement by assuring that they can arrest an individual at first contact, as appropriate.

Upon receipt of your letter, Yellowstone County engaged Schutz Foss Architects, P.C. (SFA) to review your proposal of a Sprung Instant Structures temporary facility. SFA determined this type of structure is deemed uninsurable by our carrier and presented us with security issues that could not be resolved as submitted. With these developments, Yellowstone County asked SFA to conceptually design an appropriate building according to your requests, while complying with applicable laws, security needs and guaranteeing insurability.

On January 21, 2024, SFA presented a draft concept for a two-floor addition to the existing YCDF structure. The cost estimate to complete the first floor providing up to 48 beds for male inmates, was estimated at \$4.7 million, including professional services and contingency estimates. The cost to complete the second floor with 48 beds is estimated at an additional \$1.3-1.5 million. In sum, the total project cost is approximately \$6 million.

We view this project as a partnership with the City of Billings, providing significant benefits to the City, its police staff and legal department, along with the County and its citizens. An equal share in this construction would yield an obligation to the City of \$3 million. Keep in mind that this will present a material and unilateral obligation to the County for operating this facility. Aside from an estimated staffing requirement of an additional six FTEs at the facility, the County will likely look at operational costs of almost \$100 per bed per night. This is a challenging funding consideration for us.

Yellowstone County accepts your previous offer of \$500,000 in FY24 and request a future payment of \$2.5 million to cover half the cost of this project. This project will reduce crime, hold offenders accountable for their actions and increase the morale of law enforcement officers. It is exactly what the citizens of the City of Billings and Yellowstone County want to see – collaboration by the City and County to solve some of the criminal justice issues plaguing our citizens. The community will view this positively if we are able to construct this project using reserves, and not incur debt or request a tax increase. This will help taxpayers understand our frugal approach, given how we approached this project and the previous 148-bed expansion which didn't involve a tax increase either. When we request a bond and a mill levy increase for extensive jail expansion, a future project to solve lack of inmate capacity at YCDF, we can honestly and openly demonstrate to them that we have always looked for ways to avoid additional debt and a property tax increase, but the overall expansion will be of such scale as to give us no other choice.

Finally, we offer to draft an interlocal agreement to confirm our partnership. In it, we will clearly define Yellowstone County's obligation to cover all operational costs associated with this facility now and into the future. We hope to finalize our agreement promptly in order that we can finalize plans and initiate activities to get construction in place.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

John Ostlund, Chair

Mark Morse, Member

Donald W. Jones, Member

City Council Work Session

Date: 02/20/2024
Title: City Council Retreat Discussion
Presented by: Chris Kukulski, City Administrator
Department: City Hall Administration
Presentation: Yes
Legal Review: Not Applicable
Project Number: N/A

RECOMMENDATION

Provide feedback on the March 15 and 16 city council retreat

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The current schedule includes starting at noon on Friday with lunch, transitioning into conversations throughout the afternoon until dinner at 5:30. Saturday we will begin at 8:30 wrapping up at 1:00. In addition to Friday's meals, we will have refreshments and snacks during the afternoon and Saturday morning.

I have not hired a facilitator for the full retreat. However, I have asked a local leader to consider guiding the "building an effective policy body" discussion. Kevin and I would be the only staff attending the policy body discussion and I am considering only requiring directors to attend when their topic is up.

I thought we would cover a specific aspect of four of the five strategic goals. Improving Safety - Specifically, followup to the crime prevention round table discussions; What's next for parks, recreation and trails; Fostering economic vibrancy through quality designed neighborhoods and business districts and building an effective policy body-which works through conflict to make better decisions without creating animosity and breaking trust. If we want to discuss infrastructure, we should consider starting earlier, on Friday. I also suggest making sure we take 15 - 20 minute breaks between each subject.

Please let me know what you think. How will we know we've used our time wisely and had a successful retreat?

ALTERNATIVES

Staff blocked off their calendars for all day Friday if the Council wanted to start earlier in the day. We also welcome any suggested alternatives.

FISCAL EFFECTS

NA

SUMMARY

NA
