

ORDINANCE NO. 24-02

An Ordinance of the City Council of the City of Whitefish, Montana, amending Title 12, Subdivision Regulations, of the Whitefish City Code.

WHEREAS, in 2023, the City adopted amendments to Title 12, Subdivision Regulations, of the City Code to address changes to the Montana Subdivision and Platting Act made by the 2023 Montana Legislature through Senate Bills 131, 152, 158, 170, 323 and 331 and House Bills 211 and 874, and to address various housekeeping items; and

WHEREAS, the subdivision regulations were subsequently amended to address various topics; and

WHEREAS, staff initiated an effort to further amend the subdivision regulations to address changes made by the 2023 Montana Legislature through Senate Bill 130, and to address various housekeeping items; and

WHEREAS, a legal notice was published in the Whitefish Pilot on January 3, 2024; and

WHEREAS, on December 29, 2023, staff sent notices to twenty-one (21) reviewing agencies, departments and other service providers regarding the subdivision regulation amendments; and

WHEREAS, at a lawfully noticed meeting held on January 18, 2024, the Whitefish Community Development Board received an oral and written report from Planning staff, invited public comment and recommended approval of the proposed amendments to the subdivision regulations; and

WHEREAS, at lawfully notice meeting held February 5, 2024, the Whitefish City Council received oral and written reports from Planning staff regarding the proposed amendments to the subdivision regulations and invited public comment; and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants to adopt the proposed amendments to the subdivision regulations.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

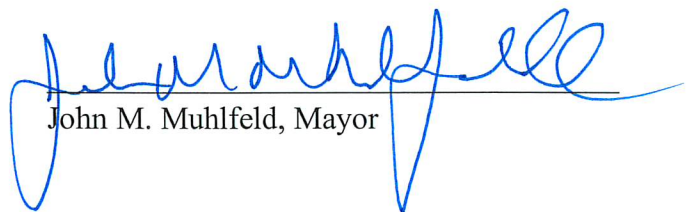
Section 2: Staff Report WSUB 24-01 dated January 11, 2024, together with letter of transmittal from the Whitefish Planning & Building Department dated January 30, 2024, are hereby adopted as Findings of Fact.

Section 3: The amendments to Title 12, Subdivision Regulations, as shown in Exhibit A are hereby adopted.

Section 4: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 5: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 20TH DAY OF FEBRUARY 2024.


John M. Muhlfeld, Mayor

ATTEST:


Michele Howke, City Clerk

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12-2-1: APPLICATION; FEES:

B. In order to cover costs of reviewing plans, advertising, holding public hearings and other expenses incidental to the review of a subdivision, the subdivider must pay a nonrefundable fee at the time of application. The fee schedule will be established by the city council. All application fees for preliminary and final plat applications will be due at the time of the subdivision application. If an application is terminated prior to the ~~planning board~~ community development board public hearing, the planning department may refund a portion of the application fee as determined by the planning director.

12-2-4: PUBLIC NOTICE:

A. The ~~planning board~~ community development board or city council will hold a public hearing on all applications when a public hearing is required by these regulations. The city council may require the ~~planning board~~ community development board to hold additional public hearing(s) if new information becomes available not considered at the previous public hearing. Public notice must follow the procedures under section 12-3-5 of this title for an expedited subdivision, section 12-3-6 of this title for a major subdivision or section 12-3-7 of this title for a minor subdivision or section 12-3-8 for an administrative minor subdivision ~~with a waiver~~.

B. Once the notice of the first scheduled public hearings before the ~~planning board~~ community development board and city council has been published, as required by these regulations, it is presumed interested persons are aware of the pending application and it will not be necessary to publish, post or mail a notice of subsequent hearings, if they are announced at a meeting of the ~~planning board~~ community development board or city council.

C. In order to allow sufficient time for reasonable comment and if the ~~planning board~~ community development board determines its decision would be affected by the members' fatigue, or should natural events occur which preclude the completion of the public hearing or deliberations, the board, by majority vote of those present, may continue the hearing to the next available meeting. This continued hearing is not a subsequent hearing, nor does it extend the time limits stated in these regulations without subdivider approval.

12-2-9: AMENDMENT OF SUBDIVISION REGULATIONS:

Before the city council amends these regulations, it will hold a public hearing on the proposed amendment(s). Notice of the time and place of the public hearing must be published in a newspaper of general circulation in the county not less than fifteen (15) days nor more than thirty (30) days before the date of the hearing. The city council may, at its discretion, ask for a recommendation from the ~~planning board~~ community development board and it may also direct the ~~planning board~~ community development board to hold a public hearing prior to city council action. In such event, a similar notice must be provided with respect to such hearing.

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12-3-4: REVIEW OF THE PRELIMINARY PLAT APPLICATION:

C. Acceptance Of The Preliminary Plat Application: Once a determination is made that an application contains sufficient information for review as provided in subsection B of this section and the application is accepted, it does not ensure the proposed subdivision will be approved or conditionally approved by the city council and it does not limit the ability of the planning department, ~~planning board~~community development board or city council to request additional information during the review process.

12-3-6: PRELIMINARY PLAT REVIEW PROCESS; MAJOR SUBDIVISIONS:

D. Action By The Planning Department: Upon receipt of the complete application the department must:

1. Distribute copies of the submitted application for review and comment to the appropriate departments, agencies and utility companies, as deemed necessary by the planning department;

2. Set a date for public hearing by the ~~planning board~~community development board and City Council and provide notification of the public hearing according to the following:

a. Notice of the time, date and location of the initial ~~planning board~~community development board and city council hearings must be published in a newspaper of general circulation in the city not less than fifteen (15) days prior to the date of the hearing, exclusive of the date of notice and the date of hearing.

b. The subdivider and the adjoining property owner of record included in the subdivision plat excluding any right of way must be notified of the initial hearing by registered or certified mail and each property owner of record beyond the adjacent property owners within three hundred feet (300') of the land must be notified by first class mail not less than fifteen (15) working days prior to the date of the ~~planning board~~community development board hearing, exclusive of the date of notice and the date of hearing. The notice must include the date, time and location of both the ~~planning board~~community development board and city council public hearings, a site plan and city staff contact information. The notice must also include instructions for submitting public comments. All written comments and documents regarding the subdivision must be submitted to the planning director, rather than to the ~~planning board~~community development board or city council directly, to be forwarded to the hearing body.

c. A notice must be posted by the planning department in a conspicuous place on the site at least fifteen (15) working days prior to the public hearing and must remain on the subject parcel until all the public hearings are complete. It is the responsibility of the applicant to ensure the sign is maintained in place during the entire public review process.

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3. Review the submitted plat and supplemental information to determine compliance with these regulations and prepare a report which will include comments received from other departments, agencies and utility companies, findings of fact concerning the public interest, conditions and recommendations;

4. Submit the application, staff report and associated agency and public comments to the ~~planning board~~community development board members and to the subdivider at least five (5) days prior to the initial ~~planning board~~community development board hearing;

5. Present the application and staff report at the hearing.

E. Action By The ~~Planning Board~~Community Development Board: When reviewing an application for preliminary plat, the ~~planning board~~community development board must:

1. Review the application, planning department staff report, comments from other departments and other supplemental information;

2. Hold public hearing(s) and receive public comments;

3. Prepare and adopt written findings of fact. Such findings of fact must be based on the following evaluation criteria:

a. Conformance with the following:

(1) The subdivision regulations including, but not limited to, the current city of Whitefish engineering standards;

(2) The Whitefish zoning regulations;

(3) Other applicable policies, ordinances and regulations;

(4) The Whitefish city-county growth policy; and

(5) The Montana subdivision and platting act.

b. Effects on agriculture and agricultural water user facilities;

c. Effects on local services;

d. Effects on the natural environment;

e. Effects on wildlife and wildlife habitat;

f. Effects on public health and safety; and

g. Proposed mitigation of impacts.

4. Based on the above findings, make a recommendation to the city council to approve, conditionally approve or deny the preliminary plat. The ~~planning~~

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~~board~~ community development board, at its discretion, may choose to not make a recommendation:

a. A recommendation for approval may incorporate reasonable conditions of mitigation to reasonably minimize potentially significant adverse impacts identified above.

b. When requiring conditions of mitigation, the ~~planning board~~ community development board must consult with the subdivider and must give due weight and consideration to the expressed preference of the subdivider for the mitigation of potential adverse impacts.

c. A recommendation for denial may not be based solely on its impact on educational services.

5. Within ten (10) working days after the public hearing, the ~~planning board~~ community development board must submit the following in writing to the subdivider and the city council:

a. Recommended findings of fact based on the evaluation criteria in these regulations that discuss and consider the subdivision's compliance with and potential impacts;

b. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;

c. A recommendation for approval or denial of any requested variances; and

d. A finding as to whether any public comments or documents presented for consideration at the ~~planning board~~ community development board's public hearing constitute significant information or analysis of information the public has not had a reasonable opportunity to examine and comment.

F. Action By The City Council: Upon receipt of the ~~planning board~~ community development board recommendation, the city council must:

1. Review the application, ~~planning board~~ community development board recommendation, staff report, public comments, and other related information;

2. Hold public hearing(s), as may be required or deemed appropriate, and receive public comments;

3. Adopt the written findings of fact as presented by the ~~planning board~~ community development board, amend these findings or make and adopt new written findings of fact. Such findings must be based on the following:

a. Conformance with the following:

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(1) The subdivision regulations including, but not limited to, the current city of Whitefish engineering standards;

(2) The city of Whitefish zoning regulations;

(3) Other applicable policies, ordinances and regulations;

(4) The Whitefish city-county growth policy;

(5) The Montana subdivision and platting act.

b. Effects on agriculture and agricultural water user facilities;

c. Effects on local services;

d. Effects on the natural environment;

e. Effects on wildlife and wildlife habitat;

f. Effects on public health and safety; and

g. Proposed mitigation of impacts.

4. Based on the above findings, the city council must then approve, conditionally approve, or deny the preliminary plat according to the time frames in subsection 12-3-4D2 of this chapter unless the subdivider consents to an extension of the review period. A subdivision cannot be denied based solely on its impacts on educational services.

12-3-8: PRELIMINARY PLAT ADMINISTRATIVE REVIEW PROCESS; MINOR SUBDIVISIONS:

B. Action By The Planning Department: Upon receipt of a complete application for administrative preliminary plat and subsequent to a preapplication conference, the planning department will consider the administrative preliminary plat request based on the above criteria. If the above criteria are met and the application is complete according to 12-3-4, the planning department must:

2. A notice must be posted by the planning department in a conspicuous place on the site at least fifteen (15) working days prior to the date of decision on the administrative preliminary plat ~~waiver~~ request.

3. Written comments from adjacent property owners expressing concerns or objections, if any, must be specific stating the granting of the administrative preliminary plat ~~waiver~~ would adversely or injuriously affect their personal and/or legal interests.

12-3-11: MODIFICATIONS TO PRELIMINARY PLAT; NEW INFORMATION OR AMENDMENTS TO PLATS:

A. Receipt Of New Information:

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4. If a subsequent public hearing before the ~~planning board~~community development board is held, as required by these regulations, it must be held within forty five (45) days of the city council's determination. Only the new information or analysis of information must be considered at the subsequent public hearing.

a. A public hearing must be held in accordance with the procedures outlined in these regulations.

b. The review period pursuant to subsection 12-3-4 D of this chapter is suspended as of the date of the city council's action. The review period resumes on the date of the city council's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

B. Revisions To The Preliminary Plat After ~~Planning Board~~Community Development Board Hearing; Minor Changes Or Changes In Response To The Public Hearing: If the subdivider proposes mitigation measures reasonably designed to lessen impacts of the proposed subdivision or to address the recommendations from the ~~planning board~~community development board, the public, other agencies, or the planning department prior to city council consideration, the city council may determine such mitigation measures do not necessitate a subsequent hearing by the ~~planning board~~community development board.

1. Minor or insignificant amendments to the preliminary plat application proposed by the subdivider prior to city council consideration must be submitted to the planning director for a minor amendment determination.

C. Revisions To The Preliminary Plat After ~~Planning Board~~Community Development Board Hearing; Major Changes: If, after the ~~planning board~~community development board public hearing, the subdivider decides to make significant amendments to address recommendations from the ~~planning board~~community development board, the public and other agencies or for other reasons the preliminary plat must be reconsidered by the ~~planning board~~community development board at another public hearing. Significant amendments to the preliminary plat include, but are not limited to, the following:

1. Increasing the number of lots;
2. Significant changes to the road systems or layout;
3. The elimination or reduction of park land, open space or common areas;
4. Significant changes to the location of buildings, access or parking;
5. Other items that significantly alter the plat, as determined by the planning director.

D. Significant Amendments To Preliminary Plat; Waiver; Public Hearing: Should the subdivider decide to make significant amendments to the preliminary plat, the planning department must be notified in writing within seven (7) working days of the public

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hearing. The letter must include a waiver to the required review time frames in subsection 12-3-4 D of this chapter. A second public hearing will be held by the ~~planning board~~ community development board at the next available meeting date.

E. City Council Consideration: If no written request to amend the preliminary plat is received by the planning department within seven (7) working days of the ~~planning board~~ community development board public hearing, the preliminary plat will be forwarded to the city council for consideration.

12-3-12: FINAL PLAT PROCESS:

J. Changes To The Final Plat: Insignificant changes which have a minimal impact on the scale or scope of the project or immediate neighborhood must be so noted in the planning department report to the City Council. Changes which either the planning director or the city council determines to be substantial must be returned to the ~~Planning Board~~ Community Development Board for rehearing and consideration as amendments to the original preliminary plat following procedures outlined in these regulations. The time frames identified in section 12-3-4D of this chapter apply to amended preliminary plats. Substantial changes would include:

1. The reconfiguration or rearrangement of six (6) or more lots;
2. Increasing the number of lots;
3. Significant changes to the road systems or layout;
4. The elimination of park land, open space or common areas;
5. Changes to the location of buildings, access or parking.

12-4-7: WATER QUALITY PROTECTION AREAS IDENTIFICATION AND PROTECTION; WETLANDS, STREAMS, LAKES AND THE WHITEFISH RIVER:

F. Density will be calculated based on the gross acreage of the site. Where development is partly prohibited due to the presence of water quality protection areas, the subdivider may be permitted to transfer up to one hundred percent (100%) of the density attributable to the undevelopable area of the property to another portion of the same property, where the planning director and ~~planning board~~ community development board finds it is consistent with the city-county growth policy and section 11-3-29, "Water Quality Protection," of this code.

TERMS DEFINED 12-6-1

COMMUNITY DEVELOPMENT BOARD: The Whitefish community development board, formed pursuant to Title 76, Chapter 25, Montana Code Annotated.

~~PLANNING BOARD: The Whitefish planning board, formed pursuant to Title 76, Chapter 1, Montana Code Annotated.~~