

# **CITY OF EAST HELENA**

## **MUNICIPAL CODE**

### **ZONING ORDINANCE**



**ZONING COMMISSION APPROVED DRAFT:**

**February 3, 2022**

**CITY COUNCIL ADOPTED:**

**1<sup>st</sup> Reading – March 1, 2022**

**2<sup>nd</sup> Reading – March 15, 2022**

**Effective Date: April 13, 2022**



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## **CHAPTER 1**

### **SECTION 1.1 GENERAL PROVISIONS**

#### **1.1.01 CITATION.**

This title shall be known and cited as the Zoning Ordinance of the City of East Helena, except when cited herein, where it shall be referred to as “this title.”

#### **1.1.02 AUTHORITY.**

This title is adopted by authority of §76-2-301 et seq., MCA.

#### **1.1.03 JURISDICTIONAL AREA AND APPLICATION.**

These regulations govern the development and use of land within the limits of the City of East Helena and lands annexed to the City of East Helena. These regulations shall apply to all private and public lands, all uses thereon, and all structures and buildings over which the City has jurisdiction under the constitution and laws of the State of Montana or pursuant to the City’s powers.

#### **1.1.04 INTENT AND PURPOSE OF ORDINANCE.**

- A. The intent of this zoning ordinance is to protect the public health, public safety and general welfare; to recognize and balance the various rights and responsibilities relating to land ownership, use, and development identified in the United States and State of Montana constitutions, and statutory and common law; to implement the City’s adopted growth policy; and to meet the requirements of state law.
- B. It is the purpose of these regulations to promote the public health, public safety and general welfare by: preventing the creation of private or public nuisances caused by non-compliance with the standards and procedures of this title; regulating the development and use of land.
- C. The criteria and guidelines for zoning regulations is that zoning regulations must be: made in accordance with a growth policy; and designed to secure safety from fire and other dangers; promote public health, public safety, and the general welfare; and facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. In the adoption of zoning regulations, the municipal governing body shall consider: reasonable provision of adequate light and air; the effect on motorized and non-motorized transportation systems; promotion of compatible urban growth; the character of the district and its peculiar suitability for particular uses; and conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area. (§76-2-304, MCA).

#### **1.1.05 INTERPRETATION AS MINIMUM REQUIREMENTS.**

- A. In their interpretation and application, the provisions of this title shall be held to be minimum requirements adopted for the promotion of the health, safety, and general welfare of the community. In some instances, the public interest will be best served when such

minimums are exceeded. Wherever the requirements of this title are at variance with the requirements of any other lawfully adopted rules or regulations, or wherever there is an internal conflict within this title, the most restrictive requirements, or that imposing the higher standards, shall govern.

- B. In the case of a difference of meaning or implication between the text of this title and the captions or headings for each section, the text shall control.
- C. When interpreting the meaning of this title, subsections of the ordinance shall be construed in a manner that will give effect to them all as the ordinance derives its meaning from the entire body of text taken together.
- D. These regulations shall apply uniformly within each zoning district to each class or kind of structure, land or development as set forth in this title, but the regulations in one district may differ from those in other districts.

#### **1.1.06 COMPLIANCE WITH REGULATIONS REQUIRED.**

- A. No land shall hereafter be used or occupied, and no building, structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered, and no development shall commence unless it is in conformity with all of the regulations herein specified for the district in which it is located. For nonconforming uses, see Chapter 9.
- B. All City-owned land shall be subject to applicable regulations of the underlying zoning district. Development of such land shall be subject to approval by the City Council upon review of the review bodies as may be required by this title.

#### **1.1.07 DEVELOPMENTS THAT LIE WITHIN MULTIPLE JURISDICTIONS.**

If a proposed development lies partly within the City of East Helena and partly within Lewis and Clark County, Jefferson County, or the City of Helena, the proposed development must be submitted to and approved by both the City and the applicable jurisdiction.

#### **1.1.08 PRIVATE RESTRICTIONS.**

This title is not intended to affect any existing private agreement or condition such as a deed restriction or covenant. If any provision of this title is more restrictive or imposes a higher standard than any such private restriction, the requirements of this title shall control. Where the provisions of any private restriction are more restrictive or impose higher standards than the provisions of this title, the City has no duty to enforce such private restrictions or advise of their existence. The City may enforce a private restriction if the City is a party to such covenant or restriction, if such restriction was required by the City. The City may prohibit private restrictions that violate matters of law.

#### **SECTION 1.2 SEVERABILITY.**

Where any word, phrase, clause, sentence, paragraph, or section or other part of these regulations is held invalid by a court of competent jurisdiction by express inclusion in the decision to be invalid, such judgment shall affect only that part held invalid and such decision shall not affect, impair or nullify this title as a whole or any other part thereof. Insofar as these regulations are

more restrictive than any other local law, these regulations shall be controlling, and if any other law is more restrictive, the higher standard shall take precedence over a standard set forth in these regulations.

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## CHAPTER 2

### SECTION 2.1 ZONING DISTRICTS AND ZONING MAP

#### 2.1.01 USE DISTRICTS DESIGNATED; ZONING MAP ADOPTED.

- A. The City is divided into zones, or districts, as shown on the official zoning map(s) which, together with all explanatory matter thereon, are adopted by this reference and declared to be a part of this title.
- B. For the purpose of this title, the City is divided and classified into the following use districts:
- A Agricultural Suburban District. The Agricultural Suburban District shall include all land uses designated on the East Helena Zoning Map as:  
No designated land (Reserved for future use).
  - R Residential Zoning District. The Residential Zoning District shall include all land uses designated on the East Helena Zoning Map, as:  
Residential District; and  
Public Use and Parks
  - C Commercial Zoning District. The Commercial Zoning District shall include all land uses designated on the East Helena Zoning Map, as:  
Commercial District.
  - DC Downtown Commercial Zoning District. The Downtown Commercial Zoning District shall include all land uses designated on the East Helena Zoning Map, as:  
Downtown Commercial District.
  - I Industrial Zoning District. The Industrial Zoning District shall include all land uses designated on the East Helena Zoning Map, as:  
Industrial.
- C. Placement of any given zoning district on an area depicted on the zoning map indicates a judgment on the part of the City that the range of uses allowed within that district are generally acceptable in that location. Any given use is subject to the appropriate review procedure and compliance with all of the applicable requirements and development standards of this title. It is not a guarantee of immediate infrastructure availability or a commitment on the part of the City to bear the cost of extending services.
- D. Individual zoning districts are adopted for the purposes described in Chapter 1. A variety of districts is established to provide locations for the many uses needed within a healthy and dynamic community. Each district, in conjunction with other standards incorporated in this title, establishes allowable uses of property, separates incompatible uses, and sets certain standards for use of land. This provides predictability and reasonable expectation in use of land within particular zoning designations and sites.

### **2.1.02 BOUNDARY INTERPRETATION GUIDELINES.**

- A. Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the boundaries shall be interpreted as following the nearest logical line to that shown:
  - 1. Boundaries indicated as approximately following the centerline of streets, highways or alleys shall be construed to follow such center lines.
  - 2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
  - 3. Boundaries indicated as approximately following City limits shall be construed as following such City limits.
  - 4. Boundaries indicated as following railroad lines shall be construed to be midway between the main track(s).
  - 5. Boundaries indicated as following the centerline of streams, rivers, canals, or ditches shall be construed to follow such centerlines; and
  - 6. Boundaries indicated as parallel to or extensions of features indicated on the official zoning map shall be determined by the scale of the map.
- B. Where district boundaries divide a lot or parcel into two or more districts, the entire lot or parcel shall be deemed to have only the characteristics and uses of the most restrictive district that any part of the lot or parcel rests within.

### **2.1.03 CLASSIFICATION OF PARTICULAR USES.**

- A. The City Council shall determine the appropriate classification of a particular use. In making this determination, the City Council shall find:
  - 1. That the use is the same as one or more uses permitted in the district wherein it is proposed to be located; or
  - 2. That the use is so similar to one or more uses permitted in the district wherein it is proposed to be located as to be interpreted as the same, so long as:
  - 3. The use and its operation are compatible with the uses permitted in the district wherein the use is proposed to be located;
  - 4. The use will not cause substantial injury to values of property in the neighborhood or district wherein it is proposed to be located; and
  - 5. Neither the intent of this title nor the intent of the district will be abrogated by such classification.
  - 6. Persons objecting to decision of the City Council regarding a classification of use carry the burden of proof to establish error in the decision.
- B. If a question arises concerning the appropriate classification of a particular use, the City staff shall submit the question to the City Council to determine whether the particular use is the same or so similar as to be interpreted the same as a listed permitted or conditional

use. In making such a determination, the City Council shall find that the criteria set forth in either subsection A(1) or A(2) of this section are met.

- C. If a specific use is not listed and cannot be interpreted to be the same or so similar so as to be interpreted the same, as a listed accessory, principal or conditional use, the use shall not be allowed.

#### **2.1.04 ZONING OF ANNEXED TERRITORY.**

All territory which may hereafter be annexed to the City shall, in conjunction with the annexation, be the subject of a zone map amendment in order to be designated and assigned to a City zoning district. Areas of annexed public right-of-way(s) shall be considered to be zoned according to the provisions of this Chapter. The City Council shall determine the appropriate zoning for any and all areas to be annexed to the City. Any ordinance adopting such zoning amendment shall not be effective prior to the effective date of such annexation.

#### **2.1.05 OFFICIAL ZONING MAP.**

- A. The official Zoning Map shall be the current adopted East Helena Zoning Map.
- B. The official maps shall be available in City Hall and shall bear a date of adoption of the ordinance codified in this title.
- C. Regardless of the existence of purported copies of the official zoning maps, which may from time to time be made or published, the official zoning maps kept in City Hall shall be the final authority as to the current zoning status of land and water areas, buildings and other structures in the City.
- D. In the event that the official zoning maps become damaged, destroyed, lost or difficult to interpret because of the nature or number of changes or additions thereto, the City Council may adopt and certify new official zoning maps which shall supersede the prior official zoning maps. The new official zoning maps may correct drafting or other errors or omissions in the prior map, but no such corrections shall have the effect of amending the original official zoning maps or any subsequent amendment thereof.
- E. If any changes to the map are made by amendment of this title in accordance with Chapter 12, such changes shall be made to the official zoning maps and signed, dated and certified upon the map or upon the material attached thereto.

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## CHAPTER 3 ZONING DISTRICTS

### SECTION 3.1 AGRICULTURAL SUBURBAN

#### 3.1.01 INTENT AND PURPOSE.

The intent and purpose of the agricultural suburban zoning district is to encourage on-going agricultural pursuits, protect environmental concerns and set certain minimum standards for development within those areas in the district. There is a rebuttable presumption that the uses set forth for each district will be compatible with each other when the standards of this title are met and any applicable conditions of approval have been satisfied. All development is subject to this title in its entirety and Section 1.1.05.

#### 3.1.02 AUTHORIZED USES.

A. Permitted uses.

- Agricultural (excluding feedlots, slaughterhouses & pig farms)
- Community residential facility (with eight residents or less)
- Dwelling, single household
- Essential service (Type 1)

B. Conditional uses.

- Community center
- Community residential facility (with eight or more residents)
- Essential Services (Type II)
- Home based business (as allowed in Chapter 8)
- Manufactured home on permanent foundation

C. Accessory uses.

- Fencing
- Garage, domestic (private and noncommercial)
- Greenhouse, domestic (private and noncommercial)
- Home based business (as allowed in Chapter 8)
- Other buildings and structures typically accessory to authorized uses
- Parking, domestic (private, non-commercial, agricultural, and 2 ton or less)
- Sign, subject to this title
- Tool shed, domestic (private and noncommercial)

#### 3.1.03 PHYSICAL STANDARDS.

A. Lot Coverage.

1. Maximum lot coverage by principal and accessory buildings shall be not more than 10 percent of the lot area.

B. Lot Area.

1. Lots for all uses shall have a minimum lot area of 40 acres.

C. Lot Width.

1. Lots for all uses shall have a minimum lot width of 250 feet.

D. Yards.

1. Front yard setback:

- a. Adjacent to arterial streets as designated in the East Helena Growth Policy - 25 feet
- b. Adjacent to collector streets as designated in the East Helena Growth Policy - 20 feet
- c. Adjacent to local streets - 15 feet

2. Rear yard setback:

- a. 20 feet
- b. Adjacent to arterial streets as designated in the East Helena Growth Policy - 25 feet

3. Side yard setback:

- a. 10 feet
- b. All vehicle entrances into garages shall be no closer than 20 feet to a property line, unless explicitly authorized otherwise under this title.

E. Building Height.

1. Maximum building height shall be 50 feet.

F. Environmental.

1. Any development within the district shall demonstrate appropriate approvals and compliance with any institutional controls.

## **SECTION 3.2 RESIDENTIAL ZONING DISTRICT**

### **3.2.01 INTENT AND PURPOSE.**

The intent and purpose of the residential zoning district is to establish areas within East Helena that are primarily residential in character and to set forth certain minimum standards for development within those areas. There is a rebuttable presumption that the uses set forth for each district will be compatible with each other when the standards of this title are met, and any applicable conditions of approval have been satisfied. All development is subject to this title in its entirety and Section .1.05.

### **3.2.02 AUTHORIZED USES.**

#### **A. Permitted use.**

- Community center
- Community residential facility (with eight residents or less)
- Day care center (licensed by DPHHS with 12 or fewer children)
- Dwelling, single household
- Dwelling, two-household
- Essential service (Type 1)
- Manufactured home on permanent foundation
- Park, public and private
- Public buildings

#### **B. Conditional uses.**

- Community residential facility (with more than eight residents)
- Day care center (licensed by DPHHS with 13 or more children)
- Essential Services (Type II)
- Nursing Homes
- Dwellings, three- or more households

#### **C. Accessory uses.**

- Fencing
- Garage, domestic (private and noncommercial)
- Greenhouse, domestic (private and noncommercial)
- Home based business (as allowed in Chapter 8)
- Other buildings and structures typically accessory to authorized uses
- Parking, domestic (private, noncommercial, and 1.5 ton or less)

Sign, subject to this title

Tool shed, domestic (private and noncommercial)

### **3.2.03 PHYSICAL STANDARDS.**

#### A. Lot Coverage.

1. Maximum lot coverage by principal and accessory buildings shall be not more than 40 percent of the lot area.

#### B. Lot Area. These lot areas are cumulative, and these minimums assume a lack of development constraints.

1. Single-household and two-household dwelling shall have a minimum lot area of 7,500 square feet.
2. Two-household dwelling in an attached single-household townhouse configuration shall have a minimum lot area of 3,500 square feet per lot.
3. Three- or more dwellings shall have a minimum lot area of 3,500 square feet per dwelling unit.
4. Lots for all other uses shall have a minimum lot area of 7,500 square feet.

#### C. Lot Width.

1. Single-household dwelling shall have a minimum lot width of 60 feet.
2. Two-household dwelling shall have a minimum lot width of 70 feet.
3. Two-household dwelling in an attached single-household townhouse configuration shall have a minimum lot width 35 feet per lot.
4. Lots for all other uses shall have a minimum lot width of 60 feet.

#### D. Yards.

##### 1. Front yard setback:

- a. Adjacent to arterial streets as designated in the East Helena growth policy - 25 feet
- b. Adjacent to local streets - 15 feet
- c. In neighborhoods that were created before 2016 the front setback may be in line with existing structures on adjacent lots.

##### 2. Rear yard setback:

- d. 15 feet

##### 3. Side yard setback:

- e. 10 feet along interior lot lines and 5 feet adjacent to street rights-of-way.
- f. 0 feet for interior walls of townhouses

E. Building Height.

1. Maximum building height shall be 30 feet.

F. Parking.

1. One off-street, paved parking space shall be provided for each bedroom in the dwelling unit up to a maximum of 2 parking spaces.
2. One off-street, paved parking space shall be provided for each 250 square feet of floor area for all other uses.
3. Except in neighborhoods that were created before 2016 do not require paved parking.

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## **SECTION 3.3 COMMERCIAL ZONING DISTRICT**

### **3.3.01 INTENT AND PURPOSE.**

The intent and purposes of the commercial zoning districts are to establish areas within East Helena that are primarily commercial in character and to set forth certain minimum standards for development within those areas. There is a rebuttable presumption that the uses set forth for each district will be compatible with each other both within the individual districts and to adjoining zoning districts when the standards of this title are met and any applicable conditions of approval have been satisfied.

### **3.3.02 AUTHORIZED USES.**

The uses listed are deliberately broad and some are given special definitions in this title. The intent of this method is to provide general guidance for uses while allowing the unique needs and circumstances of each proposal to be specifically addressed through the review process. Some uses are the subject of special regulations contained in this title.

#### **A. Permitted uses.**

- Ambulance service
- Arts and entertainment center
- Automobile fuel sales or repair, as defined in this title
- Automobile parking lot or garage (public or private)
- Automobile washing establishment
- Banks and other financial institutions
- Community centers
- Community residential facility (with eight residents or less)
- Convenience uses, with fuel sales
- Convenience food restaurant
- Data Center
- Day care centers (licensed by DPHHS)
- Essential services (Type I)
- Extended-stay lodgings
- Frozen food storage and locker rental
- Health and exercise establishments
- Hospitals
- Hotel or motel
- Laboratories, research, and diagnostic

Medical and dental clinics  
Museum  
Offices, as defined in this title  
Personal services, as defined in this title  
Pet grooming shop  
Printing offices and publishing establishments  
Public buildings  
Residential Uses permitted on the 2<sup>nd</sup> floor or higher and in the Basement  
Restaurants  
Retail uses, excluding adult business, casinos, and large-scale retail  
Sale, storage, lease, or rent of trailers, trucks, or similar equipment  
Sign paint shops (excluding neon sign fabrication)  
Upholstery shops (excluding on site upholstery service for cars, boats, trailers, trucks, and other motorized vehicles requiring overnight storage)  
Wholesale establishments that use samples, but do not stock on premises

B. Conditional uses.

Amusement and recreational facilities  
Business, technical, or vocational school  
Bus terminals  
Casino  
Community Residential Facilities (with more than eight residents)  
Essential services (Type II)  
Food processing facilities  
Laundry, dry cleaning  
Manufacturing, light and completely indoors  
Mortuary  
Research laboratories  
Residential uses on main floor  
Retail, large-scale  
Sales of alcohol for on premise consumption  
Sales of medical or recreational marijuana



Veterinary clinic

Warehousing

Warehousing, residential storage (mini warehousing)

Wholesale distributors with on premise retail outlets, providing warehousing is limited to commodities which are sold on the premises

C. Accessory uses.

Other buildings and structures typically accessory to permitted uses:

Refuse and recycling containers

Sign, subject to this title

**3.3.03 PHYSICAL STANDARDS.**

A. Lot Coverage.

1. The entire lot, exclusive of required yard setbacks and parking, may be occupied by principal and accessory buildings.

B. Lot Area. These lot areas are cumulative, and these minimums assume a lack of development constraints.

1. Lots for all uses shall have a minimum lot area of 7,500 square feet.

C. Lot Width.

1. Lots for other uses shall have a minimum lot width of 60 feet.

D. Yards.

1. Buildings:

- a. Front yard setback - 0 feet
- b. Rear yard setback - 10 feet
- c. Side yard setback - 0 feet

2. Parking and loading areas:

- d. Front yard setback - 5 feet
- e. Rear yard setback - 0 feet
- f. Side yard setback - 0 feet and 5 feet adjacent to a street right-of-way.

3. The purpose of differentiated yard setback requirements is to encourage the placement and development of buildings in a manner to address the street and adjacent pedestrian activity and encourage a vigorous and diverse streetscape.

E. Building Height.

1. Maximum building height shall be 50 feet.

F. Parking.

1. One off-street, paved parking space shall be provided for each 250 square feet of floor area.

**SECTION 3.4 DOWNTOWN COMMERCIAL ZONING DISTRICT**

**3.4.01 INTENT AND PURPOSE.**

The intent and purposes of the downtown commercial zoning districts are to establish areas within downtown East Helena that are primarily commercial in character and to set forth certain minimum standards for development within those areas. The City of East Helena recognizes that limited space in downtown areas can be a barrier to future development. The downtown commercial zoning district is intended to relax certain development requirements to promote future development of the City of East Helena downtown. There is a rebuttable presumption that the uses set forth for each district will be compatible with each other both within the individual districts and to adjoining zoning districts when the standards of this title are met and any applicable conditions of approval have been satisfied.

**3.4.02 AUTHORIZED USES.**

The uses listed are deliberately broad and some are given special definitions in this title. The intent of this method is to provide general guidance for uses while allowing the unique needs and circumstances of each proposal to be specifically addressed through the review process. Some uses are the subject of special regulations contained in this title.

A. Permitted uses.

- Ambulance service
- Arts and entertainment center
- Automobile repair, as defined in this title
- Automobile parking lot or garage (public or private)
- Banks and other financial institutions
- Community center
- Community residential facility (with eight residents or less)
- Convenience uses, except fuel sales
- Convenience food restaurant
- Day care centers
- Essential services (Type I)
- Extended-stay lodgings
- Frozen food storage and locker rental
- Health and exercise establishments
- Hospitals
- Hotel or motel
- Museum

Medical and dental clinics  
Offices, as defined in this title  
Personal services, as defined in this title  
Pet grooming shop  
Printing offices and publishing establishments  
Public buildings  
Residential Uses permitted on the 2<sup>nd</sup> floor or higher and in the Basement  
Restaurants  
Retail uses, excluding adult business, casinos, and large-scale retail  
Sign paint shops (not including neon sign fabrication)  
Upholstery shops (excluding on site upholstery service for cars, boats, trailers, trucks, and other motorized vehicles requiring overnight storage)  
Wholesale establishments that use samples, but do not stock on premises

B. Conditional uses.

Amusement and recreational facilities  
Assisted living/elderly care facilities  
Business, technical, or vocational school  
Bus terminals  
Casino  
Community residential facility (with more than eight residents)  
Essential services (Type II)  
Food processing facilities  
Laboratories, research, and diagnostic  
Laundry, dry cleaning  
Manufacturing, light and completely indoors  
Mortuary  
Research laboratories  
Residential uses on the main floor  
Retail, large scale  
Sales of alcohol for on premise consumption  
Veterinary clinic

Warehousing

Warehousing, residential storage (mini warehousing)

Wholesale distributors with on premise retail outlets, providing warehousing is limited to commodities which are sold on the premises

C. Accessory uses.

1. Other buildings and structures typically accessory to permitted uses:

a. Refuse and recycling containers

b. Sign, subject to this title

### **3.4.03 PHYSICAL STANDARDS.**

A. Lot Coverage.

1. The entire lot, exclusive of required yard setbacks and parking, may be occupied by principal and accessory buildings.

B. Yards.

1. Buildings:

a. Front yard setback – 0 feet.

b. Rear yard setback - 10 feet

c. Side yard setback - 0 feet

2. Parking and loading areas:

d. Front yard setback – 5 feet

e. Rear yard setback – 0 feet

f. Side yard setback - 0 feet and 5 feet adjacent to a street right-of-way.

3. The purpose of differentiated yard setback requirements is to encourage the placement and development of buildings in a manner to address the street and adjacent pedestrian activity and encourage a vigorous and diverse streetscape.

C. Building Height.

1. Maximum building height shall be 50 feet.

D. Parking.

1. Providing off-street parking is encouraged, but due to limited space in the downtown district off-street parking is not required for development within the downtown commercial district.

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**SECTION 3.5 INDUSTRIAL ZONING DISTRICT**

**3.5.01 INTENT AND PURPOSE.**

The intent and purposes of the industrial zoning districts are to establish areas within East Helena that are primarily industrial in character and to set forth certain minimum standards for development within those areas. There is a rebuttable presumption that the uses set forth for each district will be compatible with each other both within the individual districts and to adjoining zoning districts when the standards of this title are met and any applicable conditions of approval have been satisfied.

**3.5.02 AUTHORIZED USES.**

The uses listed are deliberately broad and some are given special definitions in this title. All uses identified as principal, conditional, or accessory uses in the Commercial Zoning District are permitted within the Industrial District as a principal, conditional, and accessory use. The intent of this method is to provide general guidance for uses while allowing the unique needs and circumstances of each proposal to be specifically addressed through the review process. Some uses are the subject of special regulations contained in this title.

A. Permitted uses.

- Ambulance service
- Automobile fuel sales or repair, as defined in this title
- Automobile parking lot or garage (public or private)
- Automobile washing establishment
- Business, technical, or vocational school
- Bus terminals
- Data Center
- Essential services (Type I)
- Essential services (Type II)
- Food processing facilities
- Frozen food storage and locker rental
- Health and exercise establishments
- Industrial
- Laboratories, research, and diagnostic
- Laundry, dry cleaning
- Manufacturing
- Mortuary
- Outside storage

Printing offices and publishing establishments  
Public buildings  
Research laboratories  
Removal/reclamation of previously processed material contained in the slag pile  
Sale, storage, lease, or rent of trailers, trucks, or similar equipment  
Sign paint shops  
Upholstery shops  
Truck repair, washing, and fueling facilities  
Technology research establishments  
Trade schools  
Veterinary clinics  
Warehousing  
Warehousing, residential storage (mini warehousing) Wholesale distributors

B. Conditional uses.

Adult business  
Amusement and recreational facilities  
Animal shelters  
Banks and other financial institutions  
Casino  
Crematorium  
Community center  
Junk salvage or automobile reduction /salvage yard  
Production manufacturing and generation facilities (electric and gas)  
Production, manufacturing, and wholesale distribution of medical or recreational marijuana including growing facilities  
Retail  
Sales of medical or recreational marijuana  
Solid waste transfer station

C. Accessory uses.

Day care centers  
Medical and dental clinics



Offices, as defined in this title

Other buildings and structures typically accessory to permitted uses

Refuse and recycling containers

Residential use which is clearly accessory to the operation of a permitted principal or conditional use

Signs, subject to this title

### **3.5.03 PHYSICAL STANDARDS.**

#### **A. Lot Coverage.**

1. The entire lot, exclusive of required yard setbacks and parking, may be occupied by principal and accessory buildings.

#### **B. Lot Area.** These lot areas are cumulative, and these minimums assume a lack of development constraints.

1. Lots for all uses shall have a minimum lot area of 7,500 square feet.

#### **C. Lot Width.**

2. Lots for other uses shall have a minimum lot width of 60 feet.

#### **D. Yards.**

##### **1. Buildings:**

- a. Front yard setback – 15 feet, except along arterials where minimum is 25 feet
- b. Rear yard setback - 3 feet
- c. Side yard setback - 3 feet

##### **2. Parking and loading areas:**

- d. Front yard setback –15 feet
- e. Rear yard setback - 0 feet
- f. Side yard setback - 0 feet

#### **E. Building Height.**

1. Maximum building height shall be 50 feet.

#### **F. Parking.**

1. One off-street, paved parking space shall be provided for each 1,000 square feet of floor area, plus
2. One off-street, paved parking space shall be provided per 2 employees on maximum working shift.

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**SECTION 3.6 HIGHLAND MEADOWS PLANNED UNIT DEVELOPMENT DISTRICT**

**3.6.01 INTENT AND PURPOSE.**

The intent and purpose of the Highland Meadows Planned Unit Development district is to establish standards within the Highland Meadows Subdivision that are primarily residential in character and to set forth certain minimum standards for development within the Highland Meadows Subdivision. There is a rebuttable presumption that the uses set forth for the district will be compatible with each other when the standards of this title are met, and any applicable conditions of approval have been satisfied. All development within the Highland Meadows Subdivision is subject to the requirements of the Zoning Ordinance in its entirety.

**3.6.02 AUTHORIZED USES.**

A. Principal uses.

- Day Care Center (Licensed by DPHHS with 12 or fewer children)
- Dwelling, single household
- Dwelling, two-household
- Park, public and private

B. Accessory uses.

- Fencing
- Garage, domestic (private and noncommercial)
- Greenhouse, domestic (private and noncommercial)
- Home based business (as allowed in Chapter 8)
- Other buildings and structures typically accessory to authorized uses
- Parking, domestic (private, noncommercial, and 1.5 ton or less)
- Sign, subject to this title
- Tool shed, domestic (private and noncommercial)

**3.6.03 PHYSICAL STANDARDS.**

A. Lot Coverage.

1. Maximum lot coverage by principal and accessory buildings shall be not more than 40 percent of the lot area.

B. Lot Area. These lot areas are cumulative, and these minimums assume a lack of development constraints.

1. Single-household dwelling shall have a minimum lot area of 7,500 square feet.
2. Two-household dwelling in an attached single-household townhouse configuration shall have a minimum lot area of 3,500 square feet per lot.

3. Lots for all other uses shall have a minimum lot area of 7,500 square feet.

C. Lot Width.

1. Single-household dwelling shall have a minimum lot width of 60 feet at the front edge of the principal structure.

D. Yards.

1. Front yard setback:

a. Adjacent to arterial streets as designated in the East Helena growth policy  
- 25 feet

b. Adjacent to local streets - 15 feet

2. Rear yard setback:

c. 15 feet

3. Side yard setback:

d. 6 feet

e. 0 feet for interior walls of townhouses

4. All vehicle entrances into garages shall be no closer than 20 feet to a property line, unless explicitly authorized otherwise under this title.

E. Building Height.

1. Maximum building height shall be 30 feet.

F. Parking.

1. One off-street, paved parking space shall be provided for each bedroom in the dwelling unit up to a maximum of 2 parking spaces.

2. One off-street, paved parking space shall be provided for each 250 square feet of floor area for all other uses.

**CHAPTER 4 NOT USED**

*Reserved for future use.*

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## CHAPTER 5

### SECTION 5.1 PLAN REVIEW

#### 5.1.01 INTRODUCTION.

- A. All development proposals within the City will be subject to plan review and approval. Depending on the complexity of development and status of proposed use in the applicable zoning district, one of the following will be required as specified in this chapter:
  - 1. Sketch plan.
  - 2. Site plan.
  - 3. Site plans in conjunction with conditional use permits
- B. Special development proposals (e.g., CUPs, variances, etc.) require other information to be submitted in conjunction with sketch plans or site plans and are subject to requirements specific to the type of proposal. These additional submittal requirements and review procedures are outlined in this title.
- C. This chapter is provided to meet the purposes of Section 1.1.04 and all other relevant portions of this title.
- D. Applications subject to this chapter shall be reviewed under the authority established by this title.

#### 5.1.02 SKETCH PLAN REVIEW.

- A. Development Requiring Sketch Plan Review.
  - 1. The following list identifies development that requires sketch plan review as outlined in this chapter:
    - a. Accessory Uses and Structures.
    - b. Agricultural Uses.
    - c. Dwelling, Single Household to Two Household.
    - d. Essential Services Type I;
    - e. Signs; and
    - f. Temporary Uses, as defined in this title.
  - 2. All other development shall be required to meet the site plan requirements as outlined in this Chapter.
- B. Sketch Plan Review Procedures and Criteria.
  - 1. Sketch plans for projects shall be submitted to City staff for a determination of compliance with the requirements of this title. Once compliance is achieved, the application will be approved for construction or referred to the appropriate permitting authorities.

2. Sketch plans shall be reviewed for compliance with all applicable requirements of this title and the cessation of any current violations of this title, exclusive of any legal nonconforming conditions.
3. Unless a variance is explicitly sought and granted in association with a sketch plan, all standards of this title apply whether explicitly mentioned in the record of the review or not. An omission or oversight of a nonconformity with the standards of this title in the site plan shall not constitute approval of such nonconformance. Any nonconformance which was not the subject of an explicitly approved variance may be required to be cured at such time the City becomes aware of the nonconforming condition's existence.
4. Sketch Plan submittals shall contain the following required items:
  - a. Development application form.
  - b. Sketch Plan, no larger than 11x17 sheet size containing the following:
    - (1) Site boundaries/property lines, with accurate dimensions.
    - (2) Streets and alley frontages with names and easements.
    - (3) Location of all existing and proposed structures, including decks and porches, with distances to the nearest foot between buildings and from buildings to property lines with accurate building area dimensions; and
    - (4) Off -street parking areas.
  - c. Floor plans, including garage, basement, and all finished and unfinished spaces.
  - d. Building elevations, if available.
  - e. Any plans, sketches, pictures, specifications, and other data that will clearly express any proposed building alterations or additions.
  - f. Length of time since current or previous use.
  - g. Proposed use.
5. The City staff project decision may be appealed filing a notice of appeal with the Clerk of the Council for the City of East Helena, within 4 days after the date of decision as evidenced by the City staff's signature, by following the procedures of Chapter 10, East Helena Zoning Ordinance.

### **5.1.03 SITE PLAN REVIEW.**

#### **A. Site Plan Review Procedures.**

1. These procedures shall apply to all developments within the City except for development proposals specified as requiring only sketch plan review.
2. Site plans for projects shall be submitted to City staff for a determination of compliance with the requirements of this title. Once compliance is achieved, the application will be approved for construction or referred to the appropriate permitting authorities.
3. Site plans shall be reviewed for compliance with all applicable requirements of this title and the cessation of any current violations of this title, exclusive of any legal nonconforming conditions.



4. Unless a variance is explicitly sought and granted in association with a site plan, all standards of this title apply whether explicitly mentioned in the record of the review or not. An omission or oversight of a nonconformity with the standards of this title in the site plan shall not constitute approval of such nonconformance. Any nonconformance which was not the subject of an explicitly approved variance may be required to be cured at such time the City becomes aware of the nonconforming condition's existence.
5. Site plans shall be reviewed according to the procedures established by this title. After review of the applicable submittal materials, the City staff shall act to approve or deny the application, subject to the appeal provisions of this title. The basis for the City staff's action shall be whether the application complies with all the applicable standards and requirements of this title, including Section 1.1.05.

#### B. Site Plan Review Criteria

1. In considering applications for site plan approval under this title, the City staff shall consider the following:
  - a. Conformance to this title, including the cessation of any current violations.
  - b. Conformance with all other applicable laws, ordinances, and regulations.
  - c. Pedestrian and vehicular ingress, egress, and circulation, including:
    - (1.) Building location and height.
    - (2.) Setbacks.
    - (3.) Provisions for utilities, including efficient public services and facilities.
    - (4.) Site surface drainage and storm water control.
    - (5.) Loading and unloading areas.
    - (6.) Grading;
    - (7.) Signage;
    - (8.) Screening;
    - (9.) Parking;
2. If the development includes multiple lots that are interdependent for circulation or other means of addressing requirements of this title, whether the lots are either:
  - a. The subject of reciprocal and perpetual easements or other agreements to which the City is a party so that the sale of individual lots will not cause one or more elements of the development to become nonconforming.
3. Site Plan submittals shall contain the following required items:
  - a. Development application form.
  - b. Site Plan, no larger than 11x17 sheet size containing the following:
    - (1.) Site boundaries/property lines, with accurate dimensions.
    - (2.) Streets and alley frontages with names and easements;

- (3.) Location of all existing and proposed structures, including decks and porches, with distances to the nearest foot between buildings and from buildings to property lines with accurate building area dimensions; and
  - (4.) Off-street parking areas, including surfacing specifications;
  - (5.) Parcel size in square feet;
  - (6.) Total number of dwellings and number of bedrooms per dwelling;
  - (7.) Traffic ingress and egress and circulation;
  - (8.) Utilities and utility easements, existing and proposed;
  - (9.) Surface water features or wetlands;
  - (10.) Provisions for handicap accessibility meeting the requirements of the most current Americans with Disabilities Act Standards and applicant's certification that all improvements are in compliance with the most current ADA Standards;
  - (11.) Fences and walls, including location, height, and construction materials;
- c. Floor plans, including garage, basement and all finished and unfinished spaces;
  - d. Building elevations, if available;
  - e. Any plans, sketches, pictures, specifications and other data that will clearly express any proposed building alterations or additions;
  - f. Length of time since current or previous use;
  - g. Proposed use.

- C. If City staff determines that the proposed site plan will not be detrimental to the health, safety or welfare of the community; is in compliance with the requirements of this title, and is in harmony with the purposes and intent of this title, approval shall be granted. Notice of action shall be given in writing.
- D. Site plan approval may be denied upon a determination that the site plan will be detrimental to the health, safety or welfare of the community; is not in compliance with the requirements of this title, and is not in harmony with the purposes and intent of this title. Persons objecting to the recommendations of City Staff carry the burden of proof. A denial of approval shall be in writing.
- E. The City staff project decisions may be appealed filing a notice of appeal with the Clerk of the Council for the City of East Helena, within 4 days after the date of decision as evidenced by the City staff's signature, by following the procedures of Chapter 10, East Helena Zoning Ordinance.

#### **5.1.04 CONDITIONAL USE PERMITS REVIEW.**

- A. The City Council, in approving a conditional use permit, shall review the application against the review requirements of a site plan.
- B. In addition to the review criteria of a site plan, the City Council shall, in approving a conditional use permit, determine favorably as follows:
  - 1. That the site for the proposed use is adequate in size and topography to accommodate such use, and all yards, spaces, walls and fences, parking, loading and landscaping are adequate to properly relate such use with the land and uses in the vicinity;
  - 2. That the proposed use will have no material adverse effect upon the abutting property. Persons objecting to the recommendations of City staff carry the burden of proof.
  - 3. The site size, dimensions, location, topography, and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations.
  - 4. The negative impacts of the proposed use, if any, on adjacent properties and on the public can be mitigated through application of other Code standards, or other reasonable conditions of approval.
  - 5. All required public facilities, including water, sanitary sewer, and streets, have adequate capacity or are to be improved to serve the proposal, consistent with City standards; and
  - 6. A conditional use permit shall not allow a use that is prohibited or not expressly allowed under this title; nor shall a conditional use permit grant a variance without a variance application being reviewed with the conditional use application.
- C. Applications for conditional use permits may be approved, conditionally approved, or denied by motion of the City Council. If an application is denied, the denial shall constitute a determination that the applicant has not shown that the conditions required for approval do exist.
- D. The applicant shall be notified in writing of the action taken by the City Council within ten working days of its action. If the conditional use permit has been granted the notification shall include any conditions, automatic termination date, period of review or other requirements. If the conditional use permit has been granted, the permit shall be issued upon the signature of the City staff after completion of all conditions and final site plan.
- E. Conditions of Approval.
  - 1. Regulation of the development of land, and the attachment of reasonable conditions to land developed, or a use undertaken, is an exercise of valid police power delegated by the State of Montana to the City. Persons undertaking the development or use of land have the duty of complying with reasonable conditions for design, dedication, improvement and restrictive use of the land so as to conform to the physical and economic development of the City, and to the safety and general welfare of the future lot

owners and of the community at large. Such conditions may require compliance with more than the minimum standards established by this title.

2. The City Council shall, in addition to all other conditions, impose the following general conditions upon every conditional use permit granted:
  - a. That the right to a use shall be contingent upon the fulfillment of all general and special conditions imposed by the conditional use permit procedure; and
  - b. That all of the special conditions shall constitute restrictions running with the land use, shall apply and be adhered to by the owner of the land, successors or assigns, shall be binding upon the owner of the land, his successors or assigns, shall be consented to in writing, and shall be recorded as such with the County Clerk and Recorder's Office by the property owner prior to the issuance of any building permits, final site plan approval or commencement of the conditional use.
3. Conditions of approval may not be added after final action to a proposed development unless:
  - a. The conditions are necessary to correct inaccurate or incomplete information provided with an application, which error is discovered after the original approval action; and
  - b. The project is not completed within the time period provided in the approval or by this title.

However, should the owner seek material modifications (e.g. changes to the intent, nature, or scope of a development, or necessary improvements) to a previously approved development or condition of approval, the entire application shall be considered to be again opened for review and additional conditions may be applied. Modifications of conditions of approval shall be reviewed through the same process as the original application. Final action includes the resolution of any appeals.

4. Mandatory compliance with the explicit terms of this title does not constitute conditions of approval and is not affected by the limitations of this section.

#### **5.1.05 BUILDING PERMITS BASED UPON APPROVED SKETCH OR SITE PLANS.**

Based upon the approved sketch or final site plan (hereinafter referred to as "plan"), and after any appeals have been resolved, a building permit for the site may be requested and may be granted. No building permit may be granted on the basis of an approved sketch or site plan whose approval has expired.

#### **5.1.06 AMENDMENTS TO SKETCH AND SITE PLANS.**

- A. It is the intent of this section to assure that issues of community concern are addressed during the redevelopment, reuse or change in use of existing facilities in the community. Specific areas of community concern include public safety, mitigation of off-site environmental impacts and site character in relation to surroundings. The following procedures for amendments to approved plans, reuse of existing facilities and further development of sites assure that these concerns are adequately and expeditiously addressed.

B. Any amendment to or modification of a site plan approved under this title shall be submitted to the City staff for review and approval. Proposals for further development, reuse or change in use of sites developed pursuant to this title shall also be reviewed as an amendment to an approved plan. All amendments shall be shown on a revised plan drawing. Amendments to approved plans shall be reviewed and approved by the City staff upon determining that the amended plan is in substantial compliance with the originally approved plan. If it is determined that the amended plan is not in substantial compliance with the originally approved plan, the application shall be resubmitted as a new application and shall be subject to all standards and review and approval provisions of this title.

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## CHAPTER 6

### SECTION 6.1 GENERAL LAND USE STANDARDS AND REQUIREMENTS

#### 6.1.01 AREA REQUIREMENTS FOR INDIVIDUAL BUILDINGS - RESTRICTIONS.

No part of any yard, setback, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this title, shall be included as part of a yard, setback, open space or off-street parking or loading space similarly required for any other building except as provided in this title.

#### 6.1.02 YARDS, SETBACKS AND LOTS - REDUCTIONS PROHIBITED.

No yard setback existing at the time of adoption of the ordinance codified in this title shall be reduced in dimension or area below the minimum requirements of said ordinance except as set forth herein. Yards, setbacks or lots created after the effective date of said ordinance shall meet at least the minimum requirements established by this title.

#### 6.1.03 USE OF LANDS – BUILDINGS AND STRUCTURES.

- A. Only Uses Specifically Identified by This Title to be Built. No building, or structure or part thereof shall be erected, altered or enlarged for a use, nor shall any existing building, structure or part thereof, or land, be used for a purpose or in a manner that is not in conformity with the uses listed as permitted uses for the zone in which such buildings, structure or land is situated. In addition, any land, building or structure to be erected or used for a purpose listed as a conditional use in such zone shall first receive approval from the City Council. Existing nonconforming uses and structures shall be governed by this title.
- B. No building, or part thereof, or structure shall be erected, nor shall any existing building be altered, enlarged or rebuilt, or moved into any zone, nor shall any open space be encroached upon or reduced in any manner, except in conformity to the yard and setback regulations designed for the zone in which such building or open space is located, except as otherwise specified in this title.
- C. Recreational Vehicle Parking on Residential Lot. No person shall park or occupy any recreational vehicle or mobile home on the premises of any occupied dwelling or on any lot which is not a part of the premises of any occupied dwelling, either of which is situated outside of any approved recreational vehicle park except that:
  - 5. The parking of no more than two unoccupied recreational vehicles in any district is permitted except in the sight vision triangle, providing no living quarters shall be maintained or any business practiced in the recreational vehicle while such recreational vehicle is so parked or stored;
  - 6. Temporary use permits may be granted for occupying a recreational vehicle or mobile home through the variance process outline in Chapter 10 of this Ordinance.

#### 6.1.04 DWELLING UNIT RESTRICTIONS.

- A. No Use of Unfinished Structures. No cellar, garage, tent, tepee, yurt, basement with unfinished structure above, accessory building, or vehicle; shall at any time be used as a dwelling unit.

### **6.1.05 ACCESSORY BUILDINGS USES AND EQUIPMENT.**

- A. An accessory building shall be considered an integral part of the principal building if it is connected to the principal building by a common wall for not less than five feet.
- B. Accessory buildings, uses, or equipment shall not be stored or constructed within the front yard setback.
- C. Accessory buildings and garages shall not be located within a utility easement without written approval of the easement holder.
  - 1. No accessory building shall exceed the 1.5 times the footprint of the principal building.
- D. Rooftop mechanical equipment should be screened. Screening should be incorporated into the roof form when possible. Ground mounted mechanical equipment shall be screened from public rights-of-way with walls, fencing or evergreen plant materials. Mechanical equipment shall not encroach into required setbacks.
- E. Detached Structure Minimum Yard Setback Requirements.
  - 1. Accessory structures shall not be located in any front yard setback or for corner lots within the required sight distance triangle, i.e., accessory structures shall not be located between the front lot line and the front of the principal building.
  - 2. Accessory structures shall maintain a minimum rear yard setback of three feet and minimum side yard setback of 5-feet. In neighborhoods developed before 2016, accessory structures may line up with accessory structures on adjacent lots in the rear yard.

### **6.1.06 YARD SETBACK AND HEIGHT ENCROACHMENTS, LIMITATIONS AND EXCEPTIONS.**

- A. Permitted Encroachments into Yard Setbacks. The following shall be permitted encroachments into required yard setbacks:
  - 1. Architectural features, which do not add usable area to a structure, such as chimneys, balconies, stairways, wing walls, bay windows, sills, pilasters, lintels, cornices, eaves, gutters, awnings, window wells and steps:
    - a. provided such architectural features do not extend more than 5 feet into any required front or rear yard setback.
    - b. provided such architectural features do not extend more than 2 feet into any required side yard setback, except that eaves and gutters may extend 2.5 feet into any required side yard setback.
  - 2. Terraces and patios, uncovered decks and stoops or similar features, provided that such features shall not extend above the top of the second story floor of the principal structure nor more than 5 feet into any required front or rear yard setback or 2 feet into any required side yard setback;
  - 3. Porches, covered terraces, and covered decks may encroach:
    - a. not more than 5 feet into any required front yard setback.



- b. not more than 5 feet into a required rear yard setback.
    - c. not more than 2 feet into any required side yard setback.
  - 4. Fire escapes may be permitted in required side or rear yard setback only.
  - 5. Wheelchair ramps may encroach into any required yard setback.
  - 6. Flag poles, ornamental features, trees, shrubs, walkways, nameplate signs, and floodlights or other sources of illumination provided the direct source of light is not visible from the public right-of-way or adjacent residential property.
- B. Zero Lot Line Conditions. In districts where zero side yard setbacks are not otherwise allowed, where an individual owns two or more adjoining lots, or where the owners of two or more adjoining lots make legal written agreement recorded at the Lewis and Clark County Clerk and Recorder, a zero lot line concept may be used for commercial or single-household dwelling unit developments. In residential districts this may result in the creation of a dwelling, two-household residential structure, only in districts permitting such a structure, or the creation of townhouses in districts permitting such structures. In all such cases in residential districts, the minimum 10- foot side yard setback required by the District shall be maintained adjacent to the exterior side, or nonzero lot line side, of the structure.
- C. Height Limitation Exceptions.
  - 1. Non-Specific Exemptions. No building, or part thereof, or structure shall be erected, reconstructed, or structurally altered to exceed in height the limit herein designated for the district in which such building is located.
  - 2. Specific Exemptions.
    - a. Height limitations shall not apply to church spires, belfries, cupolas and domes; monuments; lightning rods; chimneys and smokestacks; flag poles; public and private utility facilities; parapet walls extending no more than 4 feet above the limiting height of the building except as hereinafter provided; and solar energy collectors and equipment used for the mounting or operation of such collectors.
    - b. Places of public assembly in churches, schools and other permitted public and semipublic buildings may exceed height limitations otherwise established by this title, provided that:
      - (1.) These are located on the ground floor of such buildings; and
      - (2.) That for each 1 foot by which the height of such building exceeds the maximum height otherwise permitted in the district, its side and rear yard setback shall be increased in width or depth by an additional 1 foot over the side and rear yard setback required in the district.
    - c. Elevator and stair penthouses, water tanks, monitors and scenery lofts are exempt from height limitations otherwise established in this title, provided that no linear dimension of any such structure exceed 50 percent of the corresponding street frontage line.

- d. Monuments, cooling towers, gas holders or other structures, where the manufacturing process requires a greater height, and grain elevators and silos are exempt from this title, provided that any structure above the height otherwise permitted in the district shall occupy no more than 25 percent of the area of the lot and shall be at least 25 feet from every lot line.
- e. Wind generation mills and equipment used for the mounting and operation of such mills for domestic (private and noncommercial) accessory use may exceed height limitations otherwise established by this title by not more than 10 feet.

## CHAPTER 7

### SECTION 7.1 DEVELOPMENT STANDARDS

#### 7.1.01 GENERAL STANDARDS.

- A. Conformance. The design and development of all land uses shall conform to this title, adopted growth policies, any relevant adopted neighborhood or subarea plan, and other resolutions and regulations, including any and all amendments thereto.
- B. Natural Environment. The design and development of all land uses shall be properly related to topography, and should, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and other existing vegetation.

#### 7.1.02 UTILITIES.

- A. New utilities shall be placed underground.
- B. Existing overhead utility lines may be used or updated.
- C. Utility facilities shall be designed by utility firms in cooperation with the developer.
  - 1. The facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.
- D. The developer shall provide adequate and appropriate utility easements.

#### 7.1.03 EASEMENTS.

- A. Required Easements. Where determined to be necessary, public and/or private easements shall be provided for private and public utilities, drainage, vehicular or pedestrian access, etc.
  - 1. The proper easements documents shall be prepared for review and approval by the City of East Helena and filed at the County Clerk and Recorder's Office. The easement documents shall be accompanied by an exhibit indicating the dimensions, and true and correct location, of all easements.
  - 2. No lot shall be encumbered by a public or private utility easement in a way that would decrease the amount of buildable land to less than the area required by this title for the applicable zoning district.
- B. Private Utility Easements. Private utilities include, but are not limited to, natural gas, electricity, telephone, cable, and fiber optic lines. The developer shall provide private utility easements necessary to extend private utilities to the development, and to provide for the construction and maintenance of private utilities within the development.
  - 1. General.
    - a. Building setbacks shall be coordinated with all provided utility easements. If a utility easement will be greater than the building setback required by this title, a note to that effect shall be placed on the final plat and/or final site plan as appropriate.

- b. Where a utility easement is to be located in an existing, dedicated right-of-way, an encroachment permit must be obtained from the local or state street or road department having jurisdiction.
  - c. If placed in a City right-of-way, easements shall be in a location required by and agreed upon in writing by all of the appropriate utility companies and the City Council.
- C. Public Utility Easements. Public utilities include water, sewer and storm water facilities that are dedicated to and maintained by the City of East Helena.
- 1. A public utility easement shall be granted for all public utility mains not located within public street right-of-way. An easement shall be at least 30 feet wide for either one or two utility mains. An additional 10 feet of width is required for each additional main that occupies the easement. Wider easements may be required at the discretion of the City of East Helena for large utility lines.
  - 2. Public utility easements shall be provided for all meter pits and fire hydrants maintained by the City of East Helena.
  - 3. No permanent structures shall be placed within public utility easements unless an encroachment permit has been obtained from the City of East Helena.

**7.1.04 FLOODPLAIN REQUIREMENTS.**

- A. All development shall be in compliance with current Floodplain Regulations.

**7.1.05 SIGHT VISION TRIANGLE**

- A. Arterial Streets. On corner lots on arterial streets in all districts except the Downtown District, no fence, wall or planting in excess of 30 inches above the street centerline grade shall be permitted within a triangular area defined as follows: beginning at the intersection of the projected curb lines of the two intersection streets, thence 50 feet along one curb line, thence diagonally to the point 50 feet from the point of beginning on the other curb lines, then to the point of beginning. The sight vision triangle shall not apply within the Downtown Commercial District.
- B. Collector and Local Streets. On corner lots, on collector and local streets, in all districts except the Downtown District, no fence, wall or planting in excess of 30 inches above the street centerline grades shall be permitted within a triangular area defined as follows: beginning at the intersection of the projected curb lines of two intersecting streets, thence 40 feet along one curb line, thence diagonally to a point 40 feet from the point of beginning on the other curb line, then to the point of beginning. The sight vision triangle shall not apply within the Downtown Commercial District.
- C. Driveways and Alleys. At the intersection of each driveway or alley, except in the Downtown District, with a street, no fence, wall or planting in excess of 30 inches above the street centerline grade shall be permitted within a triangular area where corners are defined by two points on the right-of-way line, 15 feet on each side of the centerline of the driveway or alley and a point on centerline 10 feet outside the right-of-way. Any driveway or alley wider than 30' curb to curb at the right-of-way line shall use the vision

triangle standard for local streets when intersecting local, collector, or arterial streets. The sight vision triangle shall not apply within the Downtown Commercial District.

D. Provision for Development in Sight Vision Triangle.

1. Single-stem canopy trees are discouraged but may be permitted in sight vision triangles as described in this section, provided that mature trees do not significantly affect safe driving conditions and are maintained such that no canopy foliage exists below a height of 10 feet above centerline of intersecting streets.
2. Trees which are located in the sight vision triangle and which preexisted the adoption of this title may be allowed to remain, provided the trees are trimmed such that no limbs or foliage exist below a height of 10 feet above centerline grades of intersecting streets.
3. No off-street parking shall be permitted within the sight vision triangle.
4. No structure shall be permitted within a sight vision triangle. Fences are permitted in accordance with Section 7.1.06.

**7.1.06 FENCES, WALLS, AND HEDGES.**

A. Location and Height. Except as restricted in sight vision triangles, fences, walls, and hedges, in any district may be located on lot lines or in the required yard setback provided such fences, walls and hedges comply with the following height requirements:

1. Do not exceed 8 feet in height in any required rear or required side yard setback. Decorative post caps may exceed the height limit by no more than 1 additional foot. Fences in excess of 6 feet in height require a building permit before installation may commence. Fences may not exceed 8 feet in height.
2. Do not exceed 4 feet in height in any required front yard setback that is forward of the front edge of the primary structure or any portion of a required sight vision triangle. Fences, walls, and hedges located within the sight vision triangle shall be see thru.
3. Fences used in an agricultural pursuit to retain stock animals or for public safety shall be exempt from these requirements.

B. Measuring Fence and Wall Height. In case of a fence erected on top of a retaining wall, the height shall be measured from the ground of the high side of the wall.

**7.1.07 PARKING.**

A. Floor Area. The term “floor area,” for the purpose of calculating the number of off- street parking spaces required, shall mean 85 percent of the gross floor area.

B. Stacking of Off-Street Parking Spaces. Required parking spaces shall be located so as to preclude stacking of off-street parking spaces, with the exception of single household dwellings and individual townhouse units, and duplexes with physically separated individual driveways. Physical separation is provided when at least one of these options are provided: individual garage doors for each dwelling unit, a vegetated planter not less than four feet in width between the parking spaces in the driveway area, or a

wall not less than four feet in height and length is provided between the parking area in the driveway and dividing the garage entrance. Not more than two cars may be stacked.

C. Stacked Parking in Required Front or Side Yard Setback. Within the Residential Zoning District, developments with individual driveways, may have one stacked space located within a driveway area in the required front or side yard setback.

D. Parking is permitted within required rear yard setback.

E. Parking Dimensions. The following shall be the minimum parking space dimensions:

**Table 7-1**

Width <sup>1</sup>		Length	
Angle	Standard	Standard	Aisle Width
90	9'	18/20 <sup>2</sup>	26 <sup>3</sup>
60	9'	18/20 <sup>2</sup>	18/23 <sup>4</sup>
45	9'	18/20 <sup>2</sup>	15/23 <sup>4</sup>

Notes:

<sup>1</sup>As measured by a line perpendicular to the stall line at a point on the outside end of the stall, except when the stall is on the inside edge of a curve, in which case the point of measurement shall be on the inside end of the stall.

<sup>2</sup>Eighteen feet if measured from a curb on the inside edge of the stall; 20 feet if measured from a painted line on the inside edge of the stall.

<sup>3</sup>For 90-degree parking, aisles are two-way.

<sup>4</sup>First number refers to one-way traffic and the second number to two-way traffic. If the aisle is needed as a fire lane, a 20-foot minimum is required.

<sup>5</sup>If parking stalls within the interior of a garage space are counted toward a development's required parking needs, then they shall meet the standard parking stall width of 9 feet and the standard parking stall length of 20 feet.

F. Parallel Parking Spaces. Parallel parking spaces shall be a minimum of 24 feet in length and 9 feet in width measured from the inside edge of a curb or the inside edge of the asphalt if curbing is not present.

G. Surfacing. All areas intended to be utilized for required parking and driveways shall be paved with concrete, asphalt pavement, properly placed asphalt millings, or approved pavers, to control dust and drainage. Single household dwellings developed before 2016 are exempted from this requirement. All proposed parking areas and driveway improvements shall require a grading and drainage plan, except single family dwellings on individual lots.

H. Striping. Except for up to four-household dwellings and individual townhouse units, all parking stalls shall be marked with white or yellow painted lines not less than 4 inches wide.

I. Parking Lot Curbing.

1. Except for individual townhouse units and up to four-household dwellings, all required off-street parking areas and driveways intended for required parking shall have a minimum of 6-inch by 6-inch perimeter concrete curb around the entire parking lot, including edges of driving access ways.

2. Concrete pindown wheel stops may be permitted as an alternative to continuous concrete curbing in front of parking spaces which front on the perimeter of the parking lot.
  3. Alternative perimeter treatment may be permitted adjacent to snow storage areas subject to the approval of the City.
  4. Requirements for perimeter curbing shall not preclude opportunities for shared access between adjacent parking lots.
- J. Protruding Vehicles. All on-site parking stalls which abut property lines shall be designed and constructed such that parked vehicles shall not protrude over property lines.
- K. Disabled Accessible Parking Spaces.
1. Accessible parking spaces shall be provided in accordance with all current Americans with Disabilities Act (ADA) standards. Each disabled parking space shall also be accompanied by a sign stating, "Permit Required \$100 Fine".
  2. All parking lots and facilities shall be subject to current ADA Standards, and shall contain a minimum number of accessible parking spaces as set forth in the current ADA Standards.
  3. All accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility at each space. Such signs shall not be obscured by a vehicle parked in the space. Signs and symbols painted on the pavement as the only means of identification do not meet this requirement.
    - a. Raised signs shall be located at a distance no greater than 5 feet from the ground to the bottom of the sign.
  4. Provision of an accessible path of travel from each accessible parking space to the entrance of the facility shall include ramped access where necessary and an unencumbered minimum width for walks, sidewalks or ramps as required by current ADA standards.
  5. The maximum slope and cross slope shall meet all current ADA standards. The maximum rise shall meet all current ADA standards.

#### **7.1.08 SIGNS.**

- A. Commercial and Industrial Districts. A lot is permitted total signage not to exceed 300 square feet. A comprehensive sign plan is required for all commercial centers consisting of two or more tenant spaces on a lot and shall be designed for equitable distribution of the permitted total signage not to exceed 300 square feet.
1. Freestanding Signs. One freestanding sign is permitted per zoned lot. The maximum area for a freestanding sign shall be 64 square feet per sign or 192 square feet total. A low-profile freestanding sign shall be set back a minimum of 5 feet with a maximum height of 5 feet. A pole-style freestanding sign shall be set back a minimum of 15 feet with a maximum height of 30 feet. The pole-style sign shall maintain at least an 8-foot minimum vertical clearance from the ground.

2. Permanently Mounted Wall Signs. Wall signs are not to exceed a total signage allowance of 2.0 square feet per linear foot of building frontage minus any area devoted to freestanding or projecting signs. Canopy and awning signs shall be classified as wall signs. Wall signs shall not project above the top of a wall or parapet. Lots fronting on two or more streets shall be permitted an additional 35 percent of the already permitted wall sign area for each subsequent building frontage.
3. Projecting Signs. One projecting sign per tenant in the Commercial District. Projecting signs shall not exceed 15 square feet in area nor extend more than 5 feet from the building. In the Industrial district, projecting signs shall not exceed 25 square feet in area nor extend more than 6 feet from the building. Projecting signs shall provide a minimum sidewalk clearance of 8 feet.

B. Residential District.

1. Signs. In Residential areas, signs shall not exceed 32 square feet in area and shall not exceed 8 feet in height from the finished grade. The sign must be setback at least 5 feet from the property line.
2. Signs Appurtenant to Residential Principal and Conditional Uses and Home Occupations.
  - a. Principal residential uses and home occupations shall be permitted signage not to exceed 6 square feet in area and shall be located a minimum of 10 feet from any property line. If the sign will be located within a sight vision triangle, the sign shall have a maximum height of 30 inches. In addition, home occupations shall be permitted 1 square foot signs on a lamp post or 1.5 square feet of freestanding signage located a minimum of 5 feet from the property line.
  - b. Conditional nonresidential type uses, such as community centers, day care centers and schools shall be permitted signage not to exceed 32 square feet. Such signs may only be illuminated during the hours of operation.

C. Agricultural Suburban District.

1. Freestanding Signs. One freestanding sign is permitted per 40-acre lot. The maximum area for a freestanding sign shall be 32 square feet. Such signs may not be illuminated.

D. Temporary Signs

1. Temporary/portable signs as defined in Chapter 14, including, but not limited to, banners, pennants, or portable signs may be used as temporary supplemental signage by an organization or licensed business in connection with a special event. The use of said signs shall not exceed a maximum of 30 days at any one time nor occur on more than four (4) separate occasions within any calendar year.
2. Permitted temporary or portable signage shall not be located in public rights-of-way, including alleys and street and highway rights-of-way.
3. Size and placement limitations. Temporary signs shall only be allowed to be a maximum height of eight (8) feet with allowable square footage not exceeding 16 sixteen (16) square feet in the Residential District and thirty-two (32) square feet in in any other District on each side of the display. Measuring one (1) side of the display



shall determine the square footage for purposes of computation. In addition, temporary signs shall be located at least one hundred fifty (150) feet apart and a minimum of five (5) feet behind all property lines. Temporary signs shall be placed outside the required sight vision triangle as defined in Section 7.1.05. All temporary signs shall be secured in such a manner to prevent signs from moving from their intended location.

4. The following temporary/portable signs are exempt from obtaining a zoning permit from the zoning administrator:
  - a. Temporary/portable signs meeting the following requirements:
    - (1.) Signs equal to or less than 6 square feet in size.
    - (2.) Signs located on private property; and
    - (3.) Signs in place for 30 days or less at any one time nor occur on more than four (4) separate occasions within any calendar year.
  - b. Temporary signs located on an active construction site not exceeding sixteen (16) square feet per face which are removed either at time of substantial completion or occupancy. Multiple contractors on a single development site are entitled to display signage, provided it is consolidated on a single sign and does not exceed thirty-two (32) square feet per face.
  - c. Temporary signs displayed prior to, during and after elections, not exceeding six (6) square feet per face in Residential Districts, and not exceeding thirty two (32) square feet in other districts, to be removed no later than seven (7) days after the final election.
  - d. Temporary signs on properties for sale or rent, one per dwelling unit or property listed, six (6) square feet per sign face for detached dwelling units, thirty two (32) square feet per face for other uses, with one additional temporary sign allowed up to six (6) square feet per face on days the property is open for public viewing.
  - e. Temporary signs on or near residential properties having temporary yard or garage sales, up to six (6) square feet and no more than four feet (4') in height

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## CHAPTER 8

### SECTION 8.1 SPECIFIC USE STANDARDS AND REQUIREMENTS

#### 8.1.01 PURPOSE.

The purpose of this section is to further describe the standards and conditions under which certain uses may be permitted as principal or conditional uses in specific districts.

#### 8.1.02 APPLICABILITY.

All uses listed in this section shall be subject to the specific standards described for each use, in addition to all other applicable standards of this title.

#### 8.1.03 ADULT BUSINESSES.

In addition to the requirements to be followed for all development established in this title, the following requirements shall apply to all adult businesses.

- A. An adult business must be separated by at least a 500-foot radius from any other adult business, residence, residential district, school, community center, or public park. Subsequent establishment of one of the above listed uses within the required separation radius does not compel the relocation of an adult business.

#### 8.1.04 AUTOMOBILE REPAIR AND/OR FUEL SALES.

Automobile fuel sales and repair are subject to the requirements for convenience uses as defined in this title, and the following requirements.

- A. Gas pump and pump island canopies may not be located closer than 10 feet to any side or rear property line. The maximum height of the canopy shall not exceed 18 feet.
- B. All on-site activities, except those normally performed at the fuel pumps, are to be performed within a completely enclosed building.
- C. Where towing service is to be provided, a parking bay for the towing vehicle is to be provided. Vehicles that are either under repair or vehicles that have been repaired may be stored on a temporary basis, not to exceed 30 days, and designated parking bays must be provided for each vehicle awaiting repairs. Vehicle storage areas are subject to the same screening requirements as parking lots.
- D. All restroom entrances shall be screened from view of adjacent properties or street rights-of-way by a decorative wall or landscaping or shall be accessed from the inside of the main entrance to the building.
- E. No outside storage of, and no sale, lease or rental of trailers, trucks or similar equipment shall be permitted except as may be specifically allowed in that zone.
- F. Parking space for each service stall in the station shall be provided. Pump islands shall not be considered as service bays. Standing areas at pump islands and interior circulation areas shall not be used as parking areas in calculating required parking spaces; and
- G. RV dump sites shall be provided with a minimum of 120 feet of stacking space and be located a minimum of 60 feet from any ingress or egress from a public street. This stacking

space shall be provided with bi-directional accessibility, and this space shall not in any manner inhibit on-site or off-site vehicular circulation.

H. All repairs or painting shall be performed within a building.

I. No site plan shall be approved which exposes unassembled vehicles, auto repair activities or auto parts to any street or residential district.

J. Any facility shall be designed to contain and minimize noise and odors.

#### **8.1.05 HOME BASED BUSINESSES.**

A. A home-based business is a use that is considered accessory to a dwelling unit in the Residential District.

B. Home-Based Business as Permitted Accessory Use

1. Purpose. It is in the intent of this section to eliminate as accessory home-based businesses for uses except those that conform to the standards set forth in this section. In general, an accessory home-based business is a use so located and conducted that the average neighbor, under normal circumstances, would not be aware of its existence with the exception of permitted signage as allowed by this title. The standards for home-based businesses included in this section are intended to insure compatibility with other permitted uses and with the residential character of the neighborhood. The use shall be clearly incidental and secondary to the use of the property for residential purposes and shall not change the character of the property or adversely affect the uses permitted in the residential district of which it is a part. The home-based business may be conducted in an accessory building. A clearly accessory or incidental status in relation to the residential use of the main building is the criteria for determining whether a proposed accessory use qualifies as a permitted accessory home based business use.

2. Standards for Permitted Accessory Use. Accessory home-based businesses are permitted so long as all the following standards are met:

- a. The home-based business shall be conducted by resident occupants on their property with not more than two on premise nonresident employees.
- b. No more than 30 percent of the gross area of all structures shall be used for such purpose.
- c. Except equipment and vehicles used for the business, there shall be no outside storage of any kind related to the home-based business.
- d. The use may increase vehicular traffic flow and parking by no more than one additional vehicle.
- e. No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home based business exists.

3. Acknowledgement of Home-Based Business Requirements. Any individual applying for a business license, with the intent of operating the business from his/her home, shall

acknowledge by signature his/her understanding of the requirements and conditions of this title.

- C. Uses That Are Prohibited. The following uses, by the nature of their character or the investment of operation, have a pronounced tendency, once started, to rapidly increase beyond the limits permitted for home based businesses and thereby impair the use and value of a residentially zoned area for residential purposes. Therefore, the following uses shall not be permitted as home based businesses: adult businesses; auto repair, carpentry work; dance instruction; dental offices; medical offices; mobile oil and lube services; painting of vehicles, trailers or boats; private schools with organized classes; radio or television repair; and upholstery.

#### **8.1.06 DRIVE IN/DRIVE THROUGH FACILITIES.**

- A. Required parking and stacking spaces for waiting automobiles shall provide a minimum of 1 stall and 6 spaces for stacking per lane. A Traffic Study prepared by a professional engineer for the proposed use shall be submitted by the Applicant. If the traffic analysis shows more stalls or spaces are required, then the applicant shall provide the required number of parking spaces. These spaces shall not in any manner inhibit on-site or off-site vehicular circulation.
- B. Noise from drive through speakers shall not be audible from adjacent residential districts.

#### **8.1.07 MANUFACTURED HOMES ON INDIVIDUAL LOTS.**

- A. Intent. It is the intent of this section to allow manufactured homes as defined in MCA, 73-2-302, Manufactured Housing, as a permitted use in specific zoning districts in which single-household dwellings are permitted subject to the requirements and procedures set forth in this title. It is the intent to allow for the permitting of only those manufactured homes certified as meeting the Mobile Home Construction and Safety Standards of the U.S. Department of Housing and Urban Development, not mobile homes or recreational vehicles, as defined in this title.

#### **8.1.08 LARGE-SCALE RETAIL, SIZE LIMITATIONS AND DESIGN AND SITE DEVELOPMENT GUIDELINES AND REQUIREMENTS.**

- A. Purpose.
1. The purpose of this section is to establish general development standards for large scale retail developments. These standards are intended and designed to assure compatibility of uses; to prevent urban blight, deterioration, and decay; and to enhance the health, safety and general welfare of the residents living within the City of East Helena.
  2. These standards are also intended to be used as guidelines for evaluating and assessing the quality and design of proposed large-scale retail developments. The particulars of any large-scale retail developments will be evaluated against their respective standards contained in this chapter. It is expected that the quality and design of the large-scale retail developments, while not necessarily complying with the exact standards of this chapter, will meet or exceed the intent behind these standards.
  3. Applicability. All uses listed in this chapter shall be subject to the specific standards described for each use, in addition to all other applicable standards which may apply.

B. Limitations on Outdoor Sales and Storage of Large-Scale Retail Development.

1. Large-scale retail development may offer for direct sale to the public merchandise, which is displayed outdoors, but the area occupied by such outdoor sales and storage, exclusive of warehouses, shall not exceed 25 percent of the total square footage of the retail building(s).
2. The following principal uses are exempt, as they pertain to outdoor sales and storage:
  - a. Recreation vehicle sales, auto sales, motorized vehicles, boats, and heavy equipment.
  - b. Agricultural implement sales, i.e., tractors, cultivators, balers, etc., and
  - c. Plant nursery

C. Design and Site Development Guidelines for Large-Scale Retail Developments.

1. Large-scale retail development shall be subject to the design and site development criteria and development standards contained herein. These guidelines shall be applied as part of the review and approval process for conditional use permits in commercial districts.
2. Intent and Purpose. All new construction of buildings in a large-scale retail development are subject to design review. It is the intent and purpose of this section to ensure the quality of large-scale retail development will enhance the impression and enjoyment of the community both by guiding development and change that occurs after the adoption of the ordinance codified in this section, and by stimulating and assisting, in conjunction with other provisions of this title, improvements in signage, landscaping, access and other contributing elements of large-scale retail development appearance and function. It is further the intent of this section to establish design criteria, standards and review procedures that will allow the City to review and direct, in a fair and equitable manner, the development and redevelopment of future and existing properties and facilities governed by this section.
3. Design Criteria and Development Standards.
  - a. All buildings within a large-scale retail development shall be designed with an architectural and design character that is appropriate for and compatible with the area.
  - b. When located in developed commercial area or shopping center, the architectural character of the large-scale retail development shall be integrated with the design theme of the center through the use of the same building materials, shapes and details. The effect of color in creating a design character that is appropriate for and compatible with the area will be considered. All parking, circulation, driveways, setbacks, and signage shall be integrated with the entire design theme of the project; and
  - c. The elevation design of the building shall provide design character and detailing.

**8.1.09 COMMUNITY CENTER.**

- A. Community centers must have access to an arterial or collector standard street within one block (or within 1,320 feet) of the community center site.

- B. Community centers shall provide a 20-foot landscaped yard setback adjacent to any residentially zoned property.
- C. The property on which a community center is proposed to be located, shall provide a minimum of 2 ingress/egress points.
- D. The requirements of this section shall not apply to a community center that is intended for use solely by the residents of the residential development, is privately or jointly owned by the residential development or by the property owners' association, and is an accessory use to the residential development.

**8.1.10 SPECIAL TEMPORARY USE.**

- A. General. Uses permitted are those special temporary uses which are required for the proper function of the community or are temporarily required in the process of establishing a permitted use, constructing a public facility, or providing for response to an emergency. Such uses shall be so conducted that they will not be detrimental in any way to the surrounding properties or to the community. Uses permitted may include:
  - 1. Carnivals, circuses, special events of not over seventy-two consecutive hours.
  - 2. Fireworks stands.
  - 3. Tent revival meetings.
  - 4. Swap meets; or
  - 5. Such other uses deemed to be within the intent and purpose of this section.
- B. Application. Application for a special temporary use may be made by a property owner or his authorized agent as a sketch plan. Additional information deemed necessary to support the approval of a special temporary use may be required.
- C. Decision. Application for a special temporary use shall be given only when such approval is within the intent and purposes of this chapter.
- D. Location. Special temporary uses are commonly commercial in nature and are generally not appropriate in a residential neighborhood.
- E. Conditions. In approving such a special temporary use, the approval shall be made subject to a time limit and other conditions deemed necessary to assure that there will be no adverse effect upon adjacent properties. Such conditions may include, but are not limited to, the following:
  - 1. Regulation of parking.
  - 2. Regulation of hours.
  - 3. Regulation of noise.
  - 4. Regulation of lights.
  - 5. Requirement of bonds or other guarantees for cleanup or removal of structure or equipment.
  - 6. Provide proof of insurance; and/or

7. Such other conditions deemed necessary to carry out the intent and purpose of this section.

### **8.1.11 WIRELESS TELECOMMUNICATION FACILITIES**

A. Intent, Purpose and Applicability. The City Council finds that:

1. It is the duty of the City to protect the public health, safety and welfare and the City has the authority to regulate the placement, construction, and modification of wireless telecommunications facilities in the advancement of that duty.
2. Wireless telecommunications facilities are often visually obtrusive due to their necessary height, support equipment and interruption of the viewscape, and can have substantial impacts on the character of East Helena and its surrounding viewsheds that negatively affect the character of the City.
3. The impacts of wireless telecommunications facilities can be reduced by establishing standards for location, structural integrity, compatibility, and co- location.
4. The City desires to support the ability of wireless telecommunication service providers to deliver such services to the community consistent with other community objectives.
5. It is necessary to determine the locations and circumstances most appropriate for placement of wireless telecommunication facilities to serve the community.
6. The City seeks to protect against potential health and safety hazards to citizens and prevent damage to adjacent properties.
7. The City recognizes the certain sole authority the Federal Communication Commission exercises in the licensing and other regulation of wireless telecommunications services.

B. General Application. All uses listed herein shall be subject to the specific standards described for each use, in addition to all other applicable standards which may apply and are limited to those districts specified. The provisions herein apply to development and modification of wireless telecommunication facilities and their accessory equipment.

1. The provisions herein only apply to facilities which meet the definition of a wireless telecommunication facility or that are otherwise specifically brought under the authority of Section 8.1.11.
2. Additional definitions applicable to wireless telecommunication facilities (facility) are found below.

C. Authorized Uses within Districts. The purpose of this section is to describe the situations under which certain uses may be authorized as principal, conditional or accessory uses in specific districts.

1. Districts.

#### **AGRICULTURAL SUBURBAN, 03.0.020 AUTHORIZED USES.**

A. Permitted uses.

Facility up to 30 feet in height

B. Conditional uses.



Facility up to 45 feet in height

C. Accessory uses.

Micro (10') facility in compliance with maximum height

Micro (10') facility located on top of a building is exempt from the maximum height limitation

Facility, when stealth located within another structure – light pole, flagpole, cupola, water tower, etc., and in compliance with maximum height

**RESIDENTIAL, 03.1.020 AUTHORIZED USES.**

C. Accessory uses.

Micro (10') facility on community center property, located on top of a building in compliance with maximum height

Micro (10') facility on public property, located on top of a building is exempt from the maximum height limitation

Facility on public or community center property, stealth located within another structure – light pole, flagpole, cupola, water tower, etc., and in compliance with maximum height.

**COMMERCIAL, 03.2.020 AUTHORIZED USES.**

A. Permitted uses.

Facility up to 30 feet in height

B. Conditional uses.

Facility up to 45 feet in height

C. Accessory uses.

Micro (10') facility in compliance with maximum height

Micro (10') facility located on top of a building is exempt from the maximum height limitation

Facility, stealth located within another structure – light pole, flagpole, cupola, water tower, etc., and in compliance with maximum height

**DOWNTOWN COMMERCIAL, 03.4.020 AUTHORIZED USES.**

C. Accessory uses.

Micro (10') facility on community center property, located on top of a building in compliance with maximum height

Micro (10') facility on public property, located on top of a building is exempt from the maximum height limitation

Facility on public or community center property, stealth located within another structure – light pole, flagpole, cupola, water tower, etc., and in compliance with maximum height

**INDUSTRIAL, 03.5.020**

**AUTHORIZED USES**

A. Permitted uses.

Facility up to 45 feet in height

B. Conditional uses.

Facility up to 70 feet in height

Facility over 70 feet in height but not to exceed 90 feet in height and is designed to accommodate co-location

C. Accessory uses.

Micro (10') facility in compliance with maximum height

Micro (10') facility located on top of a building is exempt from the maximum height limitation

Facility, stealth located within another structure – light pole, flagpole, cupola, water tower, etc., and in compliance with maximum height

D. Required Review Procedures. The purpose of this section is to describe the procedures under which certain uses may be permitted as principal, conditional or accessory uses in specific districts. Unless specifically exempted by this chapter, all other standards and procedures of this title shall apply.

1. The Montana Subdivision and Platting Act (Title 76, Chapter 3, MCA) requires subdivision review when land interests are created by rent or lease. Depending on how the ownership and use of land for a facility subject to this chapter is established, subdivision review may be required in addition to site plan review.
2. No facility may be permitted except in accordance with the applicable zoning district and development review processes.
3. All applications are subject to the review processes, submittal requirements and other requirements of Chapter 5 of this title as may be applicable.
4. Pre-Application. Prior to submitting an application for a facility, the applicant must request in writing a pre-application conference with the City staff. The purpose of the pre-application conference is to acquaint the participants with the applicable requirements of this section and title, as well as any preliminary concerns of the City staff. The applicant's written request for a pre-application conference must include the following information with regard to the proposed facility:
  - a. Location
  - b. Overall height
  - c. Number of antennas proposed, including those of other providers to be collocated
  - d. Type(s) of wireless telecommunication services to be provided
  - e. Coordination of accessory ground equipment shelter(s)
  - f. Documentation of service coverage and/or capacity gaps

- g. For an applicant who is not themselves a wireless service provider, a copy of an executed lease from a wireless service provider of not less than 12 months duration will be required prior to final permit approval.
5. Sketch Plan. The following shall be reviewed as a sketch plan, and a pre- application is not required:
- a. Co-location upon a previously approved facility, when such additional facilities were contemplated as part of the original review and approval.
  - b. Replacement of existing antennas on lawfully established facility, provided:
    - (1.) They are mounted using similar techniques as that of the antennas they are replacing in order to minimize visual impact,
    - (2.) They are made of non-reflective material and colored to match the telecommunication facility or existing antennas, whichever results in the replacement antennas being less visible, or are placed in the tower.
    - (3.) Replacement does not result in an increase in the number of antennas (e.g., like antennas may be replaced with like antennas). Notwithstanding, existing antennas may remain for a period not to exceed six (6) months in order to accommodate the transfer of service from the existing antennas to the replacement antennas; and
    - (4.) Replacement antennas do not exceed the size (e.g., area or length) of existing antennas.
  - c. Reconstruction or replacement of previously approved facility subject to the following:
    - (1.) Does not increase the height or base diameter of the existing tower or structure as originally approved or constructed.
    - (2.) Does not reduce existing landscape buffers unless replaced with vegetation with similar characteristics, plant densities and maturity; and
    - (3.) Does not use colors or lights that make the tower or antenna more visually obtrusive, unless required by either the Montana Aeronautics Division (MAD) or the Federal Aviation Administration (FAA).
  - d. A facility as a temporary use and will not last in excess of one hundred-twenty (120) days in accordance with Section 8.1.10 of this title.
  - e. Temporary communication uses, including, but not limited to, wireless telecommunications, mobile services and other types of broadcast towers used solely for emergency communications by non-emergency service providers (i.e., private, for-profit wireless service providers) in the event of a loss of service or communications due to an act of God, natural disaster, or other occurrence that necessitates the re-establishment of services for the public benefit are subject to the following:
    - (1.) Application for sketch plan review within two (2) days of placement; and

- (2.) The emergency use of the facility shall not exceed a period of one (1) year commencing when transmissions or receiving begins. The facility must be removed within 30 days after they are no longer used unless land use approval is obtained through the appropriate procedure to allow their continued use in accordance with all applicable requirements.
6. Site Plan. All applications for a facility shall be reviewed as a site plan unless classified for sketch plan review.
7. Conditional Use. In addition to the site plan and conditional use criteria described in Chapter 5, the City Council shall, in approving a conditional use permit for a facility, determine favorably as follows:
  - a. That the applicant has clearly demonstrated a service coverage and/or capacity gap.
  - b. That no existing or approved facility within the city meets the applicant's engineering requirements.
  - c. That no existing or approved facility within the city meets the applicant's height requirements.
  - d. That no existing or approved structure within the city has sufficient structural strength to support the applicant's proposed antenna and cannot be reinforced to provide sufficient structural strength.
  - e. That verifiable limiting factors render collocation unsuitable or unreasonable, such as:
    - (1.) Proposed antennae would cause electromagnetic interference.
    - (2.) Existing or approved antenna would cause interference with proposed antenna.
    - (3.) Owners are unwilling to accommodate the applicant's needs.
  - f. That the service may not be provided by a higher-ranking preference in Subsection E.7 at the proposed site, or that verifiable limiting factors otherwise render higher ranking preferences unsuitable or unreasonable.
  - g. That the maximum building height limitation of the district will be exceeded by the least amount necessary to provide service.
  - h. That the service may not be provided at an alternative site at a higher elevation within the municipal limits or that verifiable limiting factors otherwise render an alternative site at a higher elevation unsuitable or unreasonable.
  - i. That the facility is built to the minimum height necessary to provide service.
8. Adequate review of applications may require the City to retain consultants or other third-party assistance to review an application. In such event the applicant shall reimburse the City for the actual costs incurred prior to issuance of a building permit.
9. The provisions of Chapter 9, East Helena Zoning Ordinance shall apply for all nonconforming facilities subject to this section.
10. Any expansion of existing facilities or sites may only occur in compliance with the review procedures required in this section.

E. Special Standards. All facilities shall meet the following special standards:

1. Safety. All facilities shall meet the following standards:

- a. The structural design for all facilities greater than 10 feet in height or which have more than 4 square feet of total antenna area shall be certified by a professional structural engineer licensed to practice in the State of Montana. A building permit shall be obtained prior to the installation of any facility.
- b. All facilities shall meet or exceed current standards and regulations of the FCC, FAA and any other agency with the authority to regulate facilities. If such standards are changed, the owner shall modify the installation to comply with the new standards within six months of the effective date of the new standards or regulations unless a different implementation schedule is required by the issuing agency.
- c. Facilities with a base located at grade shall be enclosed within a secure fence not less than 6 feet in height or the facility shall be equipped with an appropriate anti-climbing device.

2. Aesthetics. All facilities shall meet the following standards:

- a. All installations shall be as visually unobtrusive as is feasible. Facilities and equipment mounted on existing structures shall be visually incorporated into the structure or background by the use of architectural elements, color, screening or other methods.
- b. No signage is permitted, except for identification and warning signs and other signs required by the building code or FCC.
- c. All structures shall be required to obtain a building permit from the City of East Helena prior to construction.
- d. Visual screening of ground mounted equipment shall be provided in all residential areas and where a facility is located within a nonresidential area which is visible, from a viewpoint 6 feet above grade, from a residential area. Screening shall provide an opaque screen within eighteen months of establishment and be a minimum of 6 feet in height. The screening may be of landscape materials or a fence which otherwise complies with this title.
- e. Exterior facade materials and the character of equipment shelters used in residential areas shall be of materials commonly used in the immediate area. The architectural design of the exterior of the shelter shall be compatible with surrounding residential structures. The intent of the requirements of this paragraph may be met by providing opaque fencing or other visual screening compatible with the neighborhood, in compliance with this title, which will obscure the entire equipment shelter. The screening shall be in place prior to the commencement of operations of the facility.

3. Setbacks. Special setbacks for facilities shall be provided and/or a design for internal structural collapse to avoid damage or injury to adjoining property or users shall be provided.

- a. Residential district setbacks shall be 100 percent of facility height which may be reduced to no less than 75 percent upon the provision and approval of an

engineered design, stamped by a professional structural engineer licensed to practice in the State of Montana, establishing a smaller collapse area.

- b. A facility in nonresidential districts shall provide a minimum setback from the property lines of 75 percent of facility height which may be reduced to no less than 30 percent of facility height upon the provision and approval of an engineered design, stamped by a professional structural engineer licensed to practice in the State of Montana, establishing a smaller collapse area.
- c. Facilities located within nonresidential districts, but adjacent to a residential district or residentially developed areas, shall maintain a minimum setback from residential zoning or residential property boundaries of 100 percent of facility height which may be reduced to no less than 75 percent upon the provision and approval of an engineered design, stamped by a professional structural engineer licensed to practice in the State of Montana, establishing a smaller collapse area. All accessory equipment related to said facility shall maintain the minimum residential zoning district setbacks.
- d. All accessory equipment related to a facility shall maintain the minimum zoning district setbacks.

#### 4. Height.

- a. The general exemption in Section 6.1.06.C.2(a) which applies to public and private utility facilities does not apply to wireless telecommunication facilities.
- b. The specific exemption in Section 6.1.06.C.2(d) which applies to towers, “provided that any structure above the height otherwise permitted in the district shall occupy no more than 25 percent of the area of the lot and shall be at least 25 feet from every lot line” refers to the maximum building height permitted without a conditional use permit and applies to wireless telecommunication facilities.

#### 5. Stealth.

- a. The proposed stealth structure should be appropriate for the context of its surroundings. For example, a silo structure appropriate in a farming area would be inappropriate in a more urban setting.
- b. The proposed stealth structure should blend the technology into whatever the surrounding environment has to offer.
- c. True stealth should mean people can't readily spot an antenna installation.
- d. The accessory equipment should be integrated into the site or buried underground.
- e. Color does not achieve stealth against the sky or distant views but can achieve stealth for building mounted antenna. For example, building mounted antennas that are painted to match the brick facade.

6. Co-location. If co-location is required, the owner of the facility shall certify in writing, prior to final permit approval, that the owner will accept for co-location any FCC licensed or licensing exempt provider using compatible technology at reasonable and customary rates and terms up to the structural capacity to accommodate additional antennae. Co-location may be denied based on verifiable expectations of interference from additional

users. Later failure to comply with the requirements supporting collocation may result in the revocation of City approvals or other penalties provided by the municipal code as the requirements of the title will have been violated.

7. Preferences. In order to justify the construction of a facility, the applicant must demonstrate that higher ranking alternatives in the following hierarchy do not constitute feasible alternatives. The order of preference, from most preferred to least preferred and based on technical feasibility, for new facilities is:

- a. Stealth micro (10') facility or co-location on existing facility.
- b. Micro (10') facility.
- c. Stealth facility 30 feet or less in height.
- d. Facility 30 feet or less in height or stealth facility 45 feet or less in height.
- e. Facility 45 feet or less in height or stealth facility 70 feet or less in height.
- f. Facility in excess of 70 feet in height.

- (1.) In order to demonstrated that preferable facilities do not constitute feasible alternatives, such demonstration must be made by submission of a statement of position, qualifications and experience by a professional engineer (electrical or radio frequency) licensed to practice in the State of Montana and address the required findings that no existing or proposed structures adequate to accommodate the proposed antennae are located within the city that meet the applicant's engineering and service requirements.

#### F. Administrative.

1. The applicant must provide an inventory of existing and approved facilities within one (1) mile of the city boundaries. The inventories shall note the feasibility of accommodating other users. The City may share this information with other applicants or interested parties to encourage co-location.
2. The public land and agencies exemption from full compliance with zoning in §76-2-402, MCA does not apply to private entities utilizing publicly owned lands.
3. Any antennae or antenna support structures that are not utilized for the provision of wireless services for a continuous period of six months shall be considered abandoned. All facilities shall be removed within six months of the cessation of operations. If a facility is not removed within six months, the City shall remove the facility at the facility or landowner's expense. Where multiple users share a facility, the non-operational antennae and associated ground mounted equipment shall be removed but any common equipment may be retained until all users have terminated the utilization of the site.
4. Failure to comply with the terms of the zoning ordinance shall be grounds for facilities to be removed by action of the City at the facility or landowner's expense.
5. Denial of an application shall be made only after the review body has determined that specific criteria of this title cannot be met. Said determination shall be made in writing and shall include the reasons for the denial and the evidence which supports those

reasons. The stated reasons for the denial must be based on substantial evidence, not generalized public opposition.

G. Exemptions.

1. The following wireless communication facilities that are regulated by the Federal Communications Commission (FCC) pursuant to the Code of Federal Regulations as may be amended:
  - a. Industrial, scientific, and medical equipment.
  - b. Military and government radar antennas and associated communication and broadcast towers used for aviation services; and
  - c. Amateur (ham) and citizen band transmitting and receiving antennas and associated communication and broadcast towers.
2. Radio transceivers normally hand-held or installed in a vehicle, such as an automobile, truck, trailer, watercraft, or aircraft, including cellular phone or mobile broadcast studio.
3. A radio frequency machine which is designated and marketed as a consumer product, such as microwave ovens and radio control toys; or is in storage, shipment, or on display for sale, provided such machines are not operated except for demonstration purposes.
4. Temporary telecommunication facilities used solely for emergency communications by public officials in the event of a natural disaster, emergency preparedness or public health or safety purposes.
5. Two-way transmitting antennas used on a temporary basis by “911” emergency services, including fire and rescue, medical, and law enforcement, as well as essential public utility providers, including but not limited to water and sanitary and storm sewer providers.

**8.1.12 OPENCUT MINING OPERATIONS.**

- A. Purpose and Intent: For the purpose of promoting the health, safety, morals, and the general welfare of the community, the City of East Helena strictly prohibits the use of land within the limits of the City of East Helena for the purpose of conducting sand or gravel opencut mining operations.

**8.1.13 MARIJUANA FACILITIES**

- A. Purpose and Intent: For the purpose of promoting the health, safety, morals, and the general welfare of the community, the City of East Helena provides for additional requirements for marijuana facilities.
  1. Sales, production, manufacturing, and wholesale distribution of medical or recreational marijuana including growing facilities is prohibited on property that is directly adjacent to property zoned Residential District or directly adjacent to an existing residential use.



## CHAPTER 9

### SECTION 9.3 NONCONFORMING SITUATIONS

#### 9.3.01 NONCONFORMING USES.

- A. Any use lawfully existing upon the effective date of the ordinance codified in this title may be continued at the size and in the manner of operation existing upon such date except as hereinafter specified.
- B. Except as otherwise specified in this chapter, the right to operate and maintain a nonconforming use shall terminate when the structure or structures housing such use are removed beyond 60 percent of the market value of the structure, said nonconforming use or uses may be reestablished through a conditional use permit procedure. Such restoration shall comply to the maximum extent reasonably feasible with the requirements of this title.
- C. When any lawful nonconforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use.
- D. Whenever a lawful nonconforming use of a building, structure or land is discontinued for a period of one hundred and eighty (180) days, except agricultural uses in all districts prior to the date of the adopted ordinance, any future use of the building, structure or land shall be in conformity with the provisions of this title.
- E. Normal maintenance of a building or other structure containing or related to a lawful nonconforming use is permitted, including necessary structural repairs, provided such structural repairs do not enlarge, intensify, or otherwise redefine the nonconforming use.

#### 9.3.02 CHANGES TO OR EXPANSION OF NONCONFORMING USES.

- A. Lawful Nonconforming Nonresidential Use.
  - 1. A lawful nonconforming nonresidential use shall not be changed except in conformance with the use requirements of the zone in which it is located. Except, however, a lawful nonconforming nonresidential use may be changed to another nonconforming use, provided that the proposed use is not of greater intensity than the original use, as determined by the criteria below, and that a conditional use permit is obtained from the City Council. A lawful nonconforming nonresidential use may be expanded only through the granting of a conditional use permit by the City Council. In considering the appropriateness of the conditional use permit application, the City Council shall weigh the criteria set forth below. In addition, the Council shall consider whether the expansion is reasonable, natural, and incidental to the growth and use of an existing business. In general, proposals to expand nonconforming uses shall not be approved if the expansion would encompass new land or property which was not in use at the time of the enactment of zoning or a change in zoning.

2. To approve a conditional use permit to change or expand a nonconforming nonresidential use, the City Council shall determine that the proposed nonconforming use is more appropriate to the district than the existing nonconforming use, and that no unsafe or unhealthy conditions are perpetuated. In making such a determination, the Council shall weigh the following criteria in addition to the criteria applicable to all conditional use permits:
  - a. Traffic impacts, both on-site and off-site.
  - b. Off-street parking and loading requirements.
  - c. The visual impact on the surrounding area.
  - d. The degree of compliance with the adopted growth policy and this title.
  - e. The level of conflict with other uses in the surrounding area.
  - f. The presence of other nonconformities in the surrounding area.
  - g. The degree to which any existing unsafe or hazardous conditions would be mitigated.
  - h. The viability of the subject structure(s); and
  - i. On-site and off-site impacts from noise, dust, smoke, surface or groundwater contamination, or other environmental impacts.

**B. Lawful Nonconforming Residential Use.**

1. A lawful nonconforming residential use may be reduced in terms of the number of dwelling units, in an effort to achieve greater conformance with the underlying zoning designation, through the review process established in this title, without the need to obtain a conditional use permit from the City Council. A lawful nonconforming residential use shall not be permitted to increase the number of dwelling units.
2. The maintenance and reconstruction of existing nonconforming residential dwelling units is allowed, in compliance with applicable fire and building codes, including expansion of up to 20 percent of the existing total residential area, without the need of a conditional use permit from the City Council, as long as the number of dwelling units on the lot is not increased. In instances where new construction is allowed, all appropriate approvals such as a building permit shall be obtained prior to the initiation of construction.

**9.3.03 NONCONFORMING LOTS.**

- A. At the time of the enactment of the ordinance codified in this title, if any owner of a plot of land consisting of one or more adjacent lots, in a subdivision of record, does not own sufficient land within the lot of record to enable him/her to conform to the minimum lot size requirements, or does not have sufficient lot width to conform to the minimum lot width requirements, such plot of land may nevertheless be used as a building site. The lot dimension requirements of the district in which the piece of land is located may be reduced by the smallest amount that will permit a structure of

acceptable size to be built upon the lot that does not exceed maximum lot coverage for that District.

1. In the Residential district, the reduction shall permit only a single-household residence.
- B. No lot shall be reduced in size so that lot width or size of yard setback or lot area per household or any other requirement of this title is not maintained except as provided for by variance in this title.
  1. This section shall not apply when a portion of a lot is acquired for a public purpose.
- C. The owner of a plot of land consisting of two or more adjacent lots, in a subdivision of record, may choose to have the lots considered a single lot of record to comply with minimum requirements without need of a variance as provided for in this title. Existing buildings on nonconforming lots may be expanded without variances so long as the expansion does not increase or create one or more nonconformities, see Changes to or Expansions of Nonconforming Structures below.

#### **9.3.04 NONCONFORMING STRUCTURES.**

- A. Any nonconforming structure lawfully existing upon the effective date of the ordinance codified in this title may be continued at the size and configuration existing upon such date except as hereinafter specified.
- B. Except as otherwise specified in this chapter the right to operate and maintain a nonconforming structure shall terminate when the structure is removed beyond 60 percent of the market value of the structure. Said nonconforming structure may be reestablished through a conditional use permit procedure as set forth in this title. Such restoration shall comply to the maximum extent feasible with the requirements of this title.
- C. Normal maintenance of a lawful nonconforming structure is permitted, including necessary structural repairs provided such structural repairs do not enlarge the structure or intensify the use.

#### **9.3.05 CHANGES TO OR EXPANSION OF NONCONFORMING STRUCTURES.**

- A. A lawful nonconforming structure shall not be changed except in conformance with the requirements of the zone in which it is located or as provided in this chapter.
- B. A lawful nonconforming structure may be expanded through the plan review process required by this title. Unless the proposed expansion would create a new nonconformity or increase an existing nonconformity, no variance is required for the expansion.
- C. If a lawful nonconforming structure is proposed to be changed or expanded in a manner which would increase the degree of nonconformity, or would create a new nonconformity, a variance shall be required prior to or in conjunction with the site development approval required in this title.

- D. The maintenance and reconstruction of existing nonconforming residential structures is allowed, in compliance with applicable fire and building codes, as well as, the provisions of this chapter, so long as the number of dwelling units on the lot is not increased. Maintenance activities may not increase the degree of nonconformity.
- E. The maintenance and reconstruction of existing nonconforming nonresidential structures is allowed, in compliance with applicable fire and building codes, as well as, the provisions of this chapter, so long as the intensity of the use on the lot is not increased. Maintenance activities may not increase the degree of nonconformity.

## **CHAPTER 10**

### **SECTION 10.1 APPEALS AND VARIANCE PROCEDURES**

#### **10.1.01 PURPOSE.**

- A. This chapter is adopted:
  - 1. To establish procedures for granting relief from the requirements of this title subject to the standards of this chapter in order to preserve equitable implementation of the law, prevent special treatment to particular parties and preserve the various rights established by the Montana and United States constitutions of all person's subject to this title.
  - 2. To provide through appeals of administrative interpretations a procedure for consideration of and resolution of disputes regarding the meaning and implementation of this title.
  - 3. To provide through zoning variances a procedure for relief from the occasional inequities created by the physical standards of this title relating to zoning when such standards create a substantially unequal burden on a particular parcel of land in a fashion that would otherwise prevent the reasonable use of property, owing to physical circumstances unique to that parcel.
  - 4. To prohibit the granting of variances that would be contrary to the public interest and endanger public health, safety, and welfare; and
  - 5. To allow for appeals from decisions made by administrative staff approving, approving with conditions or denying applications for development approval.
- B. The City Council shall hear and decide appeals of administrative decisions and variances as follows:
  - 1. Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this title or of any standards adopted pursuant thereto. An aggrieved person may appeal the final decision of the City staff in the manner provided in this chapter.
  - 2. Authorize in specific cases such zoning variances from the physical standards of this title that will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship, and so that the spirit of this title shall be observed and substantial justice done.

#### **10.1.02 HEARING AND NOTICING REQUIREMENTS.**

- A. There shall be a hearing before the City Council for any appeal of administrative decisions and interpretations and for each application for any variance. The hearing shall be held at an appointed time and place. Testimony shall be taken by the Council from persons interested in the application and from the City staff.
- B. The City staff or Clerk of the Council shall give public notice as required by this title of all public hearings to be held before the City Council. Notification of appeal procedures shall be

included in the initial posting and notice of the proposal, provided that an initial posting and notice is required by this title.

#### **10.1.03 ADMINISTRATIVE INTERPRETATION APPEALS.**

- A. An Applicant may request an appeal of an interpretation of this title, including classifications of use, shall be made by filing an application, with appropriate fees, with the Clerk of the Council within 20 business days of the interpretation decision. After receiving a completed application, the Clerk of the Council shall schedule a hearing at a regular Council meeting. In all cases, the complete application shall include, and shall not be deemed filed until; all of the materials required by this title are submitted.
- B. The Council shall cause to be made such investigation of facts bearing on the application as will provide necessary information to assure that the action on each such application is consistent with the intent and purpose of this title. During time of appeal all construction shall cease and shall not commence until approved by the City Council.
- C. When interpreting the meaning of this title, subsections of the ordinance shall be construed in a manner that will give effect to them all as the ordinance derives its meaning from the entire body of text taken together.
- D. The concurring vote of the majority of the Council shall be necessary to reverse any order, requirements, decisions or determination of any administrative official, or to decide in favor of the applicant.

#### **10.1.04 ADMINISTRATIVE PROJECT DECISION APPEALS.**

- A. An aggrieved person may appeal the final decision of the City staff in the manner provided in this section. Any appeal of a final administrative decision to approve or deny an application shall be an appeal on the basis of the information available to the City staff including this title, all submitted application materials, review and recommendations by administrative staff or advisory bodies, public comment and such other materials as were available. Denial of requests for waiver or alteration of applicable regulations is not an administrative decision subject to appeal.
- B. Application of Appeal Procedures. Appeals from City staff to the City Council or the courts are set forth in the various sections of this title. Said appeals are permitted under the provisions of this section in the manner set forth herein.
  - 1. These appeal procedures shall apply to the decisions brought forth by the City staff.
  - 2. Appeals shall be from the City staff to the City Council.
  - 3. In reviewing an appeal, the City Council shall consider the application as if it were the original approval.
- C. Filing of Notice of Appeal. An appeal shall be taken by filing with the Clerk of the Council a notice of intent to appeal by 5:00 pm on the tenth (10) business day following the final decision of the City staff, and a documented appeal and appeal fee within fifteen (15) business days of the final decision of the City staff. Such notice of intent to appeal shall include the following:

1. The action of the City staff which is the subject of the appeal; and
  2. The date of such action.
- D. Appeal Contents. In all cases, the complete appeal application shall include, and shall not be deemed filed until; all of the materials required by this title are submitted.
- E. Notice of Appeal. Once a complete appeal has been filed and a hearing date is set, notice of the appeal shall be provided in the same fashion as was required for notice of the initial application. The date, time, and location for hearing an appeal before the City Council shall be included in the required notice of the appeal.
- F. Scheduling of the Hearing. Upon receipt of a complete appeal application the Clerk of the Council shall place the appeal on the next available regularly scheduled City Council agenda for scheduling. The City Council shall schedule the hearing of the appeal within thirty working days of the agenda item to set the hearing date.
- G. Material. The material to be considered by the City Council shall be the record of the project review, including the City staff's decision, in addition to materials that may be submitted during the processing and review of the appeal.
1. No less than ten working days prior to the appeal hearing before the City Council, the City staff shall transfer the entire record of the application to the City Council.
  2. Any materials submitted by the appellant shall be provided to the City Council no less than ten working days prior to the appeal hearing before the City Council.
- H. Procedure of the Hearing. At the hearing on the appeal, the following procedure shall be followed:
1. Only arguments and evidence relevant to the application shall be presented. The presentation shall be made in the following order, subject to such limitations, in time and scope as may be imposed at the discretion of the presiding officer:
    - a. Explanation of the application and nature of the appeal and presentation by City staff.
    - b. Presentation of position by the applicant and/or representative.
    - c. Presentation by any person who is a proponent or an opponent of the application; and
    - d. Motion, discussion, and vote by the City Council.
  2. No person making a presentation shall be subject to cross-examination except that members of the City Council and the City Attorney may inquire of such person for the purpose of eliciting information and for the purpose of clarifying information presented.
- I. Alternative Actions Available to the Appellate Body. At the conclusion of the hearing, the City Council shall approve or deny the appeal within 15 working days of the hearing.

**10.1.05 ZONING VARIANCES.**

- A. Application. A request for one or more variance(s) from design standards shall be made by filing an application, with appropriate fees, with the City staff at least 30 working days prior to the Council meeting and shall be accompanied by the materials described in this title.
- B. Investigation of Facts. The Council shall cause to be made such investigation of facts bearing on the application as will provide necessary information to assure that the action on each such application is consistent with the intent and purpose of this title.
- C. Criteria for Consideration and Findings. In acting on an application for a variance, the Council shall designate such lawful conditions as will secure substantial protection for the public health, safety and general welfare, and shall issue written findings setting forth factual evidence that the variance:
1. Will not be contrary to and will serve the public interest.
  2. Is necessary, owing to conditions unique to the property, to avoid an unnecessary hardship which would unavoidably result from the enforcement of the literal meaning of this title:
    - a. Hardship does not include difficulties arising from actions, or otherwise be self-imposed, by the applicant or previous predecessors in interest, or potential for greater financial returns; and
    - b. Conditions unique to the property may include, but are not limited to, slope, presence of watercourses, after the fact imposition of additional regulations on previously lawful lots and governmental actions outside of the owners' control.
  3. Will observe the spirit of this title, including the adopted growth policy, and do substantial justice.
- D. Authorization and Limitations on Approval.
1. The Council shall, after public notice and hearing, deny, approve, or conditionally approve all requests for variances meeting all the criteria of this section within 15 working days, including:
    - a. Requests to modify dimensional or other numerical requirements of this title.
    - b. Requests for multiple variances; and
    - c. Requests for variances in conjunction with conditional use permits.
    - d. Approvals of all such variances shall be conditioned upon City Council approval of the conditional use permit.
  2. The scope and extent of the variance(s) shall be limited to the minimum relief necessary to provide reasonable use of the property.
  3. In no case may the City Council grant variances to allow uses not already permitted pursuant to this title or alter administrative requirements of this title. Permission to change uses allowed on a parcel may be sought through a zone map amendment or an amendment to the text of the applicable zoning district.
  4. The concurring vote of the majority of the Council shall be necessary to affect any variance of this title.



- E. Effective Time for Council Decisions - Variances Void When. The decision of the City Council shall be final except as appealed. If a building permit or land use permit is not obtained for the subject property within six months from the date of the Council's decision, the variance shall be automatically canceled and become null and void.

**10.1.06 APPEALS FROM CITY COUNCIL ACTIONS.**

- A. Zoning Variances. Any person or persons, jointly or severally, aggrieved by any decision of the City Council under this chapter, or any taxpayer, or any officer, department, board or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal in whole or in part and specifying the grounds of illegality. Such petition shall be presented to the court within the time frame established by state law.
- B. Zoning Decisions. An aggrieved person may appeal the approval, approval with conditions or denial of a development application acted upon by the City Council by presenting to a court of record a petition, duly verified, setting forth that such decision is illegal in whole or in part and specifying the grounds of illegality. Such petition shall be presented to the court within the time frame established by state law.

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## CHAPTER 11

### SECTION 11.1 ADMINISTRATION, FEES, AND PENALTIES

#### 11.1.01 REVIEW AUTHORITY.

- A. The City Council has the right to review and require revisions to all development proposals subject to this title, and delegates that authority in certain circumstances as set forth below to its designees, reserving to itself the right to hear appeals from decisions of the City staff. The purpose of this review is to prevent demonstrable adverse impacts of the development upon public safety, health or general welfare, or to provide for its mitigation; to protect public investments in roads, drainage facilities, sewage facilities, water facilities, and other facilities; to conserve the value of adjoining buildings and/or property; to protect the character of East Helena; to protect the right of use of property; advance the purposes and standards of this title and the adopted growth policy; and to ensure that the applicable regulations of the City are upheld.
- B. The City Council, or its designees shall, upon recommendation from appropriate agencies, entities or City staff as may be applicable, approve, approve with conditions, or deny all applications subject to this title. Decisions of the City staff are subject to the appeal provisions of this.
  - 1. Exception. The City Council may, by an affirmative vote of the majority of the present and voting members of the City Council at a regularly scheduled meeting reclaim to itself the final approval of a development normally subject to the approval of the City staff. The vote shall occur prior to the action of the City staff.
- C. The City Council or its designees may require the applicant to design the proposed development to reasonably minimize potentially significant adverse impacts identified through the review required by these regulations.

#### 11.1.02 ADMINISTRATION.

- A. The City Council or its designees shall administer and enforce this title. He/she may be provided with the assistance of such other persons as the City Council may supervise and those assistants shall have essentially the same responsibilities as directed by the City Council.
- B. The City Council or its designees may in the administration of this title consult with other persons having expertise in relevant subject areas as in his/her opinion is necessary for the review of the proposed development or administration of the title.

#### 11.1.03 ENFORCEMENT – THE CITY COUNCIL OR ITS DESIGNEES.

- A. This title shall be enforced by the City Council, or its designees. No development approval, building permit or business or occupational use license shall be issued, except in compliance with the provisions of this title.
- B. If the City Council or its designees shall find that any of the provisions of this title are being violated, he/she shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall order

discontinuance of illegal use of land, illegal additions, alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this title to ensure compliance with or prevent violation of its provisions.

#### **11.1.04 STOP WORK ORDER – THE CITY COUNCIL, OR ITS DESIGNEES, BUILDING OFFICIAL, CITY ENGINEER AUTHORITY.**

Whenever any development or building work is being done contrary to the provisions of this title, the City Council, or its designees shall order the work stopped by notice in writing served on any person engaged in doing or causing such work to be done, and any such person shall forthwith stop such work until authorized by the City Council, or its designated designees to proceed with the work. The Building Official or City Engineer may also issue a stop-work order when building work is being done contrary to the provisions of this title.

#### **11.1.05 PERMISSION TO ENTER.**

The City Council, or its designees, may conduct such investigations, examinations, and site evaluations as they deem necessary to verify the information supplied. The submission of an application for review shall constitute a grant of permission to enter the subject property.

#### **11.1.06 INACCURATE OR INCOMPLETE INFORMATION AND WAIVERS.**

- A. The City shall review each submitted application for acceptability and sufficiency as described in this title.
- B. The final approval body may withdraw approval or conditional approval of a development approval if they determine that information provided by the applicant, and upon which approval or conditional approval of the development was based, is inaccurate or incomplete.
  1. Within thirty calendar days following approval or conditional approval of a development application, any person or agency that claims that information provided by the applicant is inaccurate or incomplete may submit the information and proof to the City staff.
  2. The City Council, or its designees, shall investigate the claim, the accompanying information and proof, and make a report to the final approval authority (City Council, or its designees) within thirty working days after receipt of the information. If the final approval authority is the City Council, the Council shall consider the information and proof, and shall make a determination regarding the claim at a regular meeting. Notice of the meeting or presentation of the report shall be given to the claimant and the applicant.

#### **11.1.07 DATE OF SUBMITTAL AND ASSOCIATED REVIEW STANDARDS.**

Review of development applications shall be under such regulations as are in effect at the time an application for approval of a preliminary site plan is deemed sufficient according to this title. An applicant may waive, in writing, the shield from changing ordinances established by this section. In the event that such waiver is provided, the development application shall be reviewed under the ordinances in effect on the date of the final action on the application.

### **11.1.08 BUILDING PERMIT REQUIREMENTS.**

- A. No building or other structure shall be erected, moved, added to or structurally altered and no land use shall be changed without valid permits.
- B. Based upon an approved sketch, site plan, or site plan with conditional use permit (hereinafter referred to as “plan”), and after any appeals have been resolved, a building permit for the site may be requested and may be granted, provided such building permit is granted within one year of plan approval. Prior to lapse of one year, the applicant may seek an extension of one additional year from the City staff. In such instances, the City staff shall determine that the terms and circumstances have not significantly changed since the initial approval.

### **11.1.09 PERMIT ISSUANCE – CONFORMITY WITH REGULATIONS REQUIRED.**

No permit or license of any type shall be issued unless in conformance with the regulations contained within this title. Permits issued on the basis of plans and applications approved by the Building Official and City staff authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this title, punishable as provided in this chapter.

### **11.1.10 PERMITS ISSUED CONTRARY TO TITLE DEEMED VOID.**

Any authorization, including without limitation site plan approval or building permit, issued, granted or approved in violation of the provisions of this title shall be null and void and of no effect without the necessity of any proceedings or a revocation or nullification thereof, and any work undertaken or use established pursuant to any such building permit or other authorization shall be unlawful.

### **11.1.11 FEE SCHEDULE.**

- A. The City Council shall establish a schedule of fees, charges and expenses and a collection procedure for reviews, permits, appeals and other matters pertaining to this title. The schedule of fees for the procedures listed below shall be set from time to time by the City Council by resolution. The fee schedule shall be available in the City offices and may be altered or amended only by the City Council.
- B. No permit, zone change, site plan, conditional use, special temporary use, or variance shall be issued unless or until such costs, charges, fees or expenses have been paid in full, nor shall any action be taken on proceedings before the City Council until fees have been paid in full.

### **11.1.12 COMPLAINTS OF ALLEGED VIOLATIONS – FILING AND RECORDING.**

Whenever a violation of this title occurs or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof shall be filed with the City staff. He/she shall record properly such complaint and immediately investigate and take action thereon as provided by this title. Upon receipt of verbal complaints, City staff may, as time permits, record such complaint, investigate, and take action thereon as provided by this title.

**11.1.13 VIOLATION - PENALTY – ASSISTING OR ABETTING - ADDITIONAL REMEDIES.**

- A. Violation of the provisions of this title or failure to comply with any of its requirements including violations of conditions and safeguards established in connection with the grant of variances or conditional uses or any of the required conditions imposed by the City staff and/or City Council shall constitute a misdemeanor. Any person who violates this title or fails to comply with any of its requirements shall upon conviction thereof be fined or imprisoned or both, as set forth in state law regarding zoning, and in addition shall pay all costs and expenses involved in the case except as stated below.
  - 1. Each day such violation continues shall be considered a separate offense and punishable as such.
- B. The code compliance officer is authorized to issue a notice to appear under the provisions of §46-6-310, MCA to any violator of this title.
- C. The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.
- D. When a violation has not been corrected by the property owner after written notice from the City Council or its designee, the City may seek approval for filing at the Lewis and Clark County Clerk and Recorder’s Office a Notice of Violation or Noncompliance. Such notice shall serve to advise potential purchasers of existing violations of this title or of on-going enforcement actions regarding a property. Such notice shall clearly state that the parcel or development on the parcel is in violation of this title and that correction of the violation must be made prior to the City approving additional development or redevelopment of the site. The notice shall also describe the nature of the violation and applicable citations to the relevant sections of this title.
  - 2. When such a notice is to be filed the code compliance officer shall either:
    - a. Through the office of the City Attorney bring an action for civil and/or injunctive relief that requests a court order to record a Notice of Violation or Noncompliance; or
    - b. Schedule a public hearing to be held before the City Council with the intention of receiving an order from the City Council confirming the validity of the violation and the need for correction, and authorizing the recording of the Notice of Violation or Noncompliance. Notice of such a hearing shall be provided as required by this title.
  - 3. When a violation has been corrected for which a Notice of Violation or Noncompliance was filed, the City shall record a release of noncompliance indicating that the prior violation has been corrected. The property owner is responsible for notifying the City in writing of the correction of the violation or noncompliance. Upon receipt of such notification by the property owner, the code compliance officer shall conduct an inspection to verify correction prior to the recording of the release.

- E. The City may maintain an action or proceedings in a court of competent jurisdiction to compel compliance with, or to restrain by injunction the violation of, any provision of this title.
- F. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

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## **CHAPTER 12**

### **SECTION 12.1 ZONE MAP AMENDMENT**

#### **12.1.01 INITIATION OF AMENDMENTS AND CHANGES.**

- A. The City Council may, from time to time, amend, supplement or change the zoning district maps appertaining to this title. An amendment, supplement or change may be initiated by the City Council or upon application from an owner of property within the City.
- B. The City Council may upon a vote of a majority of its members direct the initiation of an amendment to the zoning map.
- C. Whenever the property owner of any land or building desires a reclassification on his/her property, they may file with the City an application requesting an amendment or change of regulations prescribed for such property. When the application, bearing property owner's signatures, is filed with the Department it shall contain or be accompanied by:
  - 1. All the data and information pertinent to the understanding and judgment of the proposal, as may be prescribed by the Council for that purpose so as to assure the fullest practicable presentation of facts for the permanent record; and
  - 2. A notarized statement by at least one of the owners of property within the area proposed to be changed attesting to the truth and correctness of all facts and information presented with the application.
- D. Whenever an owner of any land within the City desires a reclassification on property that they do not own, such as a request to establish a different zoning classification for a block or other group of properties, they may file with the City an application duly signed by the owners of no less than 51 percent of either the area of lots or number of lots of the affected property requesting an amendment for such property. When the application, bearing property owners signatures, is filed with the City it shall contain or be accompanied by:
  - 1. All the data and information pertinent to the understanding and judgment of the proposal, as may be prescribed by the Council for that purpose so as to assure the fullest practicable presentation of facts for the permanent record; and
  - 2. A notarized statement by at least one of the owners of property within the area proposed to be changed attesting to the truth and correctness of all facts and information presented with the petition.
  - 3. An application containing less than the required number of signatures shall be considered incomplete and invalid and shall not be processed.

#### **12.1.02 AMENDMENTS AND REZONINGS – INVESTIGATION REQUIREMENTS.**

Upon initiation of an amendment by the City Council or upon application from a property owner, the City shall cause to be made an investigation of facts bearing on such initiation or application as will provide necessary information to assure that the action of each such application is consistent with the intent and purpose of this title. Specifically, the investigation must address the criteria of MCA which are:

- A. Consistency with the City's growth policy.

- B. Designed to;
  - 1. Securing safety from fire, panic and other dangers.
  - 2. Promote public health, public safety, and the general welfare.
  - 3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
- C. Reasonable provision of adequate light and air.
- D. The effect on motorized and non-motorized transportation systems.
- E. Promotion of compatible urban growth.
- F. The character of the district and its particular suitability for particular uses.
- G. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

### **12.1.03 PUBLIC HEARING PROCEDURES AND REQUIREMENTS.**

- A. In the case of protest against such changes, signed by the owners of 25 percent or more of either the area of the lots included in any proposed change or those lots 150 feet from a lot included in a proposed change, such amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the City Council. The provisions of the subsection below include the ability for an applicant to protest a possible decision to adopt a zoning less than originally requested when the applicant meets the same criteria as other affected landowners.
- B. If the City Council intends to adopt a zoning designation different than that applied for, the hearing will be continued for a minimum of one week to enable the applicant to consider their options and whether to protest the possible action. In the case of protest against a change to the zoning map by the applicant the same favorable vote of two-thirds of the present and voting members of the City Council is required as for any other protested zoning action.

## **CHAPTER 13**

### **SECTION 13.1 NOTICING**

#### **13.1.01 PURPOSE.**

It is the intent of this chapter to provide for adequate notice of governmental actions to those affected by such actions. Notice is required in order for citizens to participate in decision making which affects their interests and provides opportunity to receive information pertinent to an application that would not otherwise be available to the decision maker. In establishing standards for providing such notice, the need for expeditious processing of applications is also recognized.

#### **13.1.02 CONTENTS OF NOTICE.**

- A. The following elements shall be included in notices issued pursuant to this title:
  - 1. Address of the property, or its location by approximate distances from the nearest major street intersections, or other description to identify the affected property.
  - 2. Legal description of the property.
  - 3. The name and address of the applicant.
  - 4. The name and address of the owner of record.
  - 5. The number, date, time and place of all relevant scheduled public hearings by the City Council, meetings of other review bodies established by this title at which final decisions shall be made, or the date of any final public comment deadline.
  - 6. A description of how and where additional information regarding the action may be obtained; and
  - 7. A brief description of the subject of the notice.
- B. The applicant shall provide for the purposes of noticing a list of names and addresses of property owners within 150 feet of the site, using the most current known property owners of record as shown in the records of the County Clerk and Recorder's Office and stamped, unsealed envelopes (with no return address) addressed with names of above property owners, and/or labels with the names of the above property owners, as specified on the appropriate application.

#### **13.1.03 NOTICE REQUIREMENTS FOR APPLICATION PROCESSING.**

- A. The following minimum standards for timing, location of noticing area and type of notice shall be provided. Noticing provisions are cumulative with the maximum combination of noticing requirements being provided. When more than one newspaper notice is required, only one of the required publication dates must fall within the minimum and maximum days required.
- B. If for some reason a required property owner fails to receive mail notification of a scheduled public hearing, or if one or more of the required posted signs in the area or on the site for which the public hearing is being held is inadvertently moved through no fault of the

City, this in no way shall invalidate the legal notice requirements of the scheduled public hearing.

**Table 13-1**

<b>Application</b>	<b>Minimum Days<sup>3</sup></b>	<b>Maximum Days<sup>3</sup></b>	<b>Distance<sup>1</sup></b>	<b>Notice Type</b>
Text Amendment	15	45	NA	Newspaper once <sup>4</sup>
ZMA	15	45	150 ft.	Newspaper once <sup>4</sup>
ZMA- Resulting from ordinance changes	15	45	NA	Newspaper once <sup>4</sup>
ZMA- Annexation w/ initial zoning	15	45	150 ft.	Newspaper once <sup>4</sup>
Variance	15	45	NA	Newspaper 2 times <sup>5</sup>
Public Agency Exemption (76-2-402)	15	45	NA	Newspaper 2 times <sup>5</sup>
Appeals <sup>2</sup>	15	45	150 ft.	Newspaper 2 times, mail 1st class <sup>2</sup>
Sketch Plan	None	None	NA	None
Informal Review	None	None	NA	None
Site Plan	None	None	NA	None
CUP	15	45	NA	Newspaper 2 times <sup>5</sup>
Notice of Violation <sup>6</sup>	15	45	None	Post on-site, certified mail to landowner

<sup>1</sup>The distance from the exterior property boundary of the site to all or part of another parcel of land whose owners must be notified of a governmental action. This distance includes the width of a right-of-way or other public ownership.

<sup>2</sup>In accordance with, MCA, notice must be given in the newspaper 2 times at least 6 days apart, and in accordance with, MCA, mailing only applies to parties in interest of appeals taken from actions to approve, approve with conditions or deny a development proposal and not to appeals of administrative interpretations.

<sup>3</sup>Days prior to the public hearing.

<sup>4</sup>In accordance with., MCA, notice must be given in the newspaper once.

<sup>5</sup>In accordance with, MCA, notice must be given in the newspaper 2 times at least 6 days apart.

<sup>6</sup>Notices of Violation subject to Chapter 11 of this title.

## CHAPTER 14

### SECTION 14.1 DEFINITIONS

#### 14.1.01 DEFINITIONS OF TERMS AND INTERPRETATION OF LANGUAGE.

- A. All words in this title shall be first defined as provided in this chapter and, if not defined herein, shall be defined as in the latest edition of ‘The Illustrated Book of Development Definitions’ by Harvey S. Moskowitz and Carl G. Lindbloom, and if not defined in ‘The Illustrated Book of Development Definitions’, shall have their customary dictionary definitions.
- B. Words used in the present tense include the future tense; words used in the singular include the plural, and words used in the plural include the singular; the word “shall” is always mandatory, the word “person” includes a firm, association, organization, partnership, trust, corporation or company, as well as an individual; the word “lot” includes the words “plot” or “parcel”; the word “building” includes the word “structure”; the words “used” or “occupied,” as applied to any land or building, shall be construed to include the word “intended, arranged, or designed to be used or occupied”; the words “map” or “zoning map” mean the zoning map(s) of the City that delineate the area to be governed by these regulations; the word “setback” shall include the word “yard”.
- C. For the purposes of this title certain words and terms used herein are defined as follows:

#### **ACCESS**

The place means or way by which pedestrians and vehicles shall have adequate and usable ingress and egress to property or use as required by this title.

#### **ACCESSORY BUILDING OR USE**

A subordinate building, or portion of the principal building, located on the same lot as the principal building, or a subordinate use of land, either of which is customarily incidental to the principal building or to the principal use of land. Where part of an accessory building is connected to part of the principal building by a common wall, such accessory building shall be counted as part of the principal building. Individual public utility installations above ground are considered accessory buildings.

#### **ACCESSORY EQUIPMENT**

Any equipment serving or being used in conjunction with a Structure or use: This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

#### **ADULT BUSINESS**

An establishment which advertises, trades, exchanges, transfers, sells, presents, shows, offers or exhibits materials, activities, reproductions, likenesses, services and/or objects defined as obscene by MCA. Adult business as defined in this section shall include, but need not be limited to, adult

bookstores, adult motion picture theaters, rap studios, massage parlors, exotic dance studios, nude art studios, nude photographic studios and nude body painting studios.

**AGGRIEVED PERSON**

A person, as defined in this chapter, who has a specific, personal and legal interest in the final decision of an agency, board, commission or council, as distinguished from a general interest such as is the concern of all members of the community, and which interest would be specifically and personally prejudiced by the decision or benefited by its reversal.

**ALTERATION**

Any act or process, except repair and light construction as defined herein, that changes one or more of the architectural features of a structure or site, including, but not limited to, the erection, construction, reconstruction, relocation of, or addition to a structure. Changes upon interior elements of private residences, regardless of their location or historic status, shall not be considered alterations as defined in this section.

**ANTENNA (wireless telecommunications antenna)**

One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include Omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). Antennas used by amateur radio operators are excluded from this definition.

**APARTMENT**

A habitable room or suite of two or more habitable rooms meeting the requirements of the City's adopted International Building Code, located in an apartment building or used for residential purposes in nonresidential buildings located within nonresidential districts, as specified in this title. Efficiency units shall qualify as an apartment under this definition.

**APARTMENT BUILDING**

A building other than a hotel or motel containing five or more dwelling units.

**APPELLANT**

An aggrieved person who has appealed the decision of an agency, board, commission or council to another body designated herein by the filing of a notice of appeal.

**APPLICANT**

The person(s) who, or organization which, submitted the application to the agency, board, commission or council for approval, or the person(s) who, or organization which, submitted the application to the agency, board, commission or council whose decision has been appealed.

**AREA OF SIGNS**

The area of a sign that shall be computed by enclosing the entire area within any type of perimeter or border which may enclose the outer limits of any writing, representation, emblem, figure or character together with any other material or color forming an integral part of the

display or used to differentiate such sign from a building on which it is placed. The area of a sign having no such perimeter shall be computed by enclosing the entire area within parallelograms, triangles, or circles in a size sufficient to cover the entire area of the sign copy and computing the size of such area. In the case of a two-sided sign, the area shall be computed as including only the maximum single display surface which is visible from any ground position at one time. If the angle between the two sign faces is greater than 45 degrees, the sign area will be the sum of the areas of the two faces. The supports or uprights on which any sign is supported should not be included in determining the sign area unless such supports or uprights are designed in such a manner as to form an integral background of the sign. In the case of any spherical, conical, or cylindrical sign, one-half of the total surface area shall be computed as the area of the sign.

#### **ATTACHED STRUCTURE**

A building sharing with one or more other buildings a common wall(s) for not less than five feet.

#### **AUTOMOBILE FUEL SALES OR REPAIR**

The use of a site for the direct sale of fuel to the end user, or for the repair of automobiles, noncommercial trucks, motorcycles, motorhomes, recreational vehicles, or boats. This includes the sale and on-site installation of parts, wheel and brake shops, body and fender shops, and similar repair and service activities, but excludes dismantling or salvage.

#### **AUTOMOBILE WASHING ESTABLISHMENT**

A building which has its primary purpose as washing automobiles. Such facilities shall be considered incidental to automobile service stations if not more than one auto may be washed at one time and if the service station is clearly the principal use.

#### **AWNING**

A roof-like structure, which is generally composed of a skeletal frame, covered in a fabric or other skin-type material, and typically open on the bottom side, which projects beyond a building or extending along and projecting beyond the wall of the building. For the purposes of this title a sign on an awning shall be considered to be a wall sign.

#### **BAR (TAVERN, COCKTAIL LOUNGE)**

An establishment where alcoholic beverages are served on premises and where the total sales of alcohol exceeds the total sales of food.

#### **BASEMENT**

A portion of a building located partly underground but having not less than half its floor-to-ceiling height below the average grade of the adjoining ground.

#### **BUILDING**

Any structure having enclosed space and a roof for the housing and/or enclosure of persons, animals, or chattels.

## **BUILDING AREA**

The maximum horizontal projected area of the principal and accessory building(s), excluding open steps, terraces, and architectural appurtenances projecting not more than 2 feet. Building area, as that portion of a lot upon which construction is permitted, is that area of a lot that lies within the boundaries of the front, side and rear yard setback requirements measured from the actual lot lines.

## **BUILDING HEIGHT**

The vertical distance measured from grade as defined in this section to the highest point on the roof or parapet wall. Where a building utilizes multiple roof styles or pitches, the highest point of each type of roof or parapet wall shall be in conformance with applicable height regulations as established for the respective roof pitches in each zoning district. Where the vertical difference between grade as defined in this section is greater than 2 feet between opposite elevations of the building, the height of the building may be increased by 1 foot for every 1 foot in grade difference up to a maximum of 6 additional feet.

## **BUILDING, PRINCIPAL**

A building in which is conducted the main, or principal, use of the lot on which the building is situated.

## **BUSINESS**

Engaging in the purchase, sale, barter or exchange of goods, wares, merchandise, or services; the maintenance or operation of offices or recreational or amusement enterprises.

## **CANOPY**

Any open, permanent roof-like accessory structure which is not attached or part of a principal building.

## **CASINO**

- A. An establishment whose primary use or activity is gambling, either in the form of gambling machines (video poker, keno, etc.), card games or other licensed gambling activity. A casino will normally have beverage and restaurant facilities as accessory uses. In all instances, an establishment will be considered a casino for the purpose of these regulations if any of the following characteristics apply:
  - 1. The establishment is referenced as a casino by signage, advertisement or by name.
  - 2. More than one card table is on the premises, and/or
  - 3. Six or more gambling machines are on the premises.
- B. An applicant for a casino establishment must obtain a Montana state license to sell alcoholic beverages for consumption on the premises.



**CITY**

The City of East Helena.

**CITY COUNCIL**

The governing body of the City of East Helena.

**CLUB, PRIVATE (NONPROFIT)**

A nonprofit association of persons who are bona fide members, paying annual dues, which owns, hires or leases a building, or a portion thereof, the use of such premises being restricted to members and their guests.

**CO-LOCATION (collocation)**

The use of a wireless telecommunications facility by more than one wireless telecommunications provider. The placement of an antenna by two or more wireless service providers on a common antenna supporting structure, or the addition of antennas on an existing structure: The term does not include roof-mounted or surface-mounted wireless facilities.

**COMMON OWNERSHIP**

Ownership by the same person, corporation, firm, entity, partnership or unincorporated association; or ownership by different corporations, firms, partnerships, or unincorporated association in which a stockbroker, partner, or associate, or a member of his family owns an interest in each corporation, firm, partnership, entity or unincorporated association.

**COMMUNITY CENTER**

A building or portion of a building used for nonprofit cultural, educational, recreational, religious or social activities which is open to the public or a designated part of the public, usually owned and operated by a public or nonprofit group or agency, including private clubs, fraternity, sorority, and lodge.

**COMMUNITY RESIDENTIAL FACILITY**

A single residential structure including:

1. A community group home for developmentally, mentally, or severely disabled persons, which does not provide skilled or intermediate nursing care.
2. A youth foster home or other facility for care of minors as defined in MCA.
3. A halfway house operated in accordance with regulations of the State Department of Public Health and Human Services for the rehabilitation of alcoholics or drug dependent persons.
4. A licensed adult foster care home; and
5. Assisted living facility defined in MCA.

Where a limitation of eight or fewer residents is imposed for the purpose of defining the necessary review process to establish this use, the operator of a residential facility, members of the operator's household or persons employed as staff shall not be counted as residents.

### **COMPATIBLE DEVELOPMENT**

The use of land and the construction and use of structures which is in harmony with adjoining development, existing neighborhoods, and the goals and objectives of the City's adopted growth policy. Elements of compatible development include, but are not limited to: variety of architectural design; rhythm of architectural elements; scale; intensity; materials; building siting; lot and building size; hours of operation; and integration with existing community systems including water and sewer services, natural elements in the area, motorized and non-motorized transportation, and open spaces and parks. Compatible development does not require uniformity or monotony of architectural or site design, density or use.

### **COMPATIBLE LAND USE**

A land use which may by virtue of the characteristics of its discernible outward effects exist in harmony with an adjoining land use of differing character. Effects often measured to determine compatibility include, but are not limited to, noise, odor, light and the presence of physical hazards such as combustible or explosive materials.

### **CONDITIONAL USE**

A public or private use as listed in this title which, because of its unique characteristics, cannot be properly classified as a principal use or accessory use in a particular district. After consideration in each case of the impact of such use upon neighboring land, and of the public need for the particular use at the particular location, a permit for such conditional use may or may not be granted, with or without conditions, pursuant to the requirements of this title.

### **CONDITIONAL USE PERMIT**

Legal authorization to construct, develop or operate a conditional use as defined by this title.

### **CONSTRUCTION**

The act of adding to an existing structure or erecting a new principal or accessory structure.

### **CONVENIENCE FOOD RESTAURANT**

An establishment whose principal business is the sale of foods, frozen desserts or nonalcoholic beverages to the consumer in a ready-to-eat state for consumption either within the premises or for carry-out with consumption either on or off the premises and whose design or principal method of operation includes both of the following characteristics:

- A. Foods, frozen desserts or nonalcoholic beverages are usually served in containers.
- B. The customer is not served food at his/her table by an employee but receives it at a counter, window, or similar facility for carrying to another location for consumption either on or off the premises.

## **CONVENIENCE USE**

Retail commercial uses which have relatively high traffic generation rates per 1,000 square feet compared to other commercial uses. A use is designated as a convenience use if the method of operation includes one or more of the following characteristics:

- A. Retail motor fuel is sold.
- B. The primary business is the sale of food or drink for consumption, either on or off premises, over a counter, or from an outdoor service window or automobile service window. Of the food or drink sold, at least 20 percent is served containers; or
- C. Drive-in and drive-through restaurants.

## **CREMATORIUM**

An establishment used for arranging, managing and conducting funerals and memorial services and the storage and preparation of the human deceased for cremation, which contains a properly installed cremation chamber that meets all applicable state and federal regulations and has obtained all applicable state and federal permits and licenses to operate.

## **DATA CENTER**

a repository that houses computing facilities like servers, routers, switches and firewalls, as well as supporting components like backup equipment, fire suppression facilities and air conditioning.

## **DAY CARE CENTER**

A place in which supplemental care is provided to nonresident persons on a regular basis and which is licensed by the State of Montana.

## **DEMOLITION**

Any act or process that destroys, in part or whole, a structure or archaeological site.

## **DEVELOPMENT**

Any man-made change to improve or alter real estate, including but not limited to, subdivision of land, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

## **DRIVE ACCESS**

That area between the curb of a street, or edge of the traveled portion of a street when no curb exists, and the right-of-way/property line over which the City will permit vehicular travel from the traveled portion of a street to an individual property or off-street parking space(s).

## **DRIVE-IN BUSINESS**

Any business in which people are provided a service or a product, where a sale is made without the customer being required to leave the vehicle. Such businesses include, but are not limited to, drive-in theater, drive-in bank, freestanding automated teller machine, drive-in laundry or dry-cleaning pickup station, drive-in restaurant and any business offering take-home food services.

## **DWELLING**

A building, or portion thereof, meeting the requirements of the City's adopted International Building Code and used by one household, as defined by this chapter, for residential purposes. Dwelling occupancy duration is typically longer than thirty continuous days. Dwellings may exist in many configurations, including single-household, two-household, multiple-household dwellings, and group homes. Dwellings do not include hotels, motels, extended stay lodgings or tourist homes.

## **EFFICIENCY UNIT**

A dwelling unit containing only one habitable room as defined and regulated by the most recently adopted International Building Code.

## **ESSENTIAL SERVICES (TYPE I)**

Water pumping stations; storm water drainage facilities (including collection lines, retention/detention ponds and drainage ways); sanitary sewer and storm sewer lift stations; public domestic water storage facilities; water fill stations for firefighting equipment; local service telephone lines and cables; local service electrical distribution lines and cables; local service gas distribution lines; local service cable television lines; local service electronic data transmission lines and cables; water and sanitary sewer distribution and collection lines; and public and amateur radio antennae and towers.

## **ESSENTIAL SERVICES (TYPE II)**

Pipelines to transport gas, oil and coal (interstate and intrastate); electric substations; electrical transmission lines (interstate and intrastate); public supply facilities (electric and gas); public treatment facilities (water, sanitary sewer and storm sewer); solar power generation facilities; telephone satellite community dial offices; telephone exchanges and repeater stations, except those facilities which may be considered wireless facilities; other accessory facilities, equipment and structures; and police and fire stations.

## **EXTENDED STAY LODGINGS**

Guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes for guests and contain kitchen facilities for food preparation including but not limited to such facilities as refrigerators, stoves and ovens. Generally, an individual guest will not exceed thirty days stay. This definition includes dwelling units used, rented or hired out for vacation homes.

## **FINAL DECISION**

The final action of an agency, board, commission, or council when no further action is available before such agency, board, commission, or council.

## **FINAL SITE PLAN**

The final scale drawings of a preliminarily approved development and any other required information, the approval of which by the Planning Director indicates that the required conditions for approval have been met.

## **FOOD PROCESSING FACILITY**

A facility in which food is processed or otherwise prepared for eventual human consumption but not consumed on the premises.

## **FREESTANDING SIGNS**

A sign principally supported by one or more columns, poles, or braces placed in or upon the ground. May also be referenced as a Ground or Monument Sign.

## **FRONT LINE OF BUILDING**

The line of the face of a building nearest the front lot line.

## **FRONT YARD**

A yard extending across the full width of the lot between two side lot lines, the depth of which is the least distance between the street right-of-way and the front building line.

## **GARAGE, PRIVATE**

A detached accessory building, or portion of a main building, designed or primarily used for the storage of self-propelled vehicles for the household housed in the building to which such garage is accessory.

## **GARAGE, PUBLIC**

Any building or premises, except those defined herein as a private garage, used for the storage or care of motor vehicles; or where such vehicles are equipped for operation, repaired, or kept for rental, hire or sale.

## **GOVERNING BODY**

The governing authority of a city or town organized pursuant to law. In the City of East Helena, the City Council is the governing authority.

## **GRADE**

The lowest point of elevation of the finished surface of the ground between the exterior wall of a building and a point 5 feet distance from the wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and the property line if it is less than 5 feet distance from the wall. If walls are parallel to and within 5 feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley, or public way. "Finished surface of the ground" shall not include window wells, stairwells, or other similar features, but shall include features such as usable patio areas.

## **GREENHOUSE**

A building or structure constructed chiefly of glass, glass-like translucent material, cloth, lath or similar materials which is devoted to the protection or cultivation of flowers or other plants.

## **GROSS ACREAGE**

The total area of a parcel including the area of perimeter street rights-of-way to the centerline of the street.

## **GROWTH POLICY**

An official public document adopted and used by a local government as a general guide for development and conservation decisions. It is not a regulation; rather, it is an official statement of public policy to guide growth and change. The required and optional elements of a growth policy are listed in MCA.

## **HEALTH AND EXERCISE ESTABLISHMENTS**

An establishment designed and equipped for the conduct of sports, exercise activities and other customary and usual recreational activities, including tennis, racquetball, handball and squash courts, martial arts, gymnastics, weight and aerobic exercise rooms, running facilities, swimming pools, yoga, sport dancing, and whirlpool and sauna facilities. Permitted accessory uses shall include childcare, sun tanning booths, massage, health and nutrition counseling services, retail sales of sporting goods and restaurant services.

## **HOME BASED BUSINESS**

Any business, occupation or activity undertaken for gain within a residential structure that is incidental and secondary to the use of that structure as a dwelling. Home based businesses are subject to the requirements of this title.

## **HOSPITAL**

An institution for the diagnosis, treatment or other cure of human ailments and which may include a sanitarium or clinic, provided such institution is operated by, or treatment is given, under direct supervision of a physician licensed to practice by the State of Montana.

## **HOTEL OR MOTEL**

A building or a group of buildings in which lodging is provided and offered to transient guests for compensation; shall not include a boarding house, extended stay lodgings, lodging house or rooming house.

## **HOUSEHOLD**

A person living alone, or any of the following groups living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking and eating facilities:

- A. Any number of people related by blood, marriage, adoption, guardianship or other duly-authorized custodial relationship;

- B. Not more than four unrelated people, including persons enrolled in an institution of higher learning.
- C. Two unrelated people and any children related to either of them; or
- D. Not more than four people who are:
  - 1. Residents of a “Community Residential Facility” as defined in MCA and this title; or
  - 2. “Handicapped” as defined in the Fair Housing Act, 42 USC §3602 (h). This definition does not include those persons currently illegally using or addicted to a “controlled substance” as defined in the Controlled Substances Act, 21 USC §802 (6).
- E. “Household” does not include:
  - 1. Any society, club, fraternity, sorority, association, lodge, combine, federation, coterie, cooperative housing or like organization.
  - 2. Any group of individuals whose association is temporary or seasonal in nature; or
  - 3. Any group of individuals who are in a group living arrangement as a result of criminal offenses.

**INCIDENTAL**

Any action or use of less importance, or secondary to, any other action or use.

**LIGHT CONSTRUCTION**

Any change not construed as an alteration or repair, including paving of established driving and parking areas; construction of patios not greater than 120 square feet in size; construction of sidewalks not wider than 5 feet; and landscaping (but not including major changes in grading or site surface drainage).

**LOCAL SERVICES**

All services provided by governmental bodies for the benefit of citizens. These services include, but are not limited to, police, fire, water, recreation, streets, parks, libraries, schools, and wastewater and solid waste collection and disposal.

**LOT**

A piece, parcel, plot, tract, or area of land in common ownership created by subdivision or its legal equivalent for sale, lease or rent. A lot has the characteristics of being able to be occupied or capable of being occupied by one or more principal buildings, and the accessory buildings or uses customarily incidental to them, and including the open spaces required under this title, and having its principal lot frontage on a street. When one or more lots are held in common ownership they shall be treated as a single lot for the purposes of development review and evaluation of compliance with the standards of this title.

## **LOT AREA**

The total horizontal area within the boundary lines of a lot.

## **LOT MEASUREMENTS**

- A. Lot Depth. The horizontal distance of a line measured at a right angle to the front lot line and running between the front lot line and rear lot line of a lot.
- B. Lot Width. The distance as measured in a straight line, between side lot lines at the points of intersection with the required front building line.
- C. Lot Frontage. The horizontal distance between the side lot lines measured at the point where the side lot lines intersect the street right-of-way. All sides of a lot that abuts a street shall be considered frontage. On curvilinear streets, the arc between the side lot lines shall be considered the lot frontage.
- D. Lot Area. The total horizontal area within the boundary lines of a lot.

## **LOT TYPES**

- A. Corner Lot. A lot at a junction of, and fronting on, two or more intersecting streets.
- B. Interior Lot. A lot other than a corner or through lot.
- C. Double Frontage or Through Lot. A lot having frontage on two parallel, or approximately parallel, streets.
- D. Reverse Frontage Lot. A double frontage or through lot that is not accessible from one of the parallel or nonintersecting streets on which it fronts.

## **LOT LINE, FRONT**

In the case of an interior lot, a line separating the lot from the street, in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street and in the case of a double frontage or through lot, a line separating the lot from the street from which a drive access may be permitted by the City. A corner lot may have more than one front lot line if the building faces the longer frontage while more than 75 percent of the lots within the same block face the narrow frontage.

## **LOT LINE, REAR**

A lot line which is opposite and most distant from the front lot line and, in the case of an irregular or triangular shaped lot, a line 10 feet in length within the lot, parallel to and at the maximum distance from the front lot line.

## **LOT LINE, SIDE**

Any lot boundary line not a front lot line or a rear lot line.

## **LOT LINE, ZERO**

A concept utilized to permit a structure or wall of a building to be located on a property line.



## **LOT WIDTH**

The distance as measured in a straight line, between side lot lines at the points of intersection with the required front building line.

## **MANUFACTURED HOME**

A factory-built, single-household structure that is manufactured under the authority of 42 USC§5401, the National Manufactured Home Construction and Safety Standards Act, is built on a permanent chassis, and is used as a place for human habitation, but which is not constructed or equipped with a permanent hitch or other device allowing transport of the unit other than for the purpose of delivery to a permanent site, and which does not have wheels or axles permanently attached to its body or frame. This definition specifically does not include recreational vehicles. Any dwelling meeting the definition of modular home is not a manufactured home.

## **MANUFACTURED HOME LOT OR SPACE**

A lot for rent or lease in a manufactured housing community designated for the accommodation of one manufactured home and its accessory buildings or structures for the exclusive use of the occupants.

## **MANUFACTURED HOME STAND**

That area of a lot for rent or lease which has been prepared for the placement of a manufactured home in a manufactured home community.

## **MANUFACTURED HOME COMMUNITY**

Any piece of real property under single ownership or control for which the primary purpose is the placement of two or more manufactured homes for permanent residential dwellings and for the production of income. A manufactured housing community does not include real property used for the display and sale of manufactured units, nor does it include real property used for seasonal purposes only, as opposed to year-round occupancy. Home sites within the community are leased to individual homeowners, who retain customary leasehold rights.

## **MANUFACTURING**

The creation of products either with machinery or by hand according to an organized plan and with the division of labor.

## **MANUFACTURING, LIGHT**

Fabrication of and/or assembly of goods from previously prepared materials.

## **MEDICAL OFFICES, CLINICS AND CENTERS**

An establishment where patients are admitted for special study and treatment by licensed health care professionals, including acupuncturists and chiropractors.

**MICRO (10') BUILDING- OR STRUCTURE- MOUNTED WIRELESS TELECOMMUNICATION FACILITY (micro (10') facility)**

A non-free standing, non-ground mounted facility consisting of small antennae mounted on building or structure which were not built or intended primarily for the purpose of housing, supporting, or locating a wireless telecommunication facility. Any foundation, platform or structure built solely or primarily for the purpose of housing, supporting, or locating a wireless telecommunication facility is considered a ground-mounted facility. This facility is less than 10 feet in height from the base to the highest point, including attachments: When calculating the height of a facility, other structures designed for other uses such as buildings or water towers shall not be included in the calculation.

**MINI-WAREHOUSE (WAREHOUSE, RESIDENTIAL STORAGE)**

A building or group of buildings in a controlled access and fenced or screened compound that contains relatively small storage spaces of varying sizes and/or spaces for recreational vehicles or boats, having individual, compartmentalized and controlled access for the dead storage of excess personal property of an individual or household generally stored in residential accessory structures, when such building or group of buildings are not located on the lot of the residence.

**MOBILE HOME**

A transportable, manufactured structure, suitable for year-round single-household occupancy and having water, electrical and sewage connections similar to those of conventional dwellings. This definition applies only to units constructed prior to the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976. Compare with the definition of manufactured home.

**MODULAR OR SECTIONAL HOME**

A dwelling unit meeting the standards of the International Building Code which was mass produced in a factory, designed and constructed for transportation to a site for occupancy when connected to the required utilities and when permanently anchored to a permanent foundation, whether intended for use as an independent, individual unit or in combination with other units to form a larger building, and which does not have integral wheel, axles or hitch. For the purposes of locating a dwelling according to the standards of this title there is no distinction made between a dwelling constructed wholly or partly off-site and a dwelling constructed on-site so long as they meet the standards of the City's adopted International Building Code.

**MORTUARIES, FUNERAL HOMES**

An establishment used for arranging, managing and conducting funerals and memorial services; the storage and preparation of the human deceased for burial, and viewing the deceased for rituals and ceremonies connected therewith before burial or cremation; excluding cemeteries, crematoriums, and columbariums.

**NEW CONSTRUCTION**

Development commenced on or after the effective date of the ordinance codified in this title.

## **NONCONFORMING STRUCTURE**

Any structure which was legal prior to the effective date of the ordinance codified in this chapter which fails to comply with the building location standards, and/or size requirements of the applicable zone of this title in which it is located.

## **NONCONFORMING USE**

An existing use of land or building which was legal prior to the effective date of the ordinance codified in this title but which fails to comply with the requirements set forth in this title applicable to the zone in which such use is located.

## **NURSERY, PLANT**

Facilities for commercial development, growth, and sale of plants and/or for the utilization of and storage of equipment for landscaping operation and wholesale and/or retail or commercial gardening supplies.

## **OCCUPANCY**

A document issued by a local building or zoning authority to the owner of premises attesting that the premises have been built and maintained according to the provisions of building or zoning ordinances. A certificate of occupancy is evidence that the building complies substantially with the plans and specifications that have been submitted to, and approved by, the local authority. It complements a building permit—a document that must be filed by the applicant with the local authority before construction to indicate that the proposed construction will adhere to zoning laws.

## **OFFICES**

Buildings or portions of buildings in which commercial activities take place but where goods are not produced, sold or repaired. These include but are not limited to general and professional offices; governmental offices; insurance offices; real estate offices; taxicab offices (but not taxi stands); travel agency or transportation ticket offices; telephone exchange; utility offices; radio broadcasting and similar uses.

## **OPENCUT MINING**

Means activities conducted for the primary purpose of sale or utilization of materials, including:

- A. mine site preparation;
- B. removing the overburden and mining directly from the exposed natural deposits or mining directly from natural deposits of materials;
- C. processing of materials mined from the natural deposits, except that processing facilities located more than 300 feet from where materials were mined or are permitted to be mined are not part of the opencut operation;
- D. transporting, depositing, staging, and stockpiling of overburden and materials unless the activity occurs more than 300 feet from where the materials were mined or are permitted to be mined;

- E. storing or stockpiling of materials at processing facilities that are part of the opencut operation;
- F. reclamation of affected land; and
- G. parking or staging of vehicles, equipment, or supplies unless:
  - 1. the activity is separated from other opencut operations by at least 25 feet and is connected to the opencut operation by a single road that is no more than 25 feet wide;
  - 2. the activity is inside the construction disturbance area shown on a construction project plan.

**OPEN SPACE**

A land or water area devoid of buildings and other physical structures except where accessory to the provision of recreation, including but not limited to benches, picnic tables and interpretive signage.

**OPEN SPACE, USABLE**

That space which is capable of being used by the public for recreation, relaxation and social purposes. Parking lots and perimeter landscaping are specifically excluded from this definition of usable open space.

**PARAPET**

That part of the wall which extends above the roof. For the purposes of this title relating to signage, the top of the parapet shall be considered to be the roofline.

**PARK**

For the purposes of this title only, park means an open space, as defined in this title, under the ownership or other legal control of the City of East Helena which provides area for active and passive recreational purposes.

**PARKING AREA**

An area, other than a street or alley designated for use, or used, for temporary parking of vehicles.

**PARKING SPACE, OFF-STREET**

A space designated for the temporary parking of a motor vehicle not on the right-of-way or alley but accessible from a street or alley.

**PERMITTED USE**

A use which is lawfully established in a particular district or districts and which conforms with all requirements, regulations, and performance standards of such district. A permitted use may be a principal use, an accessory use, or a conditional use.

## **PERSONAL AND CONVENIENCE SERVICES**

Businesses offering services such as barbershops, beauty shops, tailors, shoe repair, tattooing, massage, laundromats, laundry and dry-cleaning pickup and delivery stations, and similar uses. Some production of finished goods may occur as an activity accessory to the delivery of services.

## **PERSONAL PROPERTY**

Property, other than real property, consisting of things temporal and movable.

## **PERSONS**

Includes any individual or group of individuals, corporations, partnerships, associations, or any other organized group of persons, including state and local governments and agencies thereof.

## **PLANNED UNIT OF DEVELOPMENT (PUD)**

A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

## **PLANNING BOARD**

The East Helena Planning Board.

## **PLAZA**

An area generally open to the public on a controlled basis and used principally for passive recreational activities and relaxation. Plazas are paved areas typically providing amenities such as seating, drinking and ornamental fountains, art, trees and landscaping for use by pedestrians.

## **PRINCIPAL USE OR STRUCTURE**

A use or structure which determines the predominant or major use of the lot on which it is located. The principal use shall be that use which establishes the character of the property relative to surrounding or adjacent properties.

## **PROJECTING SIGN**

A sign other than a Wall sign that is attached to or projects more than eighteen (18) inches from a building face or wall or from a structure whose primary purpose is other than the support of a sign.

## **PROPERTY OWNER**

Any person, firm, corporation, or other entity shown as being the legal owner of a tract, parcel, or lot in the records of the County Clerk and Recorder.

## **PROPERTY OWNERS ASSOCIATION**

An association incorporated or not incorporated, combining individual property ownership with shared use or ownership of common property or facilities, or shared maintenance of subdivision or community facilities. This definition includes condominium associations.

## **PUBLIC BUILDING**

A building, supported by government funds, to be used in an official capacity on behalf of the entire community.

## **PUBLIC HEALTH AND SAFETY**

A condition of optimal well-being, free from danger or injury, for a community at large, not merely for an individual or small group of persons.

## **PUBLIC IMPROVEMENT**

Any structure or facility constructed to serve the residents of a subdivision or the general public such as parks, streets, sidewalks, curbs, gutters, street lighting, utilities and systems for water supply, sewage disposal and drainage.

## **PUBLIC STREET OR ROAD**

A street or road for which the right-of-way has been dedicated to the public.

## **REAL PROPERTY**

Property consisting of buildings and/or land.

## **REAR YARD**

A yard extending across the full width of the lot between the two side lot lines the depth of which is the distance required by this title between the rear property line and the rear building line.

## **RECREATIONAL VEHICLE**

A vehicular type portable structure without permanent foundation, which is built on a single chassis; which is designed to be self-propelled or permanently towable by a light duty truck; primarily designed as temporary living accommodation for recreational, camping and travel use and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes less than 8 feet in width and 50 feet in length.

## **RECREATIONAL VEHICLE PARK**

A plot of ground upon which two or more sites are located, established, or maintained for occupancy by the general public as temporary living quarters for travel, recreation or vacation purposes.

## **RECREATIONAL VEHICLE SPACE**

A lot for rent or lease within a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.

## **RELOCATION**

Any movement of a structure, on the same site or to another site.

## **REPAIR**

Any change not otherwise construed as light construction or an alteration, as herein defined, that constitutes replacing broken, worn or damaged materials with like, not necessarily identical, materials and is insignificant to the size and condition of the structure or property. Repainting and reroofing shall be included under this definition of repair.

## **REQUIRED FRONT BUILDING LINE**

The line nearest to the front and across a lot establishing the minimum open space to be provided between the front line of a building and the front lot line. See also definition of “setback line”.

## **REQUIRED REAR BUILDING LINE**

The line nearest to the rear and across a lot establishing the minimum open space to be provided between the rear line of a building and the rear lot line. See also definition of “setback line”.

## **REQUIRED SIDE BUILDING LINE**

The line nearest to the side and extending between the required front building line and required rear building line establishing the minimum open space to be provided between the sideline of a building and the side lot line. See also definition of “setback line”.

## **REQUIRED YARD**

The minimum dimension of a front, side or rear yard as established by the use regulations for each district.

## **RESTAURANT**

Any restaurant (except a drive-in restaurant or a convenience food restaurant as defined in this chapter), coffee shop, cafeteria, short-order café, luncheonette, sandwich stand, drugstore and soda fountain serving food.

## **RETAIL**

The rental or sale of tangible personal property for any purpose.

## **RETAIL, LARGE SCALE**

The sale of tangible personal property for any purpose where the total area utilized by a single tenant, exclusive of parking, occupies 40,000 square feet or more.

## **RIGHT-OF-WAY**

A linear public way established or dedicated for public purposes by duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of the law and intended to be occupied by a street, crosswalk, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line or other similar uses.

## **SCHOOL**

Any 1) pre-primary, primary or grammar, public, parochial or private school or high school; 2) preparatory school or academy, public or founded, or owned or conducted by or under the

sponsorship of a religious or charitable organization; 3) private preparatory school or academy furnishing courses of instruction substantially equivalent to the courses offered by public high schools for preparation of admission to college or universities which award B.A. or B.S. degrees; 4) junior college or university, public or founded, or conducted by or under the sponsorship of a religious or charitable organization; or 5) private school when not conducted as a commercial enterprise for the profit of individual owners or stockholders.

### **SCREENING**

A method of visually shielding or obscuring an abutting or nearby structure or use from another through the use of solid or nearly solid barriers (e.g., wall, fence, plantings, berms).

### **SECOND OR SUBSEQUENT FRONT YARD OR CORNER SIDE YARD**

A yard on a corner lot extending across the full width/length of the lot between the front lot line and the side/rear lot line, the depth of which is the least distance between the street right-of-way and the building line.

### **SETBACK**

The distance from the property line to the nearest part of the applicable building, structure or sign, measured perpendicularly to the property line.

### **SETBACK LINE**

That line that is the required minimum distance from the street right-of-way or public access easement line or any other lot line that establishes the area within which structures must be placed, as specified in this title.

### **SEWER, PUBLIC**

Any sanitary sewer line owned and maintained by the City, whether or not installed by the City.

### **SHARED ACCESS**

A fixed automotive and pedestrian access location from a street to two or more adjoining properties which mutually have the right and ability to use the access, and which has been established by an easement or other legally binding means.

### **SIDE YARD**

A yard extending between the front building line and the rear building line, the width of which is the least distance between the side lot line and the nearest part of the principal building.

### **SITE PLAN**

A scale drawing showing the accurate location of all structures, streets, alleys and parking areas, existing and proposed, on subject property or any other information as may be required by this title.

### **STACKED PARKING**

Parking of one or more vehicles one behind the other or bumper to bumper.



## **STEALTH**

Any Wireless Telecommunications Facility which is disguised to appear as another natural or artificial object that exists in the surrounding environment or which is architecturally integrated into a building or other structure. Architecturally integrated with existing buildings, structures, and landscaping means including height, color, style, massing, placement, design, and shape, and which does not stand out as a wireless telecommunications facility when viewed with the naked eye. The use of monopines or other monotree type structures shall not be considered appropriate unless integrated into the surrounding landscape with the use of live, mature trees, new or existing structures or other design features. The use of color shall not be considered appropriate unless integrated with new or existing structures or other design features.

## **STREET**

A right-of-way, dedicated or otherwise legally established, for public use by motorized and non-motorized vehicles and pedestrians, usually affording the principal means of access to abutting property.

## **STREET FRONTAGE**

Any property line separating a lot from a street other than an alley; the front lot line.

## **STREET, PUBLIC**

Any street which has been dedicated to or is otherwise publicly owned. Any street not a public street shall be deemed a private street.

## **STREET TYPES**

For the purposes of these regulations, street types are defined as follows:

- A. Alley. A street used primarily for vehicular access to the rear of properties which abut and are served by public or private streets.
- B. Arterial. A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing limited access to adjacent land. Arterial streets are generally designated in the growth policy or transportation plan, however, streets not depicted in such may be designated as arterials by the City Engineer.
  1. Principal Arterial. Serves the major centers of activity, the highest traffic volume corridors, and the longest trip distances in an urbanized area. This group of streets carries the highest proportion of the total traffic within the urban area with typical loads of 10,000 to 35,000 vehicles per day. Most of the vehicles entering and leaving the urban area, as well as most through traffic bypassing the central business district, utilize principal arterials. Significant intra-area travel, such as between central business districts and outlying residential areas, and between major suburban centers, are served by major arterials.

2. Minor Arterial. Interconnects with and augments the urban principal arterial system. It accommodates trips of moderate length and at a somewhat lower level of travel mobility than principal arterials, and it distributes travel to smaller geographic areas. With an emphasis on traffic mobility, this street network includes all arterials not classified as principal arterials while providing access to adjacent lands. Minor arterials typically carry 5,000 to 15,000 vehicles per day.
- C. Collector. A street or road that provides equal priority to the movement of traffic, and to the access of residential, business, and industrial areas. This type of roadway differs from those of the arterial system in that the facilities on the collector system may traverse residential neighborhoods. The system distributes trips from the arterials to ultimate destinations. The collector streets also collect traffic from local streets in the residential neighborhoods, channeling it into the arterial system. Collectors typically carry 2,000 to 10,000 vehicles per day. Collector streets are typically designated in the growth policy or transportation plan, however, streets not depicted in such may be designated as collectors by the City Engineer.
  - D. Cul-de-sac. A street having only one outlet for vehicular traffic and terminating in a turnaround area.
  - E. Dead-End Street. A street having only one outlet for vehicular traffic.
  - F. Half-Street. A portion of the width of a street, usually along the outside perimeter of a subdivision, where the remaining portion of the street must be located on adjacent property.
  - G. Local Streets. A street having the primary purpose of permitting access to abutting lands and connections to higher systems. Generally, service to higher speed traffic movements are intentionally discouraged. They typically carry 1,000 to 3,000 vehicles per day but can carry in excess of 6,000.
  - H. Loop. A local street which begins and ends on the same street, generally used for access to properties and to control traffic access to arterials or collectors.

## **STRUCTURE**

Anything constructed or erected which requires location on the ground; and for the purposes of floodplain review anything which may impede, retard, or alter the pattern of flow of water in a floodplain.

## **STRUCTURAL ALTERATION**

Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any change in the exterior walls or the roof.

## **SUBSTANTIAL DAMAGE**

Damage sustained by a structure where the cost of restoring the structure to its condition before damage would equal or exceed 60 percent of the market value of the structure before the damage occurred as determined by Lewis and Clark County's last equalized assessment roll.

## **SUBSTANTIAL IMPROVEMENT**

Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 60 percent of the market value of the structure either:

- A. Before the improvement or repair is started; or
- B. If the structure has been damaged, and is being restored, before the damage occurred.
- C. For the purposes of this definition, substantial improvement is considered to occur when the first construction to any wall, ceiling, floor or other structural part of the building commences. The term does not include:
  - 1. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or
  - 2. Any alteration of a structure listed on the National Register of Historic Places or State Inventory of Historic Places.

## **TELECOMMUNICATION**

The technology which enables information to be exchanged through the transmission of voice, video, or data signals by means of electrical or electromagnetic systems.

## **TEMPORARY/PORTABLE SIGN**

An outdoor sign not affixed to a building nor permanently attached to the ground or other permanent structure, or a sign designed to be transported, including but not limited to: banners; signs attached to a chassis designed to be transported by means of wheels (whether or not the wheels are removed is immaterial); A- or T-frame signs; inflatable signs; and signs attached or painted on vehicles (including trailers) parked and visible from the public right-of-way, unless the vehicle is used in the normal day-to-day operations of the business occurring on the premises.

## **TEMPORARY USE**

A use established for a fixed period of time with the intent to discontinue such use upon the expiration of the time period.

## **TOTAL ANTENNA AREA**

Total antenna area shall be computed by adding the area of each individual antenna together for the total. In the case of a two-sided antenna, the area shall be computed as including only a single side. In the case of any spherical, conical, or cylindrical antenna, one-half of the total surface area shall be computed as the area of the antenna.

## **TOWER (wireless telecommunications tower)**

A free-standing structure intended to support equipment used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures. These structures include but are not limited to a lattice tower or monopole. A lattice tower is a support structure constructed of vertical metal struts and cross braces forming a triangular or

square structure which often tapers from the foundation to the top. A monopole is a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

### **TOWNHOUSE**

A dwelling unit, located on its own lot, that shares one or more common or abutting walls with one or more dwelling units, each located on its own lot. A townhouse does not share common floors/ceilings with other dwelling units.

### **TOWNHOUSE CLUSTER**

A building consisting of three or more non-communicating, attached one-household units placed side by side and/or back to back, with no unit located over another, and having a common wall between each two adjacent dwelling units.

### **USE**

The employment or occupation of a building, structure or land for a person's service, benefit, or enjoyment.

### **VARIANCE**

A modification or variation of the provisions of this title as applied to a specific piece of property.

### **VIOLATION**

The failure of a structure, subdivision, use of land or other development to be fully compliant with this title.

### **WAREHOUSE**

An enclosed building designed and used primarily for the storage of goods and materials.

### **WATERCOURSE**

Any stream, river, creek, drainage, waterway, gully, ravine or wash in which some or all of the water is naturally occurring, such as runoff or springs, and which flows either continuously or intermittently and has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow.

In the event of a braided or other multiple channel configuration of a watercourse, the area of the watercourse shall be that area lying between the two outermost high-water marks, as defined in this title. The term watercourse shall not be construed to mean any facility created exclusively for the conveyance of irrigation water or storm water. The City may consult with other agencies with expertise in this matter when there is a question of whether a particular water body is a watercourse.

### **WETLAND**

Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation

typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas. The provisions contained in these regulations do not apply to wetlands created by a wholly man-made water source used for irrigation purposes or storm water control.

### **WHOLESALE**

The sale of goods and merchandise for resale instead of for direct consumption.

### **WIRELESS TELECOMMUNICATIONS EQUIPMENT SHELTER (equipment shelter, shelter, equipment enclosure, enclosure)**

The structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.

### **WIRELESS TELECOMMUNICATIONS FACILITY**

Federal Communication Commission (FCC) – licensed facility, designed and used for the purpose of transmitting, receiving, and relaying voice and data signals from various wireless telecommunication devices and equipment. An unstaffed facility typically consisting of an equipment enclosure, an antenna support structure, and one or more antennae. For purposes of this ordinance, amateur radio transmission facilities, Essential Services (Type I and Type II), satellite earth stations, and facilities used exclusively for receive-only antennas are not classified as wireless telecommunications facilities. Wireless telecommunication facilities shall include the word(s) “facility”, “communication facility”, telecommunication facility”, “wireless communication facility”, “wireless telecommunication facility”, and “wireless facility”.

### **YARD**

A space on the same lot with a principal building, which is open and unoccupied from the ground upward or from the ground downward other than by steps, walks, terraces, driveways, lamp posts and similar structures, and unobstructed by structures, except as otherwise provided in this title. A yard shall be the same as or greater than any required yard setback.

### **ZONING COMMISSION**

The East Helena Zoning Commission.

### **ZONING MAP**

A map or maps with all notations, dimensions, references, and symbols shown thereon depicting individual zoned districts in accordance with this title.

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# **FEE SCHEDULE**

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**CITY OF EAST HELENA  
306 EAST MAIN  
PO BOX 1170  
EAST HELENA, MT 59635**

**ZONING ORDINANCE FEE SCHEDULE  
CITY COUNCIL APPROVED NOVEMBER 1, 2016**

<b>Application Type</b>	<b>Review Fee</b>	<b>Advertising Fee</b>	<b>Number of Sets</b>
Sketch Plan	\$150	None	3
Site Plan*	\$500	None	5
CUP*	\$500	\$200 (2 ads)	5
Variance	\$500	\$200 (2 ads)	5
Administrative Appeal	\$250	\$200 (2 ads)	5
Zone Map Amendment (ZMA)	\$500	\$100 (1 ad)	5
ZMA- initial (with Annexation)	\$500	\$100 (1 ad)	5
Zoning Text Amendment	\$500	\$100 (1 ad)	5
Informal Review	\$100	None	5
Classification of Use	\$250	\$200 (2 ads)	5
Public Agency Exemption	\$250	\$200 (2 ads)	5
Survey Review	\$100	None	1

\* Plus actual contract planning review expenses. The Applicant is financially responsible for actual outside engineering, consulting, professional and/or contracted service fees, etc. at the sole discretion of the City for review and/or final plan approval of a proposed Site Plan or CUP application. The City shall require the additional review costs to be paid before a Site Plan or CUP approval permit is issued.

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# **ZONING MAPS**

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