

to provide drainage at frequent intervals rather than concentrate water into one large conduit. Culverts shall have a minimum diameter of 18 inches, although a larger diameter may be required as deemed necessary by the City Public Works Director to assure adequate runoff conveyance. A smaller culvert of no less than 15" may be installed if approved by the City Public Works Director. Culverts should be of sufficient length to allow construction of a driving surface consistent with the width of adjacent sections of the roadway. Installation of the culverts should be in accordance with generally accepted standards, with attention given to the details of bedding, compaction, and erosion control.

(5) Effect on adjacent properties

Roadway drainage features constructed for a subdivision shall not cause stormwater discharge which will in any way adversely affect neighboring properties.

h. Reclamation of disturbed areas

To protect subdivided lands within the City from erosion and the spreading of noxious weeds, the subdivider shall provide a plan for reclaiming disturbed areas for cut and fill slopes and borrow areas, which may include topsoil and mulching as necessary, and planted with appropriate ground cover during the earliest suitable season.

i. Safety considerations

The safety of a street is directly related to the standard of its design and the quality of workmanship in its construction. All street construction shall comply with applicable ASSHTO standards for safety including site distances and vertical clearances.

j. Preservation of vegetation

Existing trees and other vegetation shall be preserved when possible. Plantings may be required for buffering, screening, or erosion control and are subject to approval by the City Council.

k. Signs and traffic control devices

Road signs and traffic control devices of the size, shape, and height approved by the City Council shall be placed at all intersections and other locations required by the City Council by the subdivider. Where roadwork is not scheduled for completion until after the final plat is filed, any required road signs and traffic control devices shall be included as part of the public improvements guarantee.

Traffic control devices shall be consistent with the "Manual on Uniform Traffic Control Devices," available from the Montana Department of Transportation. Other signs shall meet any applicable standards adopted by the City of Thompson Falls.

Street address signs on posts 6-8' high, reflective lettering of white on green for public access ways and white on blue for private access (unless otherwise approved), letters 4" high, visible in both directions.

k. Street lighting

Street lighting with subdivisions and along new subdivision streets may be required by the City Council. Where roadwork is not scheduled for completion until after the final plat is filed, any required street lighting shall be included as part of the public improvements guarantee.

10. Bridges

Bridges can serve as an integral part of any subdivision roadway system. Where bridges are required, they shall meet the following minimum standards:

Width	Same as roadway, driving surface width
(AASHTO) Design Load	In conformance with AASHTO LRFD Bridge Design, with current interims, HL-93 Live Load
Vertical Clearance (above decking)	15 feet

11. Easements

Where determined necessary in order to protect the public health, safety, and welfare, the City Council shall require that legal easements be provided for utilities, drainage, irrigation ditches (See Section IV-B.3., page 72), watercourses, vehicular or pedestrian access, emergency access, emergency service facilities (such as fire stations or hydrants), screen plantings, and wellhead protection areas (for community water wells). Any such existing easements shall be shown on the preliminary plat and summary or final plat. Where easements already exist, the subdivider shall notify the easement holder(s) of the proposed subdivision, prior to submitting the subdivision application.

a. Utility easements

Utility easements shall meet the following standards:

- (1) Utility easements shall be centered along-side and rear lot lines of subdivision lots wherever possible or located within the right of way of dedicated streets.

(2) Utility easements along lot lines shall be twenty (20) feet wide, except the City Council may require easements for sanitary sewer, storm sewer, and water lines to be thirty (30) feet wide.

(3) Where a utility easement is to be located in an existing, dedicated street right-of-way, an encroachment permit must be obtained from the City of Thompson Falls prior to the installation of utilities.

b. Drainage easements

Where a subdivision is traversed by a watercourse, drainage way, channel, ditch or canal, or stream, easements or rights-of-way may be required to parallel the lines of such watercourse at a sufficient width to allow for maintenance and protection. Before any maintenance or improvements are performed on any water course, drainage way, channel, ditch, or canal, the owner of the waterway must give written permission for the work to be done. See Subsection IV-A.B.3., Irrigation ditches, for specific standards regarding irrigation ditch easements.

c. Access easements

Streets providing primary access to and through a proposed subdivision must be accessible to the public. Subdivision streets shall be designated as public rights of way and maintained by the City of Thompson Falls.

12. Grading and drainage

- a. When required as per Subsection IV-A.2, Design by licensed professionals, grading and drainage plans pertaining to proposed roadway improvements and drainage facilities must be designed and certified by a registered professional engineer. They shall show the proposed grades of roads and proposed drainage facilities for all lots, blocks, and other areas. The plans shall display accurate dimensions, courses, and elevations.
- b. Where proposed subdivision lots are less than twenty (20) acres in size, the drainage system and facilities required for any surface runoff affecting the proposed subdivision or adjacent properties shall meet the minimum drainage standards of the Montana Department of Environmental Quality.
- c. Curbs and gutters or swales may be required by the City Council according to the character of the area, density of proposed development, and nature of adjoining properties.
- d. The subdivider shall provide suitable drainage facilities for any surface runoff affecting the proposed subdivision. Such facilities must be large enough to accommodate potential runoff from upstream drainage areas. The design of such

facilities shall be based upon local soil factors, topography, natural drainages, gullies and swales, aesthetics, and capacity for proper disposal of excess water.

- e. Unless an adequate storm sewer exists or is provided, all surface runoff in addition to that normally present before subdivision shall be retained on-site or released from the site in a manner which will not substantially increase the peak runoff normally present before subdivision. Drainage easements across undeveloped land to the nearest drainage way may be required.
- f. Drainage systems shall not discharge into any sanitary sewer facility.

13. Emergency services

- a. The subdivider shall contact the City of Thompson Falls emergency service providers (law enforcement, fire district, quick response unit, and ambulance service) before completing the design of a proposed subdivision and submitting the subdivision application.

As much as possible, the local emergency service providers should work together to provide consensus recommendations on proposed subdivisions. Their recommendations are not binding upon the City Council. Their recommendations become binding upon the subdivider only if included as conditions of subdivision approval by the City Council.

- b. Fire protection standards

All subdivisions shall 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 and property. Standards shall include:

- (1) Meeting street and access standards identified in Section IV.8.
- (2) Providing a fire protection water supply per the direction of the City Director of Public Works and the Thompson Volunteer Fire Department which would include one of the following:
 - a. Installation of municipal fire hydrants within the subdivision
 - b. Contribution of proportional monies for the construction of or maintenance of an offsite fire protection water supply within the City of Thompson Falls that will provide water for direct protection of the subdivision.
- (3) Comply with the City of Thompson Falls street naming and addressing system for each lot/home in the subdivision.

14. Utilities

All public and private utilities should be placed underground when undergrounding is technically feasible.

a. Underground utilities

Underground utilities, if placed in the street right-of-way, shall be located between the roadway and the right-of-way line to simplify location and repair of lines. Such underground facilities shall be installed after the street has been brought to grade and before it is surfaced, to eliminate so far as practicable the necessity for disturbing such surfacing for the connection of individual services.

b. Overhead utilities

Overhead utility lines shall be located at the rear property line, where practical. Utility facilities shall be designed by utility firms in cooperation with the subdivider, subject, however, to all applicable laws and all rules and regulations of any appropriate regulatory authority having jurisdiction over such facilities.

15. Sanitation (water supply, wastewater treatment, stormwater management, and solid waste disposal). All new lots created through subdivision review within the City of Thompson Falls shall be served by stormwater drainage, municipal drinking water and wastewater treatment systems provided by the City of Thompson Falls. Thus, subdividers are eligible to utilize the municipal facilities exemption and thus subject to the requirements of 76-4-127, MCA.

In order to utilize the municipal facilities exemption a subdivider is responsible for the installation of all infrastructure necessary to provide service to the subdivision including but not limited to stormwater drainage facilities, water and sewer mains, pumps and lift stations.

15.1 Water

- a. The water distribution system for the subdivision must be designed to connect to the existing City's water distribution system and provide each lot with water service.
- b. The water system must be designed according to the most current version of the Montana Public Works Standards Specifications (MPWSS) and requirements of the City and may include for the provision of fire hydrants.

15.2 Wastewater

- a. The wastewater collection system for the subdivision must be designed to connect to the City's wastewater collection system and to provide each lot with wastewater service. NO drainfields or septic systems will be allowed.

- b. The wastewater collection system must be designed according to the most current version of the Montana Public Works Standards Specifications (MPWSS) and requirements of the City.

15.3 Stormwater Drainage

- a. The subdivider shall include provisions for stormwater management in the subdivision that are designed that meet the applicable standards of the Montana Department of Environmental Quality and the City.
- b. Stormwater management shall be subject to approval by the Montana Department of Environmental Quality and City Public Works Director. Construction must not proceed on property intended for subdivision until City approval of a stormwater management.

15.4 Solid Waste

- a. The subdivider shall include provisions for collection and disposal of solid waste within the subdivision that meet the applicable minimum standards of the Montana Department of Environmental Quality and requirements of the City.
- b. The subdivision street system must be designed to provide access for the collection and disposal of solid waste for each lot in the subdivision.

16. Park Land

- a. Except as provided below, a subdivider shall dedicate parkland to the City Council in the form of cash or a 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.
- b. A park dedication is not required for:
 - 1. Land proposed for subdivision into parcels larger than 5 acres;
 - 2. Subdivision of parcels for nonresidential uses;

3. 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.
- c. In accordance with MCA 76-3-621(8)(a), the City Council requires park dedication for all minor subdivisions within the City's jurisdictional boundaries.
 - d. The City Council, in consultation with the subdivider and the planning board, 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.
 - e. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
 - f. The City Council 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 (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.

- g. The City Council may waive the park dedication requirement if:
 - 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
 - 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).
- h. Subject to the approval of the City Council 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.
- i. The City Council may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks, trails, or recreational areas, or use the money for the purchase of parkland only if:
 - 1. The parkland is within a reasonably close proximity to the proposed subdivision within the City; and
 - 2. The City Council has formally adopted a parks plan that establishes the needs and procedures for use of the money;
- j. Based upon the requirements of subsection 16(i) above, the City Council may not use more than 50% of the dedicated money for park maintenance.
- k. For the purposes of this section, *cash donation* means the fair market value of the unsubdivided, unimproved land.

17. Noxious weed control

Each approved subdivision in the City must have a noxious weed management plan approved by the City of Thompson Falls. (See APPENDIX 15, Noxious, Weed Management Plan Application Form).

18. Wildlife and wildlife habitat protection

Review of a proposed subdivision for the effects on wildlife and wildlife habitat shall include consideration of the following factors:

- a. The types of wildlife found, or likely to be found, in the habitat where the subdivision is proposed.

- b. Whether the proposed subdivision is designed to minimize its effects on wildlife and wildlife habitat.
- c. What cumulative effect the proposed subdivision may have on wildlife populations and wildlife habitat.

A more detailed analysis of the proposed subdivision's impact on wildlife and wildlife habitat may be required as part of the environmental assessment.

If City review determines that a proposed subdivision may negatively impact wildlife and wildlife habitat, building setbacks, building envelopes, or other special design/development standards may be required in order to mitigate project impacts.

19. Other resource protection

In designing the development proposal, the subdivider shall consider the historic, cultural, and scenic resources of the City of Thompson Falls and attempt to minimize any negative impact of the proposed subdivision on such resources. In particular, the subdivider may be required to notify the Montana State Historical Society prior to submitting the subdivision application, in order to determine the potential for existing significant historic resources. If the Historical Society recommends a "walk-through" or inventory of historic resources on the land proposed for subdivision, such action shall be taken prior to submittal of the subdivision application and prior to any construction activity connected with the proposed subdivision.

If the City review determines that a proposed subdivision may negatively impact the historic, cultural, and scenic resources of the City of Thompson Falls, a building setback, building envelope, or other special design/development standard may be required in order to mitigate project impacts.

20. Other mitigation

The City may require additional design and development standards beyond those listed in this Chapter, in order to mitigate the negative impacts of a proposed subdivision. For example, all outdoor lighting must be directed so as to avoid glare and excessive light spillage on adjacent properties.

IV-B. SPECIFIC STANDARDS

1. Construction Setbacks from Water Bodies: River front property in Thompson is very desirable for new development, but it can be located within the 100-year floodplain and can pose a potential risk to public health and safety. In addition, river frontage can be of major ecological importance for wildlife habitat and the protection of water quality.

- a. Purpose. The purpose of these construction setbacks is to:
 - (1) Protect the water quality, floodplain, and riparian resource of the Clark Fork River and other water bodies located with or adjacent to the City of Thompson Falls;
 - (2) Protect the visual resource enjoyed from these waterways; and
 - (3) Protect the health and safety of the residents of the City of Thompson Falls.
- b. Applicability. The construction setbacks pertain to all new buildings in subdivisions. The setback shall be depicted on the final plat or accompanying final plat documents to be filed with the Clerk and Recorder's office. These standards do not include irrigation ditches, which are addressed in Subsection IV-B.2.
- c. Setbacks.
 - (1) The minimum construction setback from the Clark Fork River shall be 150 feet from the mean high water mark or located outside the designated 100-year floodplain, whichever distance is greater.
 - (2) The minimum construction setback from other waterways in the City shall be 50 feet from the mean high water mark.

2. Commercial and industrial subdivisions

Non-residential land uses differ in their positive and negative impacts upon a community. For this reason, commercial and industrial subdivisions and lots warrant somewhat different design and development standards as outlined below. These standards supplement those outlined previously in this chapter and apply to mixed use subdivisions containing commercial and/or industrial lots.

a. Transportation design

(1) Commercial

Streets and accessory parking areas serving a proposed commercial subdivision (or commercial lots within a subdivision) shall connect to arterials and shall not generate additional traffic on local roads. Intersections of driveways from parking areas with arterials or collectors shall be designed to cause the least possible interference with traffic movement. The City Council may require frontage or service roads to provide maximum safety and convenience.

(2) Industrial

Collector streets for industrial subdivisions (or industrial lots within a subdivision) shall be planned to serve industrial areas exclusively and shall connect to arterials or non-residential collectors. The intersections of frontage or service roads from parking areas with arterials or collector streets shall be at least 125 feet apart.

(3) Service access

Provisions shall be made for service access, such as off-street loading, unloading and parking. Such provisions shall be adequate to support the proposed use(s). Parking areas shall be located so as to preclude motorists from backing onto any public right-of-way.

b. Signage

No sign within a subdivision shall project or extend into a public right-of-way or block sight visibility on any street.

c. Lighting

(1) No lighting treatment shall, whether by brilliance or reflected light, be a detriment to surrounding properties or prevent the reasonable enjoyment of adjacent properties.

(2) Street lights shall be aimed downward.

(3) Where signs are illuminated, the illumination shall shine only on the sign or on the property on which the sign is located. Sign illumination shall not shine onto any other property in any direction, except by indirect reflection.

(4) All outdoor lighting must be directed so as to avoid glare and excessive light spillage on adjacent properties.

d. Fire protection

Any commercial and industrial standards contained in the Uniform Fire Code, as adopted by the State of Montana, shall apply.

3. Mobile Home and Recreational Vehicle Parks, Condominiums, Cityhomes and Cityhouses

a. Additional state regulations

(1) Mobile home and recreational vehicle parks are required to be licensed by the Montana Department of Environmental Quality under the provisions of Title 50, Chapter 52, MCA.

- (2) Condominium developments must comply with all provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-613, MCA.

b. Special provision

The City Council may require provision for:

- (1) Storage facilities on the lot or in compounds located within a reasonable distance;
- (2) A central area for storage or parking of boats, trailers, or other recreational vehicles;
- (3) An off-street area for mail delivery or post office box; and
- (4) Street lighting.

Mobile/Manufactured Home Park Standards

Mobile home parks are residential developments containing mobile homes, as defined in Section I-K. Mobile home parks do not pertain to residential developments using modular or factory-built buildings, as defined in Section I-K.

(1) Mobile/Manufactured Home Spaces

- (a) Mobile/manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
- (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) The mobile/manufactured home pad must be located at least 10 feet from the street that serves it.
- (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) A mobile/manufactured home pad may not occupy more than one-third (1/3) 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 (2/3) of the area of a space.
- (f) The City Council 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) 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) No detached structure, such as a storage shed, may be located within five feet of any mobile/manufactured home or its attached structures.
 - (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 10 feet wide.
 - (j) One guest parking space must be provided for each 10 mobile/manufactured home spaces. Group parking may be provided.
 - (k) The limits of each mobile/manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.
 - (l) Each mobile/manufactured home must be skirted within 30 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
- (3) Streets within a mobile/manufactured home park must meet the standards specified in Section IV.A.8. Streets must be designed to allow safe placement and removal of mobile homes.
- (a) Streets must be designed to provide safe access to public roads.
 - (b) Streets within the mobile/manufactured home park must be designed to provide safe traffic circulation and parking.
 - (c) One-way streets must be at least 15 feet wide; two-way roads must be at least 24 feet wide.

(4) 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.

(5) Gas Systems

- (a) Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the applicable provisions of the "National Fuel Gas Code" (NFPA Pamphlet 54-1981) and the "Standard for the Storage and Handling of Liquefied Petroleum Gases" (NFPA Pamphlet 58-1981).
- (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.
- (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.

c. 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) Density

The density of a recreational vehicle park must not exceed 25 recreational vehicle spaces per acre of gross site area.

d. Condominiums (and Cityhouses)

(1) Development design

The proposed subdivision may be required to:

- (a) Provide an on-site open area for storage or parking of boats, trailers, other recreational vehicles belonging to residents.
- (b) Landscape and/or fence any on-site storage areas.
- (c) Landscape and/or fence along the property boundary line in order to provide separation between adjoining land uses.
- (d) Provide an area for visitor parking.

4. Planned unit developments (PUD)

The subdivider may choose to submit a proposed subdivision application as a PUD.

a. Purpose

The purpose of this subsection is to allow flexibility in design and development standards, in cases where the subdivider proposes a creative concept which clusters development to promote the efficient provision of services and the preservation and enhancement of open space and other natural or cultural features. The PUD concept supports the planned development of an individual tract for either a single land use such as residential, or for a harmonious combination of land uses, such as a mixture of residential and commercial.

b. Special requirements

In addition to the standard application package requirements discussed in Chapter II of these regulations, a PUD subdivision application must demonstrate a clustered development design and include the following information in narrative form:

In addition to the standard application package requirements discussed in Chapter II of these regulations, a PUD subdivision application must demonstrate a clustered development design and include the following information in narrative form:

- (1) A description of proposed open space and recreational facilities, streets and any other public improvements;
- (2) A description of plans for the long-term management of open space, whether commonly owned or not;
- (3) A description of plans for the long-term management of common facilities or property;

- (4) A schedule for installing proposed road and utility improvements;
- (5) A description of any proposed modifications from the design and development standards outlined in this Chapter; and
- (6) A statement of how the proposed PUD would accomplish any or all of the following purposes:
 - (a) Preserve to the maximum extent possible, the natural characteristics of the land including topography, vegetation, streams, and other bodies of water.
 - (b) Provide economies in the provision of roads and other public improvements.
 - (c) Preserve productive agricultural lands, wildlife habitat, or other significant open space.
 - (d) Protect important historic sites or structures.
 - (e) Provide development facilities for recreational purposes.

A PUD project must advance three or more of the five purposes outlined in (6)(a)-(e) above.

A PUD does not have to adhere to all of the design and development standards outlined in earlier subsections of this chapter. The planning board shall consider any request for modified standards as a part of its overall review of the proposed PUD. Such request for modifications shall not be treated as a variance request, as described in Section V-B, of these regulations.

V-A. SCHEDULE OF FEES

Pursuant to 76-3-602, MCA, the City Council may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats. The current fee schedule is available from the City of Thompson Falls Clerk.

V-B. VARIANCES**1. Application Requirements**

Where a variance from one or more of the design and development standards outlined in Chapter IV of these regulations is sought as a part of the subdivision application, the subdivider shall submit a variance application form and appropriate variance review fee, along with the subdivision application package.

If a subdivider seeks more than one variance, the subdivision application package shall contain a separate variance application form and fee for each variance request.

2. Application Review and Decision (Process is outlined in accordance with 76-3-506, MCA)**a. Public notification and review.**

The variance request shall be noted in all written public notifications issued by the City and the subdivider regarding the proposed subdivision.

b. Public hearing requirement.

The variance request shall be considered by the planning board at a properly noticed public hearing. Pursuant to 76-3-506(1) and (3) MCA, variances for first minor subdivisions are exempt from the public hearing requirement and shall be considered by the City Council in conjunction with the subdivision application.

c. Planning board review and recommendation.

The planning board shall consider the variance request and make a written recommendation to the City Council, as to whether the variance request should be approved or denied. The planning board's recommendation shall contain findings of fact which address the criteria outlined in Subsection V-B.4. below.

d. City Council review and action.

- (1) The City Council shall consider the variance request, the planning board's recommendation, and all other pertinent information at its public meeting to review the proposed subdivision. The City Council may approve or deny the variance. In granting a variance, the City Council may impose such conditions as will, in its judgment, secure substantially the objectives of these regulations. Whenever a variance request is granted, the City Council's motion of subdivision approval shall contain a statement describing the variance and the findings of facts and conditions supporting its approval.

3. Review Criteria

Pursuant to 76-3-506, MCA, the City Council may grant a variance from the design and development standards of these regulations when strict compliance will result in undue hardship on the subdivider and when it is not essential to the public welfare.

A variance approval shall not have the effect of nullifying the intent and purpose of these regulations.

The City Council shall approve a variance request only if it finds that, based on the evidence of the specific case:

- a. The variance will not be detrimental to the public health, safety, or general welfare, or injurious to other adjoining properties;
- b. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of these regulations is enforced.
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance should not place the proposed subdivision in substantial non-compliance with the City of Thompson Falls Growth Policy.

The City Council may not grant a variance which will allow building in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

Notwithstanding V-B.4.b. above, an innovative development proposal which does not circumvent the purpose of these regulations may be reason for a variance approval.

4. Variance Requests after Preliminary Plat Approval

A subdivider who has received preliminary plat approval may request a variance from one or more of the design and development standards outlined in Chapter IV of these regulations. Where such a variance is sought, the subdivider shall submit a variance application form and appropriate variance review fee at least 30 days prior to the date

of the planning board's public hearing on the variance request. The variance request must be reviewed by the planning board at least by its second regularly scheduled meeting from when the request was received.

At least 30 days prior to the planning board public hearing, the subdivider is required to: (a) notify each adjoining property owner and any existing property owners association potentially affected by the project as determined by the planner, by certified and return receipt mail; and (b) post a notice of the variance request at one or more conspicuous places on the boundaries of the property.

Review of this type of variance request shall follow the same process as outlined above. The planner shall notify the subdivider, each adjoining property owner, and any existing property owners' association potentially affected by the project as determined by the planner, of the public hearing before the planning board, by certified and return receipt mail not less than 15 days prior to the date of the hearing.

V-A. AMENDMENT OF REGULATIONS

Before the City Council amends these regulations, it may seek the planning board's recommendation and it shall hold a public hearing. The City Council shall give public notice of its intent to amend these regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in Thompson or Sanders County not less than fifteen (15) or more than thirty (30) days prior to the date of the hearing.

V-B. TRANSFER OF TITLE

1. Preliminary and final plats

Pursuant to 76-3-301(1), MCA and except as noted below, every final subdivision plat must be filed for record with the Sanders County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner. The Clerk and Recorder shall refuse to accept any plat for record that fails to have the City Council's approval in proper form.

Pursuant to 76-3-303, MCA, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

- a. That under the terms of the contracts, the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the State of Montana;
- b. That under the terms of the contracts and the escrow agreement, the payments made by purchasers of lots in the proposed subdivision may not be distributed by

the escrow agent to the subdivider until the final plat of the subdivision is filed with the Clerk and Recorder;

- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the Clerk and Recorder within two (2) years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
 - d. That the Sanders County Treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and
 - e. That the contracts contain the following language conspicuously set out therein:
"The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the County Clerk and Recorder, title to the property cannot be transferred in any manner."
2. In accordance with 47 Op. Att'y Gen. No. 10 (1997), the Clerk and Recorder may refuse for recording a United States government lot or an aliquot part of a government survey section less than 160 acres or less than one-quarter section aliquot part, unless it is described as an individual parcel of land in a prior deed or unless it is being segregated and conveyed in compliance with the Montana Subdivision and Platting Act.

V-C. ENFORCEMENT

1. Unlawful transfers or conveyances

If transfers or conveyances not in accordance with Section V-D. above are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the Montana Subdivision and Platting Act and these regulations. The cost of such action shall be imposed against the party not prevailing.

2. Violations or Appeals

- a. Pursuant to 76-3-105, MCA, any person who violates any provision of the Montana Subdivision and Platting Act or these regulations shall be guilty of a misdemeanor and punishable by a fine of not less than \$100.00 or more than \$500.00 or by imprisonment in a county jail for not more than three (3) months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of the Act or these regulations shall be deemed a separate and distinct offense.
- b. Actions against the City Council, pursuant to 76-3-625, MCA.

- (1) A person who has filed with the City Council an application for a subdivision under the Montana Subdivision and Platting Act may bring an action in district court to sue the City Council to recover actual damages caused by a final action, decision, or order of the City Council or a regulation adopted pursuant to the Act that is arbitrary or capricious.
- (2) A party identified in subsection V-E.2.b.(3) below who is aggrieved by a decision of the City Council to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days of the date of the written 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.
- (3) The following parties may appeal under the provisions of subsection V-E.2.b.(2) above:
 - (a) The subdivider;
 - (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;
 - (c) a nearby municipality, as described in 7-1-4111, MCA.
 - (d) 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.

V-D. VACATION OF RECORDED PLATS

Pursuant to 76-3-305, MCA, any recorded plat may be vacated either in whole or in part, as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115, MCA. Upon vacation, the City Council or the district court, as provided in 7-5-2502, MCA, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The City Council or the district court, as provided in 7-5-2502, MCA, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

However, when any pole line, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or

alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

V-E. CORRECTION OF RECORDED PLAT

1. By City Council

Pursuant to 76-3-614, MCA, when a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the City Council may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the Sanders County Clerk and Recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

2. By landowner

A landowner or landowner's representative may submit a corrected final plat to the City Council for review and approval. Eligible correction(s) are only those drafting or surveying errors that, in the judgment of the City Council, do not materially alter the plat. The plat shall be entitled, "Corrected Plat of the (name of subdivision) Subdivision". The surveyor issuing the corrected plat shall endorse its face, refer to the original plat, note the defect existing therein, and explain the correction(s) made on the face of the new plat.

3. Filing of corrected plats

Once the City Council has reviewed and approved a corrected plat, it may be filed with the Sanders County Clerk and Recorder.

V-F. AMENDMENT OF RECORDED PLAT

1. Exemption from Amended Plat Review

Pursuant to 76-3-207(1)(d) and (e), MCA, the following plat amendments are exempt from review as a subdivision:

- a. For five (5) or fewer lots, the relocation of common boundaries;
- b. For five (5) or fewer lots, the aggregation of lots; and
- c. Divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

2. Amended Plat Review

The City Council shall review and approve all other amended plats, pursuant to 76-3-207(2), MCA, as follows:

- a. A proposal that increases the number of lots, or redesigns or rearranges (six) 6 or more lots within a platted subdivision, where such change would result in a higher development density, shall undergo subdivision review in accordance with Chapter II of these regulations and the subdivision review fee schedule available from the planner or City Clerk.
 - b. A proposal for other types of changes to a filed final plat or plan [e.g., increased number of lots or redesign or rearrangement of six (6) or more lots but no increase in development density, or changes to land uses, building setback requirements or road and utility easements] will be reviewed by the City Council, which has the discretion to determine whether the proposed changes constitute a material alteration to the original plat or plan. If the changes constitute a material alteration, the City Council may require the amended plat request to undergo subdivision review in accordance with Chapter II of these regulations and the subdivision fee schedule available from the planner or City Clerk. If the changes do not constitute a material alteration, an amended plat review fee shall apply.
3. All amended plats must be filed with the Sanders County Clerk and Recorder.

Chapter VI

SUBDIVISION EXEMPTIONS

Divisions of land meeting one or more of the descriptions listed in this Chapter are not subject to subdivision review as described in Chapter II of these regulations, but they may be subject to some procedural requirements. In accordance with 76-3-504(1)(p), MCA, the City Council has established criteria to determine whether a proposed exemption is an attempt to evade the subdivision review process.

VI-A PURPOSE

Montana state statutes provide that certain divisions of land which would otherwise constitute subdivisions are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the subdivision review process as outlined in the Montana Subdivision and Platting Act (76-3-101 et seq., MCA).

1. The exemptions from subdivision review under Sections 76-3-201 through 76-3-207, M.C.A., are intended to relieve a landowner from the requirements of local review when the division of land either creates no additional building sites (agricultural exemption or boundary line adjustment) or creates so few building sites that only minimal impact will likely result. The purpose of the exemptions is not to provide a means of creating numerous building sites without subdivision review, but rather to deal with the exceptional circumstances when plenary subdivision review is unnecessary;
2. The proper use of an exemption will not compromise or conflict with the purpose of the Subdivision and Platting act which is to:
 - a. Promote the public health, safety, and general welfare by regulating the subdivision of land;
 - b. Prevent overcrowding of land;
 - c. Lessen congestion on the streets and highways;
 - d. Provide for adequate light, air, water supply, sewage disposal, park and recreational areas, ingress and egress, and other public requirements;
 - e. Require development in harmony with the natural environment;
 - f. Promote preservation of open space;
 - g. Promote cluster development approaches which minimize costs to local citizens;
 - h. Promote effective and efficient provision of public services;

- i. Protect the rights of property owners.
- 3. The likelihood that land development problems will occur greatly increases when building sites are created without public review and are further divided without review;
- 4. The City Council has the authority and duty to evaluate and determine from all the circumstances whether the proposed division of land is based on a purpose to evade subdivision review requirements.

The purpose of this Chapter is to outline (1) the types of allowable exemptions, (2) the exemption request and review procedures used by City of Thompson Falls for certain exemptions, and (3) the evasion criteria used by City of Thompson Falls to determine whether or not the proposed use of certain exemptions would evade the Act.

VI-B TYPES OF EXEMPTIONS

The following is the list of the divisions of land which, under 76-3-101 et seq., MCA and 76-4-101 et. seq., MCA, are exempt from subdivision review, survey requirements, and/or sanitation review.

- 1. Subdivision Exemptions Within Platted Subdivisions -- Subject to Survey Requirements
 - a. For five (5) or fewer lots, the relocation of common boundaries (commonly called boundary adjustment).
 - b. For five (5) or fewer lots, the aggregation of lots.
 - c. The relocation of a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
 - d. Condominiums constructed on land divided in compliance with 76-3-101 et seq., MCA.
- 2. Subdivision Exemptions Outside of Platted Subdivisions -- Subject to Survey Requirements
 - a. The relocation of common boundaries between adjoining properties (commonly called boundary adjustment).
 - b. A single gift or sale to each member of the landowner's immediate family (commonly called family conveyance).

- c. Land divisions made by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the City Council and the property owner, that the divided land will be used exclusively for agricultural purposes (commonly called agricultural exemption). A change in the use of the land exempted for agricultural purposes to any other use requires review as a subdivision.
3. Subdivision Exemptions Within and Outside of Platted Subdivisions -- Not Subject to Survey Requirements

Any division of land that:

- a. Is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30.

Pursuant to 76-3-201(2), MCA, before a court of record orders this type of division of land, the court shall notify the City Council of pending division and allow that City Council to present written comment on the division. In preparing its written response on the division, the City Council shall consider:

- (1) Provision of legal and physical access to the land in question;
- (2) Provision of utility easements, including irrigation ditch easements;
- (3) The public interest criteria outlined in 76-3-608(3)(a), MCA; and
- (4) Whether or not the division would be in substantial compliance with the Growth Policy.
- (5) Whether or not the division is legally described and recordable, upon consultation with the Sanders County Clerk and Recorder.

The City Council shall also suggest to the court, that it require the landowner to have the land surveyed and then file a certificate of survey, including a legal description and cause number of the court order.

- b. Is created to provide security for construction mortgages, liens, or trust indentures (commonly called mortgage exemption) for the purpose of construction, improvements to the land being divided, or refinancing purposes.
- c. Creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property.
- d. Creates cemetery lots.

- e. Is created by the reservation of a life estate.
- f. Is created by lease or rental for farming and agricultural purposes.
- g. Is in a location over which the state does not have jurisdiction.
- h. 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 local subdivision review.
- i. A division of state-owned land, 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.
- j. 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 if it is to be used for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air-carrier-related activities.
- k. 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 60-2-209, MCA. 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 [Note: City street easements and rivers may not automatically create property boundaries].
- l. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, situated on one or more parcels of land.
- m. Deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

VI-C EXEMPTION REQUEST AND REVIEW PROCEDURES

These procedures are pertinent to the exemptions listed in Subsections VI-B.1a-c, VI-B.2a-c, and VI-b.3.

1. Request for Exemption

Any landowner seeking an exemption from the requirements of the Montana Subdivision and Platting Act, as set forth in Sections 76-3-201(1)(b), MCA and 76-3-

207(1)(a), (b), (c), (d), (e), and (f), MCA, shall submit to the Sanders County Clerk and Recorder three (3) sets of the following items:

- a. As required, a certificate of survey in either draft or final form.
- b. A completed Request for Exemption Review available from the planner or City Clerk, including the signatures of all landowners.
- c. Supporting documents or evidence of entitlement to the claimed exemption.

In addition, pursuant to 76-3-201(4), MCA, the landowner shall pay the subdivision exemption review fee.

2. Exemption Request Review by Exemption review board

The Clerk and Recorder shall distribute the exemption request materials to the exemption review board (See Section I-K for definition). The landowner requesting the exemption shall be notified by the Sanders County Clerk and Recorder in advance of the exemption review board meeting. In accordance with the Montana open meeting law, exemption review board meetings shall be properly noticed. The exemption review board shall meet to review the proposed exemption.

At the meeting, the exemption review board will consider whether or not the proposed exemption is exempt from the Montana Subdivision and Platting Act (76-3-101 et seq., MCA) and the Sanitation in Subdivision Act (76-4-101 et seq., MCA), as well as the criteria listed in Section VI-D. All members of the exemption review board must participate in the review. Each exemption review board member may have a designated alternate to serve in his or her absence.

Within fifteen (15) working days of the Clerk and Recorder's receipt of three complete sets of the exemption request materials and the review fee, the exemption review board shall review the exemption request.

If the board finds that the proposed exemption meets the statutes and the criteria stated herein, it shall approve, with or without conditions, the exemption request. If the board finds that the proposed exemption does not meet the statutes and the criteria stated herein, it shall deny the exemption request. The Clerk and Recorder shall notify the landowner or landowner's representative in writing of the board's decision within five (5) working days of the decision.

The board shall approve or disapprove the exemption request within twenty (20) working days of the clerk and recorder's receipt of the complete submittal.

Action on an exemption request may be deferred once if the exemption review board determines it contains inaccurate or incomplete information. In such a case, the "clock" starts over once the clerk and recorder receives the revised material. If the

board determines the request contains inaccurate or incomplete information on the revised submittal, the request will be denied and a new application with review fee will be required.

3. City Review and Approval

The City shall not approve certificates of survey for filing unless the lots or parcels created thereby have legal and physical access to public right of ways, and are served by water and sewer wastewater mains located in adjacent public rights of way or City held easements, and all required stormwater facilities have been provided for.

4. Certification of Exemption

Where required, a certificate of survey pertaining to any division of land which is created according to one of the subdivision exemptions listed above may not be filed by the Sanders County Clerk and Recorder unless it bears the acknowledged certificate of property owners stating that the division of land in question is exempted from review as a subdivision and citing the applicable exemption [24.183.1104.(1)(f), ARM].

5. Appeal

A landowner whose exemption request has been denied may submit a written appeal of the decision to the City Council within twenty (20) working days of the exemption review board's decision. The appeal must be accompanied by an explanation of why the proposed exemption should be approved. The City Council will notify the landowner of the meeting time, date and place when the appeal will be considered. The City Council may reverse, with or without conditions, the decision of the exemption review board. The landowner will be notified in writing of the City Council's decision and the reasons for the decision. A copy of the decision will be sent to each member of the exemption review board.

6. To assist in the monitoring and enforcement of the criteria listed in Section VI-D., the Clerk and Recorder shall incorporate the following abbreviations into the certificate of survey filing system for exemptions used in the City of Twin Bridges.

ME	Mortgage Exemption [76-3-201(1)(b), MCA]
BA	Boundary Adjustment [76-3-207(1)(a), (1)(d) and (1)(f), MCA]
FC	Family Conveyance [76-3-207(1)(b), MCA]
AE	Agricultural Exemption [76-3-207(1)(c), MCA]

VI-D EXEMPTION REVIEW CRITERIA

1. General Criteria

In its review of an exemption request, the exemption review board shall consider all of the surrounding circumstances. These circumstances may include, but are not limited to: (a) the prior history of the tract in question; (b) whether the claimant has engaged in prior exempt transactions involving the tract; (c) the configuration of the tracts if the proposed exempt transaction is completed; and (d) any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

Pattern of development

The scope of review of a pattern of development shall apply to the creation of a division of land or multiple divisions of land by use of or proposed use of an exemption(s):

- a. Original Tract Less Than 20 Acres: A pattern of development may occur whenever more than three parcels (i.e., two exempt parcels and a remaining parcel) have been divided from the original tract of less than 20 acres regardless of ownership by use of exemptions of the Act;
- b. Original Tract 20 Acres Or More: A pattern of development may occur whenever more than four parcels under 20 acres (i.e., three exempt parcels and a remaining parcel) have been divided from the original tract of 20 acres or more, regardless of ownership, by use of exemptions of the Act.

A pattern of development may be evidenced by the use of exemption(s) contiguous to platted lots where common roads are shared or the exempted tracts have similar shape or size to the platted lots, or the exempted tracts are being created by the same landowner who created the platted lots.

2. Specific Criteria

a. Use for Family Conveyance

- (1) Statement of Intent. The intention of this exemption is to allow a landowner to convey one parcel to each member of the immediate family (See Section I-K for definition) without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.
- (2) A proposed division of land as a family transfer may be declared to be an evasion of the Act if it is determined that one or more of the following conditions exist:
 - (a) The proposed new parcel would result in a pattern of development.
 - (b) The division is made for the purpose of speculation by the grantor or for resale for the benefit of the grantor by using the grantee as a "straw person."

- (c) A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption.
 - (d) The transfer is the second or subsequent family transfer of property owned by the grantor to the same member of the immediate family.
 - (e) The name of the grantee and relationship to the grantor do not appear on the face of the proposed Certificate of Survey.
 - (f) The grantee is also one of the grantors.
 - (g) The grantee is a minor child and the trustee is the grantor.
 - (h) The property is a parcel created through the family conveyance exemption which was transferred within three (3) years of the parcel's creation.
 - (i) The affidavit of intent is incomplete or missing.
 - (j) The tract proposed for division was previously created through the use of an exemption.
 - (k) The proposed use of the family conveyance exemption would create more than one remainder parcel of less than 160 acres.
 - (l) The exempted parcel is being divided from a tract that was previously created through the use of an exemption, including remaining tracts of less than 160 acres.
 - (m) There must be no evidence at the time of review, indicating that the proposed new tract is intended to be sold.
 - (n) This exemption may not be used as an alternative to a proposed subdivision for which an application has been submitted.
 - (o) In accordance with 76-3-207(1)(b), MCA, the land proposed for a family conveyance exemption shall not be located within a subdivision platted since July 1, 1973.
- (3) The deed transferring the land shall accompany the COS at the time of recording.

b. Use for Agriculture (Agricultural Exemption)

(1) Statement of Intent

The intention of this exemption is to allow a landowner to create a parcel without local subdivision and sanitation review, where the land will be gifted, sold, or there is

an agreement to buy and sell the divided land, which will be used only for the raising of crops or livestock or for the preservation of open space, and where no residential, commercial or industrial buildings will be built.

(2) Permitted buildings

Agricultural sheds, outbuildings, and wells for stock watering are permitted, provided no sanitary facilities are required. Facilities for the commercial processing of agricultural products are prohibited.

(3) Required covenant

The parties to the transaction must enter into a covenant (A sample covenant is found running with the land and revocable only by mutual consent of the City Council and the landowner, that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by both the property owner and the buyer or lessee in the presence of a notary public.

(4) The application must be accompanied by draft deeds showing the name of the person(s) to whom the property is to be transferred and the proposed covenant to run with the land.

(5) A proposed division of land as an agricultural exemption may be declared to be an evasion of the Act if it is determined that one or more of the following conditions exist:

(a) Documentation of the intent to gift, sell, or an agreement to buy or sell the divided land is not included as supporting documentation with the application.

(b) The proposed covenant to run with the land is not included as supporting documentation with the application.

(c) The landowner has not demonstrated that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings have been or will be built on it.

(d) The parcel does not meet the criteria for an agricultural exemption under 15-7-202, MCA.

(6) Any change in use of the land for other than agricultural purposes subjects the division to review as a subdivision.

(7) Revocation of the agricultural exemption shall come only as a part of the City Council's approval of the division of land as a subdivision.

c. Relocation of Common Boundary (Boundary Adjustment)

(1) Statement of Intent

The intended purpose of this exemption is to allow a change in the location of a boundary line between two adjoining parcels and to allow a transfer of a tract to effect that change in location without local subdivision review.

(2) Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and the new boundary. This shall be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line. The appropriate landowner certification must be included on the certificate of survey.

(3) Where the boundary adjustment will affect more than one set of landowners, a certificate of survey showing the relocation of common boundary lines must be accompanied by a quitclaim deed from the adjoining property owner(s) for the newly described parcel or parcels. All affected landowners must sign the application for exemption.

(4) A proposed division of land as a boundary adjustment may be declared to be an evasion of the Act if it is determined that one or more of the following conditions exist:

(a) The boundary adjustment will result in the permanent creation of an additional parcel of land.

(b) The submitted documentation does not support the stated reason for relocation.

(c) The proposed relocation of common boundary lines significantly rearranges multiple parcels with little or no resemblance to the original parcel configuration.

b. Division to Provide Security for a Mortgages, Liens or Trust Indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.

(1) When this exemption is to be used, the landowner shall submit to the clerk and recorder a signed statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.

(2) Pursuant to 76-3-201(3), the land divided by this exemption may be of any size. Further, this exemption applies if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection

subjects the division of land to the subdivision review requirements outlined in Chapter II, except as provided in subsection b.(2)(a) below.

- (a) If a parcel of land located within the City was divided pursuant to the 76-3-201(1)(b), MCA and one of the parcels created by the division was conveyed by the landowner to another party without a foreclosure before October 1, 2003, the remaining parcel is not subject to the requirements of Subdivision and Platting Act.
- (3) A proposed division of land as mortgage exemption may be declared to be an evasion of the Act if it is determined that one or more of the following conditions exist:
- (a) More than one new building site will be created.
 - (b) The financing is not for construction or improvements on the exempted parcel, or for refinancing.
 - (c) The person named in the "statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed" is anyone other than the borrower of funds for construction or refinancing.
 - (d) Title to the exempted interest would not be initially obtained by the lending institution in the event of foreclosure.
 - (e) There exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract.
 - (f) It appears that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose.
 - (g) The division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.

VI-E SPECIAL REQUIREMENTS

1. County Treasurer

Division of lands under 76-3-207, MCA may not be made unless the Sanders County Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

2. Examining land surveyor

Pursuant to 76-3-611(2)(a), MCA, the City Council may require that certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the clerk and recorder. If an examining land surveyor has reviewed a certificate of survey or amended plat and found it to meet the surveying and filing requirements of the Montana Subdivision and Platting Act, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the certificate of survey or plat. The certificate or plat must be signed by the examining land surveyor. Fees for the examining land surveyor will be paid by the person submitting the plat or survey.