

- cii. A landowner claiming that a parcel is a remaining parcel must present evidence that the parcel is in fact intended to be retained and is not to be transferred. Examples of such evidence include the existence of the landowner's residence on the parcel and building plans for a structure to be built by or for the landowner.

.7. Condominiums, Townhomes, or Townhouses (MCA 76-3-203).~~76-3-203).~~

- (a.) *Statement of Intent.* Generally condominiums, townhomes, or townhouses, as those terms are defined in MCA 70-23-102 are subject to review as subdivisions as described in the MSPA, but under certain circumstances they may be exempt from review pursuant to MCA 76-3-203.
- (b.) *Exemption.* Condominiums, townhomes, or townhouses, as those terms are defined in MCA 70-23-102~~70-23-102~~ constructed on lots within the incorporated city limits of the City of Miles City are exempt from subdivision review if the condominium, townhome, or townhouse proposal is in conformance with all applicable zoning regulations.
- (c) To use the exemption, the Declaration of Unit Ownership must include an exhibit containing certification from the City of Miles City that the condominiums are exempt from review under MCA 76-3-203 (~~See MCA 70-23-301~~).~~76-3-203 (See MCA 70-23-301).~~ Only the City of Miles City has the authority to determine whether a division of land is exempt from subdivision review. The act of recording a condominium declaration does not establish the declaration's validity simply because the county clerk and recorder's office accepted and recorded it.
- (d) To obtain City of Miles City certification that the condominiums, townhomes, or townhouses are exempt from review as a subdivision, the person seeking the use of the exemption shall submit evidence of and an affidavit affirming entitlement to the exemption to the subdivision administrator, who shall cause the documents to be reviewed by the designated agents.
- (e) Within 30 working days of the receipt of the affidavit and evidence, the designated agents shall render a decision certifying or denying the use of the exemption.
- (f) If the designated agents deny the use of the exemption, the person seeking the use of the exemption may appeal the decision to the governing body under subsection 21-17(b)(B-4).

.8. Exemptions not requiring action by the City of Miles City:

- (a.) A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the subdivision review requirements of this chapter or the MSPA, provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities. [~~See MCA 76-3-205(1)~~][~~See MCA 76-3-205(1)~~]

- (b.) A division of state-owned land is not subject to the subdivision review requirements of this chapter or the MSPA unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974. [See MCA 76-3-205(2)] [~~See~~ MCA 76-3-205(2)]
- (c.) Subdivision review requirements of these regulations and the MSPA do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974. [See MCA 76-3-206] [~~See~~ MCA 76-3-206]
- (d.) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with MCA 60-2-209 and are exempted from the surveying and platting requirements of the MSPA and these regulations. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. [44 A.G. Op. 25 (1992)] 44 A.G. Op. 25 (1992)
- (e.) The following divisions in MCA 76-3-201 ~~76-3-201~~ not previously included in this section:
 - (1.) A division of land that creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
 - (2.) A division of land that creates cemetery lots;
 - (3.) A division of land that is created by the reservation of a life estate;
 - (4.) A division of land that is created by lease or rental for farming and agricultural purposes;
 - (5.) A division of land that is in a location over which the state does not have jurisdiction; and
 - (6.) A division of land that is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

Sec. 21-18. Design and improvement standards.

1-A. All subdivisions approved by the governing body must comply with the provisions of this section; except where granted a variance pursuant to subsection 21-22(a), ~~variances~~ A, Variances. The governing body may not grant variances from the provisions of subsection (4), floodplain provisions, below. For planned unit developments, subdivisions created by rent or lease, and condominiums, refer to Sections 21-19, 21-20 and 21-21 of these regulations.

- (1). *Conformance with regulations.* The design and development of a subdivision must conform with any applicable zoning or other regulations.

- (2). *Natural environment.* The design and development of subdivisions must provide satisfactory building sites which are properly related to topography, and must, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and natural vegetation.
- (3). *Lands unsuitable for subdivision.* The governing body may find land to be unsuitable for subdivision because of potential natural or human caused hazards such as flooding, snow avalanches, rock falls, landslides, adverse soil types, steep slopes in excess of 25 percent, high potential for wildfire, subsidence, high water table, polluted or non-potable water supply, high voltage lines, high pressure gas lines, aircraft or vehicular traffic hazards or congestion, or severe toxic or hazardous waste exposure; or because of unreasonable burdens on the general public such as requirements for the excessive expenditure of public funds, environmental degradation, or other features which may be detrimental to the health, safety, or general welfare of existing or future residents. These lands must not be subdivided for building or residential purposes unless the hazards are eliminated or will be mitigated by approved design and construction plans.
- (4). *Floodplain provisions.* Land located in the floodway of a 100-year flood event as defined by MCA Title 76, Chapter 5, or other land determined by the governing body to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.
- (a) If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide in detail to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC), a flood hazard evaluation, including the calculated 100-year frequency water surface elevations and the 100-year floodplain boundaries. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. The evaluation must follow the "guidelines for obtaining 100-year flood elevations in Approximate Zone A or unmapped areas" which may be obtained from the DNRC.
- (b) The subdivider shall be responsible to solicit comment on the detailed floodplain evaluation from the DNRC and if required obtain a floodplain delineation for the subject property reviewed and approved by the DNRC and the Miles City floodplain administrator which shall be submitted to the subdivision administrator along with the preliminary plat application.
- (c) The above requirement is waived if the subdivider contacts the water resources division and that agency states in writing that available data indicate that the proposed subdivision is not in a flood hazard area. However, the DNRC may require additional information following the above guidelines to ensure there are no flood hazards.
- (5). *Improvement design.* Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision application required by the governing body must be prepared by a professional engineer or a professional land surveyor as their respective licensing laws allow in accordance with the MSPA and these regulations.

(6). *Lots.* Each lot intended for building purposes must contain a satisfactory building site and conform to health board regulations, applicable zoning regulations, and these regulations.

(a.) No single lot may be divided by a municipal or county boundary line.

(b.) No single lot may be divided by a public or private road, alley or utility right-of-way or easement.

(c.) Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary means of access to a lot.

(d.) Corner lots must have driveway access to the same street or road as interior lots.

(e.) Corner lots must be of sufficient area to provide acceptable visibility for traffic safety.

(f.) No lot may have an average depth greater than three times its average width.

(g.) Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.

(h.) Through lots are prohibited except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

(7). *Blocks.*

(a.) Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.

(b.) Unless impractical, block length must not be more than 1,600 feet.

(c.) Blocks must be wide enough to allow for two tiers of lots except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation or unless the governing body approves the design of irregularly shaped blocks indented by cul-de-sacs.

(d.) Rights-of-way for pedestrian walks, not less than 10 feet wide, must be required where deemed essential to provide circulation or safe access to schools, playgrounds, shopping, transportation and other community facilities.

(8). *Streets.*

(a.) *General design.*

(1.) The arrangement, type, extent, width, grade, materials, and location of all streets shall be considered in their relation to existing and planned streets, topographical conditions, maintenance considerations, the delivery of emergency services, public convenience and safety, and the proposed uses of the land to be served by them.

- (2.) *Relation to subdivided areas.* The subdivider shall arrange the streets to provide for the continuation of streets between adjacent parcels when such continuation is necessary for the convenient movement of traffic, effective provision of emergency services, and the efficient provision of utility easements.
- (3.) *Relation to adjoining lands.* Developing subdivisions shall provide access and utility easements to adjoining lands when access to those lands must pass through the subdivision. The subdivider shall provide legal rights-of-way and the access must be constructed in accordance with these standards.
- (4.) *Separation of through and local traffic.* Where a subdivision abuts or contains an existing or proposed arterial or collector street, the subdivider may be required to provide frontage access, reverse frontage access with a reservation prohibiting access along the rear property line, with screen planting or other such treatment as may be necessary for the protection of residential properties and to afford separation of through and local traffic.
- (5.) *Distance between parallel rights-of-way.* Where a subdivision borders on or contains a railroad, limited access highway, canal, ditch, or stream right-of-way, the subdivider may be required to provide a street approximately parallel to such right-of-way at a distance suitable to allow for appropriate use of the intervening land. When a proposed internal road is parallel to a highway right-of-way, a reasonable distance between the two must be established by the subdivider in consultation with adjacent landowners, and approved by the governing body. Such distances shall be determined with regard for the requirements of approach grades and future grades.
- (6.) *Dead-end streets.* No dead-end streets shall be permitted without an approved turnaround. Where streets terminate, the developer shall provide either a cul-de-sac or "T" turnaround at the terminus. Where it is planned that a dead-end street will be extended in the future, a temporary cul-de-sac or "T" turn-around shall be provided. Cul-de-sacs and "T" turnarounds must also conform to the design specifications in *Table 1* below. ~~Cul-de-sacs shall have a minimum turning radius of 35 feet. "T" turnarounds shall include two backup legs of a minimum of 30 feet each from the edge of the street width, with an inside turning radius of 25 feet and~~ *Figure 2* below..
- (7.) *Half-streets.* Half-streets are prohibited except when they are essential to the development of the subdivision and when the governing body is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- (8.) *Second or emergency access.* To facilitate access by emergency vehicles and to allow an escape route for residents in emergency situations, the subdivider shall provide a second access in major subdivisions and all subdivisions located in high fire hazard areas.
- (9.) *Streets design standards.* The design standards contained in these regulations shall apply to all safety standards, construction, reconstruction, and paving of:

- i. Streets by easement;

- ii. Streets dedicated to the public;
- iii. City streets/alleys;
- iv. Streets within any special improvement districts.

(10. —) *Street dedication and easements.* All streets serving a proposed subdivision or neighboring lands shall be dedicated to the public or shall have easements providing for public access.

(b.) *Street maintenance.* Street maintenance shall include, but is not limited to: sprinkling, chip sealing, seal coating, overlaying, treating, pothole repair, general cleaning, sweeping, flushing, snow removal, leaf and debris removal, the operation, maintenance and repair of traffic signal systems, the repair of traffic and street signs, the placement and maintenance of pavement markings, curb and gutter repair, and minor sidewalk repair that includes cracking, chipping, sinking, and replacement of not more than six feet of sidewalk in any 100-foot portion of sidewalk.

(c.) *Drainage channels and waterways.* Bridges and culverts shall be provided and installed by the subdivider where drainage channels and waterways intersect any street right-of-way or approach. Bridges and culverts shall be appropriately sized in accordance with the drainage area. Bridges and culverts shall be designed by a registered engineer. Bridges shall be constructed to HS25 load standards and shall be the same width as the street. Guard rails shall also be installed. All bridge installations shall be approved by the Miles City Planning Department, which may consult with other departments or contracted agents to ensure adequacy.

(d.) *Intersections.* The following requirements shall apply to street intersections:

(1.) The intersection of more than two streets at one point shall be avoided, except as described in subsection (d)(-3) below.

(2.) Streets shall be laid out so as to intersect as nearly as possible at right angles. No street shall intersect any other street at less than a 75 degree angle.

(3.) Two streets meeting a third street from opposite sides shall meet at the same point or their centerlines shall be offset by a minimum of 125 feet for local streets and 300 feet for arterials or collectors.

(4.) Any street, which intersects a paved street, shall be paved for a minimum of 30 feet from the paved street.

(5.) Intersection design shall conform to the specifications in *Table 1* below.

(6.) Intersection design must provide acceptable visibility for traffic safety as dictated by the designed operating speeds on the individual streets.

(7.) Hilltop intersections are prohibited, except where no alternatives exist. Intersections on arterial and collector streets within 200 feet of a hilltop are prohibited.

(8.) Maximum grade of approaches to major highways, arterials, and major collectors must not exceed 2 percent or the applicable jurisdiction's standards, whichever is stricter.

(e.) *Street names.* New streets aligned with existing streets shall have the same name as the existing street. All street names must be approved by the governing body.

(f.) *Street signs.* All traffic signs shall be installed by the subdivider. Traffic signs shall be of the size, shape, height, and placement in accordance with the Manual of Uniform Traffic Control Devices. Traffic sign plans shall be approved by the Planning Department, which may consult with other departments or contracted agents to ensure adequacy.

(g.) *Addressing.* All subdivisions shall conform to the Miles City addressing system requirements. All street intersection and address number signs shall be installed by the subdivider. The addressing plan shall be approved by the Planning Department, which may consult with other departments or contracted agents to ensure adequacy.

(h.) *Street-Related Improvements.*

(1.) All street improvements including pavement, curbs, gutters, sidewalks, utilities, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations, using materials approved by the governing body.

(2.) Street subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, or other substandard materials. Subgrades must be properly rolled, shaped and compacted and subject to approval by the governing body.

(3.) Streets must be designed to ensure proper drainage, including but not limited to surface crown, culverts, curbs and gutters, drainage swales and storm drains.

(4.) Where access from a public street to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain easements, at least 60 feet wide, from each property owner or the appropriate administrator of public lands. Each easement must allow construction and perpetual maintenance of a street accessing the property and allow vehicular travel on the street.

i. Adequate and appropriate easements must be granted by each property owner through a signed and notarized document that grants the easement in conformance with the design.

ii. The location of any street easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

(5.) Existing trees and other vegetation must be preserved whenever possible. Plantings may be required for buffering, screening, or soil erosion protection and are subject to approval by the governing body.

- (6.) Street light installation may be required by the governing body on all streets within the subdivision or may be included as part of the public improvements agreement.
- (7.) If postal service will not be provided to each individual lot within the subdivision, the subdivider must provide an off-street area for mail delivery within the subdivision in cooperation with the United States Post Office. Responsibility for maintenance of the area and postal facilities shall be included as part of the maintenance agreement for the streets or other maintenance agreement.
- (8.) *Primary access standards.* All off-site and on-site streets providing primary access to the proposed subdivision and subdivision lots shall meet the standards in ~~Table 4.~~ Table 1. The governing body shall approve all street designs and plans.
- (9.) Right-of-way width and respective design and construction standards shall apply.
- (10.) Primary access streets shall be dedicated to the public, or shall have a public easement which meets the criteria of these regulations.
- (11.) When necessary to provide proper legal and physical access to the subdivision and subdivision lots, the subdivider shall be responsible for bringing all primary access streets which serve the subdivision up to the standards.
- (12.) The subdivider may be required to pave all or parts of the primary access street network if the subdivision increases the traffic burden on the primary access street network to 100 or more vehicle trips per 24 hour period. Paving shall conform to respective paving standards.

TABLE 1
STREET DESIGN STANDARDS

| Design Criteria/Street Type | Arterial | Major Collector | Minor Collector | Minor Street | Local Street | Alley |
|----------------------------------------------------------|-----------|-----------------|-----------------|------------------------|------------------------|------------------------|
| Average Daily Traffic (ADT) in 24-hr period | 1,001 + | 301-1000 | 101-300 | 21-100 | 1-20 | N/A |
| Minimum right-of-way or easement width | 80 ft. | 60 ft. | 60 ft. | 50 ft. | 40 ft. | 30 ft. |
| Minimum street surface width | 30 ft. | 28 ft. | 26 ft. | 26 ft. | 16-20 ft. | 12 ft. |
| Centerline radius on curves | 400 ft. | 300 ft. | 150 ft. | 100 ft. | 100 ft. | 75 ft. |
| Tangent length between reverse curves | 300 ft. | 200 ft. | 100 ft. | 100 ft. | 50 ft. | 50 ft. |
| Stopping site distance | 300 ft. | 300 ft. | 300 ft. | 300 ft. | 150 ft. | 100 ft. |
| Minimum angle of intersecting centerlines | 75° | 75° | 75° | 75° | 75° | 75° |
| Curb radius at intersections | 25 ft. | 25 ft. | 25 ft. | 15 ft. | 15 ft. | 15 ft. |
| Maximum length of cul-de-sac | n/a | n/a | 1,000-750 ft. | 1,000-750 ft. | 600 ft. | n/a |
| Maximum street grade | 5% | 6% | 6% | 7% | 9% | 7% |
| Maximum grade within 100 feet of intersecting centerline | 2% | 2% | 2% | 3% | 3% | 3% |
| Minimum in-slope | 3:1 | 3:1 | 3:1 | 3:1 | 3:1 | 3:1 |
| Minimum back-slope | 3:1 | 3:1 | 3:1 | 3:1 | 3:1 | 3:1 |
| Minimum round culvert diameter | 18-inch | 18-inch | 18-inch | 18-inch | 15-inch | 15-inch |
| *Sub-base depth | 18-inches | 18-inches | 12-inches | 12-inches | 8-inches | 8-inches |
| **Surface or surface base depth | 6-inches | 6-inches | 4-inches | 4-inches | 3-inches | 3-inches |
| ***Surface material | Asphalt | Asphalt | Asphalt | Gravel or hard surface | Gravel or hard surface | Gravel or hard surface |
| Surface depth | 6-inches | 4-inches | 3-inches | See above | See above | See above |

* Sub-base Construction Standards: The gravel base course shall consist of hard, durable stone, gravel or other similar materials mixed or blended with sand, stone dust or other binding or filler materials providing a uniform mixture and compacted into a dense and well-bonded base. Oversize stones, rocks and boulders shall be screened out pit run a maximum of 4 inches in diameter. Oversize material of acceptable quality may be crushed and used in the base material. The material shall be placed in

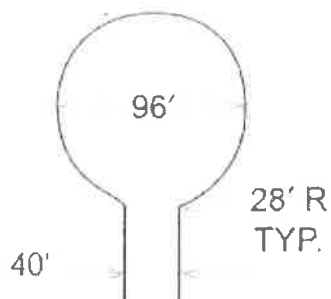
uniform thickness and compacted to the prescribed depth. The base course shall be compacted to 95% of the maximum dry density as determined by AASHTO Designation T99. If water is needed to facilitate compaction and bonding of the material, it shall be applied. The subgrade shall be finished within a tolerance of 3/4 of an inch measured as a vertical ordinate from the face of a 10-foot straight edge.

** Surface and Surface Base Gravel Construction Standard: The gravel shall consist of both fine and coarse fragments of hard, durable, crushed stone or crushed gravel blended with sand, finely crushed stone, crusher screenings or other similar materials. The material shall be placed in uniform thickness with a minimum compacted depth of 4 inches of 3/4 inch minus crushed gravel compacted to 95% of the maximum dry density as determined by AASHTO Designation T99. If water is needed to facilitate compaction and bonding of the material, it shall be applied. All surface base and surface gravel material shall have a tolerance of 5% by volume up to the next specified gradation (1" for 3/4" maximum size). All oversized material shall not be allowed in the top 2" and shall be removed from the street section.

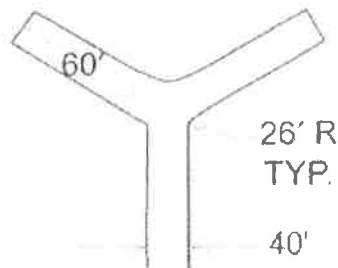
*** Finished asphalt surfaces shall be constructed in accordance with Montana Public Works Standards.

(Figure 2*

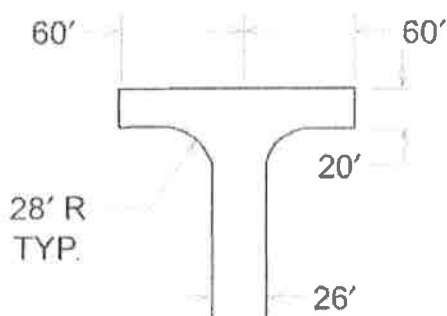
(Measurements shown are minimums - See Table 1 for actual street width.)



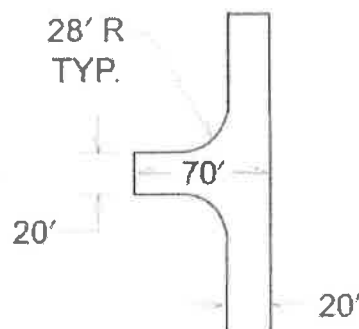
96-FOOT DIAMETER
CUL-DE-SAC



60-FOOT "Y"



120-FOOT HAMMERHEAD



ACCEPTABLE ALTERNATIVE
TO 120-FOOT HAMMERHEAD

**From International Fire Code Appendix D103.1*

Table 2
REQUIREMENTS FOR DEAD-END FIRE APPARATUS ACCESS ROADS

| LENGTH (FT) | WIDTH (FT) | TURNAROUNDS REQUIRED |
|------------------------|-----------------------|---------------------------------------------------------------------------------------------|
| 0 – 150 | 20 | None required |
| 151 – 500 | 20 | 120-foot Hammerhead, 60-foot "Y" or 96-foot diameter cul-de-sac in accordance with Figure 2 |
| 501 – 750 | 26 | 120-foot Hammerhead, 60-foot "Y" or 96-foot diameter cul-de-sac in accordance with Figure 2 |
| Over 750 | | Special Approval of Miles City Fire & Rescue required |

9). *Drainage facilities.*

- (a) The drainage system and facilities required for storm run-off affecting the subdivision are subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size also must be reviewed and approved under MCA Title 76, Chapter 4, by the DEQ.

- (b) A grading and drainage plan as required by subsection 21-14(a)(subsection 21-14 A-5) is subject to approval by the governing body.
- (c) Curbs and gutters or swales will be required as determined by the governing body according to the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended according to current specifications of local and state authorities.
- (d) Culverts or bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts must extend at least across the entire width of the base of the fill including side slope toes; the amount of backfill to be placed over the culvert and the culvert's capacity must be determined by a professional engineer. The plan must include arrangements for driveway culverts. Culverts shall be provided with the diameters required by Table 1 and large enough to accommodate potential runoff from upstream drainage areas. Culvert material, type, gauge and depth of cover shall be included in the design. All culvert installations shall be approved by the City Planning Department, which may consult with other departments or contracted agents to ensure adequacy.
- (e) The subdivider must provide suitable drainage facilities for any surface runoff affecting the subdivision; these facilities must be located in street rights-of-way or in perpetual easements of appropriate widths and are subject to approval by the governing body.
- (f) Each drainage facility must accommodate potential runoff from upstream drainage areas.
- (g) Drainage systems must not discharge into any sanitary sewer facility.
- (h) The grading and drainage system must be designed and certified by a professional engineer.
- (i) The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be drawn on the plat and a signed statement granting the easements must appear on the plat.

(10). *Water supply.*

- (a) The subdivider shall provide, along with the preliminary plat application, the water supply information specified in MCA 76-3-622: 76-3-622.
- (b) All subdivisions within Miles City shall be served by municipal water facilities or systems managed by a public water district.
- (c) The governing body may require that any proposed subdivision provide adequate and accessible water for fire protection.
- (d) The subdivider must install complete water system facilities in accordance with the requirements of Miles City and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the Planning Department and to the DEQ, and

must obtain their approvals prior to undertaking any construction. The Planning Department may consult with other departments or contracted agents to ensure adequacy.

(11). *Wastewater treatment.*

- (a) The subdivider shall provide, along with the preliminary plat application, the sanitation information specified in MCA 76-3-622.76-3-622.
- (b) All subdivisions within Miles City shall be served by municipal wastewater treatment facilities or systems managed by a public sewer district.
- (c) The subdivider must install complete wastewater treatment system facilities in accordance with the requirements of Miles City and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the Planning Department and to the DEQ, and must obtain their approvals prior to undertaking any construction. The Planning Department may consult with other departments or contracted agents to ensure adequacy.

(12). *Solid waste.*

- (a) The subdivider must provide for collection and disposal of solid waste that meet the minimum standards of the DEQ and the City of Miles City solid waste codes ~~(Code of Ordinances Chapter 19)~~.

(13). *Utilities.*

- (a) The subdivider must provide adequate and appropriate easements for existing utilities and the construction of planned utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- (b) Utilities must be placed underground, wherever practical. Underground utilities, if placed in the street right-of-way, must be located between the street and the right-of-way line to simplify location and repair of lines. Such underground facilities must be installed after the street has been brought to grade and before it is surfaced, to eliminate disturbance of the surfacing for the connection of individual services.
- (c) Any overhead utility lines must be located at the rear property line, where practical.
- (d) Utility facilities must be designed by utility firms in cooperation with the subdivider, subject to all applicable laws and rules and regulations of any appropriate regulatory authority.
- (e) Utility easements located between adjoining lots must be centered on lot lines.
- (f) Utility easements must be a minimum of 15 feet wide unless otherwise specified by a utility company or the governing body.
- (g) Utilities placed in the street right-of-way shall be located between the street and the right-of-way line.
- (h) When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway authority.

- (i) In addition to showing the location of the utility easement on the plat with dashed lines, the following statement must be on the final plat:

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, telecommunications, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

- (j) The subdivider shall describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(14). Water course and irrigation easements.

- ~~(1)~~(a) Except as noted in subsection (14)(b) below, the subdivider shall establish within the subdivision ditch easements that:

~~(a)~~(1) Are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

~~(b)~~(2) Are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

~~(c)~~(3) Prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

- ~~(2)~~(b) The subdivider need not establish irrigation easements as provided above if:

(1.) The average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or

(2.) The water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat; and

(3.) The fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water

right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

- (3)(c) The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the county clerk and recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of ten feet is required on each side of irrigation canals and ditches for maintenance purposes.

(15). *Disposition of water rights.*

- (1)(a) If a subdivision will create lots averaging less than five acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:

(a)(1) Reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;

(b)(2) If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(c)(3) Reserved and severed all surface water rights from the land proposed for subdivision.

(16). *Park land dedication; cash in lieu; waivers; administration.*

- (1)(a) Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:

(1) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(2) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;

(3) 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and

(4) 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.

- (2)(b) A park dedication is not required for:

- (1) Land proposed for subdivision into parcels larger than 5 acres;
- (2) Subdivision into parcels that are all nonresidential;
- (3) A subdivisions in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
- (4) Subdivisions which will create only one additional parcel.

~~(3)(c)~~ When allowed by subsection (16)(b) above, in accordance with MCA 76-3-621(8)(a); ~~76-3-621(8)(a)~~, the governing body requires park dedication for all minor subdivisions within the municipal boundaries.

~~(4)(d)~~ The governing body, in consultation with the subdivider and the planning board or community parks advisory council and/or superintendent of city parks, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

~~(5)(e)~~ The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.

~~(6)(f)~~ The governing body will waive the park dedication requirement if it determines that:

- (1) The preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (16)(a) above;
- (2) The proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and by virtue of providing this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under subsection (16)(a) above;
- (3) The area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (16)(f)(1) and (f)(2) above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection (16)(a) above; or
- (4) The subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (16)(a) above.

~~(7)~~(g) The governing body may waive the park dedication requirement if:

~~(a)~~(1) The subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

~~(b)~~(2) The area of the land to be subject to long-term protection, as provided in subsection ~~(g)~~(-1) above, equals or exceeds the area of dedication required under subsection ~~(16)~~(-a);

~~(8)~~(h) Subject to the approval of the governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection ~~(16)~~(-a) to a school district, adequate to be used for school facilities or buildings.

~~(9)~~(i) The governing body will administer funds dedicated to the public under this section in accordance with MCA 76-3-621(5).

~~(10)~~(j) For the purposes of this subsection ~~(16)~~, *cash donation* means the fair market value of the unsubdivided, unimproved land.

~~(17)~~. Fire protection.

~~(1)~~(a) All subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, grazing lands, and forested areas.

~~(2)~~(b) All subdivisions in Miles City fall in the service area of the Miles City Fire Department.

~~(3)~~(c) Subdivisions shall comply with the Uniform Fire Code and city fire codes.

~~(4)~~(d) The governing body may require that any proposed subdivision provide adequate and accessible water for fire protection, including installation of fire hydrants on the municipal water system designed to standards adopted by city codes.

~~(5)~~(e) Special standards apply to subdivisions in high fire hazard areas. High fire hazard areas include heads of draws, excessive slopes, dense fuel growth or other hazardous components as determined by the Miles City Fire Department or the Forestry Division of the Montana Department of Natural Resources and Conservation. Subdivisions in high fire standards must meet the following standards:

~~(a)~~(1) Interior and exterior streets must provide two entrances/exits to assure more than one escape route for residents and access routes by emergency vehicles and fire suppression equipment. Fire suppression equipment includes, but is not limited to, wildland fire engines, structural fire engines, water tenders, heavy equipment, and trucks used for hauling heavy equipment.

~~(b)~~(2) Bridges providing access to the subdivision must be built to a design load of 20 tons and be constructed of non-flammable materials.

(e)(3) Street rights-of-way must be cleared of slash.

(d)(4) Residences and other structures must be placed in such a manner as to minimize the potential for flame spread and to permit efficient access for firefighting equipment.

(e)(5) Defensible space around structures and fire protection facilities must be provided and incorporated into subdivision covenants.

(f)(6) Purchasers of lots/units in the subdivision shall be provided copies of the Fire Protection Guidelines For Wildland Residential Interface Development, Montana Departments of Natural Resources and Conservation/Justice.

18). *Landscaping standards for commercial development.*

(1)(a) *Intent.* The intent of landscaping is to enhance, conserve and stabilize property values by encouraging pleasant and attractive surroundings; to encourage preservation of existing trees on proposed building sites; and to contribute to the relief of noise, wind, glare through the proper placement of living plants and trees. Allowances for non-living landscaping, i.e., gravel sculptures, art, desert type landscaping shall be taken into consideration.

(2)(b) *Landscaping.* The definition of landscaping shall mean a combination of planted living trees, shrubs, hedges, vines ground cover, flowers and lawns suitable for the climate, exposure, and site conditions. In addition, the design may include bark, mulch, edging, flower beds, rock and such structural features as fountains, pools, art works, screens, walls, fences, or benches. The selected combinations of materials and plants for landscaping purposes shall be arranged in a harmonious manner compatible with the building and its surroundings.

(3)(c) *Plant materials.* Selection of plant materials shall be based upon local climate, water restrictions, and soils. Site plans shall protect existing trees where feasible.

(4)(d) *Irrigation.* Automated irrigation is required for all landscaping consisting of living plant materials. Irrigation plans will be reviewed as part of the landscaping review.

(5)(e) *Preservation.* Landscaping which exists on any property or for any use, subject to the provisions of this subsection, shall not be altered or reduced below the minimum requirements of this subsection, unless suitable substitutions are made which meet the requirements of this subsection and a landscaping plan is first approved by the governing body.

(6)(f) *Area.* The landscaping area shall be eight percent of the net land available (total area of the site minus the area occupied by all buildings).

(7)(g) *Spacing.* Trees will be planted no closer to each other or site structures than the mature drip line. Trees must be pruned to provide at least eight feet of clearance over sidewalks parking areas and streets. The use of elevated earth berms to accomplish such landscaping is encouraged. Landscaping between parking bays with appropriate ground cover and trees is encouraged. This subsection shall complement subsection 24-1849(b) Landscaping of the Miles City Zoning Code.

(8)(h) *Installation timing.* All approved landscaping shall be completed within 90 calendar days after the substantial completion of the buildings being constructed on the lot. If weather conditions do not permit the completion of the approved landscaping, then such landscaping shall be completed as soon thereafter as weather conditions permit. In the case of a delay due to weather, an improvements agreement acceptable to the City Council shall be submitted in the amount estimated for reasonable completion of the approved landscaping and released upon completion.

(9)(i) *Maintenance.* All areas required to be landscaped in accordance with the provisions of this subsection shall, after completion, be maintained in an attractive and well-kept condition by the owner or occupant of the site.

(10)(j) *Trash receptacles.* Trash receptacles and refuse storage areas must be surrounded on four sides by a decorative or painted wall or fence with a gate, to adequately screen the facility from view from public ways and other properties. The occupant of the site must also provide an adequate number of appropriate receptacles to prevent trash and refuse spreading about or away from the property.

(11)(k) *Ownership and use changes.* Any property having an approved landscaping plan pursuant to this subsection upon change of ownership or use of property must maintain existing landscaping or submit a new landscaping plan to the city for review and approval by the planning board and City Council, as applicable.

Sec. 21-19. Subdivisions created by rent or lease.

(a) **A.** *Definition.* A subdivision created by rent or lease, including a mobile home/manufactured home park or recreational vehicle park or campground, is any tract of land divided by renting or leasing portions of it. The land is owned, however, as one parcel under single ownership (including property held in common). Subdivisions created by rent or lease must comply with applicable zoning.

(b) **B.** *Subdivisions providing multiple spaces for recreational camping vehicles or mobile/manufactured homes.*

(1) *Recreational camping vehicles.* Developments which are subject to subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under subsection (f), recreational vehicle park standards, below.

(2) *Mobile/manufactured homes.* Developments which are subject to subdivision review because they will provide two or more spaces for mobile/manufactured homes will be reviewed under subsection (e), mobile/manufactured home park standards, below.

(3) *Subdivisions for lease or rent, generally.*

(a.) Land subdivision created by rent or lease will be reviewed under the procedures described in Section 21-16 for major and subsequent minor subdivisions, or Section 21-15 for first minor subdivisions, as may be appropriate.

(b.) Land subdivisions created by rent or lease are subject to Section 21-18, design and improvement standards.

(c) **C.** *Procedures for review.*

(1). *Review and approval.* Subdivisions must be submitted for review and be approved by the governing body before portions of the subdivision may be rented or leased.

(a.) *Submittal.* The subdivider shall submit a completed application in accordance with Section 21-14.

(b.) *Review.* The procedure used to review subdivisions created by rent or lease will be as described in Section 21-15 for first minor subdivisions or Section 21-16 for major and subsequent minor subdivisions.

(2). *Improvements.* The subdivider shall install all required improvements before renting or leasing any portion of the subdivision. The governing body or its agents will inspect all required improvements in order to assure conformance with the approved construction plans and specifications.

(3). *Final plat review.* The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in subsection 21-14(b), subsection 21-14, final plats

(4). *DPHHS license.* If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also a "trailer court," "work camp," "youth camp," or "campground" as those terms are defined in MCA 50-52-102, MCA 50-52-102, the governing body will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under MCA Title 50, Chapter 52.

(d) **C.** *Design standards for subdivisions created by rent or lease.*

(1). *Design standards.* Subdivisions created by rent or lease must comply with the provisions of Section 21-18 Section 21-18, design and improvement standards.

(2). *Additional provisions.* The governing body may require provision for:

a.(a) a. Storage facilities on the lot or in compounds located within a reasonable distance;

b.(b) b. A central area for storage or parking of boats, trailers, or other recreational vehicles;

c.(c) c. Landscaping or fencing to serve as a buffer between the development and adjacent properties;

d.(d) d. An off-street area for mail delivery; and

e.(e) e. Street lighting.

(e) **E.** *Mobile/manufactured home park standards.*

(1). *Mobile/manufactured home spaces.*

- (a) a. Mobile/manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
- (b) b. All mobile/manufactured homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.
- (c) c. The mobile/manufactured home pad must be located at least ten feet from the street that serves it.
- (d) d. The size of the mobile/manufactured home pad must be suitable for the general market to be served and must fit the dimensions of mobile/manufactured homes anticipated.
- (e) e. A mobile/manufactured home pad may not occupy more than one-third of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds of the area of a space.
- (f) f. The governing body may require that the mobile/manufactured home pad be improved to provide adequate support for the placement and tie-down of the mobile home.
- (g) g. No mobile/manufactured home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures.
- (h) h. No detached structure, such as a storage shed, may be located within five feet of any mobile/manufactured home or its attached structures.
- (i) i. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile/manufactured home space. The driveway must be located to allow for convenient access to the mobile/manufactured home, and be a minimum of ten feet wide.
- (j) j. One guest parking space must be provided for each ten mobile/manufactured home spaces. Group parking may be provided.
- (k) k. Each mobile/manufactured home must be skirted within 30 calendar days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire-resistant material similar to that of the mobile/manufactured home exterior.

(2). *Streets.* Streets within a mobile/manufactured home park must meet the standards specified in subsection 21-18(a)(A-8); streets. Streets must be designed to allow safe placement and removal of mobile homes.

(3). *Electrical systems.* Electrical systems must be designed and installed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installations must be designed and constructed in accordance with the applicable state electrical standards.

(4). *Gas systems.*

- 1.(a) a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where City of Miles City, including the state or other political subdivision does International Fire Code (IFC) and applicable codes referenced by the IFC as applicable. In any situation exists where applicable codes have not assume jurisdiction been adopted by the City of Miles City, such installation installations must be designed and constructed in accordance with the applicable provisions of the latest versions of the National Fire Protection Association's "National Fuel Gas Code" (NFPA Pamphlet 54-1981) and the "Standard for the Storage 54) and Handling of the " Liquefied Petroleum Gases Gas Code" (NFPA Pamphlet 58-1981).), as applicable.
- 2.(b) b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.
- 3.(c) c. Each mobile/manufactured home lot must have an accessible, listed gas shutoff installed. This valve must not be located under a mobile home. Whenever the mobile home lot gas outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

(f)F. *Recreational vehicle park standards.*

(1). *Recreational vehicle spaces.*

- (a.) Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces.
- (b.) Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.
- (c.) Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.
- (d.) No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way.

(2). *Streets.* Streets within a recreational vehicle park must meet the standards specified in subsection 21-18(a)(A-8)., streets. Streets must be designed to allow safe placement and removal of recreational vehicles.

(3). *Density.* The density of a recreational vehicle park must comply with the standards of the zoning district it is located in, but in no case shall the density of a recreational vehicle park exceed 20 recreational vehicle spaces per acre of gross site area.

Sec. 21-20. Planned unit developments.

(a) *Definition.* MCA 76-3-103(10) defines a planned unit development as "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." Planned Unit Developments (PUDs) are major subdivisions that obtain PUD designation during subdivision review of the overall development or the first phase of the development according to the review process described in subsection 21-20(f) below.

(b) *Purpose.* PUDs are intended to:

- (1) Allow flexibility in specification and performance standards in exchange for community benefits and innovative, quality design;
- (2) Encourage a complementary mixture of uses and developed in accordance with an approved plan, that protects adjacent properties;
- (3) Encourage the preservation and enhancement of natural amenities, cultural resources and open space;
- (4) Provide for a more efficient arrangement of land uses, buildings, circulation systems, and infrastructure; and,
- (5) Encourage infill development, traditional neighborhood development, affordable housing, low-impact, energy efficient and innovative projects, and a variety of housing types and sizes to accommodate households of all ages, sizes and incomes.

(c) *Applicability.* A PUD may be approved in any zoning district.

(d) *Requirements.* No application for a PUD will be accepted or approved unless all of the property included in the application is under unified ownership or a single entity's control. In addition, PUDs must contain the following components:

- (1) An overall development size of at least 10 acres except for infill development, where the minimum size is 2.5 acres;
- (2) Pedestrian and bicycle facilities throughout and connecting to adjacent facilities;
- (3) A mixture of land uses and housing types;
- (4) Interconnected roads, preferably lots and blocks with alleys;
- (5) Architectural design standards to be implemented by a private party such as a property owners association;
- (6) A coordinated landscape plan;
- (7) Significant open spaces such as playground or park areas designed for active and passive users with the scale, type and natural features depending on the projected needs of the future users of the site; and
- (8) Community facilities in common or public ownership and use.

~~Larger scale projects are also encouraged to include:~~

~~(9) A functional neighborhood center that is the focal point of the neighborhood with indoor and outdoor spaces and a mixture of uses, opportunities for civic engagement and public art; and~~

~~(10) The majority of dwellings located within 2,000 feet of the neighborhood center.~~

~~(e) *Standards Eligible for Modification.* Unless otherwise expressly approved by the planning board and governing body, PUDs are subject to all applicable standards of the base zoning district regulations and the design standards of these regulations. A waiver of the standards does not require approval of the board of adjustment or a variance to subdivision design standards. The planning board and governing body may approve PUDs that deviate from specific standards if it is determined that the resulting development satisfies the approval criteria in subsection (g) below. The specific standards that may be modified include:~~

~~(1) Allowed uses. Regardless of the underlying zoning, a PUD may include a complementary mix of use types and a broader range of housing types and affordable housing options. A list of uses to be allowed in a PUD must be approved by the planning board and governing body;~~

~~(2) Park land dedication or cash donation requirements if open space such as playground or park areas within the development meet or exceeds the park land dedication requirements of these regulations and when the subdivider agrees to deed the open space land to the association in perpetuity for use as parks or playgrounds;~~

~~(3) Minimum lot size, provided that parcels sizes are adequate to safely accommodate all proposed buildings and site features and are warranted to support the public benefit likely to result from the proposed development;~~

~~(4) Setbacks, when determined to be warranted to support the public benefit likely to result from the proposed development;~~

~~(5) Building height, when determined that such an increase is warranted to support the public benefit likely to result from the proposed development;~~

~~(6) Maximum lot coverage, so long as erosion will be controlled and stormwater is determined likely to be contained in a manner that will not negatively impact surface water quality or downstream properties;~~

~~(7) Parking and loading, when determined that such modifications are warranted to support the public benefit likely to result from the proposed development; and~~

~~(8) Street and non-motorized transportation standards so long as such designs would better meet the purpose of this PUD section while still providing a safe and efficient traffic flow.~~

~~(f) *Review Process.* Planned Unit Development are established through the approval of a PUD master site plan in conjunction with the general procedures outlined in Section 21-14 of these regulations and the review procedures for major subdivisions as outlined in Section 21-16 of these regulations. At the option of the developer, the master site plan may also serve~~

as a preliminary subdivision plat if such intention is declared at the pre-application meeting and if the site plan includes all information required for preliminary plats. If the master site plan contemplates distinct phased preliminary plats, the plat for the first phase shall be reviewed concurrently with the master site plan.

A PUD master site plan becomes final after being reviewed by the planning board and approved by the governing body. All subdivisions authorized under a PUD designation must become final within 10 years of PUD master site plan approval.

In addition to the requirements for subdivisions, each PUD application must include the following items:

- (1) A master site plan showing the location and area of lots and blocks, buildings, transportation facilities, parks, open space and other amenities, utilities and other pertinent features;
- (2) A list of the specific standards that are requested to be modified;
- (3) A list of land uses that are proposed in the PUD;
- (4) A written description of the community benefits of the proposed development and how it provides greater benefits to the city than would development under strict application of zoning and subdivision regulations;
- (5) Architectural standards; and
- (6) A description and draft documents indicating how common areas and facilities will be managed.

(g) *Review Criteria:* In reviewing and making decisions on proposed PUDs and site plans, the planning board and governing body shall consider and make findings on the following criteria:

- (1) Whether the proposed PUD would result in a greater benefit to the city than would development under strict application of zoning and subdivision regulations. Greater benefit may include implementation of the growth policy, natural resource preservation, innovative urban design, low-impact or energy-efficient development, affordable, workforce or senior housing, neighborhood or community amenities or an overall level of development quality;

—— (2) The proposal's consistency with the adopted plans for the area;

—— (3) Compliance with this section; and

—— (4) Primary review criteria for subdivisions.

Sec. 21-21. Condominiums.

(a) All planned unit developments (PUDs) in the City of Miles City shall be reviewed and approved according to Sec. 24-28 of the Zoning Ordinance. For PUDs, there are deviations from the design

standards of the subdivision regulations that may be approved through the PUD review and approval process in the Zoning Ordinance without approval of variances from the subdivision regulations.

Sec. 21-21. Condominiums.

A. Procedures. Unless exempted by MCA 76-3-203MCA 76-3-203 and subsection 21-17(c)(C-7) of these regulations, all condominiums are subdivisions subject to the terms of the MSPA as follows:

(1). *Condominium subdivisions involving land divisions.* Proposed condominium subdivisions must be reviewed under the procedures contained in the following sections, as applicable:

Section 21-15, Review procedures for first minor subdivisions.

Section 21-16, Review procedures for major and subsequent minor subdivisions.

Subsection 21-16(b); B, applicable subsections for final plats.

Section 21-18, Design and improvement standards. All units must be provided legal and physical access by streets in a reasonable manner.

(3)2. *Unit Ownership Act.* Condominium developments must comply with all provisions of the Unit Ownership Act, MCA Title 70, Chapter 23.MCA Title 70, Chapter 23.

Sec. 21-22. Administrative provisions.

(a)A. *Variances.*

(1). *Variances authorized.* The governing body may grant variances from ~~Section 21-18~~ Section 21-18, design and improvement standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations. The governing body will not approve a variance unless it finds that:

(a.) The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;

(b.) Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self imposed;

(c.) The variance will not cause a substantial increase in public costs; and

(d.) The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

(2). *Variances from floodway provisions not authorized.* The governing body will not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by MCA Title 76, Chapter 5

(3). *Procedure.* The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The subdivision administrator and/or planning board, as applicable, will consider the requested variance and recommend its approval or denial to the governing body. The governing body may grant the variance(s) if it meets the specific variance criteria.

(4). *Conditions.* In granting variances, the governing body may impose reasonable conditions to secure the objectives of these regulations.

(5). *Statement of facts.* When a variance is granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

2.B. (b) *Administration.*

(1). *Enforcement.* Except as provided in MCA 76-3-303MCA 76-3-303 and these regulations, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the city attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the MSPA and these regulations. The cost of this action shall be imposed against the party not prevailing.

(2). *Appeals.* A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious. A party who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made. For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision. The following parties may appeal under the provisions of this subsection (B)(2):

~~The following parties may appeal under the provisions of subsection (b)(2) above:~~

~~c.(a) a.~~ The subdivider;

~~d.(b) b.~~ A landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

~~e.(c) c.~~ The county commissioners of the county where the subdivision is proposed; and

~~f.(d) d.~~ The following municipalities:

- (1.) A first-class municipality as described in MCA ~~7-1-4111~~, MCA 7-1-4111, if a subdivision is proposed within three miles of its limits;
- (2.) A second-class municipality, as described in MCA 7-1-4111, if a subdivision is proposed within two miles of its limits;
- (3.) A third-class municipality, as described in MCA 7-1-4111, if a subdivision is proposed within one mile of its limits.

Sec. 21-23. Severability.

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section or other part of any provision of this chapter invalid, that judgment will affect only the part held invalid.

Secs. 21-24 — 21-61 ~~60~~. Reserved.

Sec. 21-61. Supplemental Administrative Materials

The City of Miles City hereby adopts, by reference, the following list of supplemental Administrative Materials to be maintained by and available from the subdivision administrator for administration of these subdivision regulations. These forms, checklists and samples may be revised from time to time by the subdivision administrator without revisions to the subdivision regulations, and similar documents can be developed and provided by the subdivision administrator to carry forth ordinary administrative functions.

- A. Pre-Application Meeting Request Form
- B. Preliminary Plat Subdivision Application
- C. Supplements to Preliminary Plat Application Checklists
- D. Subdivision Variance Application
- E. DEQ Environmental Assessment Information Required
- F. Final Plat Application
- G. Final Plat Application Checklist
- H. Model Consent to Plat by Lienholder(s)
- I. Model Subdivision Improvements Agreement
- J. Certificate of Completion of Public Improvements
- K. Subdivision Exemption Claim Form

Sec. 21-62. Adoption of uniform standards.

The City of Miles City hereby adopts, by reference, the following regulations and standards of the Montana Department of Labor and Industry, as now established, and as hereafter amended:

- (1) ~~1-A.~~ Uniform Standards for Monumentation (ARM 24.183.1101); (ARM 24.183.1101);
- 2-~~B.~~ (2) Uniform Standards for Certificates of Survey (ARM 24.183.1104); (ARM 24.183.1104); and
- 3-~~C.~~ (3) Uniform Standards for Final Subdivision Plats (ARM 24.183.1107); (ARM 24.183.1107).

ORDINANCE NO. 1329

AN ORDINANCE REPEALING SECTION 21 OF THE CODE OF ORDINANCES OF THE CITY OF MILES CITY AND ENACTING A NEW SECTION 21 OF SAID CODE OF ORDINANCES OF THE CITY OF MILES CITY, ADOPTING NEW SUBDIVISION REGULATIONS.

BE IT ORDAINED, by the City Council of the City of Miles City, Montana, as follows:

Section 1. Section 21 shall be amended by replacing Sections 21-1 through 21-62 with the following Sections 21-1 through 21-62:

Sec. 21-1. Title of chapter.

This chapter will be known and may be cited as the "Miles City Subdivision Regulations", hereinafter referred to as "these regulations."

Sec. 21-2. Authority.

Authorization for these regulations is contained in the Montana Subdivision and Platting Act ("MSPA"), MCA Title 76, *Chapter 3*.

Sec. 21-3. Purposes.

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey (*See MCA 76-3-102*).

These regulations are intended to comply with Part 5 of the MSPA and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- The orderly development of the jurisdictional area;
- The coordination of roads within subdivided land with other roads, both existing and planned;
- The dedication of land for roadways and for public utility easements;

- The improvement of roads;
- The provision of proper physical and legal access, including obtaining necessary easements;
- The provision of adequate open spaces for travel, light, air, and recreation;
- The provision of adequate transportation, water, drainage, and regulation of sanitary facilities;
- The avoidance or minimizing of congestion;
- The avoidance of subdivisions which would involve unnecessary environmental degradation;
- The avoidance of subdivisions which would involve danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services that would necessitate an excessive expenditure of public funds for the supply of the services;
- The manner and form of making and filing of any plat for subdivided lands; and
- The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.

Sec. 21-4. Jurisdiction.

These regulations govern the subdivision of land within the City of Miles City, including land proposed for subdivision outside the city limits officially proposed to be annexed into the city limits of Miles City.

Sec. 21-5. Definitions.

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense include the future; the singular, unless otherwise specifically defined in a particular section, includes the plural, and the plural the singular; the word "shall" is always mandatory, and the word "may" indicates use of discretion in making decisions.

Access (legal and physical):

- (1) *Legal access* means that each lot in a subdivision either abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties, from a public road to each lot in the subdivision, whether or not a road has been constructed on that property, and has or is proposed to dedicate the easement for public use or for private use specific to the proposed subdivision.
- (2) *Physical access* means that a street or road conforming to the subdivision design standards provides vehicular access to each lot in the subdivision, either from a public

street or road, from a street or road constructed to local standards in the obtained easements which are dedicated to public use, or from a private road improved to local standards which has been dedicated to public use.

Adjoining landowner (adjacent property owner) means the owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road or directly across watercourse or deeded right-of-way.

Agriculture means the direct use of land for grazing and cropping to produce food, feed, and fiber commodities. This includes crop cultivation and tillage of the soil; grazing for milk, egg, meat, and breeding animal production; and animal feed production. It does not include farm animal confinement facilities or structures associated with farming and ranching.

Agricultural water user facilities means those facilities which provide water for agricultural land or the production of agricultural crops or animals including, but not limited to, canals, ditches, pipes, water-control devices, springs, dams and dugouts with associated collection areas, and water-spreading systems.

ARM means the Administrative Rules of Montana. (See the ARM)

Block means a group of lots, tracts or parcels within well-defined and fixed boundaries.

Certificate of survey means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations. (MCA 76-3-103(1)).

Cluster development means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped. (MCA 76-3-103(2)). *Comprehensive plan*: See Growth Policy.

Commencement of a phase means submitting a final plat application for that phase.

Condominium means the ownership of single units with common elements located on property submitted to the provisions of the Montana Unit Ownership Act, MCA Title 70, Chapter 23. The term does not include a townhome or townhouse. (MCA 70-23-102(6))

Covenant (restrictive covenant) means a limitation contained in a deed or other document that restricts or regulates the use of the real property.

Dedication means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full

exercise and enjoyment of the public use to which the property has been devoted. (MCA 76-3-103(3)).

DEQ means the Montana Department of Environmental Quality.

Division of land means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the MSPA. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land. (MCA 76-3-103(4)).

Dwelling unit means any structure or portion thereof providing complete, independent and permanent living facilities for one household.

Easement means authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.

Engineer (professional engineer) means a person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (MCA Title 37, Chapter 67) to practice engineering in the State of Montana.

First Minor Subdivision means a proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under MCA 76-3-201 or 76-3-207 since July 1, 1973. (MCA 76-3-609).

Flood means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway (MCA 76-5-103(8)) *Flood of 100-year frequency* means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year. (MCA 76-5-103(9)).

Floodplain means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" or a "shaded X zone" by the Federal Emergency Management Agency. (MCA 76-5-103(10)).

Floodway means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway. (MCA 76-5-103(11)).

Governing body means the governing authority of a county, city, or town organized pursuant to law. (MCA 76-3-103(7)). In the jurisdictional area of the City of Miles City, the governing body is the City Council.

Growth policy means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to MCA Title 76, Chapter 1 before October 1, 1999, or a policy that was adopted pursuant to MCA Title 76, Chapter 1 on or after October 1, 1999. (MCA 76-1-103(4))

Improvement agreement means a contractual agreement that may be required by the governing body to ensure the construction of such improvements as required by local subdivision regulations. The improvement agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance or property bonds, private or public escrow agreements, or similar financial guarantees.

Landowner means all individuals, groups, or parties with a title interest in the property. For purposes of MCA 76-3-207, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM). For all other purposes of these regulations, the terms "property owner," "landowner," and "owner" mean both the seller and the purchaser under a contract for deed.

Local services means any and all services and facilities that local government entities are authorized to provide.

Lot means a parcel, plot, or other land area created by subdivision for sale, rent, or lease.

Lot measurement:

- (1) *Lot depth* means the horizontal distance between the front and the rear lot lines.
- (2) *Lot width* means the average width of the lot.
- (3) *Lot frontage* means the length of the front lot line.
- (4) *Lot area* means the area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements.

Lot types:

- (1) *Corner lot* means a lot located at the intersection of two streets.
- (2) *Interior lot* means a lot other than a corner lot.
- (3) *Through lot or double-frontage lot* means a lot whose front and rear lines both abut streets (except alleys).

- (4) *Flag lot* means a lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.

Major subdivision means a subdivision that creates six or more lots.

Material (as in a material change or amendment to an application or plat) means a change or amendment that is significant, that substantially alters the proposal, has an impact on any of the primary review criteria (MCA 76-3-608(3)(a)), brings the proposal out of conformance with the growth policy, zoning or subdivision regulations, or impacts the public's opportunity to provide meaningful comment.

Minor subdivision means a subdivision that creates five or fewer lots.

Mobile (manufactured) home means a detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, "trailer homes," "house trailers," and "manufactured homes" whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include "modular" or "factory-built buildings" that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

Mobile (manufactured) home space means a designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

Mobile (manufactured) home park means a tract of land that provides or will provide spaces for two or more mobile homes.

Mobile (manufactured) home pad means that area of a mobile home space which has been prepared for the placement of a mobile home.

Montana Department of Environmental Quality Minimum Standards means minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to MCA Title 76, Chapter 4, Part 1.

Monument (permanent monument) means any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference. (ARM 24.183.1101(1)(a)).

MSPA means Montana Subdivision and Platting Act, MCA Title 76, Chapter Three.