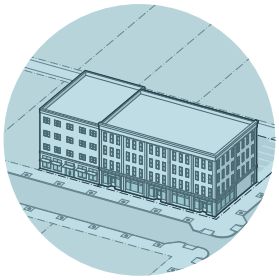
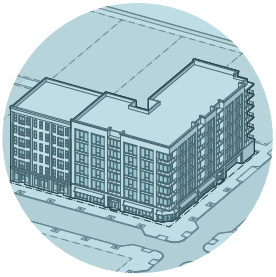
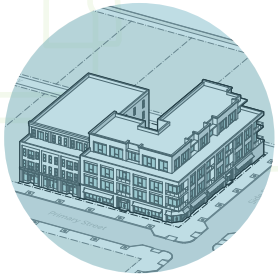
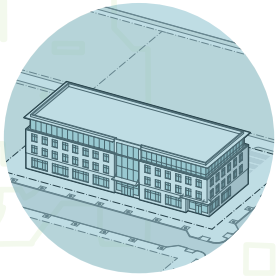
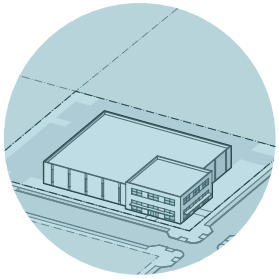
BUILDING OUR FUTURE TOGETHER



CHAPTER 38

BOZEMAN DEVELOPMENT CODE

MT BZN

ORDINANCE 2151 ADOPTION DRAFT
DECEMBER 16, 2025

CONTENTS

ARTICLE 1. - GENERAL PROVISIONS 1-1

Division 38.100. - In General 1-2
Division 38.110. - Adopted Plans, Standards and Resolutions 1-5

ARTICLE 2. - ZONING DISTRICTS 2-1

Division 38.200. - Zoning Districts and Map 2-3
Division 38.210. - Residential Districts 2-6
Division 38.220. - Commercial and Mixed Use Districts 2-17
Division 38.230. - Industrial Districts 2-38
Division 38.240. - Special Districts 2-46
Division 38.250. - Planned Development 2-57
Division 38.260. - Rules of Interpretation 2-76

ARTICLE 3. - LAND USE 3-1

Division 38.300. - Allowed Uses 3-3
Division 38.310. - General Use Standards 3-8
Division 38.320. - Specific Use Standards 3-12
Division 38.330. - Wireless Facilities 3-42
Division 38.340. - Affordable Rental Housing 3-52

ARTICLE 4. - COMMUNITY DESIGN 4-1

Division 38.400. - Transportation Facilities and Access 4-2
Division 38.410. - Community Design and Elements 4-17
Division 38.420. - Park and Recreation Requirements 4-32

ARTICLE 5. - PROJECT DESIGN 5-1

Division 38.500. - Introduction 5-4
Division 38.510. - Site Planning and Design Elements 5-7
Division 38.520. - Building Design 5-21
Division 38.530. - Parking 5-33
Division 38.540. - Landscaping 5-53
Division 38.550. - Signs 5-65
Division 38.560. - Lighting 5-82

ARTICLE 6. - NATURAL RESOURCE PROTECTION 6-1

Division 38.600. - Floodplain Regulations 6-3
Division 38.610. - Wetland Regulations 6-30
Division 38.620. - Watercourse Setbacks. 6-38

DEGREE OF CHANGE BY ARTICLE

EDITORIAL CHANGES | MINOR CHANGES | MAJOR CHANGES

ARTICLE 7. - PERMITS, LEGISLATIVE ACTIONS AND PROCEDURES 7-1
Division 38.700. - Jurisdiction and Scope of Authority 7-5
Division 38.710. - Submittal Materials and Requirements 7-14
Division 38.720. - Supplementary Documents 7-56
Division 38.730. - Noticing. 7-60
Division 38.740. - Plan Review 7-63
Division 38.750. - Subdivision Procedures 7-80
Division 38.760. - Appeals, Deviations, Departures and Variance Procedures 7-104
Division 38.770. - Text and Zoning Map Amendments 7-113
Division 38.780. - Improvements and Securities 7-116
Division 38.790. - Nonconforming Situations 7-134

ARTICLE 8. - DEFINITIONS 8-1
Division 38.800. - Terms and Interpretation 8-2

DEGREE OF CHANGE BY ARTICLE

EDITORIAL CHANGES | MINOR CHANGES | MAJOR CHANGES

ARTICLE 1. -

GENERAL PROVISIONS

DIVISION 38.100. - IN GENERAL 1-2

Sec. 38.100.010. - Citation..... 1-2
Sec. 38.100.020. - Authority..... 1-2
Sec. 38.100.030. - Jurisdictional area and application..... 1-2
Sec. 38.100.040. - Purpose of chapter. 1-2
Sec. 38.100.050. - Interpretation as minimum requirements..... 1-2
Sec. 38.100.060. - Donations or grants to public considered a grant to donee. 1-3
Sec. 38.100.070. - Conditions of approval applicable to both zoning and subdivision review..... 1-3
Sec. 38.100.080. - Compliance with regulations required..... 1-4
Sec. 38.100.090. - Development that lies within multiple jurisdictions..... 1-4
Sec. 38.100.100. - Private restrictions and city required covenants..... 1-4
Sec. 38.100.110. - Severability..... 1-4

DIVISION 38.110. - ADOPTED PLANS, STANDARDS AND RESOLUTIONS 1-5

Sec. 38.110.010. - Documents adopted by reference. 1-5
Sec. 38.110.020. - Figures..... 1-5

DIVISION 38.100. - **IN GENERAL**

Sec. 38.100.010. - **Citation.**

This document is the Unified Development Code for the city of Bozeman, and is referred to or cited throughout the document as "this chapter."

Sec. 38.100.020. - **Authority.**

This chapter is adopted by authority of MCA 76-25. Additional city authority is granted by various other sections of state law and the authority granted by those sections is incorporated in this chapter.

Sec. 38.100.030. - **Jurisdictional area and application.**

This chapter governs the division, development and use of land within the city limits and lands proposed for annexation to the city. This chapter applies to all private and public lands, all uses, and all structures and buildings over which the city has jurisdiction under the constitution and laws of the state or pursuant to the city's powers.

Sec. 38.100.040. - **Purpose of chapter.**

A. The purpose of this chapter is to protect the public health, safety and general welfare; to recognize and balance the various rights and responsibilities relating to land ownership, use, and development and other rights identified in the United States and State of Montana constitutions, and statutory and common law, comply with the Montana Land Use Planning Act as may be amended from time to time; to implement the city's adopted land use plan; and to meet all requirements of law. Further, it is the purpose of this chapter to exercise to the fullest extent the authority of the city's Charter, utility, and all other powers.

Sec. 38.100.050. - **Interpretation as minimum requirements.**

A. In their interpretation and application, the provisions of this chapter are minimum requirements adopted for the promotion of the health, safety and general welfare of the community. In some instances the public interest will be best served when the minimums are exceeded. The review authority must provide findings and sufficient evidence in support of a requirement to exceed the minimum standards. Wherever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules or regulations of federal, state, or local government, or wherever there is an internal conflict within this chapter, the most restrictive or most specific requirements, or those imposing the higher standards, govern.

B. In the case of a difference of meaning or implication between the text of this chapter and the captions or headings for each section, the text controls. Statements of intent or purpose are not regulatory.

C. When interpreting the meaning of this chapter, subsections of the chapter must be construed in a manner that will give effect to them all as the chapter derives its meaning from the entire body of text taken together.

D. This chapter applies uniformly within each zoning district to each class or kind of structure, land or development.

E. Graphics are provided to enable understanding of the adopted text. In the event of a conflict between the text and graphic, the text controls.

Sec. 38.100.060. - **Donations or grants to public considered a grant to donee.**

Every donation or grant to the public or to any person, society or corporation marked or noted on a plat or plan is a grant to the donee.

Sec. 38.100.070. - **Conditions of approval applicable to both zoning and subdivision review.**

A. Regulation of the subdivision and development of land, and the attachment of reasonable conditions to land subdivided or developed, or a use undertaken, is an exercise of valid police power delegated by the state to the city. Persons undertaking the subdivision, development or use of land have the duty of complying with reasonable conditions for design, dedication, improvement and restrictive use of the land so as to conform to the physical and economic development of the city, and to the health, safety, and general welfare of the future lot owners and of the community at large. Such conditions may require compliance with more than the minimum standards established by this chapter.

B. Compliance with the requirements and procedures of this chapter or other duly adopted applicable law, standard, or procedure does not constitute a condition of approval and is not affected by the limitations of subsection C of this section or other process limitations on conditions of approval.

C. Conditions of approval may not be added after final action, including the resolution of appeals, to grant preliminary approval to a proposed subdivision or other development unless:

1. The conditions are necessary to correct inaccurate or incomplete information provided with an application, which error is discovered after the preliminary approval action; and

2. The project is not completed within the time period provided in the approval or by this chapter and the applicant requests an extension of the approval period; or

3. The requirement is part of an improvements agreement and security for completion of required improvements prior to filing a final plat or other development.

D. Should the owner seek material modifications (e.g., changes to the purpose, nature, or scope of a development, infrastructure, or other necessary improvements) to a previously approved development, or requests to change a condition of approval, the entire application is again opened for review and additional conditions may be applied. Modifications of conditions of approval must be reviewed through the same process as the original application. Modifications within the scope of 38.740.120 and not affecting conditions of approval are not material modifications.

E. Exception. Upon written request of the developer, the review authority may amend conditions of approval where errors or changes beyond the control of the developer have rendered a condition unnecessary, impossible, or illegal as set forth below. Changes to conditions that are not unnecessary, impossible, or illegal are subject to the provisions of paragraph D of this section.

1. The written request must be submitted to the community development department.

2. The written consent of all purchasers of land (via contract for deed, etc.) must be included with the written request to amend conditions.

3. Public notice of the revision must be given in accordance with the type and scope of notice for the original application as required by this chapter.

4. The review authority may approve the requested change within 10 business days of the close of any public comment period if it meets the criteria set forth in this chapter.

5. The review authority must issue written findings of fact as required in this chapter for the original application.

Sec. 38.100.080. - **Compliance with regulations required.**

A. No land may be subdivided, used or occupied, and no building, structure or part of a building or structure may be erected, constructed, reconstructed, moved or structurally altered, and no development may commence unless it is in conformity with all of the applicable regulations specified for the district in which it is located. It is the obligation of the person proposing the development to demonstrate compliance with all applicable standards and regulations.

B. To the extent reasonable, all city-owned land is subject to applicable regulations of the underlying zoning district.

Sec. 38.100.090. - **Development that lies within multiple jurisdictions.**

If a proposed development lies partly within the city and partly within unincorporated Gallatin County, the proposed development must be submitted to and approved by both the city and the county.

Sec. 38.100.100. - **Private restrictions and city required covenants.**

A. The city has no duty to enforce private restrictions or advise of their existence.

B. The city may enforce a covenant or restriction if the city is a party to the covenant or restriction, if the covenant or restriction was required by the city, or if it was relied upon by the city during the land development process to meet the requirements of this chapter or another required standard.

C. The city may prohibit private restrictions that violate applicable law.

D. Covenants are subject to the requirements of *38.720.030*.

Sec. 38.100.110. - **Severability.**

A. Where any word, phrase, clause, sentence, paragraph, or section or other part of this chapter is held invalid by a court of competent jurisdiction by express inclusion in the decision to be invalid, the judgment will affect only that part held invalid and the decision will not affect, impair or nullify this chapter as a whole or any other part of this chapter.

B. If this chapter is more restrictive than any other applicable law, this chapter controls, and if any other law is more restrictive, the more restrictive standard takes precedence over a standard in this chapter.

DIVISION 38.110. - **ADOPTED PLANS, STANDARDS AND RESOLUTIONS**

Sec. 38.110.010. - **Documents adopted by reference.**

Administrative manuals, resolutions, standards, or other documents are referenced by title in this Chapter and are hereby incorporated by this reference. Such documents have the meaning, scope, and authority granted by this chapter and identified in the document.

Sec. 38.110.020. - **Figures.**

The figures in this chapter are for illustrative purposes only and do not constitute regulatory standards. Figures may be revised, replaced, or added by administrative order issued by the community development director.

ARTICLE 2. -

ZONING DISTRICTS

DIVISION 38.200. - ZONING DISTRICTS AND MAP 2-3

Sec. 38.200.010. - Purpose. 2-3
Sec. 38.200.020. - Districts designated, zoning map adopted. 2-3
Sec. 38.200.030. - Official zoning map. 2-4
Sec. 38.200.040. - Zoning district boundaries. 2-4
Sec. 38.200.050. - Zoning of annexed territory. 2-5

DIVISION 38.210. - RESIDENTIAL DISTRICTS 2-6

Sec. 38.210.010. - Purpose. 2-6
Sec. 38.210.020. - R-A [Residential-A] 2-8
Sec. 38.210.030. - R-B [Residential Mixed Use-B] 2-10
Sec. 38.210.040. - R-C [Residential Mixed Use-C] 2-12
Sec. 38.210.050. - R-D [Residential Mixed Use-D] 2-14

DIVISION 38.220. - COMMERCIAL AND MIXED USE DISTRICTS 2-17

Sec. 38.220.010. - Purpose. 2-17
Sec. 38.220.020. - B-1 [Local Service Mixed use] 2-20
Sec. 38.220.030. - B-2 [Community Business] 2-22
Sec. 38.220.040. - B-2M [Community Mixed use] 2-24
Sec. 38.220.050. - B-3 [Downtown Mixed use] 2-26
Sec. 38.220.060. - B-3C [Downtown Core] 2-28
Sec. 38.220.070. - REMU [Residential Emphasis Mixed use] 2-30
Sec. 38.220.080. - NEHMU [Northeast Historic Mixed use] 2-34

DIVISION 38.230. - INDUSTRIAL DISTRICTS 2-38

Sec. 38.230.010. - Purpose. 2-38
Sec. 38.230.020. - B-P [Business Park] 2-40
Sec. 38.230.030. - M-1 [Light Manufacturing] 2-42
Sec. 38.230.040. - M-2 [Manufacturing & Industrial] 2-44

DIVISION 38.240. - SPECIAL DISTRICTS 2-46

Sec. 38.240.010. - PLI [Public Lands & Institutions] 2-46
Sec. 38.240.020. - NCOD [Neighborhood Conservation Overlay District] 2-47

DIVISION 38.250. - PLANNED DEVELOPMENT 2-57
Sec. 38.250.010. - PDZ [Planned Development Zone] 2-57
Sec. 38.250.020. - Legacy Planned Unit Developments 2-72

DIVISION 38.260. - RULES OF INTERPRETATION 2-76
Sec. 38.260.010. - General provisions 2-76
Sec. 38.260.020. - Lot size. 2-79
Sec. 38.260.030. - Density. 2-80
Sec. 38.260.040. - Coverage. 2-82
Sec. 38.260.050. - Streetscape. 2-89
Sec. 38.260.060. - Setbacks 2-91
Sec. 38.260.070. - Transitions. 2-96
Sec. 38.260.080. - Frontage. 2-100
Sec. 38.260.090. - Parking location. 2-104
Sec. 38.260.100. - Vertical massing. 2-106
Sec. 38.260.110. - Horizontal massing. 2-112
Sec. 38.260.120. - Activation 2-115
Sec. 38.260.130. - Floor height. 2-117
Sec. 38.260.140. - Windows. 2-121
Sec. 38.260.150. - Entrances. 2-128
Sec. 38.260.160. - Supplemental standards. 2-133

DIVISION 38.200. - **ZONING DISTRICTS AND MAP**

Sec. 38.200.010. - **Purpose.**

Individual zoning districts are adopted for the purposes described in *38.100.040*. Furthermore:

A. A variety of districts is established to provide locations for the many uses needed within a healthy and dynamic community.

B. Each district, in conjunction with other standards incorporated in this chapter, establishes allowable uses of property, separates incompatible uses, and sets certain standards for use of land.

C. This provides predictability and reasonable expectation in use of land within particular zoning designations and sites.

D. The zoning provisions implement the community goals and objectives that are contained in the city's adopted land use plan.

E. Zoning districts and the zoning map communicate the City's expectation for land use in each particular district.

Sec. 38.200.020. - **Districts designated, zoning map adopted.**

A. The city is divided into zoning districts, as shown on the official zoning map which, together with all explanatory matter, is adopted by this reference and declared to be a part of this chapter.

B. The purpose statement for a zoning district does not constitute regulatory standards but should be used to guide the application of future zone map amendments. The purpose statements should be used to guide interpretation and application of land use regulations within each zoning district, and any changes to the range of permitted uses within each zoning district through text amendments to this chapter.

C. It is presumed that development consistent with the standards of a zoning district is not detrimental to adjacent uses within that district or a different district.

D. For the purpose of this chapter, the city is divided and classified into the following zoning districts:

RESIDENTIAL DISTRICTS	
R-A	Residential Low
R-B	Residential Mixed Use Low-Medium
R-C	Residential Mixed Use Medium
R-D	Residential Mixed Use High
COMMERCIAL AND MIXED-USE DISTRICTS	
B-1	Local Service Mixed Use
B-2	Community Business
B-2M	Community Mixed Use

B-3	Downtown Mixed Use
B-3C	Downtown Mixed Use Core
REMU	Residential Emphasis Mixed Use
NEHMU	Northeast Historic Mixed Use
INDUSTRIAL DISTRICTS	
B-P	Business Park
M-1	Light Manufacturing
M-2	Manufacturing and Industrial
SPECIAL DISTRICTS	
PLI	Public Lands and Institutions
NCOD	Neighborhood Conservation Overlay District
PLANNED DEVELOPMENT DISTRICTS	
PDZ	Planned Development Zone

E. Placement of any given zoning district on an area depicted on the zoning map indicates a judgment on the part of the city that the range of uses allowed within that district are generally acceptable in that location. It is not a guarantee of approval for any given use prior to the completion of the appropriate review procedure and compliance with all of the applicable requirements and development standards of this chapter and other applicable policies, laws and ordinances. It is also not a guarantee of immediate infrastructure availability or a commitment on the part of the city to bear the cost of extending services.

Sec. 38.200.030. - **Official zoning map.**

A. The location and boundaries of zoning districts established by this chapter are shown and maintained as part of the City's Geographic Information System (GIS). The GIS Zoning layer constitutes the city of Bozeman's official zoning map.

B. At the direction of the city commission after following the procedures of *38.770*, the director is authorized to revise the official zoning map. No unauthorized person may alter or modify the official zoning map.

C. The community development department must maintain digital or printed copies of the official zoning map and maintain records of superseded official maps.

Sec. 38.200.040. - **Zoning district boundaries.**

A. When establishing a zoning district boundary, the following guidelines must be considered:

1. Boundaries adjacent to the city limits must be taken to the city limits.

2. Zoning districts are discouraged from dividing an individual parcel or block.

3. When a parcel intended for future subdivision is proposed to include two or more districts the boundary placement should approximately follow the anticipated centerline of streets, highways or alley, or other visible physical feature where such information is available.

B. Where uncertainty exists as to the boundaries of districts as shown on the official zoning map, the boundaries must be interpreted as following the nearest logical line to that shown:

1. Boundaries indicated as approximately following city limits must be construed as following the city limits;

2. Boundaries indicated as approximately following platted lot lines must be construed as following those lot lines; and

3. When a parcel subject to two or more districts is subdivided and the district boundary is near a new parcel boundary the district must be construed to follow the new boundary.

    a. Boundaries indicated as approximately following the centerline of streets, highways or alleys must be construed to follow such centerlines;

    b. Boundaries indicated as following the centerline of streams, rivers, canals or ditches must be construed to follow the centerlines of the stream, river, canal or ditch; and

    c. Boundaries indicated as parallel to or extensions of features indicated on the official zoning map must be determined by the scale of the map.

C. Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or where other circumstances or controversy arise over district boundaries, the community development director must interpret the district boundary. The interpretation is subject to appeal per *38.760*.

D. Where district boundaries divide a lot or parcel into two or more districts, the following rule applies:

1. For the purpose of determining permitted uses and development form and intensity, the community development director may allow minor adjustments (up to 10 % increase or decrease in area, not to exceed one acre, of either zone on the applicable lot) to the zoning boundary. The criteria for making such a determination must include an evaluation of the future land use map of the land use plan, site topography, proximity of non-compatible uses adjacent to the subject property, and overall function and integration of the development with the community.

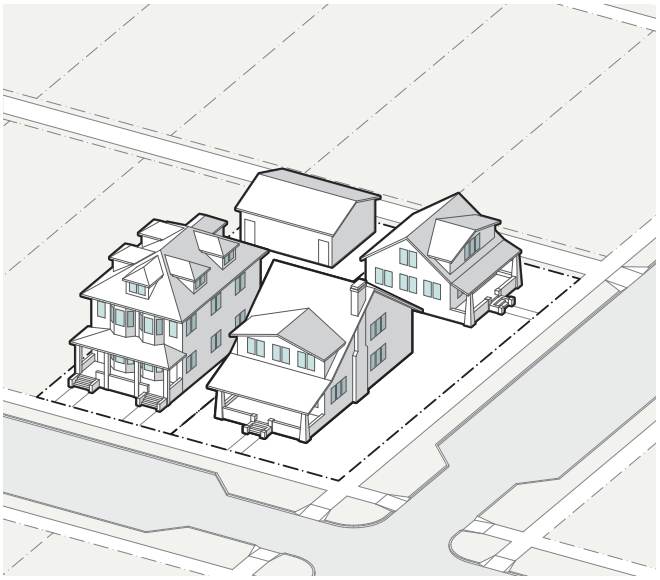
Sec. 38.200.050. - **Zoning of annexed territory.**

All territory annexed to the city must, in conjunction with the annexation, be the subject of a zone map amendment in order to be designated and assigned to a municipal zoning district; or, the city commission may establish by resolution default zones to apply upon annexation based on the future land use map of the adopted land use plan.

DIVISION 38.210. - **RESIDENTIAL DISTRICTS**

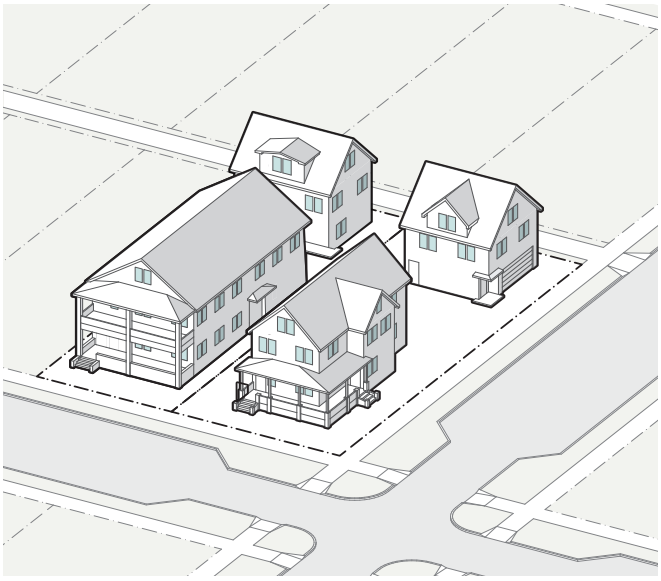
Sec. 38.210.010. - **Purpose.**

The purpose of the Residential Districts is to establish areas within the city that are primarily residential in character and to create standards for development within those areas, while allowing for a variety of housing types and complementary nonresidential uses.



A. R-A Residential-A

1. The R-A district is intended primarily to accommodate a variety of residential housing options including single-unit dwellings, accessory dwelling units (ADUs), duplexes, townhouses, and rowhouses with up to 2 units.
2. Compatible group residential, cultural, park, open space, utility, and day care uses supplement allowed residential uses.



B. R-B Residential Mixed Use-B

1. The R-B district is intended primarily to accommodate a variety of residential housing options including single-unit dwellings, accessory dwelling units (ADUs), duplexes, townhouses, rowhouses, triplexes, fourplexes, and multi-unit dwellings with up to 8 units.
2. Compatible group residential, cultural, park, open space, utility, and day care uses supplement allowed residential uses.

C. R-C Residential Mixed Use-C

1. The R-C district is intended primarily to accommodate a variety of residential housing options including single-unit dwellings, accessory dwelling units (ADUs), duplexes, townhouses, rowhouses, triplexes, fourplexes, and multi-unit dwellings with up to 24 units.

2. Compatible group residential, cultural, park, open space, utility, and day care uses supplement allowed residential uses. Neighborhood-serving day care, medical and office uses are also allowed but are limited in scale.

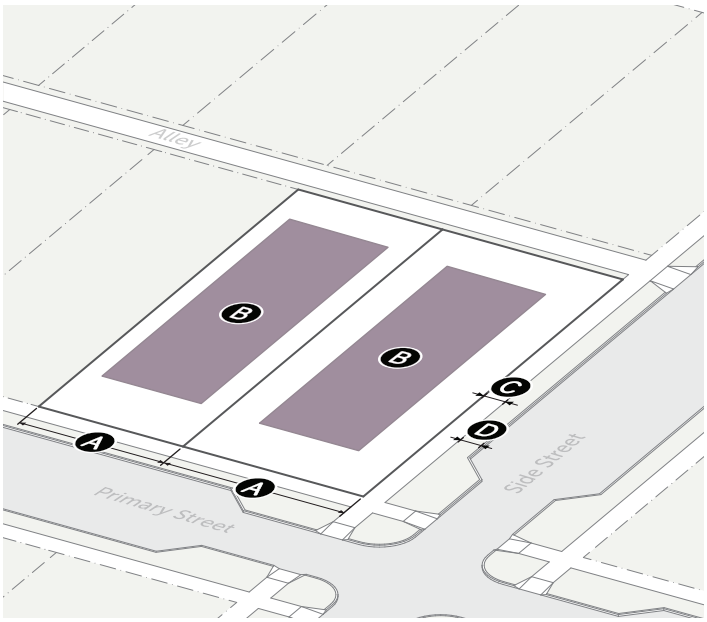
D. R-D Residential Mixed Use-D

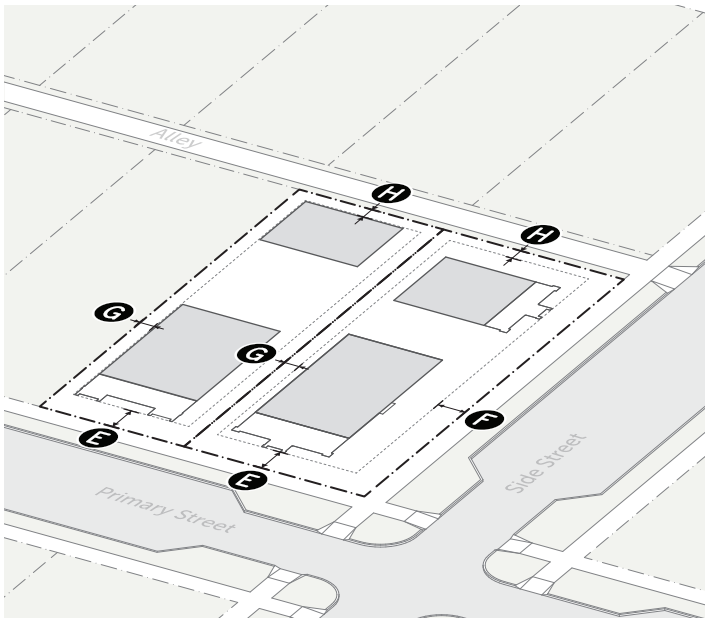
1. The R-D district is intended primarily to accommodate a variety of residential housing options including single-unit dwellings, accessory dwelling units (ADUs), duplexes, townhouses, rowhouses, triplexes, fourplexes, and multi-unit dwellings.

2. Compatible group residential, cultural, park, open space, utility, and day care uses supplement allowed residential uses. Neighborhood-serving day care, medical, office, personal service, restaurant and retail uses are also allowed but are limited in scale.

SEC. 38.210.020. - R-A [RESIDENTIAL-A]

A. Lot Standards



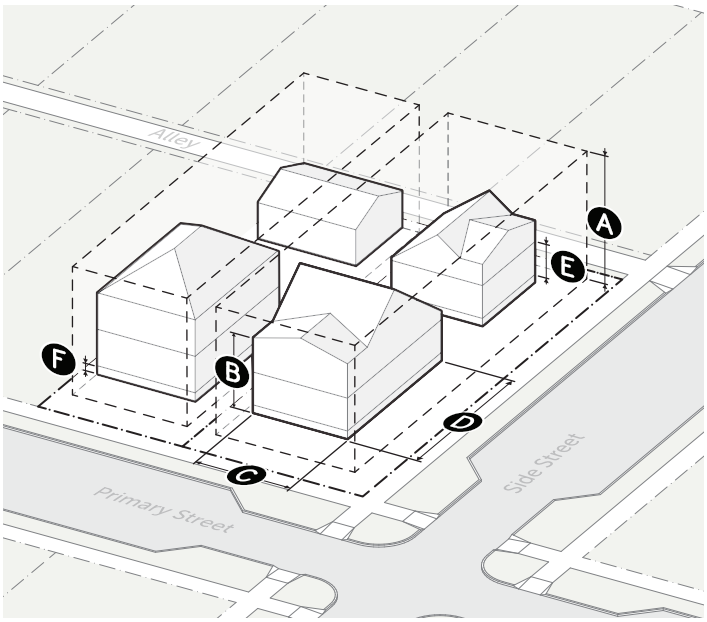


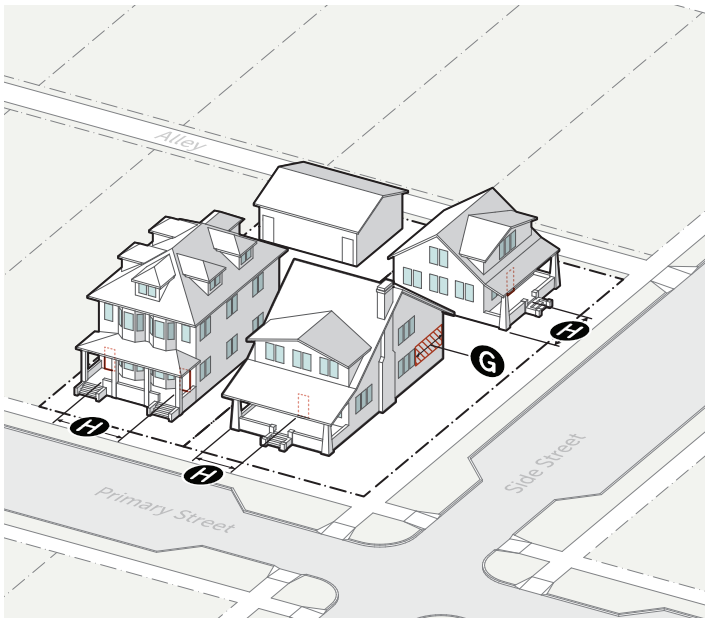
Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	
Townhouse	15'
All other structures	25'
2. **Density**	*Sec. 38.260.030*
Minimum density per net acre	6 du/a
3. **Coverage**	*Sec. 38.260.040*
B Building coverage (max)	40%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	n/a
4. **Streetscape**	*Sec. 38.260.050*
C Sidewalk width (min)	5'
D Boulevard strip width (min)	5'
Type	Landscape
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min)	10'
F Side street (min)	10'
Street-facing garage (min)	20'
G Side (min)	
Townhouse - common wall	0'
Townhouse - exterior wall	5'
All other structures	5'
Rear (min)	10'
H Alley (min)	5'
6. **Transitions**	*Sec. 38.260.070*
Building setback and height transitions	n/a
7. **Frontage**	*Sec. 38.260.080*
Build-to	n/a
8. **Parking Location**	*Sec. 38.260.090*
Primary street setback	Not allowed
Side street setback	Not allowed
Side setback	Not allowed
Rear/alley setback	Allowed

B. Building Standards



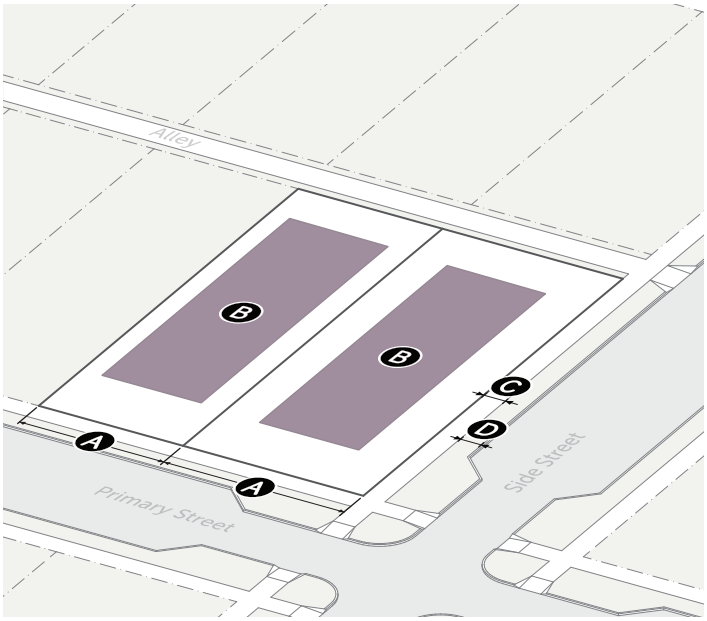


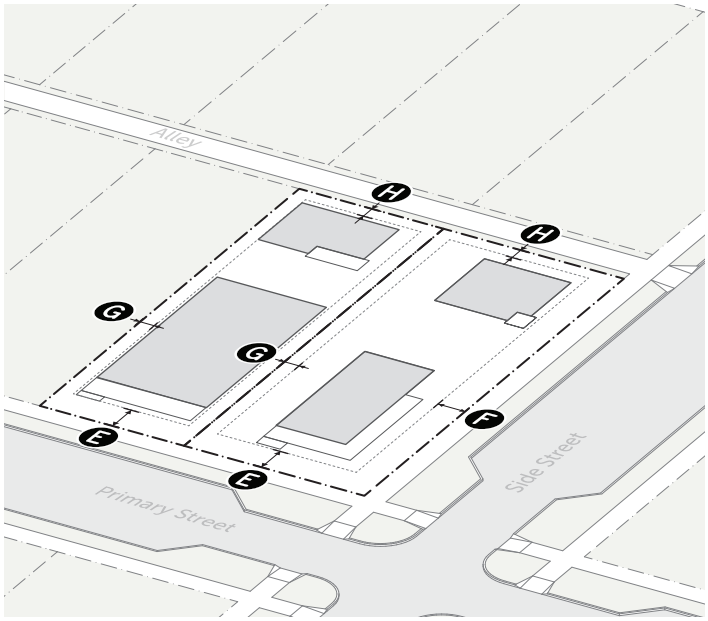
Refer to Sec. 38.260 for a description of each building standard

		Primary St.	Side St.
1. Vertical Massing	*Sec. 38.260.100*		
A Building height (max)	40'		
B Wall plate height (max)	22'		
2. Horizontal Massing	*Sec. 38.260.110*		
Dwelling units per building (max)	2		
C Building width: primary street (max)	80'		
D Building width: side street (max)	80'		
3. Activation	*Sec. 38.260.120*		
Active depth (min)	n/a		
4. Floor Height	*Sec. 38.260.130*		
E Ground story height (min)	9'		
F Ground floor elevation (min/max)	-2'/5'		
5. Windows	*Sec. 38.260.140*		
Ground story (min)		n/a	n/a
Upper story (min)		n/a	n/a
G Blank wall width (max)		n/a	n/a
6. Entrances	*Sec. 38.260.150*		
H Street-facing entry spacing (max)		Encouraged but not required	
Entry feature		Encouraged but not required	
Options		Encouraged but not required	

SEC. 38.210.030. - R-B [RESIDENTIAL MIXED USE-B]

A. Lot Standards



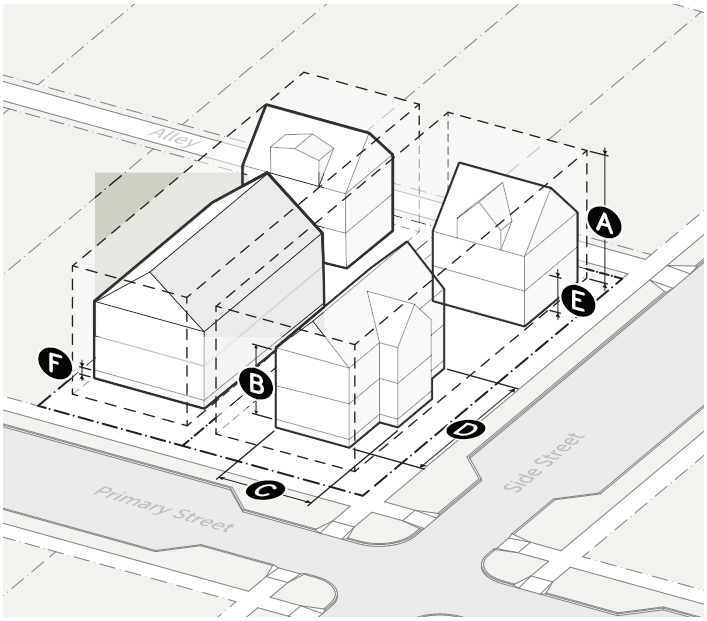


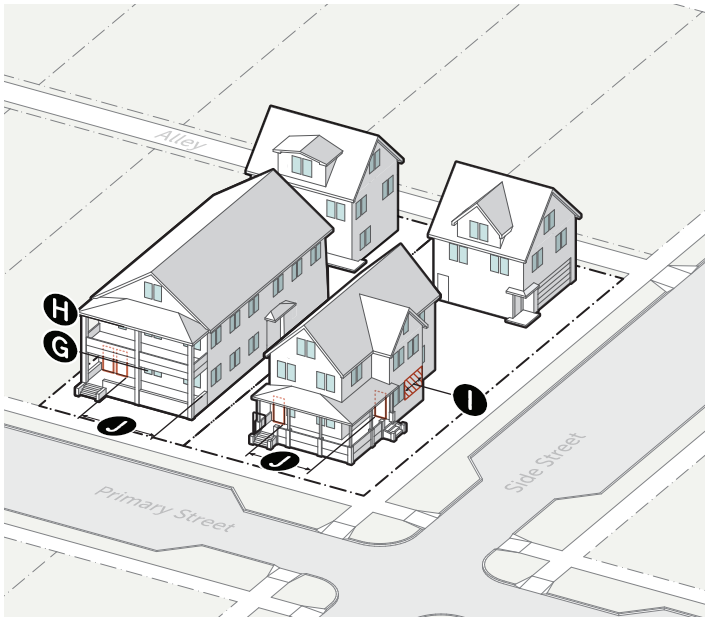
Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	
Townhouse	15'
All other structures	25'
2. **Density**	*Sec. 38.260.030*
Minimum density per net acre	8 du/a
3. **Coverage**	*Sec. 38.260.040*
B Building coverage (max)	40%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	n/a
4. **Streetscape**	*Sec. 38.260.050*
C Sidewalk width (min)	5'
D Boulevard strip width (min)	5'
Type	Landscape
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min)	10'
F Side street (min)	10'
Street-facing garage (min)	20'
G Side (min)	
Townhouse - common wall	0'
Townhouse - exterior wall	5'
All other structures	5'
Rear (min)	10'
H Alley (min)	5'
6. **Transitions**	*Sec. 38.260.070*
Building setback and height transitions	n/a
7. **Frontage**	*Sec. 38.260.080*
Build-to	n/a
8. **Parking Location**	*Sec. 38.260.090*
Primary street setback	Not allowed
Side street setback	Not allowed
Side setback	Not allowed
Rear/alley setback	Allowed

B. Building Standards



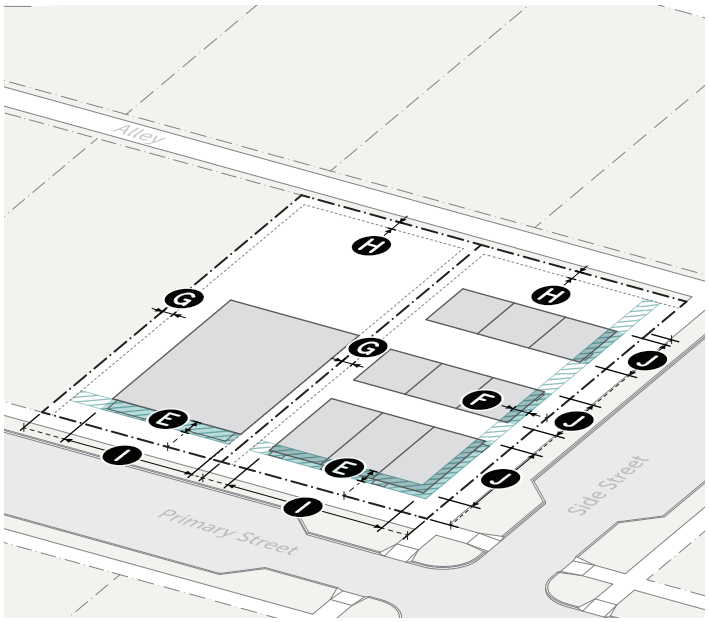


Refer to Sec. 38.260 for a description of each building standard

		Primary St.	Side St.
1. Vertical Massing	*Sec. 38.260.100*		
A Building height (max)	45'		
B Wall plate height (max)	33'		
2. Horizontal Massing	*Sec. 38.260.110*		
Dwelling units per building (max)	8		
C Building width: primary street (max)	120'		
D Building width: side street (max)	120'		
3. Activation	*Sec. 38.260.120*		
Active depth (min)	n/a		
4. Floor Height	*Sec. 38.260.130*		
E Ground story height (min)	9'		
F Ground floor elevation (min/max)	-2'/5'		
5. Windows	*Sec. 38.260.140*		
G Ground story (min)	20%	20%	
H Upper story (min)	15%	15%	
I Blank wall width (max)	10'	20'	
6. Entrances	*Sec. 38.260.150*		
J Street-facing entry spacing (max)	40'	60'	
Entry feature	Required	n/a	
Options	• Porch • Covered entry • Recessed entry		

SEC. 38.210.040. - R-C [RESIDENTIAL MIXED USE-C]

A. Lot Standards

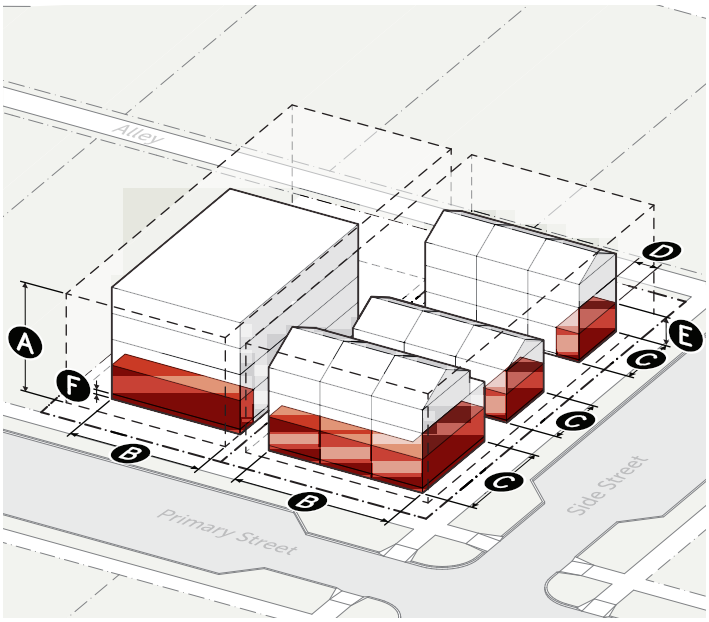


Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	
Townhouse	15'
All other structures	25'
2. **Density**	*Sec. 38.260.030*
Minimum density per net acre	10 du/a
3. **Coverage**	*Sec. 38.260.040*
B Building coverage (max)	60%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	n/a
4. **Streetscape**	*Sec. 38.260.050*
C Sidewalk width (min)	5'
D Boulevard strip width (min)	5'
Type	Landscape
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min/max)	10'/15'
F Side street (min/max)	10'/15'
Street-facing garage (min)	20'
G Side (min)	
Townhouse - common wall	0'
Townhouse - exterior wall	5'
All other structures	5'
Rear (min)	10'
H Alley (min)	5'
6. **Transitions**	*Sec. 38.260.070*
Building setback and height transitions	n/a
7. **Frontage**	*Sec. 38.260.080*
Build-to	
I Primary street	60%
J Side street	30%
8. **Parking Location**	*Sec. 38.260.090*
Primary street setback	Not allowed
Side street setback	Not allowed
Side setback	Not allowed
Rear/alley setback	Allowed

B. Building Standards



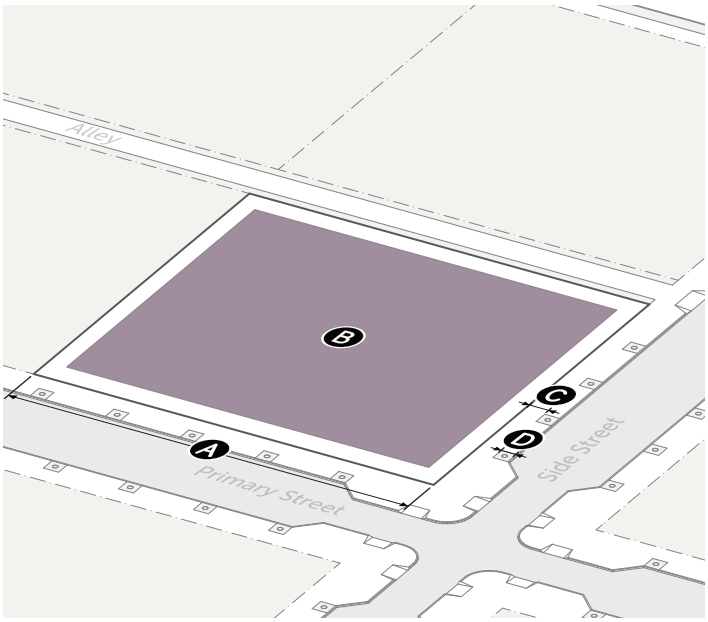
Refer to Sec. 38.260 for a description of each building standard

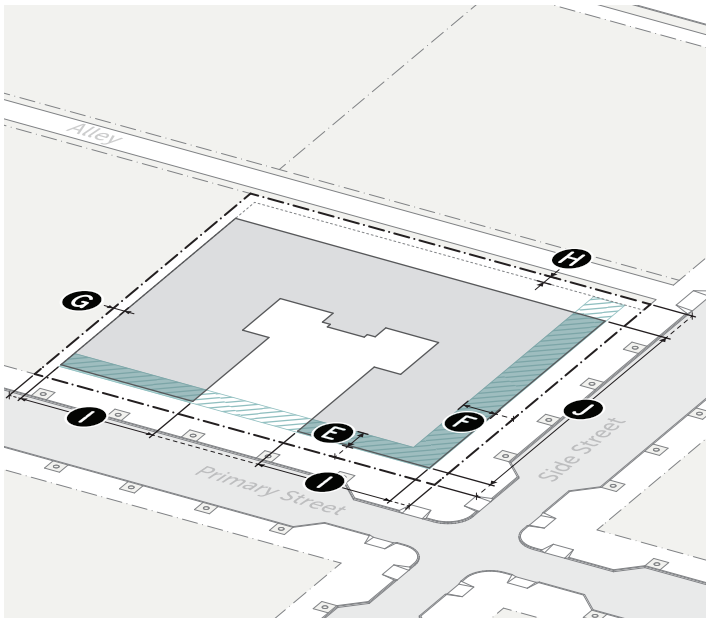
1. Vertical Massing		*Sec. 38.260.100*
A	Building height (max)	50'
	Wall plate height (max)	n/a
2. Horizontal Massing		*Sec. 38.260.110*
	Dwelling units per building (max)	24
B	Building width: primary street (max)	150'
C	Building width: side street (max)	150'
3. Activation		*Sec. 38.260.120*
D	Active depth (min)	9'
4. Floor Height		*Sec. 38.260.130*
E	Ground story height (min)	9'
F	Ground floor elevation (min/max)	-2'/5'

		Primary St.	Side St.
5. Windows		*Sec. 38.260.140*	
G	Ground story (min)	30%	30%
H	Upper story (min)	15%	15%
I	Blank wall width (max)	10'	20'
6. Entrances		*Sec. 38.260.150*	
J	Street-facing entry spacing (max)	40'	60'
	Entry feature	Required	n/a
	Options	• Porch • Covered entry • Recessed entry	

SEC. 38.210.050. - R-D [RESIDENTIAL MIXED USE-D]

A. Lot Standards



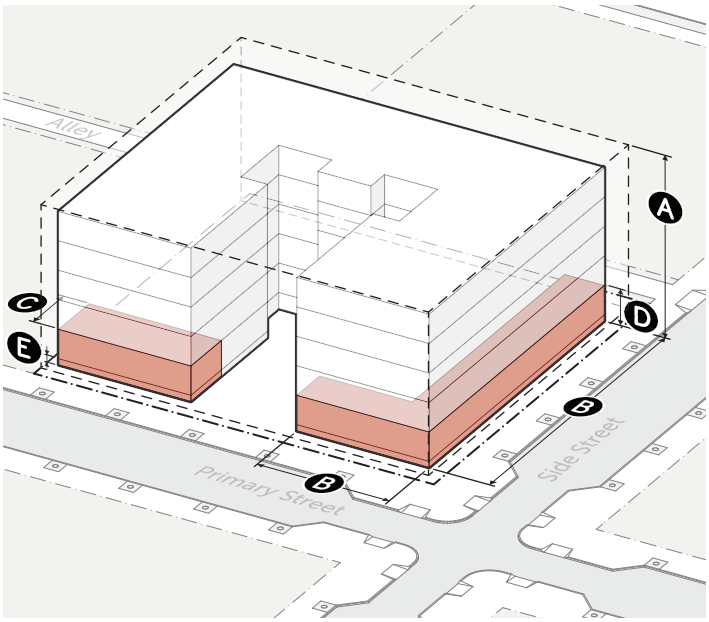


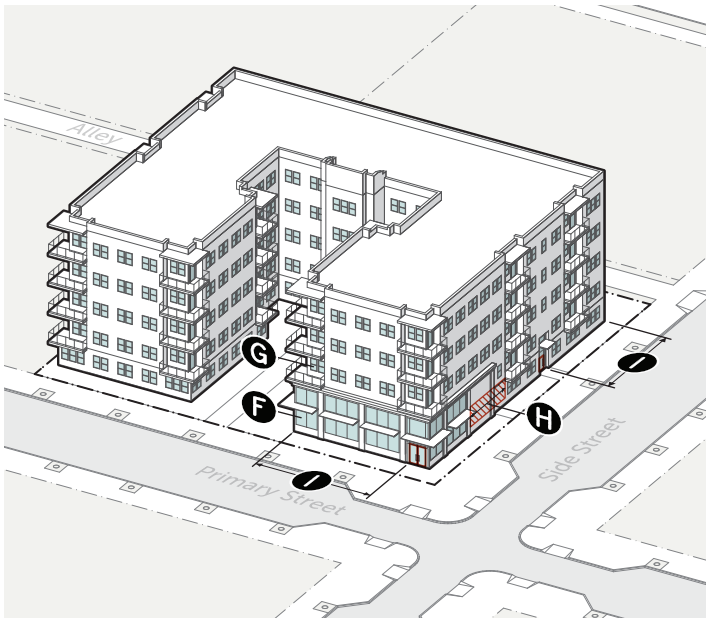
Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	
Townhouse	15'
All other structures	25'
2. **Density**	*Sec. 38.260.030*
Minimum density per net acre	14 du/a
3. **Coverage**	*Sec. 38.260.040*
B Building coverage (max)	100%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	n/a
4. **Streetscape**	*Sec. 38.260.050*
C Sidewalk width (min)	6'
D Boulevard strip width (min)	6'
Type	Landscape
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min/max)	10'/15'
F Side street (min/max)	10'/15'
G Side (min)	
Townhouse - common wall	0'
Townhouse - exterior wall	5'
All other structures	5'
Rear (min)	10'
H Alley (min)	5'
6. **Transitions**	*Sec. 38.260.070*
Building setback and height transitions	Required
7. **Frontage**	*Sec. 38.260.080*
Build-to	
I Primary street	80%
J Side street	40%
8. **Parking Location**	*Sec. 38.260.090*
Parking between building and street	Not allowed

B. Building Standards





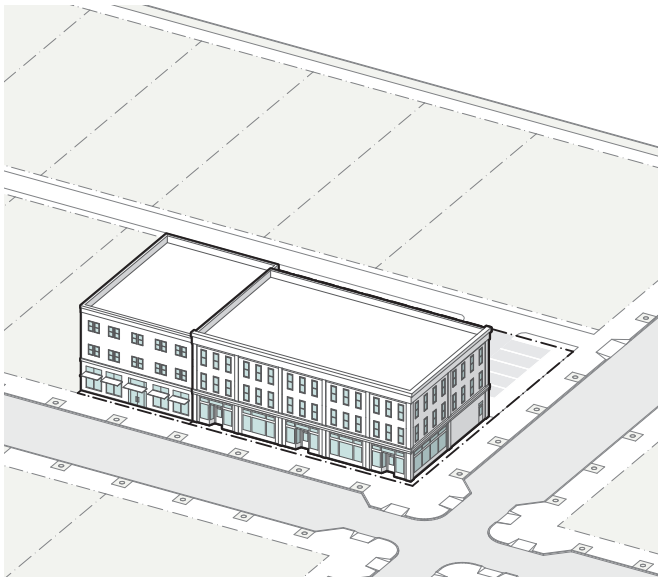
Refer to Sec. 38.260 for a description of each building standard

		Primary St.	Side St.
1. Vertical Massing	*Sec. 38.260.100*		
A Building height (max)	60'		
Wall plate height (max)	n/a		
2. Horizontal Massing	*Sec. 38.260.110*		
Dwelling units per building (max)	n/a		
B Building width (max)	250'		
3. Activation	*Sec. 38.260.120*		
C Active depth (min)			
Residential	9'		
Nonresidential	15'		
4. Floor Height	*Sec. 38.260.130*		
D Ground story height (min)			
Residential	9'		
Nonresidential	12'		
E Ground floor elevation (min/max)	-2'/5'		
5. Windows		*Sec. 38.260.140*	
F Ground story (min)			
Residential		30%	30%
Nonresidential		50%	30%
G Upper story (min)		15%	15%
H Blank wall width (max)		10'	20'
6. Entrances		*Sec. 38.260.150*	
I Street-facing entry spacing (max)		40'	60'
Entry feature		Required	Required
Options		• Porch • Covered entry • Recessed entry	

DIVISION 38.220. - **COMMERCIAL AND MIXED USE DISTRICTS**

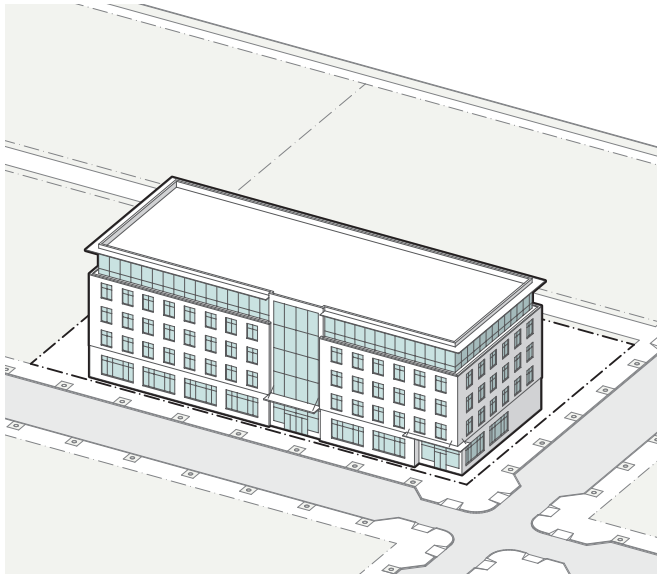
Sec. 38.220.010. - **Purpose.**

The purpose of the Commercial and Mixed Use Districts is to establish areas within the city that provide the types of professional and personal services, retail, restaurants, residences, and other establishments necessary for economic health and vibrancy, and to create standards for development within those areas at a variety of scales and intensities.



A. B-1 Local Service Mixed Use

1. The B-1 district is intended primarily to accommodate a variety of neighborhood-serving office, personal service, restaurant and retail uses.
2. To help ensure commercial uses are compatible with the residential neighborhoods they are interned to serve, individual tenant sizes cannot exceed 10,000 square feet.
3. To help maintain the commercial integrity of the district, multi-unit dwellings are allowed but are limited in extent.



B. B-2 Community Business

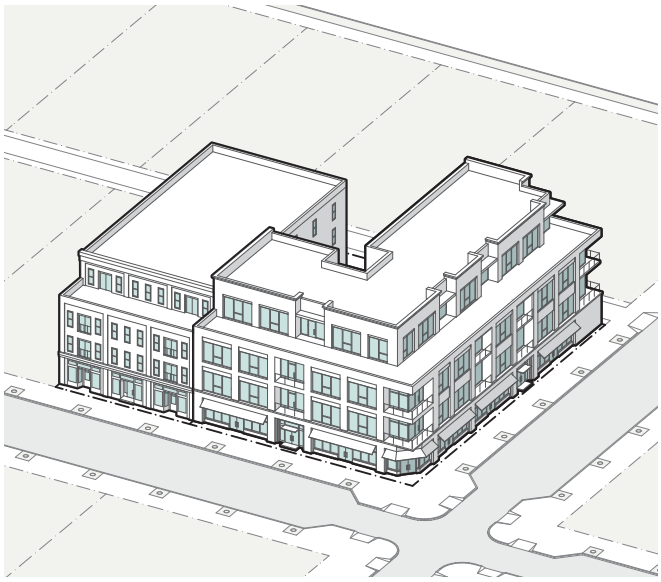
1. The B-2 district is intended to accommodate a wide variety of office, personal service, restaurant, retail, employment and residential uses.
2. To help preserve land for commercial and employment uses, residential uses are allowed only in the upper stories of buildings. Residential uses may be allowed on the ground story through the special use process.

C. B-2M Community Mixed Use

1. The B-2M district is intended to accommodate a wide variety of office, personal service, restaurant, retail, employment and residential uses.
2. There are no limits on the location or amount of residential uses.

D. B-3 Downtown Mixed Use

1. The B-3 district is intended to accommodate government service and cultural activities with residential, office, personal service, restaurant, retail and employment uses as essential supporting uses within the City's downtown area.
2. There are no limits on the location or amount of residential uses.



E. B-3C Downtown Core

1. The B-3C district is intended to accommodate the highest concentration of retail, restaurant, and pedestrian activity in the city.
2. To help create and foster a highly active and pedestrian-oriented area, residential uses are only allowed in the upper stories of buildings.
3. To ensure new construction respects the historic character of the area, building height at the sidewalk may not exceed the 45-foot wall plate. Any additional height, up to the maximum allowed, must be stepped back.

F. REMU Residential Emphasis Mixed Use District

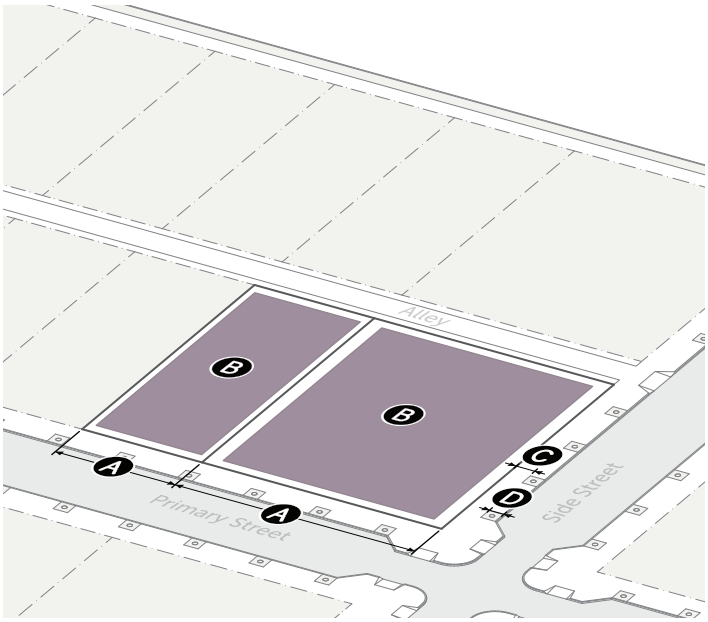
1. The REMU district is intended to create new walkable neighborhoods that are primarily residential in character but provide options for employment, retail and service opportunities.
2. REMU is intended to be developed with a mix of uses that encourage a range of building types, scales, densities, and site configurations.
3. Developments are encouraged to include non-residential uses, especially commercial and neighborhood support services, mixed horizontally and/or vertically, to promote compact, walkable and sustainable neighborhoods. To help ensure they are compatible with the residential neighborhoods they are intented to serve, non-residential uses are limited in size.
4. REMU is intended primarily for sites at least five acres in size.

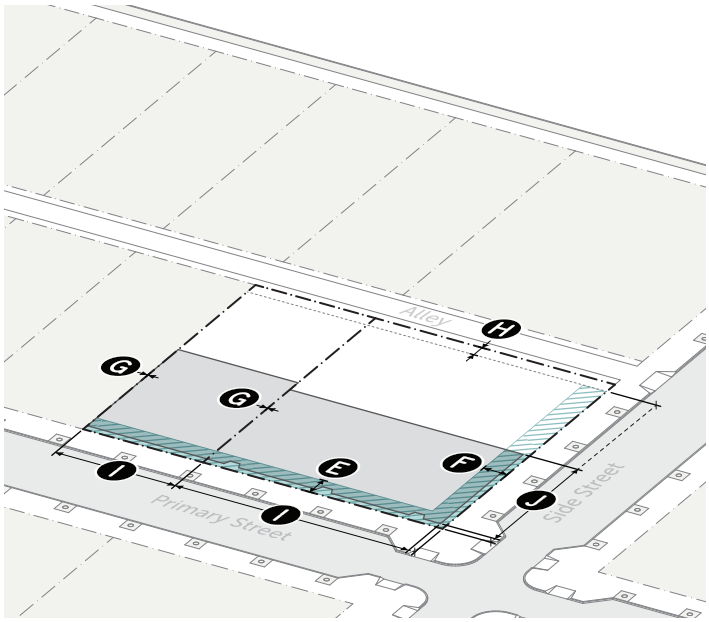
G. NEHMU Northeast Historic Mixed Use

1. The NEHMU District is envisioned as an eclectic, vibrant mixed-use neighborhood that honors its historic roots in light industrial, manufacturing, and residential uses. It also welcomes the thoughtful integration of new housing and neighborhood-scale artisan, retail, service, and other commercial uses.
2. The adaptive reuse of existing buildings, including context-sensitive new construction, fosters active street frontages that encourage social interaction through public art, public plazas, and open spaces.

SEC. 38.220.020. - B-1 [LOCAL SERVICE MIXED USE]

A. Lot Standards



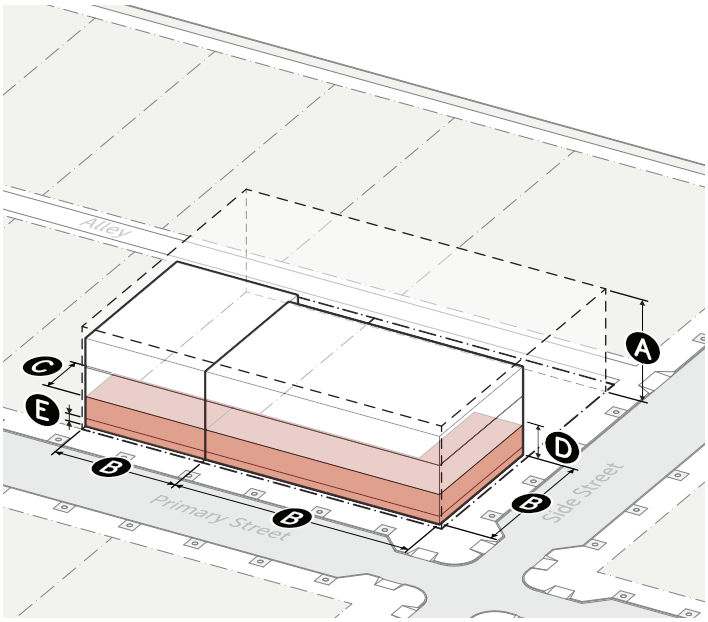


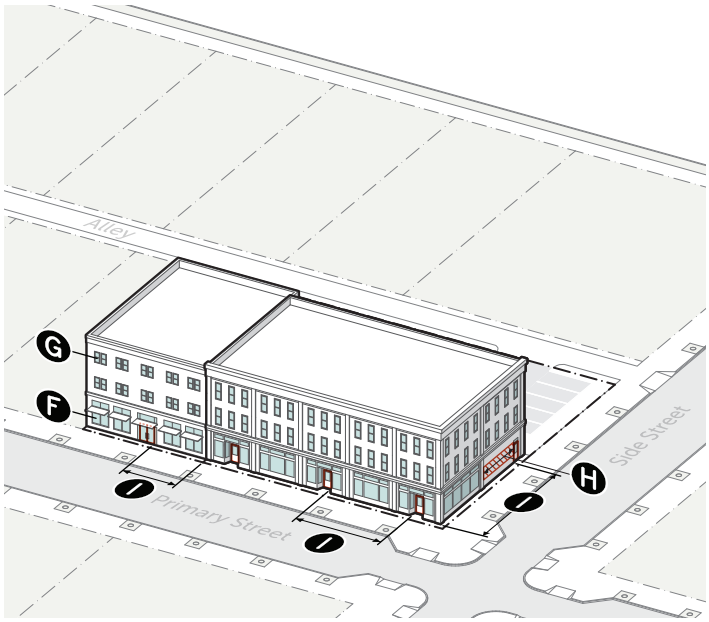
Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	15'
2. **Density**	*Sec. 38.260.030*
Minimum density per net acre	n/a
3. **Coverage**	*Sec. 38.260.040*
B Building coverage (max)	100%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	2%
4. **Streetscape**	*Sec. 38.260.050*
C Sidewalk width (min)	6'
D Boulevard strip width (min)	6'
Type	Mixed
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min/max)	1'/20'
F Side street (min/max)	1'/20'
G Side (min)	0'
Rear (min)	0'
H Alley (min)	5'
6. **Transitions**	*Sec. 38.260.070*
Building setback and height transitions	Required
7. **Frontage**	*Sec. 38.260.080*
Build-to	
I Primary street	60%
J Side street	30%
8. **Parking Location**	*Sec. 38.260.090*
Parking between building and street	Not allowed

B. Building Standards



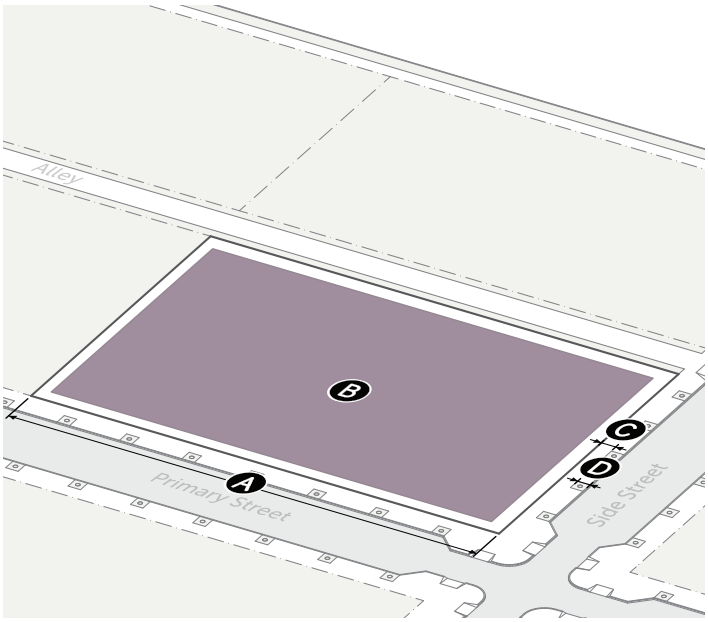


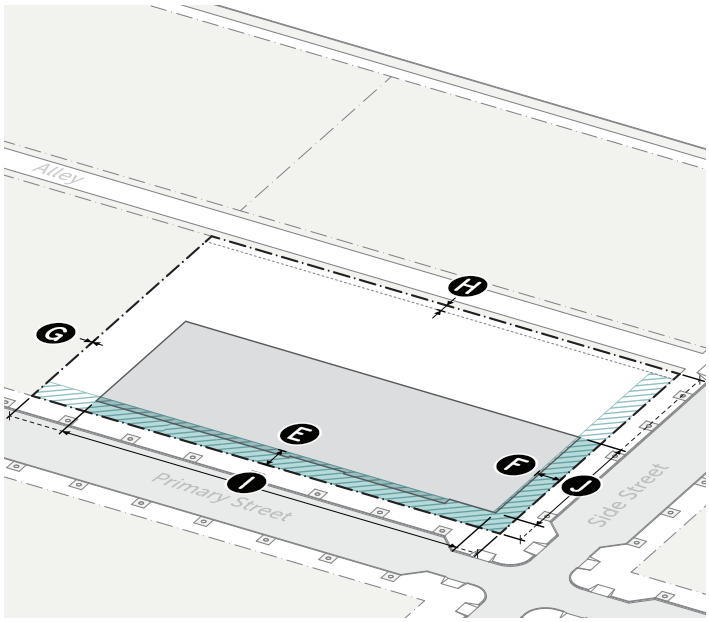
Refer to Sec. 38.260 for a description of each building standard

		Primary St.	Side St.
1. Vertical Massing	*Sec. 38.260.100*		
A Height (max)	45'		
Wall plate height (max)	n/a		
2. Horizontal Massing	*Sec. 38.260.110*		
Dwelling units per building (max)	n/a		
B Building width (max)	125'		
3. Activation	*Sec. 38.260.120*		
C Active depth (min)			
Residential	9'		
Nonresidential	20'		
4. Floor Height	*Sec. 38.260.130*		
D Ground story height (min)			
Residential	9'		
Nonresidential	12'		
E Ground floor elevation (min/max)	-2'/5'		
5. Windows	*Sec. 38.260.140*		
F Ground story (min)			
Residential		30%	30%
Nonresidential		60%	30%
G Upper story (min)		15%	15%
H Blank wall width (max)		15'	25'
6. Entrances	*Sec. 38.260.150*		
I Street-facing entry spacing (max)			
Residential		40'	60'
Nonresidential		60'	100'
Entry feature		Required	Required
Options		• Porch • Covered entry • Recessed entry	

SEC. 38.220.030. - **B-2 [COMMUNITY BUSINESS]**

A. **Lot Standards**



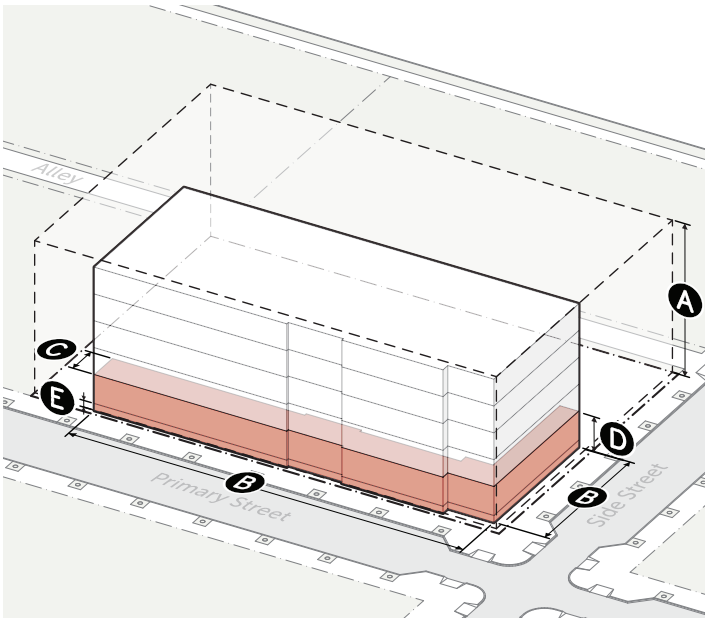


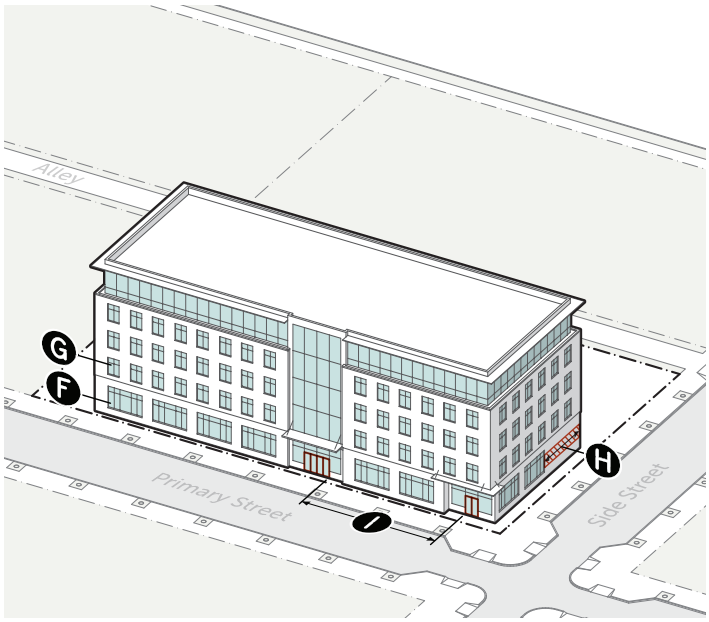
Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	25'
2. Density	*Sec. 38.260.030*
Minimum density per net acre	n/a
3. Coverage	*Sec. 38.260.040*
B Building coverage (max)	100%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	2%
4. Streetscape	*Sec. 38.260.050*
C Sidewalk width (min)	6'
D Boulevard strip width (min)	6'
Type	Mixed
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min/max)	1'/20'
F Side street (min/max)	1'/20'
G Side (min)	0'
Rear (min)	0'
H Alley (min)	5'
6. Transitions	*Sec. 38.260.070*
Building setback and height transitions	Required
7. Frontage	*Sec. 38.260.080*
Build-to	
I Primary street	70%
J Side street	35%
8. Parking Location	*Sec. 38.260.090*
Parking between building and street	Not allowed

B. Building Standards



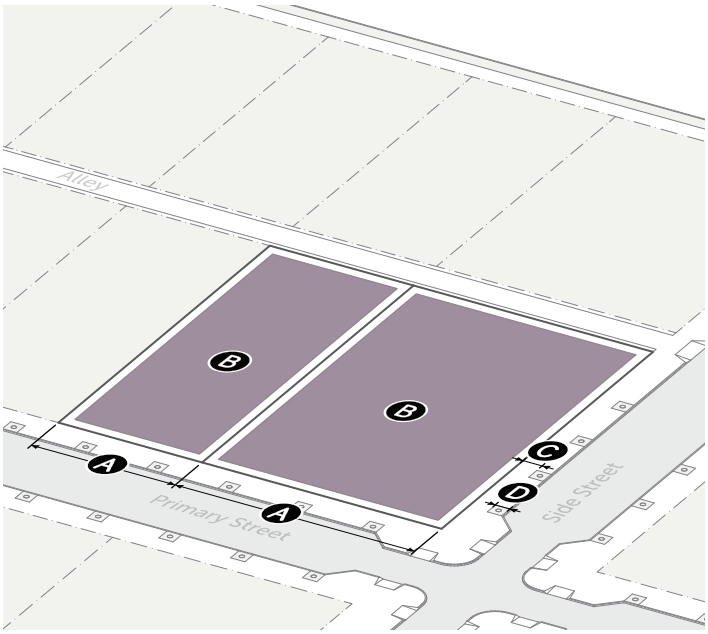


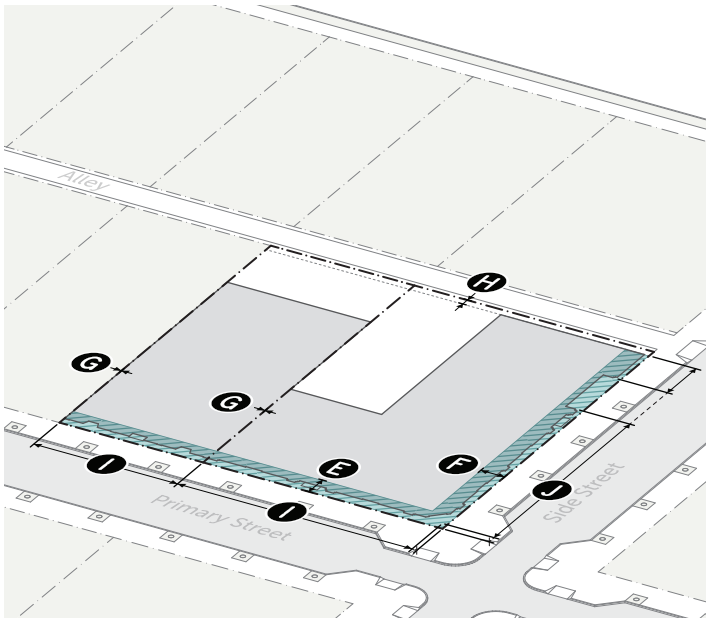
Refer to Sec. 38.260 for a description of each building standard

		Primary St.	Side St.
1. Vertical Massing	*Sec. 38.260.100*		
A Height (max)	60'		
In a regional commercial & services land use designation	90'		
Wall plate height (max)	n/a		
2. Horizontal Massing	*Sec. 38.260.110*		
Dwelling units per building (max)	n/a		
B Building width (max)	250'		
3. Activation	*Sec. 38.260.120*		
C Active depth (min)	20'		
4. Floor Height	*Sec. 38.260.130*		
D Ground story height (min)	12'		
E Ground floor elevation (min/max)	-2'/5'		
5. Windows	*Sec. 38.260.140*		
F Ground story (min)		60%	30%
G Upper story (min)		15%	15%
H Blank wall width (max)		15'	20'
6. Entrances	*Sec. 38.260.150*		
I Street-facing entry spacing (max)		60'	100'
Entry feature		Required	Required
Options		• Covered entry • Recessed entry	

SEC. 38.220.040. - B-2M [COMMUNITY MIXED USE]

A. Lot Standards



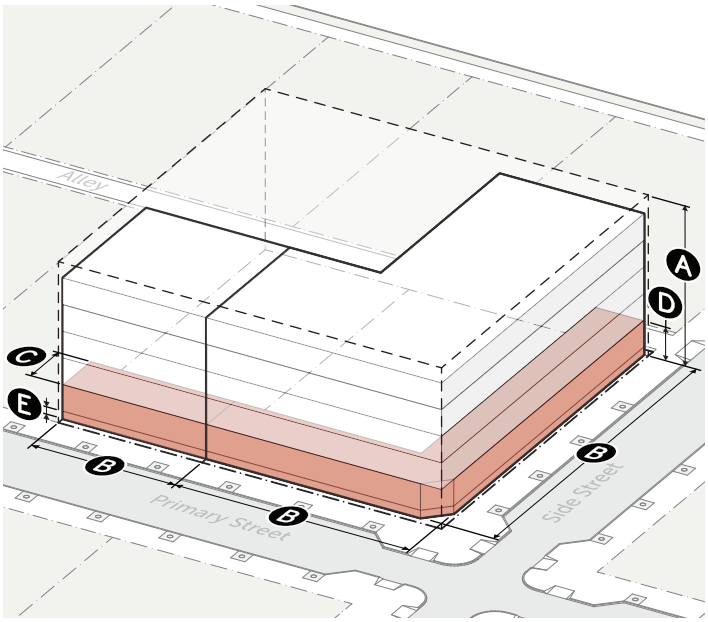


Refer to Sec. 38.260 for a description of each lot standard

1. Lot Size	*Sec. 38.260.020*
A Width (min)	15'
2. Density	*Sec. 38.260.030*
Minimum density per net acre	n/a
3. Coverage	*Sec. 38.260.040*
B Building coverage (max)	100%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	2%
4. Streetscape	*Sec. 38.260.050*
C Sidewalk width (min)	6'
D Boulevard strip width (min)	6'
Type	Mixed
Tree spacing (max)	25-30' avg. on center, depending on species

5. Setbacks	*Sec. 38.260.060*
E Primary street (min/max)	1'/20'
F Side street (min/max)	1'/20'
G Side (min)	0'
Rear (min)	0'
H Alley (min)	5'
6. Transitions	*Sec. 38.260.070*
Building setback and height transitions	Required
7. Frontage	*Sec. 38.260.080*
Build-to	
I Primary street	70%
J Side street	35%
8. Parking Location	*Sec. 38.260.090*
Parking between building and street	Not allowed

B. Building Standards

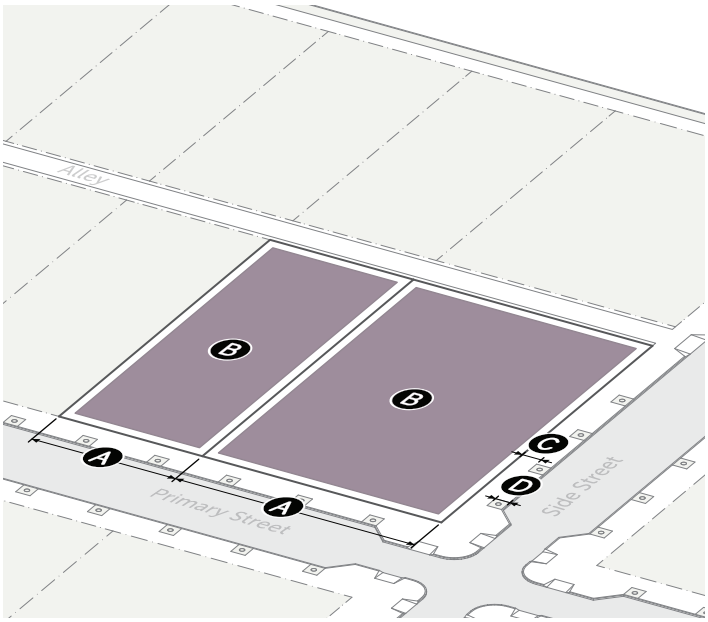


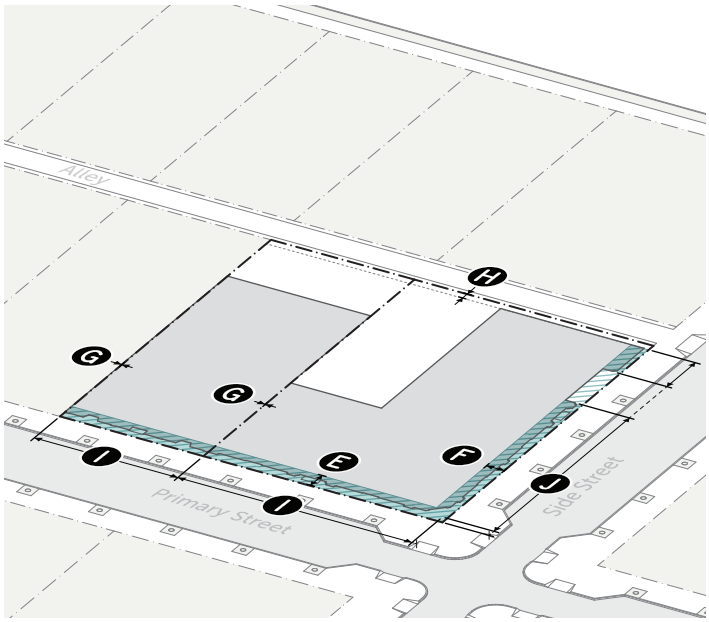
Refer to Sec. 38.260 for a description of each building standard

		Primary St.	Side St.
1. Vertical Massing	*Sec. 38.260.100*		
A Height (max)	60'		
Wall plate height (max)	n/a		
2. Horizontal Massing	*Sec. 38.260.110*		
Dwelling units per building (max)	n/a		
B Building width (max)	250'		
3. Activation	*Sec. 38.260.120*		
C Active depth (min)			
Residential	9'		
Nonresidential	20'		
4. Floor Height	*Sec. 38.260.130*		
D Ground story height (min)			
Residential	9'		
Nonresidential	12'		
E Ground floor elevation (min/max)	-2'/5'		
5. Windows	*Sec. 38.260.140*		
F Ground story (min)			
Residential		30%	30%
Nonresidential		60%	30%
G Upper story (min)		15%	15%
H Blank wall width (max)		15'	20'
6. Entrances	*Sec. 38.260.150*		
I Street-facing entry spacing (max)			
Residential		40'	60'
Nonresidential		60'	100'
Entry feature		Required	Required
Options		• Porch • Covered entry • Recessed entry	

SEC. 38.220.050. - **B-3 [DOWNTOWN MIXED USE]**

A. **Lot Standards**



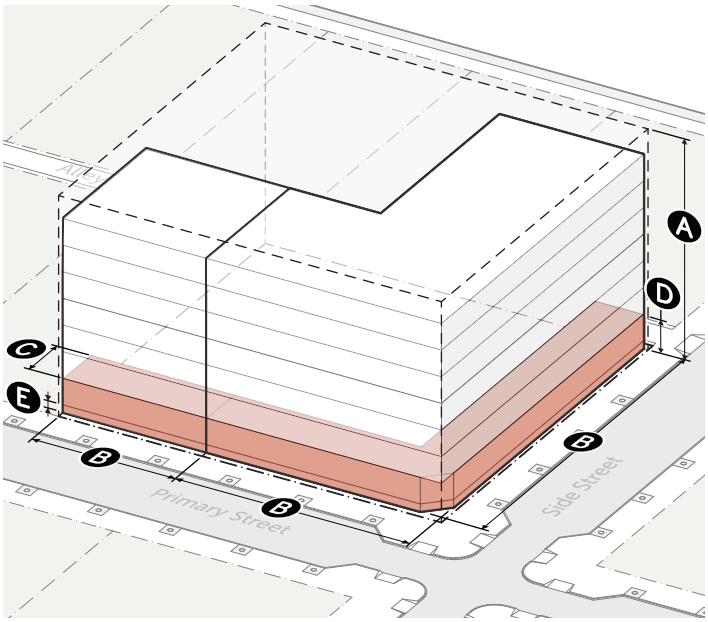


Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	15'
2. Density	*Sec. 38.260.030*
Minimum density per net acre	n/a
3. Coverage	*Sec. 38.260.040*
A Building coverage (max)	100%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	2%
4. Streetscape	*Sec. 38.260.050*
C Sidewalk width (min)	6'
D Boulevard strip width (min)	6'
Type	Mixed
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min/max)	1'/10'
F Side street (min/max)	1'/10'
G Side (min)	0'
Rear (min)	0'
H Alley (min)	5'
6. Transitions	*Sec. 38.260.070*
Building setback and height transitions	Required
7. Frontage	*Sec. 38.260.080*
Build-to	
I Primary street	80%
J Side street	40%
8. Parking Location	*Sec. 38.260.090*
Parking between building and street	Not allowed

B. Building Standards

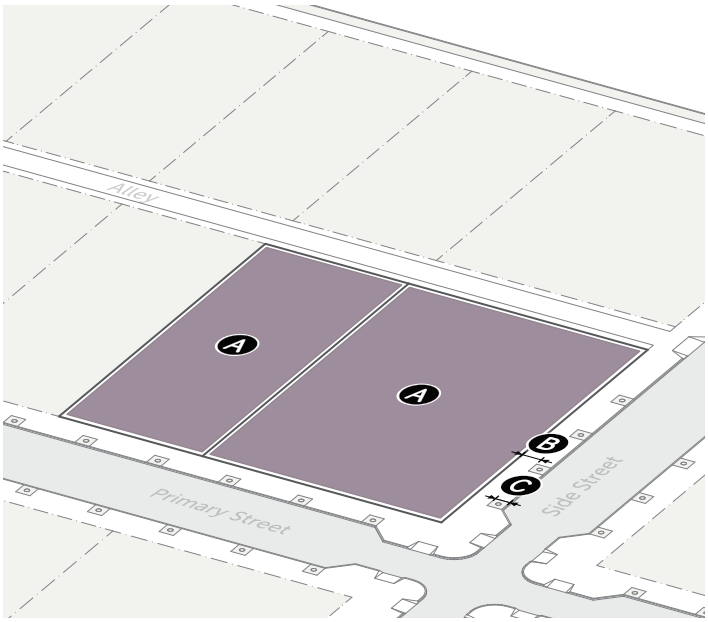


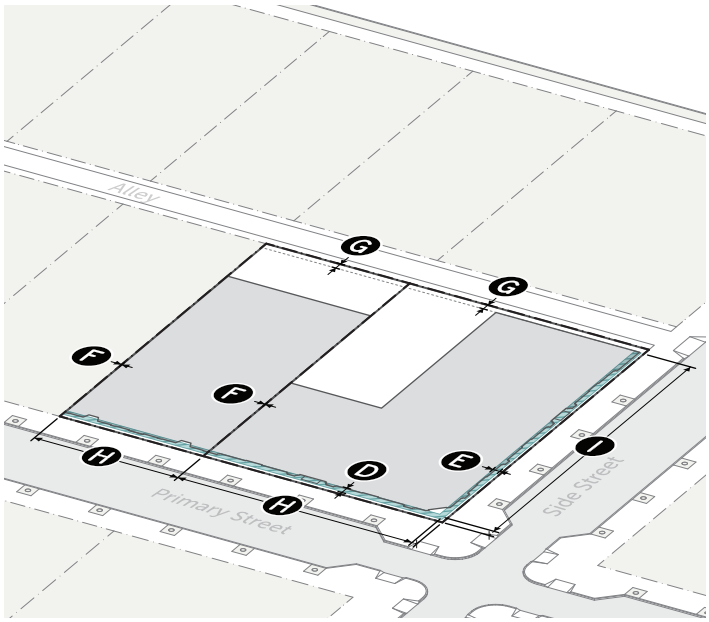
Refer to Sec. 38.260 for a description of each building standard

		Primary St.	Side St.
1. Vertical Massing	*Sec. 38.260.100*		
A Height (max)	90'		
Wall plate height (max)	n/a		
2. Horizontal Massing	*Sec. 38.260.110*		
Dwelling units per building (max)	n/a		
B Building width (max)	250'		
3. Activation	*Sec. 38.260.120*		
C Active depth (min)			
Residential	9'		
Nonresidential	20'		
4. Floor Height	*Sec. 38.260.130*		
D Ground story height (min)			
Residential	12'		
Nonresidential	12'		
E Ground floor elevation (min/max)	-2'/5'		
5. Windows	*Sec. 38.260.140*		
F Ground story (min)			
Residential		30%	30%
Nonresidential		60%	30%
G Upper story (min)		15%	15%
H Blank wall width (max)		15'	20'
6. Entrances	*Sec. 38.260.150*		
I Street-facing entry spacing (max)		40'	60'
Entry feature		Required	Required
Options		• Porch • Covered entry • Recessed entry	

SEC. 38.220.060. - **B-3C [DOWNTOWN CORE]**

A. **Lot Standards**



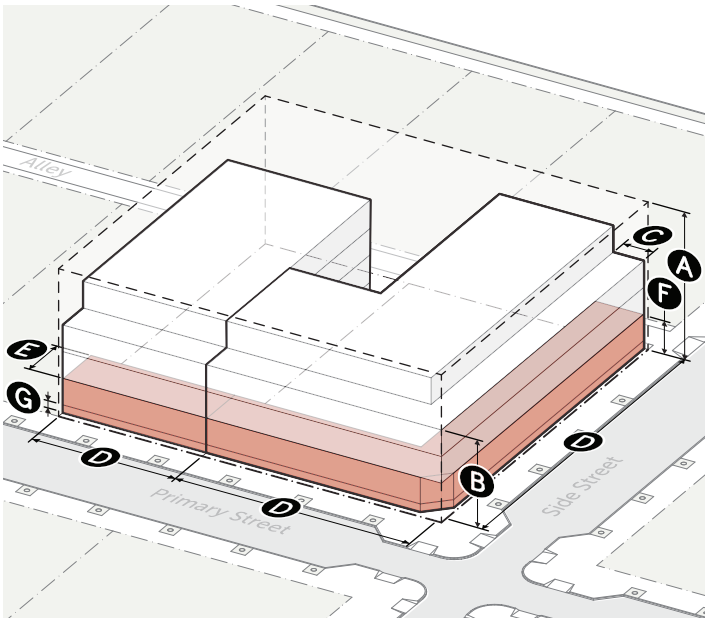


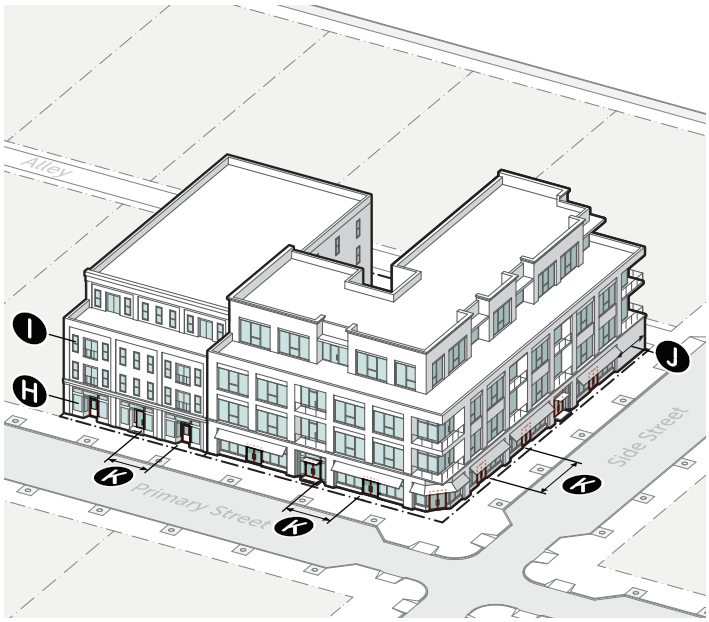
Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
Width (min)	0'
2. **Density**	*Sec. 38.260.030*
Minimum density per net acre	n/a
3. **Coverage**	*Sec. 38.260.040*
A Building coverage (max)	100%
Amenity space (min per unit)	n/a
Commercial open space (min)	n/a
4. **Streetscape**	*Sec. 38.260.050*
B Sidewalk width (min)	6'
C Boulevard strip width (min)	6'
Type	Storefront
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
D Primary street (min/max)	1'/5'
E Side street (min/max)	1'/5'
F Side (min)	0'
Rear (min)	0'
G Alley (min)	5'
6. **Transitions**	*Sec. 38.260.070*
Building setback and height transitions	n/a
7. **Frontage**	*Sec. 38.260.080*
Build-to	
H Primary street	90%
I Side street	45%
8. **Parking Location**	*Sec. 38.260.090*
Parking between building and street	Not allowed

B. Building Standards



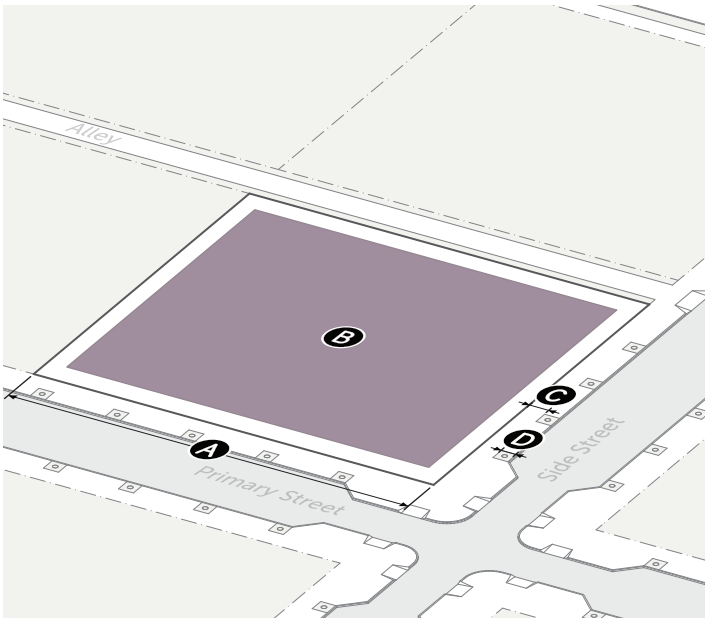


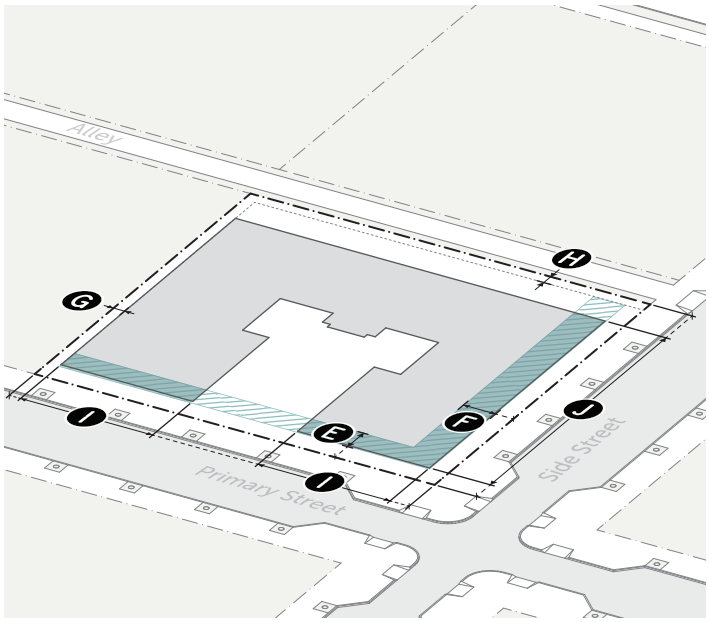
Refer to Sec. 38.260 for a description of each building standard

		Primary St.	Side St.
1. Vertical Massing	*Sec. 38.260.100*		
A Height (max)	60'		
B Wall plate height (max)	45'		
C 4th story step back (min)	16'		
2. Horizontal Massing	*Sec. 38.260.110*		
Dwelling units per building (max)	n/a		
D Building width (max)	150'		
3. Activation	*Sec. 38.260.120*		
E Active depth (min)	30'		
4. Floor Height	*Sec. 38.260.130*		
F Ground story height (min)	15'		
G Ground floor elevation (min/max)	0'/1'		
5. Windows	*Sec. 38.260.140*		
H Ground story (min)		60%	30%
I Upper story (min)		15%	15%
J Blank wall width (max)		15'	20'
6. Entrances	*Sec. 38.260.150*		
K Street-facing entry spacing (max)		40'	60'
Entry feature		Required	Required
Options		• Covered entry • Recessed entry	

SEC. 38.220.070. - REMU [RESIDENTIAL EMPHASIS MIXED USE]

A. Residential: Lot Standards



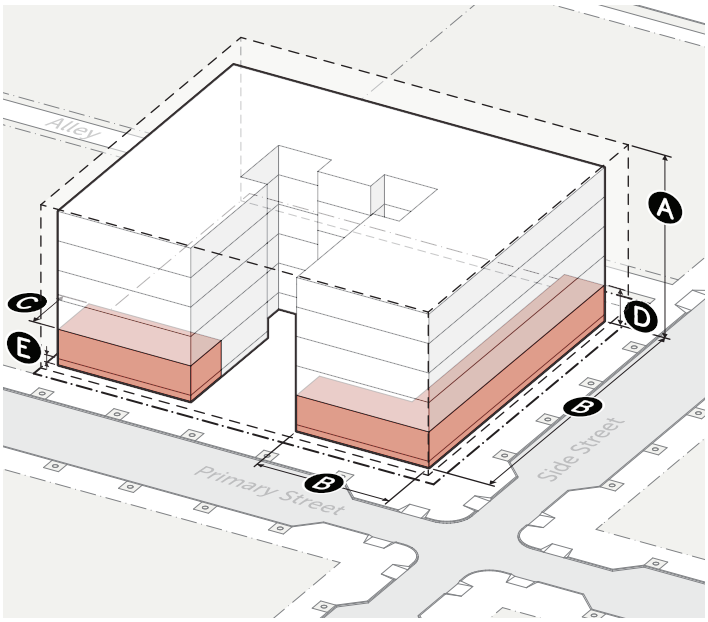


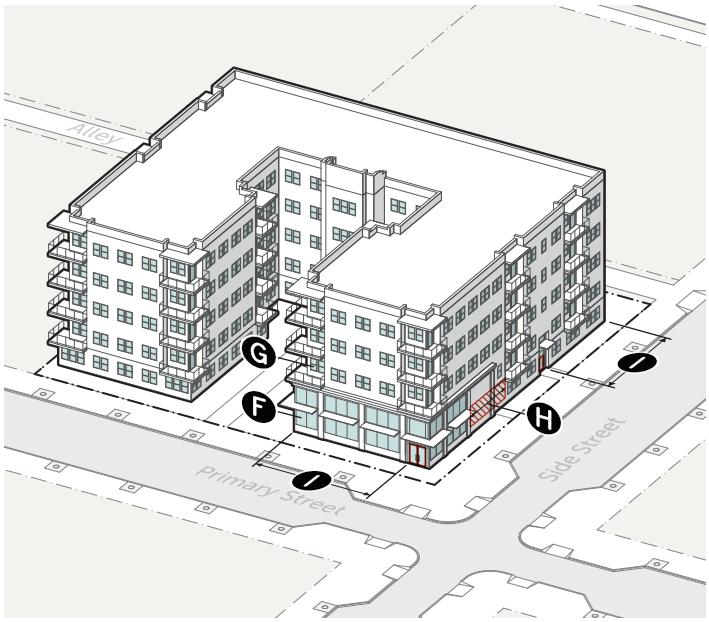
Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	
Townhouse	15'
All other structures	25'
2. Density	*Sec. 38.260.030*
Minimum density per net acre	14 du/a
3. Coverage	*Sec. 38.260.040*
B Building coverage (max)	100%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	n/a
4. Streetscape	*Sec. 38.260.050*
C Sidewalk width (min)	6'
D Boulevard strip width (min)	6'
Type	Landscape
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min/max)	10'/20'
F Side street (min/max)	10'/20'
G Side (min)	
Townhouse - common wall	0'
Townhouse - exterior wall	5'
All other structures	5'
Rear (min)	10'
H Alley (min)	5'
6. Transitions	*Sec. 38.260.070*
Building setback and height transitions	Required
7. Frontage	*Sec. 38.260.080*
Build-to	
I Primary street	70%
J Side street	35%
8. Parking Location	*Sec. 38.260.090*
Parking between building and street	Not allowed

B. Residential: Building Standards





Refer to Sec. 38.260 for a description of each building standard

1. Vertical Massing	*Sec. 38.260.100*	
A Building height (max)	60'	
Wall plate height (max)	n/a	
2. Horizontal Massing	*Sec. 38.260.110*	
Dwelling units per building (max)	n/a	
B Building width (max)	250'	
3. Activation	*Sec. 38.260.120*	
C Active depth (min)	9'	
4. Floor Height	*Sec. 38.260.130*	
D Ground story height (min)	9'	
E Ground floor elevation (min/max)	-2'/5'	

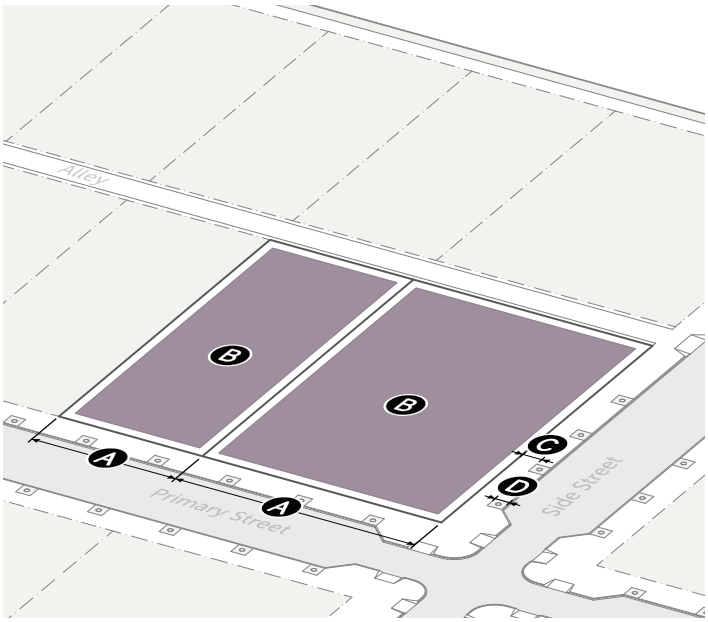
	Primary St.	Side St.
5. Windows	*Sec. 38.260.140*	
F Ground story (min)	30%	30%
G Upper story (min)	15%	15%
H Blank wall width (max)	10'	20'
6. Entrances	*Sec. 38.260.150*	
I Street-facing entry spacing (max)	40'	60'
Entry feature	Required	Required
Options	• Porch • Covered entry • Recessed entry	

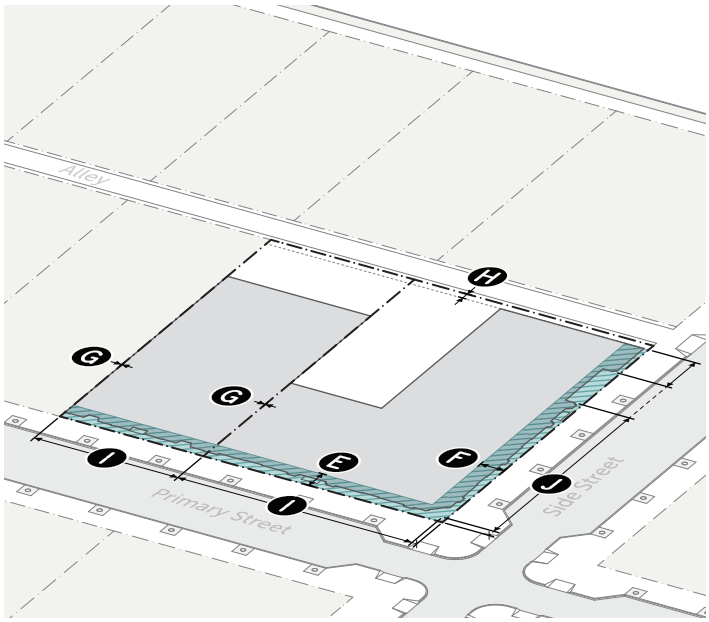
7. Supplemental Standards

Development review applications may be submitted for sites under 5 acres, though districts are encouraged to be at least 5 acres in size, and any site 5 acres or larger will require a master site plan. - *38.260.160.A*

SEC. 38.220.070. - REMU [RESIDENTIAL EMPHASIS MIXED USE]

C. Mixed Use: Lot Standards



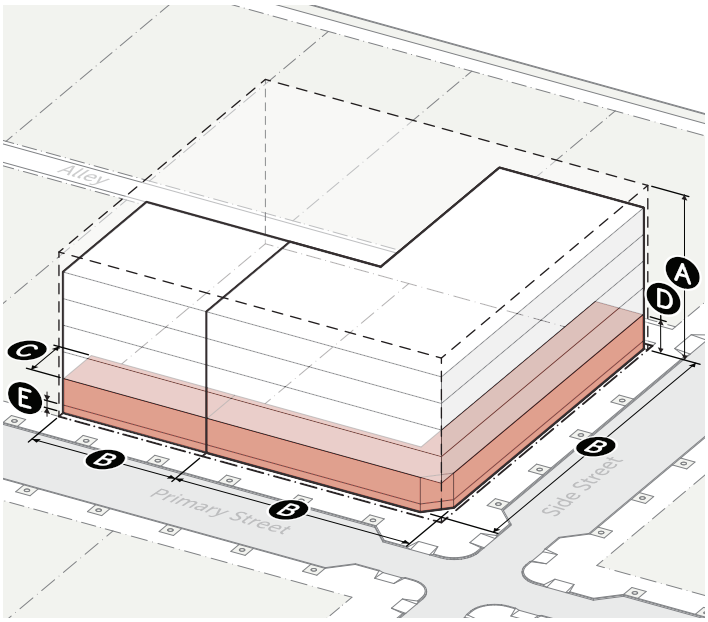


Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	15'
2. **Density**	*Sec. 38.260.030*
Minimum density per net acre	n/a
3. **Coverage**	*Sec. 38.260.040*
B Building coverage (max)	100%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	2%
4. **Streetscape**	*Sec. 38.260.050*
C Sidewalk width (min)	5'
D Boulevard strip width (min)	5'
Type	Mixed
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min/max)	1'/20'
F Side street (min/max)	1'/20'
G Side (min)	0'
Rear (min)	0'
H Alley (min)	5'
6. **Transitions**	*Sec. 38.260.070*
Building setback and height transitions	n/a
7. **Frontage**	*Sec. 38.260.080*
Build-to	
I Primary street	70%
J Side street	35%
8. **Parking Location**	*Sec. 38.260.090*
Parking between building and street	Not allowed

D. Mixed Use: Building Standards



Refer to Sec. 38.260 for a description of each building standard

		Primary St.	Side St.
1. Vertical Massing	*Sec. 38.260.100*		
A Height (max)	60'		
Wall plate height (max)	n/a		
2. Horizontal Massing	*Sec. 38.260.110*		
Dwelling units per building (max)	n/a		
B Building width (max)	250'		
3. Activation	*Sec. 38.260.120*		
C Active depth (min)			
Residential	9'		
Nonresidential	20'		
4. Floor Height	*Sec. 38.260.130*		
D Ground story height (min)			
Residential	9'		
Nonresidential	12'		
E Ground floor elevation (min/max)	-2'/5'		
5. Windows	*Sec. 38.260.140*		
F Ground story (min)			
Residential		30%	30%
Nonresidential		60%	30%
G Upper story (min)		15%	15%
H Blank wall width (max)		15'	20'
6. Doors	*Sec. 38.260.150*		
I Street-facing entry spacing (max)			
Residential		40'	60'
Nonresidential		60'	100'
Entry feature		Required	Required
Options		• Porch • Covered entry • Recessed entry	

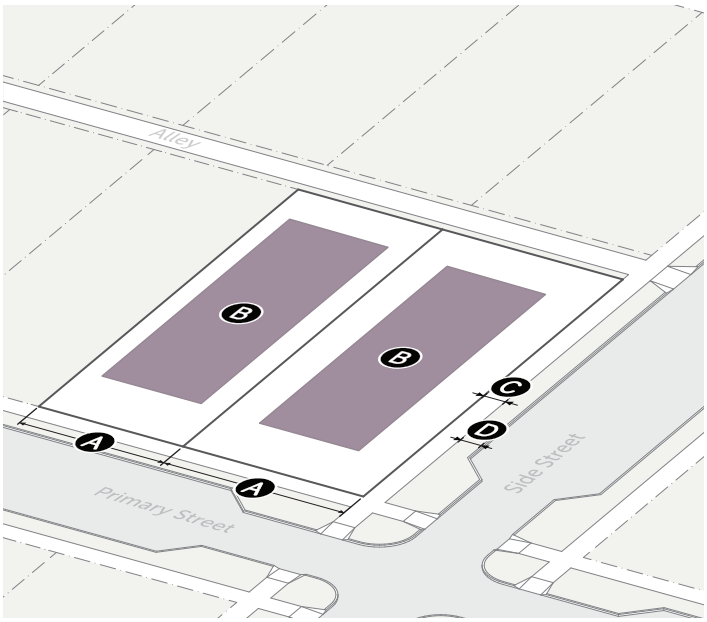
7. Supplemental Standards

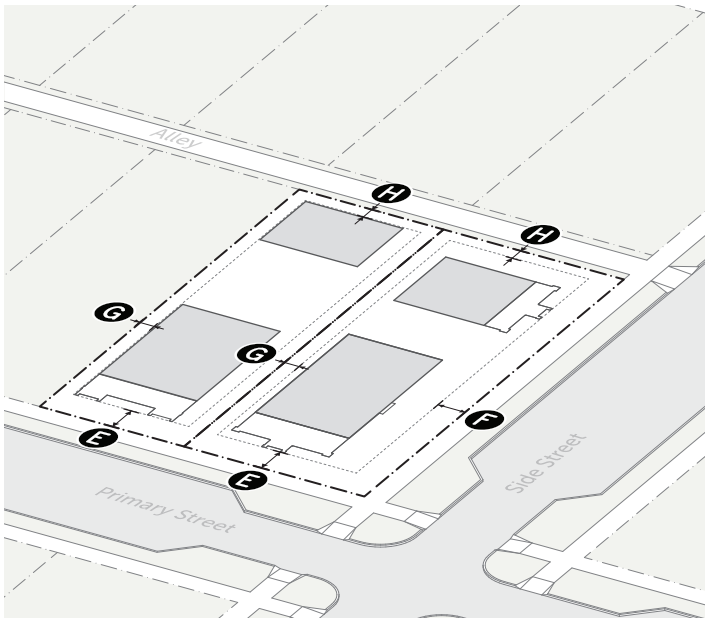
Non-residential uses cannot exceed 30% of the total gross building square footage of all uses within the project. *38.260.010.A*

Development review applications may be submitted for sites under 5 acres, though districts are encouraged to be at least 5 acres in size, and any site 5 acres or larger will require a master site plan. - *38.260.160.A*

SEC. 38.220.080. - NEHMU [NORTHEAST HISTORIC MIXED USE]

A. Residential: Lot Standards



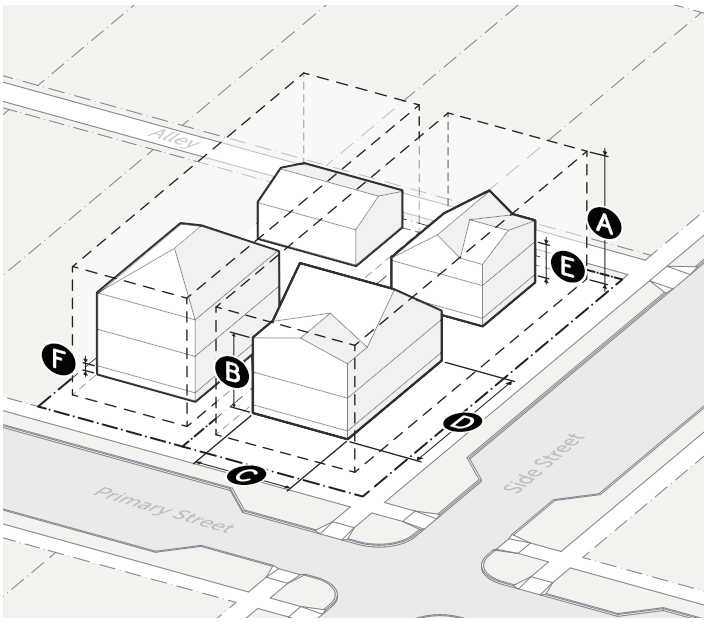


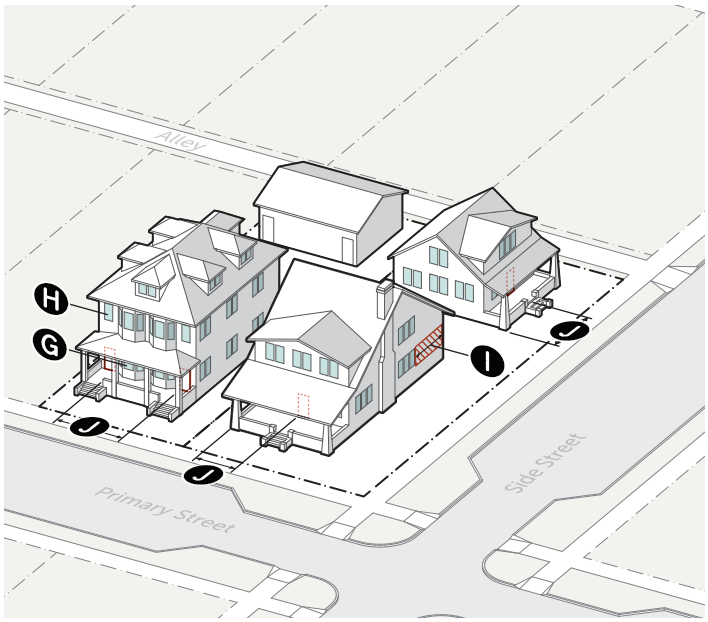
Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	
Townhouse	15'
All other structures	25'
2. **Density**	*Sec. 38.260.030*
Minimum density per net acre	8 du/a
3. **Coverage**	*Sec. 38.260.040*
B Building coverage (max)	40%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	n/a
4. **Streetscape**	*Sec. 38.260.050*
C Sidewalk width (min)	5'
D Boulevard strip width (min)	5'
Type	Landscape
Tree spacing (max)	25-30' avg. on center, depending on species

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min)	10'
F Side street (min)	10'
Street-facing garage (min)	20'
G Side (min)	
Townhouse - common wall	0'
Townhouse - exterior wall	5'
All other structures	5'
Rear (min)	10'
H Alley (min)	5'
6. **Transitions**	*Sec. 38.260.070*
Building setback and height transitions	n/a
7. **Frontage**	*Sec. 38.260.080*
Build-to	n/a
8. **Parking Location**	*Sec. 38.260.090*
Primary street setback	Not allowed
Side street setback	Not allowed
Side setback	Not allowed
Rear/alley setback	Allowed

B. Residential: Building Standards





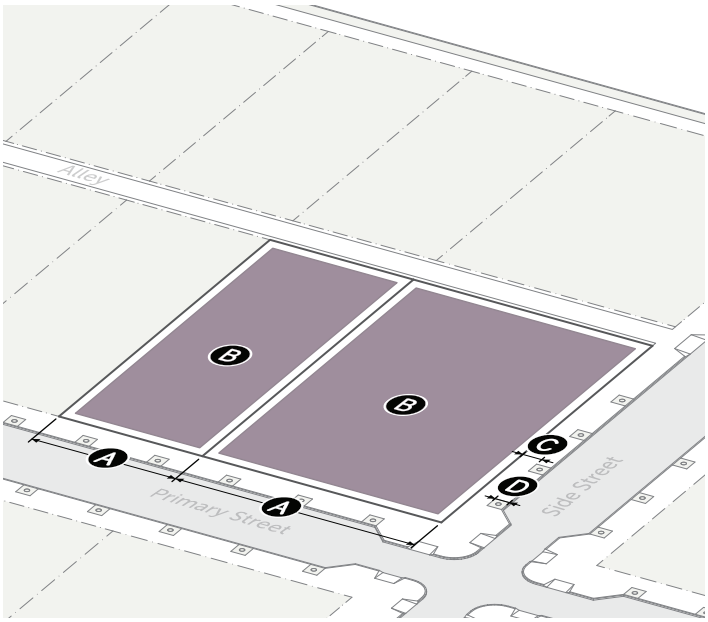
Refer to Sec. 38.260 for a description of each building standard

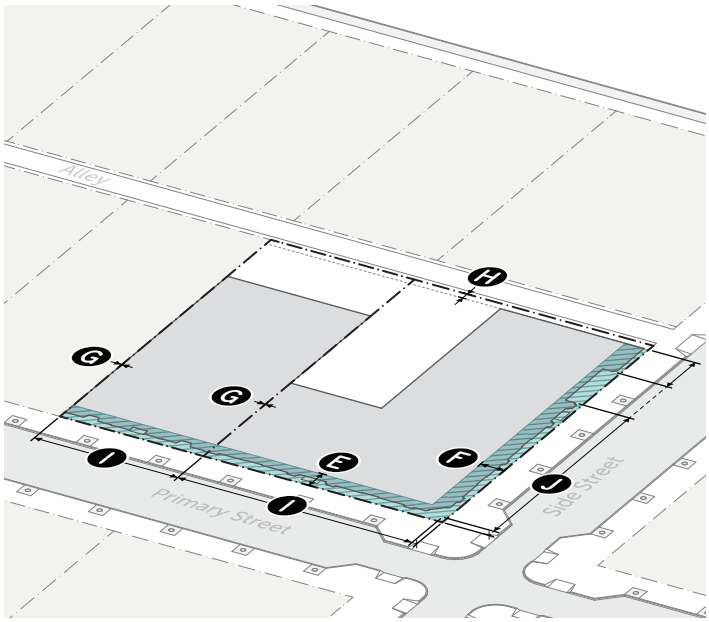
1. Vertical Massing	*Sec. 38.260.100*	
A Building height (max)	50'	
B Wall plate height (max)	33'	
2. Horizontal Massing	*Sec. 38.260.110*	
Dwelling units per building (max)	4	
Building size (max)	5,000 SF	
C Building width: primary street (max)	80'	
D Building width: side street (max)	80'	
3. Activation	*Sec. 38.260.120*	
Active depth (min)	n/a	
4. Floor Height	*Sec. 38.260.130*	
E Ground story height (min)	9'	
F Ground floor elevation (min/max)	-2'/5'	

	Primary St.	Side St.
5. Windows	*Sec. 38.260.140*	
G Ground story (min)	20%	20%
H Upper story (min)	15%	15%
I Blank wall width (max)	10'	20'
6. Entrances	*Sec. 38.260.150*	
J Street-facing entry spacing (max)	40'	60'
Entry feature	Required	n/a
Options	• Porch • Covered entry • Recessed entry	

SEC. 38.220.080. - NEHMU [NORTHEAST HISTORIC MIXED USE]

C. Mixed Use: Lot Standards



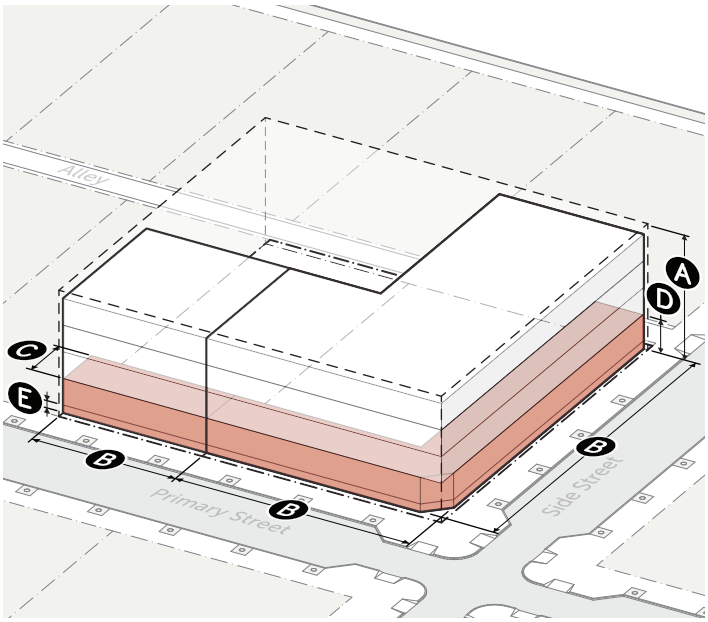


Refer to Sec. 38.260 for a description of each lot standard

1. Lot Size	*Sec. 38.260.020*
A Width (min)	15'
2. Density	*Sec. 38.260.030*
Minimum density per net acre	n/a
3. Coverage	*Sec. 38.260.040*
B Building coverage (max)	100%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	2%
4. Streetscape	*Sec. 38.260.050*
C Sidewalk width (min)	5'
D Boulevard strip width (min)	5'
Type	Mixed
Tree spacing (max)	25-30' avg. on center, depending on species

5. Setbacks	*Sec. 38.260.060*
E Primary street (min/max)	1'/20'
F Side street (min/max)	1'/20'
G Side (min)	0'
Rear (min)	0'
H Alley (min)	5'
6. Transitions	*Sec. 38.260.070*
Building setback and height transitions	Required
7. Frontage	*Sec. 38.260.080*
Build-to	
I Primary street	70%
J Side street	35%
8. Parking Location	*Sec. 38.260.090*
Parking between building and street	Not allowed

D. Mixed Use: Building Standards



Refer to Sec. 38.260 for a description of each building standard

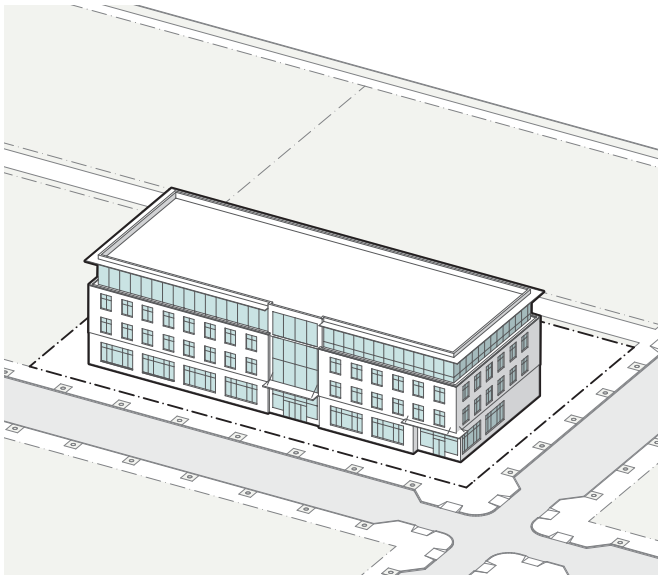
1. Vertical Massing	*Sec. 38.260.100*
A Height (max)	50'
Wall plate height (max)	n/a
2. Horizontal Massing	*Sec. 38.260.110*
Dwelling units per building (max)	n/a
B Building width (max)	200'
3. Activation	*Sec. 38.260.120*
C Active depth (min)	20'
4. Floor Height	*Sec. 38.260.130*
D Ground story height (min)	12'
E Ground floor elevation (min/max)	-2'/5'

	Primary St.	Side St.
5. Windows	*Sec. 38.260.140*	
F Ground story (min)	60%	30%
G Upper story (min)	15%	15%
H Blank wall width (max)	15'	20'
6. Entrances	*Sec. 38.260.150*	
I Street-facing entry spacing (max)	60'	100'
Entry feature	Required	Required
Options	• Porch • Covered entry • Recessed entry	

DIVISION 38.230. - **INDUSTRIAL DISTRICTS**

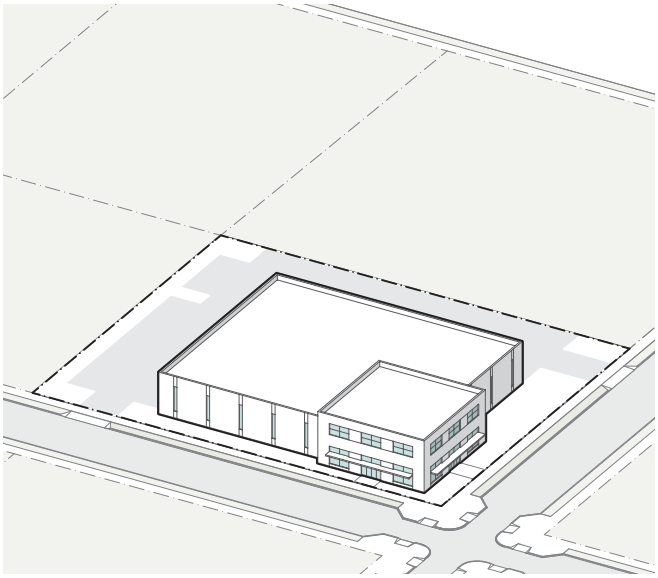
Sec. 38.230.010. - **Purpose.**

The purpose of the Industrial Districts is to establish areas within the city that provide opportunities for a variety of employment and industrial activity while minimizing adverse impacts, and to create standards for development within those areas at a variety of scales and intensities.



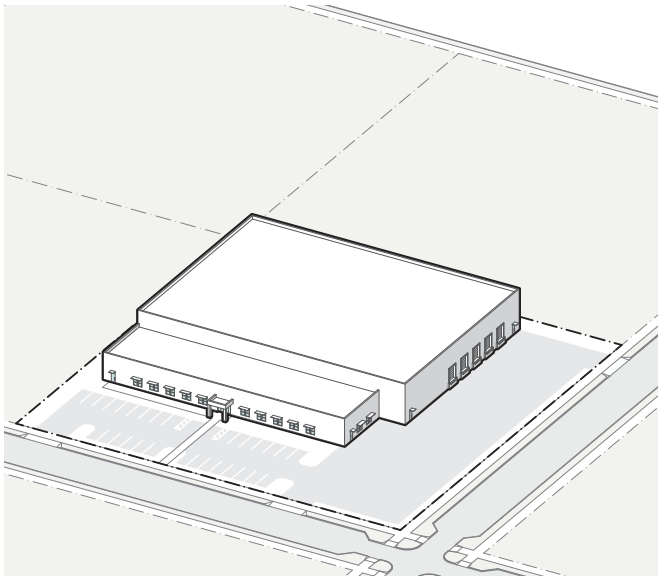
A. B-P Business Park

1. The B-P district is intended to accommodate employment and technology hubs with research and collaboration activity, containing leading-edge anchor institutions that foster company clusters, start-ups, business incubators, and accelerators.
2. Limited commercial and residential activity is allowed in order to support a more balanced live-work environment.



B. M-1 Light Manufacturing

1. The M-1 district is intended to accommodate a variety of wholesale trade, storage and warehousing, trucking and transportation, and light manufacturing uses.
2. The majority of activity is anticipated to be conducted indoors with only limited accessory outdoor storage.
3. Limited commercial and residential activity is allowed in order to support a more balanced live-work environment.

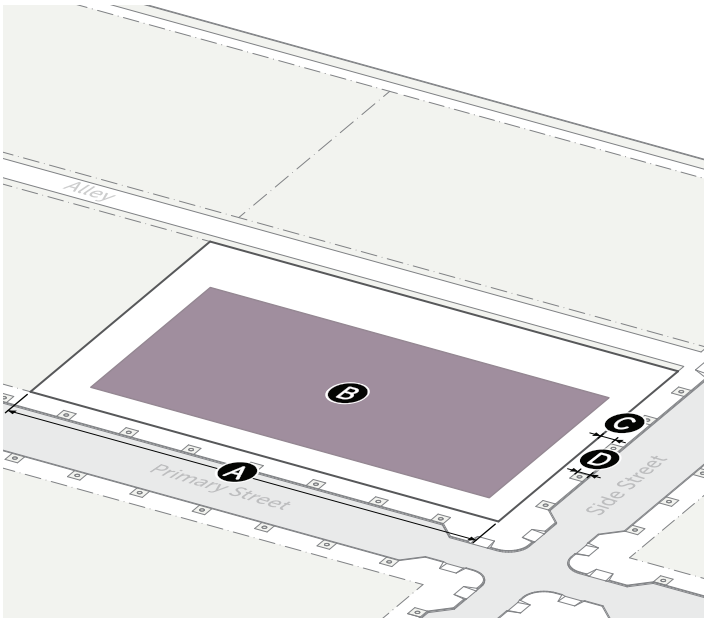


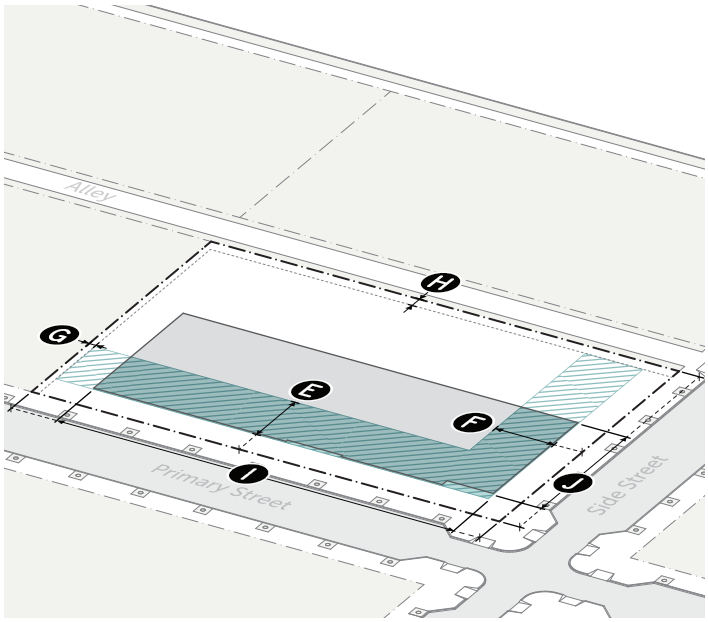
C. M-2 Manufacturing & Industrial

1. The M-2 district is intended to accommodate the most intensive heavy manufacturing and industrial uses activity in the City.
2. A significant amount of outdoor activity is anticipated to take place.
3. Limited commercial activity is allowed in order to support a more balanced live-work environment.

SEC. 38.230.020. - B-P [BUSINESS PARK]

A. Lot Standards



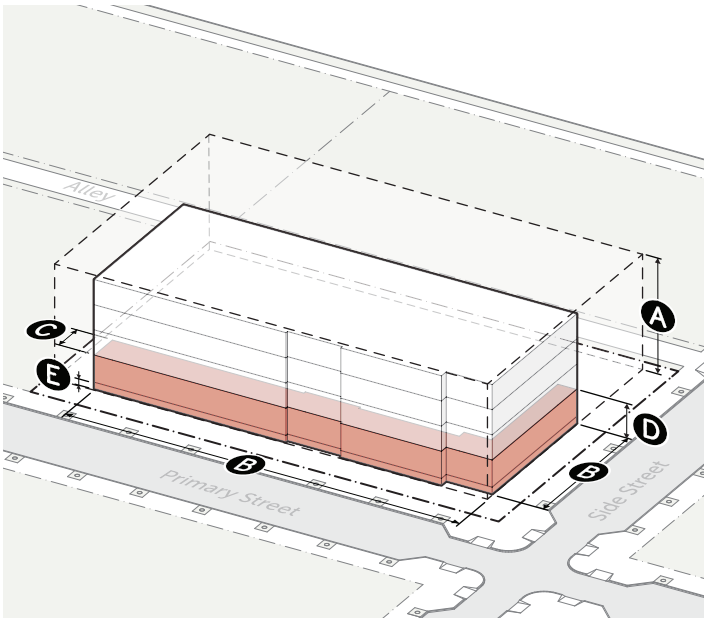


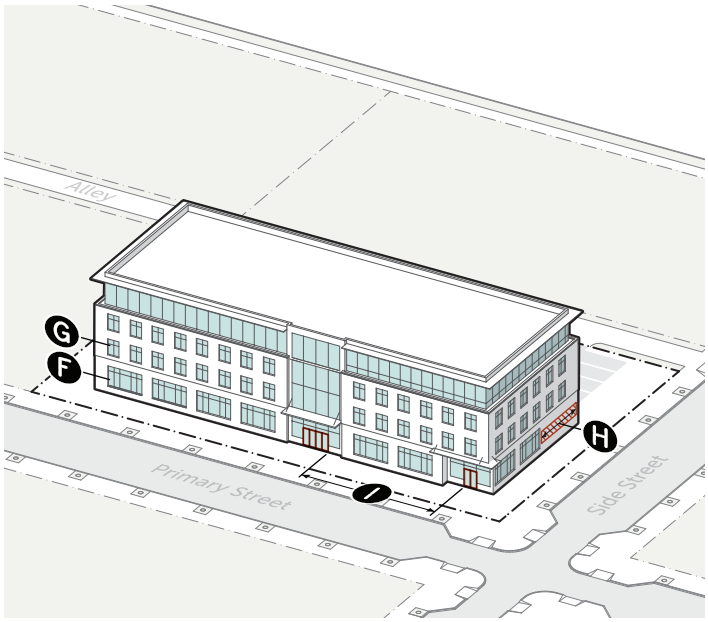
Refer to Sec. 38.260 for a description of each lot standard

1. Lot Size	*Sec. 38.260.020*
A Width (min)	150'
2. Density	*Sec. 38.260.030*
Minimum density per net acre	n/a
3. Coverage	*Sec. 38.260.040*
B Building coverage (max)	75%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	2%
4. Streetscape	*Sec. 38.260.050*
C Sidewalk width (min)	5'
D Boulevard strip width (min)	5'
Type	Mixed
Tree spacing (max)	25-30' avg. on center, depending on species

5. Setbacks	*Sec. 38.260.060*
E Primary street (min/max)	10'/30'
F Side street (min)	10'/30'
G Side (min)	3'
Rear (min)	3'
H Alley (min)	5'
6. Transitions	*Sec. 38.260.070*
Building setback and height transitions	Required
7. Frontage	*Sec. 38.260.080*
Build-to	
I Primary street	50%
J Side street	25%
8. Parking Location	*Sec. 38.260.090*
Parking between building and street	Allowed - limited to 50% of street frontage

B. Building Standards





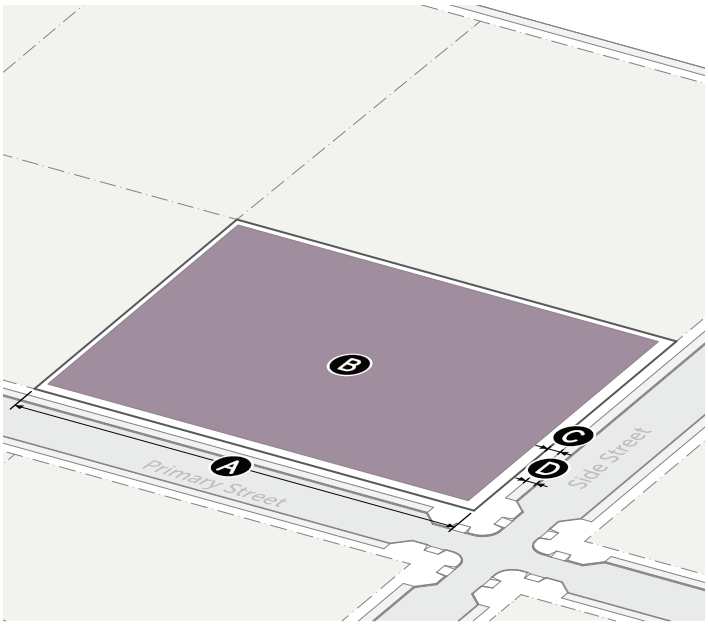
Refer to Sec. 38.260 for a description of each building standard

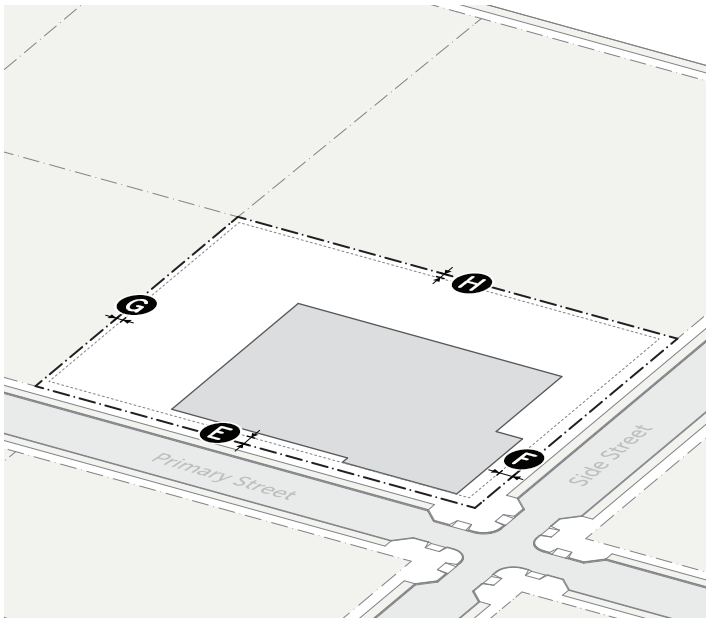
1. Vertical Massing	*Sec. 38.260.100*
A Height (max)	
In a regional commercial & services land use designation	80'
All other land use designations	60'
Wall plate height (max)	n/a
2. Horizontal Massing	*Sec. 38.260.110*
Dwelling units per building (max)	n/a
B Building width (max)	250'
3. Activation	*Sec. 38.260.120*
C Active depth (min)	20'
4. Floor Height	*Sec. 38.260.130*
D Ground story height (min)	
Residential	9'
Nonresidential	15'
E Ground floor elevation (min/max)	-2'/5'

	Primary St.	Side St.
5. Windows	*Sec. 38.260.140*	
F Ground story (min)		
Residential	30%	30%
Nonresidential	40%	30%
G Upper story (min)	15%	15%
H Blank wall width (max)	20'	30'
6. Entrances	*Sec. 38.260.150*	
I Street-facing entry spacing (max)	75'	125'
Entry feature	Required	n/a
Options	• Porch • Covered entry • Recessed entry	

SEC. 38.230.030. - **M-1 [LIGHT MANUFACTURING]**

A. **Lot Standards**



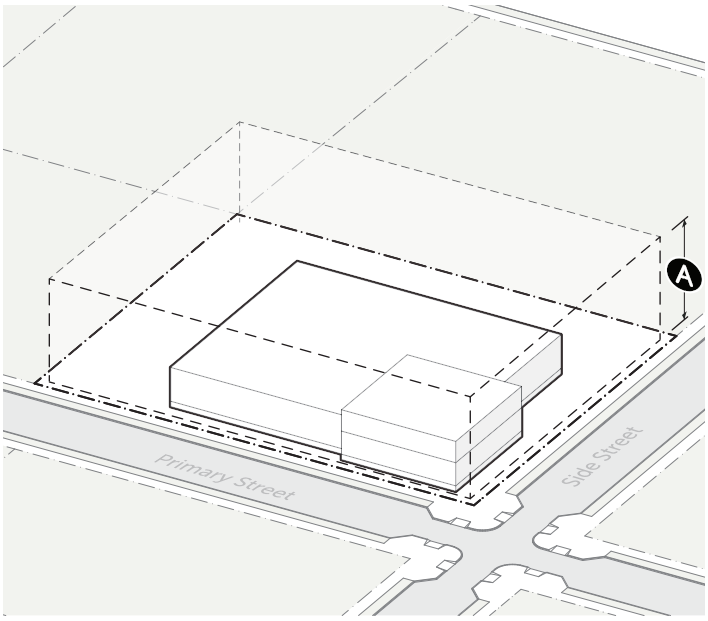


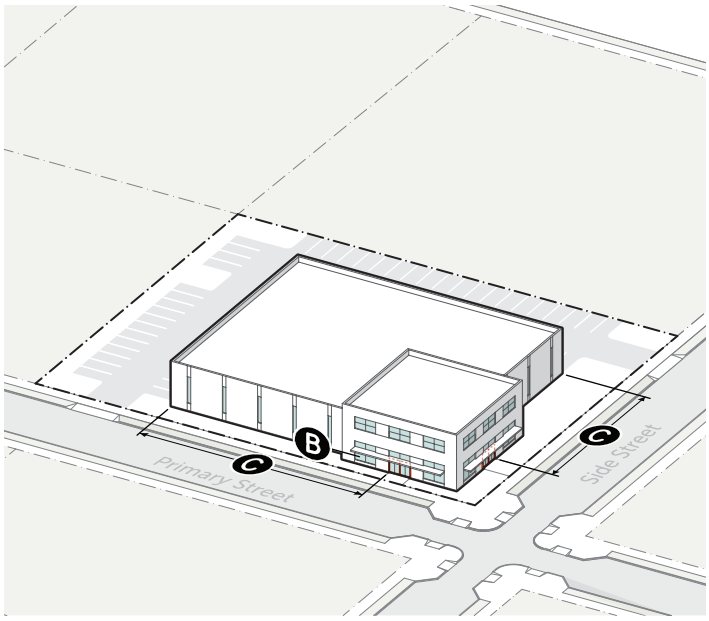
Refer to Sec. 38.260 for a description of each lot standard

1. **Lot Size**	*Sec. 38.260.020*
A Width (min)	75'
2. **Density**	*Sec. 38.260.030*
Minimum density per net acre	n/a
3. **Coverage**	*Sec. 38.260.040*
B Building coverage (max)	100%
Amenity space (min per unit)	
Up to 1 sleeping room	100 sf
2+ sleeping rooms	150 sf
Commercial open space (min)	n/a
4. **Streetscape**	*Sec. 38.260.050*
C Sidewalk width (min)	5'
D Boulevard strip width (min)	5'
Type	Landscape
Tree spacing (max)	35' avg. on center

5. **Setbacks**	*Sec. 38.260.060*
E Primary street (min)	10'
F Side street (min)	10'
G Side (min)	3'
H Rear (min)	3'
Alley (min)	5'
6. **Transitions**	*Sec. 38.260.070*
Building setback and height transitions	Required
7. **Frontage**	*Sec. 38.260.080*
Build-to	n/a
8. **Parking Location**	*Sec. 38.260.090*
Parking between building and street	Allowed - limited to 50% of street frontage

B. Building Standards





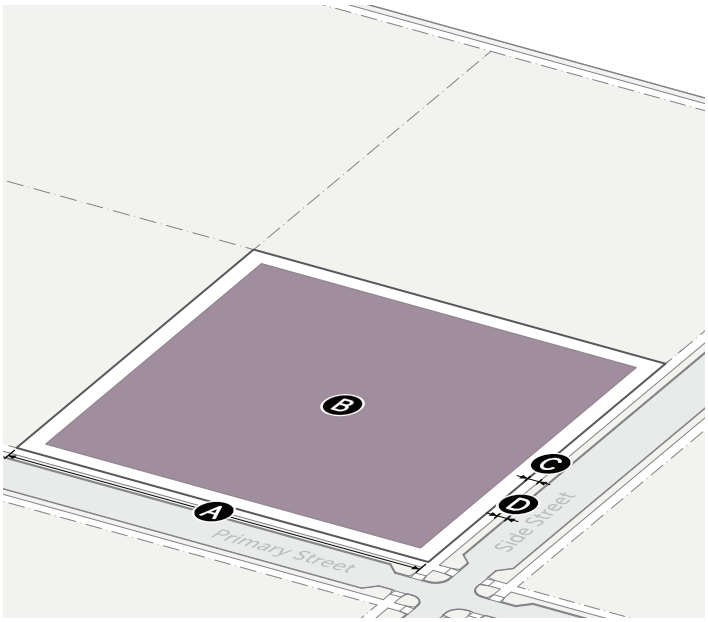
Refer to Sec. 38.260 for a description of each building standard

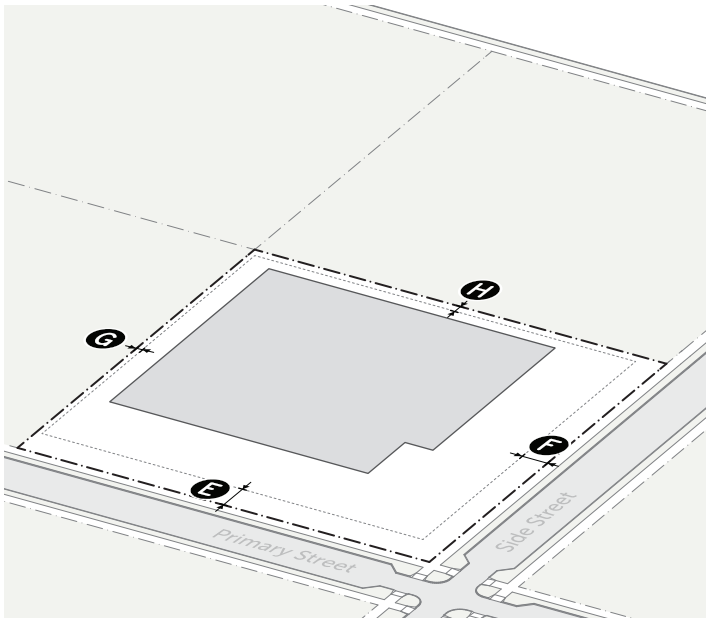
1. Vertical Massing	*Sec. 38.260.100*
A Height (max)	60'
Wall plate height (max)	n/a
2. Horizontal Massing	*Sec. 38.260.110*
Dwelling units per building (max)	n/a
Building width (max)	n/a
3. Activation	*Sec. 38.260.120*
Active depth (min)	n/a
4. Floor Height	*Sec. 38.260.130*
Ground floor elevation (min/max)	n/a

	Primary St.	Side St.
5. Windows	*Sec. 38.260.140*	
B Ground story (min)	30%	30%
Upper story (min)	n/a	n/a
Blank wall width (max)	n/a	n/a
6. Entrances	*Sec. 38.260.150*	
C Street-facing entry spacing (max)	200'	n/a
Entry feature	n/a	n/a

SEC. 38.230.040. - M-2 [MANUFACTURING & INDUSTRIAL]

A. Lot Standards



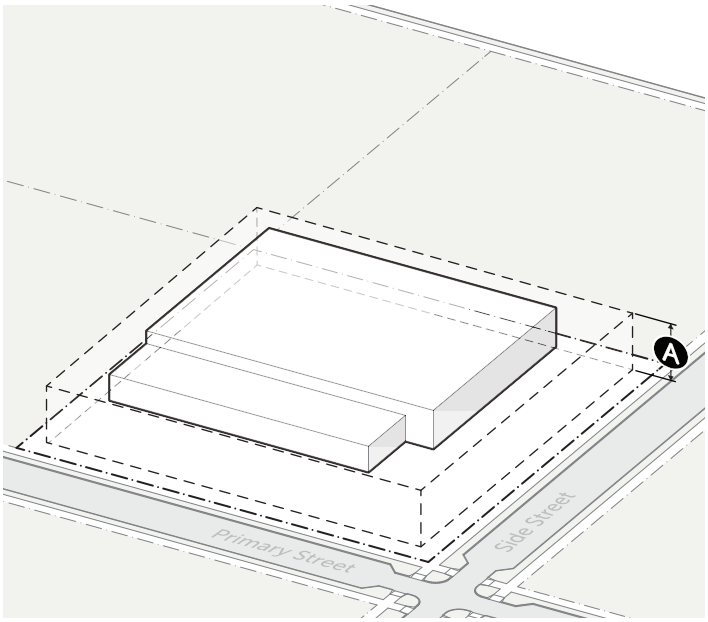


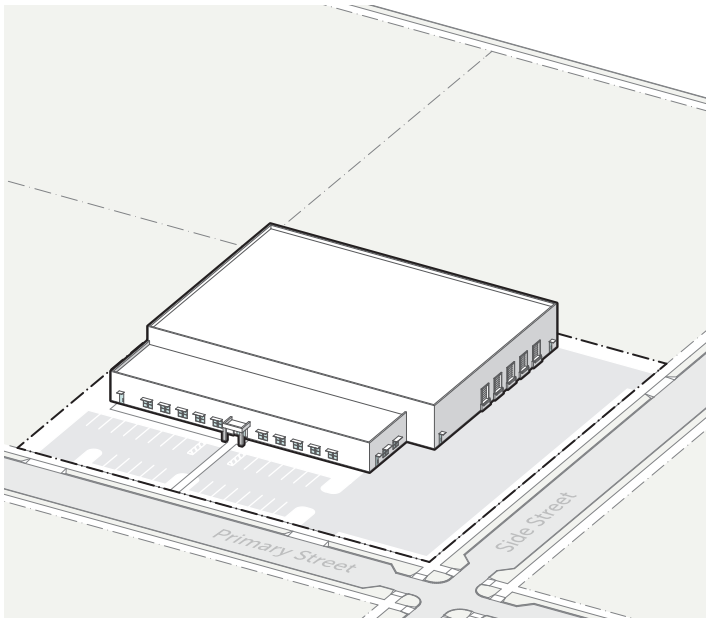
Refer to Sec. 38.260 for a description of each lot standard

1. Size	*Sec. 38.260.020*
A Width (min)	100'
2. Density	*Sec. 38.260.030*
Minimum density per net acre	n/a
3. Open Space	*Sec. 38.260.040*
B Building coverage (max)	100%
Amenity space (min per unit)	n/a
Commercial open space (min)	n/a
4. Streetscape	*Sec. 38.260.050*
C Sidewalk width (min)	5'
D Boulevard strip width (min)	5'
Type	Landscape
Tree spacing (max)	25-30' avg. on center, depending on species

5. Setbacks	*Sec. 38.260.060*
E Primary street (min)	10'
F Side street (min)	10'
G Side (min)	3'
H Rear (min)	3'
Alley (min)	5'
6. Transitions	*Sec. 38.260.070*
Building setback and height transitions	Required
7. Frontage	*Sec. 38.260.080*
Build-to	n/a
8. Parking Location	*Sec. 38.260.090*
Parking between building and street	Allowed

B. Building Standards





Refer to Sec. 38.260 for a description of each building standard

1. Vertical Massing	*Sec. 38.260.100*
A Height (max)	60'
Wall plate height (max)	n/a
2. Horizontal Massing	*Sec. 38.260.110*
Dwelling units per building (max)	n/a
Building width (max)	n/a
3. Activation	*Sec. 38.260.120*
Active depth (min)	n/a
4. Floor Height	*Sec. 38.260.130*
Ground floor elevation (min/max)	n/a

	Primary St.	Side St.
5. Windows	*Sec. 38.260.140*	
Ground story (min)	n/a	n/a
Upper story (min)	n/a	n/a
Blank wall width (max)	n/a	n/a
6. Entrances	*Sec. 38.260.150*	
Street-facing entry spacing (max)	n/a	n/a
Entry feature	n/a	n/a

DIVISION 38.240. - **SPECIAL DISTRICTS**

Sec. 38.240.010. - **PLI [Public Lands & Institutions]**

A. Purpose.

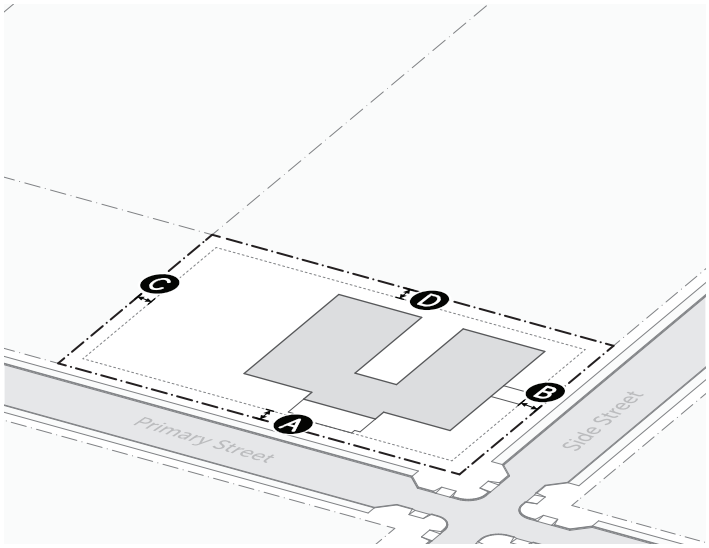
The purpose of the PLI public lands and institutions district is to provide for major public and quasi-public uses outside of other districts. Not all public and quasi-public uses need to be classified PLI. Some may fit within another district; however, larger areas will be designated PLI.

B. Applicability.

To the maximum extent allowed by state law, all PLI development must be subject to review and approval as provided for by this chapter, based upon recommendations received from the applicable review bodies established by *article 7* as may be applicable, and must be required to comply with all applicable underlying zoning requirements, as well as any requirements for certificates of appropriateness as established in design objective plans or other overlay district regulations or guidelines.

C. Lot Standards

Refer to *Sec. 38.260* for a description of each lot standard



1. **Setbacks**	*Sec. 38.260.060*
A Primary street (min)	Set by Adjacent District
B Side street (min)	Set by Adjacent District
C Side (min)	Set by Adjacent District
D Rear (min)	Set by Adjacent District
Alley (min)	Set by Adjacent District

Except as expressly stated, no additional lot or building standards apply within the PLI district.

Sec. 38.240.020. - NCOD [Neighborhood Conservation Overlay District]

A. Purpose.

1. All new construction, alterations to existing structures, movement of structures into or out of the neighborhood conservation overlay district, referred to as the conservation district, or demolition of structures by any means or process will be subject to design review unless specifically exempted. The recommendations of the administrative design review staff must be given careful consideration in the final action of the review authority.

2. This section defines and sets standards which apply to the conservation district.

3. The purpose of the conservation district designation is to stimulate the restoration and rehabilitation of structures, and all other elements contributing to the character and fabric of established residential neighborhoods and commercial or industrial areas. New construction will be invited and encouraged provided primary emphasis is given to the preservation of existing buildings and further provided the design of such new space enhances and contributes to the aesthetic character and function of the property and the surrounding neighborhood or area. Contemporary design will be encouraged, provided it is in keeping with the above-stated criteria, as an acknowledged fact of the continuing developmental pattern of a dynamic, changing community.

4. In view of the fact that most of the area included within the boundaries of the conservation district was developed and built out prior to the adoption of zoning and contemporary subdivision regulations, the construction, development pattern and range of uses is highly diverse and may not be in compliance with conventional regulatory requirements. This section recognizes that this diversity is a contributing element of the historic character of these neighborhoods or areas. The provisions of this section must be applied in a manner that will encourage the protection and enhancement of the many diverse features for future generations.

5. The conservation district boundary is largely coterminous with the area surveyed in the effort that led to the listing of nine historic districts and 40 additional landmark structures in the National Register of Historic Places, and includes the nine designated historic districts and 40 individual landmarks. The district boundary may be revised as additional cultural resource survey work is completed. This section sets the means of protecting and enhancing structures within the conservation district.

6. It is further the purpose of the conservation district designation to protect and enhance neighborhoods or areas of significant land planning or architectural character, historic landmarks or other built or natural features for the educational, cultural, economic benefit or enjoyment of citizens of the city. It will be the policy and responsibility of the administrative entities of this section to:

   a. Protect, preserve, enhance and regulate historically significant structures, archaeological or cultural sites, and areas that:

      (1) Are reminders of past eras, events or persons important in local, state or national history;

      (2) Provide significant examples of land planning or architectural styles, or are landmarks in the history of land planning and architecture;

(3) Are unique or irreplaceable assets to the city and its neighborhoods;

(4) Provide examples of physical surroundings in which past generations lived; or

(5) Represent and express the unique characteristics of small agricultural-based, western city developmental patterns;

b. Enhance property values through the stabilization of neighborhoods and areas of the city, increase economic and financial benefits to the city and its inhabitants, and promote tourist trade and interests;

c. Develop and maintain the appropriate environment for buildings, structures, sites and areas that reflect varied planning and architectural styles and distinguished phases of the city's history and prehistory;

d. Stimulate an enhancement of human life by developing educational and cultural dimensions, which foster the knowledge of the city's heritage, and cultivate civic pride in the accomplishments of the past; and

e. Seek to maintain and enhance the many private and public elements that are unique to the fabric, theme and character of each neighborhood and area, including, but not limited to: lighting, pathways, street trees, natural areas and other features that may, from time to time, be identified by the citizens and property owners' of neighborhoods, areas and subsections.

7. It is further the purpose of this article to protect historic structures and sites as defined in *article 8* by requiring any person seeking to demolish or move a historic structure or site to comply with *38.740.070* whether or not the structure is located within the NCOD.

B. Staff powers and duties within conservation districts.

1. The staff will review and make recommendations to the review authority regarding development within the neighborhood conservation district in order to maintain the underlying and desirable characteristics of structures and areas within such districts, while recognizing the need for innovation and individual expression in the development of these districts.

2. In carrying out this mission, in addition to the duties established in *38.700*, the staff must review any tax abatement or other incentive programs being considered by the city commission that are designed to stimulate preservation and rehabilitation of structures and properties, and to review any proposed action or development utilizing these abatement or incentive programs.

C. Conservation district designation or recession.

A site, structure, object, area or district may be designated or rescinded as a landmark, or added to or removed from the conservation district by the city commission upon recommendation of the Historic Preservation Advisory Board subject to the provisions of *38.770* and chapter 2, article 5, division 6. Property owner concurrence is necessary for the designation or rescission of landmark status.

D. Certificate of appropriateness.

1. A certificate of appropriateness is required before any and all alteration(s) other than those specifically exempted below, or repair(s) as defined in *38.800.190*, are undertaken upon any structure in the conservation district. The review authority for certificates of appropriateness is established in *38.700.010*. Compliance with the terms of the final decision is required. The

Montana Historical and Architectural Inventory Form must be reviewed and, if necessary, updated to reflect current conditions on the site, prior to the review of the proposal. Application procedures are as follows:

a. No building, demolition, sign or moving permit may be issued within the conservation district until a certificate of appropriateness has been issued by the appropriate review authority, and until final action on the proposal has been taken.

(1) Limited exceptions.

The following construction located within the neighborhood conservation overlay district, within an established historic district, or at a site which is individually listed on the National Register of Historic Preservation, does not require a certificate of appropriateness if the project satisfies the following standards:

(a) Fences meeting all other provisions of this chapter which are built of wood, wrought-iron, or any other non-synthetic material and whose construction allows "transparency" as set forth in Chapter 3, Section F of the design guidelines referenced in *38.240.020*. Chain link fencing is not included in this exception.

(b) Basement egress windows whose window material and configuration is present elsewhere in the structure, and whose window wells are not on the front or corner-side setback elevation of the structure, and which do not establish or provide egress from an illegal dwelling unit.

(c) Accessory structures under 120 square feet as measured from the outer edge of the exterior walls, which meet the setback requirements, are not more than 14 feet to their highest point and which do not require a building permit.

(d) Alterations in roofing material, if installing wood shingle, slate, tile, or asphalt shingle material, and no changes are made to the roof shape, pitch or slope.

(e) Photovoltaic panels which are flush mounted to a roof.

b. Application, review and public notice procedures for proposals located within the conservation district are set forth in *38.710*, *38.730*, and *38.740*. If demolition or movement of structures or sites subject to the conservation district requirements is proposed, the procedures in *38.240.020.H* apply.

E. Standards for certificates of appropriateness.

1. All work performed in completion of an approved certificate of appropriateness must be in conformance with the most recent edition of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, published by U.S. Department of the Interior, National Park Service, Cultural Resource Stewardship and Partnerships, Heritage Preservation Services, Washington, D.C. (available for review at the community development department).

2. Architectural appearance design guidelines used to consider the appropriateness and compatibility of proposed alterations with original design features of subject structures or properties, and with neighboring structures and properties, must focus upon the following:

a. Height;

b. Proportions of doors and windows;

c. Relationship of building masses and spaces;

d. Roof shape;

e. Scale;

f. Directional expression, with regard to the dominant horizontal or vertical expression of surrounding structures;

g. Architectural details;

h. Concealment of non-period appurtenances, such as mechanical equipment; and

i. Materials and color schemes (any requirements or conditions imposed regarding color schemes must be limited to the prevention of nuisances upon abutting properties and prevention of degradation of features on the property in question. Color schemes may be considered as primary design elements if a deviation from the underlying zoning is requested).

3. Contemporary, non-period and innovative design of new structures and additions to existing structures is encouraged when such new construction or additions do not destroy significant historical, cultural or architectural structures or their components and when such design is compatible with the foregoing elements of the structure and surrounding structures.

4. When applying the standards of subsections 1 through 3 above, the review authority must be guided by the design guidelines for the neighborhood conservation overlay district. Application of the design guidelines may vary by property as explained in the introduction to the design guidelines. When reviewing a contemporary, non-period, or innovative design for new structures or additions to existing structures, the review authority must be guided by the design guidelines for the neighborhood conservation overlay district to determine whether the proposal is compatible with any existing or surrounding structures.

5. Development in the NCOD must comply with all other applicable development standards of this chapter.

6. Tax abatement certificate of appropriateness applications are also reviewed with the procedures and standards established in chapter 2, article 6, division 2.

F. Application requirements for certificates of appropriateness in conservation districts.

Applications for certificates of appropriateness must be made in conjunction with applications for site plan approval in accordance with *38.740*. Where development projects in the conservation district require only sketch plan review per *38.740*, applications for certificates of appropriateness must be made on a form provided by the community development department, and must include the information and material set forth in *38.710*.

G. Deviations from underlying zoning requirements.

Because the construction of portions of historic Bozeman preceded zoning, subdivision and construction regulations, some buildings within the conservation district do not conform to

contemporary zoning standards. In order to encourage restoration, rehabilitation and appropriate new construction activity that would contribute to the overall historic character of the community, deviations from underlying zoning requirements may be granted as described in *38.760*. The criteria for granting deviations from the underlying zoning requirements are:

1. Modifications must be more historically appropriate for the building and site in question and the adjacent properties, as determined by the standards in *38.240.020.E*, than would be achieved under a literal enforcement of this chapter;

2. Modifications will have minimal adverse effects on abutting properties or the permitted uses thereof; and

3. Modifications must assure the protection of the public health, safety and general welfare. Approvals may be conditioned to assure such protection, and such conditions may include a time period within which alterations will be completed; landscaping and maintenance thereof; architectural, site plan and landscape design modifications, or any other conditions in conformity with the purpose set forth in this section.

H. Review of demolition or movement of historic structures or sites.

1. The demolition or movement of any structure or site must be subject to the provisions of this article. This process applies to:

   a. Historic properties and sites, as defined in *article 8*.

   b. Non-historic properties per *38.240.020.J*.

   c. Unsafe structures whether historic or non-historic per *38.240.020.K*. The provisions for unsafe structures take priority over other provisions for demolition.

2. An application to move or demolish a structure subject to this article must follow the applicable review procedures.

3. Optional provisional review of demolition. A property owner may request provisional review of the proposed demolition of a structure subject to this article prior to submittal of a certificate of appropriateness application for seeking demolition of the structure. The director of community development may establish criteria for the application for provisional review of demolition. Provisional review is advisory only and does not constitute approval to demolish a structure. Provisional review must consider:

   a. The property's historic significance and a neighborhood's historical significance.

   b. Whether the structure has no viable economic life remaining. "No viable economic life remaining" means the costs of repair and/or rehabilitation to bring the structure to a habitable condition as established by the applicable technical codes in article 10.02, exceed the costs of demolition and redevelopment to minimum standards with a building of the same type and scale.

I. Demolition or movement of a historic structure or site.

1. Certificate of appropriateness (COA) for demolition and subsequent development.

Approval of the proposed subsequent development is required for all historic structures proposed for demolition and for the proposed movement of any structure or site.

2. Public notice.

Proposals for demolition of historic properties within the city limits require public notice. Notice of application(s) must be provided in accordance with *38.730*.

3. Criteria.

The review authority must consider the following factors in evaluating applications for demolition or movement of a historic structure or site and subsequent redevelopment:

a. The property's historic significance.

b. Whether the structure has no viable economic life remaining. "No viable economic life remaining" means the costs of repair and/or rehabilitation to bring the structure to a habitable condition as established by the applicable technical codes in article 10.02, exceed the costs of demolition and redevelopment to minimum standards with a building of the same type and scale.

c. Whether the subsequent development complies with *38.240.020.E*.

d. Whether the subsequent development includes construction of new building(s) unless the existing character of the area does not include buildings.

e. Subsequent development requires a building permit and does not include proposals which leave the site without building(s) or structure(s).

Notwithstanding the above, for projects proposing the removal of a historic structure, which do not qualify for sketch plan review pursuant to *38.740.060*, the review authority may determine the proposed subsequent site development is more appropriate for the site based on the criteria in *38.740.090*.

4. Review process.

a. Application.

Upon application for a COA for demolition and subsequent development the review authority may:

(1) Grant preliminary or final approval of the demolition with standard contingencies and/or project specific conditions.

(2) Deny the COA application.

b. COA approval.

(1) Preliminary COA approval.

After preliminary approval with contingencies or conditions requiring follow up work, the applicant may apply for final COA approval and must demonstrate compliance with development standards and completion of contingencies and conditions, including documentation. The review authority must approve the COA for demolition and subsequent development.

(2) Final COA approval.

If the submitted application materials demonstrate compliance with development standards and completion of contingencies and conditions, including documentation, the review authority must approve the COA for demolition and subsequent development.

c. Stay of issuance.

If an application for demolition or moving is denied due to failure to meet *38.240.020.I*, issuance of a demolition or moving permit must be stayed for a period of two years from the date of the denial in order to allow the applicant and city to explore alternatives to the demolition or move, including, but not limited to, the use of tax credits or adaptive reuse. The two-year stay may be terminated at any point in time if an alternate proposal is approved or if sufficient additional evidence is presented to otherwise satisfy the requirements of this section.

(1) Early termination of two-year stay. An owner of property subject to a stay under this section may seek early termination of the stay if the owner demonstrates s/he has actively and in good faith sought alternatives to demolition. These alternatives may include but are not limited to: listing the property for sale as a historic property; actively seeking input from neighborhood groups and interested parties; exploring alternative funding sources for stabilization and/or reconstruction; and offering the property for relocation.

(2) If, upon expiration of the two-year stay of demolition, no alternate proposals have been approved or sufficient evidence has not been presented to otherwise terminate the stay, an application for a demolition permit may be presented to the city pursuant to chapter 10, article 3 or 4 of this Code. If all requirements of the demolition permit are satisfied, including documentation of the structure to be moved or demolished and the review authority has approved the subsequent development and has issued a building permit for the subsequent development, a demolition permit pursuant to chapter 10, article 3 or 4 must be granted and no other proceedings under this chapter are required.

(3) The two-year stay does not begin to run if denial of a COA to demolish a historic structure or site is based on the failure of the applicant to make a complete and adequate submittal or to propose a subsequent treatment which complies with the standards of this chapter.

d. Standard requirements.

(1) Subsequent development of the site must receive zoning approval, building permit approval, and pay all related fees prior to issuance of a demolition permit.

(2) Documentation of the structure must be completed and submitted to the historic preservation officer and deemed complete and adequate prior to issuance of a demolition permit per *38.240.020.L*.

(3) The review authority may require a developer to enter into a development agreement with the city at the time of issuance of a certificate of appropriateness authorizing demolition of all or part of a historic structure in the neighborhood conservation overlay zoning district or in a designated historic district. The development agreement may provide for conditions of demolition, timing of reconstruction, and may require the developer to post a surety bond naming the city as a beneficiary for not more than 10 % of the costs of the overall reconstruction budget as a guarantee that construction of the replacement structure will commence promptly upon completion of the demolition. This requirement is in addition to any other requirement of this code.

J. Demolition or movement of a non-historic structure or site in the NCOD.

1. Certificate of appropriateness (COA) for demolition and subsequent development.

Required for all properties proposed for demolition or movement of any structure or site. Subsequent development does not include proposals which leave the site without building(s) or structure(s).

2. Public notice.

Notice must be provided in accordance with *38.730*.

3. Criteria.

a. The applicable criteria are the COA criteria of *38.240.020.E*.

b. The subsequent development must include construction of new building(s) unless the immediately prior character of the area did not include buildings.

4. Review process.

a. Application.

Upon application for a COA for demolition and subsequent development the review authority may:

(1) Grant preliminary or final approval of the demolition with standard contingencies and/or project specific conditions.

(2) Deny the COA application.

b. COA approval.

(1) Preliminary COA approval.

After preliminary approval with contingencies or conditions requiring follow up work, the applicant may apply for final COA approval and must demonstrate compliance with development standards and completion of contingencies and conditions, including documentation. The review authority must approve the COA for demolition and subsequent development.

(2) Final COA approval.

If the submitted application materials demonstrate compliance with development standards and completion of contingencies and conditions, including documentation, the review authority must approve the COA for demolition and subsequent development.

c. Standard requirement.

Subsequent treatment of the site must receive zoning approval prior to issuance of a demolition permit. Subsequent treatment may include replacement with a new building, integration of the area into a larger site which will support future development, or reclamation of the site to a safe, graded condition where stormwater runoff and weeds are controlled and landscaping is reestablished.

K. Demolition or movement of an unsafe structure whether historic or non-historic.

1. Certificate of appropriateness (COA) for demolition and subsequent development.

Upon application and the chief building official's determination that the property is unsafe, the review authority may approve demolition and subsequent development. Subsequent development for an unsafe structure may be its replacement with a new building, integration of the area into a larger site which will support future development, or reclamation of the site to a safe, graded condition where stormwater runoff and weeds are controlled.

2. Public notice.

Notice must be provided in accordance with *38.730*.

3. Nuisance.

The demolition of unsafe properties/structures may be subject to the public nuisance abatement provisions of chapter 16, article 2 of this code. Upon the chief building official's determination that the property is unsafe and declaration of a public nuisance if the property owner does not resolve the unsafe condition, the review authority must give final approval on a COA, which may be initiated by the city, and the demolition permit will be issued so the city may abate a nuisance.

4. Initiation.

The provisions of this section may be initiated by a land owner; or by the city in accordance with chapter 16, article 2.

L. Documentation and administrative procedures.

1. Documentation.

All structures or sites approved for demolition or moving must be fully documented.

a. The director of community development must establish by administrative order rules for documentation of non-historic and historic properties. This documentation must be created by a professional who satisfies professional qualification standards for History, Archeology or Architectural History, as established by the National Park Service and published in the Code of Federal Regulations, 36 CFR Part 61.

b. Documentation may be submitted as early in the process as the property owner desires to support the requested action, and to further the consideration and review of the request, but not later than prior to issuance of a building permit.

2. Application.

A building permit application, in accordance with applicable codes and requirements, must be submitted and approved before any demolition or construction is allowed.

3. Fees.

a. All fees and charges applicable to review of the request for demolition and construction of the subsequent development (e.g. parkland, water rights, impact fees) must be paid prior to issuance of a building or demolition permit.

b. When required by the city, this must include a financial security in a form approved by the city attorney ensuring completion of the demolition and reclamation of the site to a safe condition.

4. Reconstruction as remedy.

In addition to the remedies in *38.700*, the owner of any structure or site that is demolished or moved contrary to the provisions of this section, and any contractor performing such work, may be required to reconstruct such structure or site in a design and manner identical to its condition prior to such illegal demolition or move, and in conformance with all applicable codes and regulations.

M. Safe condition and good repair.

Each property or structure located in the conservation district must be maintained in safe condition and good repair as required in sections 16.02.030 and 16.02.040. Nothing in this section must be construed to prevent normal maintenance and repair of any exterior feature of any historic structure which does not involve a building permit. Interior arrangements or alterations to the interior of a building must not be subject to this requirement.

DIVISION 38.250. - **PLANNED DEVELOPMENT**

Sec. 38.250.010. - **PDZ [Planned Development Zone]**

A. Purpose.

The purpose of the planned development zone (PDZ) district is to provide a general structure and plan for specific properties to encourage flexibility and innovation that:

1. Create distinct areas with quality urban design and mutually supportive uses; and
2. Support implementation of community plans and goals, including but not limited to the city's adopted land use plan; and
3. Provide community benefits through the creation of affordable housing, inclusion of environmentally sustainable design features, and retention of historic structures; and
4. Protect and promote the health, safety, and general welfare of the community.

B. Planned Unit Developments (PUD)s Approved or Adequate Prior to October 27, 2022.

1. Individual PUDs approved by the city prior to October 27, 2022, and PUD applications received by the city prior to October 27, 2022 that have completed the adequacy review process prior to October 27, 2022 must after October 27, 2022 be referred to as Legacy Planned Unit Developments.
2. Individual Legacy Planned Unit Developments shall be governed by, and may be amended pursuant to, the rules regarding PUDs in effect prior to October 27, 2022. The PUD regulations in effect prior to October 27, 2022 are renamed legacy planned unit developments and are in *38.250.020*.

C. PDZs Approved After October 27, 2022.

1. PDZ applications approved by the city after October 27, 2022, and submitted PUD applications that have not completed the adequacy review process prior to October 27, 2022 shall be subject to the regulations in this division.
2. A PDZ application must identify a standard base zoning district, from those listed in *38.200* (the "reference base district") for each portion of the PDZ area. Different reference base districts may be designated for different portions of the property. The project must be designed in conformance with the standards in this chapter applicable in the reference base district unless an alternative standard or allowance is approved with the PDZ. If a PDZ has more than one reference district the boundaries of the different areas should generally follow the boundary guidance of *38.300.040*.
3. PDZ districts adopted pursuant to this division must be implemented through the creation of new zoning districts through zoning map amendments as described in *38.770* and shall be labeled on the base zone district layer of the city's official zoning map as "PDZ." Individual PDZ districts are not added to or listed in *38.200.020*.

D. Eligibility for Rezoning to PDZ District.

1. An application for rezoning to a PDZ district may only be accepted for review by the city if the review authority determines that the application complies with the following general criterion along with the PDZ type-specific criteria in *subsection E* below, as determined by the director:

   a. All property included in the proposed PDZ must be under common ownership or control or must be the subject of an application filed jointly by the property owners of all the property to be included.

2. Compliance with the eligibility criteria allows the applicant to begin negotiations with the City regarding the specific uses, structures, layout, and design that will be used to satisfy the eligibility criteria.

3. Compliance with the eligibility criteria does not indicate that the PDZ will be approved by the city. Approval by the city requires a city commission finding that the criteria for approval in *subsection I* below are met.

E. Specific PDZ Eligibility Requirements.

The proposed PDZ district must, as determined by the review authority, comply with the eligibility criteria of at least one of the following five types of PDZ.

1. Affordable Housing PDZ

a. Eligibility

An affordable housing PDZ application must predominantly include residential dwelling units and must propose:

(1) That all parcels on which single-unit dwellings will be constructed are permitted to construct an accessory dwelling unit either within the primary building or in a freestanding accessory building in compliance with the provisions of *38.320.120.B*; and

(2) The following amounts and levels of affordable housing:

(a) The PDZ must propose the amounts and levels of affordable housing consistent with 38.340.020 for rental housing:

Table 38.250.010-1. Affordable Homes Required

Type of Housing	Minimum Percentage of Homes	Maximum Percentage of AMI	Duration
		For-Sale Dwellings (includes condominiums)	
Single-Household Detached Dwelling	=>10%	120% of AMI	=>30 years
Single-Household Attached Dwelling	=>10%	120% of AMI	=>30 years
Multi-Household Dwelling	=>10%	120% or AMI	=>30 years

(b) After the date on which the city commission adopts an ordinance or resolution establishing a different required amount of affordable housing or a different required level of income-restriction, the PDZ must provide:

(i) The amounts of housing and the levels of income-restriction required by those ordinances or restrictions, for a period of at least 30 years; or

(ii) At least an equivalent level of affordable housing benefit to the city, to be determined during the PDZ review and approval process, for a period of at least 30 years.

b. Flexibility Allowed

Eligible affordable housing PDZs may request an adjustment or waiver of any non-procedural provision in this chapter if that adjustment or waiver will contribute to achieving the preservation or production of housing at a lower cost than would otherwise be possible under the reference base district. The city may not adjust or waive any provision imposed by state or federal law or regulation.

2. Historic Structure/Site PDZ

a. Eligibility

A historic structure/site PDZ application must propose:

(1) Inclusion of an existing structure or site that is currently designated or is documented as eligible for designation on a city or state list of historic structures; or on the National Register of Historic Places within a contiguous area included in the PDZ application, and must either:

(a) In the case of an existing designated historic structure or site, the PDZ application must include a written commitment to preserve the structure or site in compliance with all applicable historic preservation standards for a period of at least 20 years; or

(b) In the case of an undesignated historic structure or site, the PDZ application must include a written commitment to complete the designation of the structure or site as historic prior to development of any portion of the PDZ, and to preserve the designated structure or site in compliance with all applicable historic preservation standards for a period of at least 20 years.

(2) The PDZ application may include additional lands contiguous with the lot or parcel containing the historic structure.

b. Flexibility Allowed

Eligible PDZ applications for consideration as an historic structure/site PDZ may include a request to:

(1) Calculate any unused development potential from the lot or parcel containing the historic structure or site under the property's current zoning,

(2) Apply any unused development potential on other portions of the same lot or parcel, or on contiguous lands included in the PDZ application, and

(3) To request adjustment or waiver of any non-procedural provision in this chapter if the adjustments or waivers will contribute to achieving the preservation the historic structure. The city may not adjust or waive any provision imposed by state or federal law or regulation.

3. Sustainable/Resilient Design PDZ

a. Eligibility

A sustainable/resilient design PDZ application must propose project, site, or building design features demonstrated to achieve two or more of the following reductions in resource consumption or trip generation when compared to those levels anticipated for developments of a similar type under the reference base district:

(1) A reduction in water consumption of at least 25 %; or

(2) A reduction in non-renewable energy use of at least 25 %; or

(3) A reduction in average daily motor vehicle trip generation of at least 25 %; or

(4) A combination of reductions in water consumption, non-renewable energy use, or average daily motor vehicle trip generation providing at least an equivalent sustainable/resilient development benefit to the city.

b. Flexibility Allowed

Eligible application for a sustainable/resilient design PDZ may request an adjustment or waiver of any non-procedural city development standard in this chapter if that adjustment or waiver will contribute to reductions in water consumption, non-renewable energy consumption, or traffic generation when compared to development of a similar type under the reference base district standards. The city may not adjust or waive any provision imposed by state or federal law or regulation.

4. Large Development PDZ

a. Eligibility

A Large development PDZ review must propose all of the following:

(1) The PDZ must contain at least 10 acres of contiguous land that is proposed for annexation and development pursuant to a master plan approved by the city or proposed for approval by the city along with the PDZ application;

(2) If the application includes dwelling units then the affordable housing requirements of *Table 38.250.010-1* apply; and

(3) The PDZ must include public amenities or public infrastructure investments or both beyond what would otherwise be required under this code and the reference base district(s) which are proportionate or greater to the adjustments or waivers to requested development standards.

b. Flexibility Allowed

Eligible applications for a Large Development PDZ may request an adjustment or waiver of any non-procedural city development standard in this chapter if:

(1) That adjustment or waiver will contribute to achieving the preservation or production of housing at a lower cost than would otherwise be possible under the reference base district if the PDZ includes housing;

(2) The PDZ includes public amenities or public infrastructure investments or both beyond what would otherwise be required under this code and the reference base district(s) which are proportionate or greater to the adjustments or waivers to requested development standards; and

(3) The PDZ demonstrates implementation of five adopted community goals and objectives as documented in an adopted and in effect land use plan, issue plan, or similar document to a greater degree than is required under the minimum standards of the reference base district. The city may not adjust or waive any provision imposed by state or federal law or regulation.

5. Combined Benefits PDZ

a. Eligibility

To be considered for a PDZ that provides a combination of a percentage of the affordable housing benefits identified in *subsection E.1* and benefits identified in *subsection D.2*, *subsection D.3*, *subsection D.4,* or any combination thereof, the application must:

(1) Provide at least one-half of the amounts of affordable housing, at the levels of income-restriction, required by *subsection E.1.a.(2)*, for a period of at least 30 years; and

(2) Provide benefits listed as necessary to meet *subsection I* in any one or a combination of:

(a) *Subsection E.2.a* for consideration of a historic structure/site PDZ;

(b) *Subsection E.3.a* for consideration of a sustainable/resilient design PDZ; or

(c) *Subsection E.4.a.(1)* and *subsection E.4.a.(3)* above for consideration of a Large Development PDZ.

b. Flexibility Allowed

PDZ applications eligible for consideration as a combined benefits PDZ may request an adjustment or waiver of any city non-procedural provision in this chapter if that adjustment or waiver will contribute to achieving the types of flexibility listed in *subsection E.1.b* or *subsection E.2.b* or *subsection E.3.b* or *subsection E.4.b*. The city may not adjust or waive any provision imposed by state or federal law or regulation.

6. Novel Public Benefits PDZ

a. Eligibility

A novel public benefits PDZ application must propose mutually supportive and integrated project, site, or building design features outside of the parameters of the options in *subsection 1* through *subsection 5* above that:

(1) As determined in the discretion of the review authority materially advances at least 6 objectives of the land use plan and at least two priorities each from two other adopted plans of the City which produce public benefits.

(2) The novel public benefits option is subject to a heightened level of scrutiny as the City has established the options in *subsection 1* through *subsection 5* as its preferred benefit options.

b. Flexibility Allowed

(1) PDZ applications eligible for consideration as a novel public benefits PDZ may request an adjustment or waiver of any city non-procedural provision in this chapter if that adjustment or waiver will contribute to materially advancing the objectives and priorities identified in *subsection E.6.a* when compared to development of a similar type under the reference base district standards and which produce public benefits. The city may not adjust or waive any provision imposed by state or federal law or regulation.

(2) The flexibility allowed for adjustment or waiver of standard applies uniformly to the PDZ unless specified otherwise in the approval.

F. Permitted uses in a planned development zone.

1. Proposed land uses in a PDZ must be consistent with the land use descriptions in the city's adopted land use plan.

2. A PDZ application may include any land use listed in *38.300* and must identify proposed uses by the same names used in that division.

3. Proposed uses must comply with all applicable use-specific standards for the use(s), as described in *38.320*, unless a waiver or adjustment to applicable standards is proposed and approved as part of the PDZ application review process.

4. A PDZ must address allowance for telecommunications and utilities as part of proposed land uses. The proposed allowance may not have the effect of restricting service availability of telecommunications or utilities.

G. Phased Development.

1. PDZ applications may propose development to occur in phases. If phased development is proposed, the application must include a projected timetable for phased development and a general development plan that includes all of the land to be included in all phases of development.

2. In connection with any phased PDZ development, the city may require the applicant execute a development agreement, improvements agreement, or other documentation acceptable to the

city ensuring dedication of required parks, open space, or both, and construction of required infrastructure, amenities, landscape, irrigation, or site features.

3. The city may authorize phased construction of infrastructure or site amenities pursuant to *38.780.060.C*.

4. If the nature, design, or location of required parks, open space, infrastructure, amenities, landscape, irrigation, or site features makes it necessary to construct them in a sequence other than in rough proportion to approvals for construction of residential or non-residential structures, the city may require the applicant to construct them in the order and extent necessary to protect the public and ensure practical function.

H. General Review Procedures for PDZ Applications.

1. Applicability

A request to develop land in any of the five types of PDZ zoning districts must be submitted and reviewed as a combined zoning map and text amendment under *38.770*.

2. Procedure

a. General

(1) A PDZ zoning application requires review and approval of a general development plan as described in this section concurrent with review of an application for a zoning map amendment, as described in *38.770*.

(2) A PDZ does not give authority for construction but a final development plan must be approved by the review authority prior to issuance of building permits or initiation of construction. Subdivision, site plan, or other review processes may also be required prior to initiation of construction.

(3) An application for a final development plan may be filed prior to final action on an application for a PDZ zone map amendment and a related general development plan provided that:

(a) No action by the review to approve, approve with conditions, or deny the final development plan is effective until the zone map amendment and related general development plan is approved or approved with conditions.

(b) The review authority may waive specific requirements for information the applicant must include in a final development plan if the review authority determines that information has been included in the application for a general development plan.

(4) If applicant proposes a PDZ in conjunction with a subdivision, applicant may file an application for preliminary plat concurrently with the application for a general development plan. Applicant may be required to waive required subdivision review periods for subdivision review to enable coordination of review. The review authority may waive specific requirements for information the applicant must include in a final development plan if the review authority determines that information has been included in the preliminary plat application.

(5) The city will coordinate processing of the PDZ and subdivision applications to allow for consolidated consideration of both applications together if feasible. Review of the subdivision follows standard subdivision review procedures. Final development plan review and approval is still required, as described in this section, and compliance with phased development requirements in *subsection G* is also required, if applicable.

Table 38.250.010-2. PDZ Review and Decision-Making Authority Summary

Table abbreviations:
R = Review, D = Decision-making authority, N/A = Requirement does not apply

	Director	Planning Commission	City Commission
PDZ Zoning			
Zoning Map Amendment and general development plan for all PDZ Property	R	R	D
Final development plan	D		
Subdivision (if Required for PDZ)			
Preliminary Subdivision Plat	D		
Final Subdivision Plat	R		D

3. PDZ Zoning and General Development Plan Review

a. Applicant may submit the PDZ zoning and general development plan review application upon completion of concept or informal.

b. The PDZ application must include, at a minimum the materials required in *38.710.110*.

c. If the project requires approval of a subdivision plat, the applicant may submit an application for a preliminary plat at the same time as a PDZ zoning application, and review may be coordinated. State law may limit the ability of the city to consolidate review.

4. Concept/Informal Review

A concept review or informal application is required for all PDZs as specified in *38.740.080*. If the PDZ is proposed in association with a subdivision, the city may review subdivision pre-application and concept review or informal application for PDZ zoning concurrently. If an application for PDZ zoning and general development plan are not filed with the city within one year after the concept review or informal review, the review authority may require another concept review or informal review meeting before the application is filed.

5. Noticing and Public Hearings

a. After the community development department determines the PDZ zoning and general development plan applications contain all necessary information, the department will set review dates before the community development board and before the city commission.

b. If the application also includes a complete application for a preliminary plat, the department will set a date for review of the plat in accordance with *38.750*.

c. Notice shall be provided in accordance with *38.730*.

6. Review and Action

a. The community development department may refer a complete PDZ zoning application and associated general development plan application to other city or governmental departments, agencies, or districts whose jurisdiction involves some or all of the land included in the application, for their comments or recommendations.

b. After conducting its review, the community development board must recommend to the city commission approval or denial of the PDZ zoning application; and recommend approval, approval with conditions, or denial of the associated general development plan application.

c. After conducting its review, the city commission may approve or deny the PDZ zoning application; and may approve, approve with conditions, or deny the associated general development plan application. The city commission may not approve a PDZ zoning application before a general development plan for all of the property included in the PDZ zoning application is approved or approved with conditions.

d. The review authority must indicate approval or denial of the final development plan pursuant to this section based on the PDZ zoning application and staff report, but the review authority's decision shall not become final unless and until the city commission approves the PDZ zoning and approves the general development plan in a form that is consistent with the final development plan.

7. Final Development Plan Review and Approval

a. After approval of a PDZ zoning application and approval or conditional approval of a general development plan, the review authority must approve a final development plan before applicant may initiate construction, or initiate any use based on the PDZ approval. Submittal requirements for general development plans are specified in *38.710.110*. A final development plan must be approved prior to approval of any site plan, final plat, building permit, or other final development review decision.

b. Each final development plan must be consistent with the terms of the approved PDZ zoning and general development plan and may not include adjustments or waivers to any reference base district standard inconsistent with the PDZ zoning or general development plan.

c. The review authority may approve one final development plan for the entire PDZ property or may approve multiple final development plans for different portions of the property if the city has approved phased development pursuant to *subsection G*. The city may not issue any building permit, and no individual or entity may initiate any infrastructure or other construction; or any use on any portion of the property for which the review authority has not approved a final development plan.

d. If the city has approved both a PDZ zoning application and a related application for a preliminary plat, the final plat must be filed with the Gallatin County Clerk and Recorder before the city may issue any building permit or before applicant may initiate any building construction or use based on the PDZ approval.

e. A final PDZ zoning approval is not an approval to begin building construction. It provides the general plan and pattern for the applicant to submit associated subdivision plats and site plans for approval.

I. Criteria for Approval.

The community development board may recommend approval of an application for PDZ zoning, and the city commission may approve an application for PDZ zoning, if it determines the PDZ application complies with the criteria applicable to all PDZ applications and also complies with one or more of the criteria applicable to specific types of PDZ applications, below. The applicant has the burden of proof that the proposed PDZ and general development plan meet the criteria for approval.

1. Criteria Applicable to All PDZ Applications

a. Complies with applicable Montana state law criteria for approval of a zoning map and text amendment;

b. Complies with general eligibility criteria in *subsection D*;

c. Complies with the specific eligibility criteria for the type of PDZ requested, as listed in *subsection E*, as applicable;

d. Is in accordance with the land use plan currently in effect, including the future land use map; and

e. Identifies one or more of the base zoning districts listed in *article 2*, as the reference base district for each portion of the PDZ; and

f. Mitigates known adverse impacts on surrounding properties to the extent practicable consistent with *38.100.050* and *38.100.070*.

2. Criteria Applicable to Specific Types of PDZ Applications

a. Affordable Housing PDZ

The applicant has submitted a general development plan or other documentation acceptable to the city ensuring the development provides the amounts of affordable housing required by this section. If the PDZ proposes to provide an equivalent affordable housing benefit for a period of at least 30 years, the city may consider the size, type, or location of the dwelling units, site or sustainable design features to be included in the development that would reduce operating or maintenance of the dwelling units, the proposed initial sale prices or rental rates of dwelling units, or other factors.

b. Historic Structure/Site PDZ

(1) The general development plan or other documentation acceptable to the review authority includes an adaptive reuse plan for the listed historic structure(s) included in the PDZ; and

(2) The general development plan or other documentation acceptable to the review authority ensures that the design of any new structures to be constructed on portions of the PDZ property that do not contain the historic structure will meet the criteria of the latest edition of the Secretary of the Interior standards for Related New Construction.

c. Sustainable/Resilient Design PDZ

The general development plan or other documentation acceptable to the review authority ensures that the level of combined water consumption, non-renewable energy consumption, average daily motor vehicle trip generation, or a combination thereof from all structures and uses included in the PDZ shall be at least 25 % lower than levels commonly experienced by development meeting current established standards in each of the reference base districts listed in the PDZ.

d. Large Development PDZ

(1) If the PDZ includes housing, the applicant must submit a general development plan or other documentation acceptable to the review authority ensuring the development provides the amounts of affordable housing required by this section. If the PDZ proposes to provide an equivalent affordable housing benefit for a period of at least 30 years, the review authority may consider the size, type, or location of the dwelling units, site or sustainable design features to be included in the development that would reduce operating or maintenance of the dwelling units, the proposed initial sale prices or rental rates of dwelling units, or other factors; and

(2) The general development plan or other documentation acceptable to the review authority ensures the PDZ will include physical investments public amenities or public infrastructure investments or both beyond what would otherwise be required under this chapter open to the public that significantly exceed those that would otherwise be required under this chapter for property located in the reference base district listed in the PDZ and that are proportionate to or greater than the adjustments or waivers to requested development standards.

(3) The applicant has submitted documentation acceptable to the review authority sufficient to identify the five chosen plan objectives, identify specific actions to be taken to materially advance the objectives, and provides an implementation plan for actions to be carried out within 5 years and suitable to complete implementation actions. If the implementation plan is phased to coordinate with subdivision or other development, then implementation of each objective within each phase must be able to be completed within 5 years of beginning of construction within each phase.

(4) The city may, in its sole discretion, require security for performance or completion of actions as part of the general plan using the methods and procedures of *38.780* in conjunction with subdivision or site development.

(5) The implementation plan must include for each action proposed:

(a) A timeline addressing any phasing and completing action within five years;

(b) A description of any additional review procedures required before execution can begin;

(c) The responsible party to complete additional review procedures and

(d) Intended funding source if applicable.

e. Combined Benefit PDZs

(1) The applicant has submitted a development agreement or other documentation acceptable to the review authority ensuring the development provides at least one-half of the amounts of affordable housing required by this division. If the PDZ proposes to provide an equivalent affordable housing benefit for a period of at least 30 years, the city may consider the size, type, or location of the dwelling units, site or sustainable design features to be included in the development that would reduce operating or maintenance of the dwelling units, the proposed initial sale prices or rental rates of dwelling units, or other factors; and

(2) The benefits to the city through the proposed combination of historic preservation, sustainable/resilient development, novel public benefit, and large development exceed the affordable housing benefits that the city would have received if the PDZ had included the full amounts of affordable housing required by this division.

f. Novel Public Benefit PDZs

(1) The applicant has submitted documentation acceptable to the review authority sufficient to identify the chosen plan objectives, identify specific actions to be taken to materially advance the objectives, and provides an implementation plan for actions to be carried out within 5 years and suitable to complete implementation actions. If the implementation plan is phased to coordinate with subdivision or other development, then implementation of each objective within each phase must be able to be completed within 5 years of beginning of construction within each phase.

(2) The city may, in its sole discretion, require security for performance or completion of actions as part of the general plan using the methods and procedures of *38.780* in conjunction with subdivision or site development.

(3) The implementation plan must include for each action proposed:

(a) A timeline addressing any phasing and completing action within five years;

(b) A description of any additional review procedures required before execution can begin;

(c) The responsible party to complete additional review procedures; and

(d) Intended funding source, if applicable.

J. Duration of PDZ Approval

1. Zoning Map Amendment

a. Initial approval. After preliminary approval of a PDZ the ordinance implementing the PDZ district is required. Final adoption of the implementing ordinance does not occur until after a final development plan meeting all conditions of approval has been reviewed and is ready for approval.

b. An approved PDZ zoning does not expire after final adoption of the implementing ordinance, but rezoning of the PDZ may be initiated by the city pursuant to *38.770* if:

(1) The city has not received an application for a building permit before the expiration of an approved final development plan pursuant to this section; or

(2) The applicant does not proceed with development pursuant to one or more approved final development plans according to provisions for phased development approved by the city.

2. General Development Plan Duration

a. An approved general development plan is valid for a period of one year unless the approved general development plan provides for a longer time or for phased development, or the city commission approves an extension of such time. A final development plan for at least part of the PDZ property must be approved not later than within one year after the approval of a general development plan. The applicant may submit a written request for one extension of up to one additional year to submit the final development plan, and the director may approve such requests for good cause shown.

b. If a general development plan expires, the right to proceed with the development pursuant to the approved general development plan is terminated, and the provisions of the reference base district(s) applicable to each portion of the land included in the general development plan shall apply, unless and until the city commission approves a new general development plan pursuant to this section.

3. Final Development Plan Duration

a. A final development plan is valid for a period of at least one year one year and not more than 3 years unless the city approves a building permit and applicant begins construction of at least one primary structure within one year of the approval of a final development plan. This may require completion of work and recording of a final plat prior to issuance of a building permit.

b. The applicant may submit to the director a written request for extension of time of up to 2 years to obtain the required building permit, and the director may approve such requests pursuant to *38.740.110*.

c. If a final development plan expires, the applicant must apply for and obtain approval of a new final development plan pursuant to this section.

K. Amendments to Approved Planned Development Zones and General Development Plans

1. Amendments to Approved General Development Plan

After approval of a general development plan, the applicant may request and the director may approve, minor amendments to the general development plan, as described below.

a. Minor Amendments

The review authority may approve the following minor amendments to an approved general development plan if the review authority determines that they do not change the character of the neighborhood and do not contain any changes that would increase the amount of deviation/relaxation of the requirements of the reference base zoning districts beyond those

in the approved general development plan. Minor amendments must be consistent with the initial approval and may include but are not limited to:

(1) A change in the location of any internal street that does not affect points of access to or from the PDZ property;

(2) A change in the location of any internal park, open space, or storm drainage detention/ retention facility that is not located along the periphery of the PDZ property; and

(3) A change of location or orientation of any primary building on a lot or parcel;

(4) An increase of less than five percent in the amount of permitted residential or non-residential lot coverage;

(5) A change of less than five percent in the minimum or maximum number of parking spaces required or permitted;

(6) A change of less than five percent in the maximum permitted height of any building; and

(7) A change in any numerical building design standard by up to five percent.

(8) An increase or decrease of less than five percent in the number of dwelling units in an approved PDZ, provided that the revised number of dwelling units still include the amounts and levels of affordable housing required by this division.

(9) Revisions to phasing sequence or boundaries that do not conflict with conditions of approval or conflict with standards.

(10) A 10 % increase or less for landscape irrigation water requirement. If a reduction in water consumption was relied upon as a public benefit to sustain approval of the planned development zone, any proposed increase in landscape irrigation water use must remain within the eligibility criteria for a sustainable/resilient design pursuant to *38.250.010.K.1.a.10*.

b. Major Amendments

(1) A major amendment is any change to an approved general development plan not listed as a minor amendment in this section.

(2) A major amendment to an approved general development plan requires approval through the same process used to approve the original PDZ zoning and general development plan.

(3) Any major amendment that proposes to increase the number of dwelling units in an approved PDZ must include the proportionate amounts of affordable housing required by this division.

2. Amendments to Approved Final Development Plan

a. After approval of a final development plan, the applicant may request, and the review authority may approve, amendments to the final development plan if the review authority determines the proposed amendments are consistent with the approved general development plan and

the provisions of this chapter. Amendments are subject to the minor and major amendment limits in paragraph A of this section.

b. The review authority may authorize the applicant to submit only those portions of final development plan application materials necessary to document the proposed change, rather than submitting a new final development plan application.

c. If the review authority determines the revised final development plan requires a minor amendment to a general development plan, the review authority may approve both at the same time.

L. Removal of Property from a Planned Development Zone

1. A property owner may apply for a zoning map amendment to remove a parcel from an approved PDZ and any related general development plan or final development plan.

2. The application for a zoning map amendment must indicate the zoning district to be applied to the removed properties, which may be different from the reference base district identified for such property in the approved PDZ.

3. The city shall consider any such application pursuant to *38.770* and may require the applicant provide assurances that any unfulfilled obligations related to construction or maintenance of infrastructure or amenities, provision of open spaces, preservation of access, or other matters addressed in the PDZ, general development plan, or final development plan will be satisfied without imposing additional costs or burdens on properties that are to remain included in the PDZ or on any organization or entity responsible for providing or maintaining improvements or services to the remaining PDZ properties.

M. Administrative Procedures Authorized

The city manager may adopt, and from time to time amend, administrative procedures to implement this section. The administrative procedures may at a minimum include the following items:

a. Standards to evaluate equivalent levels of housing affordability;

b. Standards related to required levels of maintenance of historic structure;

c. Standards to measure reductions in water consumption, reductions in non-renewable energy use, and reductions in average daily motor vehicle trip generation;

d. Standards to measure or evaluate equivalence of benefits to the city; and

e. Procedures for application requirements, processing, and review of a PDZ.

Sec. 38.250.020. - **Legacy Planned Unit Developments**

A. Purpose.

This division is created to provide for the continued regulation of legacy planned unit development (PUD) approved or deemed adequate prior to October 27, 2022. Prior to October 27, 2022 a PUD was a use approved within an existing zoning district and did not modify the zoning map. This division cannot be applied to property not already within a legacy PUD.

B. Final plan review and approval.

The final PUD plan must be in compliance with the approved preliminary plan and/or development guidelines except as provided for in this section, and must be reviewed by DRC and ADR staff and approved by the review authority.

1. Application process.

Upon approval or conditional approval of a preliminary plan and the completion of any conditions imposed in connection with that approval, an application for final plan approval may be submitted.

2. Review criteria; compliance with preliminary plan.

For approval to be granted, the final plan must comply with the approved preliminary plan. This means that all conditions imposed by the city commission as part of its approval of the preliminary plan have been met and:

a. The final plan does not change the general use or character of the development;

b. The final plan does not increase the amount of improved gross leasable non-residential floor space by more than five percent, does not increase the number of residential dwelling units by more than five percent and does not exceed the amount of any density bonus approved with the preliminary plan;

c. The final plan does not decrease the open space and/or affordable housing provided;

d. The final plan does not contain changes that do not conform to the requirements of this chapter, excluding properly granted deviations, the applicable objectives and criteria of *38.250.010.J*, or other objectives or criteria of this chapter. The final plan must not contain any changes which would allow increased deviation/relaxation of the requirements of this chapter; and

e. The final plat, if applicable, does not create any additional lots which were not reviewed as part of the preliminary plan submittal.

3. Final plan approval.

a. The final plan may be approved if it conforms to the approved preliminary plan in the manner described above. Prior to final plan approval, the review authority may request a recommendation from the staff, or other entity regarding any part of a proposed final plan. If a final plat is part of the final plan submittal, the review authority per *38.700.010* is responsible for approval of the final plat.

b. Final plats associated with a PUD must comply with the requirements of *38.750.090* and *38.710.060*.

C. Amendments to final plan.

1. Issuance of building permits and other development approvals are based on the approved final plan and any conditions of approval. No city administrative personnel are permitted to issue permits for improvements which are not indicated on the approved final plan with the exception of the following:

   a. Minor changes to a planned unit development may be approved administratively and in writing, whereupon a permit may be issued. Such changes may be authorized without additional public notice at the discretion of the review authority. This provision does not prohibit the review authority from requesting a recommendation from qualified persons to assist in making a decision.

   b. Minor changes are defined as follows:

      (1) Those developments that do not change the character of the development;

      (2) An increase of less than five percent in the approved number of residential dwelling units;

      (3) An increase of less than five percent in the approved gross leasable floor areas of retail, service, office and/or industrial buildings;

      (4) A change in building location or placement less than 20 % of the building width without compromising requirements of the UDO;

      (5) An increase in the number of lots less than two percent without increasing the density by more than five percent. This is applicable only to zoning PUD plans, not subdivision PUD plats;

      (6) A final plan which does not contain any changes which would allow increased deviation/ relaxation of the requirements of this chapter; and/or

      (7) A final plat, if applicable, which does not create any additional lots which were not reviewed as part of the preliminary plan submittal.

      (8) A 10 % increase or less for landscape irrigation water requirement.

      (9) Modifications to approved landscaping plans and other documents to meet water conservation standards established in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

2. Changes greater than minor changes must be processed as a PDZ subject to *38.250.010*.

D. Duration of planned unit development approval.

1. Duration of preliminary plan approval.

The provisions of this subsection do not apply to subdivision elements of a PUD.

a. Within a maximum of one year following the approval of a preliminary plan, the applicant must file with the community development department a final plan in detailed form covering the entirety, or one or more phases, of the development.

b. Upon application and in accordance with the standards of *38.740.110*, the community development director may administratively extend the period for filing a final plan for six-month periods. The granting of administrative extensions under this section may, at the discretion of the community development director, be referred to the city commission.

c. If no final plan is filed covering all or any portion of the preliminary plan within the above time limits, the right to proceed under the preliminary plan will expire for any portion of the preliminary plan for which a final plan has not been timely filed.

2. Duration of final plan approval.

a. The applicant must undertake and complete the development of an approved final plan within two years from the time of final plan approval. For the purposes of this section, a development is substantially complete once all engineering improvements (water, sewer, streets, curbs, gutter, streetlights, fire hydrants and storm drainage) are installed and completed in accordance with city rules and regulations. Extensions for periods of not more than one year may be administratively granted by the community development director in accordance with the standards of *38.740.110*. The granting of administrative extensions under this section may, at the discretion of the community development director, be referred to the city commission.

b. A request for extension of final approval under this section must be submitted to the community development director in writing by the applicant at least 30 days prior to the date of expiration. Failure to submit a written request within the specified time period will cause forfeiture of the right to extension of final approval. Failure to construct the development and implement improvement requirements within the specified time limit will cause a forfeiture of the right to proceed under the final plan and require resubmission of all materials and re-approval of the same through the preliminary plan procedures.

c. The timing of all extensions of final plan approval must be coordinated with the approval period established for any subdivision plat approval that is part of the PUD so that any expiration dates are consistent.

d. Final plan approval may occur multiple times for phased PUDs under the provisions described in *38.250.010.G*.

E. Enforcement of approval requirements and conditions.

The failure to comply with any of the terms, conditions of approval or limitations contained on the site plan, landscape plan, building elevations, other approved documents, or other element pertaining to a planned unit development which has received final approval from the city may subject the applicant or current landowner to the enforcement remedies contained in *38.700.160*.

F. Removal of property from an approved legacy planned unit development

1. A property owner may request removal of one or more parcels from a legacy PUD.

2. Such a request for removal must be in writing to the community development director, must clearly identify the PUD by the city's assigned application number under which the PUD was approved, and must clearly state that the landowner is abandoning all associated rights and privileges due to the PUD. The property owner is not relieved from participating in ongoing maintenance of any facilities from which they benefit. The community development director may establish standards for the content, form, and supporting materials to be included in a request to abandon an approval.

3. The city will review any such application pursuant to *38.740.120* and may require the applicant to provide assurances that any unfulfilled obligations related to construction or maintenance of infrastructure or amenities, provision of open spaces, preservation of access, or other matters addressed in the PUD, will be satisfied without imposing additional costs or burdens on properties that are to remain included in the PUD or on any organization or entity responsible for providing or maintaining improvements or services to the properties remaining in the PUD.

4. City must determine the abandonment of the PUD does not negatively impact the public benefit created by the PUD.

5. Removal from a PUD does not rescind other final approvals such as subdivisions or site plans.

6. Notice is required per *38.730*.

7. After removal of property from a PUD the standards of the zoning district applied to the property are the standards of development.

DIVISION 38.260. - **RULES OF INTERPRETATION**

The purpose of this Division is to provide detailed guidance on interpreting, applying, measuring, and requesting relief from the zoning standards presented in the district graphics and tables in Article 2 – Zoning Districts.

Sec. 38.260.010. - **General provisions.**

A. Street designation.

All streets abutting a lot must be designated as either a primary street, side street, or alley.

B. Lot line designation.

1. General.

a. Each lot line must have one of the following designations and no individual lot line can have more than one of the following designations:

(1) Primary street lot line;

(2) Side street lot line;

(3) Rear lot line;

(4) Side lot line; or

(5) Alley lot line.

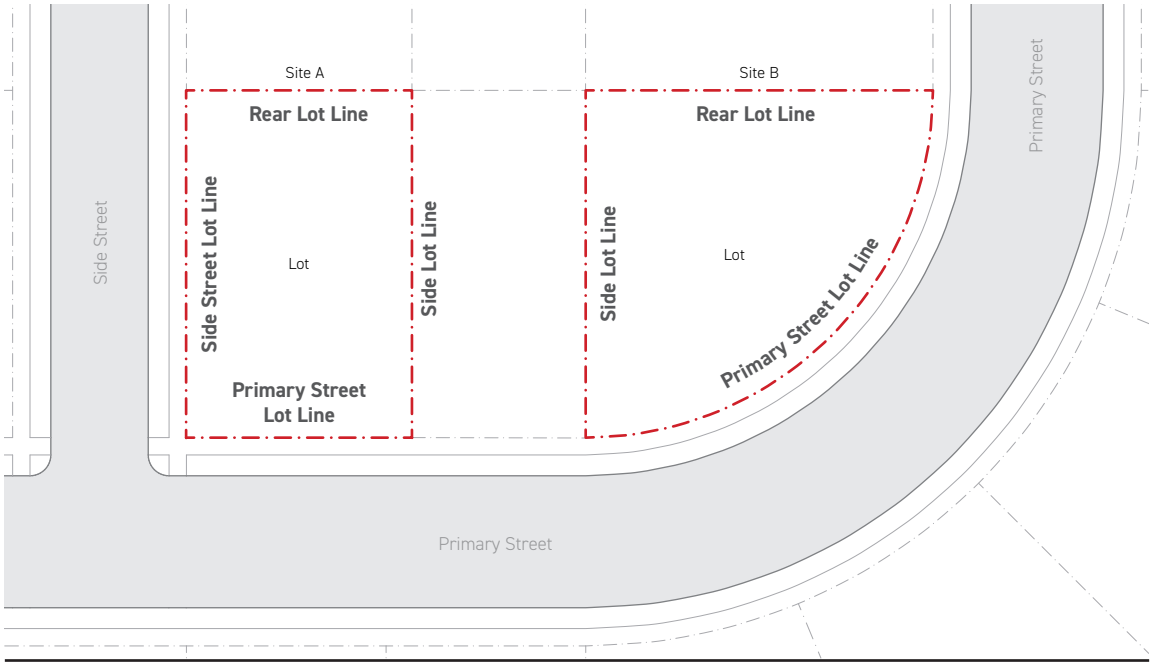


Figure 38.260.010-1. Lot lines.

b. In addition to the required designations, lot lines may also be included into one of the following categories:

(1) Street lot line; or

(2) Common lot line.

2. Primary street lot line.

a. A lot line that abuts a primary street. Each lot must have at least one primary street lot line.

b. Where a lot abuts only one street, that street is considered a primary street.

c. A lot abutting multiple streets must designate at least one as a primary street.

d. A lot may abut more than one primary street.

e. For lots that abut multiple streets, the primary street is determined using the following:

(1) The street or streets with the highest classification;

(2) The established orientation of the block;

(3) The street abutting the longest face of the block;

(4) The street parallel to an alley within the block;

(5) The street that the site takes its address from; and

(6) The primary street designation of adjacent development, either existing or approved.

f. A lot line abutting a park, open space, river, trail or pedestrian path can be designated as a primary street lot line. Where the review authority determines that an orientation to a park, open space, river, trail or pedestrian path would not be appropriate based on the context of the site, the development must provide a minimum building setback of 20 feet from the applicable right-of-way, easement, or property line.

The development in the left image includes a courtyard that orients towards the trail. The low fence allows visibility between the uses, yet divides public and private space in an acceptable manner. The right image illustrates an active commercial use fronting on the trail.

Figure 38.260.010-2. Park/trail frontage examples.

g. Once designated for a lot, a primary street lot line cannot be changed (e.g., a primary street lot line cannot, for purposes of subsequent development, be re-designated a side street lot line) unless all standards of the applicable zoning district are met based on the proposed change in street lot line designation.

3. Side street lot line.

Any lot line that abuts a side street. Any street lot line not determined to be a primary street lot line or alley lot line is considered a side street lot line.

4. Rear lot line.

Any lot line that does not abut a street or alley and is opposite and most distant from a primary street lot line.

a. A lot may have no more than one lot line designated as a rear lot line.

b. In the case of a lot that fronts two streets on opposite sides, a lot may have no rear lot line.

c. Where no lot line is clearly opposite to the primary street lot line or where there are multiple primary street lot lines, the lot line having the highest portion of its length serving as the rear lot line of an abutting lot is the rear lot line.

5. Side lot line.

Any lot line not determined to be a primary street, side street, rear or alley lot line.

6. Alley lot line.

Any lot line separating a lot from an alley. Even when a lot line otherwise qualifies as a rear lot line or side lot line, all lot lines that abut an alley are considered an alley lot line.

7. Street lot line.

Any lot line that abuts a street. Street lot lines include all primary street lot lines and side street lot lines.

8. Common lot line.

Any lot line shared by multiple lots. Common lot lines include all side and rear lot lines.

C. Street-Facing Building Facades

1. The portions of a building facade (when projected parallel to the street) with no permanent structure located between the building facade and a front or side street lot line are considered street-facing building facades.

2. Building facades located more than 50 feet behind the front or side street lot line are exempt from any street-facing requirements.

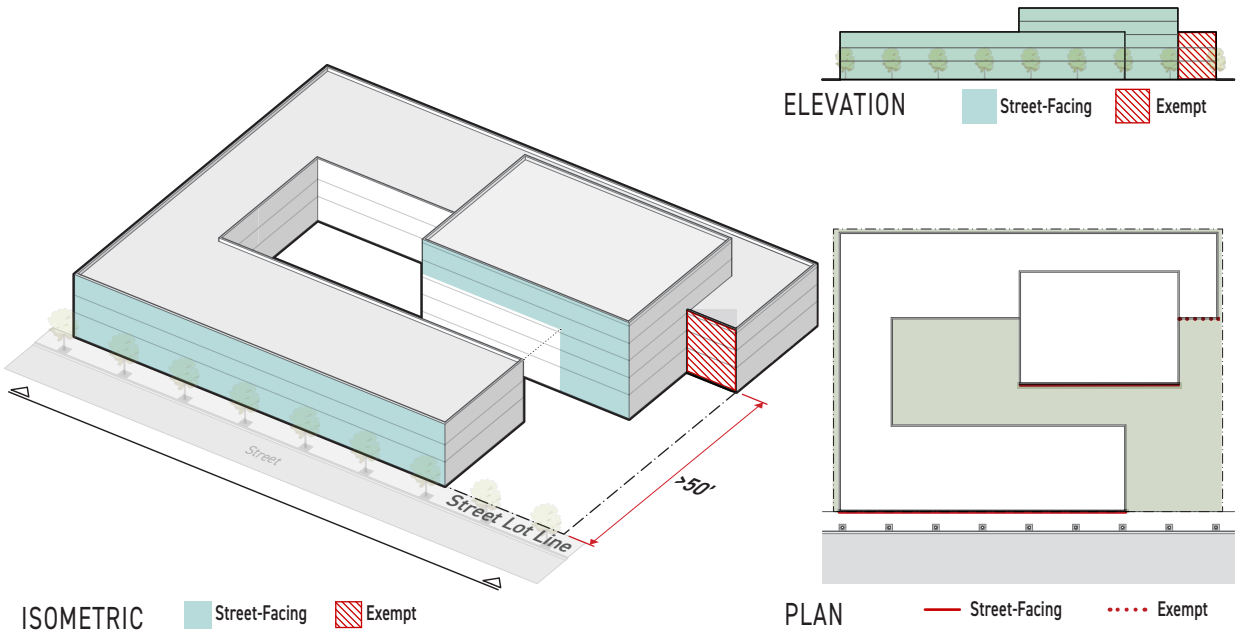


Figure 38.260.010-3. Street-facing building facades.

Sec. 38.260.020. - **Lot size.**

A. Lot Width

The length of primary street lot lines bounding a lot.

1. Purpose

To help ensure newly established lots are generally consistent with the character of the neighborhood and other properties within the same zoning district.

2. Applicability

The minimum lot width requirement applies to all existing and proposed lots.

3. Standards

a. No lot can have a width less than the minimum required by the zoning district. No lot can have a width of less than 15 feet.

b. Lot width is subject to *38.400.090*. Lot widths of 25 feet or less may jeopardize compliance with standards for legal and physical access, street trees, on-street parking, garage design, drive access width and placement, and utilities. Building design and size will be restricted as a result. Mitigation measures may be required for placement and separation of public and private utilities.

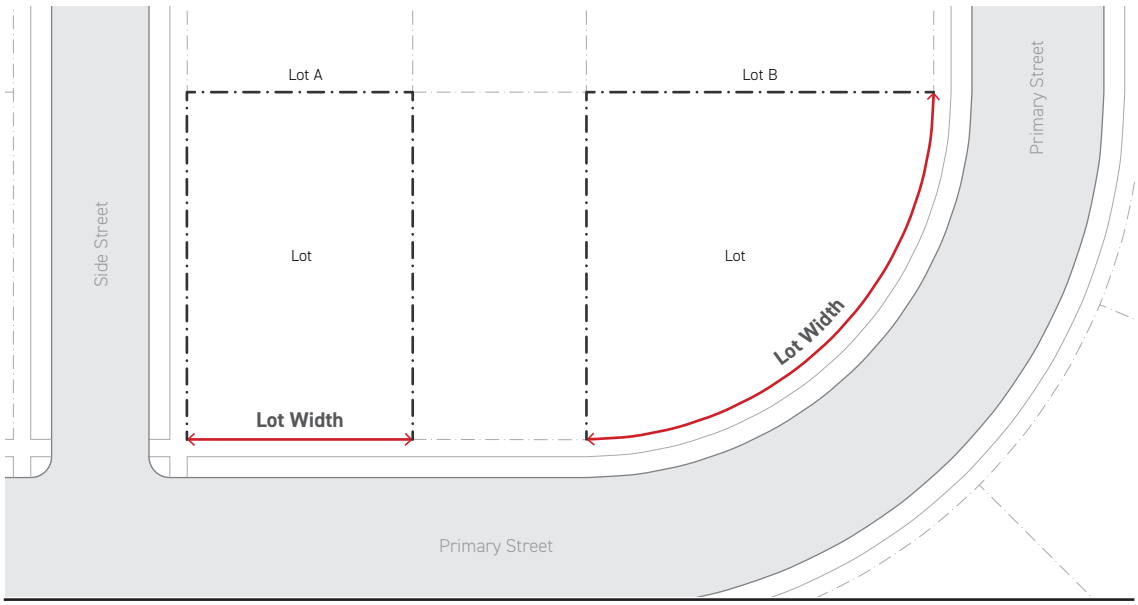


Figure 38.260.020-1. Lot width measurement.

4. Measurement

a. Lot width is measured following the geometry of all primary street lot lines that bound the lot.

b. Where a lot has 2 or more primary street lot lines facing different streets, all primary street lot lines must meet the minimum lot width standard.

5. Relief

Relief of up to 10% of the minimum lot width due to irregular shaped lots, topography, utility access, existing or required easements, or preexisting natural features may be granted but in no case can the minimum lot width be less than 15 feet.

Sec. 38.260.030. - **Density.**

A. Minimum Density

The minimum number of dwelling units that must be provided.

1. Purpose

To support efficient land use and provision of municipal services, and to advance the purposes and goals of this chapter and the adopted land use plan.

2. Applicability

The minimum density requirement applies to all lots and projects that have a residential component, except:

a. In an infill area to allow for a 1:1 replacement of an existing single-unit dwelling; or

b. In an infill area when the lot is 10,000 square feet or less.

c. The addition of an ADU on an infill lot does not require full compliance with the density standards of the base zoning district.

3. Standards

a. A project must provide at least the minimum number of dwelling units per acre as required by the zoning district. An ADU is not counted toward the minimum number of dwellings, except as provided in *A.5* of this section.

b. The minimum number of dwelling units per acre may be achieved by averaging the number of units over an entire project.

c. Redevelopment of existing lots in the R-A, R-B, R-C or R-D districts must maintain or increase the number of dwellings on the lot.

4. Measurement

a. Minimum density is calculated as net density, which excludes any land used or to be used as street rights-of-way, parks, public buildings or private non-residential uses.

b. To calculate density for a project, the following formula applies:

$$\text{Net Density} = du / [A - (c + i + s + a + p + n)]$$

du = Total number of dwelling units in project

A = Total site area (acres)

c = Total commercial land area (acres)

i = Total industrial land area (acres)

s = Dedicated or reserved but undedicated school or park sites (acres)

a = Street, public or private, rights-of-way and transportation easements (acres)

p = Dedicated parklands, conservation easements, or common open spaces (acres)

n = Areas under development restriction from floodplain, watercourse, or wetland standards (acres)

c. When calculating density, fractional dwelling units must be counted as follows:

(1) If the fractional result is 0.5 or greater, the number of dwelling units must be rounded up to the next whole unit.

(2) If the fractional result is less than 0.5, the number of dwelling units must be rounded down to the next whole unit.

5. Relief

a. Relief up to 20% reduction for minimum density required for infill lots when it can be demonstrated that topographic constraints, utility access, or a similar physical constraint limits the ability to construct an additional unit.

b. When redevelopment of an infill lot would require an additional dwelling be constructed to meet density requirements, an accessory dwelling unit may count as a full dwelling.

Sec. 38.260.040. - **Coverage.**

A. Building Coverage

The percentage of lot area covered by buildings or structures.

1. Purpose

To preserve open area and reduce the bulk of buildings on a lot by limiting the amount of buildings or structures that cover a lot.

2. Applicability

The maximum building coverage requirements apply to all zoning lots.

3. Standards

Buildings or roofed structures on a lot cannot have a cumulative footprint in excess of the maximum building coverage allowed by the zoning district.

4. Measurement

Building coverage is measured by dividing the footprint of all roofed building and structures on the lot by the lot area.

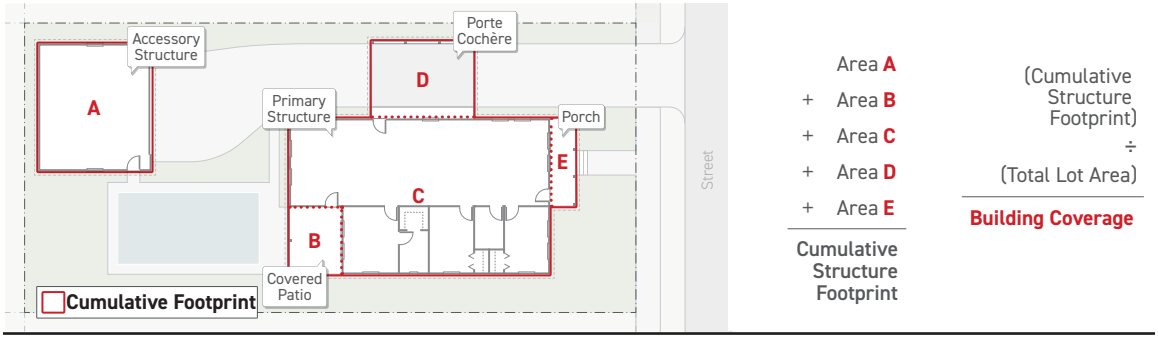


Figure 38.260.040-1. Coverage measurement.

5. Relief

Additional square footage of up to 20% is allowed for infill lots when exceeding the maximum allowed building coverage is needed to comply with another standard.

B. Amenity Space

An area on a lot designated to be used for active or passive recreation.

1. Purpose

To help provide adequate recreation and open space areas for developments, and to ensure such spaces are accessible, usable, and safe.

2. Applicability

a. The amenity space requirements apply to all lots.

b. Amenity space only applies to projects with a residential component.

3. Standards

a. General

(1) The cumulative area of amenity space provided on a lot cannot be less than required by the zoning district.

(2) Required amenity space must be provided onsite.

(3) All landscaped areas must meet the requirements in *38.540*.

(4) The required amenity space may be provided in any combination of the following types of spaces.

b. Common Outdoor Space

(1) Shared usable outdoor open space in the form of a courtyard, patio, paseo, play area, roof deck, garden or similar shared outdoor area.

(2) Must be made available to all tenants of a building, at no cost, during the hours of operation of the building. The space may not be permanently reserved or in any way exclude any tenant during the time it is required to be made available to all tenants.

(3) Must have a minimum area of 400 square feet, and have no horizontal dimension less than 10 feet.

(4) Must include hard surfacing and amenities such as seating areas, landscaping, and/or other features that encourage use.

(5) Must include landscaping elements that enhance the character of the space and encourage its use.

(6) Must include features that provide for the safety of residents, such as enclosures, railings, and appropriate lighting levels.

(7) Building facades adjacent to public outdoor space must have a minimum transparency of 15% for each story.

(8) Must be separated from ground level windows, streets, service areas and parking lots via landscaping, fencing, and/or other acceptable treatments that enhance safety and privacy for both the shared open space and dwelling units. Landscaping planters, beds, or other structures used to meet this requirement cannot be included in the calculation of required amenity space area.

(9) Can be located at ground level, on upper stories, or on a roof.

(10) Can count for up to 100% of the total amenity space requirement.

c. Private Outdoor Space

(1) Private outdoor open space in the form of a balcony, garden, deck, patio or similar private outdoor area.

(2) Must have a minimum area of 36 square feet, and have no horizontal dimension less than 6 feet.

(3) Ground level private outdoor space must be adjacent to and directly accessible from a dwelling unit and must be enclosed by a fence and/or hedge at least 32 inches in height.

(4) May count for up to 75% of the total amenity space requirement.

d. Common Indoor Space

(1) Shared indoor recreational space in the form of a lobby, lounge area, gym, shared kitchen, co-working or similar shared indoor recreational area. Indoor bicycle parking areas cannot be included.

(2) Must be made available to all tenants of a building, at no cost, during the hours of operation of the building. The space may not be permanently reserved or in any way exclude any tenant during the time it is required to be made available to all tenants.

(3) Must have a minimum area of 400 square feet, and have no horizontal dimension less than 15 feet.

(4) Must be located in a visible area, such as near an entrance, lobby, or high traffic corridor.

(5) Must be designed specifically to serve interior recreational functions and not merely be leftover unrentable space.

(6) Must include amenities and design elements that encourage use by residents.

(7) May count for up to 50% of the total amenity space requirement.

e. Public Outdoor Space

(1) Publicly-accessible outdoor open space in the form of a courtyard, patio, plaza, paseo, play area, or similar shared outdoor area.

(2) Must be made permanently available to the general public, at no cost, at minimum between sunrise and sunset daily.

(3) Must abut and provide direct access to a public sidewalk. The space cannot be separated from the public sidewalk by any structure or landscaping, with the exception of a planters or fencing that doesn't exceed 3 feet in height.

(4) Must have a minimum area of 400 square feet, and have no horizontal dimension less than 15 feet.

(5) For every 400 square feet of public outdoor space, two permanent or movable seats must be provided. Two linear feet of bench or seat wall are counted as 1 seat.

(6) Building facades adjacent to public outdoor space must have a minimum transparency of 15% for each story.

(7) Must include landscaping elements that enhance the character of the space and encourage its use.

(8) Each square foot of public outdoor spaces provided counts as 2 square feet of required amenity space.

(9) May count for up to 100% of the total amenity space requirement.

4. Measurement

Required amenity space is based of the number of sleeping rooms associated with each dwelling unit and is calculated as follows:

Number of dwelling units with up to 1 sleeping room x 100 square feet
+
Number of dwelling units with 2 or more sleeping rooms x 150 square feet
=
Total amount of amenity space required on-site

5. Relief

Additional square footage of up to 10% beyond the maximum allowed percentage allocation for private outdoor space and common indoor space may granted but the total amount of amenity space for the project must still be provided.

C. Commercial Open Space

An area that is part of commercial project that designated to be used for pedestrian-oriented open space.

1. Purpose

a. To provide help pedestrian-oriented spaces in commercial areas that enhance the employees' and public's opportunity for active and passive activities, such as dining, resting, people watching, and recreational activities.

b. To help provide adequate recreation and open space areas for developments, and to ensure such spaces are accessible, usable, and safe.

2. Applicability

New development with non-residential uses on sites with a total site area greater than 43,560 square feet (one acre) must provide commercial open space.

3. Standards

a. General

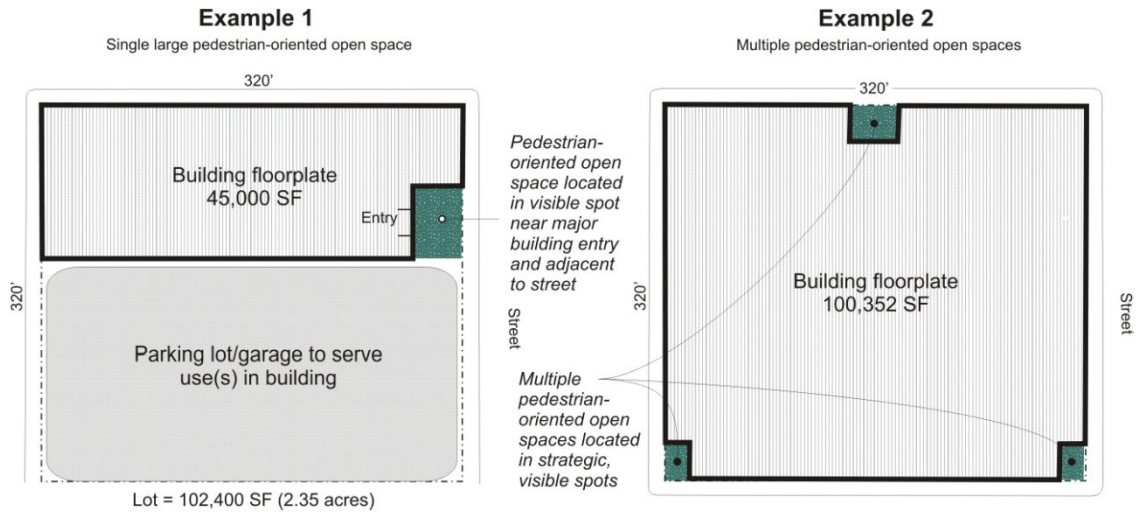
All landscaped areas must meet the requirements in *38.540*.

b. Commercial-only sites

(1) An area equal to at least two percent of the site area. For this specific standard, "site area" includes all land needed for the non-residential portion of the project including parking, service areas, access and required landscaping.

(2) The open space may be in the form of pedestrian-oriented open space per 3.c. below, garden, play area or other open space feature that serves both as a visual amenity and a place for human activity.

(3) Portions of sidewalks that are wider than 12 feet and which meet the standards of pedestrian-oriented open space may be counted toward this requirement.



The "site area" on both sites is 102,400sf (2.35 acres). The minimum amount of usable commercial open space (2% of site area) is 2,048sf. The left example consolidates the open space into one plaza near the major building entry. The right example includes three separate open spaces at strategic, visible locations.

Figure 38.260.040-2. Commercial open space calculation.

c. Mixed-use sites.

(1) When determining the "site area" for mixed-use buildings, areas solely used for residential use may be omitted. To be omitted, areas must be specifically restricted to residents (e.g. parking spaces signed for residential parking only, open space areas gated off or only accessible from internal residential areas, internal lobbies without access to commercial spaces).

(2) When the omission of solely residential areas results in the site area being less than 43,560 square feet (one acre), no commercial open space is required.

d. Pedestrian-oriented open space design criteria.

The following describes the requirements and desired characteristics of pedestrian-oriented open space (which may be used to meet the requirements of *subsection 3.a.* above). Buildings larger than 40,000 square feet must include at least two items from the list of desirable pedestrian-oriented open space features.

(1) Required pedestrian-oriented open space features.

(a) Visual and pedestrian access into the site from a street, private access road, or non-vehicular courtyard.

(b) Paved walking surfaces of either concrete or approved unit paving.

(c) Lighting must conform to *38.560*.

(d) The spaces must be located in or adjacent to areas with significant pedestrian traffic to provide interest and security, such as adjacent to or visible from a building entry.

(e) At least two feet of seating area (a bench or ledge at least 16 inches deep and appropriate seating height) or one individual seat per 60 square feet of plaza area or open space.

(f) Landscaping components that add visual interest and do not act as a visual barrier. This could include planting beds, raised planters, and/or potted plants.

(2) Desirable pedestrian-oriented open space features and required large scale building requirement (see subsection 3.c above).

(a) Pedestrian amenities, such as site furniture, artwork, drinking fountains, shade structures or other similar features.

(b) Adjacent buildings with transparent windows and doors covering at least 50 percent of the facade between 30 inches and feet above the ground level.

(c) Pedestrian weather protection, alcoves, seating, or other features along building edges to allow for outdoor gathering.

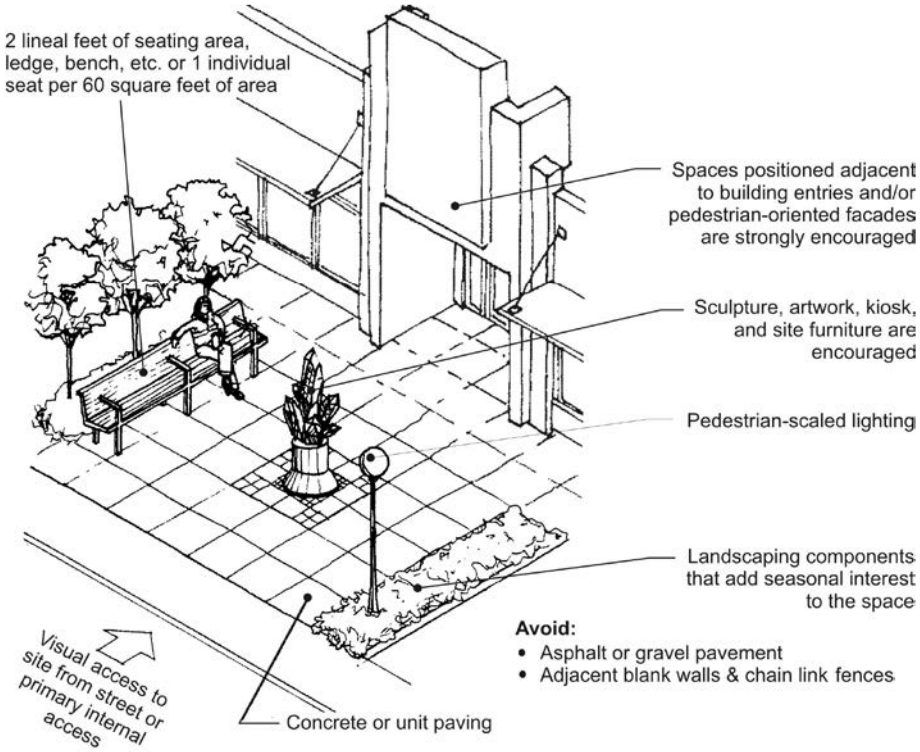


Figure 38.260.040-3. Pedestrian-oriented open space.

(3) Features prohibited within a pedestrian-oriented open space.

(a) Asphalt pavement.

(b) Adjacent service areas (e.g., trash areas) that are not separated with landscaping, as required in *38.510.060.*

(c) Adjacent chain-link fences.

(d) Adjacent "blank walls" without windows or doors or blank wall treatment (see *38.260.140*).

(e) Outdoor storage.

4. Relief

Reduced open space will be considered for projects that include exceptional design features and elements that meet the purpose of the standards. This includes open spaces that feature a combination of design (site materials, amenities, and configuration) and location/context that clearly exceed typical plaza designs found in the region. All relief must feature usable open space no less than one percent of the development envelope.

Sec. 38.260.050. - **Streetscape.**

A. Streetscape

Portion of the public realm that include sidewalks, street furniture and street trees.

1. Purpose

a. To provide standards that recognize the need for a system of walkable, pedestrian-oriented streets; and

b. To provide adequate room for pedestrian traffic in a variety of weather conditions and geographic contexts.

2. Applicability

The streetscape requirements apply to all lots.

3. Standards

a. Sidewalk

(1) A sidewalk must be installed along the full width of any street frontage. The minimum required sidewalk width is specified by the zoning district. Setbacks and utility easements must also be considered and may result in a larger minimum sidewalk width.

(2) The review authority may require wider sidewalks where called for in adopted plans or where significant pedestrian traffic is anticipated.

(3) The minimum required sidewalk width must remain clear of obstacles at all times and be constructed to meet all City and ADA specifications.

(4) Where there is not enough room available in the right-of-way to meet the minimum required sidewalk width, additional right-of-way for the sidewalk must be provided on-site.

b. Boulevard Strip

(1) The boulevard strip is the area of land located between the street and the sidewalk primarily intended for the planting and maintenance of street trees.

(2) A boulevard strip must be installed along the full width of any street frontage. The minimum required boulevard strip width is specified by the zoning district.

(3) One street tree must be planted in the boulevard strip on average every 25-30 feet on center depending on species, per *16.05*, of total street frontage rounded to the nearest whole number. When this requirement conflicts with other requirements of this chapter, such as vision triangles, street accesses, or utility protection, the review authority must relax this standard to reach an optimal balance in public interests, provided that spacing does not exceed 50 feet on center, excluding street access points.

(4) Street trees must be planted and maintained in accordance with *38.540.050.E* and chapter 16, article 5 of this code.

(5) The following encroachments are allowed in the boulevard strip subject to City approval:

(a) Benches, trash receptacles, and bicycle racks.

(b) Utility boxes, meters, man hole covers, regulatory signs and fire suppression equipment.

(c) Pedestrian lighting.

(d) Landscaping, sidewalk, trees and planters.

c. Boulevard Type

(1) A specific boulevard type is required by the zoning district.

(2) The following standards comprise the allowable boulevard types:

(a) Landscape. Must be landscaped as defined in *article 8*.

(b) Storefront. A boulevard paved with a firm, stable, slip-resistant surface continuously from back-of-curb to the edge of the sidewalk. Street trees must be planted within tree wells containing a grate flush with the sidewalk surface. Landscaping is allowed in raised planter beds no wider than 2 feet, measured perpendicular to the street.

4. Measurement

a. Sidewalk width is measured from the edge of the boulevard strip to the primary or side street lot line.

b. Boulevard strip width is measured from the edge of the sidewalk to the back of the curb.

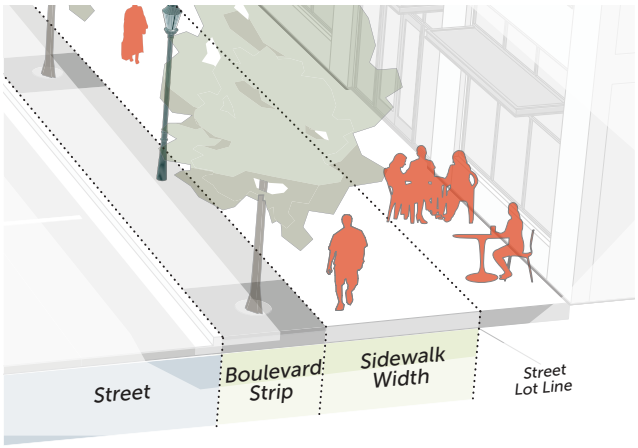


Figure 38.260.050-1. Streetscape measurement.

5. Relief

a. Alternative designs may be considered where topographical challenges exist. Alternative designs must be able to accommodate safe and comfortable pedestrian traffic anticipated for development of the full block.

b. The review authority may waive street tree requirements if the applicant demonstrates that installation would pose a safety hazard or conflict with existing site conditions.

Sec. 38.260.060. - **Setbacks**

A. Building Setbacks

The area on a lot not intended for buildings and structures. Includes primary street setbacks, side street setbacks, side setbacks, rear setbacks, and alley setbacks.

1. Purpose

To provide open areas on a lot and help reduce the impact of buildings or structures on abutting sidewalks and neighboring development.

2. Applicability

The building setback requirements apply to all lots and designations of applicable lot lines are in *38.260.010*.

3. Standards

a. Minimum Setback

All buildings and structures on a lot must be located at or behind the minimum building setback specified by the zoning district unless otherwise permitted by this chapter.

b. Street-Facing Garages

(1) Individual garages are subject to the street-facing garage setback requirement as specified by the zoning district.

(2) All garages doors that face the street must be at least 4 feet behind the adjacent facade of the structure. Garage entrances may also be tucked under the second floor to help meet this requirement.

(3) A street-facing garage door cannot exceed the greater of 10 feet or 50% of the ground-level building facade facing the street.

(4) There is no restriction on the number of individual garage doors facing the street, only the proportion of the facade associated with a garage door or doors exceeding 10 feet in total width.

(5) Individual garages facing the street are not allowed in the B-3 or B-3C districts when an alley is adjacent to the property.

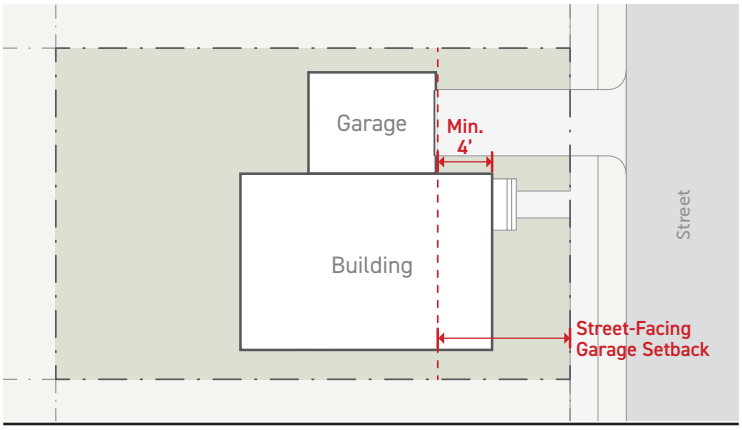


Figure 38.260.060-1. Garage setback.

c. Alley-Facing Garages

(1) All structures must meet the alley setback as required by the district.

(2) When parking is provided between the structure and an alley lot line, the structure must be setback at least 20 feet from the alley lot line.

d. Zero Lot Line Conditions

In all districts, the owners of two or more adjoining lots may make a legal written agreement for mutual benefit to allow an otherwise required side setback to be reduced to zero to allow a building to be placed at the property line. The agreement must be approved by the City and recorded with the Gallatin County Clerk and Recorder. If no setback is required no agreement is required. This provision does not change any building code requirement.

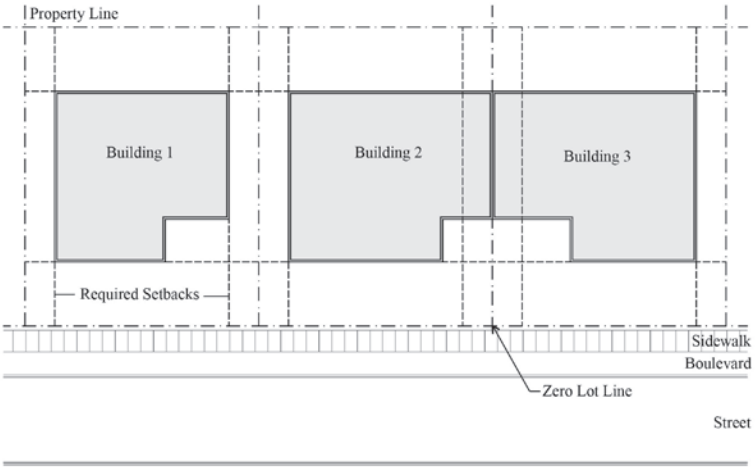


Figure 38.260.060-2. Zero lot line conditions.

e. Accessory structure setbacks.

(1) Accessory structures less than or equal to 120 square feet in footprint and 9 feet or less in height cannot be located in any front, side, or side street setback but can be up to three feet from a rear or alley lot line.

(2) Accessory structures greater than 120 square feet in footprint or more than 9 feet in height must meet the minimum setback requirements of the district.

f. Maximum Setback

The area between the minimum and maximum street setbacks defines the build-to zone. For requirements related to the build-to zone, see *38.260.080*.

4. Measurement

a. All building setbacks are measured perpendicular from the applicable lot line. Easements for utilities or other special standards may require adjustments to minimum building setbacks.

(1) A primary street setback is measured from the primary street lot line.

(2) A side street setback is measured from the side street lot line.

(3) A side setback is measured from the side lot line.

(4) A rear setback is measured from the rear lot line.

(5) An alley setback is measured from the alley lot line.

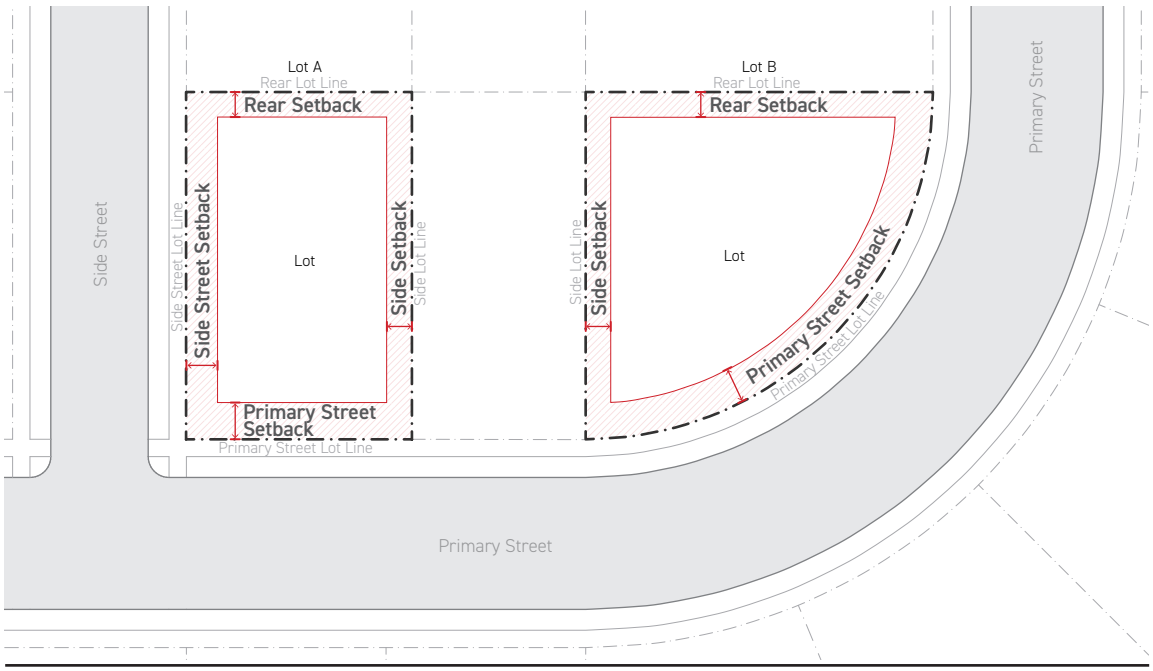


Figure 38.260.060-2. Setback measurement.

b. See *38.260.010.B* to determine a primary street, side street, side, rear, or alley lot line.

5. Exceptions

a. Limited Encroachments

The following are allowed encroachments into required setbacks subject to any and all applicable International Building Code requirements and/or utility easements.

b. Residential Districts

Table 38.260.060-1. Residential Districts

	ALLOWED ENCROACHMENT			
	Primary St. / Side St. Setback	Side Setback	Rear Setback	Alley Setback
Architectural Details (max)	0'	2.5'	2.5'	1'
Building elements attached to or integrated into the structure of a building, not available for human occupation. Examples include: eaves, roof overhangs, gutters, awnings, canopies, belt courses, sills, lintels, pilasters, pediments, window wells and steps and chimneys				
Unenclosed Structures - ground story (max)	0'	2'	2.5'	1'
Unenclosed structures having all finished floors and ground surfaces more than 2.5 feet above grade and having a total structure height less than 15 feet. Examples: porches, decks, stoops, landing platforms, gazebos, trellises, arbors, pergolas				
Unenclosed Structures- above ground story (max)	0'	2'	2.5'	1'
Unenclosed structures having a total structure height of 15 feet of greater. Examples: balconies, upper-story light shelves, exterior stairways				
Mechanical/Electrical Equipment (max)	0'	0'	2.5'	1'
Examples: gas meters, electrical meters, water heaters, HVAC equipment, cisterns, wind turbines and solar panels				
Waste Receptacle Enclosure (max)	0'	0'	0'	1'
Examples: trash compactors, garbage, recycling and food waste and associated screening				
Fences and walls	*See 38.540.070*			
Signs	*See 38.550*			

c. Nonresidential Districts

Table 38.260.060-2. Nonresidential Districts

	ALLOWED ENCROACHMENT			
	Primary St. / Side St. Setback	Side Setback	Rear Setback	Alley Setback
Architectural Details (max)	1'	0'	0'	1'
Building elements attached to or integrated into the structure of a building, not available for human occupation. Examples include: eaves, roof overhangs, gutters, awnings, canopies, belt courses, sills, lintels, pilasters, pediments, window wells and steps and chimneys				
Unenclosed Structures - ground story (max)	1'	0'	0'	1'
Unenclosed structures having all finished floors and ground surfaces more than 2.5 feet above grade and having a total structure height less than 15 feet. Examples: porches, decks, stoops, landing platforms, gazebos, trellises, arbors, pergolas				
Unenclosed Structures- above ground story (max)	1'	0'	0'	1'
Unenclosed structures having a total structure height of 15 feet of greater. Examples: balconies, upper-story light shelves, exterior stairways				
Mechanical/Electrical Equipment (max)	0'	0'	0'	1'
Examples: gas meters, electrical meters, water heaters, HVAC equipment, cisterns, wind turbines and solar panels				
Waste Receptacle Enclosure (max)	0'	0'	0'	1'
Examples: trash compactors, garbage, recycling and food waste and associated screening				
Fences and walls	See *38.540.070*			
Signs	See *38.550*			

For encroachments into the right-of-way, an encroachment permit must be obtained from the local or state street or road department having jurisdiction.

d. Unlimited Encroachments

The following can encroach into a required setback to the extent necessary to perform their proper function.

(1) Equipment related to public or utility operating systems, including related wires, conduits, and pipes. Examples include hydrants, transformers, utility cabinets, water utility devices, cable television boxes.

(2) Essential services Type I and Type II when they are within a utility easement.

(3) Sidewalks, multi-use paths, ramps, and driveways 2.5 feet in height or less.

(4) Vegetation, including trees, shrubs, flowers, herbs, vegetables, grasses, ferns, mosses, and associated planters and raised planting beds, if applicable.

(5) Natural stormwater devices.

(6) Permanent or movable furniture including benches, tables, and bicycle and scooter parking racks.

(7) Fire escapes are only allowed in a required side or rear setbacks only.

(8) Wheelchair ramps and lifts may encroach into any required setback, but must not be located closer than 3 feet from any property line.

6. Relief

Relief of up to 10 % of a required side, rear, or alley setback may be granted due to irregular shaped lots, topography, utility access needs, existing or required easements, or preexisting natural features.

Sec. 38.260.070. - **Transitions.**

A. Zone edges.

1. Purpose.

To help mitigate the impacts of taller buildings on lower intensity zoning districts.

2. Applicability.

Subject lots are required to provide the following transition type as shown in the table below.

Table 38.260.070-1.

		REQUIRED DISTRICT TRANSITION																
		ABUTTING LOT																
											REMU		NEHMU					
		R-A	R-B	R-C	R-D	B-1	B-2	B-2M	B-3	B-3C	RES	MX	RES	MX	B-P	M-1	M-2	PLI
SUBJECT LOT	R-A	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
	R-B	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
	R-C	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
	R-D	1a	1a	--	--	--	--	--	--	--	--	--	1a	--	--	--	--	--
	B-1	1a	1a	--	--	--	--	--	--	--	2a	--	2a	--	--	--	--	--
	B-2	1b	1b	2b	2a	--	--	--	--	--	2a	--	1a	--	--	--	--	--
	B-2M	1b	1b	1a	2a	--	--	--	--	--	2a	--	1a	--	--	--	--	--
	B-3	1b	1b	1b	2b	--	--	--	--	--	2b	--	1a	--	--	--	--	--
	B-3C	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
	REMU RES	1a	1a	--	--	--	--	--	--	--	--	--	1a	--	--	--	--	--
	REMU MX	1a	1a	2a	2a	--	--	--	--	--	--	--	1a	--	--	--	--	--
	NEHMU RES	1a	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
	NEHMU MX	1a	1a	2a	2a	--	--	--	--	--	2a	--	1a	--	--	--	--	--
	B-P	1b	1b	2b	2a	--	--	--	--	--	2b	--	1a	--	--	--	--	--
	M-1	1b	1b	2a	2a	--	--	--	--	--	2a	--	1a	--	--	--	--	--
	M-2	1b	1b	2b	2b	2b	2b	2a	2b	--	2b	2b	1b	2b	2a	--	--	--
	PLI	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Key:
1a = Transition Type 1a required 2a = Transition Type 2a required -- = No transition required for subject lot
1b = Transition Type 1b required 2b = Transition Type 1b required

3. Standards.

a. Type 1a. Height stepback.

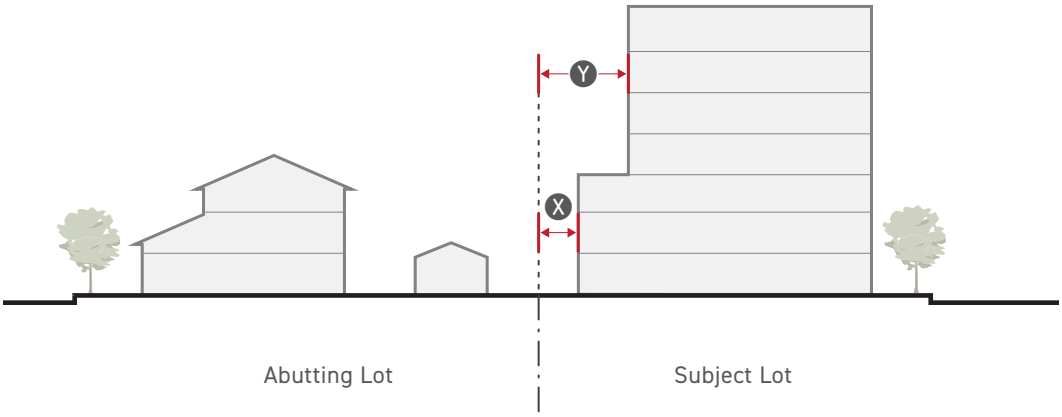


Table 38.260.070-2.

Type 1a Standards	No Alley	Alley
X Setback from lot line (min)	10'	5'
Y Setback from lot line (min) - above max height of abutting district	22'	13'

b. Type 1b. Height stepback with landscaping.

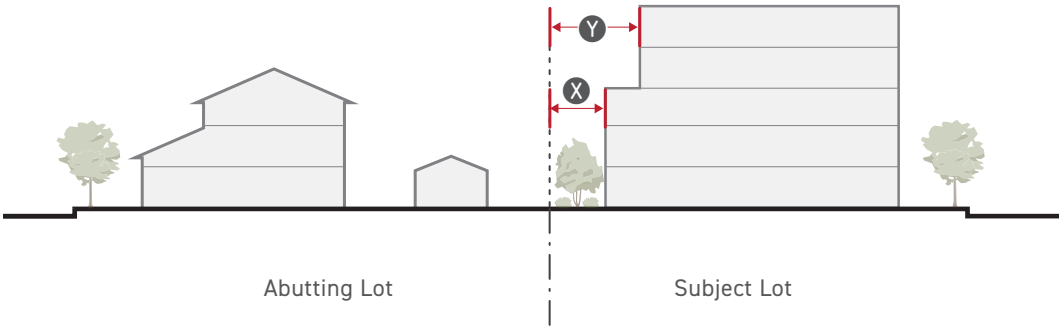


Table 38.260.070-3.

Type 1b Standards	No Alley	Alley
X Setback from lot line (min)	14'	9'
Landscaping in setback (min per 50')	Required	Not required
Trees	2 large or 3 small	n/a
Shrubs	16	n/a
Y Setback from lot line (min) - above max height of abutting district	22'	13'

c. Type 2a. Horizontal setback.

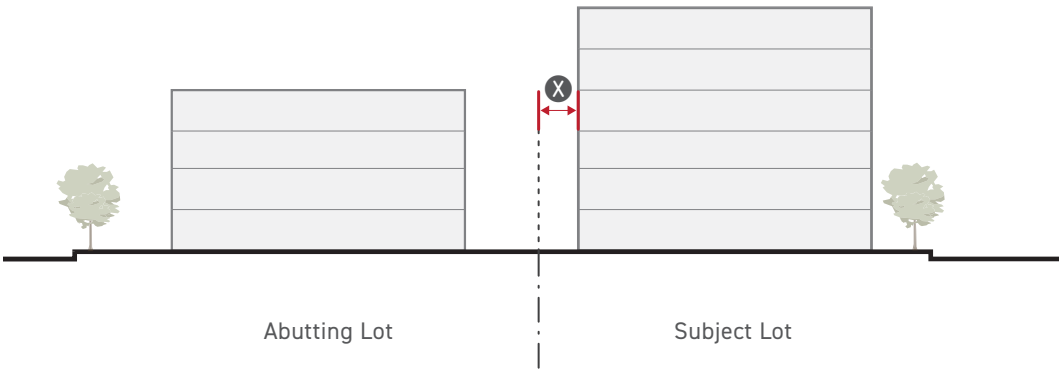


Table 38.260.070-4.

Type 2a Standards	No Alley	Alley
X Setback from lot line (min)	10'	5'

d. Type 2b. Horizontal setback with landscaping.

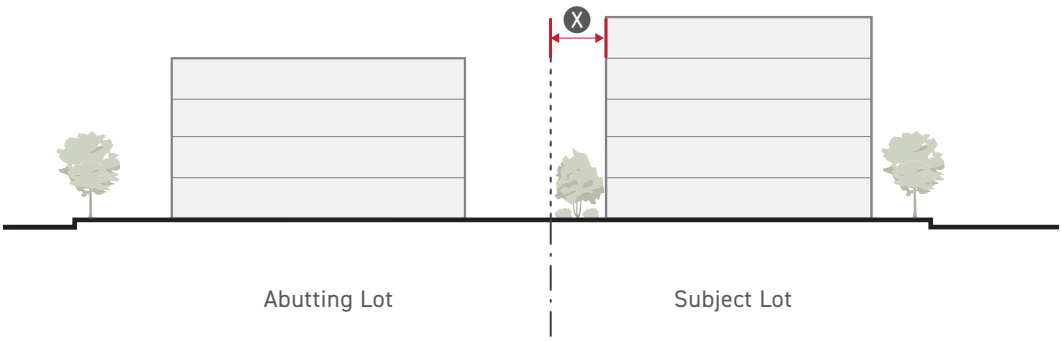


Table 38.260.070-5.

Type 2b Standards	No Alley	Alley
X Setback from lot line (min)	14'	9'
Landscaping in setback (min per 50')	Required	Not required
Trees	2 large or 3 small	n/a
Shrubs	16	n/a

e. Rules for Type 1a and Type 1b:

(1) Where a lot is adjacent to an R-A or R-B district, all setback distances must be increased by 3 feet.

(2) For subject lots facing R-A and R-B districts, and fronting a right-of-way less than 60 feet wide, the upper level of a building must be stepped back from the front property lines according to the height stepback standard. Standard features within a street right-of-way are described in the most recent edition of the City of Bozeman Modifications to the Montana Public Works Standard Specifications - Standard Drawings.

f. Rules for all transition types.

(1) Required transition types must be located along side and rear lot lines extending inward to the subject property, or front property lines where the street right-of-way width is less than 60 feet. Transition types cannot extend into, or be located within, any portion of an existing street right-of-way.

(2) No buildings or structures, except for walls or fences, are allowed in the transition setback area.

(3) Except when abutting an alley, no parking area, driveway or fire lane is allowed in the transition setback area.

(4) Required landscaping must meet *38.540*.

4. Measurement.

a. All building setbacks are measured from the lot line - see *38.260.060*.

b. When the entire building is set back from the lot line at least 22 feet, the building can go straight up - no step back is required.

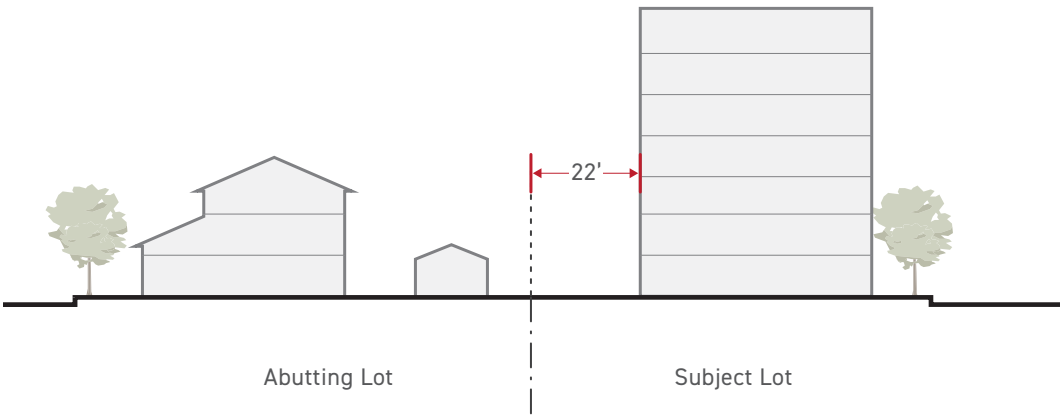


Figure 38.260.070-1. Horizontal transition measurement.

5. Relief

Relief of up to 10% of a dimensional standard may be granted due to irregular shaped lots, topography, utility access, existing or required easements, or preexisting natural features.

Sec. 38.260.080. - **Frontage.**

A. Build-to

The amount of building facade that must be in the build-to zone.

1. Purpose

To regulate the placement of buildings so that buildings frame the public realm with a consistent street wall.

2. Applicability

a. The build-to requirement applies to all lots.

b. The build-to requirement applies to the ground story of a building only.

3. Standards

a. General

(1) The build-to zone is the area on the lot between the minimum and maximum building setbacks, for the full width of the site.

(2) The build-to zone is measured from the primary or side street lot line. The build-to zone starts at the minimum building setback and extends to the maximum building setback.

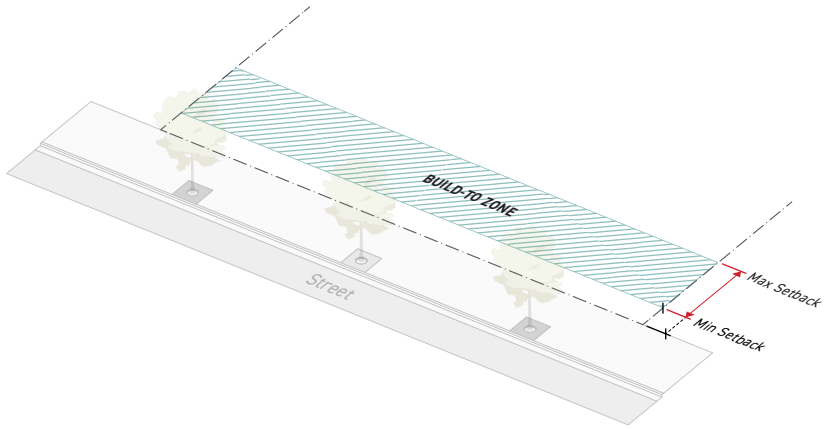


Figure 38.260.080-1. Build-to zone.

(3) No building or portion of a building facade can be located outside of the build-to zone, until the build-to requirement for the width of the facade of the first building on the lot, as specified for the zoning district, has been met.

(4) Once the minimum build-to requirement has been met, buildings and structures may be located in the area behind the maximum building setback.

b. Corner Lot

(1) On a corner lot where intersecting streets both have a build-to requirement, a building must occupy the portion of the lot where the two build-to zones overlap.

(2) The building must occupy the build-to zones for both streets for a minimum of 30 feet from the corner. Distance is measured away from the corner, starting at the edge of the building occupying the area of overlap, parallel to the street lot line. This counts toward the build-to requirement for the width of the building for both streets.

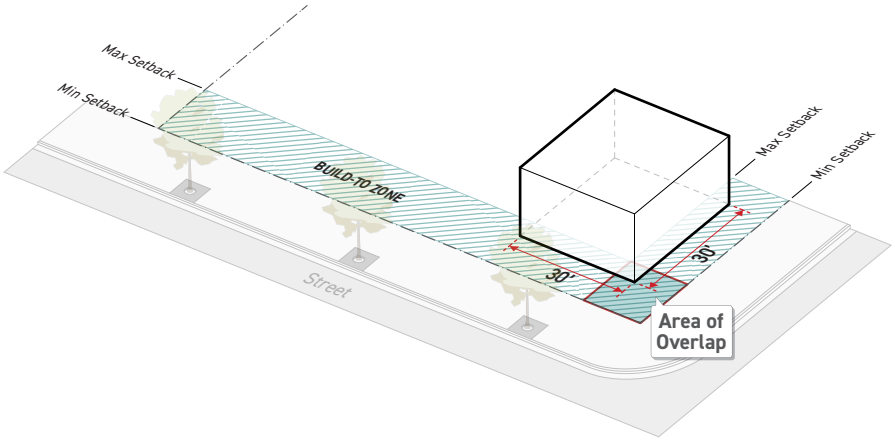


Figure 38.260.080-2. Build-to zone - corner lot.

(3) On a corner lot, a chamfered corner no more than 20 feet in width along both streets qualifies as building facade in the build-to zone even where it extends outside of the build-to zone. Chamfered corner width is measured parallel to the street lot line.

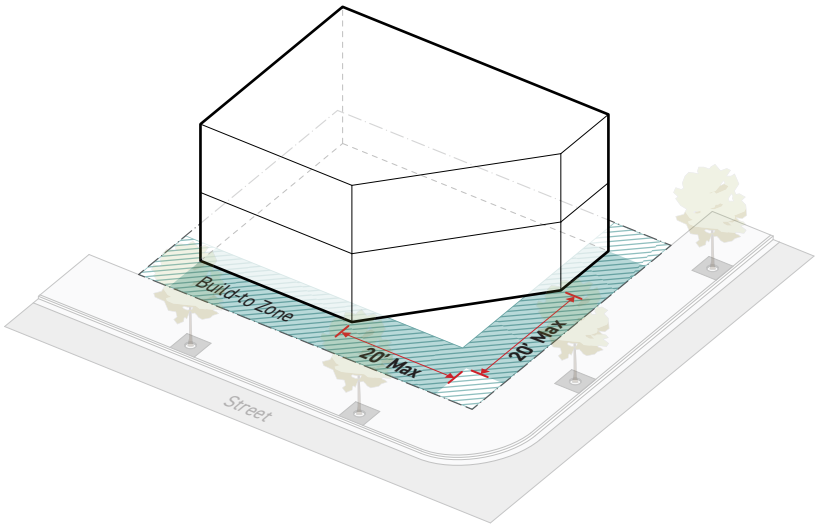


Figure 38.260.080-3. Build-to zone - chamfered corner.

4. Measurement

a. The length of the building facade in the build-to zone, divided by the total width of the building.

b. The required build-to is calculated separately along each street lot line where a build-to is required.

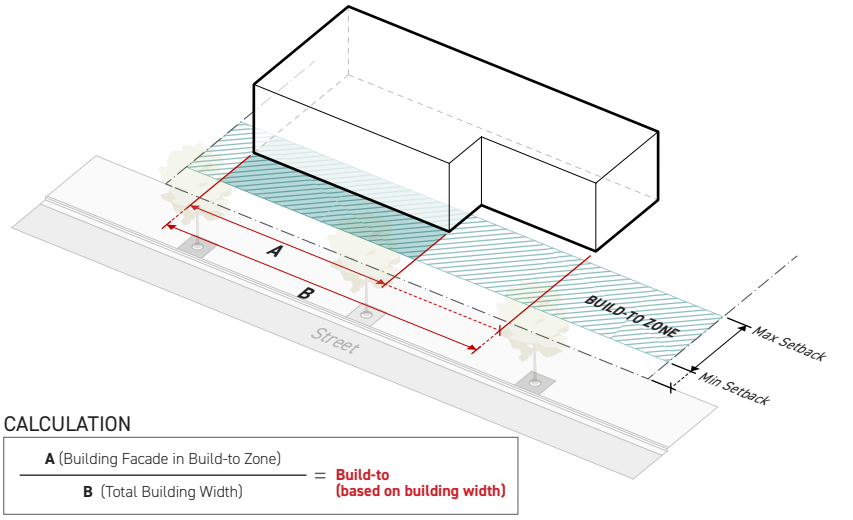


Figure 38.260.080-4. Build-to - measurement.

c. Portions of building facade providing vehicle access through the ground story of a building do not count as building facade for the purpose of meeting the build-to requirement.

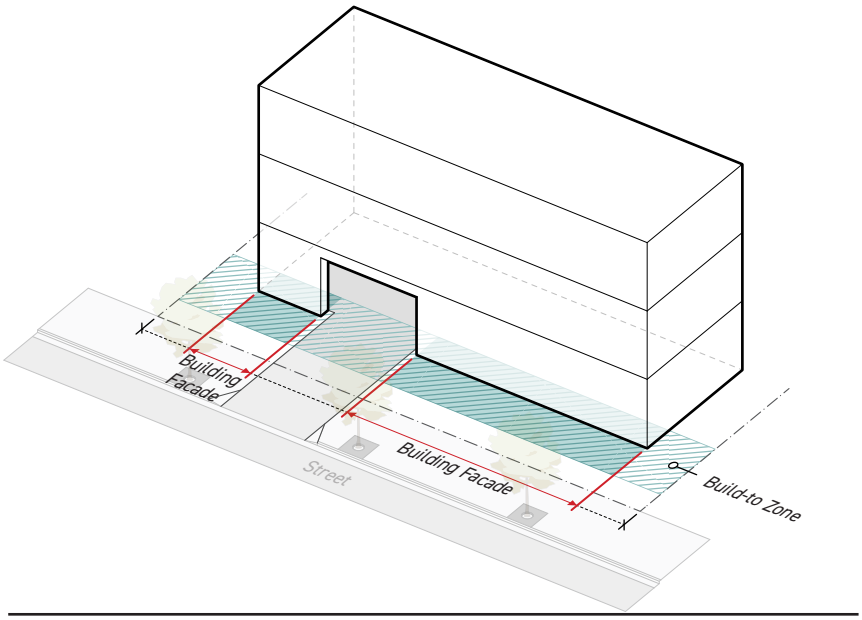


Figure 38.260.080-5. Build-to zone - vehicle access exemption.

5. Exceptions

a. Where providing vehicle access prevents a building from meeting the required build-to, a reduced percentage may be allowed, provided the portion of the lot in the build-to zone used for vehicle access is no wider than the minimum required driveway width plus an additional 2 feet of width on each side for clearance.

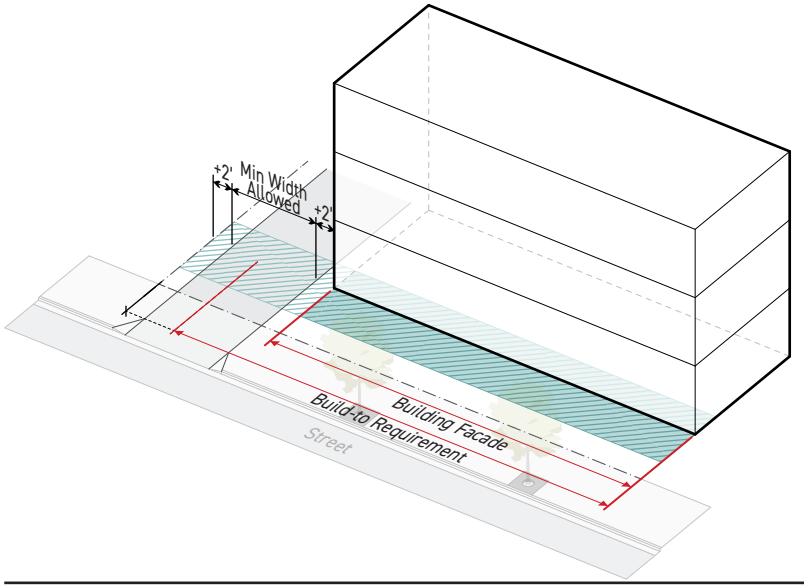


Figure 38.260.080-6. Build-to zone - exceptions.

b. The review authority may approve an alternative build-to requirement in an approved master site plan.

6. Relief

a. Relief allowed as needed to meet street vision triangle requirements.

b. Up to 10% relief to address placement of utilities and mechanical equipment.

c. Up to 20 % relief may be granted to accommodate public open spaces, dining areas associated with on-site restaurants, and other amenity spaces as specified in *38.260.040.B*.

Sec. 38.260.090. - **Parking location.**

A. Parking in Setbacks

1. Purpose

To minimize the impact of parked vehicles on the public realm and abutting development.

2. Applicability

The parking location limitations apply to all lots.

3. Standards

a. Parking spaces cannot be located in a required primary street or side street setback, except that single/two-unit dwellings and townhouses with physically separated individual driveways, may have one parking space located on a driveway in the required primary street or side street setback.

b. A driveway can be located in a required side setback, parking spaces cannot.

c. Driveway access must be setback at least five feet from a side lot line, unless shared access, as defined in article 8, with the adjoining property is approved. This standard does not apply to the shared side property line of townhouses units with adjacent garages using attached drive ways.

d. Parking spaces and driveways are allowed in a required rear or alley setback.

4. Measurement

To determine a primary street, side street, side, rear or alley setback see *38.260.060*.

5. Relief

Relief of up to 10% of a dimensional standard may be granted due to irregular shaped lots, topography, utility access, existing or required easements, or preexisting natural features.

B. Parking Between the Building and Street

1. Purpose

To reduce the impact of vehicle dominated areas on the public realm and to promote a comfortable, safe, engaging and attractive streetscape with active uses and landscaping along the public realm.

2. Applicability

The parking location limitations apply to all lots.

3. Standards

a. No parking or other area designed for use by a vehicle can be located between a building used to meet the build-to requirement and the street, when required by the zoning district. Parking areas cannot be located closer to the street than the facade of the adjacent building and in no case may be nearer than 10 feet to the right-of-way.

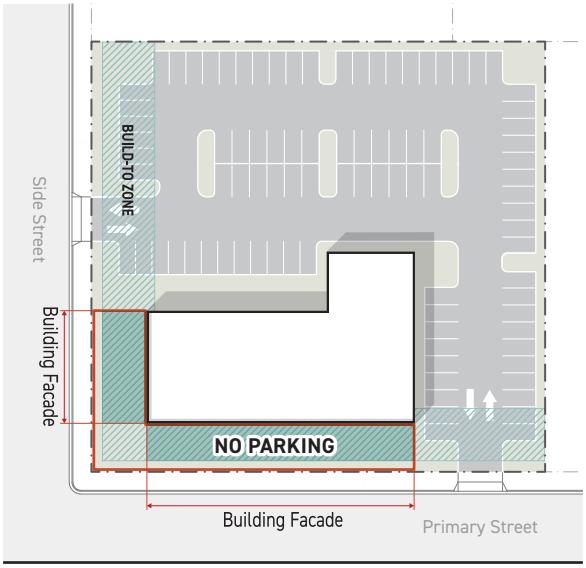


Figure 38.260.090-1. Parking location.

b. All parking lots and other areas designed for vehicles that abut the primary or side street lot line must be screened in accordance with *38.540.050.C*.

4. Measurement

For build-to see *38.260.080.A*.

5. Relief

a. ADA parking is allowed between the building and street when it provides a shorter accessible path of travel.

b. Parking is allowed between the building and street when it is infeasible due to topography to access behind the building.

c. Proposed alternatives must include design features to successfully mitigate the visual impact of additional parking areas.

Sec. 38.260.100. - **Vertical massing.**

A. Building Height

The vertical dimension of a building.

1. Purpose

To help provide adequate light, air, safety, and to protect the visual character of an area and the interests of the general public.

2. Applicability

The height limitations apply to all lots.

3. Standards

No building or portion of a building can exceed the maximum height in feet allowed in the zoning district.

4. Measurement

a. Building height is measured as the vertical distance in feet from grade to the highest point of the roof or parapet wall.

(1) For buildings with multiple roof types or pitches, the highest point of each roof type or parapet wall must comply with the maximum building height as specified by the zoning district.

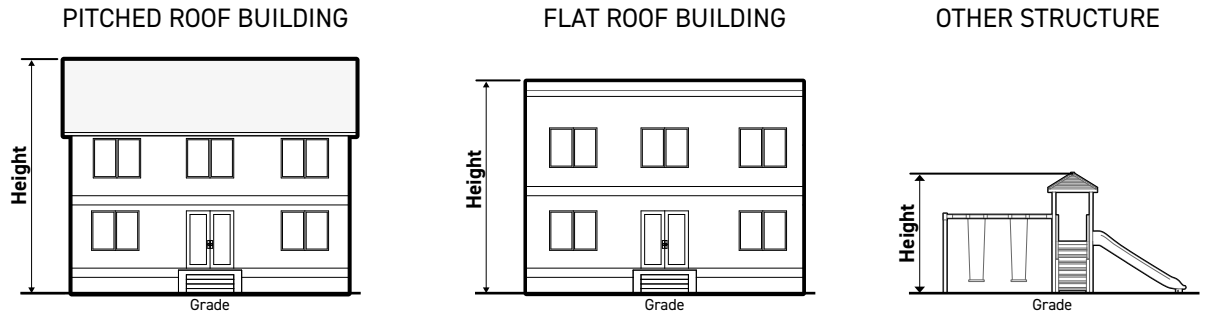


Figure 38.260.100-1. Height in Feet.

(2) If the grade varies by more than two feet between opposite elevations of the building, the maximum building height may be increased by one foot for every foot of grade difference, up to a maximum increase of six feet.

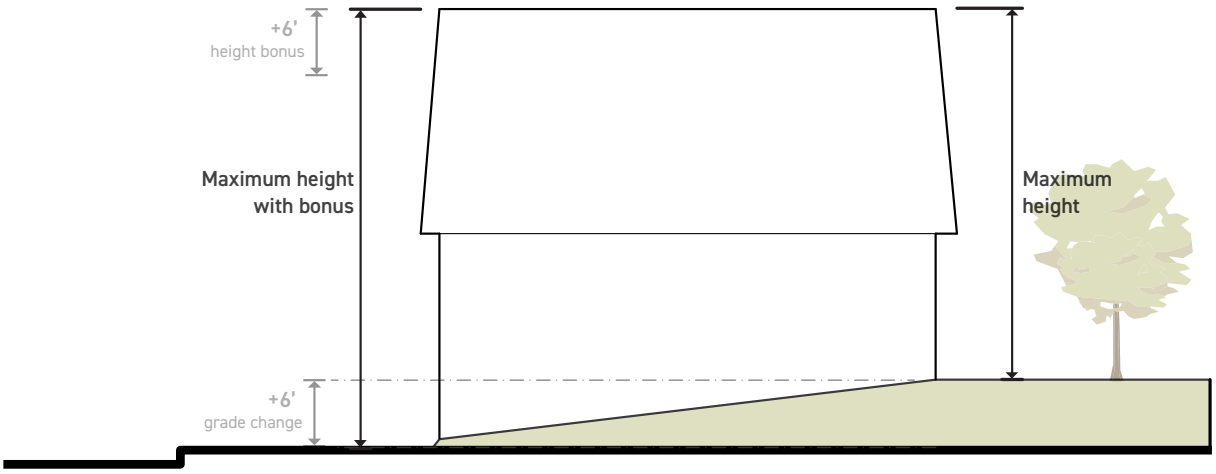


Figure 38.260.100-2. Height bonus.

5. Exceptions

a. The following encroachments can extend above the roof on a building constructed to the maximum height, as specified below:

Table 38.260.100-1.

	ALLOWED ENCROACHMENT
Architectural Elements *Attached to or integrated onto the top of a building, not intended for human occupation. Examples: steeples, spires, belfries, cupolas, domes, and flagpoles*	
Encroachment (max)	25% of maximum district height
Setback from roof edge (min)	0'
Safety Barriers *Used for safety, screening or protection. Examples: fencing, walls, parapets, railings and stairs*	
Encroachment (max)	6'
Setback from roof edge (min)	0'
Vertical Circulation *Floor area used only for building circulation and rooftop access. Examples: elevator room (and associated equipment) and stairway access to roof*	
Encroachment (max)	12'
Setback from roof edge (min)	0'
Size (max % of building footprint)	10%
Unenclosed Structures *Attached to or integrated onto the roof of a building, intended for human shelter or activity. Examples: shade structures, cabanas, pergolas, outdoor dining, permanent seating, beehives, and cooking facilities*	
Encroachment (max)	8'
Setback from roof edge (min)	5'
Mechanical/Electrical Equipment *Supported by a roof related to public or privately-operated systems, including related wires, conduits, pipes and visual screens. Examples: HVAC equipment, exhaust ducts, smokestacks, satellite dishes, ventilation fans, chimney, flues, vent stacks, and generators*	
Encroachment (max)	3’
Setback from roof edge (min)	3'
Renewable Energy Systems *Supported by roof related to renewable energy such solar, wind or rainwater catchment. Examples: cisterns, water tanks, wind turbines, solar panels, and solar water heaters*	
Encroachment (max)	10’
Setback from roof edge (min)	3'
Urban Farming System *Glass-enclosed framed structure used for the production of fruits, vegetables, flowers, and any other plants that require special conditions of temperature. Examples: greenhouse, planthouse.*	
Encroachment (max)	10'
Setback from roof edge (min)	5'

Table 38.260.100-1.

	ALLOWED ENCROACHMENT
Vegetation *Living organisms, absorbing water and organic substances through its roots and synthesizing nutrients. Examples: trees, shrubs, flowers, herbs, vegetables, grasses, ferns, mosses and associated planters and raised planting beds.*	
Encroachment (max)	Unlimited
Setback from roof edge (min)	3'
Signs	See *38.550*

b. Height restrictions for wireless facilities are in *38.330*.

6. Relief

a. Relief of up to 10% of an encroachment dimensional standard may be granted due to topographical issues, utility access, existing or required easements, or preexisting natural features.

b. Urban farming systems can be closer than 5 feet to the edge of the roof if demonstrated compliance with building and fire code.

B. Wall Plate Height

The vertical dimension of the wall of a building or structure, supporting the roof structure.

1. Purpose

To help protect the scale and character of development in established neighborhoods.

2. Applicability

The wall plate height limitation applies to all buildings on the lot.

3. Standards

The wall plate height cannot exceed the maximum height in feet specified by zoning district.

4. Measurement

a. Wall plate height is measured from grade to the wall plate of the building.

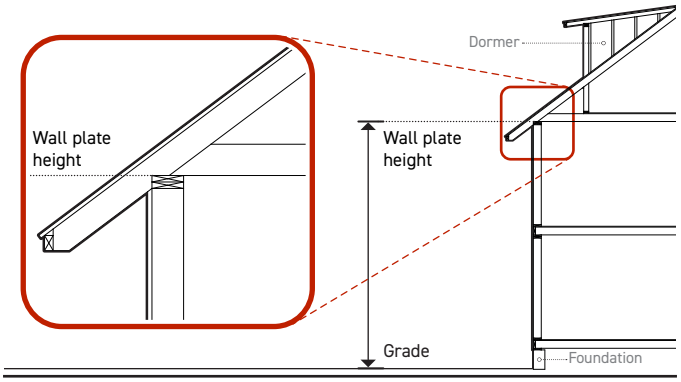


Figure 38.260.100-3. Wall plate height.

b. Wall plate height is measured at the point where the exterior wall intersects the roof structure, typically at the building corners. For complex roof forms - such as cross gables or standard gables - the measurement applies at the corners, and the roof form then extends above this height.

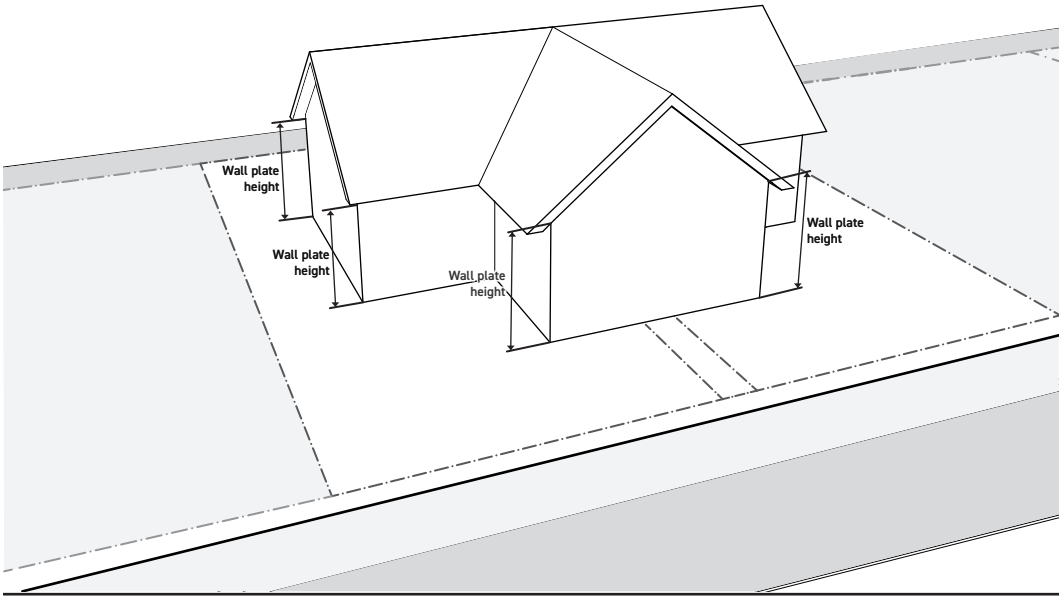


Figure 38.260.100-4. Wall plate height from corners.

c. For shed roofs, the measurement applies at the lowest two corners, and the roof form then extends above this height. The side of a shed roof with the highest plate corners may not exceed the zoning district's maximum wall-plate height by more than 6 feet when located within 15 feet of a property line.

d. Dormers located within the roof form above the wall plate cannot exceed more than 50% of the width of the roof.

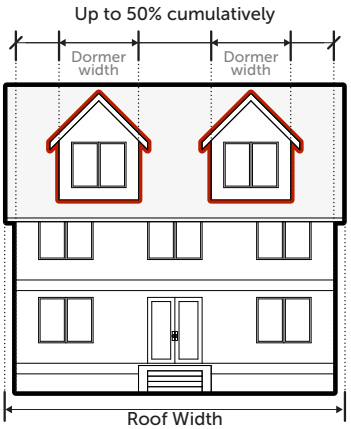


Figure 38.260.100-5. Maximum extent of dormers.

5. Relief

a. Relief of up to 10% may be granted due to topographical issues, utility access, existing or required easements, or preexisting natural features.

b. An additional 1 foot may be added to allowed wall plate height when the roofing systems uses raised heel trusses meeting all building code requirements.

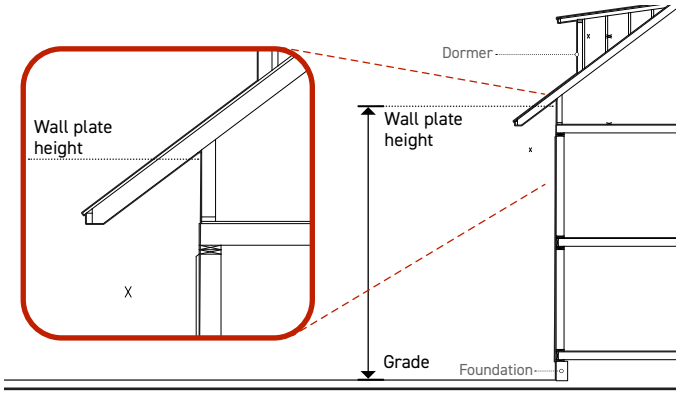


Figure 38.260.100-6. Wall plate height relief.

Sec. 38.260.110. - **Horizontal massing.**

A. Dwelling Units Per Building

The maximum number of dwelling units allowed in a building.

1. Purpose

To help ensure that the size and scale of buildings are generally consistent with the mass and scale requirements of a zoning district.

2. Applicability

The limitation on the number of dwelling units in a building applies to each building on the lot.

3. Standards

A building cannot have more than the maximum number of dwelling units allowed by the zoning district.

4. Measurement

See *article 8* for the definition of a dwelling unit.

B. Building Width

The horizontal width of a building on a lot, parallel to the street lot line.

1. Purpose

a. To promote fine-grained patterns of development and prevent long buildings that are significantly out of context with traditional patterns by breaking wide buildings into multiple, clearly distinguished building widths.

b. To encourage larger projects to provide open space for pedestrians and recreation.

2. Applicability

a. Building width requirements apply to all street-facing building facades.

b. Building width requirements also apply to any side of a non-residential building that is directly adjacent to a residential zoning district and not separated by a public right-of-way.

3. Standards

a. General

(1) No street-facing building facade can be wider than the maximum building width allowed by the zoning district.

(2) Two buildings can abut one another provided that they have no shared components and are structurally independent from one another.

b. Open Space as Building Break Alternative

(1) An open space meeting the following standards may be used to establish a continuous structure as separate buildings for the purpose of meeting the maximum building width requirement.

(2) The width of the open space must be at least 1/4 the width of the widest adjacent building facade.

(3) The depth of the open space must be at least equivalent to the width of the open space up to a maximum of 30 feet.

(4) The open space must meet the landscaping and building facade standards of *38.260.30.B.3.e, Public Outdoor Space*.

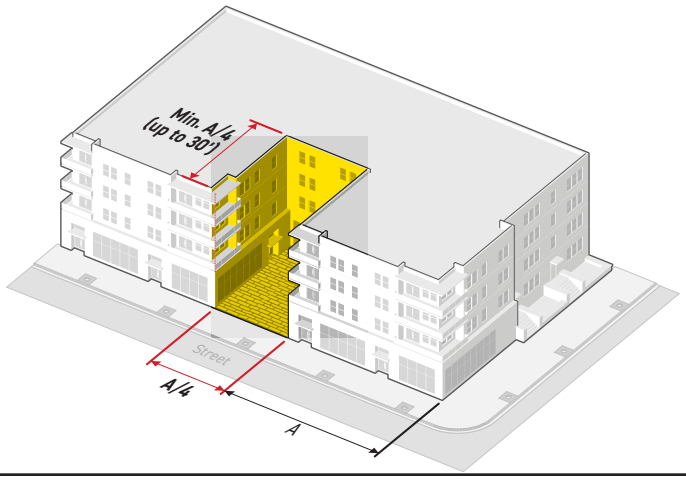


Figure 38.260.110-1. Open space as building break.

4. Measurement

Building width is measured horizontally and parallel to each abutting street lot line from one end of a building to the opposite end.

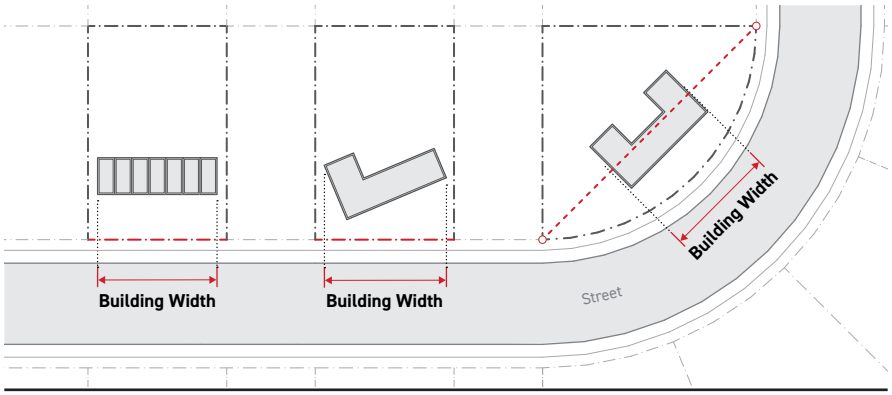


Figure 38.260.110-2. Building width measurement.

5. Relief

a. Relief of up to 20% of a dimensional standard may be granted due to irregular shaped lots, topography, utility access, existing or required easements, or preexisting natural features.

b. Relief of up to 10% of a dimensional standard may be granted for institutional uses, such as schools, places of worship, or community centers if the proposed use requires large internal spaces that cannot be reasonably accommodated within the maximum building width.

Sec. 38.260.120. - **Activation**

A. Active Depth

The horizontal depth of a building that must contain active uses.

1. Purpose

To help minimize the impact of inactive spaces on the public realm and to promote a comfortable, safe, engaging, and attractive built environment.

2. Applicability

a. Active depth standards apply to the portions of a building used to meet the required build-to - see *38.260.080*.

b. The active depth requirement applies to the ground story of a building only.

3. Standards

a. Applicable portions of a building must provide the minimum active depth required by the zoning district.

b. No more than 20% of the floor area of the required active depth can be used for inactive uses such as storage, hallways, stairwells, elevators, and equipment rooms.

c. Parking spaces and other vehicle use areas are not allowed in any portion of the required active depth.

4. Measurement

Active depth is measured inward from the exterior face of the building facade,

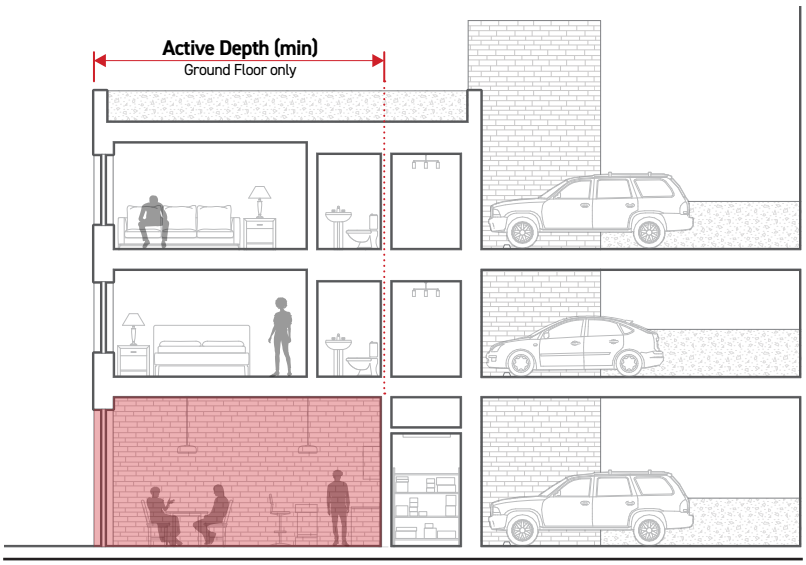


Figure 38.260.120-1. Active depth measurement.

5. Relief

Reduced depths will be considered where the applicant can successfully demonstrate the proposed alternative design and configuration of the space is viable for an active use.

Sec. 38.260.130. - **Floor height.**

A. Ground Story Height

The floor-to-floor height of the ground story of a building.

1. Purpose

To promote high-quality ground-story spaces that are adaptable and appropriate to their intended use and surrounding context.

2. Applicability

The ground story height standards apply to all buildings that contain habitable space on the ground story.

3. Standards

a. The ground story can be no less than the minimum ground story height required by the zoning district.

4. Measurement

a. Ground story height is measured from the top of the finished floor of the ground story to the top of the finished floor of the story above.

b. Where there is no story above, ground story height is measured from the top of the finished floor to the top of the ceiling or roof structure above.

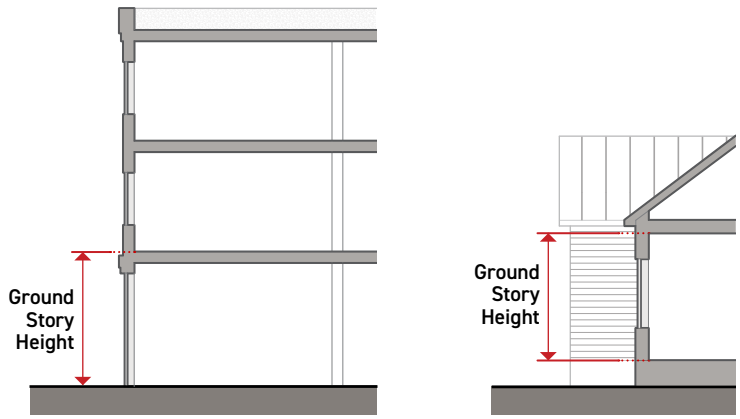


Figure 38.260.130-1. Ground story height.

c. The ground story of a building is determined as follows:

(1) The first story of building that is exposed a minimum of 6 feet above existing grade along the full width of the building facade.

(2) The finished floor of a ground story can be no higher than 6 feet above existing grade for any portion of the building perimeter. This may mean the ground story changes within the same building.

Figure 38.260.130-2. Determination of ground story - gentle slope

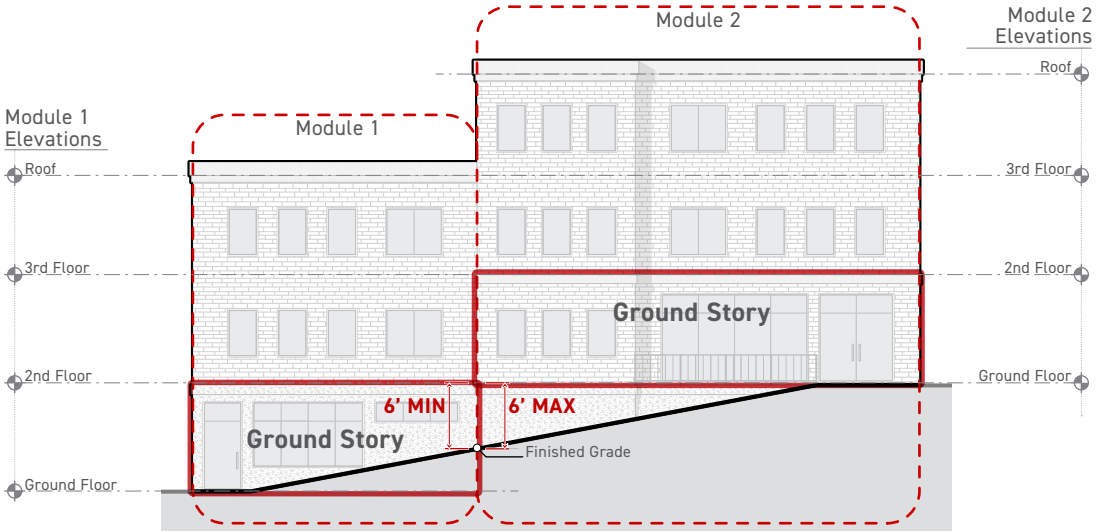


Figure 38.260.130-3. Determination of ground story - steep slope

5. Relief

a. Relief may be granted down to the minimum floor height for occupied space allowed by the building code, where necessary to align with existing floor heights in an existing dwelling.

B. Ground Floor Elevation

The finished floor height associated with the story of a building having its finished floor elevation nearest to the finished ground surface.

1. Purpose

To promote "eyes" on the street, increase the perception of safety and encourage visual connections between the public realm and the exterior of a building.

2. Applicability

a. The ground floor elevation standards apply to all buildings that contain habitable space on the ground story that are located within 20 feet of a street lot line.

b. The ground floor elevation standards apply only to the required ground floor active depth portions of a building.

c. The ground floor elevation standards do not apply to portions of a building used for parking.

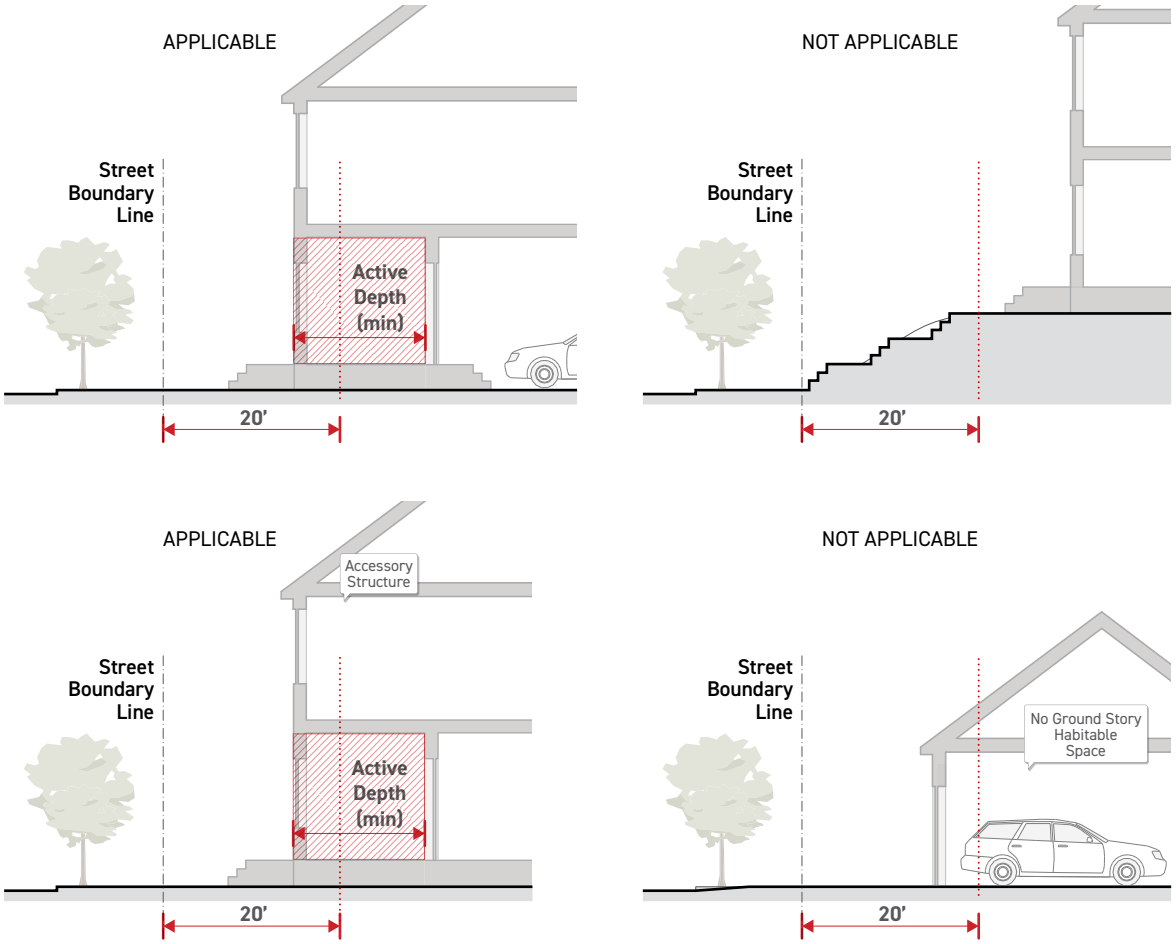


Figure 38.260.130-4. Ground floor elevation.

3. Standards

All applicable portions of a building must have a ground floor finished floor surface at:

a. A height no lower than the minimum ground floor elevation required by the zoning district.

b. A height no higher than the maximum ground floor elevation required by the zoning district.

4. Measurement

Ground floor elevation is measured from grade to the top of the finished floor of the ground story. On corner lots, for the purpose of determining ground floor elevation, grade must be established independently for each street-facing building facade.

5. Relief

Relief of up to 10% to a minimum or maximum ground floor elevation may be granted due to preexisting natural features.

Sec. 38.260.140. - **Windows.**

A. Transparent Area

The amount of transparent area on a building facade.

1. Purpose

To provide visual interest along the public realm by encouraging visual connections between the public realm and the interior of a building.

2. Applicability

a. Transparency requirements apply to all street-facing building facades of a building.

b. Single-unit dwellings up to fourplexes, including townhomes and rowhomes, are exempt from the transparency requirements.

3. Standards

a. Applicable ground and upper story building facades must meet the minimum transparency of the zoning district.

b. To be considered transparent area, window and door glazing must meet the following:

Table 38.260.140-1.

	Visible Light Transmittance	External Reflectance
Ground story	More than 60%	Less than 20%
Upper story	More than 30%	Less than 40%

c. Transparent area may be temporarily covered by operable window treatments, such as curtains or blinds.

d. Muntins, mullions, window sashes, window frames, and door frames, no more than 3 inches wide are considered transparent area.

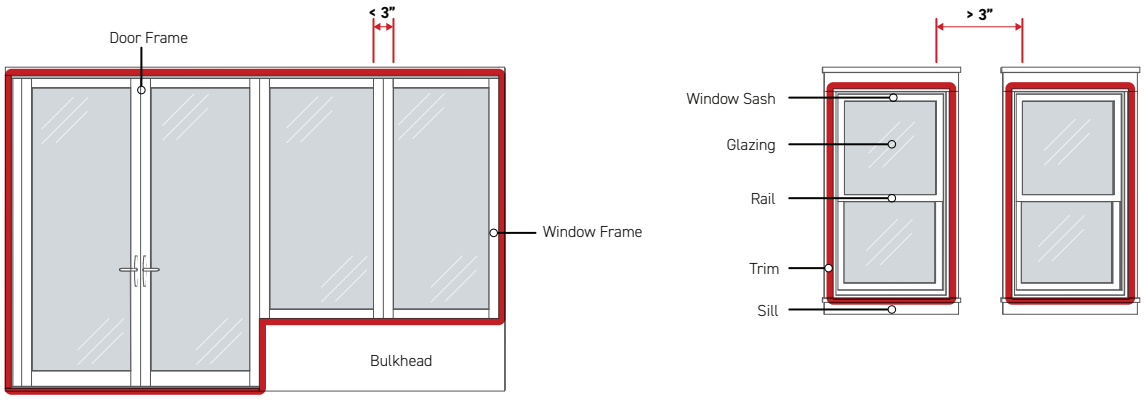


Figure 38.260.140-1. Windows.

e. For ground stories intended to be occupied by nonresidential uses, shelving and other visual obstructions cannot be located within 5 feet of any ground story window or door counting toward transparent area, measured inward from the exterior face of the transparent area.

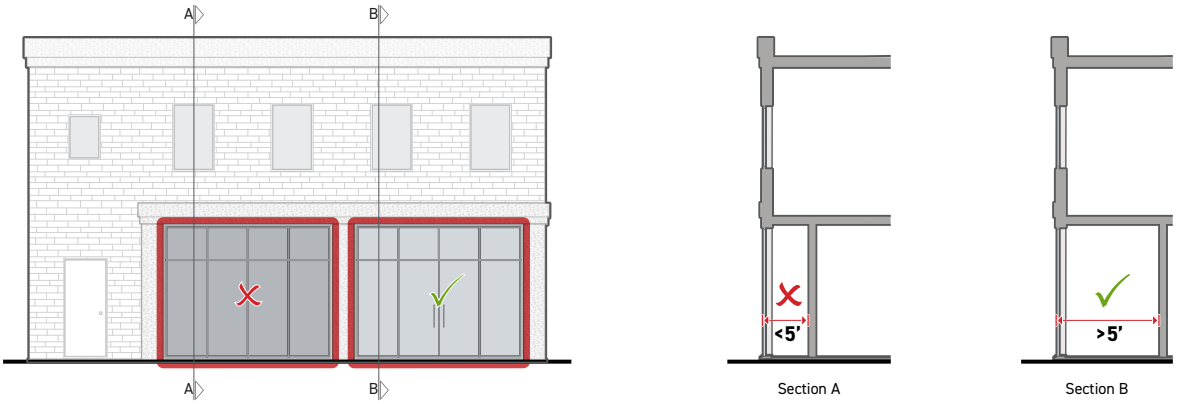


Figure 38.260.140-2. Ground story transparency.

4. Measurement

a. Ground Story

(1) General

Ground story transparency is measured as a percentage, calculated as the sum of all transparent area divided by the total facade area for the ground story.

(2) Commercial Ground Stories

(a) For ground stories intended to be occupied by nonresidential uses, facade area is measured between 0 and 12 feet above the top of the finished floor of the ground story.

(b) If the ground story height is less than 12 feet, facade area is measured between the top of the finished floor of the ground story and the top of the finished floor above.

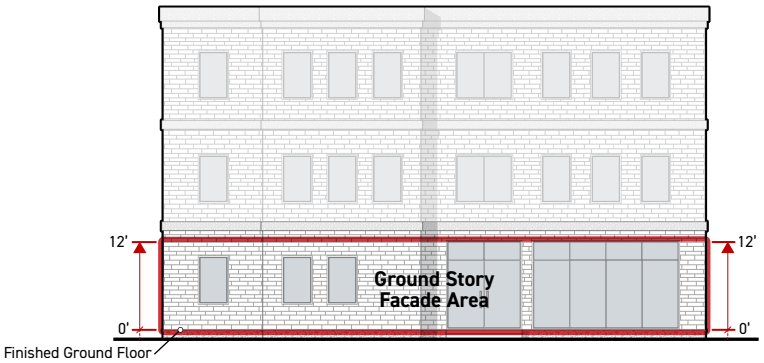


Figure 38.260.140-3. Ground story facade area - non-residential.

(3) Residential Ground Stories

For ground stories intended to be occupied by residential uses, facade area is measured between 1.5 and 8 feet above the top of the finished floor of the ground story.

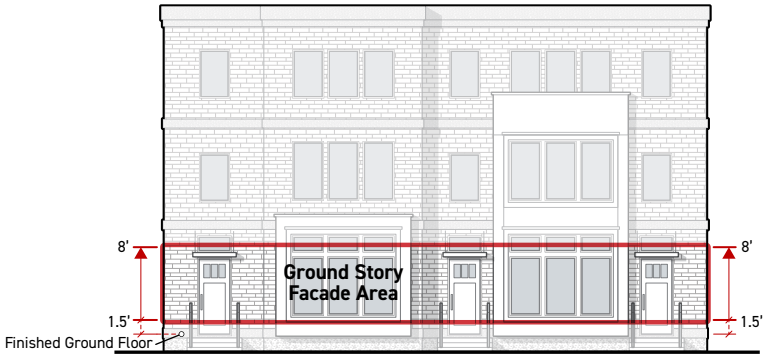


Figure 38.260.140-4. Ground story facade area - residential.

b. Upper Stories

(1) Each upper story facade must meet the required transparency standard independently. All facade area associated with an upper story having the same story designation (for example: 4th story) is considered part of the same upper story facade.

(2) For the purpose of calculating upper story transparency, facade area is measured as the portion of a facade area between the top of the finished floor for that story to the top of the finished floor above. When there is no story above, it is measured to the top of the wall plate.

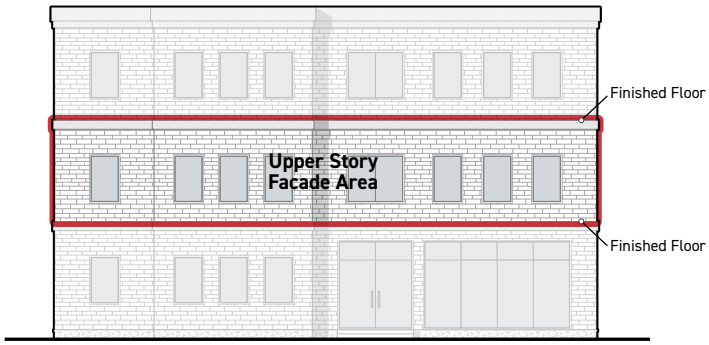


Figure 38.260.140-5. Upper story facade area.

5. Relief

See *38.260.140(B)*

B. Blank Wall Width

The distance between ground story windows or doors.

1. Purpose

To provide visual interest and activation along the public realm by limiting the area without visual or physical connections between the public realm and the interior of a building.

2. Applicability

Blank wall width applies to street-facing building facades between 3 feet and 8 feet from the finished ground floor elevation, measured vertically.

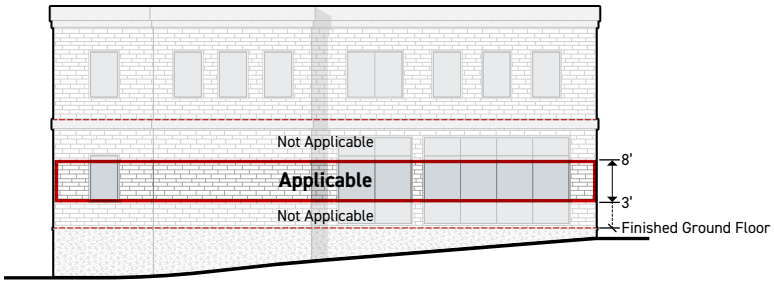


Figure 38.260.140-6. Blank wall facade area.

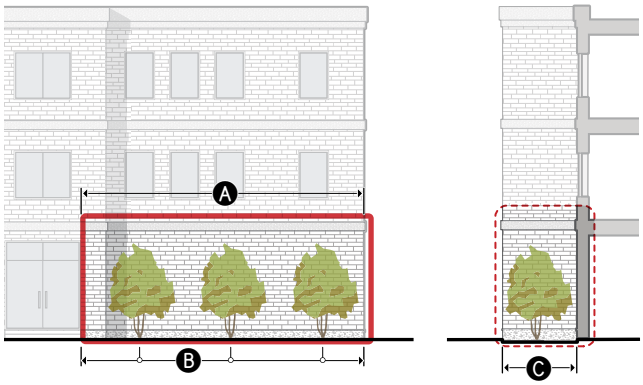
3. Standards

a. Window and door openings meeting the transparent area requirements on ground story facades can be separated by a distance no greater than the maximum blank wall width specified by the zoning district. For the purpose of determining blank wall width, a garage door providing access to a single vehicle parking space is considered to be a door opening which meets the transparent area requirements on a ground story facade.

b. Facades that exceed the maximum allowed blank wall width may apply one or more of the following treatments and may double the maximum blank wall width standard.

Small Trees

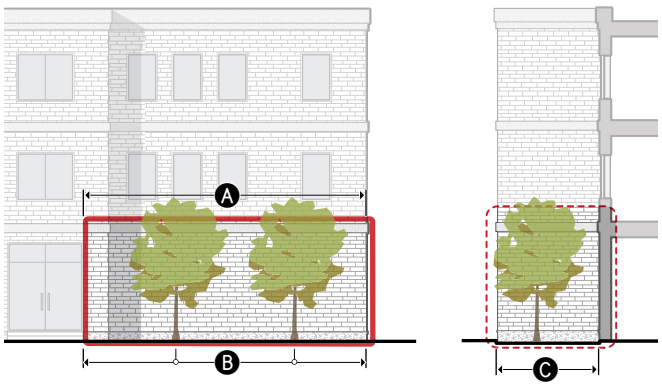
Small trees planted between a ground story facade with no window or door openings and the public realm.



Dimensional Standards		
A	Treatment width (min % of blank wall width)	100%
	Tree type	Small
B	Planting frequency (min avg.)	5 per 100'
C	Planting area depth (min)	7'

Large Trees

Large trees planted between a ground story facade with no window or door openings and the public realm.



Dimensional Standards		
A	Treatment width (min % of blank wall width)	100%
	Tree type	Large
B	Planting frequency (min avg.)	3 per 100'
C	Planting area depth (min)	15'

Living Wall

A permanently fixed assembly located between a ground story facade with no window or door openings and the public realm that supports plants, their growing medium, and irrigation.

Dimensional Standards	
A Treatment area (min % of blank facade area)	75%

Mural

A noncommercial image attached to the blank wall. Murals must be approved by the review authority.

Dimensional Standards	
A Treatment area (min % of blank facade area)	75%

4. Measurement

a. Blank Wall Width

Blank wall width is measured horizontally and parallel to the street lot line from edge of transparent area to edge of transparent area, and edge of transparent area to edge of the building.

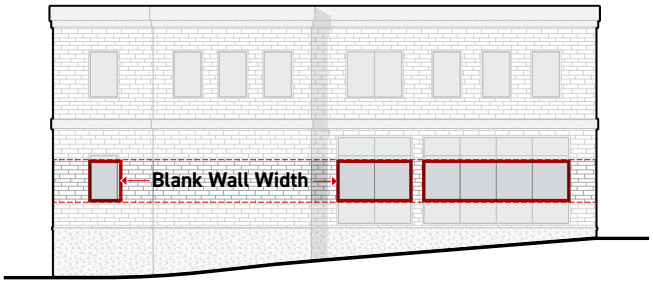


Figure 38.260.140-7. Blank wall measurement.

b. Treatment Width

Minimum treatment width is measured as a percentage, calculated as the cumulative width of blank wall treatments divided by the total length of blank wall.

c. Treatment Area

Minimum treatment area is measured as a percentage, calculated as the cumulative area of blank wall treatments divided by the total facade area within the blank wall width.

d. Planting Frequency

Planting frequency is measured as a ratio of the minimum number of plants required along the total length of the blank wall width. A minimum of one plant of the required plant type must be provided regardless of the width of blank wall treatment.

e. Planting Area Depth

Minimum planting area depth is measured as the horizontal dimension of growing medium at the narrowest point, measured perpendicular to the applicable street lot line. The planting area must be open to the sky for at least the required planting area depth.

5. Relief

a. Relief of up to 10% to a blank wall width dimensional standard may be granted due to preexisting natural features.

b. Public or utility facilities where windows may compromise safe operations or security may be granted relief from the window transparency and the window and door opening requirements of this section.

Sec. 38.260.150. - **Entrances.**

A. Street-Facing Entrance Spacing

An entrance providing access from the public realm to the interior of a building.

1. Purpose

To provide visual interest along the public realm, orient buildings to the public realm and promote greater use and activation of the public sidewalk by limiting distance without physical connections between the public realm and the interior of a building.

2. Applicability

a. Street-facing entrance requirements apply to all ground story street-facing building facades when specified in the zoning district.

b. Street-facing entrance requirements do not apply to buildings serving exclusively residential uses with 24 or fewer dwelling units. Street-facing entrance requirements always apply to non-residential or mixed-use buildings.

3. Standards

a. General

(1) A street-facing entrance must be provided to meet the street-facing entrance spacing requirements of the zoning district. To qualify as a street-facing entrance, a building entrance must meet the following.

(a) Be located on a ground story facade.

(b) Provide pedestrian access to the inside of a building.

(c) Remain operable at all times. Access may be controlled and limited to residents or tenants.

(d) A primary street-facing entrance must face a primary street.

(e) A side street-facing entrance must face a side street.

(2) Non-required entrances are allowed in addition to required entrances.

(3) Accessory structures do not have to provide a street-facing entrance.

b. Entry Spacing

(1) Street-facing entrances cannot be separated by a distance greater than the maximum allowed entrance spacing specified by the zoning district.

(2) If a primary street-facing entrance is provided, a side street-facing entrance is only required when the building along the side street is greater than the maximum street-facing entrance spacing requirement for the zoning district.

(3) On a corner lot, an angled entrance may be used to meet the requirement for a street-facing entrance along both streets. The entrance spacing requirements for each street still apply.

4. Measurement

a. Maximum entrance spacing is measured as the horizontal distance from edge of door to edge of entrance or entry feature and edge of entrance or entry feature to edge of the building.

b. The maximum entrance spacing requirements must be met for each building individually, but are not applicable to adjacent or abutting buildings.

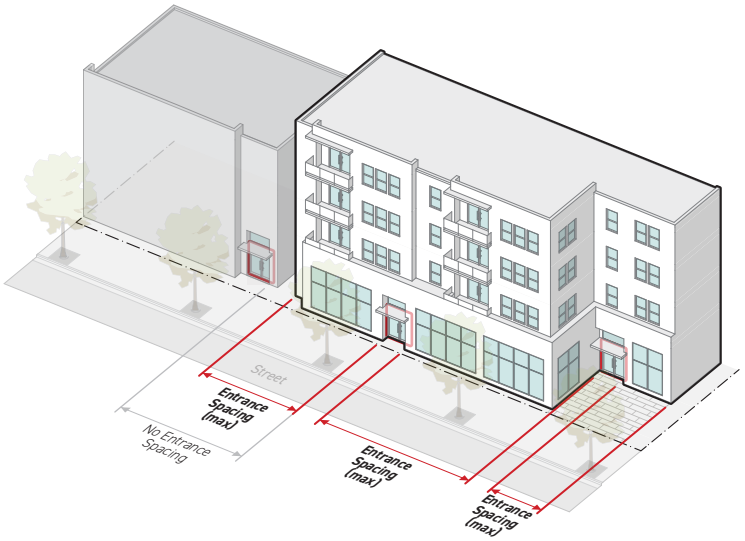


Figure 38.260.150-1. Entrance spacing measurement.

5. Relief

Relief of up to 20% of the required dimensional standard on primary streets and 50% on side streets may be granted due to topographical issues, utility access, existing or required easements, or preexisting natural features.

B. Entry Features

Improved design standards applied to entrances along the public realm.

1. Purpose

To provide architectural embellishment of entrances to promote inconspicuous way-finding in the public realm, provide greater shelter and comfort to users, promote visual interest along the public realm, and highlight the connection between the public and private realm to improve walkability.

2. Applicability

a. Entry feature requirements apply when specified in the zoning district.

b. Entry feature requirements do not apply to buildings serving exclusively residential uses with 24 or fewer dwelling units. Entry feature requirements always apply to non-residential or mixed-use buildings.

3. Standards

a. General

(1) Required entry features must abut and provide direct access to a street-facing entrance.

(2) An entrance directly accessed from an entry feature counts as street-facing, regardless of whether the entrance faces the street.

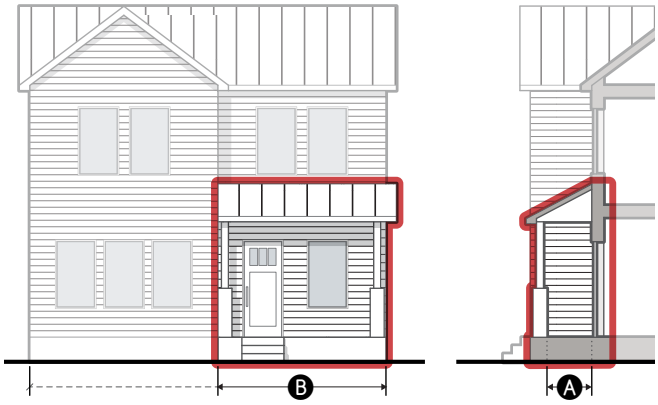
(3) Required entry features must provide direct access from the sidewalk (or street if no sidewalk) abutting the street lot line.

b. Entry Feature Options

Each required street-facing entrance must include one of the following entry features.

Porch

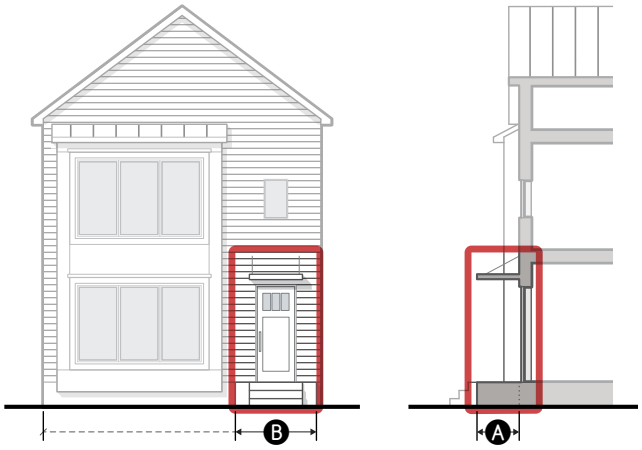
A wide entry or landing area providing sheltered access to a street-facing entrance.



Dimensional Standards	
A Depth (min)	5'
B Width (min)	6'
Covered	Required
Enclosed	Not allowed

Covered Entry

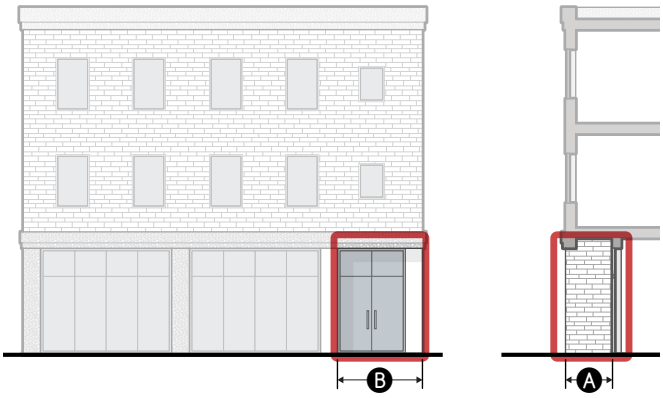
A narrow entry landing area providing sheltered access to a street-facing entrance.



Dimensional Standards	
A Depth (min)	3'
B Width (min)	4'
Covered	Required: door only
Enclosed	Not allowed

Recessed Entry

A space set behind the primary facade plane providing sheltered access to a street-facing entrance.



Dimensional Standards	
A Depth (min)	3'
B Width (min)	5'
Enclosed	Not allowed

4. Measurement

a. Entry Feature

(1) Depth

Minimum entry feature depth is measured as the dimension where the occupiable portion of the entry feature is at its shallowest.

(2) Width

Minimum entry feature width is measured as the dimension where the occupiable portion of the entry feature is at its narrowest.

b. Enclosed

Cannot have any enclosing features, including glass and screens, higher than 42 inches above the floor of the entry feature except for the roof, roof supports, and railings.

5. Relief

a. Sites with steep slopes and/or those facing busy arterial streets and very limited pedestrian traffic may warrant some flexibility (particularly in residential districts).

b. Public or utility facilities where windows may compromise operations or security may be granted flexibility from the street-facing entrance requirements.

c. Other proposed alternative design treatments must provide equivalent weather protection benefits.

Sec. 38.260.160. - **Supplemental standards.**

A. Supplements standards for REMU.

1. Limitation on non-residential uses.

a. Non-residential uses cannot exceed 30 % of the total gross building square footage of all uses within the master planned area unless otherwise allowed through master site plan review.

b. For the purposes of calculating the percentage of a use within the master planned area, the gross square foot floor area of building for each use must be used in the calculation.

c. The specific method of tracking will be determined during the master site plan or site plan review.

d. Home-based businesses can be excluded from the calculation of total gross building square footage of non-residential uses.

e. Non-residential uses intended for public benefit and shared public amenities can be excluded from the calculation of total gross building square footage of non-residential uses. This includes, but is not limited to, schools, parks, community centers, city operated services and structured parking facilities.

2. Development review applications.

a. To accomplish the purpose of the district, the REMU district is anticipated to be located on sites five acres or larger.

b. Development review applications for sites in the REMU district greater than, or equal to, five acres will first be subject to review as a master site plan per *article 7*.

c. Project applications for subsequent project phases in compliance with an approved master site plan may be reviewed as a site plan review or sketch plan review in accordance with *38.740*.

d. All development review applications for property in the REMU district smaller than five acres are subject to the standards in this section and may be subject to review as a master site plan per *38.740* upon a finding by the city that:

(1) The development application is for a site considered a major infill site, having a significant impact on an existing neighborhood; or may create a center within an existing neighborhood;

(2) The proposed development is located at an intersection deemed to have special significance;

(3) The proposed development may have a significant impact on existing transportation and open space network, pedestrian and bicycle travel; and/or

(4) The proposed development requires a multi-year approval and multiple phases for completion.

ARTICLE 3. -

LAND USE

DIVISION 38.300. - ALLOWED USES 3-3

Sec. 38.300.010. - Use table key. 3-3
Sec. 38.300.020. - Allowed use table. 3-4
Sec. 38.300.030. - Use interpretation. 3-7

DIVISION 38.310. - GENERAL USE STANDARDS 3-8

Sec. 38.310.010. - Agricultural water user facilities. 3-8
Sec. 38.310.020. - Condominiums. 3-9
Sec. 38.310.030. - Marijuana. 3-10
Sec. 38.310.040. - Dwelling unit restrictions. 3-11

DIVISION 38.320. - SPECIFIC USE STANDARDS 3-12

Sec. 38.320.010. - Purpose. 3-12
Sec. 38.320.020. - Applicability. 3-12
Sec. 38.320.030. - General residential uses. 3-12
Sec. 38.320.040. - Group residential uses. 3-16
Sec. 38.320.050. - Recreation, culture and entertainment uses. 3-19
Sec. 38.320.060. - Lodging uses. 3-20
Sec. 38.320.070. - Public, government and regional uses. 3-29
Sec. 38.320.080. - Personal service and general service establishment uses. 3-29
Sec. 38.320.090. - General retail uses. 3-31
Sec. 38.320.100. - Industrial and wholesale uses. 3-35
Sec. 38.320.110. - Agriculture uses. 3-35
Sec. 38.320.120. - Accessory uses. 3-36

DIVISION 38.330. - WIRELESS FACILITIES 3-42

Sec. 38.330.010. - Purpose and applicability. 3-42
Sec. 38.330.020. - Special submittal requirements. 3-43
Sec. 38.330.030. - Uses within districts and required review procedures. 3-43
Sec. 38.330.040. - Standards. 3-45

DIVISION 38.340. - AFFORDABLE RENTAL HOUSING..... 3-52
Sec. 38.340.010. - Purpose..... 3-52
Sec. 38.340.020. - Applicability and affordability requirements..... 3-52
Sec. 38.340.030. - Affordable housing plan required; pre-application meeting..... 3-54
Sec. 38.340.040. - Incentives..... 3-57
Sec. 38.340.050. - Development standards for affordable dwellings..... 3-62
Sec. 38.340.060. - Alternatives for land donation and cash-in-lieu..... 3-62
Sec. 38.340.070. - Administration..... 3-63
Sec. 38.340.080. - Noncompliance and sanctions..... 3-64

DIVISION 38.300. - **ALLOWED USES**

Sec. 38.300.010. - **Use table key.**

The uses listed in *38.300.020* are deliberately broad and some are given special definitions in article 8. The purpose of this method is to provide general guidance for uses while allowing the unique needs and circumstances of each proposal to be specifically addressed through the review process.

A. Principal uses.

1. P = Use permitted as a principal use.
2. P* = Use permitted as a principal use and must meet the use standards (link provided in right-hand column of table).

B. Accessory uses.

1. A = Use permitted as an accessory use.
2. A* = Use permitted as an accessory use and must meet the use standards (link provided in right-hand column of table).

C. Special uses.

1. S = Use requires special use approval (see *38.740.100*).
2. S* = Use requires special use approval and must meet the use standards (link provided in right-hand column of table).

D. Uses not allowed.

1. - = Use not allowed.

E. If a specific use is not listed and cannot be interpreted as the same as, or substantially similar to, a listed accessory, principal, or special use in accordance with *38.300.030*, the use is not allowed.

F. Any use or combination of uses allowed in a zoning district may be reviewed and approved on a single site, unless specifically restricted elsewhere in this chapter. Multiple structures containing allowed uses may be located on a single site, provided all applicable requirements of this chapter are met.

Sec. 38.300.020. - **Allowed use table.**

	RESIDENTIAL				COMMERCIAL & MIXED USE							INDUSTRIAL				
Use	R-A	R-B	R-C	R-D	B-1	B-2	B-2M	B-3	B-3C	REMU	NEHMU	B-P	M-1	M-2	PLI	Use Standard
General Residential																
Single-unit dwelling	P	P	P	P	—	—	—	—	—	P	P	—	—	—	—	
Two-unit dwelling	P	P	P	P	—	—	—	—	—	P	P	—	—	—	—	
Three-unit dwelling	P*	P	P	P	—	—	—	—	—	P	P	—	—	—	—	*38.320.030.A*
Four-unit dwelling	P*	P	P	P	—	—	—	—	—	P	P	—	—	—	—	*38.320.030.A*
Multi-unit dwelling	—	P*	P*	P	P*	P*	P	P	P*	P	P	P*	P*	—	—	*38.320.030.B*
Townhouse/rowhouse	P*	P*	P*	P*	P*	S*	P*	P*	—	P*	P*	P*	—	—	—	*38.320.030.C*
Group Residential																
Community residential																
Up to 8 residents	P	P	P	P	P	P	P	P	P*	P	P	P	—	—	—	*38.320.040.A*
9 or more residents	S	P	P	P	—	S	S	—	—	P	—	S	—	—	—	
Cooperative household	P	P	P	P	—	—	—	—	—	P	S	—	—	—	—	
Group living	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	—	—	—	*38.320.040.B*
Lodging house	S	S	P	P	—	S	S	S	S*	P	—	—	—	—	—	*38.320.040.C*
Recreational vehicle park	S*	S*	—	—	—	—	—	—	—	—	—	—	—	—	—	*38.320.040.D*
Transitional & emergency housing	S*	S*	S*	S*	—	S*	S*	S*	S*	S*	S*	S*	S*	—	S*	*38.320.040.E*
Recreation, Culture & Entertainment																
Adult business	—	—	—	—	—	—	—	—	—	—	—	—	P*	P*	—	*38.320.050.A*
Amusement & recreation	—	—	—	—	—	P	P	—	—	—	P	—	P	S	—	
Arts & entertainment center	—	—	—	—	P	P	P	P	P	P*	P	—	—	—	P	*38.320.050.B*
Casino	—	—	—	—	—	—	—	—	—	—	—	—	S	S	—	
Community center	P	P	P	P	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	*38.320.050.C*
Golf course	S	S	—	—	—	—	—	—	—	—	—	—	—	—	—	
Private schools, K-12	S	S	S	S	—	—	—	—	—	—	—	—	—	—	—	
Lodging																
Bed & breakfast	S	S	P	P	—	—	—	—	—	P	S	—	—	—	—	
Hotel/motel	—	—	—	—	—	P	P	P	P	P*	P	P	P	P	—	*38.320.060.A*
Public, Government & Regional																
Business, trade, technical or vocational school	—	—	—	—	P*	P	P	P	—	P	P	P	P	P	P	*38.320.070.A*
Cemetery	—	—	—	—	—	—	—	—	—	—	—	—	—	—	P	

KEY P = Permitted as a principal use A = Permitted as an accessory use;
S = Special use approval required * = Use standards apply — = Use Not allowed

	RESIDENTIAL				COMMERCIAL & MIXED USE							INDUSTRIAL				
Use	R-A	R-B	R-C	R-D	B-1	B-2	B-2M	B-3	B-3C	REMU	NEHMU	B-P	M-1	M-2	PLI	Use Standard
Essential services																
Type II	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	*38.320.070.B*
Type III	S*	S*	S*	S*	S*	P*	P*	S*	S*	S*	P*	P*	P*	P*	P*	*38.320.070.B*
Meeting hall	—	—	—	—	—	P	P	P	—	P	—	—	—	—	—	
Production manufacturing & generation (electric/gas)	—	—	—	—	—	—	—	—	—	—	—	—	—	S	P	
Public institution	—	—	—	—	—	—	—	—	—	—	—	—	—	—	P*	*38.320.070.C*
Public building/publicly owned land used for a park, playground or open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Solid waste transfer station	—	—	—	—	—	—	—	—	—	—	—	—	—	S	P	
Solid waste landfill	—	—	—	—	—	—	—	—	—	—	—	—	—	—	S	
Truck, bus or rail terminal	—	—	—	—	—	—	—	—	—	—	P	—	P	P	P	
Personal & General Service																
Animal shelter	—	—	—	—	—	—	—	—	—	—	S	—	S	S	P	
Automobile washing	—	—	—	—	—	P	P	S	—	S	P	—	P	P	—	
Daycare center	P	P	P	P	P	P	P	P	P*	P	P	P	S	S	P	*38.320.080.A*
General service	—	P*	P*	P*	P*	P	P	P	P	P	P	P*	P	S	—	*38.320.080.B*
Health & exercise	—	P*	P*	P*	P*	P	P	P	P	P	P	S*	P	P	—	*38.320.080.C*
Medical/dental office, clinic	—	—	S*	S*	P*	P	P	P	—	P	P	P	P	P	—	*38.320.080.D*
Mortuary	—	—	—	—	—	S	S	S	—	—	—	—	—	—	—	
Office	—	—	S*	S*	P*	P	P	P	P	P	P	P	P	P	—	*38.320.080.E*
Personal service	—	P*	P*	P*	P*	P	P	P	P	P	P*	P*	P*	P*	—	*38.320.080.F*
Truck, bus repair, washing, & fueling	—	—	—	—	—	—	—	—	—	—	S	—	S	P	P	
General Retail																
Alcohol sales, on-premise consumption	—	—	—	—	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	—	*38.320.090.A*
Automobile fuel sales/ repair	—	—	—	—	S*	S*	S*	S*	—	S*	P*	—	P*	P*	—	*38.320.090.B*
Convenience use	—	—	—	—	—	P*	P*	P*	—	P*	P*	—	—	—	—	*38.320.090.C*
Heavy retail and service establishment	—	—	—	—	—	P	S	S	—	S	P	—	P	P	—	
Restaurant	—	—	P*	P*	P*	P	P	P	P	P	P*	P*	P*	P*	—	*38.320.090.D*

KEY P = Permitted as a principal use A = Permitted as an accessory use;
S = Special use approval required * = Use standards apply — = Use Not allowed

	RESIDENTIAL				COMMERCIAL & MIXED USE							INDUSTRIAL				
Use	R-A	R-B	R-C	R-D	B-1	B-2	B-2M	B-3	B-3C	REMU	NEHMU	B-P	M-1	M-2	PLI	Use Standard
Retail																
Less than 40,000 sf GFA	—	—	P*	P*	P*	P	P	P	P	P	P/S*	P*	S*	S*	—	*38.320.090.E*
40,000 sf and over GFA	—	—	—	—	P*	P*	P*	P*	P*	—	—	—	—	—	—	*38.320.090.E*
Industrial & Wholesale																
Junk salvage/automobile reduction/salvage yard	—	—	—	—	—	—	—	—	—	—	—	—	—	S	—	
Manufacturing																
Artisan	—	—	—	—	P	P	P	P	P	P	P	P	P	P	—	
Light	—	—	—	—	—	S	S	S	—	P	P	P*	P*	P	—	*38.320.100.A*
Moderate	—	—	—	—	—	S	S	—	—	—	P	P	P	P	—	
Heavy	—	—	—	—	—	—	—	—	—	—	—	—	S	P	—	
Outside storage	—	—	—	—	—	—	—	—	—	—	—	—	P	P	P	
Warehousing	—	—	—	—	—	—	—	—	—	—	P	—	P	P	—	
Warehousing, mini storage	—	—	—	—	—	—	—	—		—	P*	—	P*	P*	—	*38.320.100.B*
Agriculture																*38.320.110*
Community garden	P*	P*	P*	P*	P*	P*	P	P	P	P	P	P	P	P	P	*38.320.110.A*
Urban farm	P	—	—	—	P	P	P	P	P	P	P	P	P	P	P	*38.320.110*
Accessory																
Accessory buildings, uses and equipment	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	*38.320.120.A*
Accessory dwelling unit	A*	A*	A*	A*	—	—	—	—	—	A*	A*	—	A*	A*	—	*38.320.120.B*
Daycare center	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Essential services: Type I	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	*38.320.070.E*
Family/group day care	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Farm stand	A*	A*	A*	A*	—	—	—	—	—	—	A*	—	—	—	A*	*38.320.120.C*
Greenhouse	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	*38.320.120.D*
Home-based business	A*	A*	A*	A*	A	A	A	A	A	A	A	A	A	A	—	*38.320.120.F*
Outdoor sales and display	—	—	—	—	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	—	*38.320.120.G*
Outside storage	—	—	—	—	—	A	A	—	—	—	A	A	A	A	A	
Refuse & recycling containers	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Short term rental																
Type 1*	—	A	A	A	—	A	A	A	A	A	A	—	—	—	—	*38.320.060.B*
Type 2*	—	A	A	A	—	A	A	A	A	A	A	—	—	—	—	*38.320.060.B*
Temporary buildings and yards incidental to construction work	A	A	A	A	—	—	—	—	—	—	A	A	A	A	—	

KEY P = Permitted as a principal use A = Permitted as an accessory use;
S = Special use approval required * = Use standards apply — = Use Not allowed

	RESIDENTIAL				COMMERCIAL & MIXED USE							INDUSTRIAL				
Use	R-A	R-B	R-C	R-D	B-1	B-2	B-2M	B-3	B-3C	REMU	NEHMU	B-P	M-1	M-2	PLI	Use Standard
Temporary sales & office building	A	A	A	A	—	—	—	—	—	—	—	—	—	—	—	
Other uses, buildings & structures typically accessory to allowed uses	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

KEY P = Permitted as a principal use A = Permitted as an accessory use;
S = Special use approval required * = Use standards apply — = Use Not allowed

Sec. 38.300.030. - **Use interpretation.**

A. When a use is not clearly defined or otherwise identified in this chapter so that it may be determined if it is allowed within a district, the community development director must determine the appropriate classification of a particular use. In making this determination, the community development director must find:

1. That the use is the same as one or more uses permitted in the district where it is proposed to be located; or

2. That the use is so similar to one or more uses permitted in the district where it is proposed to be located as to be interpreted as the same, so long as:

   a. The use and its operation are comparable with the uses permitted in the district where the use is proposed to be located, in terms of:

      (1) The amount, type, and pattern of vehicle, pedestrian, and bicycle traffic anticipated for the use, and

      (2) The expected outdoor uses and activities associated with the use;

   b. Neither the purpose of this chapter or the purpose of the district will be abrogated by such classification.

3. Persons objecting to a decision of the community development director regarding a classification of a use carry the burden of proof to establish error in the decision.

B. If a question arises concerning the appropriate classification of a particular use, the community development director may submit the question to the city commission to determine whether the particular use is the same or so similar as to be interpreted the same as a listed permitted, accessory, or special use. In making a determination, the city commission must find that the criteria in either subsection *A.1* or *A.2* of this section are met.

C. However, an amendment to the text of this chapter may be submitted for review and approval to allow such use as a listed principal, special or accessory use.

DIVISION 38.310. - GENERAL USE STANDARDS

Sec. 38.310.010. - Agricultural water user facilities.

A. Purpose.

1. The purpose of this section is to recognize and protect property rights established through water rights issued by the State of Montana and the associated rights of conveyance for agricultural water user facilities. Development of land has potential to negatively impact such rights and function of such facilities. The state has adopted requirements including but not limited to MCA 70-17-112, 85-7-2211 and 85-7-2212, to protect agricultural water user facilities and prevent interference with them.

2. The realignment or relocation of active agricultural water user facilities is discouraged. If an agricultural water user facility or points of diversions thereon are proposed to be realigned or relocated, the developer's professional engineer must certify, prior to final plat approval or final routing for building permits or allowance of operation under a zoning approval, that the water entering and exiting the realigned or relocated agricultural water user facility is the same quality and amount of water that entered or exited the facility prior to realignment or relocation. Relocation or realignment must be approved by the facility owner. The relocation of a point of diversion for an agricultural water user facility may require change authorization approval from the Montana department of natural resources and conservation pursuant to MCA 85-2-402.

B. Notice requirements concerning agricultural water user facility:

The requirements of this section only apply to a proposed development where an agricultural water user facility is present on-site, or on an adjoining property within 100 feet of the exterior boundaries of the proposed development.

1. The developer must:

   a. Provide written notice to the applicable water users and/or agricultural water user facility's authorized representatives of the proposed development,

   b. Provide them with a copy of the proposed development layout,

   c. Provide a description of any proposed modifications or anticipated adverse effects to the agricultural water user facility,

   d. Provide a description of any mitigation proposed to remedy such adverse effects, and

   e. Provide 30 business days for the water users and/or agricultural water user facility's authorized representatives to submit written comments.

2. Notice to the water users and/or agricultural water user facility's authorized representatives must be as follows.

   a. In the event the agricultural water user facility conveys water rights for an incorporated or otherwise organized group of water users such as a ditch or canal company or water users association, written notice must be sent to the board of directors or executive officer of the organized group at the address listed on the water rights abstract. The notice must request

that the board or officer provide the notice to any of its members with a contract interest in water being conveyed in the agricultural water user facility that is present on-site. In the event the agricultural water user facility conveys water rights for individual water rights owners, the developer must give written notice to all water users.

b. In the event the agricultural water user facility conveys water rights in a combination of the scenarios described in 2.a and 2.b above, the developer must give written notice to all identified water right owners. The notice must be sent to the water rights owner at the address listed on the water rights abstract obtained from the official water rights records of the Montana Department of Natural Resources and Conservation. The pre-application or concept plan submittal must include the names and contact information for the water users and agricultural water user facility's authorized representatives that were provided with written notice, and the date they were provided written notice; and a copy of the notice sent.

3. If the water users and/or agricultural water user facility's authorized representatives have provided the applicant with written comments, those comments must be submitted with the pre-application or concept plan submittal.

4. If there are changes to the project between the pre-application plan or concept plan submittal and formal application stage that would result in additional impacts to the agricultural water user facility, the developer must comply with the notice and documentation requirements described above to be submitted with the formal application.

5. If the subject of this subsection was fully addressed with a previous development review and a new application is fully in compliance with the earlier approval then compliance with the notice provisions of this subsection is not required.

C. Maintenance of agricultural water user facilities.

Persons holding water rights, agricultural water user facility owners, or their representatives may conduct necessary maintenance such as cleaning and removal of accumulated silt, branches, trees, sticks and other debris as well as repair or restoration activities consistent with state law and the terms of any applicable easement or other authority.

D. Easements.

Agricultural water user facilities may also be subject to *38.410.060*.

Sec. 38.310.020. - **Condominiums.**

A. Unit ownership act.

Condominium developments must comply with all provisions of the Unit Ownership Act, MCA 70-23-101 et seq., and all regulations adopted to implement to Act.

B. Condominium association.

A condominium association must be established for each condominium development. The developer must prepare bylaws for the condominium association to provide for the operation and mainenance of the condominium development, in compliance with this chapter. The bylaws must be submitted to the city for review and approval prior to the granting of plan approval or approval for condominiumization of existing development. City enforcement follows *38.100.100.*

C. Internal circulation.

Internal circulation in a condominium development must be designed in accordance with *38.530*, and must, when deemed necessary by the city engineer, comply with *38.400.020*.

Sec. 38.310.030. - **Marijuana.**

A. Any activity involving a marijuana business as defined in chapter 16 must meet all requirements of state law including, but not limited to, the standards of MCA 16-12-101 et seq., and any applicable administrative rules established by the state. Should such rules or laws change, any marijuana business must immediately begin any required process to come into compliance with the new rules. This includes submittal for review of applications to the city as they may relate to zoning, licensing, or other municipal requirements. Compliance with city zoning regulations does not shield any person, corporation, or other legal entity from the requirements of, or enforcement by, other governing entities, or from civil liabilities.

1. Unless specifically exempted, any person or existing or proposed entity intending to conduct activities which meet the definitions of "agriculture," "manufacturing," "office" or "retail" as established in *38.800* which is for the purpose of cultivation, manufacturing, processing, transporting, testing, distribution, sale or any other marijuana business must, in addition to this section, comply with all other provisions of this chapter, and must not be located within 500 feet of and on the same street as:

   a. All schools or facilities, where students are regularly present, owned or operated by Bozeman School District 7 whether located inside or outside the city limits; or

   b. All private schools, not including home schools, where students are regularly present, whether located inside or outside the city limits, which provide instruction in the class range from kindergarten to 12th grade and which are either subject to MCA 20-5-109, or listed as a kindergarten provider by the county superintendent of schools.

   c. Any postsecondary school defined by MCA 20-5-402, where students are regularly present.

   d. A building used exclusively as a church, synagogue, or other place of worship as defined for the purposes of this section by the state.

   e. For purposes of this section, distances will be measured pursuant to state law and rules promulgated by the state.

2. All medical marijuana businesses within the city limits that were duly licensed and authorized to conduct medical marijuana business by the city on or before [the effective date of the ordinance from which this section derives] are exempt from the above requirements in *subsections 1.(a)* - *1.(e)* above and may continue to operate, including conducting businesses related to non-medical marijuana, in the established location at the size and capacity originally licensed. Any marijuana business that is duly licensed by the state and city to operate in a location and is operational prior to a school, postsecondary school, church, synagogue, or other place of worship establishing a location that would have precluded the marijuana business from being licensed based on the restrictions *subsections 1.(a)* - *1.(e)* above, may continue to operate in the established location at the size and capacity originally licensed.

3. Any activities meeting the definitions of "agriculture," "manufacturing," "office," or "retail" as established in *article 8* which is for the purpose of cultivating, growing, processing, manufacturing, testing, transporting, distribution, and/or any other activity related to marijuana business where marijuana or marijuana product is physically present may not be located in the R-A, R-B, R-C, R-D and B-3C.

4. The requirements of *subsections A.1* and *A.2* above do not apply to personal use or personal growing of marijuana plants permitted by state law.

5. Establishing a marijuana business may result in a change in the designation of building code occupancy type. A change in use or occupancy type may require physical modifications to the structure, which must be approved by the building division prior to any construction as required by *38.700.100*.

6. Air discharge control. Any marijuana cultivation, growing, manufacturing or processing operation must provide a forced air vent discharge point that provides a mechanical filtration system to control discharges of particulates and odors. The ventilation filtration system must be designed by a mechanical engineer licensed to practice in the state such that odors and particulates may not be detected by unaided human observation at the property boundary, and noise produced by the system must be controlled and minimized.

7. Any person applying for a zoning approval for a marijuana business must provide evidence of state licensure and must maintain state licensure approval at all times. Failure to maintain any and all state licensing requirements may immediately suspend zoning approval to operate a marijuana business in the city.

8. These regulations are for review of applications to the city and do not restrict property owners from establishing more stringent standards for their properties.

Sec. 38.310.040. - **Dwelling unit restrictions.**

A. No use of unfinished structures.

No cellar, garage, tent, tepee, yurt, basement with unfinished structure above, accessory building, or vehicle; or any manufactured home or recreational vehicle outside of an approved manufactured home community, recreational vehicle park, or approved individual lot in accordance with *article 2* can at any time be used as a dwelling unit, unless approved for use as a temporary dwelling unit due to a demonstrated hardship.

B. Use of basements.

The basement portion of a finished home must be properly damp-proofed and have natural lighting, heating, ventilation, and suitable fire protection and exits if used for living.

DIVISION 38.320. - **SPECIFIC USE STANDARDS**

Sec. 38.320.010. - **Purpose.**

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

Sec. 38.320.020. - **Applicability.**

All uses listed in this division are subject to the specific standards described for each use, in addition to all other applicable standards.

Sec. 38.320.030. - **General residential uses.**

A. Three- and Four-unit dwelling.

1. R-A

Three- and four-unit dwellings are permitted only within existing residential structures on lots that meet the definition of infill, and any expansion must not increase the gross floor area of the structure by more than 25 %; nothing in this standard modifies or supersedes applicable building code requirements.

B. Multi-unit dwelling.

1. R-B, R-C.

There is a limitation on the maximum number of dwelling units in a building - see *38.210*.

2. B-1, B-P.

Total residential floor area is limited to 35% of the total gross floor area for the entire project.

3. B-2.

a. Allowed only in the upper stories of a building. Lobbies and shared facilities such as a gym, lounge area, meeting space or mail room are allowed on the ground floor.

b. Allowed on the ground floor through the special use process.

4. B-3C.

Allowed only in the upper stories of a building. Lobbies and shared facilities such as a gym, lounge area, meeting space or mail room are allowed on the ground floor.

5. M-1.

Total residential floor area is limited to 25% of the total gross floor area for the entire project. State-adopted building codes have limits for the design for live/work spaces.

C. Townhouse and rowhouse.

1. Purpose.

a. To enhance the character of the street.

b. To maintain "eyes on the street" for safety to pedestrians and to create a more welcoming and interesting streetscape.

c. To de-emphasize garages and drive aisles as major visual elements along the street.

d. To provide usable open space for residents.

e. To reduce the apparent bulk and scale of large townhouse/rowhouse buildings.

f. To promote architectural variety that adds visual interest to the neighborhood.

2. Parking and garage access.

a. Setbacks. See *article 2* for minimum building and garage setbacks for the applicable district.

b. For buildings with less than five attached units, see *38.250.060* for parking and garage standards.

c. Individual garages facing the street are not allowed in the B-3 district when an alley is adjacent to the property.

d. See *38.400.090.C* for driveway standards.

3. Pedestrian entrances.

For rowhouses where the primary pedestrian access to the dwelling is from an alley or private internal vehicular access, buildings must emphasize individual pedestrian entrances over individual garages by using both of the following measures:

a. Enhance entries with a trellis, small porch, or other architectural feature that provides cover for a person entering the unit and a transitional space between outside and inside the dwelling.

b. Provide a planted area in front of each pedestrian entry of at least 20 square feet in area, with no dimension less than four feet.

c. Alternative designs will be considered, provided they meet the purpose of the standards.

Figure 38.320.030-1. Good and bad examples of garage/entry configurations. The left example features a landscaped area and a trellis to highlight the entry. In the middle image, the balconies and landscaped areas deemphasize the garage. In the right image, the lack of landscaping near the entries would not be allowed (where this is the primary pedestrian entry to the unit).

4. Internal drive aisle standards.

a. Must meet minimum widths of any city adopted International Fire Code.

b. Minimum building separation along uncovered internal drive aisles must be 24 feet. The purpose is to provide adequate vehicular turning radius, allow for landscaping elements on at least one side, and to provide adequate light and air on both sides of the dwelling units and drive aisles, which often function as usable open space for residents.

c. Upper level building projections over drive aisles are limited to three feet, and must comply with *subsection 4.b.* above.

5. Open space.

See *article 2* for minimum amenity space requirements.

6. Building design.

a. Townhouse and rowhouse buildings must comply with residential building articulation standards in *38.520.040.C* except that the articulation intervals must be no wider than the width of units in the building. Thus, if individual units are 15 feet wide, the building must include at least three articulation features for all facades facing a street, common or other shared open space, and common parking areas at intervals no greater than 15 feet.

b. Repetition with variety [see *Figure 38.320.030-2* and *Figure 38.320.030-3*]. Townhouse and rowhouse developments must employ one or more of the following "repetition with variety" guidelines:

(1) Reversing the elevation of two out of four dwellings.

(2) Providing different building elevations by changing the roofline, articulation, windows, and/or building modulation patterns.

(3) Adding a different dwelling design or different scale of the same design, such as adding a one-story version of the basic dwelling design where two stories are typical (or a two-story design where three stories are typical).

(4) Other design treatments that add variety or provide special visual interest. While the variable use of color on buildings can be effective in reducing the perceived scale of the building and adding visual interest, color changes alone are not sufficient to meet the purpose of the standards.

Figure 38.320.030-2. Acceptable townhouse configuration employing the repetition with variety concept.

Figure 38.320.030-3. Acceptable townhouse/rowhouse buildings integrating the "repetition with variety" guidelines. The internal units in the left image each have distinct, but identical windows and roof forms. The outside unit is differentiated through the use of building materials, window design, unit size, and facade detailing. The internal and external units in the right example include reverse elevations.

7. Additional standards in R-A.

A set of townhouses/rowhouses can have no more than two attached units in a row.

8. Additional standards in R-B.

A set of townhouses/rowhouses can have no more than eight attached units in a row.

9. Additional standards in B-1, B-2, B-2M, B-3 and B-P.

A set of townhouses/rowhouses must have a least five attached units in a row.

10. Additional standards in NEHMU.

A set of townhouses/rowhouses can have no more than four attached units in a row.

Sec. 38.320.040. - **Group residential uses.**

A. Community residential.

1. B-3C.

Allowed only in the upper stories of a building. Lobbies and shared facilities such as a gym, lounge area, meeting space or mail room are allowed on the ground floor.

B. Group living.

1. Applicability.

All group living uses except for health care facilities and community residential facilities are subject to the standards of this section.

2. Density.

a. The density of residents in a group living use is limited to generally approximate and correspond with the density limits that apply to other types of housing in residential zoning districts. Limiting density addresses areas of legitimate public concern and the purposes of zoning as established by the state legislature and adopted locally in *38.100.040*.

b. For the purpose of these regulations, "residents" include all people living at the site, including children; except that people who provide support services, building maintenance, care, and supervision, are not considered residents.

c. Group living use requires the following area of land within the site for each resident.

(1) R-A: Minimum lot area of 750 square feet per person.

(2) R-B: Minimum lot area of 700 square feet per person.

(3) R-C: Minimum lot area of 600 square feet per person.

(4) R-D: Minimum lot area of 500 square feet per person.

(5) REMU: Minimum lot area of 500 square feet per person.

(6) All other districts: no minimum lot area per person.

3. On-site services and facilities.

In any Residential district, on-site services and facilities may be provided only to residents of the group living use.

4. Duration of occupancy.

Group living is not a substitute for a hotel, motel, or other transitory service facility. Therefore, duration of terms of occupancy for residents is 30 days or greater.

5. Open space.

On-site open space for group living uses is required per *38.260.040.B*.

6. Additional requirements in B-3C.

Allowed only in the upper stories of a building. Lobbies and shared facilities such as a gym, lounge area, meeting space or mail room are allowed on the ground floor.

7. Fraternities and sororities.

a. Must provide an assembly space internal to a building adequate in size to accommodate not less than 90% of the enrolled members of the fraternity or sorority at the time the use is approved by the City, but not less than 70 persons.

b. Assembly area occupant loads must be consistent with currently adopted State of Montana Building Codes. The Building Department can evaluate the occupancy use and Occupant load on a case-by-case basis.

C. Lodging house.

1. B-3C.

Allowed only in the upper stories of a building. Lobbies and shared facilities such as a gym, lounge area, meeting space or mail room are allowed on the ground floor.

D. Recreational vehicle park and overnight campground.

1. Recreational vehicle parks must be screened from view of any adjacent residential development.
2. Internal circulation roads must be paved with a concrete, asphaltic concrete surface, or other surfacing approved by the City.
3. Individual recreational vehicle parking pads must be plainly marked and maintained with a dust free surface.
4. Approved trash disposal is required, and bathroom and laundry facilities may be provided for use of overnight campers.
5. Recreational vehicle spaces must be separated by no less than 15 feet and must be no less than 1,000 square feet in area.

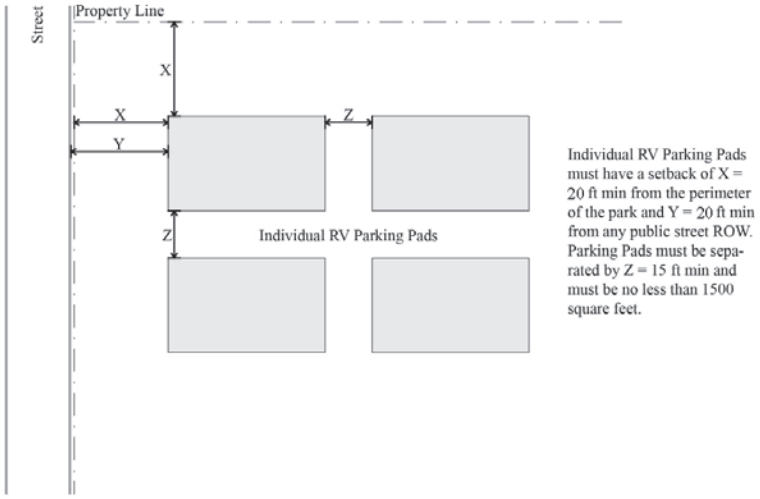


Figure 38.320.040-1. Recreational vehicle park and overnight campground.

E. Transitional and emergency housing.

1. Purpose.

The purpose of this section is to provide for the regulation of transitional and emergency housing and related services to ensure compatibility of uses and to promote public health, safety and welfare.

2. Applicability.

This section applies to all transitional and emergency housing and related services as defined in *38.800.180*.

3. Required standards.

The following standards must be met in order for a special use permit to be granted for the use:

a. Transitional and emergency housing may be provided in:

(1) A shared structure on any level where a residential use is allowed;

(2) A mixed-use structure on any level where a residential use is allowed;

(3) Detached ground-level units only if the units include individual bathrooms.

b. The structure must be on a permanent foundation approved by the building division.

c. The tract or parcel of land on which the use is proposed must be under single ownership, or the application for the use must be filed jointly by all of the owners of the property to be included in the development.

d. On-site facilities and related services are provided only for the residents of the transitional and emergency housing unless the provision of services to non-residents is permitted in the applicable zoning district.

e. This use is exempt from parkland dedication requirements. Open-space requirements per *38.260.040.B* apply.

f. A management plan from the applicant addressing the following factors:

(1) Provision for continuous on-site management from an employee or volunteer during all hours of operation.

(2) Staff training.

(3) Intake screening of clients to insure compatibility with services provided at the facility.

(4) Client code of conduct.

(5) Provision of on-site storage for clients' belongings.

(6) Security measures to be adopted.

4. Additional criteria.

The review authority may, in its sole discretion, apply additional criteria deemed necessary to mitigate impact(s) of the proposed use as a condition of approving a special use permit, including but not limited to:

a. The site where such use is proposed is within ¼ mile of a sheltered public transit stop.

b. Limitation on the maximum occupancy and/or number of beds provided by the facility.

Sec. 38.320.050. - Recreation, culture and entertainment uses.

A. Adult business.

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

B. Arts and entertainment center.

1. REMU.

Limited to 12,000 square feet of gross floor area per arts and entertainment center.

C. Community center.

1. Within residential districts, there must be public street access onto an arterial or collector standard street within 600 feet of the entrance to a community center site.

2. Community centers located within residential districts must, when any individual structure exceeds 5,000 square feet in gross floor area or exceeds the district's allowed maximum height, provide a 20 foot landscaped setback between the building and adjacent residential uses. A structure separated from the adjacent residential uses by a parking lot, public street, watercourse, public open space, or similar separation is exempt from the additional setback width requirement.

3. Each community center site with more than 40 parking spaces must provide a minimum of two ingress/egress points which comply with *38.400.090*.

Sec. 38.320.060. - **Lodging uses.**

A. Hotel/motel.

1. REMU.

Limited to 40,000 square feet of gross floor area per hotel/motel.

B. Short term rental.

1. Purpose.

The purpose of this section is to provide for the regulation of short term rentals in certain zoning districts within the city to preserve neighborhood character and promote a supply of long term rental housing stock, while encouraging economic activity and diversity, and to promote public health, safety, and welfare.

2. Applicability.

a. The provisions of this section apply to transient occupancy of a short term rental as defined herein.

b. This section does not apply to any rental of a dwelling unit which is governed by The Montana Residential Landlord and Tenant Act of 1977 (Landlord Tenant Act).

c. A lower-priced or moderate-priced home subject to and defined by *38.340*, or a dwelling that received financial support from the city, including but not limited to down payment assistance, impact fee payment, or other consideration including affordable units developed using regulatory incentives, infrastructure prioritization or assistance or a financial subsidy, may not be used as a short term rental until such time as either the lien instrument against the property in favor of the city securing the amount of such subsidy has been released and the release recorded with the Gallatin County Clerk and Recorder's Office or the expiration of an applicable affordability covenant. The prohibition on use as a short term rental under this subsection will continue until the later of a lien release or expiration of an affordability covenant.

3. Definitions.

For purposes of this section, the following definitions apply:

a. "Booking transaction" means any reservation or payment service provided by a hosting platform that facilitates a short term rental transaction between an owner and a transient occupant.

b. “Host” means a natural person who occupies a dwelling unit as the person’s primary residence and has the legal right to offer the dwelling unit for use as a short term rental.

c. "Hosting platform" means a person or entity that participates in the short term rental business by collecting or receiving a fee directly or indirectly for any booking transaction through which an owner may offer a dwelling unit or portion thereof for transient occupancy. Hosting

platform includes but is not limited to an online service and an individual using any other means to collect or receive a fee on behalf of an owner for a transient occupancy of a short term rental.

d. "Operate, operation of," or "operating a short term rental" means the short term rental has been rented by or on behalf of the host to the general public for compensation for transient occupancy. "Operate" "operation of" or "operating" a short term rental does not include mere advertisement of or offering to rent short term rental(s).

e. "Primary residence" means the dwelling unit a natural person occupies for a minimum of 70 % of the calendar year. A natural person can have only one primary residence.

f. "Responsible person" means the person responsible for addressing all maintenance, nuisance, and safety concerns related to a short term rental, as designated by the host.

g. Short term rental is defined in article 8 of this chapter.

h. "Transient occupancy" of a short term rental means occupancy which has the following characteristics:

(1) The period of occupancy is less than 28 consecutive days, and

(2) The person(s) occupying the short term rental has a primary residence other than the short term rental.

4. Short term rental classifications.

Short terms rentals are classified as:

a. Type-1:

A short term rental of one or more bedrooms a host's primary residence while the host is occupying the same dwelling unit for the entire short term rental period.

b. Type-2:

A Type-2 short term rental is the short term rental of a dwelling unit if the host is not occupying the dwelling unit during the entire short term rental period. Type 2 short term rentals include:

(1) Type-2A:

A short term rental of a dwelling unit if the host is not occupying the dwelling unit during the entire short term rental period. The dwelling unit offered as a short term rental must be the host's primary residence, as defined herein.

(2) Type-2B:

A short term rental of an accessory dwelling unit (ADU) on the same lot as the host's primary residence, or a short term rental of no more than one additional dwelling unit in the same building as the host's primary residence regardless of whether the host is present in the host's primary residence during the short term rental period.

5. Where allowed.

A host may operate a short term rental in all zoning districts where such use is authorized in *38.300.020* subject to the requirements of this chapter and pursuant to a valid and current short term rental hosting permit.

6. Compliance with laws.

a. In addition to the provisions of this chapter, a host must comply with all other applicable local, state and federal laws, including but not limited to city parking regulations, including time limitations and ADA parking restrictions; lodging facility use tax and accommodations sales tax regulations; health department permitting requirements; the Americans with Disabilities Act; fair housing laws; building codes and fire codes, and the non-discrimination provisions in chapter 24, article 10. Loss of any required permit or license will result in revocation of the short term rental hosting permit in accordance with subsection B.11. of this section.

b. Compliance with all applicable laws and regulations is the sole responsibility of the host. City approval of an application for a short term rental hosting permit in no way waives or transfers to the city such responsibility. In addition, the host is solely responsible for verifying the use of a property as a short term rental is compatible with insurance and mortgage contracts, home owners' association covenants, rental agreements and any other contracts which govern the use of the property.

7. Administration.

The director will collect all permit fees and will issue permits and renewals thereof in the name of the city to all persons qualified under the provisions of this chapter and has the power to:

a. Make rules.

The director will promulgate and enforce all reasonable rules and regulations necessary to the operation and enforcement of this section, including, but not limited to, providing alternative means to comply with hosting platform reporting requirements of subsection B.10. by maintaining an online tool accessible to the city that includes all required data. All rules are subject to city commission review and modification.

b. Adopt forms.

The director will adopt all forms and prescribe the information to be given therein.

c. Obtain approvals.

The director will submit all applications to interested city officials for their approval as to compliance by the applicant with all city regulations which they have the duty of enforcing.

d. Investigate.

The director will investigate and determine the eligibility of any applicant for a short term rental permit as prescribed herein.

e. Examine records.

The director may examine the books and records of any host when reasonably necessary to the administration and enforcement of this section. The city may issue administrative subpoenas as necessary to obtain information regarding a short term rental or booking transaction.

f. Give notice.

The director shall notify any applicant of the acceptance or rejection of the application and will, upon the director's refusal of any permit and at the applicant's request, state in writing the reasons for the denial and deliver it to the applicant.

g. Record keeping.

The director will maintain at all times a record of permitted short term rentals, including the full name of each host, the address at which such short term rental is operated, the date of issuance, the fee paid therefor, the telephone and address of the host, and the time such permit will continue in effect.

8. Hosting Permits.

The following requirements apply to all short term rentals hosting permits unless otherwise noted.

a. General.

It is unlawful for any person to operate within the city a short term rental without having first obtained approval for a short term rental hosting permit with the department of community development. A separate permit shall be required for each short term rental. Approval of a short term rental application results in the city issuing a permit for the short term rental.

b. Application; submittal materials.

The applicant must complete and submit an application for a short term rental hosting permit to the department of community development using a form provided by the city. The form will include an acknowledgement and agreement the short term rental meets and will continue to meet the definition of short term rental classification (Type-1, Type-2A, or Type-2B) during the permit term. Before the application will be accepted by the director, the applicant must provide:

(1) The name, telephone number, address, and email address of all property owners and of the responsible person, if different. If the property owner is a business, the name(s) and contact information of all business owners must be provided.

(2) The Montana Department of Revenue tax registration number for the short term rental.

(3) A sketch plan with a description of the short term rental, including street address, number of bedrooms, and number of off-street parking spaces available for guests' use.

(4) Certification the short term rental meets and will continue to meet the definition of short term rental classification (Type-1, Type-2A, or Type-2B) during the registration term.

(5) Certification the applicant has read, understands, and acknowledges the standards of this section, the property is the applicant's primary residence, and the applicant has the legal right to offer the dwelling unit for use as a short term rental.

(6) All hosting platforms on which the short term rental is listed.

(7) The permit fee and fire inspection fee.

c. Safety inspections.

(1) Initial inspection.

Prior to issuance of the first short term rental hosting permit for any property, an inspection by the city fire department must be completed and signed off by a city fire inspector, or by an NFPA or ICC-certified fire inspector using an inspection form approved by the city fire marshal. A fire inspection checklist form will be provided to the applicant with the application materials. If a short term rental hosting permit lapses for any period of time, upon reapplication for a permit an inspection must be completed and signed off as described in this subsection before the short term rental hosting permit will be issued.

(2) Re-inspection.

If re-inspection or multiple visits by a fire inspector are required before the inspection form may be signed, an additional inspection fee will apply for each inspection after the initial inspection.

(3) Subsequent inspections; self-certification.

A short term rental must be inspected by the city fire department every three years. The host must self-certify continued compliance with each item on a fire inspection checklist upon annual renewal of a permit for each year that an inspection is not required. The city fire marshal may require a repeat inspection at any time upon complaint or evidence of noncompliance.

d. Safety hazards.

The host acknowledges that the city, or any authorized representative thereof, have the right to suspend operation of any short term rental when the city determines the short term rental is causing or contributing to an imminent public health or safety hazard.

e. Fees.

Short term rental hosting permit and inspection fees shall be established by resolution of the city commission.

f. Issuance of permit.

Once the applicant submits the completed application form, all required submittal materials, and registration and inspection fees, the director will review the application form and submittal materials and determine whether the short term rental meets all city requirements for permit. The director may issue the short term rental hosting permit when:

(1) The director determines the short term rental meets all city requirements for a permit; and

(2) The applicant has provided either a signed pre-operational inspection report from the health department indicating the short term rental may operate as a public accommodation or a valid and current public accommodation license issued by the state of Montana department of health and human services pursuant to MCA 50-51.

g. Display of short term rental hosting permit number.

The host must include the short term rental hosting permit number issued by the city in all listings and advertisements, of the host's short term rental on any hosting platform and print advertising.

h. Change in status of host.

A short term rental hosting permit does not run with the land, and a change in primary residence status of the short term rental host terminates the permit. In order for the dwelling unit to remain eligible for use as a short term rental after a host no longer uses the dwelling unit as their primary residence, a new application identifying a new host as primary resident must be submitted to the city.

i. Expiration.

Permits issued pursuant to this section are valid for one year from the month in which such permit is issued and will expire automatically unless renewed in accordance with this section.

j. Renewal.

The host may apply to renew the permit annually using a form provided by the city. Renewals must comply with the requirements of this Code which are in place at the time of renewal. Failure of a host to renew a permit results in the termination of the lawful use of a property as a short term rental. It is the host's responsibility to renew the short term rental hosting permit prior to the expiration of the permit. Failure of a host to renew a short term rental hosting permit prior to the expiration of the current permit period requires the host to file a new permit application for a short term rental hosting permit and is subject to the initial inspection and fee.

9. Short term rental standards.

The following requirements apply only to Type-2 short term rentals unless otherwise noted.

a. Short term rental agreement; written rules for guests.

The short term rental owner must enter into a written rental agreement with the guest for each stay in the short term rental.

(1) The guest must be provided with a written list of rules applicable to the short term rental with the rental agreement, and the rental agreement must include a written acknowledgement by the guests of their agreement to comply with such rules.

(2) The list of rules must include those rules required by this section to be included.

(3) The list of rules must be prominently displayed within the short term rental.

b. Responsible person.

The host must designate a person responsible for addressing all maintenance, nuisance, and safety concerns related to a short term rental. The responsible person must be available to take and respond to reports of concerns and complaints 24 hours per day, seven days per week during the term of the short term rental hosting permit. The name and contact information for the responsible person must be included in the list of rules.

c. Maximum occupancy for Type-2 short term rentals.

The maximum occupancy of a Type-2 short term rental is two persons per bedroom plus two additional persons, except that this number may be reduced by the city based on available parking spaces. The maximum occupancy will be noted on the short term rental hosting permit and must be included in the list of short term rental rules.

d. Maximum number of bedrooms that may be rented in a Type-1 short term rental; maximum occupancy.

The owner of a Type-1 short term rental may rent or offer for rent up to two bedrooms in the dwelling, except that in a two-bedroom dwelling, only one bedroom may be rented or offered for rent. No other area of the dwelling may be rented or offered for rent. The maximum occupancy of a Type-1 short term rental is two persons per bedroom.

e. Trash removal.

The responsible person must ensure proper disposal of solid waste pursuant to local and state rules, regulations and laws. The schedule for trash and recycling collection and instructions for proper disposal must be included within the short term rental rules.

f. Signage.

Exterior signs identifying the unit as a short term rental are prohibited. During a rental period, there must be a sign posted inside the front door of the short term rental showing the locations of all fire extinguishers in the unit, the gas shut-off valve, and fire exits.

g. Noise and nuisance.

(1) The host of the short term rental must ensure that use of the short term rental by guests is in compliance with the noise provisions of chapter 16, article 6 and all nuisance provisions of this Code.

(2) A prohibition against making loud noise in such a manner as to disturb the quiet, comfort or repose of a reasonable person of normal sensitivity must be included in the short term rental rules.

(3) All outdoor activities producing noise discernible from a neighboring property shall cease by 10:00 p.m. This requirement must be included in the short term rental rules.

10. Hosting platforms obligations.

a. Compliance with laws.

In addition to the provisions of this section, a hosting platform must comply with all other applicable local, state and federal laws.

b. Reporting requirements.

A hosting platform must provide a report to the city on a quarterly basis that includes, but is not limited to the following:

(1) The address of each short term rental located in the city for which it conducts a booking transaction;

(2) The name of any host or responsible person for each transient occupancy for which the hosting platform conducted a booking transaction.

c. Required information for booking transaction.

A hosting platform must include the city permit number in all hosting platforms' publicly available listings prior to performing a booking transaction for each short term rental within the city.

d. Obligation to remove listings.

If the hosting platform has reason to believe a short term rental is in violation of any provision of this Code, including but not limited to notice from the city of a violation or a host's failure to supply to the hosting platform the city permit number for the short term rental, the hosting platform must remove the listing from its hosting platform within ten business days.

11. Violations; enforcement.

a. Registration suspension or revocation.

The director may suspend or revoke a short term rental hosting permit, impose administrative remedies as provided herein, or enforce a suspension or revocation through a civil action when the host commits one or more of the following acts or omissions:

(1) Failure to comply with any provision of this Code;

(2) Operating or allowing the operation of the short term rental in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of abutting property owners;

(3) Cancellation of the health department's public accommodation license, tax authority registration, or any other required permit; or

(4) The securing of the permit by fraud or misrepresentation, including but not limited to supplying false or incorrect information on the permit application.

b. Procedure.

Should the director decide to suspend or revoke a hosting permit, the host will be given notice and an opportunity to respond following the procedures in this subsection, except that should the director determine the short term rental or its operation present a safety hazard or require immediate remedy, the director may order operation of the short term rental to cease immediately.

(1) The host will be notified in writing by the director at least seven days prior to the action contemplated and the reasons therefore.

(2) Upon receipt of the notice, the host may request a meeting with the director. Such request must be in writing and must be received by the director within seven days of the host's receipt of the notice. Failure on the part of the permittee to request in writing a meeting and within the specified time period shall be a waiver of the host's right to a meeting.

(3) If a meeting is requested by the host, the director will set a time, date and place and will so notify the host, in writing.

(4) When a meeting is conducted, the city will present the evidence supporting the contemplated action. The director may request evidence be presented by other parties. The host may present evidence. The director will take all evidence admitted under advisement and once a decision has been made the director will notify the host of the findings and decision in writing.

c. Civil penalty.

The director may recover the following civil penalties for any violation of this section. Each day a violation continues constitutes a separate violation.

(1) For any violation by a host, the director may recover a civil penalty of not more than $500.00.

(2) For any violation by a hosting platform, the director may recover a civil penalty of not more than $500.00.

d. Appeal.

An aggrieved person may file an application to appeal the matter according to the procedures in *38.760.030*.

e. Unpaid fee constitutes debt.

The amount of any unpaid fee, the payment of which is required hereunder, constitutes a debt due the city.

f. Violation constitutes a misdemeanor.

In addition to suspension or revocation under subsection 11.a of this section, or the imposition of a civil penalty as provided herein, a knowing violation of this article constitutes a misdemeanor punishable as described in *38.700.160* except a person may not be imprisoned for a violation of this section.

Sec. 38.320.070. - Public, government and regional uses.

A. Business, trade, technical or vocational school.

1. B-1.

The footprint of an individual building cannot exceed 10,000 square feet.

B. Essential services.

1. All districts.

a. In recognition of MCA 69-4-201, city ordinances cannot conflict with the National Electric Safety Code (NESC).

b. In recognition of MCA 69-3-102, vesting control over fees, charges, and tariffs for public utilities in the public service commission, the city does not determine the costs charged to customers for services.

c. Essential services of Types I, II, or III operable prior to September 3, 1991, must be considered to have developed under an approved plan, and must be reviewed under *38.740.120*.

2. R-A, R-B, R-C, R-D, B-1, B-3, REMU.

Type III only allowed when service may not be provided from an alternative site or a less intensive installation or set of installations.

3. B-3C.

a. Type III only allowed when service may not be provided from an alternative site or a less intensive installation or set of installations.

b. Type III not allowed on the ground floor of buildings unless visitor access is available from an alley and another use not subject to this use standard is present to a minimum depth of 20 feet from the front building facade adjacent to a street.

C. Public institution.

Refuse and recycling facilities, group living, community residential; multi-unit dwelling, townhouses/rowhouses, and health and exercise establishments are allowed accessory uses.

Sec. 38.320.080. - Personal service and general service establishment uses.

A. Daycare center.

1. B-3C.

Not allowed on the ground floor of buildings unless visitor access is available from an alley and another use not subject to this use standard is present to a minimum depth of 20 feet from the front building facade adjacent to a street.

B. General service.

1. R-B, R-C, R-D

Limited to 3,000 square feet of gross floor area and only allowed on street corner sites within a mixed-use building featuring residential units next to and/or above.

2. B-1, B-P.

The footprint of an individual building cannot exceed 10,000 square feet. However, this limitation does not apply to vehicular parking lots and garages.

C. Health and exercise.

1. R-B, R-C, R-D

Limited to 3,000 square feet of gross floor area and only allowed on street corner sites within a mixed-use building featuring residential units next to and/or above.

2. B-1, B-P.

The footprint of an individual building cannot exceed 10,000 square feet.

D. Medical/dental office, clinic.

1. R-C, R-D.

Limited to 2,500 square feet of gross floor area per individual tenant.

2. B-1.

The footprint of an individual building cannot exceed 10,000 square feet.

E. Office

1. R-C, R-D.

Limited to 2,500 square feet of gross floor area per individual tenant.

2. B-1.

The footprint of an individual building cannot exceed 10,000 square feet.

3. B-3C.

Use not allowed on the ground floor of a building unless visitor access is available from an alley or side street, and another use not subject to this use standard is present to a minimum depth of 20 feet from the front building facade adjacent to a primary street.

F. Personal service

1. R-B, R-C, R-D.

Limited to 3,000 square feet of gross floor area and only allowed on street corner sites within a mixed-use building featuring residential units next to and/or above.

2. **B-1, NEHMU, B-P, M-1, M-2.**

   The footprint of an individual building cannot exceed 10,000 square feet.

Sec. 38.320.090. - **General retail uses.**

A. Alcohol sales, on-premises consumption.

1. Alcohol sales for on-premises consumption, on either a temporary or permanent basis, may not be conducted on the same lot or premises where an adult business or the sale of auto retail fuel is permitted.

2. Pursuant to section 4.02.020, the restrictions in MCA 16-3-306(1) do not apply to:

   a. A person operating a temporary event using a catering endorsement; or

   b. The sales of alcohol for on-premises consumption pursuant to a state issued alcohol retail license as long as such establishment complies with the following requirements and provides the city an annual certification with its business license application of such compliance:

      (1) Gambling or gaming is prohibited.

   c. Sales of alcohol for on-premises consumption in the M-1 and M-2 districts are permitted with the following conditions:

      (1) Restaurants serving alcoholic beverages are limited to those with state beer and wine licenses issued since 1997, prohibiting any form of gambling and occupying not more than 45 % of the total building area of a food processing facility; and/or

      (2) Retail sales for on-premises consumption of alcohol produced on site, not to exceed 10,000 square feet or 50 % of the facility, whichever is less.

B. Automobile fuel sales/repair.

In addition to applicable project design standards in *article 5* and the requirements for all convenience uses in *38.320.090.C* and elsewhere in this chapter, the following requirements apply to all service station and automobile uses. Compliance with all criteria listed in this section does not necessarily guarantee approval by the city.

1. Gas pump and pump island canopies must be located not closer than 10 feet to any side or rear property line. Design of the canopy must architecturally match the design of the main building. All lighting must meet the lighting standards of *38.560*. The maximum height of the canopy must not exceed 18 feet. All signs must conform to the sign regulations of *38.550*;

2. All on-site activities, except those normally performed at the fuel pumps, must be performed within a completely enclosed building;

3. Where towing service is to be provided, a parking bay for the towing vehicle must be provided. Vehicles that are either under repair or vehicles that have been repaired may be stored on a temporary basis, not to exceed seven days, and designated parking bays must be provided for each vehicle awaiting repairs. Vehicle storage areas are subject to the same screening requirements as parking lots;

4. All structures approved under these standards must be of a design character that is appropriate to the area in which they are to be constructed. Color renderings of buildings must accompany each application and construction must be in conformity thereto. Architectural detailing must be consistent on all four sides of the building;

5. Parking space for each service stall in the station must be provided. Pump islands must not be considered as service bays. Standing areas at pump islands and interior circulation areas must not be used as parking areas in calculating required parking spaces;

6. No outside storage of, and no sale, lease or rental of trailers, trucks or similar equipment is permitted except as may be specifically allowed in that zone;

7. Automotive repair facilities.

   a. All repairs or painting must be performed within a building;

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

   c. Any facility must be designed to contain and minimize noise and odors; and

   d. All facilities must have a water quality facility (oil/water separator) as part of the water quality design for stormwater runoff, and must conform to *38.410.080*.

C. Convenience use.

1. Standardized corporate identification themes integrated into the architectural design is considered sign area and subject to the requirements of *38.560*.

2. Screening of drive-through areas may be required to control glare affecting public right-of-way or adjacent properties.

3. Noise from drive-through speakers must not be audible from adjacent residential districts.

D. Restaurant.

1. R-C, R-D.

   a. Limited to 3,000 square feet of gross floor area and only allowed on street corner sites within a mixed-use building featuring residential units next to and/or above. Hours of operation are limited to between 6 am to 10 pm.

   b. No building may include a drive-through facility for any type of sale or service.

   c. Air discharge control. Any restaurant that provides a mechanical filtration or venting system must control discharges of particulates and odors by placement of the exterior vent at least 10 feet from a property line or if closer than 10 feet elevated at least 20 feet from ground surface. The ventilation system must be designed by a mechanical engineer licensed to practice in the state.

2. B-1, B-P.

The footprint of an individual building cannot exceed 10,000 square feet.

3. NEHMU.

Limited to 3,000 square feet of gross floor area per individual tenant.

4. M-1, M-2.

Occupying not more than 20 % of the gross floor area of a building or 1,500 square feet, whichever is less, or occupying not more than 45 % of the gross floor area of a food processing facility.

E. Retail.

1. Up 40,000 SF GFA.

a. R-C, R-D.

(1) Limited to 3,000 square feet of gross floor area and only allowed on street corner sites within a mixed-use building featuring residential units next to and/or above.

(2) Retail uses must not include:

(a) Sales of marijuana or marijuana-related products.

(b) Sale of automobile fuels or operation of automobile repair services.

b. REMU.

(1) Retail uses greater than 5,000 square feet and less than or equal to 12,000 square feet are limited to no more than 1 structure per 25 acres of contiguous master planned development.

(2) Retail uses greater than 12,000 square feet and less than or equal to 25,000 square feet are limited to no more than 1 structure per 50 acres of contiguous master planned development.

c. B-1, B-P.

The footprint of an individual building cannot exceed 10,000 square feet.

d. NEHMU.

(1) Accessory retail sales of goods produced or warehoused on site and related products is allowed, not to exceed 20 % of gross floor area or 10,000 square feet, whichever is less.

(2) Retail of 2,500 square feet or less per individual tenant is a principal use. Retail per individual tenant greater than 2,500 square feet requires a special use permit.

e. M-1, M-2.

(1) Accessory retail sales of goods produced or warehoused on site and related products, not to exceed 20 % of gross floor area or 10,000 square feet, whichever is less.

(2) Retail as a principal use requires a special use permit.

2. Retail 40,000 SF and over.

a. Purpose.

(1) The purpose of this section is to establish general development standards for large scale retail developments. These standards are designed in conjunction with the other standards of this chapter to ensure compatibility of uses; to prevent urban blight, deterioration and decay; and to enhance the health, safety and general welfare of the residents living within the city.

b. Design and site development guidelines for certain retail developments.

(1) Adaptability for reuse/compartmentalization. The building design must include specific elements for adaptation for multi-tenant reuse. Elements may include but are not limited to compartmentalized construction, including plumbing, electrical service, heating, ventilation and air conditioning. The building design must also allow for:

(a) The interior subdivision of the structure into separate tenancies;

(b) Facades that readily adapt to multiple entrances and adapt to entrances on all but one side of the building;

(c) Parking lot that are shared by establishments or are linked by safe and functional pedestrian connections;

(d) Landscaping that complement the multiple entrance design; and

(e) Other elements of design which facilitate the multi-tenant reuse of the building and site.

c. Additional criteria and site development guidelines for certain retail developments.

(1) Applications must include a renewal plan that will afford maximum opportunity for the rehabilitation or redevelopment of the structure in the event of closure or relocation by the original occupant. The plan will be approved if the review authority finds that:

(a) The plan conforms to the applicable requirements of this chapter;

(b) A sound and adequate plan exists for redevelopment;

(c) The plan affords maximum opportunity for rehabilitation or redevelopment of the structure by both private enterprise and the city; and

(d) The renewal plan provides a maintenance plan for normal repairs and upkeep of property, including but not limited to building, parking lot and surfacing, landscaping, signage and elimination of legible impressions, images, or remnants of signs remaining on a building or sign surface after the use for which the sign was permitted ceases to operate.

(2) The city may enter into an agreement with the owner of the real property and undertake activities, including the acquisition, removal or demolition of structures, improvements or personal property located on the real property, to prepare the property for redevelopment. A development agreement entered into in accordance with this section

must contain provisions obligating the owner to redevelop the real property for a specified use consistent with the provisions of this chapter and offering recourse to the city if the redevelopment is not completed as determined by the city.

Sec. 38.320.100. - **Industrial and wholesale uses.**

A. Manufacturing, light.

1. B-P, M-1.

Completely enclosed within a building.

B. Mini storage warehouse.

1. Minimum site size must be one acre.
2. Each mini warehouse site must provide a minimum of two exits;
3. All one-way drive aisles must provide for one ten-foot parking lane and one 12-foot travel lane. Traffic direction and parking must be designated by signing or painting;
4. All two-way drive aisles must provide for one ten-foot parking lane and two ten-foot travel lanes; and
5. The parking lanes may be eliminated when the driveway does not serve storage cubicles.

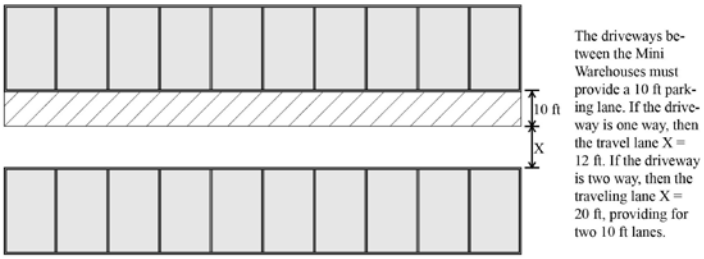


Figure 38.320.100-1. Mini storage warehouses.

Sec. 38.320.110. - **Agriculture uses.**

A. Community garden.

1. Owners and producers associated with the community garden may conduct on-site sales of community garden-grown products provided the following requirements are met:
   a. Only products grown within the community garden can be sold; and
   b. Sales are limited to 4 times a month between the hours of 8:00 a.m. and 8:00 p.m.

B. Accessory agriculture uses.

1. For accessory agriculture uses, including Farm Stand and Greenhouse, see *38.320.120.C*.
2. Agricultural use standards for animals per two and one-half acres: one horse or one cow; two sheep or two goats; ten rabbits; 36 fowl (pheasants, pigeons, etc.) or six larger fowl (ducks, geese, turkeys, etc.). For smaller or larger parcels the review authority may determine that a

proportionately smaller or larger number of livestock is consistent with the requirements of this section. Animals regulated under Chapter 8 of the municipal code are not subject to these standards.

3. Agricultural operations existing prior to annexation to the city may continue at the scope and manner in place at the time of annexation as a lawful non-conforming use if they exceed the allowed scope under this chapter for the applicable zoning district. Changes to the use are subject to *38.790.020*.

4. Targeted grazing for weed control and open space management may be allowed as a special temporary use for short terms or as accessory use to another established use for longer terms through other review processes. No targeted grazing is allowed prior to approval by the city of a targeted grazing plan. The city may establish duration, location, and other limits deemed necessary. The city manager may establish administrative procedures to administer this section.

Sec. 38.320.120. - **Accessory uses.**

A. Accessory buildings, uses and equipment.

1. An accessory building is an integral part of the principal building if it is connected to the principal building by a common wall for not less than five feet horizontally and eight feet vertically.

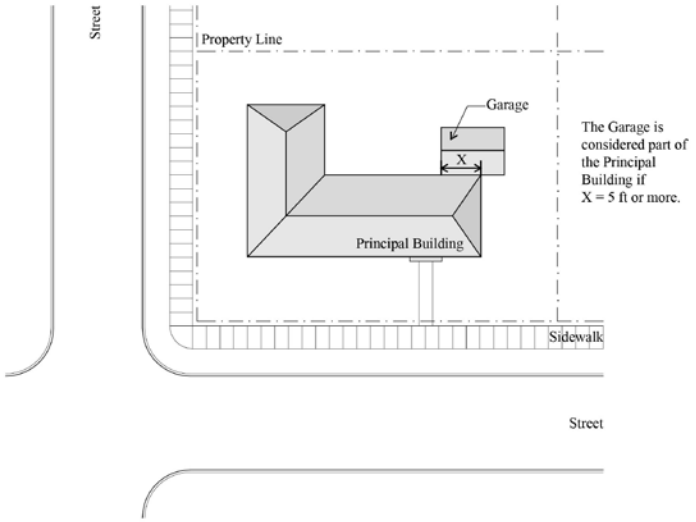


Figure 38.320.120-1. Accessory building example.

2. Accessory buildings, uses or equipment must not be stored or constructed between the front lot line and front facade of the building. On a corner lot with two streets, the accessory building must be placed behind both front facades of the primary structure. For lots with three or more frontages, alternate locations may be allowed. The review authority must consider the predominant placement of accessory structures in the site vicinity, the consistency of the proposal with the established and/or desired character of the surrounding area, and the visual impact of the structure given its proposed placement.

3. Accessory buildings and garages may not be located within a utility easement without written approval of the easement holder.

4. Accessory buildings in any business or industrial district must be located only to the rear of the front line of the principal building.
5. No accessory building can exceed the footprint of the principal building.
6. Accessory buildings with less than five feet separation between walls or with any connecting elements will be considered a single structure for determination of maximum size allowed.
7. All accessory structures located within the neighborhood conservation district require a certificate of appropriateness unless exempted in *38.240.020* For accessory structure setbacks see *38.260.060*.
8. An accessory structure in a residential district cannot exceed the height of the principal building, except for an accessory dwelling unit that meets *38.320.120.B*.
9. An accessory structure in all other districts can not exceed the height limit of the zoning district. Maximum height in feet is calculated as 15 feet multiplied by the number of stories allowed in the zoning district.

B. Accessory dwelling unit (ADU).

The following ADU standards apply:

Table 38.320.120.B-1.

Deviations	No
Max number of ADUs per lot	One
Access	ADUs require a pedestrian connection to a sidewalk or the adjacent right-of-way.
Parking requirement	ADUs are not subject to minimum parking requirements. If parking is provided it must conform to all applicable standards.
Unit size	In no case may an ADU be larger than 1,000 square feet or 75% of the principal unit, whichever is larger.. The method of calculating the maximum ADU square footage is the sum of habitable and occupiable spaces as defined by the city's adopted building code.
Design requirements	Detached ADUs, including second story additions on detached garages may be approved only if found compatible and consistent with the existing character and fabric of the neighborhood. The review authority must consider placement and size of windows, decks, balconies, fencing, landscape screening, and height and massing of the structure to minimize impacts to adjacent properties.
Height limit	A detached ADU may exceed the height of the principal building but may not exceed 25 feet in height.
Garage conversions	Garages may not be converted for use as ADUs unless all required parking for all uses on the lot is otherwise provided prior to conversion. However, ADUs may be placed above garages.
Minimum standards or "no guarantee"	A permit for an ADU will not be granted unless the lot has been configured to accept an ADU with adequate utility services and compliance with setbacks and height standards.

C. Farm Stand

1. No more than one farm stand is allowed on a lot. Multiple growers or producers are allowed at the farm stand.
2. Enclosed floor area for the farm stand cannot exceed 200 square feet. Additional unenclosed floor area may be roofed but must otherwise be open to the elements.
3. The farm stand must meet the setback requirements of the zoning district. Farm stands are not allowed within the public right of way.
4. A farm stand may not be located upon any required parking spaces.
5. Food preparation is not allowed at farm stands.
6. Temporary signs are allowed subject to *38.550.040*; and
7. Sales are limited to between the hours of 8:00 a.m. and 8:00 p.m.

D. Greenhouse

1. Greenhouses must apply light mitigation measures to limit light trespass at night from the greenhouse structure.
2. Greenhouses must meet the lighting requirements of *38.560.040.G* and *38.560.060*.

E. Home-based business.

1. Generally.

A home-based business is a use that is considered accessory to a dwelling unit. Buildings combining live/work arrangements located in districts where both the residential and non-residential uses to be combined are authorized are not subject to the requirements of this section.

2. Home-based business as accessory use.

a. Secondary in nature.

The use must be clearly incidental and secondary to the use of the dwelling for residential purposes and must not change the character of the dwelling or adversely affect the uses permitted in the residential district of which it is a part. The home-based business must not be conducted in an accessory structure.

b. Purpose.

It is in the purpose of this section to eliminate as accessory home-based businesses for all uses except those that conform to the standards set forth in this section. In general, an accessory home-based business is a use so located and conducted that the average neighbor, under normal circumstances, would not be aware of its existence with the exception of permitted signage as allowed by *38.550*. The standards for home-based businesses included in this section are intended to ensure compatibility with other permitted uses and with the residential character of the neighborhood. A clearly accessory or incidental status in relation to the residential use of the main building is the criteria for determining whether a proposed accessory use qualifies as an of-right home-based business.

c. Necessary conditions for accessory use.

Accessory home-based businesses are permitted accessory uses in residential districts only so long as all the following conditions are observed:

(1) The home-based business must be conducted by resident occupants in their residence with not more than one on-premises halftime nonresident employee;

(2) No more than 25 % of the gross area of all structures may be used for a home-based business;

(3) No use may require internal or external alterations or involve construction features or the use of electrical or mechanical equipment that would change the fire rating of the structure;

(4) No home-based business may cause an increase in the use of any one or more utilities (water, sewer, garbage, etc.) so that the combined total use for dwelling and home-based business purposes exceeds the average for residences in the neighborhood;

(5) There can be no outside storage of any kind related to the home-based business;

(6) The use may increase vehicular traffic flow and parking by no more than one additional vehicle at a time. Depending on the individual circumstances of each application, an additional off-street parking space may be required; and

(7) No use can create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances where no home-based business exists.

d. Notice of intent to operate an accessory home-based business.

Any individual applying for a business license, with the intent of operating the business from their home, must acknowledge by signature such person's understanding of the requirements and conditions of this chapter.

3. Home-based business as special use.

a. Purpose.

The use must be secondary to the use of the lot for residential purposes and must not be incompatible with the character of the zoning district or adversely affect the principal uses permitted in the district of which it is a part. When a home-based business has been established through the SUP process, it means that the owner, lessee or other persons who have a legal right to the use of the dwelling also have the right to conduct the home-based business whether in the principal or an accessory structure.

b. Special use.

It is the purpose of this section to provide, through the special use process established in *38.740*, opportunities for home-based businesses which are more intensive in nature than those which would be allowed as an accessory use. In general, a home-based business approved through the special use process is an accessory use which complies with the

requirements of this chapter and is subordinate to the primary use of the particular lot for residential purposes. The standards for home-based businesses included in this section are intended to ensure compatibility with other permitted uses and with the residential character of the neighborhood. A secondary, but not incidental, status in relation to the residential use of the main building is the criteria for determining whether a proposed use may, under certain circumstances, qualify as a home-based business which may be approved by the special use process. Special uses start from the presumption that they are incompatible with the zoning district but may under specific and limited conditions become compatible. Unless such conditions are found, there is no right to the practice of a home-based business which does not comply with the terms of an accessory home-based business as listed in this section.

c. Necessary conditions for special use.

Home-based businesses permitted through the special use permit process are allowed in residential districts only so long as all the following conditions are observed:

(1) The home-based business must be conducted by resident occupants with not more than one on-premises halftime nonresident employee;

(2) No more than 30 % of the gross area of all structures may be used for a home-based business;

(3) No use may require internal or external alterations or involve construction features or the use of electrical or mechanical equipment that would change the fire rating of the structure beyond that allowed in a residential use;

(4) No home based business may cause an increase in the use of any one or more utilities operated by the city so that the combined total use for dwelling and home-based business purposes exceeds the average for residences in the neighborhood;

(5) There may be no outside storage of any kind related to the home-based business;

(6) No use may create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any greater or more frequent extent than that allowed by this chapter;

(7) Home-based businesses by special use permit may only be allowed on lots occupied by single- and two-unit dwellings;

(8) Such special use must be subject to all conditions set forth in this chapter; and

(9) All permits required by the city, including, but not limited to, building permits and business licenses, must be received prior to establishing the home-based business.

d. Home-based business allowed through a special use permit.

Any individual seeking to operate a home-based business greater in scope than that allowed by an accessory home-based business, must make application for a special use permit under the terms of *38.740*. The community development director must determine if a home-based business requires a special use permit.

4. Complaints.

Complaints may be cause for termination of the home-based business. Final administrative actions in relation to complaints are subject to appeal per *article 7*.

5. Prohibited uses.

The following uses are not permitted as home-based businesses: adult businesses; auto repair, minor or major; carpentry work; dance instruction; dental offices; medical offices; marijuana; mobile oil and lube services; painting of vehicles, trailers or boats; private schools with organized classes; radio or television repair; and upholstering.

F. Outdoor sales and display.

1. Merchandise which is offered for direct sale, rental or lease to the ultimate consumer or user may be displayed beyond the confines of a building, but the area occupied by the outdoor display must not be an area of more than 10 % of the ground floor area of the building housing the principal use, unless the merchandise is a type customarily displayed outdoors, such as automobiles or garden supplies. In such cases, the maximum area for outdoor sales and display must not exceed 50 % of the total lot area.

2. Outdoor sales and display areas must not be located in any required setback.

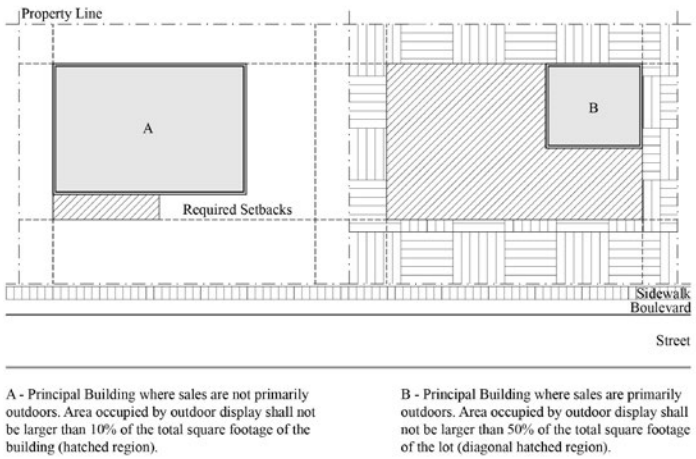


Figure 38.320.120-2. Outdoor sales and display.

DIVISION 38.330. - **WIRELESS FACILITIES**

Sec. 38.330.010. - **Purpose and applicability.**

A. It is the duty of the city to protect the public health, safety and welfare and the city has the authority to regulate the placement, construction and modification of wireless facilities in the advancement of that duty.

B. The city commission finds that:

1. The aesthetic character of the city is a matter of substantial economic importance and general concern to the citizens of the city, as described in the city's adopted land use plan, and is an important part of the public welfare;

2. Wireless facilities are often visually obtrusive due to their necessary height, support equipment and interruption of the viewscape, and can have substantial negative impacts on the character of the city and its surrounding viewsheds;

3. The impacts of wireless facilities can be reduced by establishing standards for location, structural integrity, compatibility and collocation;

4. To reduce visual and other impacts on the community the city desires to promote collocation, use of stealth installations of wireless facilities and the use of smaller less intrusive facilities to minimize the need to construct new large scale wireless facilities;

5. The city desires to provide clear and consistent regulations for review of proposed wireless facilities;

6. The city desires to support the ability of telecommunication service providers to deliver such services to the community consistent with other community objectives;

7. The construction of new large scale wireless facilities is the action of last resort to provide for wireless communication services and should only be undertaken when alternatives are not available;

8. It is necessary to determine the locations and circumstances most appropriate for placement of wireless facilities to serve the community;

9. Consistent with applicable law, the city desires to minimize the adverse visual impacts of towers and antennas through careful siting, design, landscape screening and innovative camouflaging screening;

10. The city seeks to protect against potential health and safety hazards to citizens and prevent damage to adjacent properties;

11. The city intends to exercise its authority with respect to the regulation of the placement, construction and modification of wireless facilities, to the fullest extent permitted by applicable law;

12. The city recognizes the need to respond to the policies in the Telecommunications Act of 1996 and has constructed its regulations in a manner that does not unreasonably discriminate between

providers of functionally equivalent personal wireless service, and that does not prohibit or has the effect of prohibiting personal wireless service in the city;

13. The city recognizes that the Federal Communication Commission exercises certain sole authority in the licensing and other regulation of wireless services;

14. The adequate review of a telecommunications application may require expertise not typically possessed by city staff which would require the city to obtain qualified outside expertise to properly evaluate an application; and

15. Outside review would generate additional costs to the public to preserve the public interest these costs must be mitigated and should properly be mitigated by those causing such additional costs.

C. General application. All uses listed in this division are subject to the specific standards described for each use, in addition to all other applicable standards which may apply, and are limited to those districts specified. The provisions of this division apply to development and modification of large scale wireless facilities, micro-scale wireless facilities, non-broadcast telecommunication facilities and small scale wireless facilities. These and other terms are defined in *article 8*.

1. The provisions of this division only apply to facilities which meet the definition of a wireless facility or that are otherwise specifically brought under the authority of this division.

Sec. 38.330.020. - **Special submittal requirements.**

In addition to the materials required by *38.710* for site plans or special use permits the materials required by *38.710.160* must be submitted.

Sec. 38.330.030. - **Uses within districts and required review procedures.**

A. Purpose.

This section authorizes telecommunication uses in specific districts. Unless specifically exempted by this division, all other standards and procedures of this chapter apply.

B. Permitted wireless facility uses.

No wireless facility may be permitted except in accordance with the development review processes indicated in *Table 38.330.030-1*, based on the applicable zoning district and scope of the proposed facility. All applications are subject to the review processes, submittal requirements and other requirements of *article 7* as may be applicable.

Table 38.330.030-1.

Review procedures. Uses:
P = Principal uses; S = Special uses; A = Accessory uses; — = Uses which are not permitted.

Zoning District	Large scale	Small scale	Micro scale	Non-broadcast
PLI	P	P	A	P
M-2	P	P	A	P
M-1	P	P	A	P
B-P	S	P/S	A	P
B-3C	S	P/S	A	P
B-3	S	P/S	A	P
B-2	S	P/S	A	P
B-2M	S	P/S	A	P
B-1	S	P/S	A	P
REMU	S	P/S	A	P
NEHMU	P	P	A	P
R-D	S	S	P	P
R-C	S	S	P	P
R-B	S	S	P	P
R-A	S	S	P	P

C. Special review requirements by type.

1. For small scale facilities listed as "P/S" in the table above, special use review is required when the proposed facility exceeds the height limitation of the district.

2. Colocation upon a previously approved wireless facility, when such additional facilities were contemplated as part of the original review, must be reviewed as a sketch plan in all zones.

3. A wireless facility may be permitted as an accessory use in any non-residential district when:

   a. It is for the exclusive use of a single on-site business when the business has otherwise been approved under *38.740* or *38.250*, rather than offered to additional parties;

   b. It is in compliance with the maximum building height limitations of the zoning district;

   c. It complies with all setback and other zoning requirements; and

   d. Has eight or less square feet of total antenna surface area.

4. Installations located within the neighborhood conservation overlay district (NCOD) must be reviewed against the criteria of *38.240.020* as applicable, and a certificate of appropriateness is required before issuance of a building permit.

5. Prior to submitting an application for a large scale or small scale wireless facility, the applicant must complete a concept review per *38.740* with the community development department. The purpose of the concept review is to acquaint the participants with the applicable requirements of this division, as well as with any preliminary concerns the department may have.

6. The applicant's concept review submittal must include the following information with regard to the proposed facility:
    a. Location;
    b. Overall height;
    c. Number of antennas proposed, including those of other providers to be collocated;
    d. Type of wireless communication services to be provided; and
    e. Coordination of ground equipment shelters.
7. Adequate review of applications may require the city to retain consultants or other third party assistance to review an application. In such event the applicant must reimburse the city for the actual costs incurred prior to issuance of a building permit.
8. The provisions of *38.790* must apply for all nonconforming facilities subject to this division.
9. A large scale wireless facility may be allowed in the R-A, R-B, R-C, R-D and REMU districts by special use permit only when demonstrated to be necessary to meet federal requirements for continuity of service in an area.

Sec. 38.330.040. - **Standards.**

A. Safety.

All wireless facilities subject to this division must meet the following standards:

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

B. Aesthetics.

1. All wireless facilities.
    a. The provisions of this section may be waived by the review authority as determined by *38.760* where it has been demonstrated that the waiver will result in superior compliance with the purposes of this chapter.

b. All installations must be as visually unobtrusive as is feasible. Facilities and equipment mounted on existing structures must be visually incorporated into the structure or background by the use of architectural elements, color, screening or other methods.

c. No lighted signage is permitted.

d. All structures must be constructed in conformance with the standards of the city's adopted International Building Code.

e. In addition to landscaping required by *38.540*, visual screening of ground mounted equipment must be provided in all residential areas and where a facility is located within a non-residential area which is visible, from a viewpoint five feet above grade, from a residential area. Screening must provide an opaque screen within 18 months of establishment and be a minimum of four feet in height. The screening may be of landscape materials or a fence which otherwise complies with this chapter. The site must comply with the landscaping provisions of *article 5*.

f. Exterior façade materials and the character of equipment shelters used in residential areas must be of materials commonly used in the immediate area. The architectural design of the exterior of the shelter must be compatible with surrounding residential structures. The purpose of the requirements of this subsection may be met by providing opaque fencing or other visual screening compatible with the neighborhood, in compliance with all other sections of this chapter, which will obscure the entire equipment shelter. The screening must be in place prior to the commencement of operations of the facility.

2. Preferences.

In order to justify the construction of a wireless structure, the applicant must demonstrate that higher ranking alternatives in the following hierarchy, beginning with *subsection a.(1)* below, do not constitute feasible alternatives. The order of preference, from most preferred to least preferred and based on technical feasibility, for new wireless facilities is:

a. Facility size.

(1) Micro-scale wireless facilities or colocation on existing large scale wireless facilities;

(2) Small scale wireless facilities;

(3) Large scale wireless facilities 50 feet or less in height; and

(4) Large scale wireless facilities in excess of 50 feet in height.

b. A facility meeting the definition of stealth, as defined in *38.800.200*, is always preferred over a facility of the same scope which does not meet the definition of stealth. Stealth facilities may be required in historic districts and under other circumstances.

c. As appropriate, the following evidence may also be submitted to demonstrate compliance with this section:

(1) That no existing wireless communications facility within the search area meets the applicant's radio frequency engineering or height requirements;

(2) That no structure within the search area has sufficient structural strength to support the applicant's proposed antennas; or

(3) That there are other verifiable limiting factors that render collocated or other more preferred options unsuitable or unreasonable.

d. Self-supporting lattice or guyed structures are generally preferred over monopoles.

3. Special standards.

The following special standards apply as shown in *Table 38.330.040-1*:

Table 38.330.040-1.

Zoning District	Large scale	Small scale	Micro scale	Non-broadcast
PLI	b	b	b	-
M-2	b	b	b	-
M-1	b	b	b	-
B-P	c	a, c	b	-
B-3C	c	a, c	b	-
B-3	c	a, c	b	-
B-2	c	a, c	b	-
B-2M	c	a, c	b	-
B-1	c	a, c	b	-
REMU	d	a, c	b	-
NEHMU	b	b	b	-
R-D	d	a, c	a, b	-
R-C	d	a, c	a, b	-
R-B	d	a, c	a, b	-
R-A	d	a, c	a, b	-

Key: a = Stealth installation is required

b = Wireless facilities may exceed the maximum height of a district but are subject to the limitations of this section

c = The height limitation of the district may be exceeded by the least amount necessary to provide services, but only when service may not otherwise be provided by a less intensive facility or an alternative site

d = Only allowed when service may not be provided from an alternative site or a less intensive installation or set of installations

4. Stealth.

a. Installations located within the conservation overlay district must be stealth facilities.

b. A stealth wireless facility may exceed the height limitations of the district by 10 feet.

5. Small scale wireless facilities.

All small scale wireless facilities established in the neighborhood conservation district must be installed in such a way as to maintain the historic or architectural character of the host site. All sites must maintain the least possible visual obtrusiveness.

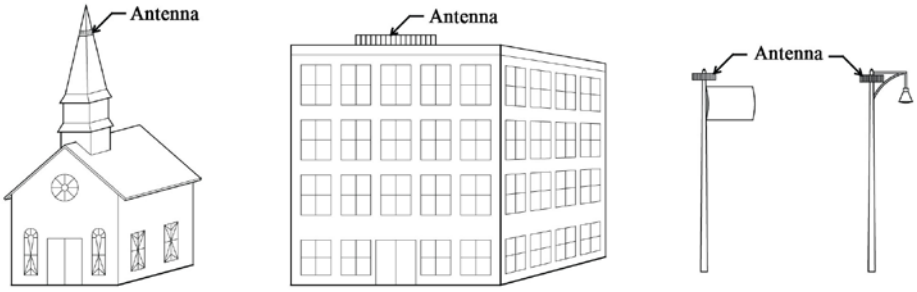


Figure 38.330.040-1. Small-scale wireless facilities.

6. Large scale wireless facilities.

No large scale wireless facility will be permitted unless the applicant demonstrates that the proposed facility cannot be accommodated on an existing structure or by placement of a smaller facility. In order to justify the construction of a large-scale wireless facility, the applicant must demonstrate that higher ranking alternatives in the hierarchy, beginning with 2.a.(1) above, do not constitute feasible alternatives. Such demonstration must be made by submission of a statement of position, qualifications and experience by a licensed radio frequency engineer; and must address the required findings of this section.

a. If colocation is feasible, the owner of the large scale wireless facility must certify in writing, prior to final permit approval, that the owner will accept for colocation any FCC-licensed or licensing exempt wireless communication provider using compatible technology at reasonable and customary rates and terms up to the structural capacity to accommodate additional antennas. Colocation may be denied based on verifiable and substantial expectations of interference from additional users. Later failure to comply with the requirements supporting colocation may result in the revocation of city approvals or other penalties stipulated by the municipal code as the requirements of the title will have been violated.

b. The city must find the proposed guarantee, assurances or provisions for the perpetual maintenance and for removal of an abandoned large scale wireless facility to be adequate.

c. A large scale wireless facility must not either:

(1) Exceed 190 feet in height; or

(2) When located east of the alignment of Church Avenue/Sourdough Road and west of the extended alignment of Bozeman Trail Road/Arnica Drive;

(a) Exceed 100 feet in height when its base elevation is greater than 4,800 feet;

(b) Exceed 40 feet in height when its base elevation is above 4,850 feet;

(c) Notwithstanding the provisions of (a) and (b), these restrictions must not apply for those areas lying east of the extended alignment of Bozeman Trail Road/Arnica Drive and south of Interstate 90.

d. Where multiple service providers will be utilizing the same ground area and/or support structure, a single structure must be provided to house all ground based equipment.

e. Special setbacks for large scale wireless facilities must be provided and/or a design for internal structural collapse to avoid damage or injury to adjoining property or users must be provided.

(1) Residential district setbacks for a large scale wireless facility must be 100 % of facility height, which may be reduced to no less than 50 % upon the provision and approval of an engineered design, stamped by a professional structural engineer licensed to practice in the state, establishing a smaller collapse area.

(2) A large scale wireless facility in non-residential zones must provide a minimum setback from the property lines of 75 % of facility height, which may be reduced to no less than 30 % of facility height upon the provision and approval of an engineered design, stamped by a professional structural engineer licensed to practice in the state, establishing a smaller collapse area. Large scale wireless facilities located within non-residential zones, but adjacent to a residential zone or residentially developed areas, must maintain a minimum setback from residential zoning or property boundaries of at least 50 % of facility height. All installations must maintain the minimum zoning district setbacks per *article 2*.

f. New large scale wireless facilities greater than 50 feet in height must be designed in all respects to accommodate both the applicant's antennas and antennas for at least two additional users. A new large scale wireless facility may meet this requirement by correctly sizing the foundation and other structural elements to allow the future addition of height to the structure to accommodate additional users rather than immediately constructing the entire large scale wireless facility. This requirement may be waived by the governing body upon a showing of fact to overcome the presumption that multiple transmitters are desirable on the proposed facility.

g. All large scale wireless facilities 50 feet or greater in height, regardless of the zoning district in which the structure is located, must be located at least one mile, measured in a straight line, from any other large scale wireless facility that is 50 feet or greater in height. An exception to this requirement may be granted by the approval body when it is found and factually supported in the written record that the criteria of 6.i below are met and a critical need exists for the proposed location, or that a closer placement is desirable to advance the purpose of this chapter.

h. A large scale wireless facility greater than 50 feet in height must only be approved when the applicant can demonstrate in writing that no existing or approved micro-scale, small scale or large scale wireless facility within the required separation distance of the proposed site can accommodate the applicant's proposed antenna.

i. In addition to the other review criteria of this chapter, affirmative findings for at least one of the following items must be made in order for the conditions necessary for approval to exist:

(1) No existing or proposed structures located within the geographic area are adequate to support the proposed antennas are required to meet the applicant's engineering and service requirements;

(2) Existing or approved structures are not of sufficient height to meet the applicant's engineering and service requirements and a combination of smaller scale facilities will not provide for adequate service delivery;

(3) Existing or approved structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment and cannot be reinforced to provide sufficient structural strength;

(4) The applicant's proposed antennas would cause electromagnetic interference with the antenna on the existing or approved antenna support structures, or the antenna on the existing or approved antenna support structures would cause interference with the applicant's proposed antenna;

(5) Property owners' or owners of existing or approved wireless facilities or locations for smaller scale installations are unwilling to accommodate the applicant's needs; or

(6) The applicant demonstrates that there are other factual and verifiable limiting factors that render existing or approved wireless facilities unsuitable.

j. Height and number of users. A large scale wireless facility may be reviewed as a multiple phase project and be constructed over time. Prior to the approval of a final site plan, or a building permit if it is a latter phase of a phased project, an applicant must provide:

(1) For the first 70 feet of tower height, for an applicant who is not a wireless service provider, a copy of an executed lease from a wireless service provider of not less than 12 months duration;

(2) For a height of greater than 70 feet and not more than 110 feet of structure height, one additional executed lease;

(3) For a height greater than 110 feet, a second additional executed lease;

(4) Leases may be redacted to remove proprietary information but must identify the parties.

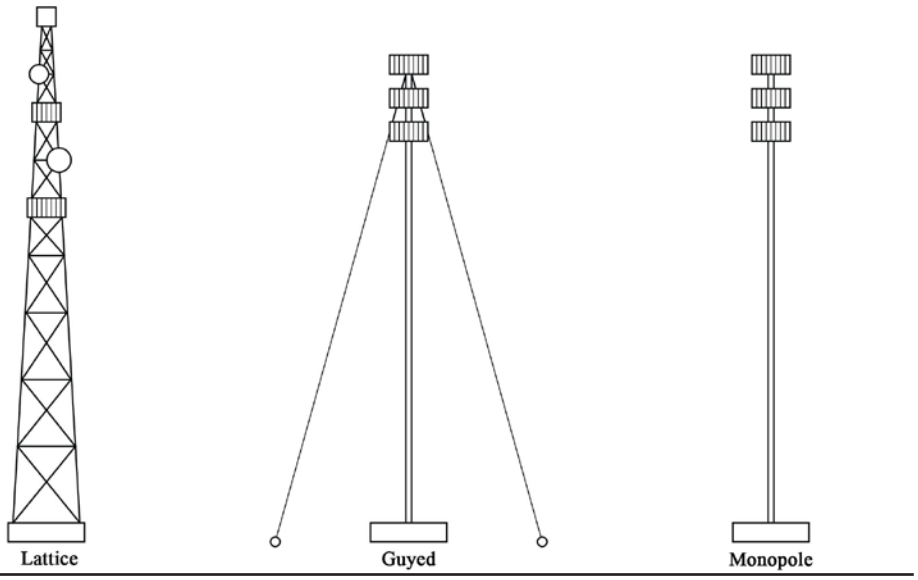


Figure 38.330.040-2. Large-scale wireless facilities.

7. Non-broadcast.

A non-broadcast telecommunication facility located within a B-1, B-2, B-2M, B-3 or B-3C district, a mixed-use district, the neighborhood conservation overlay district or a residential zoning

district must be enclosed within a structure. The structure must be of materials and architectural character compatible with the adjacent properties. The facility must comply with all applicable side, front and rear setback setbacks.

C. Administrative.

1. An inventory of existing sites utilized by the applicant must be provided. The inventory must note the feasibility of accommodating other users. The city may share this information with other applicants or interested parties to encourage collocation.

2. The public land and agencies exemption from full compliance with zoning in MCA 76-2-402 does not apply to private entities utilizing publicly owned lands.

3. Any antennas or antenna support structures not utilized for the provision of wireless services for a continuous period of six months will be considered abandoned. All facilities must be removed within six months of the cessation of operations. If a facility is not removed within six months the city may remove the facility at the facility or landowner's expense. Where multiple users share a facility, the non-operational antennas and associated ground-mounted equipment may be removed, but any common equipment may be retained until all users have terminated the utilization of the site.

4. Any emergency power supply or other equipment installed at the facility must comply with *38.510.060*.

5. No facilities which require employees to be present on a routine basis may be established in residential areas, with the exception of periodic maintenance activities, unless the zone allows offices and appropriate review has been completed.

6. Failure to comply with the terms of this chapter is grounds for facilities to be removed by action of the city at the facility or landowner's expense.

7. Any modifications to existing wireless sites must only occur in compliance with the review procedures required in *38.330.030*.

8. Denial of an application must be made only after the review body has determined that specific criteria of this chapter cannot be met. Said determination must be made in writing and must include the reasons for the denial and the evidence which supports those reasons. Public opposition alone is not sufficient to deny the application.

DIVISION 38.340. - **AFFORDABLE RENTAL HOUSING**

Sec. 38.340.010. - **Purpose.**

A. The purpose of this division is to promote the public health, safety, and welfare by incentivizing increased production of affordable rental housing to meet the needs of city residents and businesses and the goals of the adopted land use plan and the community housing action plan and to maintain the affordability of housing.

B. The purpose of this division is also to provide regulatory incentives to ensure housing affordability in new development and redevelopment. The incentives in this division require affordable rental rates and provide for an increase in the amount of affordable housing provided as a landowner increases the use of the incentives. The greater the incentives being requested the greater the affordability required.

Sec. 38.340.020. - **Applicability and affordability requirements.**

A. The incentives in this division take the place of and supersede the applicable regulations of this chapter where a regulation of this chapter directly addresses the same subject. All other regulations of this chapter 38 remain applicable including without limitation all processes, development standards, and definitions. The city retains the authority to approve, approve with conditions, or deny an application based on compliance with other regulations of this code but may not attach conditions to an approval that have the effect of negating the incentives provided in this division. The incentives in this division are in addition to the departures for housing creation provided in *38.320.070*.

B. The incentives in *38.340.040* may be approved in conjunction with a preliminary plat, master site plan, or site plan, or sketch plan, that:

1. Contains or will contain dwellings that will be offered for rent or lease; and

2. Provides at least the minimum percentages of affordable dwellings in the development at rental rates affordable at no more than the maximum percentages of the area median income (AMI) established in Tables *38.340.020*-1 and 2 of this division.

C. Tables *38.340.020*-1 and 2 provide the required percentage of affordable dwellings, the affordability thresholds, and the duration of the affordability period for the types of housing to be constructed in a development in reliance on incentives:

Table 38.340.020-1. Affordable Dwellings Required with Type A Incentives

	Minimum Percentage of Dwellings	Maximum AMI Percentage for Rentals	Duration of Affordability Period
Type of Housing			
Single-Household Detached Dwelling	≥ 5% of Dwellings	80% of AMI	≥ 50 Years

Table 38.340.020-1. Affordable Dwellings Required with Type A Incentives

	Minimum Percentage of Dwellings	Maximum AMI Percentage for Rentals	Duration of Affordability Period
Single-Household Attached Dwelling (Rowhouses and Townhouses)	≥ 5% of Dwellings	80% of AMI	≥ 50 Years
Multi-Household Dwelling	≥ 5% of Dwellings or ≥ 8% of Dwellings	60% of AMI or 80% of AMI	≥ 50 Years

Table 38.340.020-2. Affordable Dwellings Required with Type B or C Incentives

	Minimum Percentage of Dwellings	Maximum AMI Percentage for Rentals	Duration of Affordability Period
Type of Housing			
Single-Household Detached Dwelling	≥ 50% of Dwellings	80% of AMI	≥ 50 Years
Single-Household Attached Dwelling (Rowhouses and Townhouses)	≥ 50% of Dwellings	80% of AMI	≥ 50 Years
Multi-Household Dwelling	≥ 50% of Dwellings	60% of AMI	≥ 50 Years

D. Each affordable dwelling must be maintained as affordable pursuant to the adopted affordable housing plan and the compliance document required pursuant to *38.340.030* for no less than 50 years. The affordability period begins to run at the issuance of a certificate of occupancy for each building wherein affordable dwellings are provided. For subdivisions that rely on an incentive, the affordability period does not begin at the time final plat is recorded; rather, the affordability period for each affordable dwelling begins at the time each affordable dwelling in the subdivision receives a certificate of occupancy.

E. For the entire affordability period, except for adjustments as may be authorized pursuant to *38.340.070.A*, an affordable dwelling must be rented only to persons whose household income is verified to not exceed the applicable AMI thresholds.

F. An applicant may provide all or a portion of the required affordable dwellings on a site other than the site or parcel where the incentives are applied only if the affordable dwellings will be provided in the same development.

G. Accessory Dwelling Units (ADU), short term rentals, and group living are not eligible to be used as affordable dwellings and cannot be considered as qualifying affordable dwellings.

H. The following applies to previously approved annexations, subdivisions, or site plans that request to provide affordable dwellings in exchange for incentives as provided in this division:

1. A previously annexed but undeveloped parcel of land, a subdivision that has received final plat, or an approved site plan that received final approval prior to March 13, 2025, and that has not previously received an incentive in return for commitments to provide affordable housing, may

apply for the incentives in this division. The application for the previously undeveloped parcel must comply with the standards and procedures of this division.

2. Only the portion of the amended plat or site plan application, including associated code standards and conditions of approval, pertaining to the request for approval of one or more incentives will be subject to amended plat or site plan review.

I. Assumptions and calculations.

1. All references to area median income (AMI) are to the most recent AMI values for the city established by the U.S. Department of Housing and Urban Development (HUD). As HUD publishes updated AMI values, the values are immediately effective without further action by the city. The city may establish administrative rules and procedures for application and implementation of AMI in calculating maximum rental rates.

2. The maximum rental rates of an affordable dwelling are based on the AMI of a household and corresponding number of bedrooms within each affordable dwelling. The following establishes the maximum rental rate of each bedroom type based on the correlation between the number of bedrooms with the corresponding area median household income:

   a. Studio unit: AMI for a one-person household;

   b. One-bedroom dwelling: AMI for a two-person household;

   c. Two-bedroom dwelling: AMI for a three-person household; and

   d. Three-bedroom unit or larger: AMI for a four-person household.

3. If the calculation of the required number of affordable dwellings results in a fraction of an affordable dwelling, the developer must construct affordable dwellings equal to the next lower integer and either provide a cash-in-lieu payment for the additional fractional amount or construct an additional affordable dwelling.

4. Income averaging of the rental rates for affordable dwellings is allowed. Income averaging allows an applicant to establish affordable dwelling rental rates so the average rental rate for all affordable dwellings in a development meets the required AMI level. The city may establish administrative rules and procedures to implement income averaging. As an alternative, the applicant may use an income averaging procedure adopted by the Montana Board of Housing or the U.S. Department of Housing and Urban Development (HUD).

Sec. 38.340.030. - **Affordable housing plan required; pre-application meeting.**

A. For a development authorized pursuant to *38.340.020.B* to request incentives under this division the applicant must submit an affordable housing plan at the time of submittal of the application for preliminary plat, master site plan, or site plan. The affordable housing plan, upon approval of the development, controls the rental rates and occupancy by income verified persons of all affordable dwellings within the development for the entire affordability period.

B. A subdivision preliminary plat, master site plan, or site plan that requests incentives may not receive approval for the development until the affordable housing plan has been approved.

C. The affordable housing plan shall be approved if the plan is in compliance with the standards and criteria in this division, including but not limited to the standards in *38.340.020* and any administrative procedures related to this division.

D. An approved affordable housing plan binds the applicant and the applicant's successors in interest to comply with the plan for the duration of the affordability period. The approved affordable housing plan must be incorporated into a recorded restrictive covenant, deed restriction, or other document (referred to as the compliance document) acceptable to the city attorney, which implements the affordable housing plan. The compliance document must be recorded in the records of the Gallatin County Clerk and Recorder as follows:

1. For subdivisions where the incentives were requested and approved as part of the preliminary plat, the compliance document must be recorded with the final plat; and

2. For site plans, unless a compliance document was recorded with the subdivision, the compliance document must be recorded prior to the issuance of a building permit. The affordability period begins on the date of issuance of a certificate of occupancy.

E. Contents of an affordable housing plan.

1. A description of the requested incentives in *38.340.040*.

2. The applicable AMI and maximum rental rates applicable to each affordable dwelling.

3. The total number of affordable dwellings, and market-rate dwellings in the development.

4. A narrative describing how the applicant will ensure the rental of the affordable dwellings is only to income verified people for the duration of the affordability period. In addition, the narrative must describe the management system the applicant will use to meet the above requirement.

5. A description of how each affordable dwelling will comply with the development standards of this division.

6. A description of common amenities or facilities the applicant will provide and how the applicant will ensure the occupants of the affordable dwellings will have the same access to such amenities or facilities.

7. A description of how each incentive will apply to each building within the development, regardless of whether the building contains affordable dwellings or market rate dwellings or both.

8. The number of bedrooms in each dwelling in the development.

9. Clearly identify on the preliminary site plan or preliminary plat the specific location of each affordable dwelling.

10. Information sufficient to determine the timing of construction and distribution of affordable dwellings and market-rate dwellings throughout the development.

11. If the development is to be constructed in phases, provide a description of how the affordable dwellings will be distributed among the phases including whether the applicant proposes to have any subsequent phase of market rate dwellings rely on affordable dwellings provided with earlier phases.

12. Any other information the review authority determines necessary to evaluate the compliance of the affordable housing plan with the requirements of this division.

F. Preapplication community meeting.

1. Prior to the submittal of a site plan application pursuant to *38.740.090*, an applicant for an affordable housing development proposing to use Type A, B, or C incentives must hold a community meeting to inform residents and property owners of the proposed development and to solicit feedback from the community.

2. At least 20business days prior to the community meeting, the developer must mail by first class mail written notice of the community meeting to the owners of all property and all mailing addresses within a 200-foot radius of the proposed development site.

3. In addition to the above, if the proposed development is located within the boundaries of a city recognized neighborhood association pursuant to chapter 2, article 5, written notice of the community meeting must be provided at least 20 business days prior to the meeting to the presiding officer of the applicable neighborhood association, to the city neighborhood liaison, and to the chair of the InterNeighborhood council.

4. The meeting must be conducted in a location within city limits.

5. The notice must include:

    a. The date, time, and location of the community meeting;

    b. At a minimum, the notice must include the location of the proposed development, a description of the proposed development, a description of the incentives the applicant proposes to use, and the number and location of market rate and affordable units;

    c. A statement inviting the community to attend the meeting and informing the community that the purpose of the meeting is to seek community input on the proposed development and the use of incentives; and

    d. Contact information for the developer and any other project representatives, including the mailing and email addresses and telephone number of the person who may be contacted for further information.

6. The community meeting and required notice does not supplant or otherwise take the place of notice required by this chapter for the development application.

7. At the community meeting:

    a. The developer must discuss the proposed development, including key project details, incentives proposed, design elements, transportation and parking, and how the project intends to address affordable housing needs in the community.

    b. The developer must allow adequate time for the public to ask questions and provide comments. The developer must accept written comments for 10 business days after the community meeting.

    c. A representative from the City may attend.

8. A site plan application that proposes to use Type A, B, or C incentives must contain the following:
    a. A copy of the mailed notice of the community meeting;
    b. A detailed summary of all comments and suggestions made at or after the meeting;
    c. A copy of all written comments received at or after the community meeting;
    d. A copy of any materials distributed at the community meeting; and
    e. Whether and if so how the developer has addressed comments made by the community. If the developer has not incorporated community comments into the site plan application, the developer must explain why community comments were not addressed in the application.
9. A site plan application is not complete unless the application includes the required documentation of the community meeting.

Sec. 38.340.040. - **Incentives.**

A. General

1. The number of affordable dwellings must meet or exceed the minimum standards set forth in *38.340.020* needed to qualify for the applicable incentive. Any incentive not requested in the affordable housing plan in *38.340.030* is waived.
2. Incentives may be applied to dwellings:
    a. In a residential-only development; or
    b. In a mixed-use development. If the mixed-use development contains a mix of residential and nonresidential primary uses, the incentives in this section are only available if 50 % or more of the gross floor area of the development contains residential uses.

B. Type A Incentives (Table 38.340.020-1).

The applicant may apply the incentives in this subsection as follows:

1. For single-household detached dwellings, a minimum lot size of 3,000 square feet. Alternatively, if the applicant demonstrates that all other applicable city regulations related to lot development, access, and utilities can be met, a minimum lot size of 2,500 square feet is allowed.
2. For single-household attached dwellings (townhouse or rowhouse):
    a. A minimum lot size of 2,200 square feet. Alternatively, if the applicant demonstrates that all other applicable city regulations related to lot development, access, and utilities can be met, a minimum lot size of 1,800 square feet is allowable.
    b. No minimum lot width, maximum lot coverage, or maximum floor area ratio requirement if the applicant demonstrates that all other applicable city regulations related to lot development, access, and utilities can be met.
    c. A townhouse or rowhouse development that includes only dwellings of 1,600 square feet or less of livable square footage is exempt from a minimum on-site parking requirement but

may provide one parking space located within a driveway area in the required front setback, provided that the building in which the dwellings are located is three or fewer stories in height.

d. In addition to the above incentives, a townhouse or rowhouse cluster with four or fewer attached homes that includes only dwellings of 1,600 livable square feet or less in size is exempt from the following:

(1) Minimum lot size;

(2) Lot coverage;

(3) Floor area ratio;

(4) Lot area per dwelling unit density standard;

(5) Lot width; and

(6) Minimum parking requirement.

e. For affordable housing developments in R-B, nine additional feet of height, provided that if the development is adjacent to a lower intensity residential zoning district, the transition height setback provisions of *38.260.070.B* apply.

f. For affordable housing developments in R-C, five additional feet of height, provided that if the development is adjacent to a lower intensity residential zoning district, the transition height setback provisions of *38.260.070.B* apply.

3. For multi-household dwellings and mixed-use buildings:

a. In all zoning districts:

(1) The residential off-site parking standards of *38.530.070.A* may be expanded up to 1,000 linear feet from the commonly used entrance to the residential building. Notwithstanding the above, all required ADA spaces must be located on the same site as the dwellings.

(2) Up to 80% of the residential open space requirements of *38.510.060* may be met by providing private balconies provided every affordable dwelling is provided a balcony and access to a ground floor common open space is provided for all residents.

b. For affordable housing developments in the R-B, R-C, R-D, NEHMU, and B-1 districts, one additional story of height (maximum 15 feet per story) is allowed.

c. For affordable housing developments in the R-B district, the incentive of one additional story of height (maximum 15 feet per story) is only allowed if the proposed buildings have four or fewer total dwellings.

d. For all zoning districts, if a multihousehold or mixed use development is adjacent to a lower intensity residential district, the transition height setback provisions of *38.260.070.B* apply.

e. For affordable housing developments in the REMU, B-2, B-2M, B-3, and M-1 districts, two additional stories of height (maximum 15 feet per story), provided that if the development is adjacent to a lower intensity residential zoning district, the transition height setback provisions of *38.260.070.B* apply.

f. Minimum motor vehicle parking requirement of one space per dwelling for all districts other than B-3; however, the bicycle parking standards and requirements of *38.530.050* remain applicable.

g. Minimum motor vehicle parking requirement of 0.75 space per dwelling for B-3 district; however, the bicycle parking standards and requirements of *38.530.050* remain applicable.

h. For affordable housing developments in R-B, R-C, and R-D, the minimum area per dwelling standards in *Table 38.260.030.A* do not apply.

i. For the M-1 zoning district:

(1) An apartment building in an M-1 zoning district is a principal use and the prohibition on locating residential uses on the ground floor of an apartment building in M-1 zone in *Table 38.310.040.C* does not apply.

(2) In determining the maximum allowable residential square footage of a development in M-1, *Table 38.310.040.C*, footnote 6, is calculated for the development as a whole rather than per individual buildings.

j. Affordable housing developments in R-C are exempt from the maximum limit of 24 dwelling units per building, see *38.210.40*.

C. Type B Incentives (Table 38.340.020-2).

If the applicant proposes to construct affordable dwellings that meet the standards in *Table 38.340.020-2* in the same development as market-rate dwellings, the applicant may apply all of the following incentives to all buildings in the development in which 50 % or more of the livable floor area contains residential uses:

1. For single-household detached dwellings:

a. A minimum lot size of 2,000 square feet. Alternatively, if the applicant demonstrates that all other applicable city regulations related to lot development, access, and utilities can be met, a minimum lot size of 1,600 square feet is allowed.

b. Off-street parking requirement of one space per dwelling.

2. For single-household attached dwellings (townhouses and rowhouses):

a. A minimum lot size of 1,600 square feet. Alternatively, if the applicant demonstrates that all other applicable city regulations related to lot development, access, and utilities can be met, a minimum lot size of 1,400 square feet is allowed.

b. No minimum lot width requirement if the applicant demonstrates that all applicable city regulations related to lot development, access, and utilities can be met.

c. Off-street parking requirement of one space per dwelling. A townhouse or rowhouse development that includes only dwellings of 1,600 livable square feet or less of livable square footage is exempt from a minimum on-site parking requirement, but may provide one parking space located within a driveway area in the required front setback, provided that the building in which the dwellings are located is three or fewer stories in height.

d. For affordable housing developments in R-B, nine additional feet of height, provided that if the development is adjacent to a lower intensity residential zoning district, the transition height setback provisions of *38.260.070.B* apply.

e. For affordable housing developments in R-C, five additional feet of height, provided that if the development is adjacent to a lower intensity residential zoning district, the transition height setback provisions of *38.260.070.B* apply.

3. For multi-household dwellings and mixed-use buildings:

a. When incentives are requested, the building height of any building in the development is limited to that permitted in the zoning district or four stories, whichever is less and the maximum number of dwellings in a single building is limited to that permitted in the zoning district or 36 dwellings, whichever is less.

b. ADA parking spaces must be provided in accordance with applicable building codes. Notwithstanding the provisions of *38.530.070*, all required ADA spaces must be located on the same site as the dwellings.

c. In addition to the ADA parking required, a minimum of .25 vehicle parking spaces per dwelling are required. One short-term parking space located at the main building entrance must be provided and identified as a loading zone.

d. Bicycle parking standards and requirements of *38.530.050* apply. The number of secure bicycle racks provided must exceed or be equal to 50 % of the number of dwellings within the development.

e. For the M-1 zoning district:

(1) An apartment building in an M-1 zoning district is a principal use and the prohibition on locating residential uses on the ground floor of an apartment building in M-1 zone in *Table 38.310.040.C* does not apply.

(2) In determining the maximum allowable residential square footage of a development in M-1, *Table 38.310.040.C*, footnote 6, is calculated for the development as a whole rather than per individual buildings.

f. Affordable housing developments in R-C are exempt from the maximum limit of 24 dwelling units per building, see *38.210.40*.

D. Type C Incentives (Table 38.340.020-2).

If the applicant proposes to construct affordable dwellings that meet the standards in *Table 38.340.020-2* in the same development as market-rate dwellings, the applicant may apply the following incentives to all buildings in the development in which 50 % or more of the livable floor area contains residential uses:

1. For single-household detached dwellings:

a. A minimum lot size of 2,000 square feet. Alternatively, if the applicant demonstrates that all other applicable city regulations related to lot development, access, and utilities can be met, a minimum lot size of 1,600 square feet is allowed.

b. Off-street parking requirement of one space per dwelling.

2. For single-household attached dwellings (townhouses and rowhouses):

   a. A development that proposes a single grouping of two townhouses or rowhouses is a principal use in the R-A zoning district.

   b. A minimum lot size of 1,600 square feet. Alternatively, if the applicant demonstrates that all other applicable city regulations related to lot development, access, and utilities can be met, a minimum lot size of 1,400 square feet is allowed.

   c. No minimum lot width requirement if the applicant demonstrates that all applicable city regulations related to lot development, access, and utilities can be met.

   d. Off-street parking requirement of one space per dwelling. A townhouse or rowhouse development that includes only dwellings of 1,600 square feet or less of livable square footage is exempt from minimum on-site parking requirements, but may provide one parking space located within a driveway area in the required front setback, provided that the building in which the dwellings are located is three or fewer stories in height.

3. For multi-household dwellings other than those in paragraph 2 above and mixed- use buildings:

   a. One additional story of height (maximum 15 feet per story) beyond that allowed in the R-B and R-C zoning districts. For affordable housing developments in the R-B district, the incentive of one additional story of height (maximum 15 feet per story) is only allowed if the proposed buildings have four or fewer total dwellings.

   b. Two additional stories of height (maximum 15 feet per story) beyond that allowed in the R-D, REMU, B-1, B-2, B-2M, B-3, and M-1 zoning districts, provided that where any building in the development which utilizes building height incentives is adjacent to a lower intensity residential zoning district, the transition height setback provisions of *38.260.070.B* apply.

   c. ADA parking spaces must be provided in accordance with applicable building codes. Notwithstanding the provisions of *38.530.070*, all required ADA spaces must be located on the same site as the dwellings.

   d. In addition to ADA parking spaces, a minimum vehicle parking requirement of 0.75 space per dwelling is required. One short-term parking space located at the building entrance must be provided and identified as a loading zone.

   e. Bicycle parking standards and requirements of *38.530.050* apply. The number of bicycle racks provided must exceed or be equal to 50 % of the number of dwellings within the development.

   f. For the M-1 zoning district:

      (1) An apartment building in an M-1 zoning district is a principal use and the prohibition on locating residential uses on the ground floor of an apartment building in M-1 zone in *Table 38.310.040.C* does not apply.

      (2) In determining the maximum allowable residential square footage of a development in M-1, *Table 38.310.040.C*, footnote 6, is calculated for the development as a whole rather than per individual buildings.

   g. Affordable housing developments in R-C are exempt from the maximum limit of 24 dwelling units per building, see 38.210.40.

Sec. 38.340.050. - **Development standards for affordable dwellings.**

A. The affordable dwellings must be constructed with the same features, such as appliances, as market-rate dwellings within the same development but the quality of the features may vary between market rate and the affordable dwellings.

B. The mix of bedrooms per unit in affordable dwellings must be as similar as possible to the mix of bedrooms per unit of the market-rate dwellings in the development.

C. A one-bedroom dwelling must include a bedroom separated from other living areas of the dwelling by a solid door. For the purposes of this division, a one-bedroom dwelling must be greater than or equal to 450 square feet of floor area.

D. Access to shared amenities, including parking, by residents of the affordable dwellings must be the same as those in market-rate dwellings in the development. For amenities other than parking, the cost of any such amenity must be included in the required affordable rental rate.

E. All the affordable dwellings to be developed pursuant to this division must be completed and a certificate of occupancy issued prior to or at the same time as the market- rate dwellings. The timing of construction and distribution of affordable dwellings throughout a development must be approved in the affordable housing plan.

F. For multiple-phase developments or developments with more than one building:

1. In addition to *38.340.050.E*, an applicant may be issued a certificate of occupancy for market rate dwellings in buildings that do not contain affordable dwellings only if the market rate dwellings are issued a certificate of occupancy at the same time or after certificates of occupancy are issued for affordable dwellings and only for market rate dwellings in proportion to the number of affordable dwellings.

2. An applicant may use the incentives provided by affordable dwellings in a previous phase of a development in a subsequent phase that consists of market-rate dwellings.

Sec. 38.340.060. - **Alternatives for land donation and cash-in-lieu.**

As an alternative to constructing the affordable dwellings required by *38.340.020*, the applicant may qualify for the incentives listed in *38.340.040* by:

A. An applicant may donate one or more parcels of land within the city limits to the city for the purpose of building affordable dwellings, subject to the following:

1. The donated land may be one or more undeveloped parcels or ready-to-build lots but must be capable of being used as the site of residential dwellings that meet the standards of this division. All donated land will be used only to support the creation or preservation of affordable dwellings.

2. The value of the donated land must be equal to or exceed the cost of designing, obtaining land use and building approvals for, installing or upgrading Infrastructure for, and constructing the number of affordable dwellings the applicant would otherwise be required to provide in return for the requested incentives in *38.340.040*, as established by an independent valuation and economic report dated no less than one year prior to transfer of the ownership of the land to the city and produced by one or more independent firms selected by the city and paid for by the applicant.

B. An applicant may provide a cash-in-lieu payment to the city's community housing fund. The review authority may establish administrative rules and procedures for the calculation and implementation of a cash-in-lieu program. The city must use all cash-in-lieu funds to support the creation or preservation of affordable dwellings. The following apply to payment of cash-in-lieu:

1. For each affordable dwelling required by *38.340.020*, but not provided, the cash- in-lieu amount will be established based on a per dwelling price adopted by resolution of the commission.

2. The per dwelling amount must be based on the difference between the average new construction rental rate for apartments in the city and the established affordable rental rate calculated over the course of 20 years.

3. The cash-in-lieu amount must be determined on the number, type of dwellings, and mix of bedrooms identified as affordable in the affordable housing plan and proposed to be constructed.

4. Cash-in-lieu payments must be paid prior to issuance of a building permit for any dwelling in the development.

Sec. 38.340.070. - **Administration.**

A. The applicable review authority shall enforce all rules and regulations, and take all actions necessary for the effective operation and enforcement of this division, unless such authority is expressly reserved to the city commission or another city official, including but not limited to:

1. Promulgate any rule or regulation necessary to the operation and enforcement of this division, including but not limited to maintenance of the affordable dwellings, periodic reporting, and notice and tenant protections in the event of foreclosure.

2. Adopting application, monitoring, reporting forms, compliance documents, and obtaining any other information required from applicants for implementation of this division. Establishing standards for determining AMI requirements, including income- averaging, and calculating and making available to the public the AMI required to qualify for the various incentives listed in this division.

3. Establishing standards for the qualification of renters, ongoing income verification and eligibility, primary occupancy requirements, and reporting and performance of property management entities.

4. Establishing standards that will allow the review authority to approve an upward adjustment of the AMI standards for renter qualification if an affordable dwelling remains vacant for more than 30 calendar days and no person qualifying within the required AMI applies for the affordable dwelling.

5. Monitoring compliance with this division, notifying the subdivider, applicant, or current owner of the property of noncompliance, and ordering compliance, including imposing sanctions permitted by this division.

B. All rules and regulations established by the applicable review authority are subject to city commission review and modification.

Sec. 38.340.080. - **Noncompliance and sanctions.**

A. If the city determines an applicant, its successor, or the current owner of a property fails to comply with any requirements of the affordable housing plan, or the requirements of this division, or with the provisions of a compliance document, the applicable review authority must notify the applicant, its successor, or the current owner of the property of the noncompliance in writing and order compliance. Notification must describe the date by which the person or entity must be in full compliance and must describe the nature of the noncompliance and the sanctions for noncompliance.

B. In addition to other remedies available to the city pursuant to this chapter, if the person or entity remains in noncompliance on the date by which compliance was required, the city may impose one or more sanctions, including but not limited to the following:

1. Issuing a civil penalty pursuant to 24.02.040;
2. Enforcing the requirements of the compliance documents;
3. Withholding or revoking building permits;
4. Issuing stop-work orders;
5. Withholding or revoking certificates of occupancy; and
6. Any other sanction available under local, state, or federal law.

ARTICLE 4. -

COMMUNITY DESIGN

DIVISION 38.400. - TRANSPORTATION FACILITIES AND ACCESS..... 4-2

Sec. 38.400.010. - Streets, general. 4-2
Sec. 38.400.020. - Street and road dedication..... 4-4
Sec. 38.400.030. - Intersections..... 4-5
Sec. 38.400.040. - Street names. 4-6
Sec. 38.400.050. - Street and road right-of-way width and construction standards..... 4-6
Sec. 38.400.060. - Street improvement standards..... 4-6
Sec. 38.400.070. - Street lighting. 4-8
Sec. 38.400.080. - Sidewalks. 4-9
Sec. 38.400.090. - Access. 4-9
Sec. 38.400.100. - Street vision triangle. 4-13
Sec. 38.400.110. - Transportation pathways. 4-13
Sec. 38.400.120. - Public transportation. 4-15

DIVISION 38.410. - COMMUNITY DESIGN AND ELEMENTS 4-17

Sec. 38.410.010. - General standards. 4-17
Sec. 38.410.020. - Community focal point. 4-17
Sec. 38.410.030. - Lot. 4-18
Sec. 38.410.040. - Blocks. 4-20
Sec. 38.410.050. - Utilities..... 4-21
Sec. 38.410.060. - Easements. 4-22
Sec. 38.410.070. - Municipal water, sanitary sewer and storm sewer systems. 4-25
Sec. 38.410.080. - Grading and drainage. 4-27
Sec. 38.410.090. - Fire protection requirements. 4-28
Sec. 38.410.100. - Mail delivery.....4-28
Sec. 38.410.110. - Water adequacy. 4-29

DIVISION 38.420. - PARK AND RECREATION REQUIREMENTS..... 4-32

Sec. 38.420.010. - General..... 4-32
Sec. 38.420.020. - Park area requirements. 4-32
Sec. 38.420.030. - Cash donation in-lieu of land dedication. 4-34
Sec. 38.420.040. - Park use. 4-35
Sec. 38.420.050. - Location..... 4-35
Sec. 38.420.060. - Frontage. 4-36
Sec. 38.420.070. - Linear parks. 4-37
Sec. 38.420.080. - Park development. 4-37
Sec. 38.420.090. - Waiver of required park dedication. 4-38
Sec. 38.420.100. - Recreation pathways. 4-40

DIVISION 38.400. - **TRANSPORTATION FACILITIES AND ACCESS**

Sec. 38.400.010. - **Streets, general.**

A. All streets must comply with the adopted land use plan and/or transportation plan. The arrangement, type, extent, width, grade and location of all streets must be considered in their relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed uses of the land to be served by such streets. The design standards contained in these regulations apply to all construction, reconstruction and paving of streets. Review authority for exceptions or modifications to this section is specified in *38.700.010*.

B. Relation to undeveloped areas.

When a proposed development adjoins developed land, the streets and alleys must be arranged to provide for the continuation of streets and alleys between adjacent developed properties when such continuation is necessary for the convenient movement of traffic, effective provision of emergency services and efficient provision of utilities.

C. Separation of through and local traffic.

Where a development abuts or contains an existing or proposed arterial or collector street, the developer may be required to provide frontage roads, reverse frontage with a reservation prohibiting access along the rear property line, screen planting, or such other treatment as may be necessary for protection of residential properties and to afford separation of through and local traffic.

D. Distance between parallel rights-of-way.

Where a development borders on or contains a railroad, limited access highway, canal, ditch or stream right-of-way, the developer may be required to provide a street approximately parallel to and on each side of such right-of-way at a distance suitable to allow for the appropriate use of the intervening land. Such distances must also comply with the requirements of approach grades and future grade separation.

E. Dead-end streets and alleys.

1. Dead-end streets are generally prohibited. If they are approved by the review authority, they must comply with city design specifications and standards, and with any city-adopted International Fire Code, appendix D. No dead-end streets longer than 150 feet are permitted without an approved turn-around. Where streets terminate, the developer must provide a cul-de-sac at the terminus. Where it is planned that a dead-end street will be extended in the future, a temporary cul-de-sac must be provided. All approved turnarounds must be signed as Fire Lane.

2. "T" turnarounds, in-lieu of temporary cul-de-sacs, must comply with city design specifications and standards, and with any city-adopted International Fire Code, Appendix D. All other design requirements are established by the review authority.

F. Local streets.

Local streets must be laid out to discourage speeding. Traffic calming measures in line with the guidance provided in the city design and construction standards must be considered.

G. Half streets.

Half streets are prohibited except when they are essential to the development, are beneficial to the city, or when the review authority is satisfied that the half street will be dedicated to the public after the adjoining property is developed. Half streets must be approved by the review authority, and when adjacent to unannexed land, the county road office. When an existing half street is adjacent to a tract to be developed, the undeveloped half of the street must be provided with the new development.

H. Second or emergency access.

1. To facilitate traffic movement, the provision of emergency services and the placement of utility easements, all developments must be provided with a second means of access. If, in the judgment of the development review committee (DRC), a second dedicated right-of-way cannot be provided for reasons of topography or other physical conditions, the developer must provide an emergency access, built to the standards detailed in these regulations.

2. This provision may be waived or conditionally waived by the DRC.

I. Cul-de-sacs.

Cul-de-sacs are generally prohibited. The review authority may consider and approve the installation of a cul-de-sac only when necessary due to topography, the presence of critical lands, access control, adjacency to parks or open space, or similar site constraints. Active transportation connections must be installed at the end of cul-de-sacs where deemed appropriate.

J. Bridges and culverts.

Culverts or bridges must be provided and installed by the developer where drainage channels intersect any street right-of-way.

1. Bridges.

Bridges must be built to state department of transportation load standards, and must be reviewed and approved by the county road office and the city engineering department.

2. Culverts.

a. All culverts must, at a minimum, extend across the entire improved width of the street cross section. When culverts are determined necessary by the city engineering department, the size and length of the culvert and the amount of backfill over the culvert must be determined by a registered professional engineer.

b. Each culvert or other drainage facility must be large enough to accommodate potential runoff from upstream drainage areas. The minimum capacity of a culvert must meet the requirements of the city design and construction standards.

K. Encroachment permits.

The person or entity undertaking the development must obtain permits required by the Montana Department of Transportation for all access to state highways.

L. Traffic control devices.

Street signs and other traffic control devices must be installed at all intersections and any other location required by the city. The location, size, shape and height of all traffic control devices must comply with city requirements, and must conform with the Manual of Uniform Traffic Control Devices (MUTCD) and the City of Bozeman Modifications to Montana Public Works Standard Specifications.

M. Sight distances.

The alignment of all streets must provide adequate sight distances based on design operating speeds as defined in the city design and construction standards.

N. Protection of Street Rights-of-Way.

No building permit may be issued, and no use may be established, within any street right-of-way or proposed street right-of-way shown in the City's Long-Range Transportation Plan except as allowed by encroachment permit, per chapter 34, BMC.

Sec. 38.400.020. - **Street and road dedication.**

A. General.

All streets or alleys within, or providing access to, the proposed development must comply with *38.400.050*, be dedicated to the public or be privately maintained streets to be owned by the city and maintained by an approved non-city maintenance provider.

1. Public street easements.

Public street easements must:

a. Be in the city's standard form or be approved by the city attorney's office;

b. Be recorded in the county clerk and recorder's office; and

c. Clearly grant to the public an unrestricted right of ingress and egress from a public street to the property to be developed.

2. Privately maintained public streets.

a. Privately maintained streets must have a public access easement.

b. If a privately maintained local street is proposed, the following standards must be met:

(1) The street right of way complies with the city standard requirement of 60 feet, and the standard back-of-curb to back-of-curb width meets the city design and construction standards; or

(2) The street right of way complies with the city standard of 60 feet. The back-of-curb to back-of-curb width may vary from city standards, provided that the review authority approves a departure for the back-of-curb to back-of-curb width when:

(a) An alternate street cross section is provided which provides the functional equivalent for pedestrian and vehicle travel, snow and stormwater management, and parking of motor and other vehicles.

(b) A report certified by a professional engineer addressing site conditions including zoning and expected intensity of development over time, ability to accommodate unexpected intensity of development, connectivity to other streets, expected traffic volumes, site distances, spacing of accesses, turning movements, and proposed alternative means of addressing standards including but not limited to stormwater.

(c) Based upon the above data, the review authority will determine whether a modification from the required standards is justified. The alternative design must protect the public's health, safety and welfare, the purpose of this chapter, and the purpose of the city's land use plan.

(d) A permanent funding source, such as the levying of assessments against all properties within the development, for street maintenance is established and the funding levels will be adequate for all future street maintenance; and

(e) The developer signs a perpetual legal instrument, acknowledging that the city will not assume dedication and/or maintenance of the streets unless the street is brought up to city standards, or the property owners' have agreed to an assessment to fund improvements required to bring the street up to city standards. The developer must record the legal instrument at the time of final plat recordation, or prior to issuance of building permits if no final plat recordation is required.

(f) The developer must execute a hold harmless and indemnification agreement indemnifying, defending and holding harmless the city, its employees, agents and assigns from and against any and all liabilities, loss, claims, causes of action, judgments and damages resulting from or arising from approval of an alternative street cross section under this section.

c. Privately maintained collector or arterial streets are not allowed.

d. Documented proof of adequate funding and scheduling for maintenance of all privately maintained public streets, must be provided, subject to *38.780.090*.

Sec. 38.400.030. - **Intersections.**

A. Street intersections shall meet the requirements of the City of Bozeman Design and Construction Standards and the following:

1. Intersections of streets are subject to the spacing requirements of *Table 38.400.090-1*; Intersections must be designed to provide adequate visibility for traffic safety based on the designated operating speeds of the intersecting roadways.

Sec. 38.400.040. - **Street names.**

A. The following requirements apply to street names:

1. New streets aligned with existing streets must have the same name as the existing streets.
2. All street names must be approved by the county geographic information systems and city engineering department prior to final plat or plan approval in order to avoid duplication and confusion with names of existing streets and roads.

Sec. 38.400.050. - **Street and road right-of-way width and construction standards.**

A. All streets, roads, and alleys providing access to, and within, the proposed development must meet the following standards:

1. Right-of-way width and construction standards contained in this chapter: the most recently adopted long range transportation plan; the City of Bozeman Design and Construction Standards; and the City of Bozeman Modifications to Montana Public Works Standard Specifications.
2. Access streets and roads which are not on the city's or county's road maintenance system must be dedicated to the public or must have a public easement which meets the criteria of this division.

Sec. 38.400.060. - **Street improvement standards.**

A. All street improvements must be designed by and constructed under the supervision of a professional civil engineer, registered in the state, and must meet or exceed the right-of-way and construction standards adopted by the city (including but not limited to an adopted transportation plan or specifications manual) and required for the type of street to be constructed.

B. Plans and specifications for all public or private streets (including but not limited to curb, gutter, storm drainage, street lighting and sidewalks), must be provided to and approved by the review authority. The developer must provide professional engineering services for construction inspection, post-construction certifications and preparation of record drawings. The plans and specifications must be approved and a preconstruction conference must be conducted before any construction is initiated on the street improvements.

1. Surfacing.

A pavement design report, based upon specific site soil data and design-year traffic loading conditions, prepared by a professional engineer, or other qualified professional approved by the review authority, must be submitted to the review authority for approval prior to plan and specification submittal if using the self-certification process, or with the plans and specifications if using the standard process. Pavement design must be in accordance with the City of Bozeman Design and Construction Standards and the City of Bozeman Modifications to Montana Public Works Standard Specifications.

2. Alleys.

In developments where alleys are proposed, a 20-foot-wide right-of-way must be provided. The driving surface of the alley must be at least 16 feet wide and must be paved.

a. Alleys must be designed and constructed in accordance with the City of Bozeman Design and Construction Standards and the City of Bozeman Modifications to Montana Public Works Standard Specifications, and subject to approval by the city engineer.

b. Alleys used for backing under *38.530.020.C* must be designed to provide the required aisle width.

3. Mitigation of Transportation Impacts.

When the standards of this section are not met, improvements must be made to mitigate the impact of the development on the transportation system in accordance with the City of Bozeman Design and Construction Standards.

a. Level of service standards.

All intersections of arterial and collector streets and intersections with arterial and collector streets must operate at a minimum, intersection level of service of "D". Level of service (LOS) values must be determined using the methods defined by the most recent edition of the Highway Capacity Manual. Unless specifically exempted by this section, the review authority may only approve a development if the LOS standards are met or mitigated, within the study area, defined in *38.710.050.A.11.g*, in the design year. The design year is the projected year of full build out or 5 years from the date of application whichever is greater.

(1) Exception:

If an intersection required to be studied by *38.710.050.A.11.g* does not meet LOS "D" and the intersection has been fully constructed to its maximum lane, turning movement capacity, and intersection control as defined in the latest transportation master plan, then an LOS of less than "D" is acceptable.

(2) Exception:

If an intersection required to be studied by *38.710.050.A.11.g* does not meet LOS "D" and the intersection does not warrant mitigation as determined by the Director of Transportation and Engineering, then LOS of less than “D” is acceptable.

(3) Exception:

The review authority may grant a waiver for an LOS of less than "D" at a specific intersection if the review authority determines:

(a) Granting a waiver for the intersection would not be contrary to public health and safety and is in the public interest; or

(b) Improvements to the intersection to raise the overall level of service to a "D" or better are currently scheduled for commencement of construction within five years as shown on the most recently adopted Transportation Capital Improvement Plan;

A waiver granted under this subsection is valid for the initial entitlement period of the project and applies only to the real property for which the waiver is granted. A request for the extension of the initial development approval relying upon an intersection level of service waiver is a material modification to the application per *38.100.070*.

If the review authority does not grant a waiver from the level of service standard under this subsection, a subdivider or other site developer may request a variance from the requirements of this section. If a variance is granted from the requirements of this section, the variance applies only to the specific development proposal for which it was granted and must not be considered evidence for any other development proposal.

b. Local Street Volumes.

Local streets are not intended to carry more than 1,000 vehicles per day. Unless specifically exempted by this section, the review authority may only approve a development if the projected volumes on local streets within the study area, defined in *38.710.050.A.11.g*, are below 1,000 vehicles per day in the design year or projected volumes above 1,000 vehicles per day in the design year are mitigated by off-site traffic calming. The design year is the projected year of full build out or 5 years from the date of application whichever is greater.

(1) Exception:

If existing mitigation measures are already in place.

(2) Exception:

The review authority may grant a waiver for projected local street volumes greater than 1,000 vehicles per day if the review authority determines that granting a waiver for the intersection would not be contrary to public health and safety and is in the public interest;

Mitigation measures should target controlling motor vehicle speed and volume on the local street using traffic calming treatments identified in FHWA's Traffic Calming ePrimer.

A waiver granted under this subsection is valid for the initial entitlement period of the project and applies only to the real property for which the waiver is granted. A request for the extension of the initial development approval relying upon an intersection level of service waiver is a material modification to the application per *38.100.070*.

If the review authority does not grant a waiver from the level of service standard under this subsection, a subdivider or other site developer may request a variance from the requirements of this section. If a variance is granted from the requirements of this section, the variance applies only to the specific development proposal for which it was granted and must not be considered evidence for any other development proposal.

Sec. 38.400.070. - **Street lighting.**

A. Standards.

For street lighting standards, see *38.570*.

B. Timing.

For the timing of street lighting improvements, see *38.780.030*.

Sec. 38.400.080. - **Sidewalks.**

A. General.

City standard sidewalks (including a concrete sidewalk section through all private drive approaches) must be constructed in all developments on all public and private street frontages, except for alleys. The requirements of the City of Bozeman Design and Construction Standards and the City of Bozeman Modifications to Montana Public Works Standard Specifications, and the streetscape standards of *38.260.050* apply.

B. Sidewalks adjacent to public lands.

The developer must install sidewalks adjacent to public lands, including, but not limited to, parks, open space, and the intersection of alleys and streets or street easements. Applicable sidewalks adjacent to public lands are subject to the streetscape standards of *38.260.050*, with a minimum sidewalk width of 6 feet. Where the public land adjacent to the site is a recreation or transportation pathway, the developer may install access to said pathway, meeting the standards of *38.510.040.D*, in lieu of installing a sidewalk.

C. Timing.

The following requirements regarding the timing of the installation of sidewalks apply:

1. For subdivision improvements, please refer to *38.780.030*.
2. For site development improvements, sidewalks must be installed prior to issuance of an occupancy permit, or must be subject to an approved improvements agreement and financially guaranteed, as specified in *38.780*.

Sec. 38.400.090. - **Access.**

A. General.

All final site plans and plats must contain a statement requiring lot accesses to be built to the standard contained in this section, the City of Bozeman Design and Construction Standards, and the City of Bozeman Modifications to Montana Public Works Standard Specifications.

1. Lot access standards. The drive approach must be constructed in accordance with the city's standard approach, which includes a concrete apron, sidewalk section and drop-curb.
2. A city curb cut and sidewalk permit must be obtained from the engineering department prior to installation of the approach.
3. Access must comply with any city-adopted International Fire Code.

B. Drive access from improved public street, approved private street or alley required.

1. For purposes of this Code, "improved" public street, approved private street, or alley means and includes any street or alley within the city constructed to a standard which meets or exceeds standards established by this chapter, the City of Bozeman Design and Construction Standards, and the City of Bozeman Modifications to Montana Public Works Standard Specifications. Constructed public streets which may not meet current city standards but which are constructed

to a standard that has historically provided an adequate level of service to adjacent properties, which level of service would not be degraded as a result of a pending development proposal.

2. Unless otherwise allowed by this chapter, all lots must be provided with legal and physical access via one of the following options:

   a. Fifteen feet of frontage on a public or approved private street;

   b. Fifteen feet of frontage on a public or approved private street and an improved alley; or

   c. Fifteen feet of frontage on an improved alley and a greenway corridor or trail corridor which includes a transportation pathway meeting sidewalk or shared use path standards of *38.400.110* with public access. Access to each home from the transportation pathway must be provided. Developer must make provision for all necessary maintenance to keep the transportation pathway accessible and functional year round. This option may require additional improvements to the alley to accommodate emergency access, snow removal and storage, and the provision of utilities. The alley may also require signage for the provision of emergency services.

   d. Have a courtyard access meeting standards of *38.410.030.D*.

C. Drive access requirements.

1. Drive accesses are required for commercial parking lots and parking lots for residential developments subject to the site plan review procedures of *38.740*.

2. Parking areas for residential developments subject to the sketch plan review procedures of *38.740.060*, may take access directly from an improved public street, approved private street or improved alley as defined in *subsection B.1* of this section with access provided according to the provisions of this section and *38.530.020.C*.

3. All drive accesses installed, altered, changed, replaced or extended must comply with the following requirements:

   a. Residential.

      (1) Residential lots must not have direct access to arterials or collectors, unless the standards contained in *Table 38.400.090-1* are complied with;

      (2) Residential drive access standards apply to all residential development with drive access facing a street, except apartment buildings.

         (a) Individual residential drive accesses facing the street with a single internal parking bay meeting the standard of *Table 38.530.020-1* may not exceed 12 feet in width measured at the right-of-way line and 18 feet in width measured at the curb line.

         (b) Individual residential drive accesses facing the street with two or more internal parking bays meeting the standard of *Table 38.530.020-1* may not exceed 20 feet in width measured at the right-of-way line and 26 feet in width measured at the curb line.

(c) Individual and shared drive accesses must be physically separated by means of a landscaped area greater than or equal to 10 feet in width between paved areas and extending from the front line of the building to the right-of-way line.

(d) Residential complexes with 25 or more dwelling units must meet the commercial access standards in *subsection b.* below.

b. Non-residential.

(1) Commercial drive access widths must be no greater than 35 feet measured at the inside edge of the drive access extended, at its intersection with the projected curbline of the intersecting street. Two-way drive access must be a minimum of 24 feet and one-way drive access must be a minimum of 16 feet.

(2) Industrial drive access widths must be no greater than 40 feet measured at the inside edge of the drive access extended, at its intersection with the projected curbline of the intersecting street. Two-way drive accesses must be a minimum of 24 feet and one-way drive accesses must be a minimum of 16 feet.

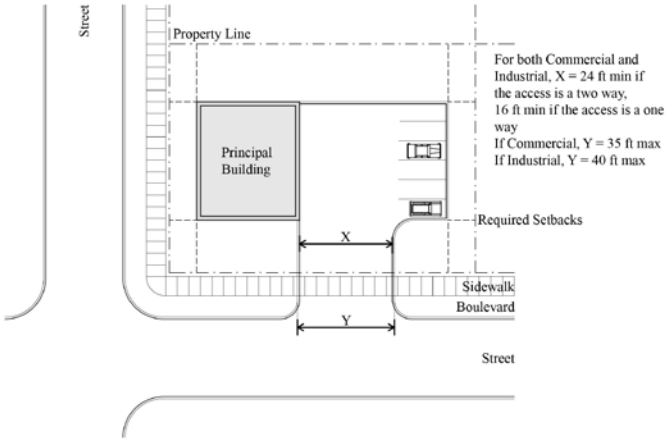


Figure 38.400.090-1. Commercial and industrial accesses.

c. Drive accesses for all multiple tenant commercial buildings or complexes/centers, or industrial drive accesses must be set back a minimum of 20 feet from the adjacent property line unless such drive access is approved as a shared drive access.

d. Drive accesses to drive-in theaters, stadiums, racetracks, funeral homes or uses generating very heavy periodic traffic conflicts must be located not closer than 200 feet to any pedestrian or vehicular entrance or exit to a school, college, university, church, hospital, public emergency shelter or other place of public assembly.

e. All commercial and industrial drive accesses on arterial streets must have a radii in accordance with the city's design and construction standards, unless otherwise approved by the review authority. All commercial and industrial drive accesses on other streets may have either return radii or depressed curbs.

D. Spacing standards for drive accesses.

1. General.

a. Consolidation of access points onto public streets, to achieve a distance between access points in excess of the minimum standards in this section, is desired and must be considered during all levels of site plan review.

b. For the purposes of this section, public or private access means any street, alley, driveway or other point of vehicular access to a publicly controlled street.

c. The distance between public and/or private accesses on a public street must be measured between the right-of-way line for public accesses and the nearest inside edges of private accesses according to the following distances specified in *Table 38.400.090-1*.

d. This *subsection D* does not apply to single-, two-, three-, or four-unit dwellings on individual lots.

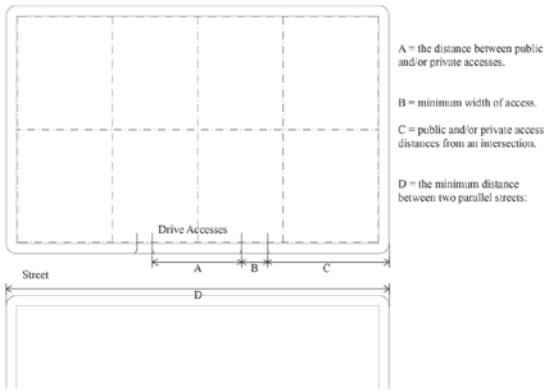


Figure 38.400.090-2. Spacing standards for drive accesses.

2. The standards in *Table 38.400.090-1* apply to the minimum distance between public and/or private accesses and intersections, and the minimum distance between public and/or private accesses and other public and/or private accesses.

   a. Partial access excludes left turns onto the major street.

   b. Full access allows all turn movements, in and out.

Table 38.400.090-1. Minimum distance between public/ private accesses, local streets, and intersections.

	Access Located on Principal Arterial Streets	Access Located on Minor Arterial and Collector Streets	Access Located on Local Streets
Average Spacing	**In All Districts**	**In All Districts**	**In All Districts**
Partial access	315'	150'	40'
Full access	660'	330'	40'
Minimum separation	315'	150'	40'

E. Number and location of drive accesses.

1. Single-household uses are limited to one drive access per street face, except on properties abutting arterial streets, in which case shared accesses, or drive aisles facilitating the turning of automobiles on-site are required.

2. Notwithstanding any other provisions of this chapter, drive accesses may not be located closer than five feet to any side property line, unless shared access, as defined in *38.800.200*, with the adjoining property is approved. This standard does not apply to the shared side property line of townhouses units with adjacent garages using attached drive aisles.

F. Shared drive access.

The city desires and encourages sharing access drives, as defined in *38.800.200*, between separate parcels.

G. Access approval required.

All drive accesses may be approved by the review authority for width and location.

H. Modifications of property access standards.

1. Some of the standards listed in subsections C through E of this section, may be relaxed by the review authority if it is shown during the development review process that more efficient design can be accomplished without jeopardizing the public's health, safety and welfare, the purpose of this chapter, or the purpose of the city's land use plan.

2. Modifications from access standards may be approved by the review authority.

3. Commercial developments (including residential complexes for five or more households) which may not be able to meet the requirements of subsections C through E of this section, and are requesting modifications from the standards, must submit to the city engineer a report certified by a professional engineer addressing the following site conditions, both present and future:

   a. Traffic volumes;

   b. Turning movements;

   c. Traffic controls;

   d. Site design;

   e. Sight distances; and

   f. Location and alignment of other access points.

4. Based upon the above data, the review authority will determine whether a modification from the required standards is justified and, if so, what alternative requirements will be necessary.

Sec. 38.400.100. - **Street vision triangle.**

Vision Triangles must meet the requirements of American Association of State Highway and Transportation Officials (AASHTO) and the City of Bozeman Design and Construction Standards.

Sec. 38.400.110. - **Transportation pathways.**

A. General.

Pathways must be installed in accordance with this chapter, the land use plan, the most recently adopted long-range transportation plan, any adopted citywide park plan, and any adopted individual

park master plan, and must comply with City of Bozeman Design and Construction Standards. See also *38.420.070*, *38.420.100*, and *38.620*.

B. Pathway categories.

The development review committee (DRC) must determine whether a pathway is a transportation pathway or a recreation pathway. For subdivision this determination must be made during the pre-application process.

1. Transportation pathways.

Developers must install transportation pathways, to provide adequate active transportation facilities within the development, as part of the required development improvements. Transportation pathways must be ADA accessible, and include the following types of facilities:

a. Sidewalks (also see *38.260.050* for sidewalk standards);

b. Bicycle facilities; and Class I trails;

(1) With the exception of trail corridors within required watercourse setbacks, corridors for Class I trails must be dedicated to the city. The dedicated trail corridor must be at least 25 feet in width to ensure adequate room for the construction, maintenance and use of the trail. Transportation trail corridors cannot be used to satisfy parkland dedication requirements; and

c. Pathways that connect community or neighborhood commercial nodes by a reasonably direct route; or

d. Pathways that connect major residential, employment, educational, or other service nodes by a reasonably direct route.

2. Recreation pathways.

For the definition of recreation pathways, please see *38.420.100.B*.

C. Related facilities.

If pathways are proposed or required, stream crossings and other similar improvements, where necessary, must be installed. Bridge design and construction must comply with City of Bozeman Design and Construction Standards and the City of Bozeman Modifications to Montana Public Works Standard Specifications, and must be submitted to the community development department for review and approval. Any necessary permits for bridges must be obtained by the developer from the appropriate agency prior to installation of the stream crossings.

D. Trail requirements.

The class of the trail must be determined by the review authority, and the trail must be designed and constructed according to any adopted park or recreation plan, City of Bozeman Design and Construction Standards, and the City of Bozeman Modifications to Montana Public Works Standards Specifications. Trails and bridges must meet ADA specifications for recreational facilities and maintain a natural appearance. Trail plans and specifications must be submitted to the planning and parks departments for review and approval prior to installation.

E. Bikeways and boulevard trails.

Wherever new streets are to be developed as a result of a development proposal, or wherever existing streets or roads are required to be improved, the developer may be required to incorporate striped bicycle lanes along the shoulder, meeting current AASHTO standards, into the design and construction or improvement of the streets or roads. The decision to install a boulevard trail instead of a bicycle lane must be based on the most recently adopted long-range transportation plan. The review authority may consider exceptions based on the particular characteristics of a transportation corridor and recommendations from the DRC and the Bozeman Area Bicycle Advisory Board. Boulevard trails and bicycle lanes must be designed and constructed in accordance with the most recently adopted long-range transportation plan, and any other applicable city specifications and standards.

F. Pathway maintenance.

Trails within and adjacent to the proposed development, as well as off-street pathways (i.e., sidewalks and boulevard trails) along external development streets, must be maintained by the developer (including snow removal) in accordance with an approved maintenance plan until 50 % of the lots within the development are sold. Thereafter, the property owners' association must be responsible for maintenance. The property owners' association may establish an improvement district to collect assessments to pay for the maintenance.

G. Pathway easements.

Where pathways cross private land or common open space, the proper public access easements must be provided. Public access easements for pathways must be at least 25 feet wide. The director of public works may accept an alternate easement width when said easement is parallel to a road ROW.

H. Trails in required watercourse setbacks.

Trail corridors within required watercourse setbacks must not be dedicated to the city, and such land may not be used to satisfy parkland dedication requirements. When publicly accessible trails are established within required watercourse setbacks, public access easements at least 25 feet in width must be provided to ensure adequate room for the construction, maintenance and use of the trail.

I. Corridors.

Corridors for transportation pathways may not be used to satisfy parkland dedication requirements.

Sec. 38.400.120. - **Public transportation.**

A. Street design.

All interior and exterior development streets that are designated as transit routes, as delineated in the most recently adopted transit provider's development plan, must be designed to accommodate transit vehicles and facilities. Considerations for transit street design include but are not limited to:

1. Pavement design;
2. Lane width;
3. Corner radii;

4. Street grade;
5. Curb height; and
6. Right-of-way width.

B. Other transit considerations.

Developments with designated transit routes must be designed with consideration to the following requirements:

1. Spacing of transit stops.

All lots within the development must not be further than one-half mile from a designated transit route;

2. Length of transit stops.

Where provided or required, pullouts at transit stops must meet the design criteria established by the transit provider;

3. Location.

a. Transit stops should be located based on best practice and any standards of the local transit provider. The locations should be reviewed by the local transit provider.

b. Transit stop locations will provide for ADA accessibility. At a minimum that includes a concrete surface connecting the sidewalk to the curb in a location where the bus can pull up to the curb.

c. Transit stop locations will include accessible connections to adjacent or nearby sidewalks or active transportation facilities.

4. Driveway conflicts.

Lots and lot accesses must be configured to avoid conflicts with transit stops; and

5. Lighting.

Street lighting must be configured to provide adequate lighting at transit stops.

C. Transit facilities.

If any streets on the interior or exterior of the development are designated as transit routes, the review authority may require the developer to provide transit facilities such as transit stop signage, benches, bicycle racks, lighting and bus shelters.

DIVISION 38.410. - **COMMUNITY DESIGN AND ELEMENTS**

Sec. 38.410.010. - **General standards.**

A. Conformance.

The design and development of all land uses must conform to this chapter, adopted growth policies, any relevant adopted neighborhood or subarea plan, and other resolutions and regulations, including any and all amendments thereto.

B. Natural environment.

The design and development of all land uses must be properly related to topography, and must, to the maximum extent possible consistent with the other requirements of this chapter, preserve the natural terrain, natural drainage, existing topsoil, trees and other existing vegetation.

C. Lands unsuitable for development.

Land which the city has found to be unsuitable for development because of potential hazards such as flooding, landslides, excessive slope, rock falls, subsidence, high water table, presence of wetlands; or because of unreasonable burdens on the general public such as requirements for the excessive expenditure of public funds, environmental degradation, or congestion in the streets or roads must not be used for building or residential purposes unless the hazards or excessive public burdens are eliminated or will be overcome by appropriate design and construction plans. Slopes of 25 % or greater are presumed unbuildable unless demonstrated otherwise by the developer.

Sec. 38.410.020. - **Community focal point.**

A. All residential subdivisions or site plans that are ten net acres in size or greater, must have a community focal point. Developments may be exempted from this requirement if every lot within the development is within one-half mile of an community focal point. Generally, the focal point must be no less than one acre in size. The focal point must be comprised of a public park, usable open space, transit stop, small scale commercial center, civic use, or any combination of these. The following requirements apply to all neighborhood centers:

1. The geographic center point of the community focal point must be no further than 600 feet from the geographic center point of the development. This requirement may be waived in the following circumstances:

    a. The focal point is a small scale commercial center or is adjacent to a small scale commercial center;

    b. The site is constrained by the presence of watercourses or wetlands;

    c. The site is part of an approved neighborhood plan under the community's land use plan that shows the focal point in a different location; or

    d. The topography of the site presents physical constraints on the property.

2. With the exception of civic and small scale commercial center uses, the developer must install all focal point related improvements as part of the required development improvements. When a multi-phase project is developed, improvements must be installed proportionately with each phase but improvements may be installed in advance of one or more phases. Required improvements must be based on the definition of each feature found in article 7 of this chapter, and/or city standards.

3. The community focal point must have street frontage along 100 % of its perimeter. The city may consider and approve the installation of streets along less than 100 %, but not less than 50 %, of the perimeter in accordance with *38.420.060.*

4. With the exception of civic, public park, and small scale commercial center buildings and grounds, the initial development application must identify a mechanism, acceptable to the city, for maintenance of the community focal point.

5. Areas within community focal point parks are subject to *38.420*.

Sec. 38.410.030. - **Lot.**

A. Dimensions and orientation.

Lot size, width, shape and orientation must be appropriate for the location and contemplated use of the development. In residential developments, a variety of lot sizes must be provided to facilitate housing diversity and choice, and to meet the projected requirements of people with different housing needs. Lot designs with irregular shapes, narrow necks, points and flag shapes are permitted only when the developer can demonstrate that the proposed lot designs are necessary due to topography or other physical constraints on infill. Each lot must contain a satisfactory building site adequate for the uses permitted in its zoning district. Each lot must conform to this chapter, any growth policies, any applicable adopted neighborhood or subarea plan, and to any applicable regulations of the state department of environmental quality.

B. Division by rights-of-way.

No single lot must be divided by a public street, alley, or public or private utility right-of-way or easement that would reduce the amount of buildable land to less than the minimum lot size required by this chapter for the applicable zoning district.

C. Double/through and reverse frontage.

Double/through frontage and reverse frontage lots are prohibited except where essential to provide separation of residential development from arterial streets; to provide access to development adjacent to limited access streets; to overcome topography or other physical conditions; or to overcome specific disadvantages of existing design and orientation. Lots fronting on a street and an alley are not considered double/through or reverse frontage lots.

D. Courtyard access lots.

This includes a series of lots clustered around a internal access easement. Minimum standards:

1. Maximum number of lots served by a courtyard access: Five (this includes lots fronting the street on either side of the courtyard access).

2. Maximum length of a courtyard access: 100 feet (or deeper if approved by the fire marshal). The length may be increased to 150 feet if all structures beyond 100 feet of the street are equipped with automatic fire sprinkler systems.

3. Surface width of courtyard access: 15 feet minimum, to provide access for ambulances. Provisions must be made to keep the access clear of snow, vehicles ("no parking" signs), and vegetation.

4. An easement of 20 feet in width must be secured over the applicable parcels to allow lots legal access to the public street. A maintenance agreement is required for all applicable lots and must be recorded on the plat.

5. Buildings accessed from a courtyard access are limited to two-stories in height, due to aerial apparatus access limitations.

Figure 38.410.030-1. Examples of courtyard access lots.

E. Corner lots.

1. Corner lots must have sufficient width to permit appropriate building setbacks from both streets and provide acceptable visibility for traffic safety.

2. Homes on corner lots must have the same orientation as homes on lots on the interior of the block, unless otherwise approved through an overall development plan.

F. Width.

Lots must have a width sufficient to allow normal construction without the construction encroaching on property lines, and must comply with the building setback requirements of this chapter.

G. Depth.

Except for individual lots for individual townhouses; lots used to meet the requirements of *38.340*; lots serviced by an alley; or when necessitated by physical features of the land, no lot may have an average depth greater than three times its average width.

H. Side lot lines.

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

I. Frontage.

Unless otherwise allowed by this chapter, all lots must have frontage in compliance with *38.400.090.B* to provide, among other things, adequate room for snow removal, lot access and utility easements.

J. Civic uses.

If lots are reserved or identified for civic uses, these lots must be prominent sites at the termination of street vistas, or in the neighborhood center.

K. Exceptions.

Commonly owned lots designated for accessory uses (i.e., stormwater management, open space, utilities) are exempt from the provisions of this section.

L. Numbering.

All tracts except ROW must have an identifying lot number restarting with each block.

Sec. 38.410.040. - **Blocks.**

A. Size and orientation.

Blocks must be designed to ensure a high level of multi-modal connectivity, traffic safety, and ease of traffic control and circulation; to accommodate the special needs of the use contemplated; and to take advantage of the limitations and opportunities of the topography.

B. Block length.

Block length must not be designed, unless otherwise impractical, to be less than 300 feet in length or more than 400 feet in length. Block lengths may be longer than 400 feet if necessary due to topography, the presence of critical lands, access control, or adjacency to existing parks or open space. In no case may a block exceed 1,320 feet in length.

C. Block width.

Blocks must not be less than 200 feet or more than 400 feet in width, except where essential to provide separation of residential development from a traffic arterial or to overcome specific disadvantages of topography and orientation.

D. Rights-of-way for pedestrians.

Rights-of-way not less than 10 feet wide for pedestrian walks are required where deemed necessary to provide circulation or access to parks, open space, schools, playgrounds, shopping centers, transportation, and other community facilities. In addition, no continuous length of block may exceed 600 feet without intersecting a street or pedestrian walk. Pedestrian walks must also be installed at the end of cul-de-sac where deemed appropriate.

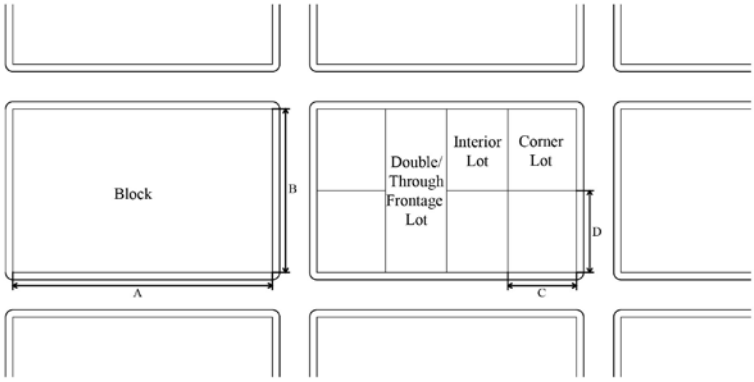
1. Setbacks adjacent to pedestrian rights-of-way less than 30 feet wide must be not less than 10 feet. Setbacks adjacent to pedestrian rights-of-way 30 feet wide or greater must be not less than five feet.

2. The pedestrian walks must be maintained by the adjacent property owner or by the property owners' association. The party responsible for maintenance of pedestrian walks must be identified in the preliminary plat application.

3. Pedestrian walks must be constructed as a city standard sidewalk, and comply with the provisions of *38.400.080* and the landscaping requirements of *38.540.050.E*.

E. Numbering.

Developments which have clearly delineated blocks must use block numbers or letters; each block must contain its own grouping of lot numbers and must be wholly surrounded by a street, separated by a park or pathway, not an alley.



Block Dimensions:
Length A = not more than 400 ft or less than 300 ft
Width B = not more than 400 ft or less than 200 ft
Lot Width = C, Lot Depth = D

Figure 38.410.040-1. Blocks.

Sec. 38.410.050. - **Utilities.**

A. Utilities must be placed underground, wherever technically and economically feasible. Underground utilities, if placed in a street right-of-way, must be installed after the street has been brought to grade and before it is surfaced.

B. If overhead utility lines are used, they must be located at the rear property line unless technically unfeasible.

C. Utility facilities must be designed by utility firms in cooperation with the developer. The facilities are subject to all applicable laws, rules and regulations of the appropriate regulatory authorities.

D. The developer must provide adequate and appropriate utility easements in compliance with *38.410.060*.

Sec. 38.410.060. - **Easements.**

A. Required easements.

Where determined to be necessary, public and/or private easements must be provided for private and public utilities, drainage, vehicular or pedestrian access, etc.

1. In subdivisions, all easements must be described, dimensioned and shown on the final plat in their true and correct location.
2. In all other developments, the proper easements documents must be prepared for review and approval by the city, and filed at the county clerk and recorder's office. The easement documents must be accompanied by an exhibit indicating the dimensions, and true and correct location, of all easements.
3. No lot may be encumbered by a public or private utility easement in a way that would decrease the amount of buildable land to less than the area required by this chapter for the applicable zoning district.
4. The city may require use of its standard easement language and may require recording of separate easement document and maps when in the city's sole discretion it is most appropriate.

B. Private utility easements.

Private utilities include, but are not limited to, natural gas, electricity, telephone, cable and fiber optic lines. The developer must provide private utility easements necessary to extend private utilities to the development, and to provide for the construction and maintenance of private utilities within the development.

1. General.

a. Building setbacks must be coordinated with all provided utility easements. If a utility easement will be greater than the building setback required by this chapter, a note to that effect must be placed on the final plat and/or final site plan as appropriate.

b. Where a utility easement is to be located in an existing, dedicated right-of-way, an encroachment permit must be obtained from the local or state street or road department having jurisdiction.

c. If placed in a city right-of-way, easements must be in a location required by and agreed upon in writing by all of the appropriate utility companies and the review authority.

2. Easement size.

a. Front setback utility easements.

Front setback utility easements must be 10 feet wide, and must always be provided unless written confirmation is submitted to the community development department from all utility companies providing service indicating that front setback easements are not needed.

b. Rear setback utility easements.

The provision of rear setback utility easements is not mandatory unless they are required by any or all of the utility companies to adequately serve the development. If provided, rear setback utility easements on each lot must be six feet wide if adjacent to a public alley and 10 feet if not adjacent to a public alley.

c. Side setback utility easements.

The provision of side setback utility easements is not mandatory unless they are required by any or all of the utility companies to adequately serve the development. If provided, the width of the side setback utility easement must be determined on a case-by-case basis based on the needs of the utility companies.

3. Private utility plans.

a. When the concurrent construction option will be used, based on the provisions of *38.780.030.D*, private utility plans must be included with the preliminary plan submittal.

b. Private utility plans must be provided with any plans and specification submittals for the construction of new water, sewer or street infrastructure as specified in the City of Bozeman Design and Construction Standards.

4. Encroachment.

No building shall be constructed that encroaches on a private utility easement unless written approval from all utility companies is provided to the community development department.

C. Public utility easements.

Public utilities include water, sewer and stormwater facilities that are dedicated to and maintained by the city. Public utility easements shall meet the requirements of the City of Bozeman Design and Construction Standards.

1. A public utility easement must be granted for all public utility mains not located within public street right-of-way. An easement must be at least 30 feet wide for two utility mains and at least 20 feet wide for a single utility main. An additional 10 feet of width is required for each additional main that occupies the easement. Wider easements may be required at the discretion of the city for large utility lines.

2. Public utility easements must be provided for all meter pits and fire hydrants maintained by the city. No permanent structures may be placed within public utility easements unless an encroachment permit has been obtained from the city.

D. Easements for agricultural water user facilities.

1. Except as noted in 2. below, the developer must establish appropriate agricultural water user facility easements that:

   a. Are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of active open ditches or below ground pipelines. Easements may be required when an agricultural water user facility is on adjacent property but an easement necessary to protect the function of the agricultural water user

facility crosses onto the property to be developed. The easement must facilitate the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right;

(1) The easements must ensure the conveyance of water through the land to be developed to lands adjacent to or beyond the development's boundaries in quantities and in a manner consistent with historic and legal rights; and

(2) A minimum easement width of 10 feet is required on each side of irrigation canals and ditches.

b. Are a sufficient distance from the centerline of the agricultural water user facility to allow for construction, repair, maintenance and inspection of the ditch or pipeline; and

c. Prohibit the placement of structures or the planting of vegetation other than grass within the agricultural water user facility easement without the written permission of the facility owner.

2. The developer need not establish agricultural water user facility easements as provided above if the following provisions were met or will be met via the subdivision or site plan process:

a. The average lot size is one acre or less and the developer provides for disclosure, in a manner acceptable to the review authority, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

b. The water rights are removed or the process has been initiated to remove the water rights from the subdivided or developed land. If the water rights have been or will be removed from the land within the development it must be so noted with the preliminary plat or plan submittal. If removal of water rights is not complete upon filing of the final plat or approval of the final site plan, the developer must provide written notification to prospective buyers of the intent to remove the water right and must document that intent, when applicable, in agreements and legal documents for related sales transactions.

c. Easements may be required to maintain an agricultural water user facility if the facility conveys water to off-site users.

3. Stormwater from a development must not be discharged to an agricultural water user facility without written approval from the owner of the facility and corresponding stormwater conveyance easements.

4. If the developer demonstrates that easements have been extinguished pursuant to state law, or the holder of the easement consents in writing to the extinguishment, or the easement is not required per 2. above, the developer may remove ditch laterals from within the subdivision.

5. If agricultural water user facility easements are required, a notice must also be recorded with a final plat or prior to final plan approval, stating that the easements are subject to the requirements of MCA 70-17-112 restricting interference with canal or ditch easements and that irrigation works are subject to MCA 85-7-2211 and 85-7-2212 regarding duties and liability. The notice must include language to assure the duties are binding upon all successors in interest and remain in effect until such time that the agricultural water user facility is abandoned in accordance with

the requirements of Montana Law or alternative requirements are agreed to in writing by all applicable parties. The easements must be prepared as documents separate from a final plat but may be referenced on a final plat.

6. Any other mitigation of impacts to an agricultural water user facility identified during development review must be coordinated with any required easement. Mitigation shall be reasonable, based on site-specific conditions, and shall be developed with consideration of comments received from the water users pursuant to *38.310.010.B*.

E. Easements for City-owned Irrigation Systems.

Easements benefiting city must be provided for irrigation systems and components that will be owned and maintained by the city for use in public rights-of-way and parks that are located on private land pursuant to this section and *38.540.080*.

F. Other easements.

Public access easements for streets and trails must be provided in accordance with the provisions of divisions *38.400* and *38.420* of this chapter.

Sec. 38.410.070. - **Municipal water, sanitary sewer and storm sewer systems.**

A. General.

All municipal water supply, sanitary sewer and storm sewer system facilities must comply with the following requirements:

1. The developer must install complete municipal water and sanitary sewer system facilities, and may be required by the city to install municipal storm sewer system facilities. These systems must be installed in accordance with the requirements of the state department of environmental quality and the city, and must conform with any applicable facilities plan. The city's requirements are contained in the City of Bozeman Design and Construction Standards and the City of Bozeman Modifications to Montana Public Works Standard Specifications, and by this reference these standards are incorporated into and made a part of these regulations. The developer must submit plans and specifications for the proposed facilities to the city and to the state department of environmental quality and must obtain their approvals prior to commencing construction of any municipal water, sanitary sewer or storm sewer system facilities.

2. The cutting of any city street must be done in compliance with the city's street cut policy and City of Bozeman Design and Construction Standards.

3. When a proposed development adjoins undeveloped land, and municipal infrastructure mains would reasonably pass through the new development to the undeveloped land, municipal infrastructure mains must be arranged to allow the suitable development of the adjoining undeveloped land. Municipal infrastructure mains within the proposed development must be constructed to the boundary lines of the tract to be developed, unless prevented by topography or other physical conditions. An exception to this standard may be granted upon written request of the applicant if the applicant demonstrates during the development review process that more efficient design can be accomplished without jeopardizing the public's health, safety and welfare, the purpose of this chapter, or the purpose of the city's land use plan.

B. Municipal water supply system; additional requirements.

Municipal water supply system facilities must also comply with the following requirements:

1. When the city's municipal water main is extended, the length of a dead-end water main typically may not exceed 500 feet in length, unless approved in writing by the city.

2. The length of service lines from the main to the structure may not exceed 150 feet in length, unless approved in writing by the city.

C. Municipal infrastructure requirements and alternative compliance.

1. Whenever any building lots and/or building sites are created inside the city limits or existing lots are annexed, and prior to the issuance of any building permits on such lots or sites, municipal water distribution, municipal sanitary sewer collection, and streets must be provided to the site. Each building site must utilize and be connected to both the municipal water distribution and municipal sanitary sewer collection systems. Installation of improvements is subject to *38.780*.

a. Alternative.

When, in the city's sole determination, it is in the city's long term best interests to allow a building lot or site to be created or developed without immediate access to either municipal water or municipal sewer the city may, at its sole discretion, make such allowance when all of the following have been met:

(1) The non-municipal system to service the lot or site must be designed, reviewed and constructed to meet city standards. Systems serving more than one lot or user must be central systems;

(2) The non-municipal system must be designed and constructed in a manner to allow connection to the municipal system components shown in applicable facility plans to serve the property at such time as it becomes available;

(3) The landowner must provide waivers of right to protest creation of special improvement districts or other financing methods to extend municipal water and sewer services. Such extensions or connections may require construction of system components that are not immediately adjacent to the building lot or site;

(4) The landowner must agree to connect to municipal water and sewer services and abandon and remove non-municipal services when so instructed by the city. Such agreement must be binding on all successors and run with the land;

(5) If the city takes responsibility to operate the non-municipal system it may impose a surcharge to cover extra operational expenses. City operation of the system is at the city's discretion;

(6) The requirement for future connection to the municipal water and/or sewer system, waivers and agreements, and other applicable materials must be either noted on the plat or final plan or a separate notice be recorded at the county clerk and recorder's office so that such notice will appear on a title report or abstract of the property;

(7) No non-municipal water or sewer systems must be constructed until all necessary approvals from the state department of environmental quality, City of Bozeman, county health department, and any other relevant agency have been received; and

(8) The use of municipal water or sewer systems is considered to be the best means to protect the public interest and welfare. The alternative for the use of non-municipal systems is intended to be used sparingly and in extraordinary circumstances. In order to protect the public interest, in approving a non-municipal system the city may impose such conditions of approval as it deems necessary.

2. These improvements must be designed, constructed and installed according to the standards and criteria as adopted and approved by the city prior to the issuance of any building permits.

3. The issuance of a building permit may be allowed prior to completion of the public infrastructure, provided the criteria, standards, and limitations of *38.780.030* are met.

Sec. 38.410.080. - **Grading and drainage.**

A. The developer must install complete drainage facilities in accordance with the requirements of the state department of environmental quality and the city, and must conform to any applicable facilities plan and the terms of any approved site specific Stormwater Drainage Plan. The city's requirements are contained in the City of Bozeman Design and Construction Standards and the City of Bozeman Modifications to Montana Public Works Standard Specifications, and by this reference these standards are incorporated into and made a part of these regulations. The developer must submit plans and specifications to the city and to the state department of environmental quality (if applicable), and must obtain their approvals prior to commencing construction of any drainage system facilities.

B. Provisions must be made for the control and drainage of surface water around buildings. All lots and street boulevard areas must be graded no lower than the back of curb or level of street, whichever is applicable, prior to final plat or final routing for occupancy approval as appropriate. Exceptions may be granted by the city when adequate drainage facilities are provided or the city determines site topography requires. All drainage plans must comply with the requirements of the International Building Code and International Residential Code as adopted by the city, and by this reference these standards are incorporated into and made a part of these regulations.

C. Stormwater retention or detention systems may be located within public parkland, but such areas must not count towards the parkland dedication requirement unless the stormwater systems on parkland are designed, constructed and/or added to so as to be conducive to the normal use and maintenance of the park. Stormwater systems serving multiple lots in separate ownership must not be located on private lots or public rights-of-way. Stormwater retention or detention ponds must be maintained by the property owners' association.

D. Stormwater retention or detention systems serving multiple lots under separate ownership must not be located on private lots without the necessary easements or on public rights-of-way. Such systems must be maintained by a property owners' association or another entity approved by the City.

E. The city may require the developer to establish easements or other perpetual controls to prevent encroachment or disruption of drainageways or facilities.

F. Stormwater facilities generally must not occupy more than one-third of a required front setback. Departures will be considered (per *38.760.050*) for stormwater facilities with Low Impact Development (LID) components, underground components, or exceptional design.

G. All finish grades in landscaped areas must comply with the provisions set forth in *38.540.050.J*.

H. Aboveground stormwater retention/detention facilities in landscaped areas must be designed as landscape amenities. They must be an organic feature with a natural, curvilinear shape. The facilities must have 75 % of surface area covered with live vegetation appropriate for the depth and design of the retention/detention facility, and be lined with native grasses, indigenous plants, wet root tolerant plant types and groupings of boulders to create a functional, yet natural site feature. A cross section and landscape detail of each facility must be submitted with the final landscape plan for review and approval. Facilities with a slope up to and including 10 % grade may be grassed and irrigated to blend into the adjacent landscaped area.

I. The City may prohibit crawl spaces or basements when potential impacts of high groundwater or high groundwater control are found detrimental to stormwater or other water control systems, or to future users of a site.

J. Ground contours must be provided for the tract or development and to a distance of an additional 100 feet.

K. Utilities should not be located below a retention or detention facility.

Sec. 38.410.090. - **Fire protection requirements.**

A. All developments must be planned, designed, constructed and maintained so as to minimize risk of fire and to permit the effective and efficient suppression of fires in order to protect persons and property.

1. The placement of structures must minimize the potential for flame spread and permit adequate access for firefighting equipment; and

2. Adequate firefighting facilities must be provided, including an adequate and accessible water supply and water distribution system.

   a. National Fire Protection Association (NFPA) standards for hydrant systems must be met.

   b. City's requirements as contained in the City of Bozeman Design and Construction Standards and the City of Bozeman Modifications to Montana Public Works Standard Specifications must apply.

Sec. 38.410.100. - **Mail delivery.**

If mail delivery will not be to each individual lot within the development, the developer must provide an off-street area for mail delivery within the development in cooperation with the United States Postal Service. The city will not be responsible for maintaining or plowing any mail delivery area constructed within a city right-of-way.

Sec. 38.410.110. - **Water adequacy.**

A. Subject to *subsection B* and *subsection C*, prior to final approval by the review authority of development occurring under this chapter or chapter 10, the applicant must offset the entire estimated increase in annual municipal water demand attributable to the development pursuant to *subsection D*.

B. Compliance with this section is triggered if the estimated increase in annual municipal water demand attributable to the development exceeds 0.25 acre-feet after accounting for the following items as they relate to the development:

1. Current average annual municipal metered water demand;
2. Water demand offsets from a prior payment of cash-in-lieu of water rights;
3. Water demand offsets from a prior transfer of water rights into city ownership, and;
4. Water demand offsets from an existing water adequacy agreement or similarly purposed document.

C. Compliance with this section is deferred for any of the following developments until the occurrence of future development if the applicant records a notice of restriction on future development in a form acceptable to the review authority with the Gallatin County Clerk and Recorder:

1. An annexation that expressly defers this section under an annexation agreement;
2. Individual lots of a subdivision final plat planned for future multiple-household development;
3. Individual lots of a subdivision final plat planned for future commercial, industrial, or institutional development, or;
4. Future phases of a phased site development.

D. The city will determine the estimated increase in annual municipal water demand attributable to the development. The applicant must offset the estimated increase in annual municipal water demand attributable to the development through one or more of the following means:

1. Transfer of water rights into city ownership that are appurtenant to or associated with the land being developed, or other water rights available from a water bank or similar organzation that may be available for transfer, that the city determines are adequate to offset all or a portion of the municipal water demands attributable to the development.
2. Implementation of onsite and/or offsite water efficiency and conservation measures that reduce or offset the estimated annual municipal water demand attributable to the development by one or more of the following methods:
    a. Installation of high efficiency indoor water using fixtures, appliances, and products that are more water efficient than city-adopted plumbing codes or state or federal minimum standards.
    b. Installation of unirrigated, or minimally irrigated, drought resistant or drought tolerant landscaping that is more water conserving than the minimum requirements outlined in the

most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual and Chapter 40.

c. Installation of high efficiency or water conserving irrigation componentry that exceeds the minimum requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual and Chapter 40.

d. Installation of non-potable water supply systems for landscaping irrigation purposes.

e. Other water efficiency and conservation methods brought forward as part of the development by the applicant that the review authority may at its discretion approve.

3. Payment to the city of cash-in-lieu of water rights for that portion of the estimated annual municipal water demand attributable to the development that is not offset under 1. or 2. above.

E. The unit cost for payment of cash-in-lieu of water rights will be established by city commission resolution. The cash-in-lieu of water rights payment amount provided by the applicant under *subsection D.3* must be calculated using the unit cost effective on the date the payment is made to the city. The director of public works must deposit all payments received under this section, upon receipt, in the cash-in-lieu of water rights fund.

F. The disposition or transfer of any existing water rights appurtenant to or associated with the lands upon which development is proposed that are determined by the city to be adequate to offset all or a portion of the estimated municipal water demands atrributatele to the development must be consistent with an annexation agreement, condition of approval, or water adequacy agreement, as applicable.

1. Any other water rights associated with the land that are not transferred to the City, or are not intended to be put to beneficial use within the development, must either be either severed from the land or terminated by the water rights owner.

2. A subdivider or other developer must:

a. Reserve all or a portion of the appropriation water rights owned by the owner of the subject property, transfer the water rights to a single entity for use by landowners within the subdivision or other development who have a legal right to the water, and reserve and sever any remaining surface water rights from the land;

b. If the land to be subdivided or otherwise developed is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement that is administered through a single entity and that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

c. Reserve and sever all surface water rights from the land;

d. Prior to severing water rights from the land the subdivider or other developer must consult with the city on whether the water rights are suitable to meet the requirements of this section. The city may require transfer of water rights to mitigate impact of development.

G. The city manager must adopt, and may from time to time amend, administrative procedures to implement this section. The administrative procedures may include, but are not limited to, the following items:

1. Standards established by the director of utilities to determine the estimated increase in annual municipal water demand attributable to development.
2. Standards established by the director of utilities to determine water demand offset amounts for implementation of water efficiency and conservation measures.
3. Standards established by the director of utilities governing the determination of adequacy of water rights transferred into city ownership and the amount of water demand offsets for an adequate water rights transfer.
4. Standards established by the director of utilities that establish and govern the use of water adequacy credits for that portion of demand offsets provided by an applicant that are in excess of the estimated increase in annual municipal water demand attributable to the development.
5. A process that provides for administrative appeals of determinations made by the review authority under this section.
6. Standards governing acceptance of water right transfers into city ownership. The standards may require a water adequacy agreement to be entered into between the city and development applicant that at a minimum provides for performance guarantees, security against defaults, the establishment and use of water demand offsets or water adequacy credits, and recordation with the Gallatin County Clerk and Recorder.
7. Standards that incentivize the transfer of water rights to the city which have the greatest utility to the city and future development.

DIVISION 38.420. - **PARK AND RECREATION REQUIREMENTS**

Sec. 38.420.010. - **General.**

Except as provided in *38.420.020.B*, all subdivisions and residential developments subject to *38.740* must comply with the provisions of this division. The purpose of this division is to comply with MCA 76-25-404; to advance the city's adopted plans for parks, trails and open space; to provide equal protection and treatment for different housing types and review processes with similar impacts on demand for service; to advance public health by encouraging and facilitating physical activity; and to address housing affordability.

Sec. 38.420.020. - **Park area requirements.**

The requirements of this division are based on the community need for parks and the development densities identified in the land use plan and this chapter.

A. The area required by this subsection must be provided as a land dedication unless an alternate method of compliance is approved by the review authority.

1. When the net residential density of development is known, 0.03 acre per dwelling unit of land must be provided.

    a. When the net residential density of development is known at the time of preliminary plat and net residential density is in excess of eight dwellings per acre, the requirement for dedication for that density above eight dwellings per acre must be met with a cash donation in-lieu of the additional land unless specifically determined otherwise by the review authority.

    b. If net residential density is in excess of eight dwellings per acre, the requirement for dedication for that density above eight dwellings per acre must be met with a cash donation in-lieu.

    c. When developed as group quarters, such as group living or community residential facilities, rather than individual dwelling units, in lieu of 0.03 acres per dwelling unit, an area of 575 square feet per resident must be provided.

    d. Land dedication or its equivalent must not be required for any dwelling units or group quarters occupancy in excess of the following:

        (1) For development within the R-A, R-B, R-C, R-D and REMU zoning districts, the maximum net residential density must be 12 dwelling units or 27 persons in group quarters per acre.

        (2) For development within other zoning districts not previously specified and developed for residential uses, the maximum net residential density must be 12 dwelling units or 27 persons in group quarters per acre.

2. If net residential density of development is unknown, 0.03 acres per dwelling unit must be provided as follows:

a. For initial subdivision or other development:

(1) Within the R-A, R-B, R-C, R-D and REMU zoning districts: an area equal to that required for eight dwelling units or 13.5 persons in group quarters per net acre.

(2) Within other zoning districts which are intended for residential development: the equivalent to an area dedication for six dwelling units or 13.5 persons in group quarters per net acre must be provided as cash-in-lieu.

b. For subsequent development when net residential density becomes known, the net residential density per acre above the minimum established above must be rounded to the nearest whole number and applied as shown in the following table. All prior provision of parkland for the project site must count towards the maximum required dedication.

Table 38.420.020-1. Parkland Dedication Provisions

Zoning District	Required Dedication per Dwelling	Maximum Required Dedication per Acre	Cash-in-Lieu Required
R-A, R-B, R-C, R-D and REMU	.03 acres or equivalent	12 dwellings	Yes
All other districts	.03 acres or equivalent	12 dwellings	Yes
	Required area per person	**Maximum required dedication per net acre**	
Group quarters	575 square feet or equivalent	27 persons	Yes

B. Exceptions. Land dedication or its equivalent cash donation in-lieu of land dedication must not be required for:

1. Land proposed for subdivision into parcels larger than five acres. Development of a parcel larger than five acres may require parkland dedication pursuant to *subsection C*.

2. Subdivision into parcels which are all non-residential.

3. A subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles or manufactured homes.

4. A subdivision in which only one additional parcel is being created. Development of the additional parcel may require parkland dedication pursuant to *subsection C*.

5. A development for which the required amount of parkland is shown to have already been provided.

6. *Subsection A.2* does not apply to subsequent site development located within major subdivisions which received preliminary plat approval after July 1, 1973, and which received final plat approval prior to October 1, 2005.

7. Development creating only one additional dwelling unit or increasing occupancy of group quarters by no more than four persons.

C. Development of a lot previously exempted from park dedication must be reviewed pursuant to this article. If the lot is no longer exempt from the park dedication requirement the development is subject to *subsection A* above.

D. To ensure coordination when parks are being created by a multiphase development, the entire parkland dedication must be accomplished at the time of the initial phase of the development. If necessary, this may be accomplished through the grant of public access easements during later phases.

E. The following land is unacceptable for parkland dedication:

1. Required watercourse setbacks unless approved by the review authority for incorporation into the design of the larger park area.

2. Stormwater retention or detention ponds, unless approved by the review authority and designed and constructed to the city's adopted standards for joint park/stormwater control use. The city may accept such land for dedication to the city but must be maintained by the property owners' association unless and until responsibility is assumed by affirmative action of the city.

3. Land with a grade of 25 % or greater, unless the city commission makes specific findings in its favor as part of the adoption of a park master plan.

4. Other land such as landslides, rock falls, or subsidence areas, debris deposition areas, environmentally contaminated areas, and land containing deteriorated structures or other public or private nuisances, unless the review authority determines the hazards or excessive public burdens can be eliminated or will be overcome by appropriate design and construction plans.

F. When land offered to the city for dedication as parkland exceeds the amount required, the additional usable land may be dedicated to the city in the same manner and subject to the same standards as minimum required areas.

G. Public use. Land donated or dedicated to meet the requirements of this section must be provided for public use. The developer must execute the appropriate public access easements on privately-owned common land. The easements must be held by the city. The city's responsibilities for parkland dedicated by easement must be the same as for fee simple parkland dedication.

Sec. 38.420.030. - **Cash donation in-lieu of land dedication.**

A. The review authority may determine whether the park dedication must be a land dedication, cash donation in-lieu of land dedication or a combination of both. For the purposes of this section construction of park improvements above the minimum improvements required by ordinance may be allowed as a method of cash donation. When making this determination, the review authority must consider the factors established by resolution of the city commission. The approval authority is governed by *38.700.010*.

B. When a combination of land dedication and cash donation in-lieu of land dedication is required, the required cash donation may not exceed the proportional amount of the total required mitigation not covered by the land dedication. Nothing in this section prohibits a developer from offering more than the required minimum.

C. Cash donation in-lieu of land dedication must be equal to the fair market value of the amount of land that would have been dedicated. The fair market value is the value of the unsubdivided, unimproved land after it has been annexed and given a municipal zoning designation.

The city commission may adopt procedures to be used by the director of parks and recreation to determine the fair market value. The amount of the cash-in-lieu to be provided must equal the city's

established fair market value per square foot times the amount of land required to be dedicated. The city must periodically update the market value as deemed necessary to reflect changes in the price of land. The valuation used for calculating the amount due will be the valuation in effect at the time an application for final plat or final plan approval is complete.

1. Alternative. A developer may provide an alternate market valuation which complies with the following:

   a. The developer must provide an appraisal of the fair market value by a certified real estate appraiser of their choosing and is responsible for the appraisal fee.

   b. When a land value must be established for cash-in-lieu of land dedication to satisfy the requirements of *38.420.020*, and the value of the land in an unsubdivided, unimproved, but annexed and zoned condition cannot be reasonable determined, the developer may provide an appraisal of residentially zoned property with a zoning designation that allows the density of dwellings proposed for development.

   c. The appraisal provided for the purpose of this alternative must be conducted not sooner than 90 days prior to the submittal of an application for final plat or final site plan approval.

D. Where a cash donation has been accepted in-lieu of land dedication, the amount of cash donation must be stated on the final plat or plan as appropriate.

E. Where a cash payment or construction of improvements has been accepted in-lieu of land dedication, the city must record in the meeting minutes or other written decision why the dedication of land for parks was undesirable.

F. Use of cash donations.

   1. The city must use a cash donation for development or acquisition of parks to serve the development.

   2. The city may use the cash donation to acquire or develop parks or recreational areas within its jurisdiction or for the purchase of public open space or conservation easements, only if:

      a. The park, recreational area, open space or conservation easement is within a reasonably close proximity to the proposed development; and

      b. The city commission has formally adopted a citywide park plan that establishes the needs and procedures for use of the cash donation.

Sec. 38.420.040. - **Park use.**

As part of an individual park master plan, the developer must indicate the proposed use of the park as active, passive, playground, ball field, etc. However, the final use of the park must be determined by the review authority.

Sec. 38.420.050. - **Location.**

A. General.

The review authority, in consultation with the developer and parks department may determine suitable locations for parks and playgrounds. Parkland must be located on land suitable to and

supportive of the activities and functions depicted in the relevant park plan, and unless the park plan indicates a requirement for another configuration, should be kept in a large block.

B. Subarea or neighborhood plans.

If a subarea or neighborhood plan has been adopted for the area, the subdivision must comply with the subarea or neighborhood plan for the location of parks.

Sec. 38.420.060. - **Frontage.**

A. Parkland, excluding linear trail corridors, must have frontage along 100 % of its perimeter on public or private streets or roads. The city may consider and approve the installation of streets along less than 100 %, but not less than 50 %, of the perimeter when:

1. Necessary due to topography, the presence of critical lands, or similar site constraints; and/or
2. When the following elements are included:
   a. When direct pedestrian access is provided to the perimeters without street frontage;
   b. When additional land area is provided in the park to accommodate the off-street parking which would have otherwise been provided by the additional length of perimeter streets and the additional land is developed as a parking area; or
   c. When additional land area is provided in the park to accommodate the off-street parking which would have been provided by the additional length of perimeter streets and, in lieu of the constructed parking area, an equivalent dollar value of non-parking improvements within the park are provided according to the individual park plan.

The park in the left image is surrounded by streets on all four sides. The open spaces in the right image are bordered by streets on one or two sides, but their configuration with a perimeter walkway and dwelling units facing the park/open space are an acceptable design option.

Figure 38.420.060-1. Acceptable park frontages.

Sec. 38.420.070. - **Linear parks.**

A. General.

If consistent with the land use plan or citywide park plan, and if reviewed and approved by the review authority, linear parks must be dedicated to the city to provide corridors for recreation pathways as defined in *38.420.100*.

1. Pathway corridors within required watercourse setbacks must not be dedicated to the city as linear parks and such land may not be used to satisfy parkland dedication requirements. Instead, cash donation in-lieu of land dedication credit must be granted only for the cost of constructing Class II or III recreational trails if public access is provided. The developer must provide a detailed cost estimate for installation of the trail, for review and acceptance by the city, to determine the cash donation credit.

    a. Within required watercourse setbacks, a public access easement that is at least 25 feet in width must be provided to ensure adequate room for the construction, maintenance and use of the trail.

B. Width.

To ensure adequate room for pathway construction, maintenance and use, linear parks must be at least 25 feet in width.

C. Maintenance.

These areas must be maintained in accordance with *38.420.100.E* until an alternative method (e.g., a citywide parks maintenance district) of funding and maintaining the linear park is established.

Sec. 38.420.080. - **Park development.**

A. General.

Developers must consult any adopted citywide park plan, and with the parks department which implements the plan, determine the types of parks needed for the proposed development and surrounding area. Parks must be developed in accordance with the citywide park plan and any approved park master plan. At a minimum, all parks must be improved to the following standards by the developer, prior to final plat or final occupancy approval as appropriate:

1. Minimum required improvements to land dedications.

The developer must level any park area, amend the soil, seed disturbed areas to allow mowing with turf type mowers, and install an underground irrigation system in compliance with city standards and specifications, unless otherwise provided in an approved Park Master Plan.

a. Parks must contain drought tolerant landscaping unless otherwise provided in an approved park master plan.

2. Irrigation.

Parks must have an irrigation water supply that is legally and physically adequate to meet the irrigation water demands of the park landscape. The developer must ensure the city obtains legal ownership of any irrigation water rights used to irrigate parks.

a. Wells may be used to irrigate parkland subject to *38.540.080*.

b. Existing irrigation water rights appurtenant to parkland may be used for irrigation subject to city review and approval.

c. The city's municipal water supply may be used for irrigation of parkland, but only if wells and existing irrigation water rights are inadequate to meet the water demands of the parkland.

B. Boundaries.

The park boundary bordering all private lots must be delineated at the common private/public corner pins, with flat, flexible fiberglass posts, a minimum of six feet in length with no less than two feet driven into the ground. Each post must be labeled with a permanent glued on sign stating "Park Boundary" or "Property Boundary." Other forms of boundary marking may be approved by the planning or other appropriate department.

C. Sidewalks.

Sidewalks, when required within the development, must be installed by the developer at points where the park borders or crosses public or private streets.

D. Stormwater detention/retention ponds.

Stormwater retention or detention ponds may be located within public parkland, but such areas must not count towards the parkland dedication requirement unless the stormwater ponds on parkland are designed, constructed and/or added to so as to be conducive to the normal use and maintenance of the park. Stormwater ponds serving multiple lots in separate ownership must not be located on private lots or public rights-of-way. Stormwater retention or detention ponds must be maintained by the property owners' association.

E. Clean up required.

All fencing material, construction debris and other trash must be removed from the park area.

Sec. 38.420.090. - **Waiver of required park dedication.**

A. The review authority may waive the park dedication or cash donation in-lieu of land dedication requirement if land equal to or exceeding the area of the dedication otherwise required by this division is set aside by one of the following means:

1. The proposed development provides: long-term protection of critical wildlife habitat; cultural, historical, archaeological or natural resources; agricultural interests; or aesthetic values.

2. The proposed development provides for land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development.

3. The development is a land subdivision created by rent or lease (i.e., manufactured housing communities and recreational vehicle parks) with land permanently set aside for parks or playgrounds within the subdivision for rent or lease for the common use of the residents of the development.

   a. These park or playground areas must be maintained by the property owners' association.

4. The developer 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.

   a. The land being developed must be within the service area, as designated by an adopted citywide park plan, of the dedicated parkland; and

   b. The developer must dedicate the off-site parkland to the city; or

   c. The developer must execute the appropriate public access easements on privately-owned land. The easements must be held by the city. The city's responsibilities for parkland dedicated by easement must be the same as for fee simple parkland dedication.

5. The developer provides land outside the development that affords long-term protection of critical wildlife habitat; cultural, historical, archaeological or natural resources; agricultural interests; or aesthetic values; and the area of the land to be subject to long-term protection equals or exceeds the area of the dedication otherwise required by this division.

6. A subdivider dedicates land to School District 7 to provide some or all of the land area required by *38.420.020*. The area dedicated to the school district may be used for school facilities or buildings, including but not limited to playgrounds or other recreational facilities. Any dedication to the school district must be subject to the approval of the review authority and acceptance by the board of trustees of School District 7.

   a. In approving a dedication of land to the school district the review authority must make affirmative findings that:

      (1) Adequate public parkland already exists within the vicinity of the dedicating subdivision to meet service standards established by the city's parks master plan;

      (2) The land is located within the city limits or within one mile of city limits;

      (3) The school district has established a issue plan to demonstrate how the dedicated property will be utilized;

      (4) The school district's issue plan must describe any coordination intended for joint use of the property by the school district and the city; and

      (5) The option for cash-in-lieu of land described in *38.420.030* must not be used in place of a land dedication to the school district.

   b. It must be noted in a certificate on the plat and in any deed to the land that if School District 7 later chooses to dispose of the property, it must revert to the city to be used for park purposes. The land must be transferred to the city from School District 7 with clear title and in a condition meeting the minimum development standards for parks established in *38.420.080*.

7. If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has previously been subdivided or developed, and sufficient parkland dedication or cash donation in-lieu of land dedication has been provided from the area that has been previously subdivided or developed to meet the requirements of this section for the entire tract being developed, the city commission must issue an order waiving the land dedication and cash donation requirements for the subsequently developed area.

B. *38.420.020* requires mitigation of recreational impacts, usually by dedication of land for parks. Under defined circumstances in this section the required dedication may be waived. However, the underlying issue of mitigating recreational impacts must be addressed. If an application provides one or more of the alternatives under *subsection A* above, then the required mitigation has been partially provided. To complete the mitigation, the alternative to land dedication must allow public access. The developer must execute the appropriate public access easements in a form acceptable to the city attorney prior to final approval of the development. The easements must be held by the city.

Sec. 38.420.100. - **Recreation pathways.**

A. General.

Developers must install pathways in accordance with this chapter, the land use plan, the most recently adopted long-range transportation plan, any adopted citywide park plan, and any adopted individual park master plan, and must comply with City of Bozeman Design Specifications.

B. Pathway categories.

The development review committee (DRC) is responsible for determining whether a pathway is a transportation pathway or a recreation pathway. For subdivision proposals, this determination must be made during the pre-application process.

1. Recreation pathways.

The review authority may require developers to install recreation pathways and/or to provide recreational and physical fitness opportunities within the development as part of the required development improvements. Recreation pathways include the following:

a. Pathways that do not connect major residential, employment, educational or service nodes;

b. Pathways that connect parks, but do not connect major residential, employment, educational or service nodes;

c. Pathways that are not ADA accessible due to topography;

d. Pathways located within parks; and

e. Class II and III trails.

2. Transportation pathways.

For the definition of transportation pathways, see *38.400.110*.

C. Related facilities.

If pathways are proposed or required, stream crossings and other similar improvements, where necessary, must be installed. Bridge design and construction must comply with city specifications and standards, and must be submitted to the community development department for review and approval. Any necessary permits for bridges must be obtained by the developer from the appropriate agency prior to installation of the stream crossings.

D. Trail requirements.

The class of the trail must be determined by the review authority and the trail must be designed and constructed according to any adopted park or recreation plan or other city specifications and standards. Trails and bridges must meet Americans with Disabilities Act (ADA) specifications for recreational facilities and maintain a natural appearance. Trail plans and specifications must be submitted to the planning and parks departments for review and approval prior to installation.

E. Pathway maintenance.

Recreation pathways within the proposed development must be maintained, in conformance with an approved maintenance plan, by the developer until 50 % of the lots or condominium units are sold. Thereafter the property owners' association is responsible for maintenance. The property owners' association may establish an improvement district to collect assessments to pay for the maintenance.

F. Pathway easements.

Where pathways cross private land or common open space, the proper public access easements must be provided. Public access easements for pathways must be at least 25 feet wide.

G. Linear parks.

Corridors for recreation pathways may be dedicated to the city in accordance with *38.420.070*.

H. Park and pathway development frontages.

All developments adjacent to existing or planned trails or parks are subject to the standards of *38.400.080.B*.

Adjacent dwelling units in both examples face the pathway/open space and feature a direct pedestrian connection to the pathway/open space.

Figure 38.420.100-1. Acceptable park and pathway development frontages.

ARTICLE 5. -

PROJECT DESIGN

DIVISION 38.500. - INTRODUCTION 5-4

Sec. 38.500.010. - Purpose..... 5-4

Sec. 38.500.020. - Applicability and compliance. 5-4

DIVISION 38.510. - SITE PLANNING AND DESIGN ELEMENTS 5-7

Sec. 38.510.010. - Purpose. 5-7

Sec. 38.510.020. - Applicability and compliance. 5-7

Sec. 38.510.030. - Relationship to adjacent properties. 5-7

Sec. 38.510.040. - Non-motorized circulation and design. 5-9

Sec. 38.510.050. - Vehicular circulation and parking. 5-14

Sec. 38.510.060. - Location and design of service areas and mechanical equipment. 5-16

DIVISION 38.520. - BUILDING DESIGN 5-21

Sec. 38.520.010. - Purpose. 5-21

Sec. 38.520.020. - Applicability and compliance. 5-21

Sec. 38.520.030. - Building character. 5-21

Sec. 38.520.040. - Building massing and articulation. 5-21

Sec. 38.520.050. - Building details. 5-26

Sec. 38.520.060. - Building materials. 5-27

Sec. 38.520.070. - Special residential frontages. 5-30

Sec. 38.520.080. - Structured parking facilities. 5-31

DIVISION 38.530. - PARKING 5-33

Sec. 38.530.010. - General provisions. 5-33

Sec. 38.530.020. - Stall, aisle and driveway design. 5-34

Sec. 38.530.030. - Maintenance of parking areas. 5-38

Sec. 38.530.040. - Number of vehicle parking spaces required. 5-38

Sec. 38.530.050. - Joint use of parking facilities. 5-47

Sec. 38.530.060. - Off-site parking. 5-48

Sec. 38.530.070. - Number of bicycle parking spaces required. 5-48

Sec. 38.530.080. - Off-street loading berth requirements. 5-52

DIVISION 38.540. - LANDSCAPING 5-53
Sec. 38.540.010. - Purpose..... 5-53
Sec. 38.540.020. - Applicability, implementation, and scope; adoption of Manual. 5-53
Sec. 38.540.030. - General landscape and irrigation provisions..... 5-54
Sec. 38.540.040. - Landscape and irrigation plan review. 5-54
Sec. 38.540.050. - Mandatory landscape and irrigation provisions..... 5-54
Sec. 38.540.060. - Landscape and irrigation performance and design standards. 5-60
Sec. 38.540.070. - Fences, walls and hedges. 5-60
Sec. 38.540.080. - Landscaping and irrigation of public lands..... 5-62
Sec. 38.540.090. - Departure from landscape and irrigation requirements. 5-63
Sec. 38.540.100. - Landscape and irrigation completion. 5-63
Sec. 38.540.110. - General maintenance..... 5-63

DIVISION 38.550. - SIGNS..... 5-65
Sec. 38.550.010. - Findings and purpose. 5-65
Sec. 38.550.020. - Sign permit requirements. 5-66
Sec. 38.550.030. - Prohibited signs. 5-66
Sec. 38.550.040. - Temporary signs; permit required. 5-67
Sec. 38.550.050. - Signs exempt from permit requirements. 5-67
Sec. 38.550.060. - Signs permitted upon the issuance of a sign permit. 5-69
Sec. 38.550.070. - Wayfinding signage. 5-74
Sec. 38.550.080. - Comprehensive sign plan..... 5-76
Sec. 38.550.090. - Multi-tenant complexes with < 100,000 SF of ground floor area. 5-77
Sec. 38.550.100. - Multi-tenant complexes with > 100,000 SF of ground floor area. 5-77
Sec. 38.550.110. - Indoor shopping mall complexes with > 100,000 SF of ground floor area. 5-77
Sec. 38.550.120. - Illumination. 5-78
Sec. 38.550.130. - Street vision triangles. 5-78
Sec. 38.550.140. - Required address signs. 5-78
Sec. 38.550.150. - Billboards and other off-premises advertising. 5-78
Sec. 38.550.160. - Signs erected in conjunction with nonprofit activities on public property. 5-79
Sec. 38.550.170. - Historic or culturally significant signs. 5-79
Sec. 38.550.180. - Application. 5-80
Sec. 38.550.190. - Maintenance of permitted signs. 5-80
Sec. 38.550.200. - Nonconforming signs. 5-81
Sec. 38.550.210. - Substitution. 5-81

DIVISION 38.560. - LIGHTING 5-82
Sec. 38.560.010. - Purpose..... 5-82
Sec. 38.560.020. - General..... 5-82
Sec. 38.560.030. - Street lighting..... 5-83
Sec. 38.560.040. - Site lighting..... 5-83
Sec. 38.560.050. - Sports and athletic field lighting. 5-86
Sec. 38.560.060. - Lighting specifications for all lighting..... 5-86
Sec. 38.560.070. - Historic lighting..... 5-86
Sec. 38.560.080. - Post installation inspection..... 5-87
Sec. 38.560.090. - Compliance monitoring. 5-87
Sec. 38.560.100. - Nuisance glare and inadequate illumination levels..... 5-87
Sec. 38.560.110. - Nonconforming lighting..... 5-87

DIVISION 38.500. - **INTRODUCTION**

Sec. 38.500.010. - **Purpose.**

This article implements the Bozeman's land use plan. Overall, this article:

A. Provides clear objectives for those embarking on the planning and design of development projects in Bozeman;

B. Preserves and protects the public health, safety, and welfare of the citizens of Bozeman;

C. Ensures that new commercial and multi-household development is of high quality and beneficially contributes to Bozeman's character;

D. Ensures that new developments within existing neighborhoods are compatible with, and enhance the character of Bozeman's neighborhoods;

E. Promotes an increase in walking and bicycling throughout the City;

F. Enhances the livability of Bozeman's residential developments;

G. Maintains and enhances property values within Bozeman.

Sec. 38.500.020. - **Applicability and compliance.**

The provisions in this article apply to development. However, since each division within it addresses different design and development elements, the applicability of each division is clarified at the beginning of the division. For instance, some divisions may only apply to new commercial and multi-household development, while individual sections in *38.530* only apply to specific housing types.

A. Relationship to other codes and documents.

Where provisions of this article conflict with provisions in any other section of the UDC, this article prevails unless otherwise noted. Relationship with other notable design provisions and guidelines:

1. For sites within the city's established neighborhood conservation overlay district (NCOD), the provisions of *38.240.020* supersede the provisions of this article. However, the review authority may apply the provisions of this article in the event of a conflict, where the review authority determines that the provisions of this division help new development better meet the purpose of the NCOD per *38.240.020*.

2. The community development director may create and maintain examples of best practices to implement the standards of this chapter to assist citizens and design professionals by providing illustrative examples of the purpose of the city's guidelines and regulations but the examples are not a regulation.

B. Thresholds for application of standards.

For building additions and remodels, three different thresholds have been established to gauge how the project design standards in this article are applied to such projects. See *Figure 38.500.020* below for examples of site development and the respective types of improvements required under each of the three levels of improvements.

1. Level I Improvements include all exterior remodels, building additions, and/or site improvements commenced within a three-year period (based on the date of permit issuance) that affect the exterior appearance of the building/site and/or increase the building's area by up to 20 %. The requirement for such improvements is that the proposed improvements meet the standards and do not lead to further nonconformance with the standards. For example, if a property owner decides to replace a building facade's siding, then the siding must meet the applicable exterior building material standards, but elements such as building articulation (see *38.520.040*) would not be required.

2. Level II Improvements include all improvements commenced within a three-year period (based on the date of permit issuance) that increase the building's area by more than 20 %, but not greater than 50 %. All standards that do not involve repositioning the building or reconfiguring site development apply to Level II Improvements. For example, if a property owner of an existing home in the B-2 zoning district wants to convert the home to an office and build an addition equaling 45 % of the current building's area, then the following requirements apply:

    a. The location and design of the addition/remodel must be consistent with the standards of the applicable zoning district in *article 2*, which address building frontages, entries, and parking lot location, and the front setback landscaping standards of *38.540.050*. For such developments seeking additions to buildings where off-street parking location currently does not comply with applicable parking location standards, building additions are allowed, provided they do not increase any current nonconformity and generally bring the project closer into conformance with the standards (see *38.530*).

    b. Compliance with applicable site planning and design elements (*38.510*).

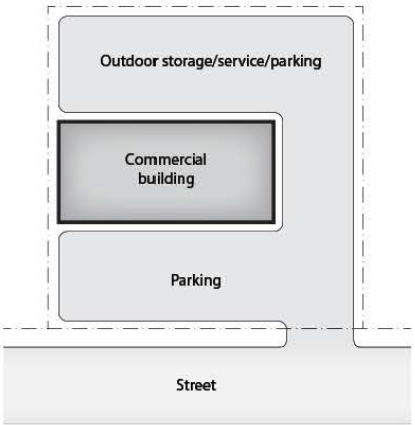
    c. Compliance with all building design provisions of *38.520*, except architectural scale and materials provisions related to the existing portion of the building where no exterior changes are proposed. The entire building must comply with building elements/details and materials standards of *38.520.050* and *38.520.060*, and blank wall treatment standards of *38.260.140.B*.

    d. Compliance with the off-street parking, signage, and lighting provisions of *38.530*, *38.540*, *38.550*, and *38.560* that relate to proposed improvements.

    e. Compliance with the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

3. Level III Improvements include all improvements commenced within a three-year period (based on the date of permit issuance) that increase the building's area by more than 50 %. Such developments must conform to all applicable standards. Site improvements are addressed in *38.740.130* and *38.740.140*.

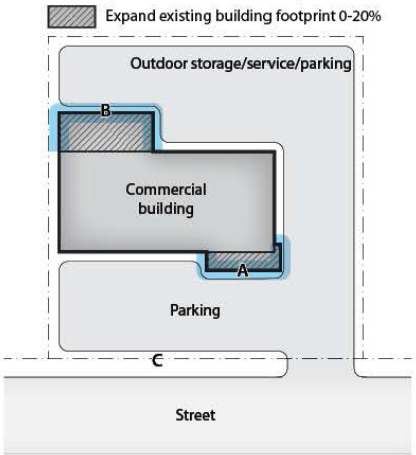
Existing



Pre-existing non-conformities:

- Parking in front of building
- No pedestrian connection to entry
- Doesn't meet streetscape and landscaping standards
- Facade doesn't meet standards

Level I Improvement Example

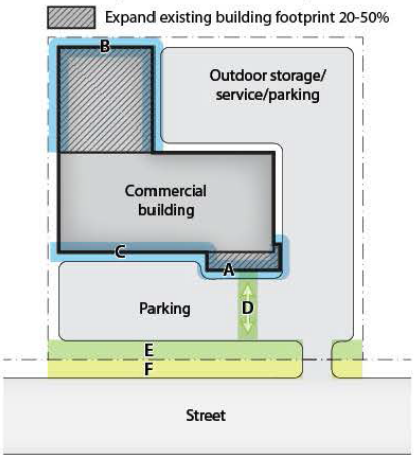


A. Entry addition meets facade and building design/ materials standards

B. Rear addition meets applicable building design/ materials standards

C. Landscaping improvements are encouraged but not required.

Level II Improvement Example



A. Entry addition meets facade and building design/ materials standards

B. Rear addition meets applicable building design/ materials standards

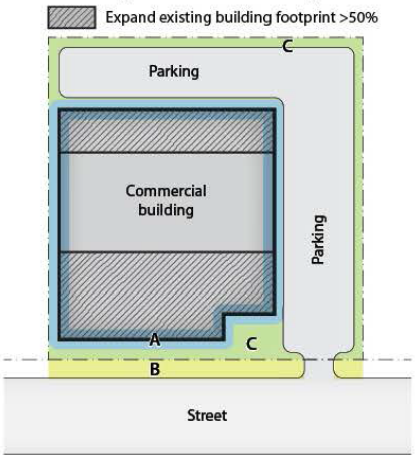
C. Facade upgraded to meet applicable facade, building design/materials standards

D. Pedestrian access improvements

E. Parking lot landscaping improvements

F. Landscaping improvements are encouraged but not required.

Level III Improvement Example



A. Entire building meets applicable facade and building design standards

B. Landscaping improvements are encouraged but not required.

C. Site design conforms with division 38.510 provisions (site planning and design elements).

Figure 38.500.020-1. Examples of site development and the respective types of improvements required under each of the three levels of improvements.

DIVISION 38.510. - **SITE PLANNING AND DESIGN ELEMENTS**

Sec. 38.510.010. - **Purpose.**

A. Preserve and protect the public health, safety, and welfare of the citizens of Bozeman.

B. To promote thoughtful layout of buildings, parking areas, and circulation, service, landscaping, and amenity elements that enhances Bozeman's visual character, promotes compatibility between developments and uses, and enhances the function of developments.

C. Also see the individual "purpose" statements for each section in this division.

Sec. 38.510.020. - **Applicability and compliance.**

The provisions of this division apply to all development within Bozeman, except single-, two-, three-, and four-unit dwellings, townhouses, and rowhouses with four or fewer dwelling units on individual lots. The excepted dwellings are subject to the form and intensity standards in *article 2*. Also:

A. For clarification on the relationship between the provisions in this division and other documents and codes, see *38.500.020.A*.

B. For the application to building additions, remodels see *38.500.020.B*.

C. For clarification on how the provisions of this division are applied to site improvements, see *38.740.120*, *38.740.130*, and *38.740.140*.

D. The review authority may waive or relax these provisions in the industrial zones depending on the type of use, number of anticipated employees and customers, and the site's physical context. A greater number of employees and/or customers and higher visibility levels warrant a greater application of building design standards.

Sec. 38.510.030. - **Relationship to adjacent properties.**

A. Purpose.

1. To promote functional and visual compatibility between developments.

2. To protect the privacy of residents on adjacent properties.

B. Balconies alongside and rear property lines adjacent to residentially zoned properties.

Balconies or rooftop decks within 15 horizontal feet of a side property line abutting a residentially zoned property must feature a railing system that is at least 50 % opaque. Specifically, 50 % of the area below the railing must be a sight-obscuring structure.

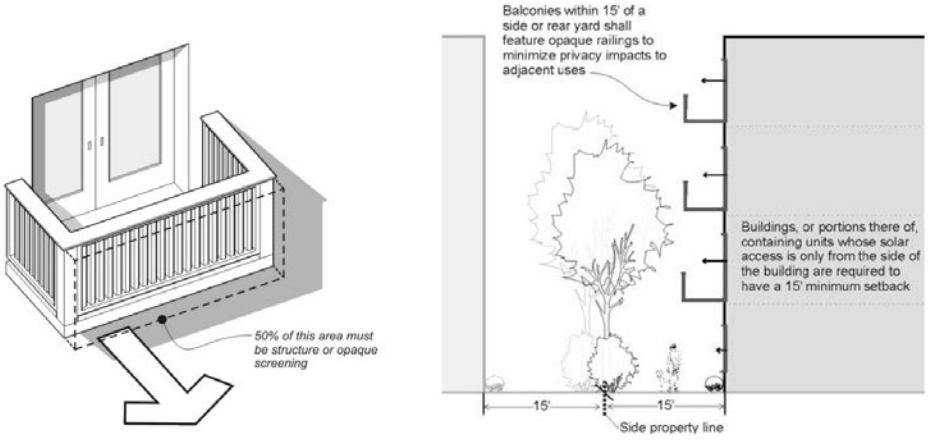


Figure 38.510.030-1. Privacy standards for balconies within 15 feet of side or rear property lines.

Departures from this standard will be allowed if the balcony will not cause visual or privacy impacts due to its location, orientation, design or other consideration.

C. Light and air access and privacy alongside and rear property lines.

Buildings or portions thereof containing multi-household dwelling units whose only solar access (windows) is from the applicable side of the building (facing towards the side property line) must be set back from the applicable side or rear property lines at least 15 feet. See *Figure 38.520.030-1* and *Figure 38.520.030-2*. Departures will be allowed where it's determined that, based on the unique site context, the proposed design won't create a compatibility problem in the near or long term.

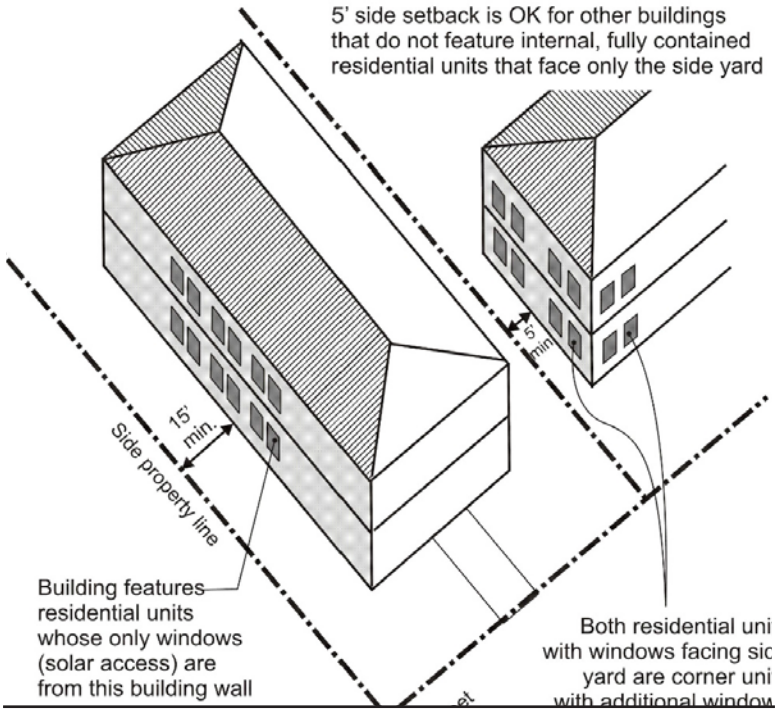


Figure 38.510.030-2. Light and air access and privacy standards for multi-household residential buildings alongside/rear property lines.

Sec. 38.510.040. - **Non-motorized circulation and design.**

A. Purpose.

1. To improve the pedestrian and bicycling environment by making it easier, safer, and more comfortable to walk or ride among residences, to businesses, to the street sidewalk, to transit stops, through parking lots, to adjacent properties, and connections throughout the city.

2. To enhance access to on- and off-site areas and pedestrian and bicycle infrastructure.

B. Access to sidewalk.

All buildings must feature pedestrian connections to a sidewalk. See *subsection D* below for access design requirements.

Figure 38.510.040-1. Examples of direct pedestrian access to buildings from the street.

C. Internal circulation.

1. For sites with multiple buildings, pedestrian paths or walkways connecting businesses and residential entries on the same development site must be provided. Routes that minimize walking distances must be utilized to the extent practical. Departures will be allowed where steep slopes prevent a direct connection or where an indirect route would enhance the design and/or use of a common usable open space. See *subsection D* below for walkway design standards.

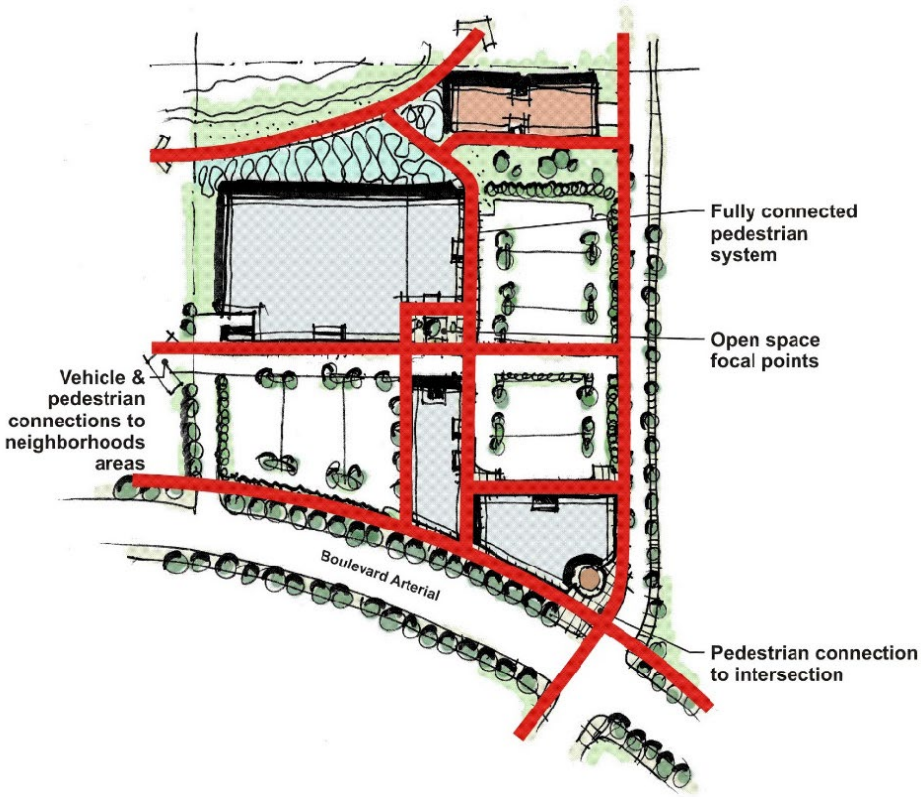


Figure 38.510.040-2. Internal and external pedestrian connections are important.

2. Sites with residential units. Provide direct pedestrian access between all ground related unit entries and a public street or to a clearly marked pathway network or open space that has direct access to a public street. Residential developments must provide a pedestrian circulation network that connects all main entrances on the site to other areas of the site, such as:

   a. Parking areas;

   b. Recreational areas;

   c. Common outdoor areas; and

   d. Any pedestrian amenities;

   For townhouses or other residential units fronting the street, the sidewalk may be used to meet this standard.

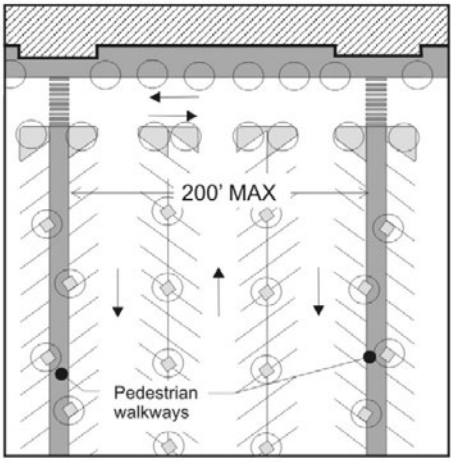
The entries of the example on the left connect directly to a public sidewalk while the entries in the right example connect to a common path that extends to the sidewalk.

Figure 38.510.040-3. Direct pathways between the street and dwelling units are required.

Figure 38.510.040-4. Examples of attractive pathway connection through a residential development.

3. Crosswalks are required when a walkway crosses an on-site paved area accessible to vehicles. Crosswalks must contain contrasting material (such as concrete) and/or patterns (such as stamped asphalt), excluding painted surfaces.

4. Pedestrian paths through parking lots. Developments must provide specially marked or paved sidewalks through parking areas. At least one walkway must be provided every four rows of parking or at a maximum spacing of 200 feet. The pathways must provide a safe connection to the building entrance and meet the pathway design standards set forth in *subsection D* below. See examples below.



Note the location of the parking lot pathway in the upper right example (connecting shops in one building to the main entry of a grocery store).

Note in both examples that the concrete pathway extends into the vehicular area to provide a highly visible and safe crosswalk.

Figure 38.510.040-5. Parking area pathway standards and examples.

5. Connections to adjacent properties (including parks and trails). Provide pathways that connect to adjacent properties, except in one of the following circumstances:

   a. When adjacent properties are residential developments of fewer than five dwelling units.

   b. Departures are permitted where it is determined that internal connections aren't necessary due to shallow lot depths, steep slopes, or other contextual challenges.

6. Barriers that limit future pedestrian access are prohibited. Gates that limit access to employees are permitted. See *subsection D* below for walkway design standards.

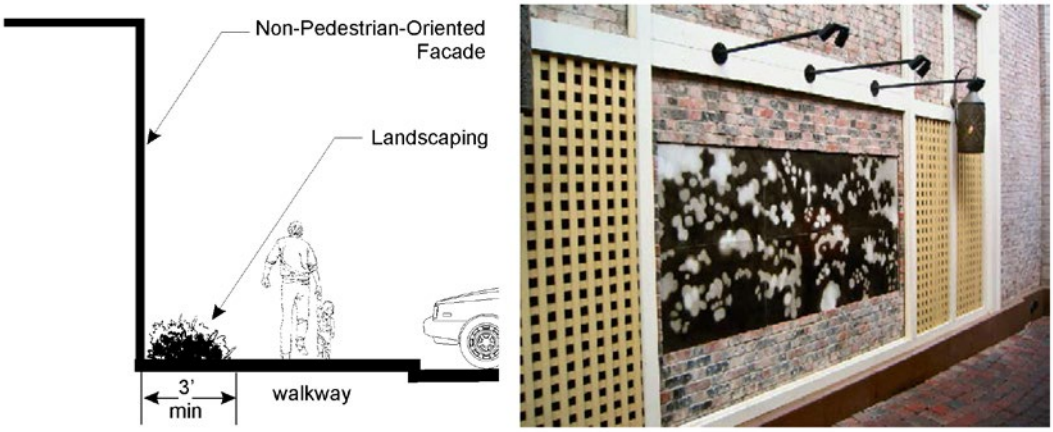
7. Provide easements for non-motorized access to facilitate the future extension of paths when adjoining properties are improved.

D. Pathway design.

1. All internal pathways must have a minimum five-foot-wide unobstructed surface, except where wider pathways are prescribed in this division or where the applicable uses and context dictate wider pathways.

2. Where a pathway is adjacent to perpendicular or angled parking, an extra two feet of walkway width must be provided to mitigate for parked vehicles overhanging the walkway.

3. Pathways must be separated from structures by at least three feet of landscaping except where the adjacent building facade is a storefront. Departures are permitted for other landscaping and/or facade design treatments to provide attractive pathways will be considered. Examples include sculptural, mosaic, bas-relief artwork, or other decorative treatments that meet the purpose. *Figure 38.510.040-6.* below provides one example.



Internal walkways adjacent to building walls that do not meet storefront façade standards must provide at least three feet of landscaping to enhance the character of the walkway. The review authority will consider alternative treatments, such as decorative walls (right example).

Figure 38.510.040-6. Standards for internal walkways adjacent to buildings.

4. Pathway design where multi-tenant commercial or mixed-use buildings 100 feet or more in length abut parking lots. Such pathways must feature a 12-foot wide sidewalk with:

   a. Eight feet minimum unobstructed width;

   b. Trees, as approved by the review authority, placed at an average of 50 feet on-center and placed in grates or in planting strips as set forth in *subsection c.* below. Departures are permitted for breaks in the tree coverage near major building entries to enhance visibility;

   c. Planting strips may be used between any vehicle access or parking area and the pathway, provided that the trees required above are included and the pathway meets the applicable width standards herein, and the combined pathway and planting strip is at least 12 feet wide. Landscaping and irrigation in planting strips are required to follow standards in *38.540.*

Figure 38.510.040-7. Example of a successful pedestrian sidewalk between parking lot and storefront.

d. Light pathways in accordance with *38.560*;

e. See also *38.510.050.D*, internal roadway design;

f. Hard surface.

Sec. 38.510.050. - **Vehicular circulation and parking.**

The standards herein supplement the provisions of *38.400* and *38.530*. Where there is a conflict, these provisions apply.

A. Purpose.

1. To create a safe, convenient, and efficient network for vehicle circulation and parking.
2. To enhance the visual character of interior access roads.
3. To minimize conflicts with pedestrian circulation and activity.

B. Driveway provisions.

Drive aisles must meet the standards set forth in *38.400.090*. Supplemental provisions:

Minimize parking lot entrances, drive aisles, and other vehicle access routes onto private property from a public right-of-way through the following means:

1. Driveway lanes crossing a public sidewalk must be no wider than the minimum required per entry or exit lane. The city may impose additional restrictions to parking lot and vehicle access points to reduce impacts to public safety, pedestrian movement, on-street vehicle circulation, and visual qualities.
2. Minimize the number of driveway entrances. Comply with the provisions of *38.400.090*.
3. The review authority may require joint drive aisles serving adjacent developments when joint access is physically and legally available.
4. Minimize conflicts between entries and vehicle parking and maneuvering areas.
5. At sites of street intersections, drive aisles must be located on the lowest classified roadway and as close as practical to the property line most distant from the intersection, unless the review authority finds there is a compelling reason to the contrary.

C. Inter-site connectivity.

The provision of through vehicle access connections between commercially or non-residentially zoned properties is required except where the review authority determines it is unfeasible or undesirable (e.g., where it is determined that such a vehicle connection would impact safe pedestrian movement). See *38.410.040* for specific block standards. Vehicle access may be in the form of a dedicated or private alley, connected or shared parking lots, shared drive aisles, or similar features.

D. Internal roadway design.

1. To increase the function and appearance of internal roadways on large sites (greater than two acres), street trees and sidewalks must be provided on all internal access roadways, except

access roads designed solely for the purpose of service (e.g. waste pick-up) and loading. Internal roadway design is subject to *38.540.050.D.5*.

2. In some instances where traffic speed and volume are low, the review authority may approve a street where vehicle, bicycle and pedestrian movement are mixed such as in a "woonerf" or "shared street." Woonerf streets must feature traffic calming and safety measures as well as landscape, irrigation, and amenity features as determined by the review authority.

The examples above include angled parking and planter strips with street trees. Pedestrian-scaled lighting also contributes to the character in the upper right image.

The above left image illustrates a thoroughfare lane with a row of street trees. A sidewalk is included on one side of the street to provide a strategic connection between businesses. The right image illustrates the curbless "woonerf" design where travel speeds are low and lanes are shared between pedestrians and vehicles.

Figure 38.510.050-1. Good internal roadway examples.

3. Drive-through facilities. Where allowed, drive through facilities (e.g., drive-up windows) must comply with the following.

   a. Drive-through lanes, including waiting and holding lanes, must be separated from public view and internal sidewalks by a planting strip (at least five feet wide with continuous plantings of evergreen shrubs and/or trees that will provide continuous evergreen screen at least four feet tall at maturity) and/or a masonry wall at least three feet high. Alternative landscaping schemes may be approved provided they include the masonry wall and a substantial vegetative screen. The landscaping must comply with *38.540*.

   b. Drive-through lanes must not restrict pedestrian access between a public sidewalk and on-site buildings. Walkways must not be located within required stacking space as set forth in *38.530.020.M*.

   c. Also see *38.320.090.C* and *38.530.020.M* for related standards.

Sec. 38.510.060. - **Location and design of service areas and mechanical equipment.**

A. Purpose.

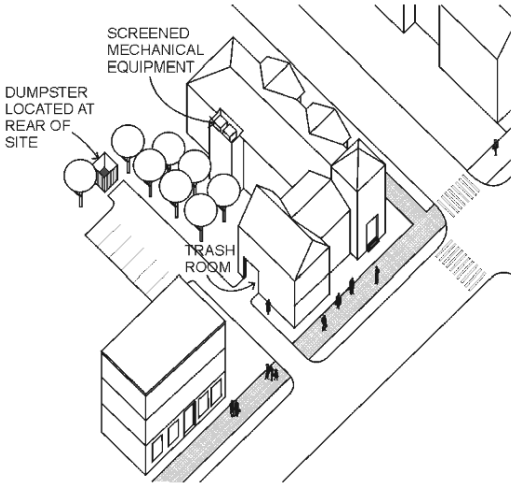
1. To minimize adverse visual, odor, and noise impacts of mechanical equipment, utility cabinets and service areas at ground and roof levels.
2. To provide adequate, durable, well-maintained, and accessible service and equipment areas.
3. To protect residential uses and adjacent properties from impacts due to location and utilization of service areas.

B. Location of ground related service areas and mechanical equipment.

1. Service areas (loading docks, trash dumpsters, compactors, recycling areas, electrical panels, and mechanical equipment areas) must be located for convenient service access while avoiding negative visual, auditory, olfactory, or physical impacts on the streetscape environment and adjacent residentially zoned properties. Service areas must be sited for alley access if available.

   The review authority may require evidence that such elements will not significantly impact neighboring properties or public areas. (For example, the review authority may require noise damping specifications for fans near residential zones.)

2. Exterior loading areas. Exterior loading areas for commercial uses must not be located within 20 feet of a residentially zoned property unless the review authority finds such a restriction does not allow feasible development, and alternative design measures can successfully mitigate potential negative impacts. For example, areas and drives may be required by the review authority to be separated from the residential lot by a masonry wall at least eight feet high.
3. Service areas must not be visible from the sidewalk and adjacent properties. Where the review authority finds that the only option for locating a service area is an area visible from a public right-of-way, internal pathway or pedestrian area, or from an adjacent property, the area may be required to be screened with structural and landscaping screening measures provided in *subsection C* below and *38.540*. Service elements accessible from an alley are exempt from screening requirements.
4. Design for safety. Other provisions of this section notwithstanding, service areas used by residents must be located to avoid entrapment areas and other conditions where personal security is potentially a problem. The review authority may require pedestrian-scaled lighting or other measures to enhance security.
5. Locate and shield noise producing mechanical equipment such as fans, heat pumps, etc., to minimize sounds and reduce impacts to adjacent residentially zoned properties.



Locate service elements to reduce impacts on the residential and pedestrian environment, and provide appropriate enclosure

Figure 38.510.060-1. Service element location.

C. Screening of ground related service areas and mechanical equipment.

1. Where screening of ground level service areas is required (see *subsection B* above), the following applies:

   a. A structural enclosure must be constructed of masonry, heavy-gauge metal, or decay-resistant material that is also used with the architecture of the main building. The review authority may allow materials other than those used for the main building if the finishes are similar in color and texture or if the proposed enclosure materials are more durable than those for the main structure. The walls must be sufficient to provide full screening from the affected roadway, pedestrian areas or adjacent use. The enclosure may use overlapping walls to screen dumpsters and other materials (see *Figure 38.510.060-2* below);

   b. Gates must be made of heavy-gauge, site-obscuring material. Chain link or chain link with slats is not an acceptable material for enclosures or gates;

   c. Where the inside of service enclosures is visible from surrounding streets, pathways, and buildings, an opaque or semi-opaque horizontal cover or screen must be used to mitigate unsightly views. The horizontal screen/cover should be integrated into the enclosure design and compatible with adjacent development;

   d. Collection points must be located and configured so the enclosure gate swing does not obstruct pedestrian or vehicular traffic. Ensure that screening elements allow for efficient service delivery and removal operations.

   e. The service area must be paved.

D. Departures

Departures to the provisions of *subsection B.1*, *subsection B.2*, and *subsection B.3* above will be considered per *38.760.060* provided the enclosure and landscaping treatments provide an equivalent degree of screening and add visual interest to site users.

All three examples use durable and attractive enclosures with trees and shrubs to soften views of the enclosures from the side. The lower left example uses a trellis structure on top – a desirable example particularly where the top of the enclosures are visible from surrounding buildings, streets, and walkways (due to topography or building heights).

Figure 38.510.060-2. Acceptable screening enclosures.

E. Utility meters, electrical conduit, and other service utility apparatus.

These elements must be located and/or designed to minimize their visibility to the public. Project designers are strongly encouraged to coordinate with applicable service providers early in the design process to determine the best approach in meeting these standards. If such elements are mounted in a location visible from the street, pedestrian pathway, shared open space, or shared auto courtyards, they must be screened with vegetation and/or integrated into the building's architecture except for fire protection system devices and equipment (FDC-fire department connection, Horn/Strobe device). Per adopted fire code these must not be obscured and have a sidewalk/landing to public way.

Figure 38.510.060-3. Utility meter location and screening—Good and bad examples.

F. Location and screening of roof and wall mounted mechanical equipment.

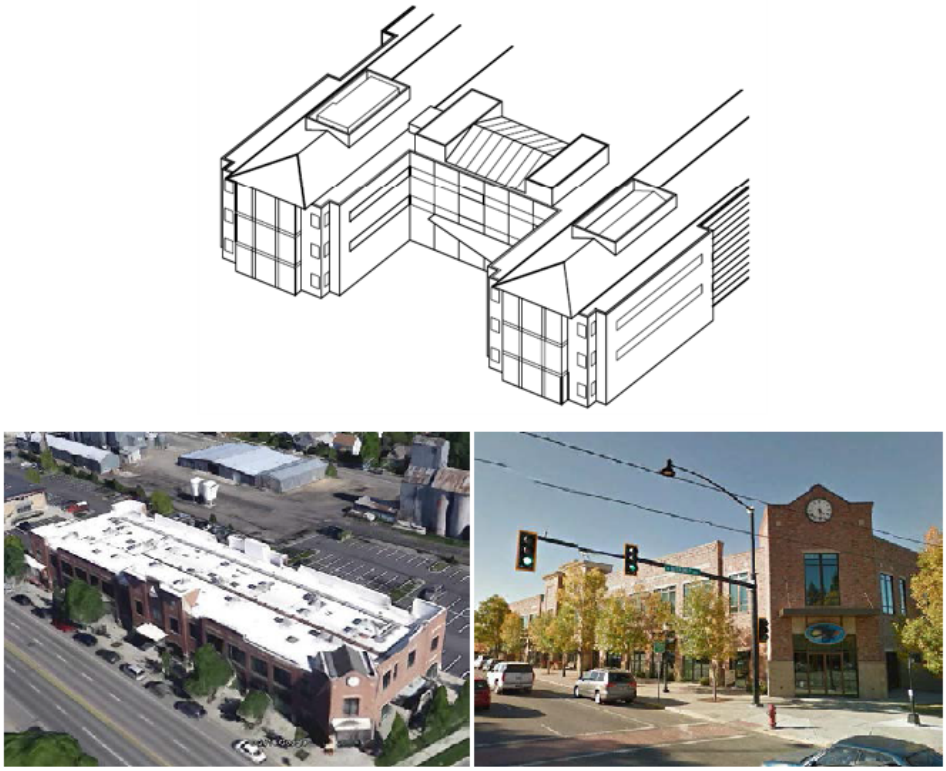
1. All rooftop mechanical equipment, including air conditioners, heaters, vents, and similar equipment must be fully screened from public view at grade with the exception of solar panels and roof-mounted wind turbines. Screening must be located so as not to interfere with operation of the equipment. Equipment set back from the roof edge by twice the height of the equipment has met the screening standard without further physical screening.

2. For rooftop equipment, all screening devices must be well integrated into the architectural design through such elements as parapet walls, false roofs, roof wells, clerestories, or equipment rooms. Screening walls or unit-mounted screening is allowed but less desirable. Wood must not be used for screens or enclosures. Louvered designs are acceptable if consistent with building design style. Perforated metal is not permitted.

3. The screening materials must be of material requiring minimal maintenance, and must be as high as the equipment being screened.

4. Locate and shield noise producing mechanical equipment such as fans, heat pumps, etc. to minimize sounds and reduce impacts to adjacent properties.

5. Wall mounted mechanical equipment must not be located adjacent to outdoor amenity spaces used to meet the requirements of this section or *38.260.040*.



The top illustration and the East Main Street building aerial and street view illustrate examples of rootop mechanical equipment that has been screened by walls (top illustration) or parapets (East Main Street building).

Figure 38.510.060-4. Examples of how to screen roof-mounted mechanical equipment.

DIVISION 38.520. - **BUILDING DESIGN**

Sec. 38.520.010. - **Purpose.**

See the individual "purpose" statements for each section in this division.

Sec. 38.520.020. - **Applicability and compliance.**

The provisions of this division apply to all development within Bozeman, except single-, two-, three-, and four-unit dwellings on individual lots unless otherwise noted. Specifically:

A. For clarification on the relationship between the provisions in this division and other documents and codes, see *38.500.020.A*.

B. For the application of building additions and remodels and site improvements, see *38.500.020.B*.

C. For clarification on how the provisions of this division are applied, see *38.500.020*.

D. The review authority may waive or relax these provisions in the industrial zones depending on the type of use, number of anticipated employees and customers, and the site's physical context. The greater number of employees and/or customers and higher visibility levels warrant a greater application of building design standards.

Sec. 38.520.030. - **Building character.**

A. Purpose.

1. To promote regionally appropriate architecture that is based on human scaled design details, durable high quality materials, sustainable design measures, and that responds uniquely to the site's context.

2. To emphasize high quality design in Bozeman's built environment.

3. To avoid generic, corporate architectural designs that are not readily reusable or convert to another use that lessens the character and identity of Bozeman. For example, some franchise convenience uses have very specific architectural features (such as a distinctive roofline design that functions as a sign) that reinforce their identity.

B. Building character standards and guidelines.

Developments within the Neighborhood Conservation Overlay District (NCOD) are subject to *38.240.020*.

Sec. 38.520.040. - **Building massing and articulation.**

A. Purpose.

1. To articulate building elements in order to achieve an appropriate perceived scale and add visual interest.

2. To create clear and welcoming building entries.

B. Nonresidential facade articulation.

Storefronts and other buildings with non-residential uses on the ground level must include a minimum of three of the following articulation features every 60 feet (maximum) to create a human scaled facade pattern:

Storefronts and other buildings with non-residential uses on the ground level must incorporate a human-scaled façade pattern. Each façade segment of 60 feet or less must include articulation features as follows:

1. Required Features:

a. The following two articulation features must be included:

(1) Change in roofline per *subsection* E below.

(2) All applicable buildings must provide vertical building modulation of at least 2 feet in depth, tied to a change in roofline per *subsection F* below or a change in building material, siding style, or color.

2. Additional Features:

a. At least two of the following additional articulation features must also be included:

(1) Windows.

(2) Entries.

(3) Use of weather protection features.

(4) Use of structural expression.

(5) Change in building material or siding style.

(6) Articulation of a single building material through varying colors, textures, or incorporating joints or an integrated trim pattern.

(7) Other design techniques that effectively reinforce a human-scaled pattern compatible with the building's surrounding context.

(8) Providing vertical elements such as a trellis with plants, green wall, art element.

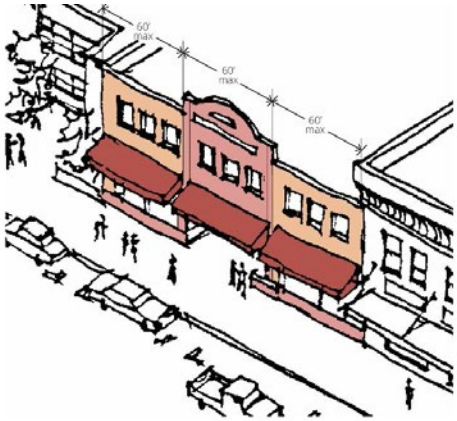
3. Exceptions:

a. Only two articulation features are required on building facades in the B-P district;

b. Only one articulation feature is required on building facades in the M-1 district;

c. Buildings in the M-2 district are exempt from these standards.

d. Building walls facing alleys or rear and side yards must incorporate at least two of the articulation strategies listed in paragraph B.



The left image uses window patterns, weather protection elements, and roofline modulation. The photo example to the right also includes window patterns and weather protection along with brick vertical piers to articulate the façade. The lower example illustrates how a multitenant retail building can successfully be articulated (windows, weather protection, vertical building modulation, and roofline changes)

Figure 38.520.040-1. Facade articulation examples.

C. Residential facade articulation.

Residential buildings must include articulation features at appropriate intervals relative to the scale of the facade in order to reduce the perceived massing of the building and add visual interest. At least three of the following features must be employed at intervals relative to the individual dwelling units or at a maximum of every 30 feet. The scale of the facade articulation should be compatible with the surrounding context.

1. Use of windows.
2. Entries.
3. Use of weather protection features.
4. Use of vertical piers/columns.
5. Change in roofline per *subsection* E below (required for multi-unit buildings in the R-C and R-D districts).
6. Change in building material and/or siding style.
7. Articulation of a single building material through varying colors, textures, or incorporating joints or an integrated trim pattern.

8. Providing vertical building modulation if tied to a change in roofline modulation per *subsection F* below or a change in building material, siding style, or color.

9. Other design techniques that effectively break up the massing at no more than 30-foot intervals.

10. Providing vertical elements such as a trellis with plants, green wall, and/or art element.

Below examples use a combination of vertical building modulation, window patterns, material changes, and roofline modulation.

Figure 38.520.040-2. Residential facade articulation examples.

D. Departure criteria associated with articulation standards.

Proposals must meet the purpose of the articulation standards. The following criteria will be considered in determining whether the proposed articulation treatment meets that purpose:

1. The type and width of the proposed articulation treatment and the degree to which it achieves the purpose of the standards, given the building's current and desired context (per Bozeman's land use plan or applicable adopted subarea plan).

2. The zoning district in which the project is located and the level of flexibility appropriate to that context.

   a. R-A and R-B districts: Greater flexibility may be appropriate due to their lower-intensity residential character, diverse housing forms, and typically smaller-scale development patterns.

   b. R-C, R-D, REMU, and nonresidential districts: Flexibility is more limited due to expectations for greater building intensity, more consistent street patterns, and higher design requirements.

3. The quality and compatibility of façade materials - including doors, windows, and other architectural features - and their ability to add visual interest to the street from both a pedestrian scale and more distant viewpoints.

E. Roofline modulation.

1. In order to qualify as a facade articulation feature in *subsection B* and *subsection C* above, rooflines must employ one or more of the following elements:

   a. For flat roofs an extension of the parapet or a break in the parapet of at least two foot measured from the adjacent roof or adjacent parapet. If no parapet is present a horizontal roof edge/eave extension of at least two feet.

   b. A pitched roofline segment(s) scaled appropriately to the facade.

   c. A façade projection of at least one foot in depth, provided at the same location as the roofline change described in (a) or (b) above.

   d. To qualify as a modulation, the required treatment must include either (c) in combination with (a) or (c) in combination with (b).

2. Departures will be considered provided the roofline modulation design effectively reduces the perceived scale of the building and adds visual interest.

Roofline modulation examples for flat roofs.

Figure 38.520.040-4. Acceptable examples of roofline modulation.

The left building illustrates a pitched roof example and the right building includes a combination of flat and gabled rooflines.

Figure 38.520.040-5. Acceptable examples of roofline modulation.

Sec. 38.520.050. - **Building details.**

A. Purpose.

1. Building facades with design details at pedestrian scale integrated with the overall composition of the building.
2. Integrated window design that adds depth, richness, and visual interest to the facade.

B. Window design standards.

1. All windows (except storefront windows and curtain walls) must include trim or other design treatment, or alternately be recessed at least two inches from the facade. Understated or trim-less windows without additional design treatment are permitted provided the placement and design is integrated into the overall composition of the building.
2. Prohibited materials:

   Mirrored glass is prohibited.

Figure 38.520.050-1. Acceptable and unacceptable window design examples.

C. High visibility street corner and gateway sites.

All development proposals located at designated high visibility street corners and gateway sites must locate a building or structure within 20 feet of the street corner and include design features that accentuate the street corner. Alternatively, the building could be configured with a corner plaza. Corner design features could include a cropped building corner with an entry feature, decorative use of building materials at the corner, distinctive facade articulation, a sculptural architectural element, or other elements that meet the purpose of the standards. *Figure 38.520.050-2* and *Figure 38.520.050-3* below illustrate acceptable examples.

Building 1 includes a corner tower. Building 2 features cropped building corners with decorative elements. Building 3 uses a functional canopy. Building 4 uses a change in building materials and façade articulation at the corner. Building 5 incorporates a plaza at the corner.

Figure 38.520.050-2. Acceptable high visibility street corner/gateway site examples.

D. Articulated building entries.

Primary building entrance(s) must be clearly defined and scaled proportionally to the building. See *Figure 38.520.050-4* below for examples.

Sec. 38.520.060. - **Building materials.**

A. Purpose.

To encourage the use of durable materials to provide visual interest from vehicular and pedestrian vantage points with the highest priority at locations susceptible to damage from maintenance and weathering.

B. Durable building materials.

Applicants must use durable materials. Where facades are located directly adjacent to a city sidewalk, impact resistant materials must be used (excluding window and door areas) for a minimum of the first 18 inches above the walking surface.

C. Special conditions and limitations for the use of certain cladding materials.

1. Concrete block (a.k.a. CMU)

When used as a primary cladding material, concrete block must be treated or articulated to provide visual interest above and beyond natural (uncolored, untreated) block with (matching) natural colored grout. Examples of such treatments include:

a. Using ground, polished or split face units;

b. Creating patterns/texture with different block sizes, face treatments, or colors; creating patterns/textures by modulating the finish plane of units;

c. Utilizing contrasting grout color; or

d. Utilizing sealers or painted treatments that enhance the finish of natural concrete block. Industrial zoning districts are exempt from this *subsection C*.

CMU is the primary cladding for the corner element above, but secondary to brick on the main façades. The corner element uses a combination of decorative split faced CMU closer to the sidewalk and smooth-faced CMU that is colored to look more like traditional white terra cotta tiles.

The above façade illustrates an acceptable alternative example, as CMU is used as the primary cladding material. Note the use of split-façade CMU's above each of the awnings and coupled with the use of smooth-façade CMU's on the vertical columns (which employ black accent tiles for added interest).

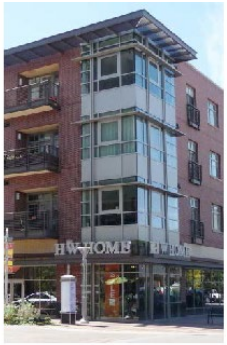
Figure 38.520.060-1. Acceptable concrete block use/design.

2. Metal siding.

a. Metal siding must be a minimum 24 gauge thickness. Re-purposed metal siding is exempt from minimum thickness requirements provided its material integrity is intact.

b. Metal siding must feature appropriate molding, trim, or hemming at all exposed edges and corners.

c. Metal siding must be factory finished, or alternately purposefully designed to naturally patina. Highly reflective galvanized finished are prohibited. Re-purposed or re-claimed metal siding is permitted.



The use of metal siding in each example above is secondary to masonry. The left and right images are more contemporary in character, whereas the middle image is more rustic and industrial, with more refined windows.

Figure 38.520.060-2. Acceptable metal siding examples.

3. Standards for the use of exterior insulation and finish system (EIFS).

Such material/finishes may be used as a decorative accent cladding material if it is incorporated with other permitted materials and it complies with the following:

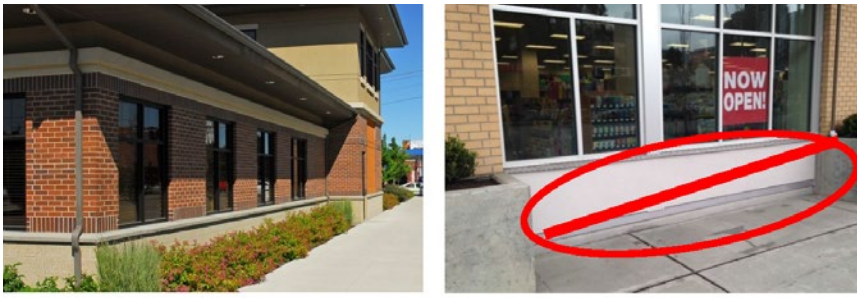
a. On buildings of three or more stories or 5,000 square feet in footprint or greater EIFS is limited to no more than 25 % of the total facade area and is not the primary cladding material. On buildings of two stories or less or less than 5,000 square feet in footprint, EIFS is limited to 60 % of the total facade area;

b. Highly textured EIFS finishes are prohibited;

c. EIFS must include an integrated joint or trim pattern;

d. EIFS must not be used on the ground floor when directly adjacent to a sidewalk, pedestrian or vehicular pathway.

Departures will be considered provided the material's integration and overall facade composition meets the purpose of the standards.



te the use of brick and decorative concrete block on the ground level and EIFS on the second floor of tl
: image. The window treatments visible on the second floor add depth and interest to the façade. The
nt image employs EIFS between the window and sidewalk – this design is prohibited.

Figure 38.520.060-3. Acceptable and unacceptable EIFS examples.

4. Cementitious wall board paneling/siding may be used provided it meets the following provisions:

a. Cement board paneling/siding may not be used on the ground floor of non-residential or mixed-use buildings where adjacent to a sidewalk or other pedestrian path;

b. Where cement board paneling/siding is the dominant siding material, the design must integrate a mix of colors and/or textures that are articulated consistent with windows, balconies, and modulated building surfaces and are balanced with facade details that add visual interest from the ground level and adjacent buildings. Departures will be considered provided the material's integration and overall facade composition meets the purpose of the standards.

D. Departures

Departures to building materials standards will be considered if they are determined to meet the purpose of this section.

Sec. 38.520.070. - **Special residential frontages.**

For residences with ground floor living spaces facing a sidewalk or pedestrian path in a residential or mixed-use development, the building must feature at least one of the public/private space transition elements described below. The objective of this standard is to ensure privacy and security for residents, and an attractive and safe pathway that complements the qualities of adjoining residences within a residential complex.

A. Raised deck or porch option.

Provide at least a 60 square foot porch or deck raised at least one foot above grade. The porch or deck must be at least six feet deep, measured perpendicular to the building face. (The deck may be recessed into the unit floor plan so that deck does not extend from the building face a full six feet.) A low fence, rail or hedge, two feet to four feet high, may be integrated between the sidewalk or internal pathway and deck or porch.

B. Front setback options.

Provide a minimum ten-foot setback between the sidewalk or internal pathway and the face of the residence. Design options for the front setback:

1. Landscaped area, meeting the provisions of *38.540*.
2. Semi-private patio space screened by a low fence or hedge (see *38.540.070*).

C. Raised ground floor.

If the residence's ground floor is a minimum of three feet above the grade adjacent to the building, then the landscaped area in option 2 above may be reduced to four feet wide (except where greater setbacks are specified for the zoning district in *article 2*).

The upper left image uses a low fence and landscaped setback. The right images use landscaped terraces and elevated ground level units. The lower left image uses a landscaped berm between the pathway and semi-private open space.

Figure 38.520.070-1. Acceptable public/private transitional space design between sidewalk or pathways and ground level residential units.

Sec. 38.520.080. - **Structured parking facilities.**

A. Applicability

All above ground structured parking facilities must conform to the following design standards.

B. Exceptions

1. Single-/two-unit dwellings, three-unit dwellings, four-unit dwellings, individual townhouses, accessory garage structures not adjacent to the street, and multi-unit dwellings with physically separated individual drive aisles. Physical separation is provided when at least one of these options are provided: Individual garage doors for each interior parking space; a vegetated planter not less than four feet in width between the parking spaces in the driveway area; or a wall not less than four feet in height and length, is provided between the parking area in the driveway and dividing the garage entrance; and

2. For development in the R-D and B-2M districts, the structured parking provisions take precedence over any conflicting provisions of *38.240.020*.

C. Building standards.

1. To promote an active and diverse streetscape, parking structures must be located behind buildings in the interior of blocks or below grade. Parking garages that front streets must line the parking garage at the street level with an active use.

    a. Street designs accommodate on street parking and pedestrian mobility. Parking lots and garages rarely front the streets, and are typically relegated to the rear of the lot and the center of blocks.

    b. Parking garages should be located in the interior of blocks. Parking garages that front onto streets must provide a lining of retail, office, or residential use at the street level along the entire street frontage.

2. In all districts, all commercial floor space wrapping must provide a minimum 20 foot depth of habitable and conditioned space as defined by the most currently adopted IBC.

3. In all districts, commercial space depth will be considered where the applicant can successfully demonstrate the proposed alternative design and configuration of the space is viable for a variety of permitted commercial uses.

4. In all districts, residential active use areas must be 12 feet in depth, except for riser room, trash areas and other functional uses that must face the street.

5. In all districts, all commercial floor space wrapping a parking structure on the ground floor must have a minimum floor-to-floor height of 15 feet.

6. Structured parking facilities must provide transparency along at least 50 % of the linear length of the building's facade. This may be achieved with windows, displays, building lobbies, building entrances, display windows, or windows affording views into the building. This requirement applies to both frontages of a building located on a corner lot.

    a. The bottom edge of any window or product display window used to satisfy the transparency standard may not be more than four feet above the adjacent sidewalk.

b. Product display windows used to satisfy these requirements must have a minimum height of four feet and be internally lighted.

7. Street-level openings on parking structures must be limited to those necessary for retail store entrances, vehicle entrance and exit lanes, and pedestrian entrances to stairs and elevator lobbies. Parking structures adjacent to streets must have architectural detailing such as, but not limited to, standard size masonry units such as brick, divided openings to give the appearance of windows, and other techniques to provide an interesting and human-scaled appearance on the story adjacent to the sidewalk.

8. Buildings must be articulated with modules, architectural detailing, individual floors visually expressed in the facade, and rhythm and pattern of openings and surfaces must be human-scale.

9. Buildings must be oriented to the adjacent public or private street.

10. If an alley is adjacent to a site, vehicle access must be taken from that alley. Access to a street in lieu of an alley may be approved by the review authority. To approve street access the review authority must consider adequacy of right of way width of the alley and street, ability to obtain additional right of way if current right of way does not meet city standards, sight access entering and exiting the alley, volume of pedestrian and vehicle traffic at the site after proposed construction would be completed, proximity to other intersections and street accesses, ability to mitigate conflicts between pedestrians and vehicles, and potential interference with other municipal standards and criteria. Approval of street access may be approved upon a finding that the balance of public benefits weighs in favor of the street access. The department of transportation and engineering must evaluate the application for the identified considerations and make a recommendation to the review authority.

11. A pedestrian safety plan is required for all parking facilities with more than 100 parking spaces and must be reviewed and approved by the city engineer. The city engineer may request a pedestrian safety plan for parking facilities with less than 100 parking spaces.

12. Parking entrances may not account for more than 25 % of entire building facade.

D. Relief

Relief to the standards of *paragraph C* may be granted upon the application demonstrating an equal or superior outcome to the listed standard.

DIVISION 38.530. - **PARKING**

Sec. 38.530.010. - **General provisions.**

A. Purpose

1. Parking is one part of the overall multi-modal transportation system. Individual choice of travel mode and development characteristics influence the need for parking.
2. The design of off-street parking is the responsibility of the developer and must consider traffic circulation, intended landscaping, pedestrian access and circulation, and other purposes of this chapter.
3. The purpose of this division is to ensure provision of off-street motor vehicle parking, bicycle parking, and other transportation access facilities in rough proportion to the generalized parking and transportation demands of different land uses which locate at a site.
4. The purpose of these standards is to:
   a. Provide functional parking areas adequate to the needs of users;
   b. Help avoid the negative impacts associated with spillover parking into adjacent neighborhoods (while at the same time avoiding the negative environmental and urban design impacts that can result from excessive parking lots); and
   c. Reduce stormwater surges.
5. The provisions of this division help protect the public health, safety, and general welfare by:
   a. Encouraging multi-modal transportation options and enhanced pedestrian and bicycle safety;
   b. Providing methods to reduce the amount of impervious surfaces in parking areas and adequate drainage structures in order to reduce the environmental impacts of stormwater runoff; and
   c. Encouraging paving or alternate means of surfacing of parking areas in order to address dust abatement and improve air quality.

B. Improvement schedule.

All parking area improvements to include surfacing, drainage, walkways, lighting, landscaping, irrigation, screening, traffic control, etc., must be installed according to *38.780*.

C. Location of parking.

See *38.260.090*.

D. Recreational vehicle parking on residential lots.

No person may park or occupy any recreational vehicle or mobile home on the premises of any occupied dwelling or on any lot which is not a part of the premises of any occupied dwelling, either

of which is situated outside of any approved manufactured home community or recreational vehicle park except that:

1. The parking of only one unoccupied recreational vehicle in any accessory individual garage, or in a rear setback in any district is permitted, provided no living quarters may be maintained or any business practiced in the recreational vehicle while such recreational vehicle is so parked or stored; and

2. In the event of hardship, temporary use permits may be granted for occupying such recreational vehicle or mobile home.

Sec. 38.530.020. - **Stall, aisle and driveway design.**

A. Parking dimensions.

1. The following are minimum parking space dimensions:

Table 38.530.020-1. Dimensions of Parking Spaces

Parking Angle	Stall Depth	Stall Width	Parking Aisle One-Way/Two-Way
Standard Parking Space			
60°	20'	9'	16'/
90°	18'	9'	—/24'
Compact Parking Space			
60°	18.5'	8'	16'/
90°	16'	8'	—/24'
Individual Residential Garage Dimensional Standards — Subject to *38.530.040.B.1.c*			
Number of Stalls	**Stall Depth**	**Stall Width**	**Special Conditions**
1	20'	9'	Additional one foot on all exterior sides of the stall
2 or more	20'	9'	Additional one foot on all exterior sides of each stall

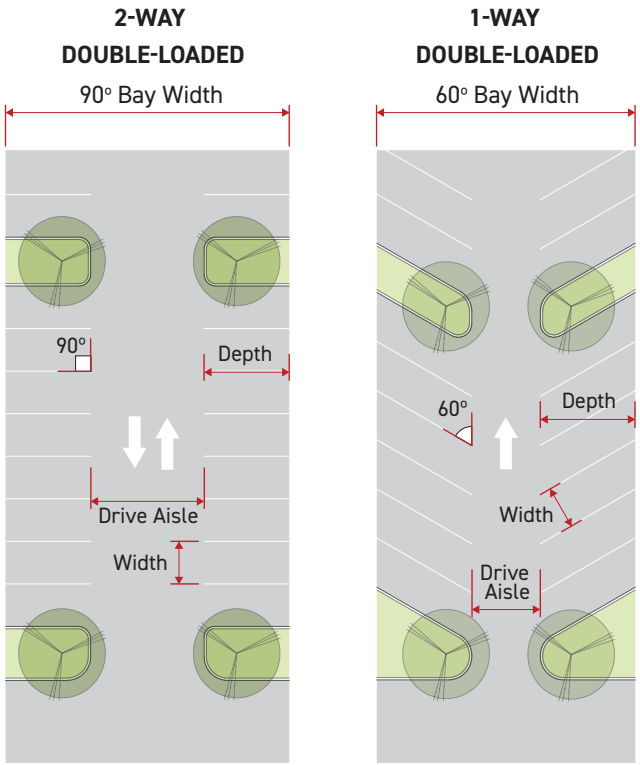


Figure 38.530.020-1. Dimensions of parking spaces.

2. Unless otherwise approved, all parking spaces must be of standard width and length. In any parking facility containing 20 or more parking spaces, a maximum of 25 % of the provided parking spaces may be reduced in size for small cars, provided these spaces are clearly identified with a sign permanently affixed immediately in front of each space containing the notation, "Compacts Only." Where feasible, all small car spaces must be located in one or more contiguous areas and/or adjacent to ingress and egress points within parking facilities.

B. Circulation between bays.

Except in the case of one to four-unit dwellings and individual townhouse/rowhouse units, parking areas must be designed so that circulation between parking bays occurs within the designated parking lot and does not depend upon a public street or alley. Turning radii between bays and additional back-up length for dead end aisles must conform to requirements of the International Fire Code.

C. Backing requirements.

All required parking must have adequate back-up maneuverability as specified in *Table 38.530.020-1*. The aisle width calculation may incorporate the width of the public right-of-way. Except in the case of single- to four-units dwellings and individual townhouse/rowhouse-style units with individual garages, parking area design which requires backing into the public street is not allowed. With the exception of residential development, parking area design which requires backing into the public alley is not allowed. An exception to the prohibition to backing into the alley by non-residential

development may be granted by the review authority when function of the alley will not be impeded and when necessary due to local site conditions.

D. Parallel parking spaces.

Parallel parking spaces must be a minimum of 24 feet in length and seven feet in width measured from the inside edge of a curb or the inside edge of the asphalt if curbing is not present.

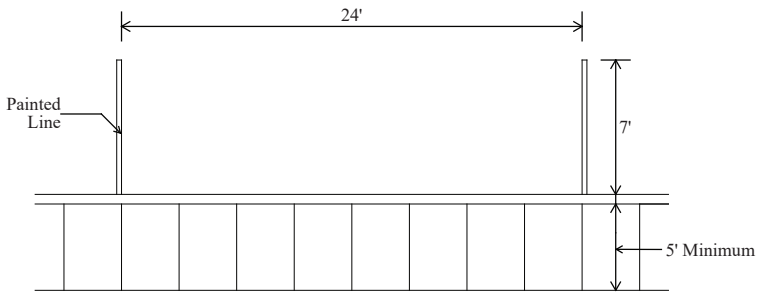


Figure 38.530.020-2. Parallel parking layout.

E. Surfacing.

Except for single-unit dwellings on individual lots, all areas intended to be utilized for permanent parking space and drive aisles must control dust and drainage. All proposed parking areas and driveway improvements must require a grading and drainage plan approved by the review authority. Areas must be paved with concrete or asphaltic concrete or approved pavers; an alternative surfacing method such as pervious pavement may be used, subject to review and approval by the review authority. Surfacing methods which minimize stormwater runoff and provide for functional parking and circulation are encouraged.

F. Striping.

All parking stalls must be marked with white or yellow painted lines not less than four inches wide, except for single- to four-unit dwellings and individual townhouse/rowhouse units. An exception to this requirement may be approved when the striping would otherwise be applied to an area that does not have a permanent and durable wearing surface.

G. Lighting.

Any lighting used to illuminate an off-street parking area must comply with the lighting standards of *38.560*.

H. Signs.

No sign may be so located that it restricts the sight lines and orderly operation and traffic movement within any parking area. All signs must conform to *38.550*.

I. Parking lot curbing.

1. All open off-street parking areas and drive aisles must have perimeter concrete curb around the entire parking lot, including driving access ways, except for individual townhouse/rowhouse units and single- to four-unit dwellings. Continuous concrete curbing must be built according to

standards provided by the review authority. Unless otherwise approved, the perimeter curb must be six-inch by six-inch concrete.

2. Alternative perimeter treatment may be permitted subject to the approval of the city engineer.

3. Requirements for perimeter curbing do not preclude shared access between adjacent parking lots.

J. Protruding vehicles.

All on-site parking stalls which abut property lines must be designed and constructed so that parked vehicles do not protrude over property lines.

K. Pedestrian facilities in parking lots.

Concrete sidewalks a minimum of five feet in width must be provided between any existing or proposed building and adjacent parking lot. Where sidewalk curbs serve as wheel stops, an additional two feet of sidewalk width is required.

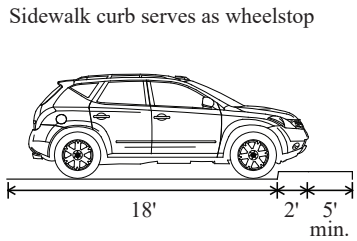


Figure 38.530.020-3.
Sidewalk width adjacent to parking.

L. Snow removal storage areas.

All parking facilities containing 5 or more parking spaces must provide a snow management plan. The plan must contain the following:

1. Locations for snow storage, which may include on-site landscaped areas, and other open space for at least 15 % of the total area of the site used for parking, access drives, walkways and other paved surfaces;

2. Snow storage is not allowed:

   a. In the public right-of-way;

   b. Where it would obstruct line of sight or vision triangle;

   c. In a location where it blocks fire hydrants, emergency vehicle access or access to other properties;

   d. Where it will cause unmanageable freeze/thaw and icing of sidewalks, pathways and other paved surfaces;

   e. Where it obstructs on-site amenities, including but not limited to points of egress, mailboxes, storage areas, and trash enclosures;

f. Within any access easement;

g. Where placed in a manner which violates the Clean Water Act (CWA) and/or the Montana Pollutant Discharge Elimination System (MPDES), and/or any other federal, state or local law or statute; or

h. Where it will cause damage to trees located in the public right-of-way.

M. Parking and stacking for drive-in/drive-through facilities.

Required parking and stacking spaces for waiting automobiles must provide a minimum of two stalls and six spaces for stacking per lane unless a traffic summary shows that fewer spaces may be required. These spaces may not in any manner inhibit on-site or off-site vehicular circulation.

N. Stormwater drainage.

Stormwater drainage from parking lots must be directed into detention/retention facilities and water quality improvement facilities as required by the engineering department, or in compliance with the storm drainage provisions of chapter 40 article 4, and/or best practices manual adopted by the city.

O. Mechanical vehicle lifts.

Mechanical vehicle lifts may be used to meet required parking when the lift design allows for access to a specific vehicle on demand.

Sec. 38.530.030. - Maintenance of parking areas.

It is the joint and separate responsibility of the lessee and owner of the principal use, uses or building to maintain in a neat and adequate manner the parking space, accessways, striping, landscaping, irrigation, and required fences or screening.

A. Use of required parking areas for parking only.

Required off-street parking spaces may not be utilized for open storage, sale or rental of goods, or storage of inoperable vehicles, except when permitted as a temporary use.

B. Parking spaces identified and maintained.

When enclosing a carport or garage for storage or living purposes, an affidavit must be submitted to the community development director identifying the required parking spaces necessary to comply with *38.530.040*.

Sec. 38.530.040. - Number of vehicle parking spaces required.

A. No required motor vehicle parking.

1. The minimum parking requirements of *38.530.040-1* do not apply within the following areas:

   a. Midtown Urban Renewal District;

   b. North Park Urban Renewal District;

   c. Pole Yard Urban Renewal District (north of the railroad only);

   d. South Bozeman Technology Urban Renewal District;

e. B-3C zoning district; and

f. Montana State University owned and operated facilities within the bounds of the parking management program.

2. All other requirements of this division, including bicycle parking, maximum parking, parking design standards, and standards when parking is provided, are applicable.

B. Minimum required motor vehicle parking – Effective through September 30, 2026.

1. General.

a. Calculation of required parking.

(1) The number of spaces shown in *Table 38.530.040-1* and *Table 38.530.040-4* must be provided. Parking stalls required pursuant to the Americans with Disabilities Act or other similar federal or state law may be provided from the minimum number of required parking stalls. All plans submitted for permit review must identify parking space allocations. Fees may be charged by the landowner for the use of required parking spaces.

(2) Alternate parking ratios may be approved where an applicant submits a parking study, prepared by a qualified professional. The study must illustrate that the required parking ratios of do not accurately apply to a specific development proposal.

(3) The number of spaces required is the total number of the spaces required for each use on the site, calculated separately.

(4) When calculation of required parking results in a fraction of a parking space being required, the fractional space is not required to be provided.

b. Change of use or occupancy of buildings.

With any change of use or occupancy of any building or buildings an occupancy permit is required. When the change in use or occupancy requires more than a 10 % cumulative increase in parking over that required with the initial building construction, an occupancy permit may not be issued until additional parking spaces, in the amount required, are provided.

c. Stacking of off-street parking spaces.

(1) Two parking spaces serving a single unit dwelling may be horizontally stacked.

(2) Both parking spaces must be assigned to the same dwelling unit.

(3) Stacked parking is not allowed for guest parking.

d. Ownership/leasehold.

Required parking lots must be owned or leased by the owner or lessee of the building or use being served by the parking. The parking lot must be maintained as a parking lot so long as the building and/or use served is in operation or until another approved parking area is established for the building or use.

e. Unenclosed parking allowed.

Required parking may be provided indoors or outdoors; required parking does not have to be provided in an enclosed space.

2. Residential uses.

a. Minimum requirements.

The following minimum number of off-street parking spaces must be provided.

Table 38.530.040-1

Use	Minimum Parking Spaces Required
General Residential	
Studio apartment or one-bedroom. All types of individual unit dwellings within the B-3 district.	1 per unit
Two-bedroom or more	2 per unit (1.75 per unit in R-D)
Group Residential	
Community residential, group home, and lodginghouse	0.75 per person of approved capacity
Group living/cooperative household/fraternity and sorority	First 25 residents: 1 per resident; Each resident beyond 25: 0.9 per resident Fraternity and sorority: Five guest spaces
Transitional and emergency housing	0.25 per person of approved capacity. Additional services and facilities to serve non-residents must provide parking in accordance with *Table 38.530.040-4*.

b. Adjustments to minimum requirements.

(1) On-street parking.

For projects submitted through a site plan or special use permit review process, one parking space for each 24 uninterrupted linear feet of available street frontage usable for on-street parking directly adjacent to a lot may be deducted from the total parking spaces required for a development. The number of on-street spaces calculated may not exceed the number of dwellings on the lot. The width of drive accesses, designated non-parking areas, vision triangles, and similar circumstances are not available for the purpose of meeting parking requirements.

(2) Transitional and emergency housing, group living, cooperative household, community residential.

A transitional and emergency housing facility, group living, cooperative household, or community residential facility may request to provide fewer parking spaces if the applicant provides evidence that some or all residents are prohibited from operating motor vehicles. Under no condition may less than two parking spaces be provided. If the use of the facility is altered to serve a different population who may operate motor vehicles, then the additional required parking must be provided before the change in use may occur.

(3) Mixed-use projects.

(a) General

(i) In order to utilize this section, the long-term availability of parking spaces upon which the use of this section was based must be ensured.

(ii) For the purpose of this section a building is considered mixed-use if the non-residential portion of the building is at least one-quarter of the gross square feet not used for parking.

(iii) Residences in mixed-use buildings may count on-street parking even if the area is subject to occupancy time limits.

(iv) The use of this section does not preclude the use of other sections of this division which may have the effect of reducing the required amount of parking.

(v) It must be demonstrated that there is no substantial overlap in the operating hours of the uses for which the sharing of parking spaces is proposed.

(b) Non-residential dominant mixed-use projects.

When calculating the amount of required parking for residential uses within a mixed-use project that requires more non-residential parking than residential parking the amount of residential parking may be reduced subject to *Table 38.530.040-2*.

Table 38.530.040-2

Residential Reduction Allowed	Ratio of Required Non-residential to Required Residential Parking Spaces
50%	Greater than 1:1 but less than 3:1
100%	Equal to or greater than 3:1

(c) Residential dominant mixed-use projects.

When calculating the amount of required parking for non-residential uses within a mixed-use project that requires more residential parking than non-residential parking the amount of non-residential parking may be reduced subject to *Table 38.530.040-3*.

Table 38.530.040-3

on-residential Reduction Allowed	Ratio of Required Residential to Required Non-residential Parking Spaces
50%	Greater than 1:1 but less than 3:1
100%	Equal to or greater than 3:1

3. Non-residential uses.

a. Minimum and maximum requirements.

(1) The following minimum number of off-street parking spaces must be provided.

(2) Parking spaces provided beyond the maximum surface parking shown in *Table 38.530.040-4* are allowed but must be provided in a parking structure.

(3) The first 1,500 gross square feet of a non-residential floor area is not included in the calculation of minimum required parking. It is included in the calculation of maximum parking.

Table 38.530.040-4

Use	Minimum Vehicle Parking Spaces Required	Maximum Vehicle Surface Parking Spaces Allowed
Recreation, Culture & Entertainment		
Community center	4 per 1,000 square feet of gross floor area	8 per 1,000 square feet of gross floor area
All other recreation, culture and entertainment uses	5 per 1,000 square feet of gross floor area	10 per 1,000 square feet of gross floor area
Lodging		
All lodging uses	0.8 per guest room	1.6 per guest room
Public, Government & Regional		
All public, government and regional uses not meeting another classification in this table	2 per 1,000 square feet of gross floor area	4 per 1,000 square feet of gross floor area
Personal & General Service		
All personal and general service uses	2 per 1,000 square feet of gross floor area	4 per 1,000 square feet of gross floor area
General Retail		
Restaurant	5 per 1,000 square feet of gross floor area	10 per 1,000 square feet of gross floor area
All other general retail uses	2 per 1,000 square feet of gross floor area	4 per 1,000 square feet of gross floor area
Industrial & Wholesale		
All industrial and wholesale uses	2 per 1,000 square feet of gross floor area	4 per 1,000 square feet of gross floor area
Agriculture		
All agriculture uses	1 per site	No restriction

4. B-3 district.

a. Minimum and maximum requirements.

(1) In the B-3 district, the minimum number of required spaces shown in *Table 38.530.040-5* can be provided as an alternative to the number of spaces required in *Table 38.530.040-1* or *Table 38.530.040-4*.

(2) Parking spaces provided beyond the maximum shown in *Table 38.530.040-5* are allowed but must be provided in a parking structure.

(3) The first 3,000 gross square feet of non-residential floor area within a building is not included in the calculation of minimum required parking. This floor area is included in the calculation of maximum parking.

Table 38.530.040-5

Use	Minimum Parking Spaces Required	Maximum Vehicle Surface Parking Spaces
All types of dwelling units	1 per unit	2 per unit
All lodging uses	0.6 per room (including accessory uses up to 20% of the building area)	1.2 per room (including accessory uses up to 20% of the building area)
All other uses	1 per 1,000 square feet of gross floor area	2 per 1,000 square feet of gross floor area

5. Affordable dwellings.

When calculating the amount of required parking for affordable dwellings, as defined in *38.700.020*, if the project is subject to an approved affordable housing plan, then required parking spaces must be provided pursuant to *38.380*.

6. Relief

To request an alternative to minimum requirements, an applicant may submit a formal parking study for review and approval by the review authority. The following elements must be included in the parking study:

a. Documentation of assumptions. The study must clearly state the basis for its parking projections, such as building size, employee and seating capacity, and anticipated operating hours.

b. Data from comparable sites. To justify lower demand, cite similar developments to project parking needs. These comparison sites must have similar uses, sizes, and market characteristics.

c. Analysis of usage patterns. The study needs to show that the comparable site's operating hours and peak periods align with the proposed project or explain any differences.

d. Quantitative methodology. The study must document the data collection process and analytical method used to calculate estimated parking demand. Acceptable references include the Institute of Transportation Engineers (ITE) Parking Generation manual or comparably robust data sets and sophisticated analyses.

C. Minimum required motor vehicle parking – Effective October 1, 2026.

1. General.

The state of Montana has adopted limitations on the ability of local governments to establish parking requirements. These regulations comply with those limitations.

2. Methods and processes.

a. Calculation of required parking.

(1) The number of spaces shown and provided in *Table 38.530.040-1* and *Table 38.530.040-2*. An applicant may provide more than the minimum required. Parking stalls required pursuant to the Americans with Disabilities Act, accessibility requirements of building code, or other similar federal or state law are in addition to the minimum number of required parking stalls. The city does not review for compliance with non-city parking requirements during verification of Chapter 38 compliance. All plans submitted for permit review must identify parking space allocations. Fees may be charged by the landowner for the use of required parking spaces.

(2) The number of spaces required is the total number of the spaces required for each use on the site, calculated separately.

(3) When calculation of required parking results in a fraction of a parking space being required, the fractional space is required to be provided when the fraction exceeds 0.5.

b. Change of use or occupancy of buildings.

No additional parking is required for a change in use of a building.

c. Stacking of off-street parking spaces.

(1) Two parking spaces serving a single dwelling may be horizontally stacked.

(2) Both parking spaces must be assigned to the same dwelling unit.

(3) Stacked parking is not allowed for guest parking.

d. Ownership/leasehold.

Required parking lots must be owned or leased by the owner or lessee of the building or use being served by the parking. The parking lot must be maintained as a parking lot so long as the building and/or use served is in operation, or until another parking area is established for the building or use and is approved by the city.

e. Unenclosed parking allowed.

Required parking may be provided indoors or outdoors; required parking does not have to be provided in a fully enclosed space.

3. Residential uses.

a. Minimum requirements.

The following minimum number of off-street, parking spaces must be provided.

Table 38.530.040-1

Use	Minimum Parking Spaces Required
General Residential	
Dwelling less than 1,200 sq. ft.	None
Dwelling 1,200 sq. ft. or greater	1 per dwelling
Deed restricted affordable housing – any size dwelling	None
Group Residential	
Community residential	0.75 per person of approved capacity
Assisted living facilities	None
Group living/cooperative household/fraternity and sorority	First 25 residents: 1 per resident; Each resident beyond 25: 0.9 per resident Fraternity and sorority: Five guest spaces
Lodginghouse	0.75 per person of approved capacity
Transitional and emergency housing	0.25 per person of approved capacity. Additional services and facilities to serve non-residents must provide parking in accordance with *Table 38.530.040-4*.

b. Adjustments to minimum requirements.

(1) Transitional and emergency housing, group living, cooperative household, community residential.

A transitional and emergency housing facility, group living, cooperative household, or community residential facility may request to provide fewer parking spaces if the applicant provides evidence that some or all residents are prohibited from operating motor vehicles. Under no condition may less than two parking spaces be provided. If the use of the facility is altered to serve a different population who may operate motor vehicles, then the additional required parking must be provided before the change in use may occur.

(2) Mixed-use projects.

(a) General

(i) In order to utilize this section, the long-term availability of parking spaces upon which the use of this section was based must be ensured.

(ii) For the purpose of this section a building is considered mixed-use if the non-residential portion of the building is at least one-quarter of the gross square feet of building area not used for parking.

(iii) The use of this section does not preclude the use of other sections of this division which may have the effect of reducing the required amount of on-site parking.

(iv) It must be demonstrated that there is no substantial overlap in the operating hours of the uses for which the sharing of parking spaces is proposed.

4. Non-residential uses.

a. Minimum and maximum requirements.

(1) The following minimum number of off-street parking spaces must be provided.

(2) Parking spaces provided beyond the maximum surface parking shown in *Table 38.530.040-2* are allowed but must be provided in a parking structure.

(3) The first 1,500 gross square feet of a non-residential floor area is not included in the calculation of minimum required parking. It is included in the calculation of maximum parking.

(4) Reuse of buildings, whether vacant or in active use at the time of application, are not required to provide additional parking spaces.

Table 38.530.040-2

Use	Minimum Vehicle Parking Spaces Required	Maximum Vehicle Surface Parking Spaces Allowed
Recreation, Culture & Entertainment		
Community center	4 per 1,000 square feet of gross floor area	8 per 1,000 square feet of gross floor area
All other recreation, culture and entertainment uses	5 per 1,000 square feet of gross floor area	10 per 1,000 square feet of gross floor area
Lodging		
All lodging uses	0.8 per guest room	1.6 per guest room
Public, Government & Regional		
All public, government and regional uses not meeting another classification in this table	2 per 1,000 square feet of gross floor area	4 per 1,000 square feet of gross floor area
Personal & General Service		
All personal and general service uses	2 per 1,000 square feet of gross floor area	4 per 1,000 square feet of gross floor area
Child-care facilities licensed or registered with the dept. of public health and human services	None	4 per 1,000 square feet of gross floor area
General Retail		
Restaurant	5 per 1,000 square feet of gross floor area	10 per 1,000 square feet of gross floor area
All other general retail uses	2 per 1,000 square feet of gross floor area	4 per 1,000 square feet of gross floor area
Industrial & Wholesale		
All industrial and wholesale uses	2 per 1,000 square feet of gross floor area	4 per 1,000 square feet of gross floor area
Agriculture		
All agriculture uses	1 per site	No restriction

5. B-3 district.

a. Minimum and maximum requirements.

(1) In the B-3 district, the minimum number of required spaces shown in *Table 38.530.040-3* can be provided as an alternative to the number of spaces required in *Table 38.530.040-1* or *Table 38.530.040-2*.

(2) Parking spaces provided beyond the maximum shown in *Table 38.530.040-3* but must be provided in a parking structure.

(3) The first 3,000 gross square feet of non-residential floor area within a building is not included in the calculation of minimum required parking. This floor area is included in the calculation of maximum parking.

Table 38.530.040-3

Use	Minimum Parking Spaces Required
General Residential	
Dwelling less than 1,200 sq. ft.	None
Dwelling 1,200 sq. ft. or greater	1 per dwelling
Deed restricted affordable housing – any size dwelling	None

6. Relief

To request an alternative to minimum requirements, an applicant may submit a formal parking study for review and approval by the review authority. The following elements must be included in the parking study:

a. Documentation of assumptions. The study must clearly state the basis for its parking projections, such as building size, employee and seating capacity, and anticipated operating hours.

b. Data from comparable sites. To justify lower demand, cite similar developments to project parking needs. These comparison sites must have similar uses, sizes, and market characteristics.

c. Analysis of usage patterns. The study needs to show that the comparable site's operating hours and peak periods align with the proposed project or explain any differences.

d. Quantitative methodology. The study must document the data collection process and analytical method used to calculate estimated parking demand. Acceptable references include the Institute of Transportation Engineers (ITE) Parking Generation manual or comparably robust data sets and sophisticated analyses.

Sec. 38.530.050. - **Joint use of parking facilities.**

Up to 80 % of the parking spaces required by *38.530.040* subject to the requirements below may be provided through shared parking. Shared parking may be requested if shared parking can be provided to serve two or more individual uses without conflict or encroachment. The review authority may authorize shared parking arrangements based on a parking demand and utilization study for the site;

A. At a minimum, the parking demand and utilization study must examine for all potential uses: trip generation, hours of operation, quantity of required parking spaces, quantity of spaces that will be filled during peak hour periods, and any unusual events that may occur during the year that will exceed the average parking requirement. The study must indicate that adequate parking exists to meet the demand of potential uses served. The city may adopt administrative procedures to establish technical requirements and review processes as specified by the review authority;

B. The building or use for which application is being made to utilize the off-street parking facilities provided by another building or use must meet the off-site parking requirements of *38.530.060*;

C. The applicant must show that there is no substantial overlap in the operating hours of the buildings or uses for which joint use of off-street parking facilities is proposed;

D. The parties sharing parking spaces must enter into a long-term joint use agreement which may be revoked with review authority approval, running with the term of the designated uses; and

E. A properly drawn legal instrument duly approved as to form and manner of execution by the city attorney, executed by the parties concerned for joint use of off-street parking facilities, must be filed with the city clerk and recorded with the county clerk and recorder.

Sec. 38.530.060. - **Off-site parking.**

Any off-site parking used to meet the requirements of this division must be approved by the review authority for compliance with this division and will be subject to the following requirements:

A. Off-site parking must be developed and maintained in compliance with all requirements and standards of this division;

B. Required parking for residential uses subject to site plan review may be located off-site provided the off-site parking is not located more than 500 feet from the main building entrance of the principal use served;

C. Required parking for nonresidential uses may be located off-site provided the off-site parking is not located more than 1,320 feet from the main building entrance of the principal use served;

D. The distance is measured based on a pedestrian route of travel (a standard city sidewalk or city standard trail) from the nearest parking space to the main building entrance of the principal use served; Continuous pedestrian and vehicle access from the off-site parking facility to the use being served must be provided; and

E. Any use which depends upon off-site parking to meet the requirements of this division must maintain ownership or provide evidence of a long-term lease agreement, revocable with review authority approval, running with the term of the designated use, for parking utilization of the off-site location.

Sec. 38.530.070. - **Number of bicycle parking spaces required.**

A. Applicability.

All site development, not including developments qualifying for sketch plan review per *38.740*, must provide bicycle parking facilities to accommodate bicycle-riding residents and/or employees and customers of the proposed development.

B. Bicycle parking required.

1. Bicycle parking must be provided in accordance with the following table.

2. When calculation of the total required bicycle parking results in a fraction of a bicycle parking space, the fractional space must be rounded up to the nearest whole number. The applicant may choose to allocate the additional space resulting from the rounding to either short or long-term use.

3. A minimum of two spaces are required for all uses.

Table 38.530.070-1

Use	Minimum Bicycle Parking Spaces Required	Short-term/ Long-term
General Residential		
2-, 3-, 4-, and multi-unit with dedicated private garages or storage	1 per dwelling	100%/0%
2-, 3-, 4-, and multi-unit without dedicated private garages or storage	1 per studio/one-bedroom apartment	25%/75%
2-, 3-, 4-, and multi-unit without dedicated private garages or storage	2 spaces per other dwelling	25%/75%
Group Residential		
All group residential uses	1 per 2 beds	25%/75%
Recreation, Culture & Entertainment		
All recreation, culture and entertainment uses	1 per 1,000 square feet of gross floor area or 10% of max occupancy, whichever is more	75%/25%
Lodging		
All lodging uses	1 per 5 lodging rooms	50%/50%
Public, Government & Regional		
All public, government and regional uses not meeting another classification in this table	1 per 1,000 square feet of gross floor area	75%/25%
Personal & General Service		
All personal and general service uses	1 per 1,000 square feet of gross floor area	75%/25%
General Retail		
All general retail uses	1 per 1,500 square feet of gross floor area	75%/25%
Industrial & Wholesale		
All industrial and wholesale uses	1 per 7,500 square feet of gross floor area	25%/75%
Agriculture		
All agriculture uses	4 min	100%/0%

C. Bicycle parking standards.

1. General.

The purpose of this sub section is to ensure required bicycle racks are designed so bicycles may be securely locked to them without undue inconvenience and will be reasonably safeguarded from accidental damage.

a. Bicycle parking must be provided in a safe, accessible and convenient location. Directional signage must be installed when bicycle parking facilities are not readily visible from the street, sidewalk, or main building entrance.

b. Bicycle racks must hold bicycles securely, and meet the following criteria:

(1) Support the frame of the bicycle and not just one wheel.

(2) Allow the frame and one wheel to be locked to the rack when both wheels are left on the bicycle.

(3) Allow the frame and both wheels to be locked to the rack if the front wheel is removed.

(4) Allow the use of either a cable or U-shaped lock.

(5) Be permanently anchored to an all-season surface such as pavement, patio stones, or other similar surface and be located such that it will not become buried by snow removal operations.

(6) Be usable by bicycles with no kickstand.

(7) Be usable by bicycles with water bottle cages.

(8) Be usable by a wide variety of sizes and types of bicycles.

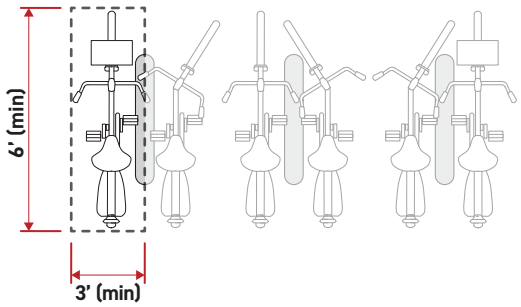
(9) If located adjacent to a motor vehicle parking space, be able to have a user load and unload a bicycle to the rack whether or not the motor vehicle parking space is occupied.

c. Preferred bicycle rack styles are inverted U, coat hanger, or post and loop racks. Other styles which meet the standards above are acceptable, including enclosed bicycle lockers. Comb and wave style racks do not meet the required standard.

d. If bicycles can be locked to each side of the rack, each side can be counted as a required space and each side must be equally accessible.

e. Bicycle racks and the area required for parking and maneuvering must meet the following standards:

(1) Bicycle parking spaces must be a minimum of two feet wide and six feet long. In covered situations the overhead clearance must be at least seven feet.



(2) An aisle for bicycle maneuvering must be provided and maintained beside or between each row of bicycle parking.

(3) Each required bicycle parking space must be accessible without moving another bicycle.

f. Bicycle parking must be provided in a well-lit area. All lighting must comply with the lighting standards of *38.560*.

g. Up to 50 % or 12 spaces, whichever is less, of bicycle parking may be located in a required setback. Bicycle parking may not interfere with any functional aspect of the site including stormwater facilities, pedestrian circulation, or landscaping requirements.

h. Bicycle parking may not occupy more than one-quarter of the total area of a required front setback on an individual street frontage.

i. Departures will be considered (per *38.760.050*) for covered bicycle parking or exceptional design.

2. Short-Term Bicycle Parking

a. Short-term bicycle parking must be well distributed throughout the project, visible to the bicyclist, in areas of high pedestrian activity to deter theft, publicly accessible and ADA accessible. 50 % of the required short-term bicycle parking must be placed within 50 feet of the main entrance with the remaining 50 % placed within 100 feet of the main entrance.

b. Short-term bicycle parking may be located in the public right-of-way subject to authorization granted by the city engineer for a perpetual encroachment easement.

c. Short-term bicycle parking may be covered or not covered. It may feature high density racks or standard density racks. It must be publicly accessible at all hours.

3. Long-Term Bicycle Parking

a. Long-term bicycle parking offers a secure and weather protected place to park bicycles for employees, residents, commuters, and other visitors who generally stay at a site for an entire day or overnight.

b. Long-term bicycle parking is required to be secure, weather protected, and must include at least one of the following:

(1) A locked facility/room with limited access, which may include individually assigned garages.;

(2) A bicycle locker; or

(3) A structure outside the main building that is covered and secured by means of a fence with a limited access gate or door.

c. Long-term bicycle parking may also provide high density style racks for optimizing parking capacity, parking spots for larger bicycles such as cargo bicycles; or parking for other personal transportation devices, including but not limited to scooters, skateboards, or one-wheels.

d. Long-term bicycle parking must be located on-site or be located within 200 feet from an entrance to the building the bicycle parking is required to serve. Long-term bicycle parking is not allowed in the public right-of way.

e. Long-term bicycle parking must be located at ground level or on levels easily accessible from the exterior of the building (such as with an elevator).

Sec. 38.530.080. - **Off-street loading berth requirements.**

If provided, off-street loading facilities must conform to the following standards:

A. All loading berths must be at least 12 feet in width and 14 feet in height, exclusive of aisle and maneuvering space.

B. Such space may occupy all or any part of any required setback space, except front and exterior side setbacks, and may not be located closer than 50 feet to any lot in any residential district unless separated from such district, except at the accesses, by screening not less than eight feet in height.

C. Sufficient room for turning and maneuvering vehicles must be provided on the site so that vehicles can cross a property line only by driving forward.

D. Each loading berth must be accessible from a street or alley or from an aisle or drive connecting with a street or alley, without traversing a residential district.

E. The loading area, aisles and access drives must be paved so as to provide a durable, dustless surface and must be so graded and drained as to dispose of surface water without damage to private or public properties, streets or alleys.

DIVISION 38.540. - **LANDSCAPING**

Sec. 38.540.010. - **Purpose.**

The process of development, with its alteration of the natural topography and vegetation, and creation of impervious cover can have a negative effect on the ecological balance of an area by causing or accelerating the processes of runoff, erosion and sedimentation. The economic base of the city can and should be protected through the preservation and enhancement of the area's unique natural beauty and environment. Recognizing that the general objectives of this division are to promote and protect the health, safety and welfare of the public, these regulations are adopted as part of this chapter for the following specific purposes:

A. To aid in stabilizing the environment's ecological balance by contributing to the process of air purification, oxygen regeneration, groundwater recharge, stormwater runoff retardation, and improvement of water quality, while at the same time aiding in noise, glare and heat abatement;

B. To provide visual buffering between land uses of differing character by placing screening vegetation;

C. To enhance the beauty of the city by expanding and strengthening the urban forest and providing a diversity of vegetation within the city;

D. To protect the character and stability of residential, business, institutional and industrial areas by establishing minimum landscaping standards;

E. Preserve the value of land and buildings by protecting and enhancing the aesthetic character of the community;

F. To conserve energy by providing windbreaks, shade and temperature moderation;

G. To retard the spread of noxious weeds by encouraging a vigorous desirable plant community within the city;

H. To enhance the appearance of the entryways into the city by providing high-quality landscaping which complements architecture;

I. To encourage a pleasant and safe environment for pedestrians by placement of boulevard trees and other interesting visual features; and

J. To achieve the conservation of water by requiring the use of efficient irrigation and water-wise plantings.

Sec. 38.540.020. - **Applicability, implementation, and scope; adoption of Manual.**

A. The provisions of this division apply to a lot or site when an application is being made for:

1. Site development approval pursuant to *38.740*;

2. Subdivision development approval pursuant to *38.750* of this chapter;

3. Planned development zone approval pursuant to *38.250.* of this chapter;

4. Restoration of a building that has been damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy or accident of any kind. For purposes of this *subsection A*, "restoration" means the act of putting back into a former or original state, only.

5. Sketch plans as provided in *38.740.060.*; or

6. Lots or sites within a legacy planned unit development regardless of whether the planned unit development has a previously approved landscape plan.

B. The provisions of this division apply regardless of the water source proposed for irrigation. This includes but is not limited to City potable water, groundwater wells, and other non-potable water systems. The application of this division for projects with irrigation systems connected to groundwater wells does not interfere with applicable groundwater permit exceptions in MCA 85-2-306(3).

C. The commission may, pursuant to resolution, adopt standards and guidelines to be known as the Landscape and Irrigation Performance and Design Standards Manual to implement the landscape and irrigation regulations of this code. The Manual may include mandatory procedural and substantive components including but not limited to: application requirements; review processes; submittal requirements; authorization for departures and exemptions; methods of calculating landscape water budgets; design plan requirements; enforcement and compliance requirements; required forms; irrigation system performance and design requirements; landscape performance and design requirements; authorized plant materials; mandatory irrigation watering schedules; decision making authority; and other standards and guidelines to implement this code. Any such resolution has the same force and effect as if adopted herein.

D. Vegetation may only be used to satisfy the requirements of this division when it is located on the same zone lot as the development depicted on the landscape plan.

Sec. 38.540.030. - **General landscape and irrigation provisions**

Landscape and irrigation plans must include the information required by *38.710.090*.

Sec. 38.540.040. - **Landscape and irrigation plan review.**

A. The review authority established in *38.700* must review each landscape and irrigation plan to determine whether or not it complies with the requirements of this division.

Sec. 38.540.050. - **Mandatory landscape and irrigation provisions.**

A. Landscaping required.

For all uses in all districts, unless otherwise provided by specific approval, the site must be landscaped as required in this chapter. Landscaped areas and irrigation systems must be perpetually maintained in a healthy and operable condition.

B. Parking lot landscaping.

1. For purposes of defining parking lot landscaping requirements, the term "parking lot" means the area within the perimeter of the paved portion of the parking lot, including drive aisles but not including drive accesses and parking stalls in front of garages where the use of one or more spaces within the garage is assigned to a particular dwelling. The provisions of this subsection

do not apply to parking areas, provided within a building or parking structure, as defined in *38.800.170*.

2. All surface parking lots on the building site must be landscaped in accordance with this subsection.

   a. Parking lot screening required

      (1) All parking lots located on a lot with a residential adjacency must be screened from that residential adjacency;

      (2) All parking lots located between a principal structure and a public street, must be screened from the public street;

      (3) The screening required under this subsection must be continuous and not less than four feet in width; and

      (4) Screening must be maintained at a height of four to six feet except as otherwise restricted by fence and hedge height limits within required front setbacks and street vision triangles.

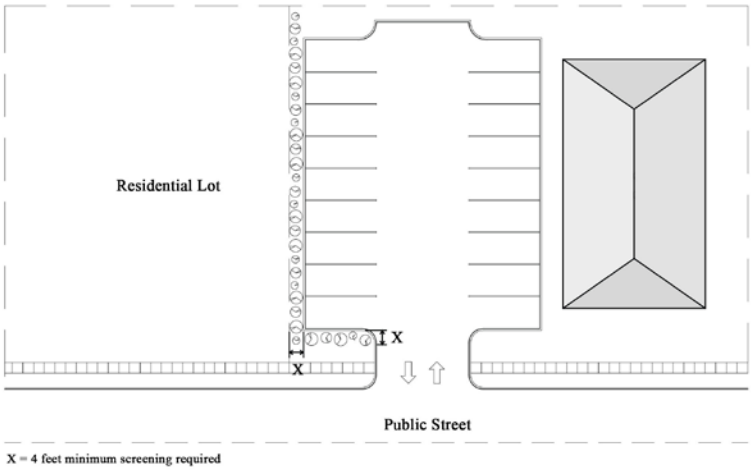


Figure 38.540.050-1. Parking lot landscape screening.

   b. Large canopy trees, large non-canopy trees or small trees must be provided in, or within 20 feet of, the parking lot at a minimum average density of:

      (1) One large canopy tree; or

      (2) One large non-canopy tree and one small tree; or

      (3) Three small trees for each nine parking spaces required or provided.

   c. No parking space shall be located more than 70 feet from the trunk of a tree.

   d. No tree shall be planted closer than three feet to the back of the curb or edging equivalent.

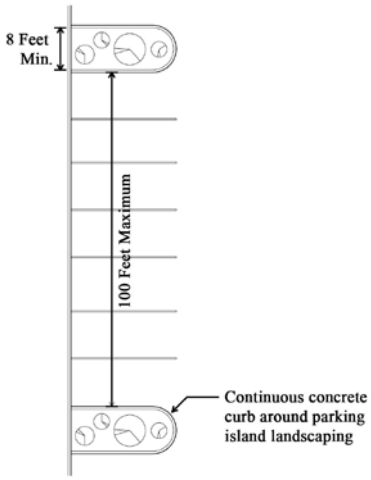


Figure 38.540.050-2.

e. Additionally, any parking lot providing 15 or more parking spaces must have a minimum of 20 square feet of landscape area within the parking lot for each off- street parking space in the lot provided as follows:

(1) The interior parking lot landscaping must be designed to facilitate, control and denote proper vehicular circulation patterns.

(2) Internal parking lot landscaping provided must be proportionately dispersed so as to define aisles and limit unbroken rows of parking to a maximum of 100 feet, with landscaped areas provided in an appropriate scale to the size of the parking lot.

(3) The minimum width and/or length of any parking lot landscaped area is eight feet.

(4) All parking lots under this subsection must include at least one large canopy or non-canopy tree.

(5) Individual internal parking lot landscaping areas with minimum dimensions of six feet by 16 feet must include large canopy or non-canopy tree(s).

(6) Internal parking lot landscaped areas are subject to restrictions on the use of overhead spray irrigation.

C. Screening of off-street loading spaces.

All off-street loading spaces are subject to *38.510.060* and *38.530.080*.

D. Street frontage landscaping required.

1. Acceptable large trees for use in public rights-of-way are those accepted by the forestry department. Street trees must meet the arboricultural specifications and standards of chapter 16, article 5, division 3. The forestry department publishes a pamphlet listing acceptable species and proper planting methods. Prior to planting street trees, a permit from the forestry department is required.

2. The minimum quantity of trees and other landscaping required and provided in the public right-of-way as described in *38.260.050* must be designed to complement on-site landscaping and to enhance the proposed development project and the streetscape.

3. Montana Department of Transportation (MDT) review and approval of street frontage landscaping for areas of a project included within or adjacent to rights-of-way subject to MDT jurisdiction must be demonstrated at time of landscape plan submittal to the city. When MDT, in writing, denies street frontage landscaping required by this section the applicant must propose and the director may approve an alternative street frontage landscaping through a departure.

4. Landscaping and irrigation must comply with boulevard and street median requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

E. Street median island landscaping.

All street median islands must comply with requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

F. Acceptable landscape materials.

1. Acceptable plant materials are those identified as hardy in Zones 1 through 5a based on the United States Department of Agriculture (USDA) Plant Hardiness Zones. Acceptable plant materials are also outlined in the City of Bozeman Plant List located on the City of Bozeman website, which includes USDA zone hardiness information. Alternatives may be considered upon a case-by- case basis. However, in the case of street frontage landscaping as required in *subsection E* of this section, acceptable tree species are limited to those approved by the city forestry division.

2. Landscape materials must not exceed water use requirements outlined in the prescriptive and performance-based landscape design approval pathways included in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

3. Adequate soil depth and quality must be installed as outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

4. No artificial plant materials may be used to satisfy the requirements of this division.

5. Plant materials used to satisfy the requirements of this division must comply with the following minimum size requirements at the time of installation (depending on the standard measuring technique for the species):

   a. Large canopy and non-canopy trees must have either:

      (1) For deciduous trees a minimum caliper of one and one-half inches to two inches; or

      (2) For evergreen trees a minimum height of eight feet.

   b. Small canopy and non-canopy trees must have either:

      (1) For deciduous trees a minimum caliper of one inch; or

      (2) For evergreen trees a minimum height of six feet.

c. All other non-turf plantings must meet American Nursery and Landscape Association standards.

6. For purposes of *subsection F.5.* of this section, height is measured from the top of the root ball or, if the plant is in a container, from the top soil level in the container.

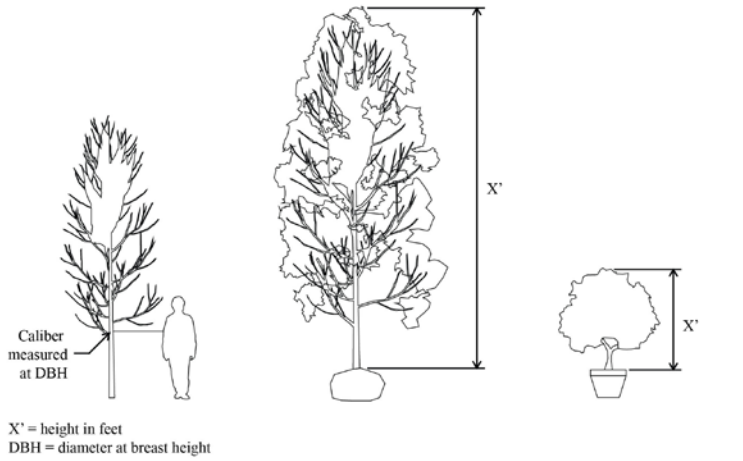


Figure 38.540.050-3. Dimensions of acceptable landscape materials.

G. Protection of landscape areas.

1. Perimeter parking lot treatment as required in *38.530.020.I* must be installed to protect landscape areas adjacent to parking lots.

2. Landscaped areas within parking lots (i.e., landscape islands or peninsulas) must be protected from vehicular traffic through the use of continuous concrete curbs, or other permanent barriers approved by the review authority. Railroad ties, rolled asphalt, pin down wheel stops or similar methods of curbing are not acceptable methods of landscape protection within parking lots.

3. No landscape area may be less than two feet wide for a perennial bed, five feet wide for shrubs and 8 feet wide for trees.

H. Irrigation standards.

1. Irrigation is required to be provided to all landscaped areas.

   a. The review authority may allow areas planted with drought-adapted vegetation that only require irrigation for germination and plant establishment purposes to be irrigated with a temporary irrigation system that meets requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

   b. The use of hose bibs on the exterior of existing or proposed structures may be used for irrigating landscaped areas adjacent to the existing or proposed structure.

   c. All other landscaped areas, that do not fall within a or b above, must include a permanent irrigation system that meets requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

2. All irrigation systems and landscaped areas must be designed, constructed, operated and maintained in accordance with requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

I. Required use of trees with residential adjacency.

All landscape plans must include, for each setback with a residential adjacency, at least one canopy or non-canopy tree for each 50 lineal feet of the adjacent area.

J. Coordination with utilities.

In order to prevent damage to both vegetation and public utility lines, all trees and other large vegetation may planted no closer than the minimum distance specified in the City of Bozeman Design and Construction Standards. When the city verifies it is not possible to meet minimum separation distance from utilities and no other arrangement can be approved, such tree or large vegetation is not required.

K. Maximum allowable slope or grade.

1. The finish grade of all landscaped areas, including, but not limited to, required setbacks, parking lot landscape islands, open space areas, plaza areas, watercourse corridors, landscaped areas adjacent to sidewalks, public trails or pathways, and any stormwater facilities proposed in required setbacks, dedicated parkland, or open space areas may not exceed a slope of 25 % grade (four run to one rise).

2. The slope percent is computed by dividing the vertical distance by the horizontal distance multiplied by 100. The degree of slope is equal to the tangent of vertical distance over horizontal distance.

3. The review authority may vary the maximum allowable slope of 25 % grade to protect existing topographical or natural features (i.e., watercourse, wetlands, mature vegetation) associated with a site. Alternatives to enable exceeding the maximum allowable slope of 25 % may include terracing, retaining walls, architectural appurtenances, landscape features, or a combination thereof that will achieve a greater design quality and enhanced landscape features.

4. All landscaping installed on slopes that meet or exceed 25 % grade must include adequate erosion control measures to ensure the slope is stabilized. If hydro-seed, groundcovers, or bunchgrasses are utilized, additional erosion control fabric (i.e., matting or blanket or equivalent thereof) must be provided to ensure a stable slope for a minimum of one calendar year while the vegetation becomes established.

L. Legacy planned unit development open spaces.

Legacy planned unit development non- site-specific open space plans must meet or exceed the standards of these landscaping regulations. For each 5,000 square feet of total landscape open space area between 5,000 and 25,000 square feet and for each 10,000 square feet of total landscape areas in excess of 25,000 square feet a landscape plan must include three of the elements in *Table 38.540.050-1* from each column A and B unless the review authority grants a relaxation. When the preceding calculation results in a fraction the amount of landscaping required is rounded up to the next whole number.

Table 38.540.050-1

Column A	Column B
1 large canopy tree	3 evergreen shrubs and 3 deciduous shrubs
1 large non-canopy tree	2 small ornamental trees
2 small ornamental trees	2 large evergreen trees
	6 evergreen shrubs
	6 deciduous shrubs

Sec. 38.540.060. - **Landscape and irrigation performance and design standards.**

Compliance with the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual is required pursuant to this division and Chapter 40, Article 2 of this code. The City of Bozeman Landscape and Irrigation Performance and Design Standards Manual and associated resources are available with the Water Conservation Division.

Sec. 38.540.070. - **Fences, walls and hedges.**

A. Location and height.

Except as provided in *38.400.100*, fences, walls and hedges in any district may be located on lot lines, provided such fences, walls and hedges comply with the following height requirements:

1. Fences and walls do not exceed six feet in height in any required rear or required side setback. Fences exceeding six feet in height must be subject to the minimum setback requirements of the district in which such fences are located. Decorative post caps may exceed the height limit by no more than one additional foot. Fences in excess of six feet in height require a building permit before installation may commence. Fences may not exceed eight feet in height.

    a. A gate may be provided which defines an entrance point. The gate may have a defining structure so long as the defining structure is not more than one foot wide on either side of the gate. Gate structure heights may not exceed twice the allowed fence height.

2. For lots with one front setback, do not exceed four feet in height in the front setback. Lots with more than one front setback, do not exceed four feet in the setback adjacent to the street on which the property has its assigned address. In non-addressed front setbacks, fences must not exceed four feet in height in the portion of the front setback that is adjacent to the building facade nearest the front setback. Decorative post caps may exceed the height limit by no more than one additional foot.

3. Fences used in an agricultural pursuit to retain stock animals or for public safety must be excepted from the standards of this section.

4. The height of fences located in the B-3 district must meet the requirements of this section for any provided, not required, setbacks.

B. Relation to linear parks.

Fences located in the rear or side setback of properties adjoining any city linear park must have a maximum height of four feet.

C. Construction and maintenance.

Every fence or wall must be constructed in a substantial, skillful manner and of substantial material reasonably suited for the purpose for which the fence or wall is proposed to be used. Every fence or wall must be maintained in a condition of reasonable repair and must not be allowed to become and remain in a condition of disrepair, damage or unsightliness, or constitute a nuisance, public or private. Any such fence or wall which is, or has become, dangerous to the public safety, health or welfare, or has become unsightly through improper maintenance or neglect is a public nuisance and the building official must commence proper proceedings for the abatement thereof.

D. Barbed wire and electric fences.

No barbed wire or similar sharp fencing or electric fences is permitted, except that barbed wire or other similar sharp fencing materials may be used on the top of security fences in M-1 and M-2 districts.

E. Measuring fence and wall height.

In case of a fence erected on top of a retaining wall, the height must be measured from the grade of the high side of the wall.

F. "Finished" side out.

Any fence or wall constructed so as to have only one elevation "finished," which must be defined as not having its supporting members significantly visible, must be erected such that the finished elevation of the fence is exposed to the adjacent property.

G. Fencing of utilities and outdoor storage areas.

1. All utility substations, wells, storage facilities or other utilities must be screened from view by a wall, fence, hedge or landscape screen.

2. All storage for commercial operations must be conducted within a completed enclosed building or within an area completely enclosed, except for access points, by a wall, fence, hedge or landscape screen at least six feet in height.

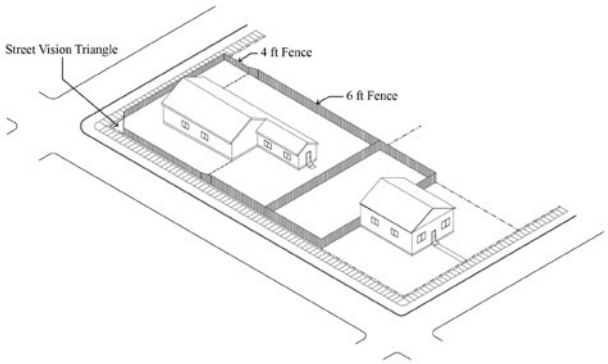


Figure 38.540.070-1. Fences.

Sec. 38.540.080. - **Landscaping and irrigation of public lands.**

A. City rights-of-way, open space and parks.

1. General.

a. Tree planting permits must be obtained from the forestry department prior to installation of trees in city rights-of-way or parks.

b. Compliance with the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual is required.

2. Streets, open space, and parks.

a. The developer must at the time of initial development install landscaping, boulevard trees and an irrigation system in city rights-of-way boulevard strips and medians along all collector or arterial streets and all streets adjacent to parks or open space areas.

(1) Prior to installing landscaping in these areas, the developer must submit a landscape and irrigation plan to the city for review and approval. The landscape and irrigation plan must be prepared by a qualified landscaping professional meeting the requirements of this *38.540*.

(2) The developer must specify its irrigation water supply source(s).

(3) Wells may be used to irrigate landscaping in these areas subject to applicable state law governing the appropriation of groundwater.

(a) The appropriation and use of groundwater for irrigation of parks and city rights-of-way take priority over irrigation of open space and individual lots.

(4) The developer must transfer to the city legal ownership of any water rights used for the irrigation of these areas.

(5) Irrigation systems owned and maintained by the city for use in public rights-of- way and parks must be discrete and separate systems from those used to irrigate open space areas and privately owned lots.

(a) Easements must be provided for irrigation systems and components owned and maintained by the city that are located on private land pursuant to this section and *38.410.060*.

(6) Landscaping and irrigation must comply with boulevard and street median requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

3. Adjacent to individual lots.

a. When individual parcels are developed, the individual property owners must install landscaping and street trees within the city rights-of-way boulevard strips adjacent to their property and provide irrigation in compliance with *38.550.050.D.1.*

b. Landscaping and irrigation must comply with boulevard and street median requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

B. Maintenance responsibility.

1. Maintenance of landscaping installed within the boulevard portion of the public right-of-way, with the exception of tree trimming and tree removal, is the responsibility of adjacent property owners.

2. The developer must maintain landscaping and irrigation systems for parklands until the parkland is accepted by the City. After the City accepts parkland, the City is responsible for maintaining the landscaping and irrigation systems for the parkland.

C. State rights-of-way.

Landscaping must be installed along state rights-of-way, in the same manner described in this section, provided that the state department of transportation has reviewed and approved the proposed landscaping plan. Maintenance of landscaping installed within the boulevard portion of the state right-of-way is the responsibility of adjacent property owners unless a different responsibility is established by the encroachment permit.

Sec. 38.540.090. - **Departure from landscape and irrigation requirements.**

A. To achieve the optimal landscape design on individual sites, or to coordinate the landscape design in an area, it may be necessary to depart from the strict application of landscaping requirements. An application for such departure must be processed per *38.760.050*.

B. The application for departure must be accompanied by written and graphic material sufficient to illustrate the conditions that the modified standards will produce, so as to enable the review authority to determine that the departure will produce an environment, landscape quality and character superior to that produced by the existing standards, and will be consistent with the purpose of this division. Upon such a finding, the review authority may authorize departures of up to 20 % from landscape design standards contained herein.

C. Departure criteria that support city water use efficiency goals are outlined in detail in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

Sec. 38.540.100. - **Landscape and irrigation completion.**

All landscaping and irrigation must be completed or secured in accordance with the provisions of *38.780*. The applicant must demonstrate satisfactory establishment of all seeded areas or guarantee establishment for a minimum two year period following occupancy.

Sec. 38.540.110. - **General maintenance.**

A. Required landscaping must be maintained in a healthy condition at all times. The property owner is responsible for regular maintenance of all plantings as needed. However, the city forestry department is responsible for pruning or removing any tree in a city right-of-way or park. Any plant that dies must be replaced with another living plant that complies with the approved landscape plan. Failure to maintain required landscaping in a healthy condition at all times may result in enforcement per

38.700.160. When enforcing this provision of this chapter, external factors such as seasonality and availability of landscape stock must be considered before any action to revoke an occupancy permit is taken.

B. Any damage to utility lines, resulting from the negligence of the property owner or the owner's agents or employees in the installation and maintenance of required landscaping or irrigation in a utility easement, is the responsibility of the property owner. If a public utility disturbs a landscaped area in a utility easement, it must make every reasonable effort to preserve the landscaping materials and irrigation system and return them to their prior locations and operations after the utility work. If, nonetheless, some plant materials die, or irrigation system components are irrevocably damaged, it is the obligation of the property owner to replace the plant materials and irrigation system components.

DIVISION 38.550. - **SIGNS**

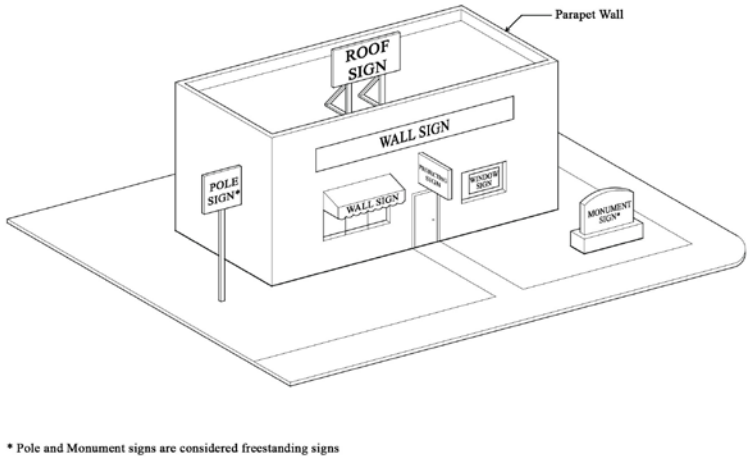


Figure 38.550-1. Signs.

Sec. 38.550.010. - **Findings and purpose.**

A. Findings.

1. Signs obstruct views, distract pedestrians and motorists, displace alternative uses for land, and may create hazards that threaten the public health and safety. Such a safety threat is particularly significant for signs that are structurally inadequate, confuse drivers or pedestrians, or interfere with official directional or warning signs.

2. Signs may also threaten the public welfare by harming property values and creating aesthetic concerns, especially where the accumulation of signs creates visual clutter or obstruct scenic vistas.

3. The ability to erect signs serving certain functions, such as address signs and directional signs, are important because they enable residents and visitors to efficiently and safely reach their intended destinations.

4. The regulation of the physical characteristics of signs in the city has a positive impact on the safety and appearance of the community.

5. The purposes described in this section are compelling interests and the regulations in this division are narrowly tailored to serve those interests while allowing adequate alternative avenues for speech.

B. Purpose.

It is the purpose of this division to promote the health, safety and welfare of the residents and visitors of the city by regulating and controlling the size, location, type, quality of materials, height, maintenance and construction of all signs and sign structures not located within a building, or within a building and visible from the exterior for the following reasons:

1. To ensure that pedestrians and motorists are protected from damage or injury caused by or partly attributable to the distractions and obstructions which are caused by improperly situated or dangerously distracting signs;
2. To preserve the Bozeman area's natural scenic beauty and character as expressed in adopted city plans and policies;
3. To contribute to inviting entrances into the city by eliminating clutter associated, in part, with the unrestricted proliferation of signs, lights and stringed devices;
4. To encourage area beautification through creative, interrelated design of signage, landscaping, buildings, access and parking that enhances the community's built and natural environment;
5. To give all persons, organizations and businesses an equal opportunity to have a sign that will help people find the goods and services they need; and
6. To encourage economic development.

C. The provisions of this division provide a reasonable balance between a person's right to identify their organization or business, or to freely express thoughts and ideas, and the interest of the public to be protected from the visual discord and distraction that results from the unrestricted proliferation of signs. Section 34.340.070 establishes certain exemptions, and alternative procedures utilizing design review. The deliberations and decisions of the design review must be directed to accomplish the purposes of this section.

D. This division must be interpreted in a manner consistent with the Federal and State Constitution's guarantee of free speech.

Sec. 38.550.020. - **Sign permit requirements.**

If a sign requiring a permit under the provisions of this division is to be placed, constructed, erected or modified on a zone lot, the owner of the lot must obtain a sign and building permit prior to the construction, placement, erection or modification of such a sign. Furthermore, the property owner must maintain in force, at all times, a permit for such sign. No permit of any kind may be issued for an existing sign or proposed sign unless such sign is consistent with the requirements of this division. Murals as defined in *38.800.140* are not subject to this division but may be subject to the provisions of *38.240.020*.

Sec. 38.550.030. - **Prohibited signs.**

A. All signs not expressly permitted under this division, or exempt from the provisions of this division, are prohibited in the city. Such signs include, but are not limited to:

1. Portable signs (except as allowed under chapter 34, article 5);
2. Roof signs;
3. Revolving signs, except as permitted in *38.550.060*;
4. Beacons, spotlights;
5. Flashing, blinking, or animated signs;

6. LED, digital, or other electronic messaging signs except for incidental signs as defined in *38.800.100*;
7. Pennants, streamers, wind socks, pinwheels, feather flags, feather banners, or similar items;
8. Stringed flags;
9. Inflatable signs and tethered balloons (except as permitted per *38.550.040*);
10. Signs located in public rights-of-way (except for those specifically permitted in this division); and
11. Signs that:
    a. Contain structural components such as size, location, movement, coloring, or manner of illumination that are similar to or which may be confused with or construed as a traffic control or hazard warning device; or
    b. Interfere with the traveling public's view of a traffic or hazard warning sign or signal.

Sec. 38.550.040. - **Temporary signs; permit required.**

A. Excluding those signs subject to *38.550.050*, temporary signs as defined in *38.700.210* may be permitted only as follows:

1. Temporary signs may be permitted only with an approved temporary sign permit.
2. All temporary signs must comply with size, height, and location requirements of this division.
3. A property may have temporary sign(s) on display for no more than 30 cumulative days per calendar year (January 1 to December 31). A new business or nonprofit organization, during its initial calendar year in business or in existence, may display temporary sign(s) for a maximum of 60 consecutive days.
4. Itinerant vendors as defined in section 12.01.010.A will receive information about allowable temporary signs at the time the vendor applies for a business license, but a temporary sign permit is not required if the itinerant vendor is operating for seven days or less.
5. A person who conducts seasonal operations, such as garden greenhouses, boat showrooms, or ski rental facilities, may apply for a longer term temporary sign permit which may be approved for a period not to exceed 180 days.
6. One temporary sign per street frontage is allowed.

Sec. 38.550.050. - **Signs exempt from permit requirements.**

A. The following signs are exempt from the permitting requirements of this division but must comply with the criteria for signs allowed by this division, except the criteria in *38.560.060*. In order to be exempt from sign permit requirements, such signs must not be internally illumined, cause glare, cast light onto adjacent property, be placed in sight vision triangles, or otherwise impede or obstruct the view of the traveling public:

1. All zones.

a. Government and public utility signs. Directional, warning, street, traffic control, informational or temporary signs that are erected, installed or placed by or on behalf of or required by any transportation agency of a federal, state, county or city government. Public utility signs showing locations of underground facilities or public telephones, and safety signs on construction sites are included within this exemption.

b. Incidental signs as defined in *38.800.100*.

c. Ghost signs. A ghost sign as defined in *38.800.080* may be, but is not required to be, stabilized, rehabilitated or preserved to its original condition, design and size. A ghost sign may not be altered in any way that changes its original design, wording, or size.

d. Sign on property that is for sale, rent, or lease. One temporary sign in addition to that otherwise allowed by this section may be located on property when the owner consents and the property is being offered for sale, rent, or lease for a period not exceeding 15 days following the closing date.

(1) On all sites less than 1 acre (43,560 square feet) in size, or containing 8 or fewer dwelling units for sale, rent, or lease, the sign may not exceed nine square feet in total area and may be no more than five feet high.

(2) On sites 1 acre (43,560 square feet) or greater in size, or containing 9 or more dwelling units for sale, rent, or lease, or located in commercial zoning districts, the sign may not exceed 32 square feet in total area and may be no more than five feet high.

2. Residential zones (R-A, R-B, R-C, R-D, REMU [residential uses]).

a. Non-commercial temporary signs that do not exceed nine square feet per individual sign in total area at any particular time and, if freestanding, five feet in height. A total sign area of not more than 32 square feet may be displayed at the same time.

b. Businesses working at a residentially zoned lot, such as landscapers or window treatment installers, may post a temporary commercial sign only during the period the business is actively working on the site and up to three days after the business' work on the site is completed. Each such sign on a single lot at any particular time may not exceed 32 square feet per individual sign in total area and, if freestanding, may not exceed five feet in height. Such signs are not considered off-premises advertising so long as the identified business is actively engaged on the site.

c. Commercial uses in the residential R-B, R-C and R-D districts may install the same types of exempt signs allowed in commercial districts.

3. Commercial and manufacturing zones (B-1, B-2, B-2M, B-3, B-3C, M-1, M-2, B-P, PLI, NEHMU, REMU [mixed-use, non-residential]).

a. Window signs, provided that such signs do not occupy more than 25 % of the area of the window in which it is displayed. If the window sign(s) exceeds 25 % of the area of the window, it will be classified as a wall sign. For the purposes of this section, a window is a transparent glass opening in a wall separated from other glass openings by mullions or other dividers of four inches or less in width.

b. Signs within a structure or building or other enclosed area of property when such signs are not legible when viewed from outside the structure or property.

c. Non-commercial temporary signs; such signs must not exceed 32 square feet in total area, must be no more than five feet high and must be at least five feet from the property line when the required setback is in excess of five feet.

d. Businesses working at a construction site may post temporary commercial signs on the site with the property owner's permission. Each such sign on the site may not exceed 32 square feet in total area, may be no more than five feet high and must be at least five feet from the property line. Such signs are not considered off-premises advertising so long as the business is actively engaged on the site.

Sec. 38.550.060. - **Signs permitted upon the issuance of a sign permit.**

A. The following on-premises signs may be permitted in the indicated zones with an approved sign permit. Where two values are listed in a cell, the larger value of the two listed applies when a building is located on a lot with no parking or other vehicular use area between the building facade and the street right-of-way, or between the building facade and a public pedestrian right-of-way adjacent to a street.

Table 38.550.060-1. Non-Residential Sign Standards - B-1, B-2, B-2M, B-3, B-3C, M-1, M-2 Districts

Zoning District	B-1	B-2, B-2M	B-3, B-3C	M-1	M-2
Maximum sq. ft. area	80 per building	400 per building	250 per building	250 per building	250 per building
Allowed sq. ft. sign area per linear foot of building frontage first 25 feet	1.5 or 2	2 or 3	2	2 or 3	2 or 3
Allowed sq. ft. sign area per linear foot of building frontage > 25 feet	1	1.5	1.5	1.5	1.5
Allowed sq. ft. of wall sign authorized adjacent to an alley in addition to the otherwise authorized maximum sign area	9	9	9	9	9
Monument max. size sq. ft.	32	32	32	32	32
Monument max. height	5'	5'	5'	5'	5'
Monument setback	5'	5'	5'	5'	5'

Table 38.550.060-1. Non-Residential Sign Standards - B-1, B-2, B-2M, B-3, B-3C, M-1, M-2 Districts

Zoning District	B-1	B-2, B-2M	B-3, B-3C	M-1	M-2
Pole style max. height	Prohibited	13'	13'	13'	13'
Pole style setback	Prohibited	15'	15'	15'	15'
Pole style clearance	Prohibited	8'	8'	8'	8'
Pole sign max. sq. ft.	Prohibited	32	32	32	32
Projecting sign max. area	8'	8'	12'	8'	8'
Projecting sign max. distance	4'	4'	6'	4'	4'
Rotating sign max area	2.5 sq. ft.	2.5 sq. ft.	2.5 sq. ft.	Prohibited	Prohibited

Table 38.550.060-2. Non-Residential Sign Standards - B-P, PLI, NEHMU, REMU Districts

			Non-Residential Uses			
Zoning District	B-P	PLI	R-B	R-C, R-D	NEHMU	REMU
Maximum sq. ft. area	250 per building	250 per building	60 sq. ft.	60 sq. ft.	250 per building	250 per building
Allowed sq. ft. sign area per linear foot of building frontage first 25 feet	2 or 3	2 or 3	1.5	2 or 3	2 or 3	2 or 3
Allowed sq. ft. sign area per linear foot of building frontage > 25 feet	1.5	1.5	1.5	1.5	1.5	1.5
Allowed sq. ft. of wall sign authorized adjacent to an alley in addition to the otherwise authorized maximum sign area	9	9	9	9	9	9
Monument max. size sq. ft.	32	32	Prohibited	Prohibited	32	32
Monument max. height	5'	5'	Prohibited	Prohibited	5'	5'
Monument setback	5'	5'	Prohibited	Prohibited	5'	5'
Pole style max. height	13'	13'	Prohibited	Prohibited	13'	13'
Pole style setback	15'	15'	Prohibited	Prohibited	15'	15'
Pole style clearance	8'	8'	Prohibited	Prohibited	8'	8'
Pole sign max. sq. ft.	32	32	Prohibited	Prohibited	32	32
Projecting sign max. area	8'	8'	6'	8'	8'	8'
Projecting sign max. distance	4'	4'	4'	4'	4'	4'
Rotating sign max. area	Prohibited	Prohibited	Prohibited	Prohibited	2.5 sq. ft.	Prohibited

1. Sign plan required.

A comprehensive sign plan pursuant to *38.550.080* must be approved prior to installation of signage for all commercial centers or buildings consisting of two or more tenant spaces on a lot..

2. Freestanding signs.

One freestanding sign may be permitted per zoned lot as defined in *38.800.070*. Signage area used for freestanding signs is counted towards the maximum allowed signage area.

3. Wall signs.

a. Regardless of the allowance for additional area, the maximum area may not exceed the amount allowed for the district.

b. Lots fronting on two or more streets may be allowed signage area for each building frontage.

c. Canopy, window and awning signs are considered wall signs. Wall signs may not project above the top of a wall or parapet.

4. Projecting signs.

One projecting sign per tenant may be permitted, unless otherwise approved through a comprehensive sign plan. Projecting signs must provide a minimum sidewalk clearance of eight feet.

A rotating sign located within the building does not need to provide the minimum sidewalk clearance height. A rotating sign exceeding a rotational speed of one full rotation in two seconds are prohibited.

5. Ghost signs.

Ghost signs as defined in *38.800.080* do not apply toward the maximum square foot signage areas of *Table 38.550.060-1* and *Table 38.550.060-2*.

B. Residential zones (R-A, R-B, R-C, R-D, REMU).

The following on-premises signs may be permitted in the indicated zones with an approved sign permit:

1. Subdivision and residential complex signs.

For residential subdivisions consisting of more than four residential lots, and for residential complexes with more than four dwellings or more than one building, one low profile, freestanding, sign per development entrance may be permitted. No sign may exceed 16 square feet in area or five feet in height from the finished grade. The sign must be set back at least five feet from the property line.

2. Residential building signs.

For properties used for multi-household residential, one wall sign per street frontage may be permitted. No sign may exceed eight square feet in area.

3. Signs appurtenant to principal residential uses, all special uses, and home-based businesses.

a. Signs not to exceed four square feet in total area may be permitted for principal residential uses and permitted home-based businesses; however, such signs must be wall signs. In addition, home-based businesses may be permitted a single one-square foot sign on a mailbox or lamppost or one and one-half square feet of freestanding signage located a minimum of five feet from the property line.

b. Principal residential uses may be permitted non-commercial signs if such signs do not exceed 32 square feet in total area nor five feet in height. Such signs must be set back at least five feet from the property line.

c. Permitted non-residential type uses, for community centers, golf courses, day care centers, or other allowed uses may be permitted signage calculated per Table 38.550.060-2 and for a district not listed in Table 38.550.060-2 by frontage as if the underlying zoning were B-1 but may not exceed 60 square feet.

d. Permitted special use residential uses such as homes used as bed and breakfasts may be permitted signage as if the underlying zoning were B-1, subject to the following modifications: Such signs may be illuminated only during the hours of operation;

(1) The allowed sign are per linear foot of building frontage is half that amount shown for the B-1 district in *Table 38.550.060-1* and may not exceed 60 square feet;

(2) Monument signs are limited to a maximum of 12 square feet in area; and

(3) Rotating/revolving signs are prohibited.

e. All other allowed non-residential uses calcluate total allowed signage per B-1 district but may not exceed 60 square feet and may not have a free standing sign.

4. Legacy planned unit developments.

Commercial establishments within legacy planned unit developments where the underlying zoning is residential may be permitted signage as if the lot were in a B-1 zone.

C. Special districts and zones.

The provisions of this division apply to all zoning districts unless otherwise addressed below:

1. Neighborhood conservation overlay district.

Within this district, prior to the installation of a sign, the city must approve a certificate of appropriateness for all non-temporary signage after review for compliance with the design guidelines for the neighborhood conservation overlay district.

2. Downtown business district.

Permits for signs in the downtown business district as defined in section 34.05.020.A that encroach into the public right-of-way must be obtained in accordance with chapter 34, article 5 of the Bozeman Municipal Code.

D. Measurement.

1. Area.

a. The area of a sign is computed by enclosing the entire area within any type of perimeter or border which may enclose the outer limits of any writing, representation, emblem, figure or character together with any other material or color forming an integral part of the display or used to differentiate such sign from a building on which it is placed.

b. The area of a sign having no such perimeter is computed by enclosing the entire area within parallelograms, triangles, or circles in a size sufficient to cover the entire area of the sign copy and computing the size of such area.

c. In the case of a two-sided sign, the area is computed as including only the maximum single display surface which is visible from any ground position at one time. If the angle between the two sign faces is greater than 45 degrees, the sign area will be the sum of the areas of the two faces.

d. In the case of any spherical, conical, or cylindrical sign, one-half of the total surface area is computed as the area of the sign.

e. The supports or uprights on which any sign is supported are not included in determining the sign area unless such supports or uprights are designed in such a manner as to form an integral background of the sign.

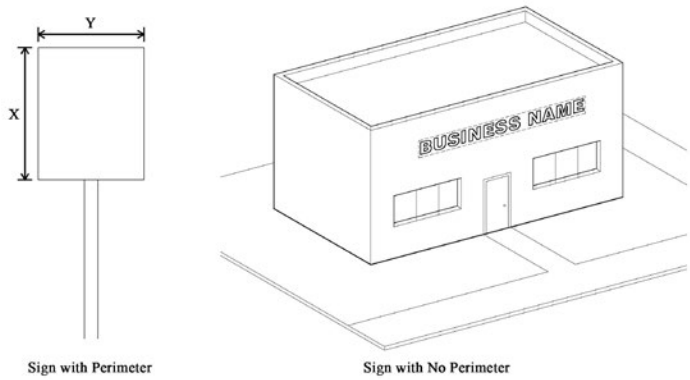


Figure 38.550.060-1. Area of signs.

2. Height.

a. Height of low profile sign.

The vertical distance between the finished grade and the highest component of the sign.

b. Height of pole style sign.

The vertical distance between the elevation of the adjacent street curb, or edge of pavement, if no curb exists, to the highest attached component of the sign. In the event that the finished grade of the sign location is higher, or lower, than the adjacent street curb or edge of pavement, the height is determined as the vertical distance from the median elevation between the adjacent street curb or edge of pavement and the lowest finished grade at the base of the sign to the highest attached component of the sign.

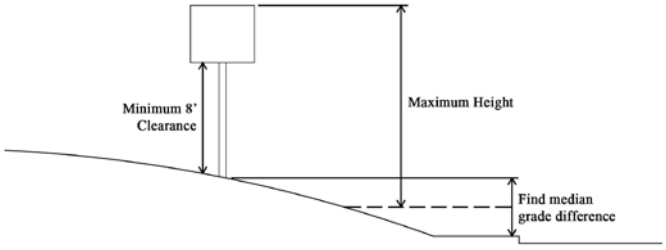


Figure 38.550.060-2. Height of pole style sign.

3. Frontage length.

a. Building frontage length.

For the purposes of this section, the frontage length of a building located on the exterior of a lot (with no other buildings between the subject building and a street lot line) is measured in linear feet using the methods described in *38.260.110.C.4*.

b. Building frontage length interior to a lot.

Buildings located interior to a lot (with other buildings between the subject building and a lot line) are measured in the same manner as 3.a. above, by projecting lines at a 90-degree angle from the ends of the subject building out to the street lot line.

Sec. 38.550.070. - **Wayfinding signage.**

A. Purpose.

Wayfinding signs serve to assist travelers in navigating the larger community and identifying defined districts. Wayfinding signs or kiosks are not intended to serve as off-premises advertising for individual entities.

B. Defined districts.

To qualify as a district an area must have a significant commonality of purpose and identity, and shared functions serving the larger community. Designation as a district is at the discretion of the city and will only be granted when found to be consistent with the purpose of this division and the city's other adopted regulations, policies and plans. Approval of district designation is the duty of the review authority, who must make written findings of the decision.

C. Description.

Wayfinding signage is intended to add to the district's "sense of place" and may include district identification signs, directory signs to designate shared or common spaces such as parking facilities, parks, trails and open space. It may also include pedestrian-scale informational kiosks to announce district events and/or to list a directory that corresponds with a map presented in the kiosk. Wayfinding signs may not advertise specific businesses or otherwise constitute off-premises signs. Wayfinding signage is permitted within districts only after approval of a comprehensive wayfinding signage plan.

D. Required submittal.

Submittal of a comprehensive signage plan for wayfinding must be made by a single individual or entity legally authorized to represent the area within the plan and with the consent of the relevant governing authority. In addition to the requirements of *38.550.080*, a comprehensive signage plan for wayfinding must:

1. Include a description of the installation and maintenance program for the signs including, but not limited to: who is responsible for installation and maintenance; identified reliable funding for installation and maintenance; contact plan for the responsible individual; and a description of how the sign program will be kept updated or removed. If the signs are to be illuminated, a description of how the power source may be removed and made safe must be included.
2. Demonstrate how it will enhance the streetscape by promoting a unified and enhanced visual aesthetic consistent with the streetscape design elements in the district; coordinate information for pedestrians and drivers in a clear, consistent, and understandable format, and reduce visual clutter.
3. Include information on how the district stakeholders were given opportunity to collaboratively participate in the selection of the sign types and designs.
4. Clearly describe the hierarchy of signs and include the criteria for determining sign placement and size. Any signs intended to be read from the right-of-way must comply with the lettering standards of the Manual for Uniform Traffic Control Devices for the road type and speed.
5. Include signage elevations and plans with corresponding map, designating sign types and locations.

E. Design standards.

The wayfinding signs must include and meet the following standards and provisions:

1. Color schemes, fonts and materials.

Coordinated color schemes, fonts and materials, including base supports, cabinet details and mounting methods, must serve to distinguish wayfinding signage within the district from other districts.

2. Lighting.

Lighting is not required. If any lighting is proposed, the wayfinding signage plan must include cut-sheets and lighting details in accordance with the standards established in *38.560*.

Photovoltaic panels to provide power, where appropriate, are encouraged.

3. Size and location.

Signage may be located within required setbacks and may be located within the right-of-way, with approval from the applicable review agencies including the city and/or the state department of transportation. Restrictions for signs within the public right-of-way may be more strict than those on private property in order to avoid conflict or confusion with official regulatory and warning signs or interference with travel.

4. **Wayfinding signs must comply with the following standards:**

   a. Wayfinding signs that are affixed to a light post, traffic post or sign within the right-of-way may not exceed four square feet in area and are limited to one sign per block face (or equivalent).

   b. Any signs intended to be located within the right-of-way must comply with the construction standards of the Manual for Uniform Traffic Control Devices.

   c. Freestanding wayfinding kiosks or signs are limited to one sign per two blocks (or equivalent), may not exceed 30 square feet in area per face and may not exceed seven feet in height.

   d. Wayfinding signage may be located within the street-vision triangle at intersections controlled by a traffic light.

   e. Decorative features including but not limited to post caps may extend an additional two feet for a total of nine feet in height.

   f. Photovoltaic panels are exempt from the height requirement.

   g. Business names, logos, or other marks identifying specific parties may be on a directory list or map in a kiosk but may not exceed one inch in height.

   h. Wayfinding signage may not interfere with the clear passage of pedestrians or vehicles, or otherwise cause safety hazards.

   i. Wayfinding signs may not obscure or obstruct any existing regulatory, warning, or parking control signs.

5. Wayfinding signs are allowed for parks, or for districts containing more than 30 acres of platted lots.

6. A performance bond or other surety acceptable to the city may be required for the maintenance, replacement, updating, and/or removal of signs in an amount acceptable to the city.

Sec. 38.550.080. - **Comprehensive sign plan.**

A. A comprehensive sign plan must be submitted for all commercial, office, industrial and civic uses consisting of two or more tenant or occupant spaces on a lot, or two or more lots subject to a common development permit or plan. A comprehensive sign plan will not be approved unless it is consistent with this division, the underlying zoning regulations applicable to the property and any discretionary development permit or plan for the property. The plan should include the size and location of buildings and the size and location of existing and proposed signs. The purpose of the plan is to coordinate graphics and signs with building design. The coordination must be achieved by:

   1. Using the same type of cabinet supports or method of mounting for signs of the same type; using the same type of construction for components, such as sign copy, cabinet and supports; or using other integrating techniques, such as common color elements, determined appropriate by the review authority.

   2. Using the same form of illumination for all signs, or using varied forms of illuminations determined compatible by the review authority.

B. A comprehensive sign plan must include an overall signage calculation for the building(s) or development consistent with the requirements of *38.550.060*, and a method of property owner distribution of the allowable signage to each tenant or condominium owner space.

Sec. 38.550.090. - **Multi-tenant complexes with < 100,000 SF of ground floor area.**

The guidelines for the underlying zoning districts apply unless otherwise addressed in this section:

The maximum permitted wall sign area allowed for each tenant space is the percentage of the total floor area on the zoned lot that the tenant occupies multiplied by the wall area allowed by *38.550.060.A.2* or *38.550.060.B.2*, unless otherwise allocated in an approved comprehensive sign plan per *38.550.080*. If the lot has more than one building frontage, the individual tenant space may derive sign area only from the frontage(s) which the space faces. Lots under this section are allowed a low profile sign that identifies the complex, which conforms to this division, in addition to the sign area already permitted under *38.550.060.A.2* or *38.550.060.B.2*.

Sec. 38.550.100. - **Multi-tenant complexes with > 100,000 SF of ground floor area.**

A. The guidelines for the underlying zoning districts apply unless otherwise addressed in this section:

1. Freestanding signs.

a. Pole-style signs.

One pole-style sign per street frontage not to exceed 48 square feet in area or 16 feet in height is permitted. The signage area computed for a pole-style sign may not be subtracted from the maximum allowable wall signage permitted for the entire complex.

b. Low profile signs.

One low profile sign is permitted at each secondary entrance of the complex, provided each sign may not exceed 32 square feet in area, nor five feet in height, and is set back a minimum of five feet from the property lines. All low profile signs may only identify the complex and must display the street number address in figures which are at least six inches high. Low profile signs complying with these regulations will not be factored when calculating the maximum permitted wall sign area.

2. Wall signs.

Each tenant is permitted wall signage square footage calculated from 1.5 times the linear store frontage. For the maximum allowable total signage, please see *Table 38.550.060-1* and *Table 38.550.060-2*.

Sec. 38.550.110. - **Indoor shopping mall complexes with > 100,000 SF of ground floor area.**

A. The guidelines for the underlying zoning districts apply unless otherwise addressed in this section:

1. **Freestanding signs.**

   a. **Pole-style signs.**

   One pole-style sign per street frontage not to exceed 48 square feet in area or 16 feet in height is permitted. The signage area computed for a pole-style sign may not be subtracted from the maximum allowable wall signage permitted for the entire complex.

   b. **Low profile signs.**

   One low profile sign is permitted at each secondary entrance of the complex, provided each sign may not exceed 32 square feet in area, nor five feet in height, and is set back a minimum of five feet from the property lines. All low profile signs may only identify the complex and must display the street number address in figures which are at least six inches high. Low profile signs complying with these regulations will not be factored when calculating the maximum permitted wall sign area.

2. **Wall signs.**

   Each anchor tenant occupying 20,000 square feet or more is permitted 300 square feet of wall signage. Each tenant with an exclusive outdoor customer entrance is permitted wall signage square footage calculated from five percent of the ground floor area.

Sec. 38.550.120. - **Illumination.**

A. Illumination, if any, must be provided by artificial light which is constant in intensity and color. Internally illuminated "can signs" are acceptable provided background and copy are coordinated to avoid excessive light output. Neon and other gas type transformers are limited to 60 milliamperes and fluorescent transformers are limited to 800 milliamperes to soften light output. The output of lumens from lighting provided by other types of light emitters may not exceed that emanating from gas type transformers as regulated in this *subsection A*. Additionally, neon and other gas type signs with exposed tubing must be equipped with dimmers.

B. Externally illuminated, wall-mounted, and pole signs must be lighted by fixtures mounted at the top of the sign and aimed downward; ground-mounted sign lighting must only be used for monument style signs. Fixtures used to illuminate signs must be aimed so as not to project their output beyond the sign.

Sec. 38.550.130. - **Street vision triangles.**

Signs may not be placed in sight vision triangles as they are established in *38.400.100*, unless specifically authorized in this division.

Sec. 38.550.140. - **Required address signs.**

Street numbers are required for all residential, commercial, industrial, and civic uses in all zones. All building numbering must comply with article 7 of chapter 10.

Sec. 38.550.150. - **Billboards and other off-premises advertising.**

A. Off-premises commercial advertising signs are not permitted within the city limits except as permitted by state or federal law.

1. **Exception:**

   a. Transit shelters: Off-premises signs may be placed on the interior of transit shelters reviewed and approved by the city and served by an active fixed route transit service. Signs within a transit shelter may not distract drivers of vehicles nor be legible from driving lanes.

   b. Ghost signs: Ghost signs are not considered to be off-premises signage.

   c. Historic signs: Historic or culturally significant signs designated per *38.550.170*.

Sec. 38.550.160. - **Signs erected in conjunction with nonprofit activities on public property.**

A. Signs erected on public property by or on behalf of nonprofit organizations are allowed only with the prior consent of the director of the department of the city or other government agency responsible for the property only as follows:

   1. The sign may be permitted only on structures in public parks or other publicly owned lands.

   2. The sign may be erected two weeks prior to the commencement of the activity and must be removed within two weeks after the cessation of the activity for which the sign was erected.

   3. Each individual sign may be no larger than 32 square feet. Freestanding signs must be setback a minimum of 15 feet from the property line and have a maximum height of five feet. Signs attached to walls or scoreboards are not subject to the five foot height limitation. However, signs attached to walls or scoreboards may not exceed the height of the wall or scoreboard to which they are attached. All signs must be oriented towards spectators attending the activity.

   4. The sign may not:

      a. Be individually illuminated; nor

      b. Be placed in sight vision triangles or otherwise impede or obstruct the view of the traveling public.

   5. Applicants for such signs must apply for, and have approved, a temporary sign permit detailing the physical characteristics of the sign to be erected and the duration of the activity or date of the event. Applications and review procedures must be made per *38.550.180*.

Sec. 38.550.170. - **Historic or culturally significant signs.**

A. Review process.

Signs which have historical or cultural significance to the city but do not conform to the provisions of *38.560* may be permitted to remain provided that the review authority makes written findings the sign meets required criteria. Replacement of the sign invalidates prior findings and new signs must meet current requirements except as allowed in C.

B. Criteria for historic or culturally significant signage.

Signs may be found to be significant if applicant can document the sign to have been initially installed on the site at least fifty years previously and meet one or more of the following criteria. A previously existing but removed sign may be reconstructed so long as it meets the following criteria and must

meet the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Reconstruction, published by U.S. Department of the Interior, National Park Service, Cultural Resource Stewardship and Partnerships, Heritage Preservation Services, Washington, D.C.

1. If the sign is unique in its design and construction or is integral to the building's design or physical fabric.
2. If the sign represents a particular historical period, is included with a historic district, is associated with a historic landmark, or is associated with historic figures or events.
3. If the sign is recognized because of its prominence and is an icon. A sign may be considered an icon when it has been visible for a long time, visible from many vantage points, and its familiarity, size, or uniqueness surpass its initial function as a vehicle of information.

C. Interaction with other parts of Division 38.560.

1. Signs designated significant do not count towards the allowed square feet of sign area as determined in *38.560.060 BMC*.
2. Signs designated significant are not prohibited off-premises signage as determined in *38.560.150*.
3. Signs designated significant may be permitted to have flashing, blinking, or other features that are prohibited in *38.560.030* to retain historic design. The sign must not create a public safety hazard, imitate traffic control, or imitate other public safety signage. Signs with design features not currently allowed must use the original methods to recreate the feature.
4. No change in the sign copy is allowed unless the applicant can demonstrate that the change in copy does not alter the historic or contributing elements of the sign character.

Sec. 38.550.180. - **Application.**

An application for a sign must be made on forms provided by the community development department. The application must contain sufficient information and plans to permit review pursuant to this division including, but not limited to, building elevations; photographs; proposed locations of signs on building elevations; sign design layout showing number, types and dimensions of all signs; and a site plan showing proposed location of all signs.

Sec. 38.550.190. - **Maintenance of permitted signs.**

All signs must be continuously maintained in a state of security, safety and repair. Abandoned signs and sign support structures must be removed. If any sign is found not to be so maintained, or is in need of repair or has been abandoned, the owner and the occupant of the premises must repair or remove the sign within 14 calendar days after receiving written notice to do so from the city. If the sign is not so repaired or removed within such time, the city may cause the sign to be removed at the expense of the owner of the premises.

Exceptions: Ghost signs are not required to be maintained or preserved, nor are they required to be removed, unless the City determines such action is necessary to protect the public health, safety and general welfare.

Sec. 38.550.200. - **Nonconforming signs.**

A. The purpose of this section is to eliminate existing signs that are not in conformity with the provisions of this division.

B. Except as otherwise provided within this section, the owner of any zone lot or other premises on which a sign exists that does not conform with the requirements of this division and for which there is no prior, valid sign permit must remove such sign.

C. All signs which were legally permitted prior to June 22, 1997, are considered legal, permitted signs under this division. Except as provided for in *subsection D* below, such signs, if nonconforming with this division, must not be:

1. Replaced, except with a conforming sign;
2. Changed in copy (except for signs specifically designed to be changed in copy, such as reader boards with changeable letters);
3. Structurally altered to extend its useful life; or
4. Expanded, moved or relocated except as allowed below.

D. No legal, nonconforming sign may be altered or enlarged in any way which increases its nonconformity, but any existing signage, or portions thereof, may be altered by decreasing its nonconformity.

E. Any lot with a nonconforming sign may not add, relocate, or replace signage, except as provided below, until all signs on the lot are brought into conformance with this division. The exceptions listed below do not apply to off-premises signs.

1. Any site modification reviewed only as a permit type described in *38.740.050*, *38.740.060*, *38.740.070*, *38.740.120*, or *38.740.130*.
2. A sign legally permitted prior to June 22, 1997 which must be relocated due to a physical alteration to or expansion of a public right-of-way.

Sec. 38.550.210. - **Substitution.**

A. Any sign allowed under this division may contain, in lieu of any other message or copy, any lawful non-commercial message, so long as the sign complies with the size, height, area and other requirements of this division. Severability.

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

DIVISION 38.560. - **LIGHTING**

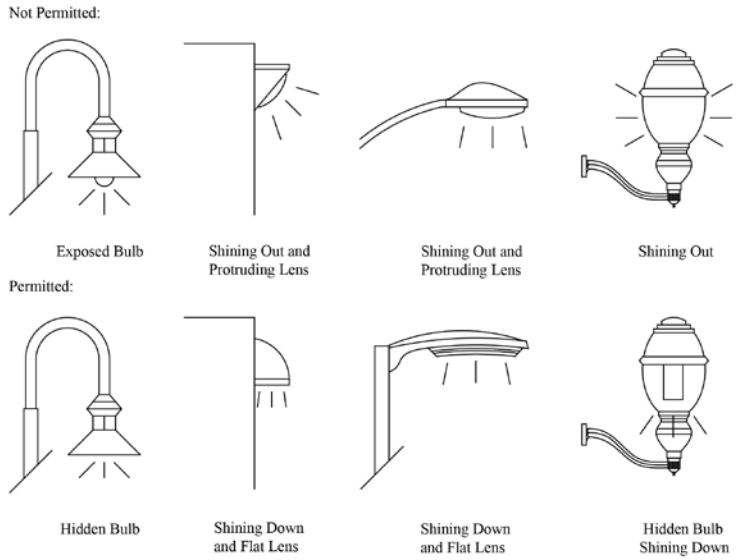


Figure 38.560-1. Lighting.

Sec. 38.560.010. - **Purpose.**

The purpose of this division is to:

A. Provide lighting in outdoor public places where public health, safety and welfare are potential concerns;

B. Protect drivers, bicyclists and pedestrians from the glare of non-vehicular light sources that shine into their eyes and thereby impair safe travel;

C. Protect neighbors and the night sky from nuisance glare and stray light from poorly aimed, placed, applied, maintained or shielded light sources;

D. Protect and maintain the character of the city;

E. Prevent excessive lighting and conserve energy; and

F. Provide adequate lighting for safe pedestrian and bicycle travel.

Sec. 38.560.020. - **General.**

A. With the exception of street lighting, lighting is not required. If installed, all lighting must comply with the requirements of this division.

B. This division applies to all lighting for subdivisions, land uses, developments and buildings. In addition, any site modification that requires a certificate of appropriateness, site plan review or reuse application will necessitate compliance for all existing and proposed lighting on the site.

C. The provisions of this division are not intended to prevent the use of any design, material or method of installation or operation not specifically prescribed herein, provided any such alternate has been approved by the review authority. Prior to approval the review authority must make findings that:

1. The lighting provides at least approximate equivalence to the applicable specific requirements of this division; and

2. The lighting is otherwise satisfactory and complies with the purpose of this division.

Sec. 38.560.030. - **Street lighting.**

Street lighting consists of street lighting and pathway intersection lighting, and must comply with the City of Bozeman Design and Construction Standards.

Sec. 38.560.040. - **Site lighting.**

A. Parking lot lighting.

1. Basic lighting provides for the safety of customers and employees during business hours, and for the security of on-site, outside storage of goods and/or materials.

2. Security lighting provides for the safety of employees during nonbusiness hours, and for the security of on-site, outside storage of goods and/or materials.

Table 38.560.040-1

	Basic Lighting	Security Lighting
Minimum horizontal illuminance in maintained footcandles	0.2	0.5
Minimum vertical illuminance in maintained footcandles	0.1	0.25
Uniformity ratio, maximum: minimum	20:01	15:00
Source: Parking Lot Lighting, Illuminating Engineering Society of North America, 1998.		

B. Building entrances.

Illuminance for building entrances (including commercial, industrial, institutional and municipal) must average 5.0 maintained footcandles.

C. Car dealership lighting.

Table 38.560.040-2

Area	Maximum Illuminance on Pavement (in Maintained Footcandles)	Uniformity Ratio
Maximum: minimum		
Main business districts		
Adjacent to roadway	10—20	5:01
Other rows	5—10	10:01
Entrances	5—10	5:01
Drive aisles	2—3	10:01

Table 38.560.040-2

Area	Maximum Illuminance on Pavement (in Maintained Footcandles)	Uniformity Ratio
Secondary business districts		
Adjacent to roadway	5—10	5:01
Other rows	2.5—5	10:01
Entrances	2.5—5	5:01
Drive aisles	1—2	10:01
Source: Lighting for Exterior Environments, Illuminating Engineering Society of North America, 1998.		

D. Service station or gas pump area lighting.

Table 38.560.040-3

Area Description	Average Illuminance on Described Area (in Maintained Footcandles)
Approach with dark surroundings	1.5
Driveway with dark surroundings	1.5
Pump island area with dark surroundings	5
Building façades with dark surroundings	2
Service areas with dark surroundings	2
Landscape highlights with dark surroundings	1
Approach with light surroundings	2
Driveway with light surroundings	2
Pump island area with light surroundings	10
Building façades with light surroundings	3
Service areas with light surroundings	3
Landscape highlights with light surroundings	2
Source: Lighting for Exterior Environments, Illuminating Engineering Society of North America, 1998.	

E. Site lighting support structures.

The ballasts; pole type, strength and anchor bolts; and pole foundation must be appropriate for the proposed lighting and must be installed per the manufacturer's recommendations. Height must be measured from grade. Except as allowed in *38.560.050* and *38.560.070*, light poles for parking lot lighting may not exceed 25 feet.

F. Site lighting installation and maintenance.

1. For new installations, electrical feeds for fixtures mounted on poles must be run underground, not overhead.

2. Poles supporting lighting fixtures for the illumination of parking areas and located directly behind parking spaces must be placed a minimum of five feet outside the paved area or on concrete pedestals at least 30 inches high above the pavement, or suitably protected by other approved means.

3. Lighting fixtures and ancillary equipment must be maintained so as always to meet the requirements of this section.

G. Miscellaneous site lighting specifications.

Except as otherwise allowed in this section, all lighting must comply with the following requirements:

1. All outdoor lighting, whether or not required by this section, must be aimed, located, designed, fitted and maintained so as not to present a hazard to drivers or pedestrians by impairing their ability to safely traverse and so as not to create a nuisance by projecting or reflecting objectionable light onto a neighboring use or property.

2. All outdoor lighting fixtures must be shielded in such a manner that no light is emitted above a horizontal plane passing through the lowest point of the light emitting element, so that direct light emitted above the horizontal plane is eliminated.

3. Except for residential lighting, street lighting, pathway intersection lighting and security lighting, all lighting must be turned off between 11:00 p.m. and 6:00 a.m. Exceptions will be granted to those businesses which operate during these hours; such lighting may remain illuminated only while the establishment is actually open for business.

4. Vegetation screens may not serve as the primary means for controlling glare. Rather, glare control must be achieved primarily through the use of such means as cutoff fixtures, shields and baffles, and appropriate application of fixture mounting height, wattage, aiming angle and fixture placement.

5. All outdoor lighting must be designed and located such that the maximum illumination measured in footcandles at the property line may not exceed 0.3 onto adjacent residential properties and 1.0 onto adjacent commercial properties and public rights-of-way.

6. Externally illuminated wall-mounted and pole signs must be lighted by fixtures mounted at the top of the sign and aimed downward; ground-mounted sign lighting may be used only for monument style signs. Fixtures used to illuminate signs must be aimed so as not to project their output beyond the sign.

7. Floodlights, spotlights or any other similar lighting may not be used to illuminate buildings or other site features unless approved as an integral architectural element on the development plan. On-site lighting may be used to accent architectural elements but not to illuminate entire portions of buildings; building illumination may not exceed more than 15% of the total wall area of a building. Where accent lighting is used, the maximum illumination on any vertical surface or angular roof surface may not exceed 5.0 average maintained footcandles. Building façade and accent lighting will not be approved unless the light fixtures are carefully selected, located, aimed and shielded so that light is directed only onto the building façade and spillover light is eliminated. Directional fixtures used to illuminate flagpoles (state, United States and/or foreign nations) may project their output beyond the flagpole.

8. Lights that flash, move, revolve, rotate, scintillate, blink, flicker, vary in intensity or color more than once every 24 hours, or use intermittent electrical pulsation are prohibited.

9. Translucent awnings and canopies used for building accents over doors, windows, etc., may not be internally lit (i.e., from underneath or behind).

10. Searchlights, laser source lights or any similar high-intensity light are not permitted, except in emergencies by police and fire personnel or at their direction, for meteorological data gathering purposes, or for special events if a permit is obtained from the review authority.

Sec. 38.560.050. - **Sports and athletic field lighting.**

Lighting for sports and athletic fields may need to exceed illumination standards for general recreational needs in order to meet higher standards required for play. The city commission may approve relaxations of these lighting standards provided that the following minimum standards are met:

A. Fixtures must be at least 70 feet in mounted height measured from grade;

B. If floodlights are used, they must not be aimed above 62 degrees and should use internal louvers and external shields to help minimize light pollution;

C. Fixtures must be designed and aimed so that their beams fall within the primary playing area and the immediate surroundings, so that off-site direct illumination is significantly restricted (spillover levels at the property line must not exceed 0.3 footcandles); and

D. Lighting must be extinguished no later than one hour after the event ends.

Sec. 38.560.060. - **Lighting specifications for all lighting.**

Light fixtures and standards must be compatible with the surrounding area, the subdivision or site design, and the development's character and/or architecture.

A. Light fixtures.

Except as otherwise allowed in *38.560.050* and *38.560.070*, all light fixtures must comply with the following requirements:

1. In all light fixtures, the light source and associated lenses may not protrude below the edge of the light fixture, and may not be visible from adjacent streets or properties.

2. Fixtures must be of a type and design appropriate to the lighting application.

3. For lighting horizontal areas such as roadways, sidewalks, entrances and parking areas, fixtures must meet IESNA "full-cutoff" criteria (no light output emitted above 90 degrees at any lateral angle around the fixture).

4. As needed, fixtures must be equipped with or be modified to incorporate light directing and/or shielding devices such as shields, visors, skirts, internal louvers or hoods to redirect offending light distribution and/or reduce direct or indirect glare.

Sec. 38.560.070. - **Historic lighting.**

The city may relax lighting standards and requirements, with the exception of illumination levels, for the provision of historic lighting in the neighborhood conservation overlay district. Historic lights must be proposed as an integrated part of an overall development plan. The historic preservation planner will review and approve the proposed lighting for historic appropriateness.

Sec. 38.560.080. - **Post installation inspection.**

The city reserves the right to conduct post-installation nighttime inspections to verify compliance with the requirements of this section, and if appropriate, to require remedial action at no expense to the city.

Sec. 38.560.090. - **Compliance monitoring.**

If the city finds that a lighting installation creates a safety or personal security hazard, the person responsible for the lighting will be notified in writing and required to take remedial action within 30 days.

Sec. 38.560.100. - **Nuisance glare and inadequate illumination levels.**

When the city finds that a lighting installation produces unacceptable levels of nuisance glare, skyward light, excessive or insufficient illumination levels, or otherwise varies from this section, the city may notify the person responsible for the lighting and require appropriate remedial action within 30 days. Lighting meeting the standards of this division is not a nuisance.

Sec. 38.560.110. - **Nonconforming lighting.**

Nonconforming lights can only be replaced with conforming lights. Site plans and special use permits require lighting to become compliant. The city may require nonconforming lights to be replaced with modifications/reuse applications.

ARTICLE 6. - NATURAL RESOURCE PROTECTION

DIVISION 38.600. - FLOODPLAIN REGULATIONS 6-3

Sec. 38.600.010. - Citation. 6-3
Sec. 38.600.020. - Authority. 6-3
Sec. 38.600.030. - Findings. 6-3
Sec. 38.600.040. - Purpose. 6-3
Sec. 38.600.050. - Land use restrictions. 6-4
Sec. 38.600.060. - Disclosure provision. 6-5
Sec. 38.600.070. - Abrogation and greater responsibility. 6-5
Sec. 38.600.080. - Regulation interpretation. 6-5
Sec. 38.600.090. - Compliance with regulations. 6-5
Sec. 38.600.100. - Floodplain administrator. 6-5
Sec. 38.600.110. - Regulated flood hazard areas. 6-5
Sec. 38.600.120. - Alterations to regulated flood hazard areas. 6-6
Sec. 38.600.130. - Interpretation of regulated flood hazard area boundaries. 6-6
Sec. 38.600.140. - Warning and disclaimer of liability. 6-7
Sec. 38.600.150. - Flood hazard evaluation. 6-7
Sec. 38.600.160. - Administration of regulations. 6-8
Sec. 38.600.170. - Subdivision and plan review and approval. 6-10
Sec. 38.600.180. - Floodplain permit application requirements. 6-12
Sec. 38.600.190. - Floodplain permit application review. 6-14
Sec. 38.600.200. - Floodplain permit application notice requirements. 6-15
Sec. 38.600.210. - Floodplain permit issuance. 6-15
Sec. 38.600.220. - Floodplain permit conditions and requirements. 6-16
Sec. 38.600.230. - Extensions to floodplain permit approval period. 6-17
Sec. 38.600.240. - Uses, activities, and artificial obstructions within regulated flood hazard areas exempt from floodplain permitting, but subject to watercourse setbacks. 6-17
Sec. 38.600.250. - Uses, activities, and artificial obstructions prohibited within regulated flood hazard areas. 6-18
Sec. 38.600.260. - Requirements for uses, activities, and artificial obstructions permitted in the regulatory floodway subject to issuance of a floodplain permit. 6-19
Sec. 38.600.270. - Development requirements for uses, activities and artificial obstructions permitted in the flood fringe subject to issuance of a floodplain permit. 6-23
Sec. 38.600.280. - Waiver of floodplain permit requirements prior to undertaking emergency repair or replacement or temporary protective measures. 6-27
Sec. 38.600.290. - Variances. 6-27
Sec. 38.600.300. - Appeals. 6-28

Sec. 38.600.310. - Enforcement. 6-28
Sec. 38.600.320. - Penalty. 6-29

DIVISION 38.610. - WETLAND REGULATIONS. 6-30
Sec. 38.610.010. - Title and applicability. 6-30
Sec. 38.610.020. - Purpose. 6-30
Sec. 38.610.030. - Application of wetland regulations. 6-31
Sec. 38.610.040. - Wetlands boundary and jurisdictional determinations. 6-32
Sec. 38.610.050. - Regulated activities. 6-33
Sec. 38.610.060. - Activities allowed without a permit. 6-33
Sec. 38.610.070. - Application requirements and procedures for activities in wetland areas. 6-34
Sec. 38.610.080. - Review standards and minimum wetland buffer. 6-34
Sec. 38.610.090. - Wetland approval conditions. 6-35
Sec. 38.610.100. - Wetland mitigation. 6-36
Sec. 38.610.110. - Administrative procedures authorized. 6-36

DIVISION 38.620. - WATERCOURSE SETBACKS. 6-38

DIVISION 38.600. - **FLOODPLAIN REGULATIONS**

Sec. 38.600.010. - **Citation.**

This division is known and may be cited as the city floodplain regulations, except when cited herein, where it is referred to as "this division".

Sec. 38.600.020. - **Authority.**

This division is adopted by authority of MCA 76-5-101 et seq.

Sec. 38.600.030. - **Findings.**

A. Flooding may cause loss of life, damage to property, disruption of commerce and essential governmental services, and unsanitary conditions all of which are detrimental to the health, safety, and welfare of city occupants.

B. The public interest necessitates management and regulation of flood hazards in a manner consistent with sound land and water use management practices intended to prevent and alleviate threats to life and health and reduce private and public economic losses.

C. Control, mitigation, and avoidance of flood hazards interacts with other provisions of public policy that promote public purposes, such as providing water quality and storm water control; therefore, regulations addressing flood hazards must be correlated with other water related regulations.

D. As stated in *38.100.050* and *38.100.070*, these regulations are minimum requirements and upon review, the review authority may determine that the public interest will be best served when such minimum standards are exceeded. The review authority may impose conditions of approval when such are found necessary.

Sec. 38.600.040. - **Purpose.**

A. This division establishes regulations for development within regulated flood hazard areas in order to protect public health and safety, safeguard water quality, provide for wildlife habitat and accomplish other public purposes. There are circumstances where development within the floodplain either currently exists or may be permitted from time to time to advance a public purpose. This division provides standards which shall be met in order to promote the public health, safety and general welfare, to minimize flood losses in areas subject to flood hazards, and to promote wise use of the floodplain. This division has been established with the following purposes:

1. Generally, it is the purpose of this division to guide development of regulated flood hazards areas within city limits consistent with the enumerated findings of this division by:

    a. Establishing zoning and subdivision regulations coincident with and applicable to regulated flood hazard areas with special requirements and regulations to protect the public health, safety, and welfare;

b. Recognizing the right and need of watercourses or drainways to periodically carry more than the normal flow of water;

c. Participating in coordinated efforts of federal, state and local management activities for 100-year floodplains;

d. Striving to ensure the regulations and minimum standards reasonably balance the greatest public good with the least private injury;

e. Carrying out the provisions of this division in a fashion consistent with the remainder of this chapter and the public policies set forth in the city's land use plan;

f. Minimizing the need for rescue and relief efforts associated with flooding undertaken at the expense of the general public;

g. Complying with minimum standards necessary for continued participation in the National Flood Insurance Program as a community in good standing; and

h. Coordinating regulations addressing flood hazards with other regulations adopted by the city and regulatory requirements imposed on the city by state and federal agencies.

2. Specifically, it is the purpose of this division to:

a. Restrict or prohibit uses that are dangerous to health, safety and property in times of flood, or that cause increased flood heights and velocities;

b. Require that developments and uses vulnerable to flood hazards, including public utilities and facilities, satisfy minimum standards of this division at the time of initial construction or substantial improvement to minimize flood damage;

c. Identify lands unsuitable for certain development or uses because of flood hazards;

d. Distinguish between regulations applied to the regulatory floodway and those applied to that portion of the regulated flood hazard area not contained within the regulatory floodway;

e. Apply more restrictive regulations within the regulatory floodway;

f. Ensure that those who develop or use land within a regulated flood hazard area do not increase flood hazards to others and to the surrounding area;

g. Regulate the alteration of natural floodplains, stream channels, and natural protective barriers that are needed to accommodate floodwaters; and

h. Regulate filling, grading, dredging and other development that may increase flood hazards.

Sec. 38.600.050. - **Land use restrictions.**

Land subject to being flooded by a flood of 100-year frequency as defined by MCA 76-5-101 et seq., or land deemed to be subject to flooding by the floodplain administrator, may not be subdivided or developed for new buildings or any new uses that may increase or aggravate flood hazards to public health, safety, and welfare or damage property. Lands within a floodplain area are also subject to the restrictions of *38.620*.

Sec. 38.600.060. - **Disclosure provision.**

All owners of property containing a regulated flood hazard area set forth in *38.600.110* shall notify potential buyers or their agents that such property is subject to the provisions of this division.

Sec. 38.600.070. - **Abrogation and greater responsibility.**

It is not intended by this division to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or underlying zoning. However, where this division imposes greater restrictions, the provisions of this division shall prevail.

Sec. 38.600.080. - **Regulation interpretation.**

The interpretation and application of the provisions of this division are intended to be minimum requirements and not deemed a limitation or repeal of any other powers granted by state statute or self-government status.

Sec. 38.600.090. - **Compliance with regulations.**

A. Compliance with this division shall be demonstrated in full prior to approval by the review authority of any development occurring under this chapter or chapter 10. Compliance with this division shall also be provided in full prior to establishing, expanding, or altering an artificial obstruction within a regulated flood hazard area.

B. Compliance with this division occurs by issuance of a floodplain permit by the floodplain administrator unless the use, activity, or artificial obstruction is exempt from the requirement to obtain a floodplain permit.

C. The issuance of a floodplain permit is independent of, and is in addition to, any other type of approval required by any other statute or ordinance of the state or any political subdivision or the United States.

D. Existing uses, activities and artificial obstructions that were lawful prior to the initial creation of city floodplain regulations on March 19, 1975, or any repeal and replacement or amendment thereto, that do not conform to this division are allowed to remain in the state and location at which they existed at the time they first became subjected to floodplain regulations without need for a floodplain permit.

E. Except as provided in *subsection D* of this section, an artificial obstruction within a regulated flood hazard area that has not been issued a floodplain permit when one is required is a public nuisance and subject to chapter 16, article 2.

Sec. 38.600.100. - **Floodplain administrator.**

The floodplain administrator has been designated by the city commission to be the city engineer, who may delegate floodplain administrator duties to a member of the city engineering division staff, and has the responsibility and authority of such position as contained in this division.

Sec. 38.600.110. - **Regulated flood hazard areas.**

A. This division applies to all lands within the boundaries of the city that are:

1. Located within designated special flood hazard areas established by the official "FEMA Flood Insurance Study of Gallatin County, Montana, and Incorporated Areas (Flood Insurance Study Number 30031CV001b)" and FEMA Flood Insurance Rate Maps dated April 21, 2021; and, subject to *38.600.120.A*, any alterations made thereto by letters of map change issued by FEMA expressly listed in the administrative procedures authorized by *38.600.160.G*.

2. Otherwise established by DNRC pursuant to MCA 76-5-101 et seq. to be located within designated floodplains and floodways by a DNRC flood study that is expressly listed in the administrative procedures authorized by *38.600.160.G*.

3. Identified as containing flood hazards determined by a flood hazard evaluation performed in accordance with *38.600.150*.

4. Independently determined by the floodplain administrator through engineering analysis, or other objective and factual basis, as being subject to flood hazards.

Sec. 38.600.120. - **Alterations to regulated flood hazard areas.**

A. Any alterations to a regulatory floodway shall be designed and delineated to carry the waters of the base flood without increasing the base flood elevation more than 0.50 feet at any point.

B. Substantial natural physical alterations to a flooding source, or new technical or scientific flood data showing that the base flood elevation or regulatory floodway has been altered or was erroneously established, must be brought to the attention of FEMA and DNRC by the floodplain administrator when such alteration or error is identified for a regulated flood hazard area set forth in *38.600.110.A.1*.

C. The official alteration of the base flood elevation or regulatory floodway for a regulated flood hazard area set forth in *38.600.110.A.1* occurs by a letter of map revision issued by FEMA. An application for a letter of map revision must be supported by DNRC and the Floodplain Administrator prior to its submittal to FEMA.

Sec. 38.600.130. - **Interpretation of regulated flood hazard area boundaries.**

A. Georeferenced boundaries.

Except where not available, the regulated flood hazard area boundaries in *38.600.110* shall be determined by using the official geographic information system georeferenced boundary data provided by FEMA, DNRC, or the floodplain administrator.

B. Delineated boundaries.

The exact location of the regulated flood hazard area boundary shall be delineated where the base flood elevation intersects natural ground. Except as provided below, the boundaries of the regulatory floodway shall be determined from the official flood insurance rate maps and floodway data tables in the flood insurance study.

1. The regulatory floodways for the East Gallatin River, Bridger Creek between the confluence with the East Gallatin River and Story Mill Road, and Bozeman Creek and its tributaries shall be the georeferenced boundary in *subsection A* above.

C. Surveyed boundaries.

The floodplain administrator may at its discretion require an on-site survey and staking of the regulated flood hazard area boundary:

1. Prior to issuance of any floodplain permit;
2. For any use, activity, or artificial obstruction under an approved floodplain permit that is not completed; or
3. For any use, activity, or artificial obstruction that appears upon reasonable suspicion and inquiry to be located within the regulated flood hazard area without a floodplain permit.

D. Application for letter of map change.

A property owner who believes their property has been inadvertently included in a regulated flood hazard area set forth in *38.600.110.A.1* may submit scientific and/or technical information to FEMA in the form of an application for a letter of map change, which if approved by FEMA may modify the flood insurance rating of a property. A letter of map change approved by FEMA does not impair or abrogate the authority of the floodplain administrator from independently determining if a property is subject to flood hazards pursuant to *38.600.110.A.4* and the provisions of this division.

Sec. 38.600.140. - **Warning and disclaimer of liability.**

This division does not imply that areas located outside of regulated flood hazard areas, or permitted land uses, will always be totally free from flood hazards or flood damages. This division does not create a liability or cause of action against the City of Bozeman or any officer or employee thereof for flood damages that may result from reliance upon this division.

Sec. 38.600.150. - **Flood hazard evaluation.**

A. Except as provided in *subsection A.2* of this section, if any portion of a proposed development contains a watercourse or drainway draining an area of 25 square miles or more, and regulated flood hazard areas under *38.600.110* have not been designated or identified, then the development applicant shall complete a detailed flood study to delineate the 100-year floodplain and floodway of the watercourse or drainway in accordance with applicable regulations, standards, and technical guidance provided by DNRC under its state program for delineation of floodplains and floodways authorized by MCA 76-5-201.

   1. The detailed flood study shall be prepared and certified by a professional engineer.
   2. The requirement to conduct a detailed flood study may be waived by the floodplain administrator if the development applicant provides written communication from DNRC stating that DNRC is unwilling or unable to provide technical assistance in the production of a detailed flood study meeting the applicable regulations and standards DNRC may have for this purpose.

      If the detailed flood study is waived by the floodplain administrator, the development applicant shall prepare a flood hazard evaluation report in conformance with *subsection C* of this section, which shall be provided with a preliminary plat or site plan application.

B. If any portion of a proposed development contains a watercourse or drainway draining an area less than 25 square miles, and regulated flood hazard areas under *38.600.110* have not been designated

or identified, then, except as provided in *B.1* below, the development applicant shall prepare a flood hazard evaluation report in conformance with *subsection C* below, which shall be provided with a preliminary plat or site plan application.

1. The requirement to provide a flood hazard evaluation report may be waived by the floodplain administrator if the development applicant demonstrates to the satisfaction of the floodplain administrator that the base flood discharge of the watercourse will not adversely affect the land proposed for development at the time of concept site plan or subdivision pre-application plan.

C. Contents of the flood hazard evaluation report shall include the following information at a minimum:

1. Certification by a professional engineer that the flood hazard evaluation report is prepared in accordance with this section;

2. Description of any mitigation required to protect the proposed development and adjacent lands from 100-year flood hazards;

3. Scaled plan view exhibit(s) showing the following: watercourses and drainways, property boundaries, existing topographic contours, proposed grading and drainage contours, existing (pre-project) 100-year floodplain boundary, proposed (post-project) 100-year floodplain boundary, and proposed project improvements. Exhibit(s) shall be neat and orderly and contain a linetype legend, north arrow, and drawing scale;

4. Hydrologic analysis performed in accordance with standard engineering practices containing at a minimum: exhibit(s) depicting delineation of overall contributing drainage basin and individual sub-basins, determination of base flood discharge, narrative describing the basin delineation approach and hydrologic method(s) used in discharge determination, and any supporting digital files and outputs produced for the hydrologic analysis;

5. Hydraulic analysis performed in accordance with standard engineering practices containing at a minimum: hydraulic modeling of the base flood discharge for existing conditions (pre-project) and proposed conditions (post-project), scaled plan view exhibit(s) depicting modeled cross sections, narrative describing hydraulic model development and data sources used for critical inputs, description of existing and proposed hydraulic structures, model outputs of water surface elevation in both profile and cross section view, and digital model files; and

6. The report shall be formatted as a PDF document and include all digital supporting files.

D. The floodplain administrator must review and approve all studies and reports required under this section and may require additional information from the applicant prior to approval.

Sec. 38.600.160. - **Administration of regulations.**

A. *38.620* and *38.600.050* establish a public policy to avoid new development within floodplains, along with certain exceptions. The administration of this division must be done in a fashion consistent with the letter and spirit of both these sections.

B. The floodplain administrator has the authority to review floodplain permit applications for proposed activities, uses, or artificial obstructions within regulated flood hazard areas to determine compliance with this division.

C. The floodplain administrator may obtain, review and reasonably use any base flood elevation and floodway data available from federal, state, or other sources.

D. At any time after a floodplain permit application has been filed, or a floodplain permit has been issued and permitted work has not been completed, the floodplain administrator may perform an on-site inspection of the subject property during regular work hours without advance notice given to the applicant pursuant to *38.700.050*.

E. Unless specifically exempt from requirements to obtain a permit, a floodplain permit must be obtained from the floodplain administrator prior to establishing, altering or performing substantial improvements to a use, activity, or artificial obstruction within the regulated flood hazard area.

F. Prior to the issuance of a floodplain permit, the floodplain administrator must ensure all necessary permits have been received from those governmental agencies from which approval is required by federal and state law and local codes, including but not limited to: section 404 of the Federal Water Pollution Control Act of 1972, 33 USC 1334; Endangered Species Act, 16 USC 1531 et seq.; and the Montana Natural Streambed and Land Preservation Act, MCA 75-7-101 et seq.

G. The floodplain administrator may adopt administrative procedures necessary to administer the provisions of this division.

H. The floodplain administrator is responsible for ensuring National Flood Insurance Program prerequisites for the sale of flood insurance pursuant to 44 CFR 59.22(a) are maintained.

I. In the event of a disaster declaration affecting properties in the FEMA special flood hazard area, and as part of the disaster recovery effort, the floodplain administrator upon completion of a cursory street level structure condition survey must notify property owners that a floodplain permit is required prior to commencement of any alteration or substantial improvements to buildings and structures damaged, or substantially damaged, by the declared disaster.

J. The Floodplain Administrator may, at its discretion, represent the city for any applications, approvals, or endorsements to FEMA affecting a special flood hazard area.

K. The floodplain administrator may require an applicant to provide additional information necessary to make an informed determination as to whether a proposed or existing use, activity, or artificial obstruction within the regulated flood hazard area meets the requirements of this division. Additional information may include but is not limited to hydraulic modeling; boundary delineations of the regulated flood hazard area in accordance with *38.600.130*; and certification by a registered land surveyor or professional engineer or licensed architect within their areas of professional expertise that the requirements of this division are satisfied.

L. The floodplain administrator may initiate enforcement actions authorized by this division if additional information required is not provided.

M. The floodplain administrator must maintain public records pertaining to the administration of this division, including items such as floodplain permit applications, issued floodplain permits, FEMA elevation and floodproofing certificates, compliance certifications, fee receipts, and other relevant documentation.

Sec. 38.600.170. - **Subdivision and plan review and approval.**

A. Any proposed development occurring under *38.740* or *38.750* of lands containing a regulated flood hazard area set forth in *38.600.110.A.1* shall satisfy the requirements of this section and *38.620*. Proposed developments shall ensure that:

1. Flood damage potential is minimized;
2. Public utilities and facilities are constructed so as to minimize flood damage; and
3. Water supply and sanitary sewer infrastructure is designed to minimize or eliminate infiltration.

B. Except as provided in B.1 below, lots within a platted subdivision shall not contain a regulated flood hazard area set forth in *38.600.110.A.1* if such lots are proposed for future residential, commercial, industrial, or other building construction; or such lots are proposed for the placement of structures or storage of materials.

1. Dedicated parkland and common open space within a platted subdivision may contain regulated flood hazard areas.

C. An exhibit depicting the location of the georeferenced boundaries and the delineated boundaries of regulated flood hazard areas set forth in *38.600.110.A.1* in relation to the proposed development shall be provided with all development applications. These boundaries shall be shown in accordance with *38.600.130*.

1. If any portion of a proposed lot, building, structure, or permanent materials storage location is within the georeferenced boundary and is completely outside the delineated boundary, then a conditional letter of map amendment shall be obtained from FEMA by the development applicant.
   a. The conditional letter of map amendment application is subject to *subsection E* below.
   b. The conditional letter of map amendment issued by FEMA shall be provided with the preliminary plat application or site plan application.
   c. A letter of map amendment issued by FEMA subject to *subsection F* of this section shall be provided by the development applicant prior to final plat approval or routing for final occupancy review.
2. If placement of fill is proposed within the delineated boundary of the flood fringe to artificially elevate land to be above the base flood elevation, then a conditional letter of map revision based on fill shall be obtained from FEMA by the development applicant.
   a. The conditional letter of map revision based on fill application is subject to *subsection E* below.
   b. The conditional letter of map revision based on fill issued by FEMA shall be provided with the preliminary plat application or site plan application.
   c. A letter of map revision based on fill issued by FEMA subject to *subsection F* below shall be provided by the development applicant prior to final plat approval or routing for final occupancy review.

3. If any use, activity, or artificial obstruction is proposed within the delineated boundary of the regulatory floodway, then the development applicant shall demonstrate that the carrying capacity of the regulatory floodway is not reduced in accordance with *38.600.260.C*.

   a. A regulatory floodway encroachment analysis shall be prepared by the development applicant and initially submitted with a subdivision pre-application or concept site plan application. The analysis shall be updated with the preliminary plat application or site plan application to reflect any changes to the proposed regulatory floodway encroachments.

      (1) If the regulatory floodway encroachment analysis indicates that the proposed use, activity, or artificial obstruction in the regulatory floodway causes an increase to the existing base flood elevation of more than 0.00 feet, then a conditional letter of map revision shall be obtained from FEMA by the development applicant in accordance with *38.600.260.C.2* and be provided with the preliminary plat application or site plan application.

      (2) A letter of map revision subject to *subsection F* below shall be provided by the development applicant prior to final plat approval or routing for final occupancy review.

4. A floodplain permit application meeting the requirements of this division shall be prepared by the development applicant and provided to the floodplain administrator for any use, activity, or artificial obstruction located within the delineated boundary of the regulated flood hazard area. If a conditional letter of map revision based on fill or a conditional letter of map revision are required under this section, then they shall be obtained from FEMA by the applicant prior to floodplain permit approval. The floodplain permit must be issued by the floodplain administrator prior to:

   a. Beginning construction of subdivision improvements, including the placement of fill, that are located within the regulated flood hazard area for development occurring under *38.750*; or

   b. Obtaining final plan approval for development occurring under *38.740*.

D. A subdivision final plat shall depict on the conditions of approval sheet the location of the regulated flood hazard area, including and pursuant to any letter of map revision or letter of map revision based on fill approved by FEMA, and base flood elevation data shall be provided for each lot.

E. The floodplain administrator must review the conditional letter of map change application and authorize its submittal to FEMA. FEMA conditional letter of map change application types include:

   1. Conditional letter of map amendment (CLOMA). A letter from FEMA stating a proposed use, activity, or artificial obstruction located on natural ground and not including the placement of fill would not be inundated by the base flood if completed as proposed.

   2. Conditional letter of map revision based on fill (CLOMR-F). A letter from FEMA stating a parcel of land or portion thereof that is proposed to be elevated by fill would not be inundated by the base flood if fill is placed on the parcel as proposed.

   3. Conditional letter of map revision (CLOMR). A letter from FEMA stating a proposed use, activity or artificial obstruction in the regulatory floodway that would, upon completion, affect the existing hydrologic or hydraulic characteristics of the flooding source and result in an alteration

of the regulatory floodway or the base flood elevation, is allowable if the project is completed as proposed. Submittal of a CLOMR application to FEMA is subject to *38.600.260.C.2*.

F. The floodplain administrator must review the letter of map change application and authorize its submittal to FEMA. FEMA letter of map change application types include:

1. Letter of map amendment (LOMA). Officially amends the effective special flood hazard area of a flood insurance rate map by confirming that natural ground is not inundated by the base flood.
2. Letter of map revision based on fill (LOMR-F). Officially revises the effective special flood hazard area of a flood insurance rate map by confirming that the parcel of land or portion thereof has been elevated by fill to be above the base flood.
3. Letter of map revision (LOMR). Officially revises the effective special flood hazard area of a flood insurance rate map and the base flood elevation or regulatory floodway in the effective flood insurance study. A LOMR usually results in republishing a portion of the flood insurance rate map.

Sec. 38.600.180. - **Floodplain permit application requirements.**

A. A floodplain permit application shall be filed with the floodplain administrator and at a minimum include the following information:

1. A completed and signed Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies;
2. A copy of all other applicable permits or pending applications required by local, federal or state law for the proposed project, which may include but are not limited to a 310 permit, SPA 124 permit, 318 authorization, section 404 permit, 401 certification, and endangered species act section 10 permit;
3. A copy of the effective flood insurance rate map with the project site identified;
4. A scaled plan view exhibit(s) showing:
   a. Linetype legend, drawing scale, and north arrow;
   b. Proposed project site and property lines;
   c. Georeferenced boundary of the regulated flood hazard area per *38.600.130.A*;
   d. Existing and proposed structures;
   e. Existing and proposed utilities;
   f. Proposed excavation and/or fill locations; and
   g. Location of stored or stockpiled materials;
5. Additional information related to the proposed use, activity or artificial obstruction that documents compliance with applicable development requirements of this division;
6. A written response explaining how each of the factors considered in the decision to issue a floodplain permit set forth in *38.600.210.G* are satisfied by the design of the proposed use, activity or artificial obstruction;

7. Application review fee in the amount established by city commission resolution;

8. Mailing labels for all adjoining property owners, including those across roads and across watercourses or drainways; and

9. The number and format of copies of the floodplain permit application as established by the floodplain administrator shall be submitted. Applications must include the signature of the applicant and land owner(s), which for properties in common ownership shall include evidence of proper authority for the owner signatory.

    a. If the floodplain permit application was prepared by a person other than the identified property owner or applicant, then the person that prepared the application shall sign as contractor.

B. The floodplain administrator may require additional information for the floodplain permit application depending on the nature of the proposed use, activity or artificial obstruction, including but not limited to:

1. Scaled topographic plan view exhibit(s) of the project area with one-foot contours and elevation values displayed in NAVD88 vertical datum depicting:

    a. Linetype legend, drawing scale, and north arrow;

    b. Existing ground contours certified by a professional engineer or registered land surveyor;

    c. Location of watercourse or drainway channel and banks;

    d. Delineated boundary of the regulated flood hazard area pursuant to *38.600.130.B*;

    e. Proposed ground contours and delineation of proposed regulated flood hazard boundaries pursuant to a conditional letter of map change issued by FEMA; and

    f. Location of all proposed improvements and artificial obstructions;

2. Cross sections of the proposed project that clearly differentiate between existing site conditions and proposed site conditions;

3. Proposed building elevations showing the elevation of the lowest floor, including any basement or crawlspace, proposed finished ground elevation, and the base flood elevation;

4. Specifications for floodproofing, filling, excavating, grading, bank stabilization, storage of materials and location of utilities;

5. Construction plans and specifications for road and utility crossings;

6. Flood scour analyses for utility crossings and bridge abutment designs;

7. Construction plans and specifications for stream restoration projects;

8. A hydraulic model prepared and certified by a professional engineer demonstrating the impact of the proposed project on the base flood elevations at and proximate to the project site;

9. A floodway encroachment analysis and no-rise certification prepared in accordance with *38.600.260.C.1* and signed by a professional engineer together with any hydraulic modeling utilized for the no-rise analysis;

10. For projects in the regulatory floodway that cause a rise in the existing base flood elevation, a conditional letter of map revision issued by FEMA;

11. For a new building, or alteration or substantial improvement to an existing building, a completed FEMA elevation certificate based on construction drawings;

12. For projects involving the placement of fill in the flood fringe, a conditional letter of map revision based on fill issued by FEMA;

13. A professional engineer's or registered architect's certification within their respective areas of expertise that the proposed use, activity, or artificial obstruction has been designed to be in compliance with this division; and

14. Any other relevant information deemed necessary by the floodplain administrator to demonstrate that the proposed activity, use, or artificial obstruction is in compliance with this division, the Montana Floodplain and Floodway Management Act, or the requirements of the National Flood Insurance Program.

Sec. 38.600.190. - **Floodplain permit application review.**

A. Within ten working days of receipt of a floodplain permit application and required application review fee, the floodplain administrator must review the application for acceptability to determine if the application omits any of the minimum information required and whether any additional information in sufficient detail and accuracy is required to enable the floodplain administrator to determined compliance with this division. If the application is determined to not include the minimum information required or needs additional information, the floodplain administrator must notify the applicant in writing of the information required to deem the application acceptable. The applicant shall have 60 working days to provide the required information or a new floodplain permit application shall be submitted.

B. The process in *subsection A* of this section will be repeated until the floodplain administrator determines the application is acceptable. If the application is not deemed acceptable by the floodplain administrator after the third notice, or if the applicant does not respond to a notice within the time frame specified, the floodplain administrator may deny the application.

C. Once the floodplain administrator is satisfied that the application is acceptable, the floodplain administrator must review the application for compliance with this division. A determination that the application is acceptable does not guarantee that the floodplain permit application will be approved or conditionally approved and does not limit the ability of the floodplain administrator to request additional information during the compliance review process to ensure conformance with this division.

D. The floodplain administrator must approve, approve with conditions, or deny a floodplain permit application within 60 working days of receipt of an acceptable application, except if the applicant in writing agrees to accept an extended time frame.

Sec. 38.600.200. - **Floodplain permit application notice requirements.**

A. Upon receipt of a floodplain permit application deemed acceptable, the floodplain administrator must prepare a notice according to the requirements of *38.730*. Notice by first-class mail must be provided by the floodplain administrator to adjoining property owners listed in the application.

B. The floodplain administrator must serve notice of the floodplain permit application to the state National Flood Insurance Program coordinator.

C. The floodplain administrator must provide notice to adjacent communities, the state National Flood Insurance Program coordinator, and FEMA for any project involving the alteration or relocation of a watercourse containing a special flood hazard area set forth in *38.600.110.A.1*.

Sec. 38.600.210. - **Floodplain permit issuance.**

A. The floodplain administrator may only approve a floodplain permit application and issue a floodplain permit when the activities, uses or artificial obstructions described in the floodplain permit application are in full compliance with this division and applicable provisions of this chapter.

B. The floodplain administrator must issue a written decision to approve, conditionally approve, or deny a floodplain permit within the time frame provided by this division.

C. The applicant must demonstrate to the satisfaction of the floodplain administrator that the floodplain permit application is not in conflict with any other applicable permits obtained for the proposed use, activity or artificial obstruction prior to floodplain permit issuance.

D. A floodplain permit for a use, activity or artificial obstruction in the regulatory floodway that causes an increase of more than 0.00 feet to the existing base flood elevation must not be issued until a conditional letter of map revision, subject to *38.600.260.C.2.a*, is approved by FEMA.

E. A letter of map revision may be required by the floodplain administrator when a proposed use, activity, or artificial obstruction in the regulatory floodway is:

   1. Certified by a professional engineer to not cause an increase of more than 0.00 feet in the existing base flood elevation; and

   2. The existing base flood elevation or existing regulatory floodway is determined to be substantially different than the effective base flood elevation or effective regulatory floodway due to:

      a. Natural physical alterations to the flooding source affecting its plan form and grade; or

      b. Proposed conditions modeling conducted to evaluate project-related impacts.

F. A floodplain permit must not be issued until any FEMA conditional letters of map change required by *38.600.170* are provided by the applicant.

G. The floodplain administrator must consider the following factors in the floodplain permit issuance decision:

   1. The danger to life and property due to increased flood heights, increased flood water velocities or alterations in the pattern of flood flow caused by the proposed use, activity, or artificial obstruction;

2. The danger that materials may be swept onto other lands or downstream to the injury of others;
3. The construction or alteration of the proposed use, activity, or artificial obstruction is conducted in such manner as to lessen the flooding danger;
4. Impacts to water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions, and whether sanitation systems will be located to avoid surcharge during flooding;
5. The susceptibility of the proposed use, activity, or artificial obstruction to flood damage and the effects of such damage on the individual owner;
6. The importance of the services provided by the use, activity or artificial obstruction to the community;
7. The proposed use, activity or artificial obstruction will be reasonably safe from flooding;
8. The drainage at the site is adequate to reduce exposure to flood hazards;
9. The requirement of the facility for a water-front location;
10. The availability of alternative locations not subject to flooding for the proposed use, activity, or artificial obstruction;
11. The compatibility of the proposed use, activity, or artificial obstruction with existing development and anticipated development in the foreseeable future;
12. The permanence of the proposed use, activity, or artificial obstruction;
13. The relationship of the proposed use, activity, or artificial obstruction to any adopted land use plan or other plans covering the project area;
14. The safety of access to property in times of flooding for ordinary and emergency services; and
15. Such other factors as are consistent with the purposes of this division, this chapter, the Montana Floodplain and Floodway Management Act and the National Flood Insurance Program.

H. The floodplain permit must be issued in the name of the landowner on the floodplain permit application form. When a floodplain permit is issued the landowner becomes the permittee and responsible party for all floodplain permit requirements.

Sec. 38.600.220. - **Floodplain permit conditions and requirements.**

A. The floodplain administrator may attach conditions of approval to a floodplain permit to ensure compliance with this division and may require reasonable mitigation of adverse impacts.

B. The floodplain administrator may require the permittee to record a notice of decision of the floodplain permit in the office of the Gallatin County Clerk and Recorder to notify successors in interest of the permit requirements and that such property is located in a regulated flood hazard area.

C. Completion of the use, activity, or artificial obstruction authorized under the floodplain permit shall be limited to the scope contained in the floodplain permit application and any conditions of floodplain permit approval.

D. The permittee shall submit a compliance report to the floodplain administrator within 30 days of project completion, or other time frame as may be specified by the floodplain administrator, that certifies that the permitted use, activity, or artificial obstruction was completed in accordance with the approved permit. The compliance report shall include any letters of map change approved by FEMA applicable to the project as well as applicable FEMA floodproofing certificates and FEMA elevation certificates.

E. The permittee shall maintain the permitted use, activity, or artificial obstruction in compliance with the floodplain permit.

F. The permitted use, activity, or artificial obstruction must be completed within one year from the date of floodplain permit issuance, or a completion timeline identified in the floodplain permit application that is determined reasonable by the floodplain administrator, whichever is later.

G. The floodplain administrator may require the permittee to provide periodic oversight by a professional engineer or licensed architect and provide interim reports during the construction period.

H. The floodplain administrator may require the permittee to submit annual performance and maintenance reports for a period of up to five years, or a time specified in the floodplain permit, for bank stabilization or stream restoration projects utilizing vegetative components.

I. For uses, activities, and artificial obstructions in which a conditional letter of map revision has been approved by FEMA, or for those projects in the regulatory floodway that floodplain administrator has determined under *38.600.210.E* that a letter of map revision is required, the permittee shall prepare and submit a letter of map revision application to FEMA, and applicable application fees, within six months of project completion and shall pursue the application until FEMA issues approval. Failure to do so constitutes a violation of this division.

Sec. 38.600.230. - **Extensions to floodplain permit approval period.**

A. The permittee may request an extension of the duration of the floodplain permit approval. The extension request must be made in writing not less than 30 days before the permit expiration date and present the reasons for which the request is being made along with a description of work completed and work remaining. The floodplain administrator may approve, conditionally approve, or deny the extension request. If a permittee requests an extension within 30 days before the permit expiration date, the permittee must pay an additional floodplain permit application fee.

B. If the permittee makes an extension request after the permit has expired, the floodplain administrator may require the permittee to file a new floodplain permit application for review and approval. The new floodplain permit application must present the reasons for which the new application is being made along with a description of the work completed and work remaining. The floodplain administrator may approve, conditionally approve, or deny the new floodplain permit application.

Sec. 38.600.240. - **Uses, activities, and artificial obstructions within regulated flood hazard areas exempt from floodplain permitting, but subject to watercourse setbacks.**

A. Any use, activity, or artificial obstruction within the regulated flood hazard area established by *38.600.110.A.3* is exempt from obtaining a floodplain permit, unless upon the discretion of the floodplain administrator a floodplain permit is determined to be required.

B. The following open space uses, activities, and artificial obstructions shall be allowed in regulated flood hazard areas without obtaining a floodplain permit, provided they are not prohibited by this chapter or state statute, do not require buildings or structures, and do not require fill, grading, excavation, or storage of materials or equipment:

1. Agricultural uses such as tilling, farming, irrigation, ranching, harvesting, and grazing, but not including structures related to agricultural uses;
2. Forestry uses, including processing of forest products with portable equipment;
3. Recreational vehicle use or storage, provided that the vehicle is on the site for fewer than 180 consecutive days or the vehicle is fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system with wheels intact, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions;
4. Residential uses such as lawns, gardens, and play areas;
5. Maintenance of existing open space uses that do not increase the flood hazard potential;
6. Preventive maintenance activities for transportation infrastructure such as bridge deck rehabilitation and roadway pavement preservation activities that are not considered alterations;
7. Public or private recreational uses that do not include structures such as picnic grounds, swimming areas, parks, golf courses, driving ranges, archery ranges, wildlife management and natural areas, alternative livestock ranches (game farms), fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails;
8. Fences that have a low impact to the flow of water such as barbed wire fences and wood rail fences, except permanent fences crossing channels. Fences that have the potential to stop or impede water flow or debris require a floodplain permit;
9. Addition of roadway guardrail, signing and utility poles that have a low impact to the flow of water along an existing roadway; and
10. Irrigation and livestock supply wells, provided that they are located at least 500 feet from domestic water supply wells and the top of the well casing is 18 inches above the base flood elevation.

Sec. 38.600.250. - **Uses, activities, and artificial obstructions prohibited within regulated flood hazard areas.**

A. The following uses, activities, and artificial obstructions are prohibited in the regulatory floodway:

1. New buildings and structures, including appurtenant or accessory buildings and structures, used for any purpose;
2. Uses, activities, or artificial obstructions, that cause water to be diverted from the regulatory floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;

3. Construction or storage of artificial obstructions subject to flotation or movement during flood level periods;
4. Solid or hazardous waste disposal systems;
5. On-site wastewater treatment systems;
6. Public and private campgrounds, and buried and sealed vaults for sewage disposal in campgrounds and recreational areas;
7. Domestic water supply wells;
8. Storage of toxic, flammable, hazardous or explosive materials; and
9. Mining or excavation of material from pits or pools not in connection with a channelization, streambank restoration, or stream stabilization project.

B. The following uses, activities, and artificial obstructions are prohibited in the flood fringe:

1. Construction or storage of an artificial obstruction subject to flotation or movement during flood levels, if the floodplain administrator determines the flotation or movement of the artificial obstruction would pose a risk to public health, welfare, or safety;
2. Solid or hazardous waste disposal systems;
3. On-site wastewater treatment systems;
4. Public and private campgrounds, and buried and sealed vaults for sewage disposal in campgrounds and recreational areas;
5. Domestic water supply wells;
6. Storage of toxic, flammable, hazardous or explosive materials; and
7. Placement of fill to elevate land not otherwise performed in connection with a proposed development occurring under this chapter or chapter 10.

C. The following uses, activities, and artificial obstructions are prohibited in regulated flood hazard areas without a regulatory floodway and flood fringe:

1. Uses, activities and artificial obstructions prohibited by *subsection B* above; and
2. Any use, activity, or artificial obstruction that causes an increase of more than 0.50 feet to the base flood elevation.

Sec. 38.600.260. - **Requirements for uses, activities, and artificial obstructions permitted in the regulatory floodway subject to issuance of a floodplain permit.**

A. When a site specific exemption or relaxation of the standards of *38.620* allow utilization of a portion of the regulated flood hazard area, the uses, activities and artificial obstructions contained in this section, including alterations and substantial improvements to existing artificial obstructions, may be permitted in the regulatory floodway subject to the issuance of a floodplain permit by the floodplain administrator.

B. All uses, activities and artificial obstructions permitted in the regulatory floodway shall be designed and constructed to minimize flood damage and ensure they do not adversely affect the flood hazards of other properties or be swept downstream to the injury of others.

C. The applicant must assure that all uses, activities and artificial obstructions do not reduce the carrying capacity of the regulatory floodway by:

1. Providing a regulatory floodway encroachment analysis, prepared and certified by a professional engineer, demonstrating that the use, activity, or artificial obstruction does not cause an increase to the existing base flood elevation of more than 0.00 feet ("no-rise") and does not significantly increase the velocity of flow. Except as provided in a. below, the no-rise analysis shall be prepared in accordance with FEMA guidance for no-rise certifications for developments in regulatory floodways.

    a. At the discretion of the floodplain administrator, a different approach to demonstrate and certify no-rise may be allowed given the scope and nature of the proposed use, activity, or artificial obstruction. The approach used shall be acceptable to the floodplain administrator and be performed in accordance with standard engineering practice.

2. Providing a conditional letter of map revision approved by FEMA, the application for which must first be supported by the floodplain administrator and the DNRC subject to this section, for any use, activity, or artificial obstruction that causes an increase to the existing base flood elevation of more than 0.00 feet, or significantly increases the velocity or flow of the watercourse or drainway, or substantially alters the location of the regulatory floodway.

    a. A conditional letter of map revision is a prospective alteration of the regulated flood hazard area and is subject to MCA 76-5-203. Alterations to the regulatory floodway must be designed and delineated so as to carry the waters of the base flood without increasing the base flood elevation more than 0.50 feet at any point. Written support to file a conditional letter of map revision application with FEMA shall be obtained from DNRC and the floodplain administrator by the applicant providing the following information to DNRC and the floodplain administrator:

        (1) Certification that no buildings are located in areas impacted by increased base flood elevations;

        (2) Information demonstrating that alternative designs or approaches that do not cause an increase to the base flood elevation are not feasible;

        (3) Any other information required by DNRC or the floodplain administrator to gain support for the filing of a conditional letter of map revision application with FEMA.

D. Substantial improvement to existing buildings and alteration of existing structures may be permitted, provided that:

1. All applicable requirements in *38.600.270* are met;

2. The existing building or structure shall not be elevated by means of new or additional fill; and

3. An alteration to expand the horizontal dimensions of an existing building is not occurring.

E. Watercourse crossings for pedestrian and transportation facilities may be permitted, provided that:

1. Crossings shall be generally oriented as perpendicular to the direction of flow as practicable;
2. Footings for bridge piers and abutments shall be buried below the maximum calculated depth of scour during the base flood discharge as calculated and certified by a professional engineer;
3. Where failure or interruption of public transportation facilities would result in danger to public health or safety, and wherever practicable:
    a. Bridge low chord elevations shall have at least two feet of freeboard above the base flood elevation;
    b. Culverts shall be designed to pass the base flood discharge and provide at least two feet of freeboard to the crossing surface; and
4. Except for those public bridges maintained by the Montana Department of Transportation, bridges for public transportation facilities shall meet applicable design and construction standards established by Gallatin County by authority of MCA 7-14-2204.

F. Limited filling for transportation facility embankments not in connection with watercourse crossings may be permitted, provided that:

1. Fill placed is a suitable material for the transportation facilities;
2. Reasonable alternate transportation routes outside the regulatory floodway are not available; and
3. The floodway encroachment is located as far from the stream channel as possible.

G. Buried or suspended utility transmission and service lines may be permitted, provided that:

1. Suspended utility lines are designed such that the lowest point of the suspension is at least six feet higher than the base flood elevation;
2. Towers, poles, and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows;
3. Alternatives routes, directional drilling, and aerial routes are considered when practicable; and
4. Utility transmission and service lines carrying toxic or flammable materials are buried to a depth of at least twice the maximum scour depth for the base flood discharge as calculated and certified by professional engineer.

H. Storage of materials and equipment not otherwise prohibited may be permitted, provided that:

1. The material or equipment is not subject to damage by flooding and is properly anchored to prevent flotation or downstream movement; or
2. The material or equipment is readily removable within the limited time available after flood warning.

I. Construction or alteration of surface water diversion structures may be permitted, provided that:

1. Potential erosion from a base flood shall be minimized; and

2. A professional engineer shall design and certify that any permanent diversion structure in the watercourse or drainway can withstand hydrodynamic, hydrostatic, buoyancy, and scour forces associated with the base flood discharge as well as ice damage and debris impacts.

J. Construction or alteration of levees and floodwalls may be permitted, provided that:

1. A professional engineer shall design and certify that the levee or floodwall can withstand hydrodynamic, hydrostatic, buoyancy, and scour forces associated with the base flood discharge as well as ice damage and debris impacts;

2. Materials used for construction are suitable materials designed to withstand the base flood discharge;

3. Constructed height shall be at least three feet higher than the base flood elevation;

4. All state and federal levee and floodwall engineering and construction standards are met; and

5. If the levee or floodwall protects structures of more than one landowner, it shall be publicly owned and maintained.

K. Streambank, pier and abutment stabilization or protection projects may be permitted, provided that:

1. A professional engineer shall design and certify that the project can withstand hydrodynamic, hydrostatic, buoyancy, and scour forces associated with the base flood discharge;

2. Materials used and construction methods employed are the least environmentally damaging practicable for the proposed application;

3. Vegetative components, if any, must be established and mature within five years of installation, or other time frame as may be required by the floodplain administrator, and once established and mature do not require substantial yearly maintenance;

4. If materials for the project are designed to biodegrade or erode over time they shall not fail catastrophically to the impact of others and the design amount and rate of erosion shall be similar to what existing stable natural streambanks experience during the base flood discharge; and

5. Potential erosion upstream, downstream, across from or adjacent to the project site during the base flood discharge shall not be increased beyond the erosion rate of existing stable natural streambanks.

L. Channelization projects may be permitted, provided that:

1. The requirements of *subsection K* of this section shall be met; and

2. The excavation and construction of the stream channel is for the purpose of altering or relocating a watercourse or drainway and diverting the entire flow of the stream, or a portion thereof, from its presently established course and shall accommodate and not increase the magnitude or velocity of the base flood discharge;

3. A conditional letter of map revision must be approved by FEMA pursuant to *subsection C.2* above.

M. Stream and bank restoration projects may be permitted, provided that:

1. The purpose of the project is to reestablish the terrestrial and aquatic attributes of a natural stream and is not for the protection of a structure or a streambank stabilization project; and

2. The requirements of *subsections K* and *L* of this section are satisfied, except for the requirement to obtain a conditional letter of map revision, which may not be required in all instances depending upon the extent and nature of the stream or bank restoration project.

N. Dams may be permitted, provided that:

1. Design and construction shall be in accordance with the Montana Dam Safety Act, MCA 85-15-101 et seq.;

2. The project shall not increase the flood hazards downstream either through operational procedures or improper hydrologic or hydraulic design; and

3. A conditional letter of map revision must be approved by FEMA pursuant to *subsection C.2* above.

Sec. 38.600.270. - **Development requirements for uses, activities and artificial obstructions permitted in the flood fringe subject to issuance of a floodplain permit.**

A. When a site specific exemption or relaxation of the standards of *38.620* allow utilization of a portion of the regulated flood hazard area, the uses, activities and artificial obstructions contained in this section, including alterations and substantial improvements to artificial obstructions, may be permitted in the flood fringe subject to issuance of floodplain permit.

B. All uses, activities, and artificial obstructions permitted in the regulatory floodway pursuant to *38.600.260* may also be permitted in the flood fringe subject to issuance of a floodplain permit by the floodplain administrator.

C. The requirements of this section shall also apply to uses, activities and artificial obstructions located in a regulated flood hazard area without a regulatory floodway and flood fringe, subject to:

1. An encroachment analysis shall be prepared and certified by a professional engineer demonstrating that the use, activity, or artificial obstruction in the regulated flood hazard area does not increase the identified base flood elevation more than 0.5 feet and does not significantly increase flood velocities or alter flood hazards to the detriment of upstream, downstream, or adjacent properties.

D. The new construction, alteration, and substantial improvement of residential and non-residential buildings and structures may be permitted, provided that:

1. Such buildings and structures shall conform to the requirements of this chapter and chapter 10 and are not prohibited by any other statute, regulation, ordinance or resolution;

2. Such buildings and structures are compatible with local growth policies;

3. Such buildings and structures are constructed by methods and practices that minimize flood damage, and are reasonably safe from flooding and anchored to resist flotation, collapse and lateral movement;

4. Grading around such buildings and structures is provided with adequate surface drainage;

5. All materials used for construction are resistant to flooding to an elevation at least two feet above the base flood elevation;

6. New construction, alteration, and substantial improvement of residential buildings and structures, including manufactured homes, shall be elevated so that the lowest floor is at least two feet above the base flood elevation by any of the following means:

   a. On suitable structural fill, foundation wall enclosure, stem walls, pilings, posts, piers, columns or other acceptable means.

   b. If elevated on suitable structural fill, the fill must be extended at an elevation no lower than the base flood elevation for a minimum distance of 15 feet in all directions beyond the foundation walls, unless physical constraints exist that make strict compliance impracticable and the floodplain administrator approves a lesser distance, and be certified by a professional engineer to meet the following:

      (1) Fill material must be suitable for its intended purpose and be clean, well graded, pervious, not adversely affected by water and frost, devoid of trash or similar foreign matter, and free of tree stumps or other organic material;

      (2) Fill material must be compacted to 95 % of its maximum density as determined by standard proctor testing in accordance with ASTM D698 standards;

      (3) Fill must not be placed within the regulatory floodway; and

      (4) Fill slope must be less than 1.5:1 unless physical constraints exist, in which case a retaining wall is allowed if the wall is adequately protected from erosion;

7. For new placement, substantial improvement, or replacement of manufactured homes, including those used for non-residential purposes, the building chassis shall be secure and resist flotation, collapse and lateral movement by anchoring with components capable of carrying a force of 4,800 pounds in addition to the following:

   a. For manufactured homes less than 50 feet long, over-the-top ties to ground anchors shall be provided at each of the four corners of the building, with two additional ties provided per side at intermediate locations; or

   b. For manufactured homes more than 50 feet long, frame ties to ground anchors shall be provided at each corner of the building, with five additional ties per side provided at intermediate points;

8. Non-residential buildings and structures shall be elevated so that the lowest floor is at least two feet above the base flood elevation in accordance with requirements of *subsection D.6* of this section or shall be certified by a professional engineer or registered architect to be adequately floodproofed in accordance with the following:

   a. The lowest floor of the building or structure must be adequately wet or dry floodproofed to an elevation at least two feet above the base flood elevation;

   b. The building or structure shall be designed to withstand hydrostatic, hydrodynamic, and buoyancy forces of the base flood;

c. Wet floodproofing is only permitted when the lowest floor of a building or structure is used for parking, loading, or storage of equipment or materials not appreciably affected by floodwater;

d. Wet floodproofing must provide adequate openings to equalize hydrostatic forces; and

e. Dry floodproofing must not allow floodwaters to cause internal flooding of the building or structure by using impermeable membranes and materials for construction of floors and walls, and must ensure that all windows, doors and other openings are watertight and do not allow the passage of floodwaters;

9. Except as provided in *subsection 9.a.* below, appurtenant or accessory buildings and structures for residential, non-residential, and agricultural purposes shall be elevated or floodproofed to an elevation at or above the base flood elevation and be adequately anchored to resist flotation, collapse and lateral movement. Means of elevating or floodproofing shall be in accordance with D.6 and D.8 above;

   a. Attached and detached garage structures used exclusively for parking or storage of equipment and materials not appreciably affected by floodwater shall be elevated in accordance with D.6;

10. The floor elevation of any crawlspace foundation enclosures, including subgrade crawlspaces with a floor elevation no more than two feet below the lowest adjacent grade of the building on all sides, shall be at or above the base flood elevation and contain flood openings designed and certified by a professional engineer to meet or exceed the following:

    a. Equalize hydrostatic forces on foundation walls by allowing the automatic entry and exit of floodwaters through screens, louvers, valves, or other covers or devices;

    b. Have two or more openings with a total net area of not less than one square inch for every one square foot of enclosed area below the lowest floor;

    c. Openings shall be located on a minimum of two walls, except for subgrade crawlspace enclosures where a minimum of two openings may be provided on a single wall; and

    d. The bottom of all openings shall be no higher than one foot above the higher of the exterior adjacent grade elevation or the crawlspace floor elevation;

11. Basements are considered the lowest floor of a building and shall be elevated two feet or more above the base flood elevation. A basement includes any floor that is more than two feet below the lowest adjacent grade of the building on all sides;

12. All electrical systems shall be certified by a professional engineer to satisfy all applicable flood hazard area provisions of the current adopted building codes set forth in chapter 10 along with the following requirements. If conflicts exist between this division and chapter 10, then chapter 10 requirements shall govern;

    a. All incoming power service equipment including all metering equipment, control centers, transformers, distribution and lighting panels, and all other stationary equipment shall be located at least two feet above the base flood elevation;

b. Portable and movable electrical equipment may be placed below the base flood elevation, provided that the equipment can be disconnected by a single plug and socket assembly of the submersible type;

c. The main power service lines must have automatically operated electrical disconnect equipment or manually operated electrical disconnect equipment located at an accessible remote location outside the regulated flood hazard area or shall be two feet above the base flood elevation; and

d. All electrical wiring systems installed below the base flood elevation shall be suitable for continuous submergence and may not contain fibrous components;

13. All mechanical systems shall be certified by a professional engineer to satisfy all applicable flood hazard area provisions of the current adopted building codes set forth in chapter 10 along with the following requirements. If conflicts exist between this division and chapter 10, then chapter 10 requirements shall govern;

a. Float operated automatic control valves shall be installed so that fuel supply is automatically shut off when flood waters reach the floor level where mechanical systems are located;

b. Manually operated gate valves shall be installed on gas supply lines. The gate valves shall be operable from a location above the base flood elevation;

c. Electrical components of the HVAC systems shall meet the requirements of D.12 above; and

d. Furnaces, cooling units, and all associated ductwork shall be installed at least two feet above the base flood elevation;

14. All plumbing systems shall be certified by a professional engineer to satisfy all applicable flood hazard area provisions of the current building codes set forth in chapter 10 along with the following requirements. If conflicts exist between this division and chapter 10, then chapter 10 requirements shall govern:

a. The building sewer line shall have a backwater valve installed to prevent sewage backup into the building; and

b. All toilets, stools, sinks, urinals, vaults, and drains shall be located so the lowest point of possible flood water entry is at least two feet above the base flood elevation.

E. Recreational vehicles may be permitted, provided that:

1. Recreational vehicles that are on site for more than 180 days out of the year, or are not ready for highway use, shall meet the manufactured home requirements in *subsection D.6* and *subsection D.7*.

F. Mining or excavation of material from pits or pools provided that:

1. A buffer strip of undisturbed land of sufficient width to prevent the base flood from channeling into the mine or excavation is left between the edge of the channel and the edge of the mine or excavation;

2. The mine or excavation meets all applicable laws and regulation of other local and state agencies; and

3. Mined or excavated material is stockpiled outside of the regulatory floodway.

G. All other uses, activities and artificial obstructions not otherwise prohibited by *38.600.250.B* or any other provision of this chapter may be permitted in the flood fringe subject to issuance of a floodplain permit.

Sec. 38.600.280. - **Waiver of floodplain permit requirements prior to undertaking emergency repair or replacement or temporary protective measures.**

A. This division is not intended to prevent a person or entity from taking temporary protective measures necessary to safeguard life, buildings, or structures during periods of flooding emergency. A person or entity shall make a reasonable effort to notify the floodplain administrator prior to initiating such temporary protective measures within the regulated flood hazard area. If prior notice is not practical, a person or entity shall provide notice to the floodplain administrator in all cases no later than five days after the temporary protective measure was undertaken. Temporary protective measures shall not be located in the channel of the regulatory floodway or increase the flood hazard to others, and shall be entirely removed upon cessation of the flooding emergency.

B. Emergency repair and replacement of severely damaged public transportation facilities, public water and sewer facilities, public utility electricity and natural gas distribution facilities, and flood control works may be authorized and floodplain permit requirements waived prior to undertaking such emergency work if:

1. Upon notification and prior to emergency repair and/or replacement, the floodplain administrator determines that an emergency condition exists warranting immediate action; and

2. The floodplain administrator agrees upon the nature and type of proposed emergency repair and/or replacement.

3. Authorization to undertake such emergency repair and replacement work may be given orally if the floodplain administrator believes that a written authorization would unduly delay the emergency works. Such oral authorization must be followed by a written authorization describing the emergency condition, the type of emergency work agreed upon, and a statement that oral authorization had been previously given.

C. Nothing in this section impairs or abrogates the authority of the floodplain administrator from requiring a floodplain permit be obtained retroactively by a person or entity undertaking emergency repair, replacement, or temporary protective measures upon cessation of the emergency conditions that gave rise to the emergency repair, replacement, or temporary protective measures. The floodplain administrator may require the permittee to complete remedial work or activities necessary to achieve compliance with this division.

Sec. 38.600.290. - **Variances.**

A. A variance from the minimum requirements of this division may be authorized as set forth in this section and *38.760*. The granting of a variance by the review authority authorizes the floodplain administrator to issue a floodplain permit that otherwise would conflict with the minimum requirements of this division. In no case may the review authority authorize a variance from a use, activity, or artificial obstruction prohibited by state or federal law.

B. In addition to submittal materials for variances set forth in *38.710.150*, a variance from the minimum requirements of this division shall be accompanied by a floodplain permit application deemed acceptable by the floodplain administrator pursuant to *38.600.190*, and be noticed publicly pursuant to *Table 38.730.020-1*.

C. Variances may be issued for the repair, rehabilitation or substantial improvement of a structure designated as historic by the U.S. Secretary of Interior or an approved state or local government historic preservation program upon a determination that the proposed repair, rehabilitation or substantial improvement will not preclude the continued designation of the structure as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

D. Variances from this division shall conform to 44 CFR 60.6(a) and ARM 36.15.218.

E. The floodplain administrator must maintain records of variance notifications and actions, including justifications for variance issuance, and forward all variance actions to the DNRC and FEMA upon disposition.

Sec. 38.600.300. - **Appeals.**

Appeals from administrative project decisions or administrative interpretations made under this division may be taken as set forth in *38.760*. Appeal submittal materials applicable under *38.710* shall be provided.

Sec. 38.600.310. - **Enforcement.**

A. It is the purpose to provide for the efficient, reasonable, and impartial enforcement of this division through the floodplain administrator and to set forth the basic procedures for compliance with, and remedies for, violations of this division.

B. Any person may file a complaint with the floodplain administrator whenever a violation of this division is alleged to have occurred. The complaint must be provided to the floodplain administrator in writing, state fully the facts supporting it, and signed by the complainant. If the complaint is filed by three titleholders of land which may be affected by the alleged violation, the floodplain administrator must perform an investigation to determine whether a violation of this division has occurred. The names and addresses of the complainants are a matter of public record.

C. The floodplain administrator may make reasonable entry upon any lands and waters for the purpose of making an investigation, inspection or survey to verify compliance with this division and may do so upon the floodplain administrator's own initiative if the floodplain administrator has reasonable suspicion to believe a violation under this division has occurred.

   1. The floodplain administrator must give notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner's agent, lessee, or lessee's agent on whose lands entry is requested.

   2. If none of these persons can be found, the floodplain administrator must affix notice to one or more conspicuous places on the property.

D. After an investigation, the floodplain administrator must provide notice to any person or entity believed to be responsible for a violation of this division of such violation and must bring any violation to the attention of the local governing body, its legal counsel, and the DNRC.

1. The notice of violation may be in the name of the city and may order the cessation of the violation and require that a corrective action plan be provided within a period of time deemed reasonable by the floodplain administrator.
2. Such notice of violation must be sent by mail or other means and is subject to appeal pursuant to *38.600.300*.
3. Failure to comply with a cessation order or requirement for corrective action is cause for the city to initiate any legal remedy it may have including but not limited to those remedies established in *38.700.160* and *1.01.210*.

Sec. 38.600.320. - **Penalty.**

Violation of the provisions of this division or failure to comply with the requirements of a floodplain permit are subject to the provisions of *38.700.160* and *1.01.210*.

DIVISION 38.610. - **WETLAND REGULATIONS**

Sec. 38.610.010. - **Title and applicability.**

A. This division may be cited as the "wetlands regulations".

B. These wetland regulations apply to land which exhibit positive wetland indicators for all three wetland parameters defined in *38.700.210*.

C. These wetland regulations apply to applications for development that may impact wetlands, and these regulations also apply to actions that modify or impact a wetland on land not associated with the development proposal.

D. The city has concurrent jurisdiction over federally jurisdictional wetlands, defined as wetlands that are regulated by a federal agency.

E. The regulations in this division do not require mitigation of wetlands created by agricultural water user facilities or wetlands created by stormwater facilities.

F. The obligation to comply with issued approvals and maintain approved mitigation runs with the land.

G. *38.610* does not repeal, abrogate, supersede, or impair any existing restriction imposed by federal or state law. This division may impose more stringent requirements than federal or state law. If this division imposes greater or more stringent requirements than a privately imposed deed restriction or agreement, the provisions of this division control.

Sec. 38.610.020. - **Purpose.**

A. Wetlands perform important public health, safety, and welfare functions. The purpose of this *38.610* is to protect, preserve and enhance wetlands to provide:

1. Aquifer recharge;
2. Water storage;
3. Regional stream hydrology (discharge and recharge);
4. Flood control and storage;
5. Sediment control (filter for sediments and nutrients);
6. Nutrient removal from urban and non-point source runoff;
7. Habitat for fish, wildlife and plants (including those that are endangered or threatened); and
8. Erosion control.

B. Wetlands provide important values that enhance the quality of life of community residents and benefit the public welfare of the community. The purpose of this *38.610* to protect, preserve and enhance wetlands to provide:

1. Recreation;

2. Open space;
3. Aesthetic considerations;
4. Education and research;
5. Historical, cultural and archaeological resources; and
6. Reduce public costs related to wastewater discharge permit compliance and water quality enhancements and protections.

C. Wetlands can present significant constraints to development. It is the purpose of these regulations to protect public and private facilities and structures from damage, minimize risk to public and private development, and reduce maintenance costs.

D. This division requires an applicant to first avoid impacts to wetlands and if avoidance is not feasible to minimize impacts and mitigate impacts. Minimization of regulated activities within regulated areas may be achieved by integration of regulated areas with required parklands and open space. This division recognizes that impacts to regulated areas may occur to advance other adopted policies and goals of the city.

E. Nothing in this *38.610* may be construed to prevent irrigators from diverting water pursuant to water rights or owners of such rights from exercising those rights including maintenance of agricultural water conveyance facilities.

F. Nothing in this *38.610* may be construed to prevent compliance with applicable state or federal statutes and regulations.

G. The purpose of this division is to balance the benefits of land development, such as housing and job creation, with the benefits wetlands provide to the community.

Sec. 38.610.030. - **Application of wetland regulations.**

A. These regulations apply to any regulated activity as described in *38.610.050* which may impact wetlands and which impacts are known prior to, or discovered through the development review process, and which are verified through a site-specific wetland boundary delineation. When any regulated activity is proposed, a wetlands boundary delineation must be conducted. If the wetlands delineation indicates wetlands are not present on or adjacent to the property, the review authority may determine these regulations do not apply. If wetlands exist on the property, the proposed development is subject to these wetland regulations and the provisions of this *38.610* will be applied in addition to any other applicable regulations of this code. If site conditions exist that indicate wetlands could potentially be present on the property, the review authority may require the following be provided with the submittal of an application for development:

1. A wetlands boundary delineation pursuant to 38.220.130 and 38.610.040 must be prepared by a qualified wetland professional in accordance with the most current version of the USACE Wetland Delineation Manual of the U.S. applicable to the USACE Omaha District and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains.
2. A qualified wetland professional is an individual with a minimum of a bachelor's degree in a water resource related field, five years' experience in a wetland related field, and/or a professional wetland scientist certification.

3. If wetlands do not exist on the subject property, a letter from a qualified wetland professional must be submitted certifying the same.

B. Wetlands which are not within the jurisdiction of a federal agency, and which are less than 400 square feet are exempt from this *38.610* unless the wetland provides habitat for the following species as confirmed by a state or federal agency:

1. Habitat for plant, animal or other wildlife species listed as threatened or endangered under federal law;

2. Habitat for plant, animal or other wildlife species listed as a species of concern, species of potential concern, or species on review as determined by the state; or

3. A portion of a mosaic of wetland areas interspersed with upland areas and other habitat types with interconnected ecological functions.

C. Any development for which the watercourse setback requirements of *38.410.100* are provided and do not result in any wetland impact is considered to have addressed the requirements of this *38.610*. Notwithstanding the above, the permitting regulations of this division for activities identified in *38.610.050* apply.

D. Applicants must avoid impacts to regulated wetlands. If the applicant demonstrates impacts to wetlands cannot be avoided, the review authority may approve development that impacts wetlands if such impacts are minimized, and appropriate mitigation is provided.

Sec. 38.610.040. - **Wetlands boundary and jurisdictional determinations.**

A. The USACE is the only entity that may issue an Approved Jurisdictional Determination.

B. The review authority may rely on the wetland delineation and the Approved Jurisdictional Determination submitted with the application.

1. If the Approved Jurisdictional Determination indicates federal jurisdiction over the wetlands exists, and impacts to the wetlands are proposed, the applicant must submit a copy of the applicant's Clean Water Act Section 404 permit application to the city concurrent with the application for development under this chapter.

2. If the Approved Jurisdictional Determination indicates federal jurisdiction over the wetlands does not exist, and impacts to the wetlands are proposed, the applicant must comply with the regulations of this chapter and obtain approval from the review authority for any impacts and the required mitigation. The city will determine the extent of and means of mitigation subject to *38.610.100*.

3. Regardless of jurisdictional status, the city will review the submitted material under local jurisdiction for any regulated activities in a wetland. All development is subject to the review process of *38.230*.

4. If federal jurisdiction is later determined to exist, the applicant must comply with any requirements of USACE.

5. Approval by the city to impact wetlands in no way implies a determination by the city of USACE jurisdiction or federal regulations.

6. A wetland delineation and boundary determination are valid for five years from the original report date.

Sec. 38.610.050. - **Regulated activities.**

A. The activities listed in this section are prohibited within a wetland, regardless of federal or city jurisdictional status unless the proposed activity is approved by the entity having jurisdiction.

B. Any activity which reduces the size of a wetland or reduces the degree to which a wetland performs any function identified in the wetland delineation report is subject to the requirements of this *38.610*. Such activities include but are not limited to:

1. Placement of any material, including any soil, sand, gravel, mineral, aggregate, organic material, or water;

2. Construction, installation, or placement of any obstruction, or the erection of a building, trail, boardwalk, or other structure;

3. Removal, excavation, or dredging of solid material of any kind, including any soil, sand, gravel, mineral, aggregate, or organic material;

4. Removal of any existing vegetation or any activity which will cause any loss of vegetation;

5. Alteration of the surface water level or ground water table by any means, including draining, ditching, trenching, impounding, or pumping; and

6. Disturbance of existing surface drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics by any means, including grading and alteration of existing topography.

Sec. 38.610.060. - **Activities allowed without a permit.**

A. Except for wetlands under federal jurisdiction, the activities listed in this section are permissible without prior approval by the review authority, if such activity does not reduce the size of a wetland or does not significantly reduce the degree to which a wetland performs any function. Notwithstanding the above, such activity must comply with any other applicable local, state, or federal law. Activities permissible without a city development approval may include:

1. Maintenance of an existing and lawful public or private road, structure or facility, including but not limited to drainage or stormwater facilities, water conveyance structures, dams, fences, trails, or any facility used to provide transportation, electric, gas, water, telephone, telecommunications or other services provided that these activities do not materially change or enlarge any road, structure or facility;

2. Maintenance of an existing farm or stock pond, an agricultural water user facility, agricultural fence, or drainage system;

3. Weed control consistent with a Noxious Weed Management and Revegetation Plan approved by the county weed control district or other maintenance activities to remove or control state identified noxious weeds;

4. Continuation of existing agricultural practices such as the cultivation and harvesting of hay or pasturing of livestock, or a change of agricultural practices which has no greater impact on wetland function;
5. Conservation or preservation of soil, water, vegetation, fish, and other wildlife;
6. Outdoor recreational activities, such as fishing, bird watching, hiking, floating, and swimming which do not harm or disturb the wetland;
7. The harvesting of wild crops;
8. Education and scientific research;
9. Minor improvements and landscape maintenance outside a wetland but within a previously approved watercourse setback or wetland buffer, including but not limited to the pruning of trees, mowing of grass, and removal of dead vegetation and debris; and
10. Activities in a wetland previously approved pursuant a wetland permit or city development approval, including but not limited to removal of debris and maintenance of vegetation and wildlife habitat.

B. If federal jurisdiction exists, the applicant must comply with all requirements of the USACE or any other state or federal agency having jurisdiction.

Sec. 38.610.070. - **Application requirements and procedures for activities in wetland areas.**

A. All proposals for regulated activities in wetlands areas must be reviewed by the review authority. The applicant must prepare a functional assessment for all wetlands using an assessment tool currently accepted by the Omaha District of the USACE or the State of Montana. If wetland impacts are proposed in association with a development permit, application must follow the review process for the development permit.

B. If a regulated activity is proposed for a regulated wetland area, but the regulated activity is not proposed in conjunction with a land development proposal, the applicant must submit a sketch plan application for decision by the review authority.

C. The applicant is prohibited from taking or engaging in a regulated activity that impacts a wetland until authorized to do so by the review authority.

D. The applicable information required in *38.220* must be submitted for all regulated activities proposed for regulated wetland areas.

Sec. 38.610.080. - **Review standards and minimum wetland buffer.**

A. The review authority may approve an application under this *38.610* after having considered the applicant's documentation of:

1. The functions and values described in *38.610.030* and as determined by a USACE accepted method of functional assessment of the wetland that may be affected by the proposed regulated activity;

2. The extent and permanence of adverse effects of the regulated activity on the wetland and any associated watercourse;

3. Any proposed mitigation; and

4. The applicant's demonstration:

   a. That any unavoidable adverse impacts on the wetland have been minimized; and

   b. The activity will result in minimal impairment to any wetland function, including the following:

      (1) Plant, animal or other wildlife species listed as threatened or endangered under federal law; or

      (2) Plant, animal or other wildlife species listed as a species of concern, species of potential concern, or species by the state.

B. Minimum Wetland Buffer. All development must provide a minimum wetland buffer of 25 feet from the edge of the delineated wetland wherein any disturbance to the wetland buffer including construction activities is prohibited. The review authority may require a larger wetland buffer based on the wetland delineation report.

Sec. 38.610.090. - **Wetland approval conditions.**

The review authority may require mitigation as provided for in 38.610.100 and impose conditions of approval for proposed regulated activities that are necessary to mitigate impacts to wetlands, or which are necessary to mitigate infringement upon wetlands and wetland buffers, or negative indirect or direct effects on the functionality of wetlands and wetland buffers. Conditions of approval may include but are not limited to, the following:

A. Notwithstanding the minimum wetland buffer, requiring a wetland buffer of a size appropriate for the proposed activity and the regulated wetland as determined by the review authority;

B. Requiring structures be appropriately supported and elevated or otherwise protected against hazards;

C. Modifying proposals for waste disposal, stormwater, or water supply facilities;

D. Requiring protective covenants between the landowner and the city regarding the future development, use, and subdivision of lands, including but not limited to the preservation of undeveloped areas as open space and restrictions on vegetation removal;

E. Requiring a protective covenant between the landowner and the city stating the measures that will be taken to protect all water resources, mitigation, and buffer areas;

F. Requiring erosion control and stormwater best management practices (BMPs);

G. Clustering structures or development;

H. Restricting fill, deposit of soil, and other activities which may be detrimental to a wetland;

I. Modifying the project design to ensure a reliable source and flow of water to the regulated wetland;

J. Requiring or restricting maintenance of a regulated wetland area for the purpose of maintaining wetland functions;

K. Requiring a mitigation monitoring report to be submitted to the review authority (the period and frequency of the reporting will be determined on a case-by-case basis); and

L. Requiring that all reasonable effort be made to limit indirect impacts to vegetation and hydrological connectivity in the site design.

Sec. 38.610.100. - **Wetland mitigation.**

A. Adverse wetland impacts must be mitigated regardless of wetland jurisdictional status in the following order of priority except as may be required or authorized by the USACE for wetlands within USACE jurisdiction:

1. Impacts must be mitigated on-site where feasible to do so. Using an approved wetland functional assessment methodology, the replacement function and value of the on-site mitigation wetland must meet or exceed the functions and values of the impacted wetland. If conditions are not suitable for establishing on-site mitigation, the review authority may authorize an alternative mitigation as described in subsections A.2-6. On-site mitigation must be conducted in accordance with methods and standards established by the USACE. Factors the review authority may consider in determining feasibility of on-site mitigation include but are not limited to: available area; the availability and reliability of water to serve the mitigation site; soil and vegetation types; wetland size and functional class; existing and future land use; compliance with adopted land use plans; and the city's current and future planned transportation network.

2. If mitigation is not suitable on-site, impacts must be mitigated through the purchase of wetland mitigation credits from a wetland bank authorized by the USACE and which is located within the East Gallatin River watershed.

3. If an authorized wetland bank is not available in the East Gallatin watershed, impacts must be mitigated through the purchase of wetland mitigation credits from a wetland bank authorized by USACE and which is located within the Gallatin River watershed;

4. If a wetland bank is not available within the Gallatin River watershed, the developer must provide a proportional payment to an in-lieu fee wetland mitigation provider authorized by the USACE to develop wetland mitigation projects within the Gallatin River watershed; and

5. If a wetland in-lieu fee provider authorized by the USACE is not available within the Gallatin River watersheds, the developer must obtain wetland mitigation credits from the geographically nearest wetland bank authorized by the USACE.

B. The city commission may, pursuant to Resolution, establish standards that:

1. Require a decrease in the compensatory value of mitigation bank credits as distance to the bank increases from the location of wetland adversely impacted; and

2. Ensure the amount of mitigation credits or acreage of wetland mitigation required are reasonably related to the area and functional class of the impacted wetland.

Sec. 38.610.110. - **Administrative procedures authorized.**

The city manager or designee may adopt and amend administrative procedures to implement this division. The administrative procedures include, but are not limited to, the following items:

A. Guidelines necessary to conduct an analysis of alternatives to the proposed action related to the prioritization of mitigation as provided for in *38.610.100*;

B. Coordination with stormwater management practices;

C. Coordination with USACE to avoid duplication of wetland mitigation bank credits;

D. Procedures for provision of payment to USACE authorized in-lieu-fee provider for wetland impacts or mitigation;

E. Requirements for wetlands delineation and wetland Jurisdictional Determination reports;

F. Procedures for certification of wetland delineation and opinion of wetlands jurisdictional status reports;

G. Guidelines related to the content of a required monitoring report;

H. Procedures to implement *38.610.100* including procedures related to timing of mitigation prior to construction of construction of improvements;

I. Requirements for wetland mitigation plans including ensuring long-term protections for off-site mitigation such as an easement or protective covenant that cannot be removed without consent of the city;

J. Fees for wetland review and mitigation prioritization; and

K. Guidelines for local in-lieu-fee program

DIVISION 38.620. - **WATERCOURSE SETBACKS.**

A. The purpose of this section is to protect watercourses and the land adjacent to ensure bank stabilization; sediment, nutrient and pollution removal; provision of habitat and shade; and flood control.

B. Where a parcel proposed for development contains a watercourse, the development is prohibited from placing structures (such as buildings, parking lots, or other impervious surfaces), an addition to an existing structure, any fill material (other than that required for exempt uses), other similar improvements within required watercourse setbacks.

C. The development may integrate the watercourse and watercourse setbacks with required parklands and open space subject to *38.420*.

D. The requirements of this section may not be less restrictive than the requirements of the city floodplain regulations or any other applicable regulation of this chapter.

1. The watercourse setbacks must be measured from the ordinary high-water mark as defined in *38.700.090* and as depicted on *Figure 38.410.100-1*. When no ordinary high-water mark is discernible, the watercourse setback must be measured from the top of the watercourse bank.

2. The following apply to all developments.

a. Setbacks. The following setback requirements must be met:

(1) East Gallatin River. A minimum 100-foot setback must be provided along both sides of the East Gallatin River.

(2) Sourdough/Bozeman Creek and Bridger Creek. A minimum 75-foot setback must be provided along both sides of Sourdough/Bozeman and Bridger Creeks.

(3) Other watercourses. A minimum 50-foot setback must be provided along both sides of all other watercourses.

(4) All watercourse setbacks must be extended as necessary to address the following additional requirements;

(a) The setback must extend to the delineated boundary of the regulated flood hazard area pursuant to *38.600.130.B* where the regulated flood hazard boundary is larger than the setbacks established in this subsection D.2.a (see *Figure 38.410.100-2*);

(b) The setback must incorporate a minimum 50-foot wetland setback from the delineated boundary of any wetlands adjacent to the watercourse. A larger setback may be established per *38.610*. A wetland is adjacent to a watercourse when some or all of the wetland lies within the required watercourse setback. *Figure 38.410.100-3*.

b. The relocation of a watercourse, if approved by the review authority, is not subject to the restrictions of subsection D.2.a.

c. Allowed encroachments. The watercourse setback is divided into two zones. Zone 1 consists of the 60 % of the setback closest to the watercourse, and Zone 2 consists of the 40 % of the

setback furthest from the watercourse. The following describes exceptions for development in Zone 1 and Zone 2:

(1) On-site stormwater treatment facilities may be located in Zone 2.

(2) Trails and trail-related improvements may be placed within the watercourse setback subject to the following:

(a) Trails, and trail-related improvements such as benches and trail signage, may be placed in Zone 2;

(b) Limited, non-looping developed spur trails to the edge of the watercourse may cross all zones. Benches and limited informational/interpretive signage may be placed in Zone 1 at the terminus of spur trails;

(c) Due to topography, avoidance of wetlands, or geographical constraints, portions of non-spur trails may be placed in Zone 1. Trail construction within Zone 1, inclusive of watercourse crossings and spur trails may not exceed the length of 300 % of the width of the applicable watercourse setback per 500 lineal feet of watercourse;

(d) All trails must be constructed to minimize bank instability, sedimentation, nutrient and pollution runoff. Trails must be aligned to minimize damage to plant and wildlife habitat; and

(e) Trails crossing the watercourse and trail-related bridge structures may be located within all zones provided that the appropriate local, state and federal permits are obtained.

(3) Streets, active transportation pathways, utility lines, or similar public construction may be permitted within all zones for the purpose of crossing a watercourse, compliance with an adopted city plan, or protecting public health and safety. The following practices must be observed:

(a) Crossings must be minimized to the greatest extent feasible while still complying with other applicable standards of this code;

(b) Crossings with direct angles (90 degrees) must be used to the greatest extent feasible instead of oblique crossing angles;

(c) Construction must be capable of withstanding 100-year flood events; and

(d) A bank stabilization plan for all watercourse crossings must be prepared and approved by the review authority prior to site preparation and installation of the improvement.

(4) Outlets from stormwater treatment facilities may pass through all zones, provided that all required permits are obtained. Stormwater facilities must be designed to prevent the discharge of untreated stormwater directly into a watercourse.

(5) Ongoing control of noxious weeds by the property owner is required and activities required within limits outlined in any approved noxious weed control plan may occur in all zones.

d. Setback planting. To ensure watercourse setback function, a setback planting plan must be prepared by a qualified landscape professional and must be reviewed and approved by the review authority prior to the commencement of development or site preparation. The plan must include a schedule, and plantings must be depicted on the plan as follows:

(1) Zone 1: Zone 1 must be (re)vegetated with new or existing native materials suited for a riparian area based on the following. One 100 % of the disturbed areas of Zone 1 must be planted with a ground cover of native riparian trees, sedges, forbs, and grasses suited for the area. In addition, a minimum of one shrub for every ten linear feet and one tree for every 30 linear feet of the watercourse must be planted along each side of the watercourse. Grouping or clumping of trees and shrubs as appropriate in a riparian area is encouraged. Species that are appropriate to the soil hydrologic conditions are required. Tree and shrub species selected must be suitable for the climate and for planting in a riparian area with an emphasis on native species. Incorporation of existing healthy vegetation of types required in this section within the setback planting plan is encouraged.

(2) Zone 2: Disturbed areas of Zone 2 must be revegetated with new or existing native grasses suited for the area. plantings in this area must be maintained in a natural state consistent with the approved setback planting plan and managed for good plant health.

(3) The property owner is responsible for maintenance of the watercourse setback landscaping. If it can be demonstrated that irrigation is present for the trees and shrubs, and fencing is provided for the trees and shrubs, the number of required trees may be reduced to one tree for every 60 linear feet and one shrub for every 20 linear feet of the watercourse along each side of the watercourse.

(4) Planting materials are exempt from the size requirements of *38.550.050.F*.

(5) To prevent soil erosion and the invasion of noxious weeds, the watercourse setbacks must be covered with existing vegetation or must be seeded with native grasses as soon as seasonally feasible.

(6) Use of native grasses, forbs, sedges, trees, and other herbaceous plants in areas of disturbance (e.g., bridges, culverts, utilities installation, trails) within the watercourse setback is required.

e. If irrigation is to be installed in the setback, an irrigation plan must be provided pursuant to *38.220.100* and the irrigation system, but not the plantings, must comply with requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

f. Except as otherwise allowed in subsections D.2.c and D.2.d of this section, disturbance of soils and existing vegetation is prohibited in the setback.

g. Nothing in this section prohibits an owner of affected property from:

(1) Combining two or more lots to assemble a larger and more usable lot;

(2) Petitioning the state department of fish, wildlife and parks and the county conservation district to reclassify the watercourse as exclusively an irrigation water user facility; or

(3) After receipt of required permits, and prior approval by the review authority, relocating the watercourse and associated setbacks and requirements.

E. An applicant may request relief from the provisions of this division by:

1. Applying for a variance to dimensional standards of the watercourse setbacks as allowed by and subject to the requirements of *38.250*;

2. When applicable, seeking a deviation to dimensional standards of the watercourse setback as allowed by and subject to the requirements of *38.430*;

3. A departure from the watercourse setback may be approved by the review authority when the review authority has made the following findings:

   a. The applicant has demonstrated by sufficient evidence the site cannot be developed in compliance with the setback standards;

   b. The property received preliminary plat approval or other final approval to develop prior to July 10, 2002;

   c. Application of the applicable watercourse setback and other applicable setbacks causes an existing parcel to have its buildable area reduced to 25% or less of the total lot area. Notwithstanding the above, the review authority may grant a departure greater than 25% from the applicable watercourse setback if the review authority determines other criteria of this subsection E.3 are met and the encroachment on the watercourse setback will not adversely affect sediment, nutrient and pollution removal or the provision of habitat and shade or flood control and will not have an adverse effect upon the stabilization of the watercourse bank; and

   d. The departure may not reduce a setback to less than:

      (1) 100-foot setback adjacent to or within the regulated flood hazard area of the East Gallatin River.

      (2) 35-foot setback adjacent to or within any regulated flood hazard area of any other watercourse.

      (3) A portion of the required setback, immediately adjacent to the ordinary high-water mark, must be left in a natural vegetative state or be subject to a setback planting plan as follows:

         (a) East Gallatin River—60 feet.

         (b) Other watercourses—21 feet.

4. Miscellaneous.

   a. The watercourse setback must be depicted on all preliminary plats and plans. A note identifying presence of watercourse and setbacks must be provided on final plats and plans and include notice that setback standards are subject to change prior to future development within the subdivision.

b. This section does not apply to uses, activities, and structures which existed on or before July 10, 2002, including agricultural uses, agricultural water user facilities, lands controlled in the conservation reserve program. Any agricultural uses, activities, or structures established after July 10, 2002 must comply with these regulations.

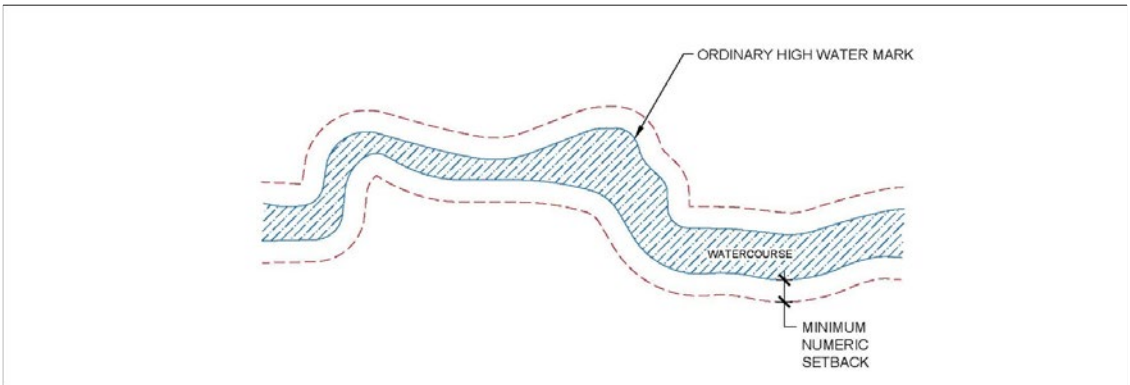


Figure 38.410.100 - 1. Watercourse minimum numeric setbacks.

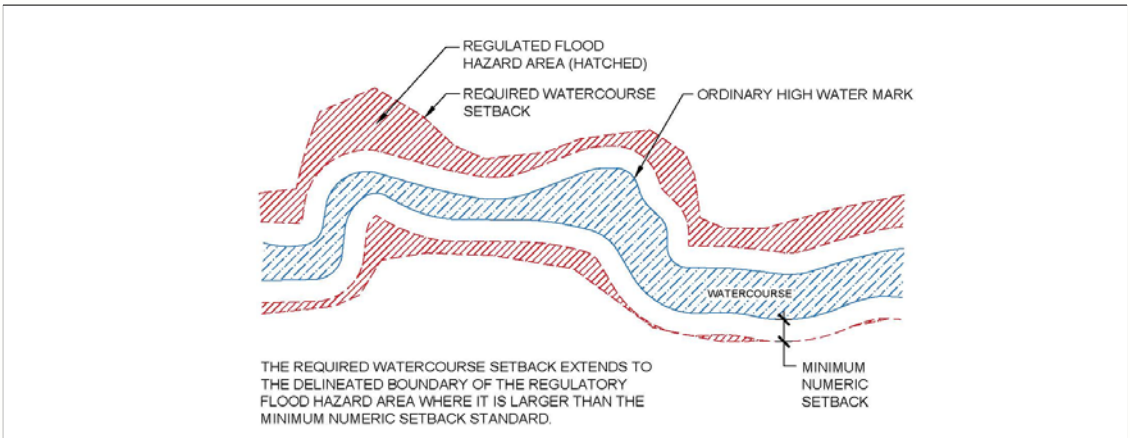


Figure 38.410.100 - 2. Watercourse setbacks with a regulatory flood hazard area.

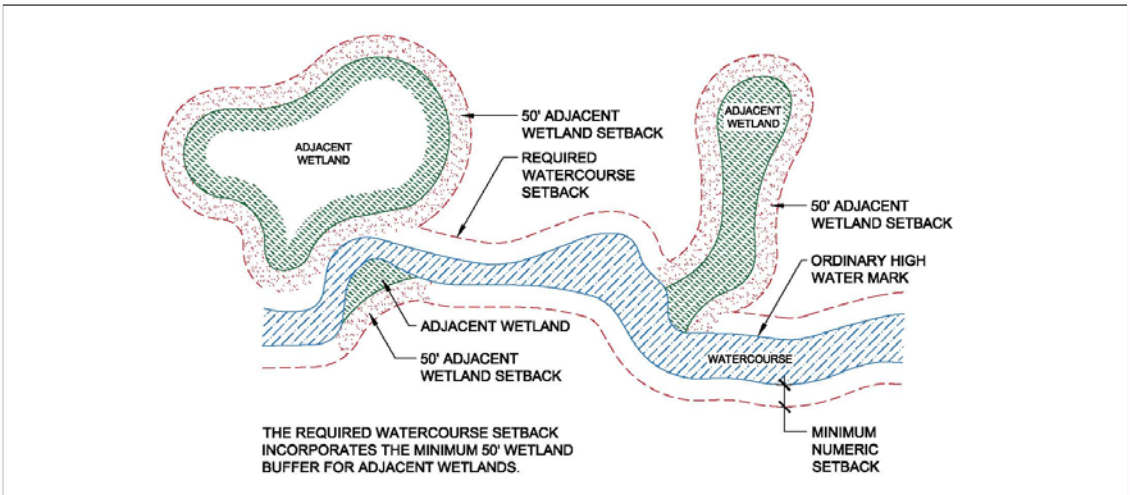


Figure 38.410.100 - 3. Watercourse setbacks with adjacent wetlands.

ARTICLE 7. - PERMITS, LEGISLATIVE ACTIONS AND PROCEDURES

DIVISION 38.700. - JURISDICTION AND SCOPE OF AUTHORITY 7-5

Sec. 38.700.010. - Review authority. 7-5
Sec. 38.700.020. - Administration and enforcement. 7-7
Sec. 38.700.030. - Enforcement; community development director. 7-8
Sec. 38.700.040. - Stop-work order. 7-8
Sec. 38.700.050. - Permission to enter. 7-8
Sec. 38.700.060. - Inaccurate or incomplete information and waivers. 7-8
Sec. 38.700.070. - Coordinated reviews. 7-9
Sec. 38.700.080. - Date of submittal. 7-9
Sec. 38.700.090. - Plan application checking; notice of noncompliance. 7-9
Sec. 38.700.100. - Building permit requirements. 7-9
Sec. 38.700.110. - Permit issuance; conformity with regulations required. 7-10
Sec. 38.700.120. - Permits issued contrary to chapter deemed void. 7-10
Sec. 38.700.130. - Expiration of permits. 7-10
Sec. 38.700.140. - Fee schedule. 7-10
Sec. 38.700.150. - Complaints of alleged violations; filing and recording. 7-11
Sec. 38.700.160. - Violation; penalty; assisting or abetting; additional remedies. 7-11
Sec. 38.700.170. - Development review committee (DRC) and staff. 7-12

DIVISION 38.710. - SUBMITTAL MATERIALS AND REQUIREMENTS 7-14
Sec. 38.710.010. - General requirements. 7-14
Sec. 38.710.020. - Streambed, streambank and/or wetlands permits. 7-14
Sec. 38.710.030. - Subdivision pre-application submittal materials. 7-14
Sec. 38.710.040. - Subdivision preliminary plat. 7-18
Sec. 38.710.050. - Documentation of compliance with adopted standards. 7-21
Sec. 38.710.060. - Final plat. 7-32
Sec. 38.710.070. - Site plan submittal requirements. 7-35
Sec. 38.710.080. - Certificates of appropriateness. 7-41
Sec. 38.710.090. - Submittal requirements for landscape and irrigation plans. 7-42
Sec. 38.710.100. - Sketch plan submittal requirements. 7-44
Sec. 38.710.110. - Planned development zone general plan and final plan submittal requirements 7-45
Sec. 38.710.120. - Submittal materials for review of activities in or adjacent to wetlands and water-courses. 7-46
Sec. 38.710.130. - Submittal materials for appeals of administrative project decisions. 7-49
Sec. 38.710.140. - Administrative interpretation or decision appeals. 7-49
Sec. 38.710.150. - Submittal materials for variances. 7-50
Sec. 38.710.160. - Submittal materials for telecommunications. 7-50
Sec. 38.710.170. - Submittal materials for regulated flood hazard areas. 7-53
Sec. 38.710.180. - Submittal materials for text or map amendments. 7-53
Sec. 38.710.190. - Submittal materials for concept plans. 7-53

DIVISION 38.720. - SUPPLEMENTARY DOCUMENTS 7-56
Sec. 38.720.010. - General. 7-56
Sec. 38.720.020. - Property owners' association. 7-56
Sec. 38.720.030. - Covenants. 7-57

DIVISION 38.730. - NOTICING. 7-60
Sec. 38.730.010. - Contents of notice. 7-60
Sec. 38.730.020. - Notice requirements for application processing. 7-60

DIVISION 38.740. - PLAN REVIEW 7-63
Sec. 38.740.010. - Introduction. 7-63
Sec. 38.740.020. - Classification of plans. 7-63
Sec. 38.740.030. - Special development proposals—Additional application requirements, review procedures and review criteria. 7-64
Sec. 38.740.040. - Application of plan review procedures. 7-65
Sec. 38.740.050. - Special temporary use permit. 7-66
Sec. 38.740.060. - Sketch plan review. 7-67
Sec. 38.740.070. - Certificates of appropriateness—Additional review procedures and review criteria. 7-68
Sec. 38.740.080. - Plan review procedures. 7-69
Sec. 38.740.090. - Plan review decision and record. 7-71
Sec. 38.740.100. - Special use permit. 7-74
Sec. 38.740.110. - Final plan. 7-76
Sec. 38.740.120. - Amendments to plans including the reuse, change in use, or further development of sites developed prior to the adoption date of a development standard. 7-78
Sec. 38.740.130. - Building permits based upon approved sketch or site plans. 7-79
Sec. 38.740.140. - Appeals. 7-79

DIVISION 38.750. - SUBDIVISION PROCEDURES 7-80
Sec. 38.750.010. - Transfers of title. 7-80
Sec. 38.750.020. - Effect of recording complying plat. 7-80
Sec. 38.750.030. - Correction of errors, amendments or vacation of recorded final plats. 7-80
Sec. 38.750.040. - General review procedure. 7-80
Sec. 38.750.050. - Pre-application plan review. 7-80
Sec. 38.750.060. - Concurrent Montana Land Use Planning Act and Sanitation and Subdivision Act review. 7-81
Sec. 38.750.070. - Preliminary plat review. 7-82
Sec. 38.750.080. - Subdivision notice and public comment. 7-83
Sec. 38.750.090. - Decision. 7-84
Sec. 38.750.100. - Duration of approval. 7-86
Sec. 38.750.110. - Notice of certification that water and waste services will be provided by local government. 7-86
Sec. 38.750.120. - Final plat. 7-87
Sec. 38.750.130. - Changes to filed subdivision plats. 7-90
Sec. 38.750.140. - Subdivision exemptions. 7-90
Sec. 38.750.150. - Subdivision certificates. 7-95

DIVISION 38.760. - APPEALS, DEVIATIONS, DEPARTURES AND VARIANCE PROCEDURES ... 7-104

Sec. 38.760.010. - Purpose and review authority. ... 7-104
Sec. 38.760.020. - Meeting and notice requirements. ... 7-104
Sec. 38.760.030. - Appeals. ... 7-104
Sec. 38.760.040. - Administrative Deviations. ... 7-106
Sec. 38.760.050. - Departures. ... 7-106
Sec. 38.760.060. - Variances. ... 7-106
Sec. 38.760.070. - Reasonable accommodation. ... 7-108

DIVISION 38.770. - TEXT AND ZONING MAP AMENDMENTS ... 7-113

Sec. 38.770.010. - Initiation of amendments. ... 7-113
Sec. 38.770.020. - Amendments; investigation requirements. ... 7-114
Sec. 38.770.030. - Public hearing procedures and requirements. ... 7-115

DIVISION 38.780. - IMPROVEMENTS AND SECURITIES ... 7-116

Sec. 38.780.010. - Purpose and applicability. ... 7-116
Sec. 38.780.020. - Standards for improvements. ... 7-117
Sec. 38.780.030. - Completion of improvements. ... 7-119
Sec. 38.780.040. - Special provisions for timing of certain improvements. ... 7-123
Sec. 38.780.050. - Acceptance of improvements. ... 7-124
Sec. 38.780.060. - Improvements agreements. ... 7-125
Sec. 38.780.070. - Payment for extension of capital facilities. ... 7-128
Sec. 38.780.080. - Types of acceptable securities. ... 7-130
Sec. 38.780.090. - Development or maintenance of common areas and facilities by developer or property owners' association. ... 7-131
Sec. 38.780.100. - Warranty. ... 7-133

DIVISION 38.790. - NONCONFORMING SITUATIONS ... 7-134

Sec. 38.790.010. - Nonconforming uses. ... 7-134
Sec. 38.790.020. - Changes to or expansions of nonconforming uses. ... 7-134
Sec. 38.790.030. - Nonconforming area and bulk requirements for existing lots. ... 7-135
Sec. 38.790.040. - Nonconforming structures. ... 7-136
Sec. 38.790.050. - Changes to or expansions of nonconforming structures. ... 7-136

DIVISION 38.700. - **JURISDICTION AND SCOPE OF AUTHORITY**

Sec. 38.700.010. - **Review authority.**

A. The Montana Land Use Planning Act authorizes review of development and assigns duties of review. The purpose of this review is to prevent demonstrable adverse impacts of the development upon public safety, health or general welfare, or to provide for its mitigation; to protect public investments in roads, drainage facilities, sewage facilities, water facilities, and other facilities; to conserve the value of adjoining buildings and/or property; to protect the character of the city; to protect the right of use of property; advance the purposes and standards of this chapter and the adopted land use plan; and to ensure that the applicable regulations of the city are upheld.

1. The city commission reviews:

   a. Amendments to the text of this chapter or amendment to the zoning map including planned development zones per *38.250.010*;

   b. Appeals from planning commission decisions;

   c. Approval of final plats; and

   d. 2nd and subsequent extensions of preliminary plats.

2. The city commission conducts a public hearing for applications under MCA 76-2-402.

B. The community development director must administer and intepret this chapter and, upon recommendation from the applicable advisory bodies approve, approve with conditions or deny all applications subject to this chapter except those explicitly assigned to another entity in this section.

C. The city engineer must review and upon recommendation from the applicable advisory bodies when needed approve, approve with conditions or deny the following site elements and processes:

1. The placement of private utility easements within public rights-of-way owned or controlled by the city;

2. Specifications for paving of streets and parking areas and modifications;

3. Site access and storm water for reuse and further development per *38.740.130.B*;

4. Modifications in required completion time for subdivision improvements per *38.780.030.B.1*;

5. The use of a financial guarantee for paving of streets per *38.780.060.C*;

6. Plans and specifications for public infrastructure and infrastructure to be granted to the public per *38.400.060.A* and *38.400.060.B*;

7. Alternate curb return radii per *38.400.090.C.3*;

8. Departures for street vision triangles per *38.400.100*;

9. Exceptions to storm water controls per *38.410.080*;
10. Exceptions or modifications to installation of pedestrian and bicycle facilities per *38.400.110*;
11. Backing into alleys, parking stall aisle and driveway design for surfacing and curbing per *38.530.020*;
12. Protection of landscape areas per *38.540.050.G*;
13. All actions required of the flood plain administrator per *article 6*;
14. Standards referenced in the City of Bozeman Design and Construction Standards;
15. Alternative widths for public utility easements; and
16. Allow vehicular access from a parking garage to a street per *38.520.080.C.*

D. The director of utilities must review and upon recommendation from the applicable advisory bodies as needed approve, approve with conditions or deny the following development elements and processes:

1. Payment of cash in-lieu of capital facilities for utilities per *38.780.070.C*;
2. Location of storm water facilities within neighborhood centers per *38.410.020*;
3. Waiver of the requirement to extend water, sewer, and streets to the perimeter of property being developed per *38.410.070*;
4. The maximum length of dead end water mains per *38.410.070*;
5. The maximum length of service lines per *38.410.070*;
6. Provision of water rights as authorized in *38.410.110*; and
7. Landscape and irrigation plans per *38.540.060*.

E. The director of transportation and engineering must review and upon recommendation from the applicable advisory bodies as needed approve, approve with conditions or deny the following development elements and processes:

1. Payment of cash in-lieu of capital facilities for streets and transportation per *38.780.070.C*.
2. All modifications or proposed standards in *38.400.010*;
3. Departure for street cross section in *38.400.020* and right of way width in *38.400.050*.
4. Subject to *38.400.060*, exceptions to the level of service standards established in *38.400.060.B.3.a*;
5. Street improvement standards and modifications therefrom per *38.400.060*;
6. Acceptable alternative sidewalk design or materials per *38.400.080*;
7. Locations and modifications to drive accesses to public streets per *38.400.090.G* and *38.400.090.H*;

8. Alternate parking angles for surface and structured parking stall configurations listed in *Table 38.530.020-1*. All other numeric standards apply;

9. Designation of street classifications for collectors and arterials not shown in the long range transportation plan;

10. Requirements for a transportation impact study and determination of its contents per *38.710.050.A.11.g*; and

11. The waiver of required information per *38.710.070.A.2.i.(3)*;

F. The director of parks and recreation must review, and as needed approve, approve with conditions or deny the following development elements and processes:

1. Determine the classification of recreation pathways per *38.420.100.D*;

2. Approve final park plans;

3. Approve preliminary park plans when a development is subject to approval by the community development director; and

4. Approval of calculations of cash-in-lieu of parkland amounts for development of property.

G. The director of economic development must oversee, review, and as needed approve, approve with conditions or deny, and manage after approval the following development elements and processes:

1. *38.340* (Affordable Housing).

H. The planning commission hears and decides appeals from final administrative decisions.

I. As detailed in this chapter, the city commission authorizes the applicable advisory bodies to review and to make recommendations to the review authority regarding development proposals. Under this section, when advisory boards review and make recommendations to the review authority they act in a quasi-judicial capacity. Recommendations do not constitute votes of approval or denial.

J. The city commission or its designated representatives may require the applicant to design the proposed development to reasonably minimize potentially significant adverse impacts identified through the review required by these regulations. The city commission or its designated representatives may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the development as submitted. Recognizing that the standards of this chapter are minimum requirements and the public health, safety, and general welfare may be best served by exceeding those minimums, the city commission or community development director may require as a condition of approval mitigation exceeding the minimums of this chapter.

Sec. 38.700.020. - **Administration and enforcement.**

A. The community development director must administer and enforce this chapter. If a specific standard is clearly assigned in *38.700.010* to another authority that authority will coordinate with the community development director to facilitate consistency of application and meaning. The community development director or other administrator of standards may be provided with the assistance of such other persons as they may supervise and those assistants will have the

responsibilities as directed by the community development director or other administrator of standards. The Community Development Director may interpret the meaning and application of the content of the chapter when necessary.

B. The community development director or other administrator of standards may in the administration of this chapter consult with other persons having expertise in relevant subject areas as in such administrator's opinion is necessary for the review of the proposed development or administration of the chapter. When an authority other than the community development director is assigned responsibility for a particular standard that authority must coordinate with the community development director in administration of that standard.

C. If the community development director or other administrator of standards finds that any of the provisions of this chapter are being violated, they must notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. Such administrator may order discontinuance of illegal use of land, illegal additions, alterations or structural changes; may order discontinuance of any illegal work being done; or may take any other action authorized by this chapter to ensure compliance with or prevent violation of its provisions.

Sec. 38.700.030. - **Enforcement; community development director.**

This chapter is enforced by the community development director and authorized representatives. No development approval, subdivision approval, building permit or business or occupational use license may be issued, except in compliance with the provisions of this chapter.

Sec. 38.700.040. - **Stop-work order.**

Whenever any subdivision, development or building work is being done contrary to the provisions of this chapter, the community development director will order the work stopped by notice in writing served on any person engaged in doing or causing such work to be done, and any such person must immediately stop such work until authorized by the community development director to proceed with the work. The building official or city engineer may also issue a stop-work order when building work is being done contrary to the provisions of this chapter.

Sec. 38.700.050. - **Permission to enter.**

The city may conduct such investigations, examinations and site evaluations as they deem necessary to verify the information supplied. The submission of material or a plat for review constitutes a grant of permission to enter the subject property. The grant of permission must continue until all final actions required by the approval process have been completed.

Sec. 38.700.060. - **Inaccurate or incomplete information and waivers.**

A. The city must review each submitted application for sufficiency as described in *38.750.070* and *38.740.060*.

B. The final approval body may withdraw approval or conditional approval of a preliminary plat or other development approval if they determine that information provided by the applicant, and upon which approval or conditional approval of the preliminary plat or other development was based, is inaccurate or incomplete.

1. Within 30 calendar days following approval or conditional approval of a preliminary plat or other development application, any person or agency that claims that information provided by the applicant is inaccurate or incomplete may submit the information and proof to the community development department.

2. The community development department must investigate the claim, the accompanying information and proof, and make a report to the final approval authority within 30 working days after receipt of the information. If the final approval authority is the city commission, the city commission must consider the information and proof, and must make a determination regarding the claim at a regular meeting. Notice of the meeting or presentation of the report must be given to the claimant and the applicant.

Sec. 38.700.070. - **Coordinated reviews.**

When a proposed subdivision, development or use is also proposed to be annexed to the city, the city must coordinate the development review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible. The city commission must also hold joint public hearings on the initial zoning and the annexation whenever possible. Based upon the circumstances of proposed development the city may require sequential review of applications.

Sec. 38.700.080. - **Date of submittal.**

A complete application is considered received on the date the application is delivered to the reviewing agent or agency if accompanied by the review fee. A complete application means it contains all materials and information required by this chapter.

Sec. 38.700.090. - **Plan application checking; notice of noncompliance.**

A. It is the purpose of this chapter that the community development director and building official check all development plans and applications for permits for compliance with this chapter both before and during construction.

B. If, during this procedure, the community development director and/or the building official deems that the proposed plan or construction does not comply with this chapter, the community development director and/or building official must inform the applicant of the infraction and must stop all construction on the project until such time as the applicant, builder or principal revises such plan to conform to this chapter and/or fulfills the requirements of any mandated review procedure as set forth in this chapter.

Sec. 38.700.100. - **Building permit requirements.**

A. No building or other structure may be erected, moved, added to or structurally altered and no land use may be changed without valid permits as prescribed in this division.

1. Only minor site surface preparation and normal maintenance is allowed prior to conditional approval by the appropriate review authority and the issuance of a building permit, provided such activity does not include excavation for foundations or the removal of mature, healthy vegetation. Minor site surface preparation means disturbing less than one-half acre, movement of 30 cubic yards or less of material, or a cut or fill of less than cumulative one foot whichever is less. Any excavation and site disturbance must be in conformance with an approved Stormwater Pollution Prevention Plan as described in 40.04.350. No excavation of foundations or setting of forms can

commence until final site or sketch plan approval has been granted and until building permits have been issued. Proceeding prior to building permit issuance is at the hazard of the landowner.

a. Exception

The issuance of building permits may be allowed prior to completion of infrastructure improvements, pursuant to the concurrent construction provisions established in *38.780*.

2. Building permit. Within the limits of the city, building permits must be obtained as provided by 10.02.020.

3. Based upon an approved sketch, site plan, certificate of appropriateness, or special use permit (hereinafter referred to as "plan"), and after any appeals have been resolved, a building permit for the site may be requested and may be granted, provided such building permit is granted within one year of plan approval. Prior to lapse of one year, the applicant may seek an extension as allowed in *38.250* and *38.740*.

Sec. 38.700.110. - **Permit issuance; conformity with regulations required.**

No permit or license of any type will be issued unless the plans and applications are in conformance with the regulations contained within this chapter. Permits issued on the basis of plans and applications approved by the building official and community development director authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement or construction at variance with that authorized is a violation of this chapter, punishable as provided in this division.

Sec. 38.700.120. - **Permits issued contrary to chapter deemed void.**

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

Sec. 38.700.130. - **Expiration of permits.**

Every permit issued by the building official under the provisions of this chapter will expire by limitation and become null and void in accordance with 10.02.020.

Sec. 38.700.140. - **Fee schedule.**

A. The city commission must establish a schedule of fees, charges and expenses and a collection procedure for reviews, permits, appeals and other matters pertaining to this chapter. The schedule of fees for the procedures listed below will be set from time to time by the city commission by resolution. The fees must be available in the office of the community development director.

B. No subdivision, or zoning permit allowed by this chapter may be issued unless or until such costs, charges, fees or expenses have been paid in full, nor may any action be taken on proceedings before any advisory body or review authority until fees have been paid in full.

Sec. 38.700.150. - **Complaints of alleged violations; filing and recording.**

Whenever a violation of this chapter occurs or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof must be filed with the community development director. The community development director must record properly such complaint and immediately investigate and take action thereon as provided by this chapter.

Sec. 38.700.160. - **Violation; penalty; assisting or abetting; additional remedies.**

The effective enforcement of adopted standards is necessary to accomplish their intended purpose. The city has a variety of options for the enforcement of this chapter. The community development director must select the option which in their opinion is most suitable to the circumstance and violation. More than one enforcement option may be used to attain compliance with the standards of this chapter when deemed appropriate.

A. Violation of this chapter is a municipal infraction and may be punishable by a civil penalty as provided in 24.02.040, in addition to other remedies of this section except that for violations of this chapter the following minimum civil penalties apply.

   1. Each day a violation continues is a separate offense and punishable as such. The minimum civil penalty for violation of this chapter by the same person for the same violation within a 12-month period is:

      a. First citation: $100.00.

      b. Second citation: $150.00.

      c. Third and subsequent citations: $200.00.

      d. The determining factor with respect to the minimum civil penalty is the receipt of service of the citation and not the judgment.

B. Violation of the provisions of this chapter or failure to comply with any of its requirements including violations of conditions of approval imposed by the review authority is a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements may upon conviction be fined or imprisoned or both, in accordance with state law regarding subdivision and zoning, or 1.01.210, and in addition may be ordered to pay all costs and expenses involved in the case. Each day a violation continues is a separate offense and punishable as such.

   1. For violations relating to plats each sale, lease or transfer of each separate parcel of land in violation of any provision of these regulations or the Montana Land Use Planning Act is a separate and distinct offense.

   2. The code compliance officer is authorized to issue a municipal infraction or a notice to appear under the provisions of MCA 46-6-310 to any violator of this chapter.

C. The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

D. If transfers not in accordance with these regulations or the Montana Land Use Planning Act are made, the city attorney may commence an action to enjoin further sales or transfers and compel compliance with all provisions of these regulations.

E. When a violation has not been corrected by the property owner after written notice from the city, the enforcement officer may seek approval from the community development director for filing at the county clerk and recorder's office a notice of violation or noncompliance. Such notice serves to advise potential purchasers of existing violations of this chapter or of on-going enforcement actions regarding a property. Such notice will clearly state that the parcel or development on the parcel is in violation of this chapter and that correction of the violation must be made prior to the city approving additional development or redevelopment of the site. The notice must also describe the nature of the violation and applicable citations to the relevant sections of this chapter.

1. When such a notice is to be filed the enforcement officer may either:

   a. Through the office of the city attorney bring an action for civil and/or injunctive relief that requests a court order to record a notice of violation or noncompliance; or

   b. Request from the Community Development Director a written decision finding the violation is valid and in need of correction, and authorizing the recording of the notice of violation or noncompliance. Notice of a decision to record a notice of violation must be provided to the landowner of record at the Gallatin County Clerk and Recorders office by first class mail.

2. When a violation has been corrected for which a notice of violation or noncompliance was filed, the city must record a release of noncompliance indicating that the prior violation has been corrected. The property owner is responsible for notifying the community development department in writing of the correction of the violation or noncompliance. Upon receipt of such notification by the property owner, the enforcement officer may conduct an inspection to verify correction prior to the recording of the release.

F. The city may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any provision of this chapter.

G. Nothing herein contained prevents the city from taking such other lawful action as is necessary to prevent or remedy any violation.

H. Upon resolution of an identified instance of noncompliance with the standards of this chapter the city may record a document with the Gallatin County Clerk and Recorder to give notice of the resolution of the noncompliance.

Sec. 38.700.170. - **Development review committee (DRC) and staff.**

A. Purpose.

The purpose of the development review committee (DRC) staff is to coordinate, expedite and ensure fair and equitable implementation of this chapter. The DRC may evaluate any proposal subject to the provisions of this chapter. The DRC and its individual members are an advisory to the review authority established by *38.700.010*. The DRC may call upon any city staff or other persons with technical expertise, and may testify before any board, commission or other body upon the subjects for which they have responsibility.

B. Development review committee procedures established.

To implement this purpose, certain procedures will be adopted to include, but not be limited to, a regularly scheduled weekly or biweekly meeting attended by representatives of each of the city departments charged with development review. Each department is authorized to require the DRC to recommend denial when in their view the project cannot meet the requirements and review criteria of this chapter and acceptable conditions do not exist to cure the identified failings of the project. Recommendations must be set forth in written staff reports or summary reviews.

1. The DRC must at a minimum be composed of representatives of the following departments: transportation and engineering, utilities, fire, streets, parks and recreation, community development, and other such personnel as the community development director deems necessary.

2. When applicable, the DRC may solicit the input of non-city agencies and persons including, but not limited to, the county subdivision review officer, the county sanitarian, the county road superintendent, and state or federal agencies, with other individuals to be included as necessary.

3. For smaller projects, such as sketch plans, a subset of the DRC may conduct the required review outside of a scheduled DRC meeting.

DIVISION 38.710. - SUBMITTAL MATERIALS AND REQUIREMENTS

Sec. 38.710.010. - General requirements.

All applications must be submitted on official forms or software tools prescribed by the community development department. The application must be accompanied by the appropriate fee and development plans showing sufficient information for the approval authority to determine whether the proposed development will meet the development requirements of the city. Supplemental material may be required, depending on the application type. The format, size, and number of submittal materials is established by the community development director.

Sec. 38.710.020. - Streambed, streambank and/or wetlands permits.

A. The developer must provide the community development department with a copy of all required streambed, streambank or wetlands permits, or written notification from the appropriate agency that a permit is not required, prior to the commencement of any work on the site, approval of infrastructure plans, and/or final plat approval, whichever is sooner. These permits include but are not limited to:

1. Montana Stream Protection Act (SPA 124 Permit). Administered by the Habitat Protection Bureau, Fisheries Division, Montana Fish, Wildlife and Parks.
2. Stormwater permit as described in 40.04.350. Administered by the water quality bureau, state department of environmental quality or city, depending on scale.
3. Montana Natural Streambed and Land Preservation Act (310 Permit). Administered by the board of supervisors, county conservation district.
4. Montana Floodplain and Floodway Management Act (Floodplain Development Permit). Administered by the city engineering department.
5. Federal Clean Water Act (404 Permit). Administered by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency.
6. Federal Rivers and Harbors Act (Section 10 Permit). Administered by the U.S. Army Corps of Engineers.
7. Short-term Water Quality Standard for Turbidity (318 Authorization). Administered by state department of environmental quality.
8. Montana Land-Use License or Easement on Navigable Waters. Administered by the state department of natural resources and conservation.

Sec. 38.710.030. - Subdivision pre-application submittal materials.

A. The pre-application plan may be a freehand sketch, legibly drawn, showing approximate boundaries, dimensions, areas and distances. The plan may be drawn directly on a print of a topographic survey required for the preliminary plat and must include:

1. Sketch map.

A sketch map showing:

a. The names of adjoining subdivisions and numbers of adjoining certificates of survey, along with adjacent lot and tract lines.

b. Location, name, width and owner of existing or proposed streets, roads and easements within the proposed subdivision; existing streets, roads and easements within adjacent subdivisions and tracts; and the name of street or road that provides access from the nearest public street or road to the proposed subdivision.

c. Location of all existing structures, including buildings, railroads, power lines towers, and improvements inside and within 100 feet of the proposed subdivision.

d. The zoning proposed for the subdivision, if a change is contemplated.

2. Topographic features.

a. Topographic features of the proposed subdivision and adjacent subdivisions and tracts to be included on the sketch map or supporting drawings:

(1) Embankments,

(2) Watercourses,

(3) Drainage channels,

(4) Areas of seasonal water ponding,

(5) Areas within the designated floodway,

(6) Marsh areas,

(7) Wetlands,

(8) Rock outcrops, and

(9) Areas of active faults.

b. Include copies of any permits listed in *38.710.020* that have been obtained for the project.

3. Utilities.

The existing and proposed utilities located on and adjacent to the proposed subdivision including:

a. Location and size of sanitary and storm sewers, water mains and gas lines.

b. Location of fire hydrants, electric lines, telephone lines, sewage and water treatment, and storage facilities.

c. Water source for irrigation and general areas to be landscaped and irrigated, including but not limited to collector and arterial street rights-of-way and open space.

d. Estimates of peak-hour water and sanitary sewer flows generated by the proposed development.

4. Subdivision layout.

The proposed layout of the subdivision showing the approximate:

a. Subdivision block, tract, and lot boundary lines, with numbers, dimensions, and areas for each block, tract and lot.

b. Street location, right-of-way width, and name.

c. Easement location, width and purpose.

d. Sites to be dedicated or reserved as park, common open space or other public areas, with boundaries, dimensions and areas.

e. Sites for commercial centers, churches, schools, industrial areas, multi-dwelling structures, manufactured housing community, and uses other than single-household residences.

5. Development plan.

An overall development plan indicating future development of the remainder of the tract, if the tract is to be developed in phases.

6. Name and location.

A title block indicating the proposed name, quarter-section, section, township, range, principal meridian and county of subdivision.

7. Notations.

Scale, north arrow, name and addresses of owners and developers, and date of preparation.

8. Variances.

A list of variance requests which will be submitted with the application for preliminary plat application.

9. Waivers.

A list of waivers requested from the requirements of *38.710.050* must be submitted with the pre-application and an explanation of why such information is not relevant or was previously provided.

10. Parks and recreation facilities.

The following information must be provided for all land proposed to meet parkland dedication requirements:

a. Park concept plan, including:

(1) Site plan for the entire property;

(2) The zoning and ownership for adjacent properties;

(3) The location of any critical lands (wetlands, riparian areas, streams, etc.);

(4) General description of land, including size, terrain, details of location and history, water features, and proposed activities;

(5) Description of trails or other recreational features proposed to connect the proposed park area to other park or open space areas; and

(6) Identification of proposed parkland irrigation water supply source.

b. If the applicant intends to request approval of cash-in-lieu, a response to the cash-in-lieu review factors established by resolution of the city commission.

11. Affordable housing.

Describe any intended use of *38.340* for creation of affordable housing with the subdivision.

12. Wildlife and habitat.

Describe key wildlife habitat issues that may be associated with proposed subdivision. Describe how the subdivision will consider fish and wildlife resources in the course of project design. Describe subdivision early planning suggestions from local FWP field biologists at FWP regional offices. This description should consider the following:

a. The species of fish and wildlife designated as species of concern, that use all or part of the project planning area (proposed subdivision site plus a one-half-mile radius around it) on a year-round, seasonal, or periodic basis.

b. The proposed subdivision's potential impacts on wildlife and wildlife habitat, both during construction and at full build-out, taking any applicable fish and wildlife habitat standards into account.

c. Identify noxious weeds.

d. Map the location of all mature trees with a diameter at breast height greater than 6 inches, including species and size in the key.

e. Identify any proposed permits listed in *38.710.020* anticipated to be required with the subdivision.

13. Waivers of right to protest.

Include copies of or the recorded document numbers of all existing waivers of right to protest special improvement districts or maintenance districts which are applicable to the property proposed to be subdivided.

14. Water rights.

a. Describe how the proposed subdivision intends to satisfy *38.410.110*.

b. Provide documentation of all water rights appurtenant to the proposed subdivision; e.g., previous payment-in-lieu of water rights, groundwater certificates, statements of claim, provisional permits, decreed rights, shares or water use contracts in canal, ditch company, or water users association etc.

c. Indicate whether any of the element listed in *38.410.110.B* are applicable.

d. Describe any water efficiency and conservation offsets that will be implemented.

e. Identify the lots for which a payment of cash in lieu of water rights will occur and the lots for which a deferral will be sought.

15. Agricultural water user facilities and holders of ditch easements.

Identify the location of all agricultural water user facilities and provide documentation of notice to such associated ditch easement holders per *38.310.010*.

16. Transportation demand generation.

Estimates of transportation demand generated by the proposed development as outlined in *38.710.050.A.11*.

Sec. 38.710.040. - **Subdivision preliminary plat.**

A. The preliminary plat must be legibly drawn as specified in the application form provided by the community development department. Where accurate information is required, surveying and engineering data must be prepared under the supervision of a registered engineer or registered land surveyor, licensed in the state, as their respective licensing laws allow. The plat submittal must include the following:

1. Pre-application information.

All information required with the pre-application plan, as outlined in *38.710.030*.

2. Subdivision information.

Name and location of the subdivision, scale, scale bar, north arrow, date of preparation, lots and blocks (designated by number), the dimensions and area of each lot, and the use of each lot, if other than for single-household.

3. Subdivision map.

Map of entire subdivision as specified on the application form provided by the community development department.

4. Streets, roads and grades.

All streets, roads, alleys, avenues, highways and easements; the width of the right-of-way, grades and curvature of each; existing and proposed road and street names; and proposed location of intersections for any subdivision requiring access to arterial or collector streets.

5. Adjoining subdivisions.

The names of adjoining platted subdivisions and numbers of adjoining certificates of survey.

6. Adjoining owners.

Names and addresses of record owners of lots and tracts immediately adjoining the proposed subdivision.

7. Perimeter survey.

A survey of the exterior boundaries of the platted tract with bearings, distances, and curve data indicated outside of the boundary lines. When the plat is bounded by an irregular shoreline or a body of water, the bearings and distances of a closing meander traverse must be given.

8. Section corner.

The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.

9. Phased improvements.

If the required improvements are to be completed in phases, the approximate area, lots, public facilities, and timeline for each phase must be provided. If a phase depends on improvements not included within the geographic area of a phase, or if timing of construction of improvements is separate from the timing of construction of that phase, those improvements and associated phases must be identified.

10. A Grading and Drainage Plan, meeting the requirements of *38.410.080*.

Ground contours must be provided for the tract and to a distance of an additional 100 feet, according to the following requirements:

Table 38.710.040-1

Where the average slope is:	Contour intervals must be:
Under 10 %	1 foot
Between 10 and 15 %	5 feet
Greater than 15 %	10 feet

11. Waivers.

List of waivers granted from the requirements of this section during the pre-application process must be submitted with the preliminary plat application.

12. Request for municipal facilities exclusion from department of environmental quality review for sanitation in subdivisions.

If the developer proposes a municipal facilities exclusion from the department of environmental quality per MCA 76-4-1, the preliminary plat application must include a written request to the city from the developer's professional engineer, licensed in the state, that indicates the purpose to request the municipal facilities exclusion, and details the extent of water, sewer and Stormwater Drainage Plan report that will be completed prior to final plat approval. A preliminary stormwater drainage plan must also be submitted with the written request.

13. Sanitation in subdivisions information.

When the subdivision does not qualify for a municipal facilities exclusion under *38.750.110* the subdivider must follow the processes of MCA 76-4-1.

B. The following information must be submitted along with the preliminary plat.

1. **Area map.**

   A map showing all adjacent sections of land, subdivision, certificates of survey, streets and roads.

2. **Non-compliance with standards.**

   a. **Variances.**

      Provide a written statement describing any requested variance and the facts of hardship upon which the request is based (refer to *38.760*).

   b. **All others.**

      Provide a written statement: describing any intended departure, deviation, modification, non-compliance or alternative compliance to any standard applicable to a subdivision review; providing a BMC citation to the authority authorizing the non-compliance; and providing the applicable criteria of review.

3. Noticing materials required by *38.230.020*.

4. **Documents and certificates.**

   Draft copy of the following documents, and certificates to be printed on or to accompany the preliminary plat:

   a. Covenants, restrictions and articles of incorporation for the property owners' association if covenants are proposed to ensure compliance with regulatory standards.

   b. Encroachment permits or a letter indicating intention to issue a permit where new streets, easements, rights-of-way or drive aisles intersect state, county or city highways, streets or roads.

   c. A draft of such other appropriate certificates.

   d. Provision for maintenance of all streets (including emergency access), open spaces to meet requirements of *38.420* or *38.410.040*, storm water facilities, and other improvements not dedicated to the public.

5. **Street profile sheets.**

   Profile sheets for street grades greater than five percent.

6. **Landscaping and Irrigation**

   Proof of compliance with water conservation standards outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual and *38.540.050.D.* and *38.540.080*.

7. **Application and fee.**

   Completed preliminary plat application form, with the original signatures of all owners of record or their authorized representatives, and the required review fee. If an authorized representative signs on behalf of an owner of record, a copy of the authorization must be provided.

Sec. 38.710.050. - **Documentation of compliance with adopted standards.**

A. The following information must be provided with all subdivision preliminary plat applications in order to document compliance with adopted development standards unless waived by the development review committee during the pre-application process per *38.750.050*. The developer must include documentation of any waivers granted by the city after the pre-application review. Additional relevant and reasonable information may be required to adequately assess whether the proposed subdivision complies with this chapter, the Montana Subdivision and Platting Act, and other applicable standards.

1. Surface water.

a. Mapping.

Locate on a plat overlay or sketch map all surface waters and the delineated floodplain which may affect or be affected by the proposed subdivision including:

(1) Natural water systems such as natural streams, creeks, stream/ditches, drainages, waterways, gullies, ravines or washes in which water flows either continuously or intermittently and has a definite channel, bed and banks.

(2) Artificial water systems such as canals, ditches, ditch/streams, aqueducts, reservoirs, irrigation or drainage systems.

b. Description.

(1) Describe all surface waters which may affect or be affected by the proposed subdivision including name, approximate size, present use and time of year when water is present.

(2) Describe proximity of proposed construction (such as buildings, sewer systems, streets) to surface waters.

c. Water body alteration.

Describe any existing or proposed streambank or shoreline alterations or any proposed construction or modification of lake beds, watercourses or irrigation ditches. Provide information on location, extent, type and purpose of alteration.

d. Wetlands.

If the subdivision contains wetlands, as defined in *38.800.240*, then a delineation of the wetland meeting standards of *38.610* must be provided and the location of existing and proposed modifications to wetlands must be shown on an overlay of the proposed plat.

e. Permits.

Include copies of any permits listed in *38.710.020* that have been obtained for the project.

2. Floodplains.

Floodplain information must be submitted with the preliminary plat in compliance with *38.600.150* or *38.600.170* as applicable.

3. Groundwater.

a. Depth.

Establish the seasonal minimum and maximum depth to the water table by site specific monitoring of seasonal groundwater levels. Monitoring information must include dates and locations on which groundwater data was collected, data source, and the location and depth of all known aquifer which may be affected by the proposed subdivision. The high water table must be determined from monitoring data representing the period of major concern, which is defined as the May thru July period unless a different period is requested and approved by the city during the subdivision pre-application review. Groundwater discharge and management information to demonstrate compliance with *38.410.080*.

4. Geology; soils; slopes.

a. Geologic hazards.

Identify geologic hazards affecting the proposed subdivision which could result in property damage or personal injury due to rock falls or slides; landslides, mud or snow; surface subsidence (i.e., settling or sinking); or seismic activity.

b. Protective measures.

Explain what measures will be taken to prevent or materially lessen the danger of future property damage or injury due to any of the hazards referred to in *subsection 4.a* above.

c. Unusual features.

Provide a statement describing any unusual soil, topographic or geologic conditions on the property which limit the capability for building or excavation using ordinary and reasonable construction techniques. The statement should address conditions such as shallow bedrock, high water table, unstable or expansive soil conditions, and slope. On a map, identify any slopes in excess of 15 % grade.

d. Soils map.

The subdivision must be overlaid on the county soil survey maps obtained from the Natural Resource and Conservation Service (NRCS). The maps are 1:24,000 in scale. These maps may be copied without permission. However, enlargement of these maps could cause misunderstanding of the detail of mapping. Soils were mapped using a minimum delineation of five acres, and these soils reports were intended to alert developers to possible problems and the need for a more detailed on-site investigation. The developer must provide the following soil reports, which can be obtained from the NRCS:

(1) The physical properties and engineering indexes for each soil type;

(2) Soil limitations for utilities, building and site development, and water features for each soil type;

(3) Hydric soils report for each soil type. If hydric soils are present, the developer must provide a wetlands investigation by a certified consultant, per *38.610*; and

(4) The developer must provide any special design methods planned to overcome the above limitations.

e. Cuts and fills.

Describe the location and amount of any cut or fill three or more feet in depth. These cuts and fills should be indicated on a plat overlay or sketch map. Where cuts or fills are necessary, describe any plans to prevent erosion and to promote revegetation such as replacement of topsoil and grading.

5. Vegetation.

a. Vegetation map.

On a plat overlay identify critical plant communities such as stream bank or shoreline vegetation; vegetation on steep, unstable slopes; and vegetation on soils highly susceptible to wind or water erosion.

b. Protective measures.

Describe measures to preserve trees and critical plant communities (e.g., design and location of streets, lots and open spaces).

c. Noxious weed management and revegetation plan.

Noxious weeds must be controlled in all developments as directed by the county weed control district (district) in accordance with the Montana County Noxious Weed Control Act (MCA 7-22-21). The developer must have any noxious weeds identified and their location mapped by a person with experience in weed management and knowledgeable in weed identification. A noxious weed management and revegetation plan approved by the district for control of noxious weeds must be submitted with the preliminary plat application. This plan must ensure the control of noxious weeds upon preliminary plat approval and the revegetation of any land disturbed during the construction of subdivision improvements.

6. Wildlife.

a. Species.

Describe any endangered species or species of concern which use the area affected by the proposed subdivision.

b. Critical areas.

Identify on a plat overlay of the proposed subdivision any known critical habitat as defined by the US Fish and Wildlife Service, habitat for threatened or endangered species, or wetlands.

c. Public access.

Describe the effects on public access to public lands, trails, hunting or fishing areas.

d. Protective measures.

Describe any proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g., keeping building and streets back from shorelines, setting aside wetlands as undeveloped open space).

e. Discussion of impact; documentation.

The developer must discuss the impact of the proposed development on fish and wildlife with the state department of fish, wildlife and Parks (FWP). With the preliminary plat application, the developer must provide written documentation from FWP that:

(1) Verifies that FWP has reviewed the proposed plat;

(2) Lists any FWP recommendations; and

(3) Outlines any mitigation planned to overcome adverse impacts.

7. Agriculture.

When a proposed development is adjacent to land used for agricultural production.

(1) What measures will be taken, if any, to control family pets.

(2) Fencing of agricultural land.

Describe any existing fence lines around the development boundary which protect agricultural lands under an ownership other than of the developer, and describe any measure which will be taken to ensure that the owners of the development will share with the owner of the agricultural lands in the continued maintenance of the fence.

8. Agricultural water user facilities.

a. Type, description, ownership, users, and existing easement holders and the easement type (e.g., filed, use, prescriptive or other) of facilities per *38.310.010* and *38.410.060*.

b. Written documentation demonstrating active use of facilities, for example the delivery of non-potable water supplies for irrigation, conversion to stormwater facilities, or other use. If a facility is not being actively used nor intended to be used in the future, include a written plan for discontinuance including all documentation required pursuant to Montana Law.

c. Describe any proposed realignment, piping, street crossings, or other modifications. Any modification of an existing agricultural water user facility must comply with all relevant requirements of Montana law.

d. Information from the owner(s) of the facility concerning the proposed use or discontinuance of the facility.

e. If the facility provides conveyance of water to downstream water users or water rights holders, or is used for agricultural water return flows or stormwater then the facility must be perpetuated and located within an agricultural water user facility easement and/or stormwater drainage easement as applicable and consistent with the requirements of this chapter.

9. Water and sewer.

Provide an engineering design report and/or other documentation demonstrating that adequate water distribution systems and capacity, and sewage collection and disposal systems and capacity, exists or will be provided to serve the proposed subdivision consistent with the City of Bozeman Design and Construction Standards and chapter 40. Provide the information needed to demonstrate proposed compliance with *38.780*. Special care is needed when concurrent construction is proposed.

10. Stormwater management.

A Stormwater Drainage Plan meeting the requirements found in the City of Bozeman Design and Construction Standards and the city's adopted stormwater master plan.

11. Transportation Facilities.

a. Access.

The developer must demonstrate that the land to be subdivided has access onto a legal street.

b. Streets, roads, and alleys.

Describe any proposed new public or private streets, roads or alleys, or substantial improvements of existing public or private streets, roads or alleys. The developer must demonstrate that the future streets will be consistent with the city's adopted design standards, article 34.4, the current long-range transportation plan, and other relevant standards.

c. Active transportation facilities.

Describe active transportation facilities to be developed with the development and their relationship to existing and future facilities.

d. Access to arterial streets.

Discuss whether any of the individual lots or tracts have access directly to arterial streets or roads, and if so, the reason access was not provided by means of a street within the subdivision and how the access complies with *38.400.090*.

e. Modification of existing streets, roads or alleys.

Explain any proposed closure or modification of existing streets, roads or alleys.

f. Pollution and erosion.

Explain how street, road and alley maintenance will be provided to meet the department of environmental quality guidelines for prevention of water pollution and erosion and who is proposed to provide the required maintenance.

g. Transportation Capacity.

Demonstrate that adequate transportation capacity exists or will be provided to serve the proposed development consistent with the city's adopted design standards and long-range plans. A Transportation Impact Study (TIS), if required, shall be provided in accordance with the City of Bozeman Design and Construction Standards.

(1) TIS is required if the proposed development meets any of the following criteria:

(a) The proposed development exceeds the following thresholds. For uses not included below refer to Table 2 from Chapter 2 of the ITE Recommended Practice: Multimodal Transportation Impact Analysis for Site Development;

Use	Threshold
Single detached dwellings	35 dwellings
Single attached dwellings	60 dwellings
Multi-dwelling structures	90 dwellings
Retail	5,300 sq. ft. gross floor area

(b) The development proposes access spacing that do not meet the requirements on any collector or arterial streets;

(c) The development intensifies use and is not adjacent to a collector or arterial street;

(d) The proposed development is in an area that was included in a previous TIS and the trip generation for the proposed development exceeds the values assumed for the area in the previous TIS or if the previous TIS is more than 5 years old.

(e) Other special circumstances as determined by the Director of Transportation and Engineering.

(2) When required above, the study area for the TIS must include:

(a) Nearest collector-collector, arterial-arterial, or arterial-collector intersections that serve the proposed development.

(b) Intersections of local streets with arterial and collector streets within the study area defined in this paragraph *38.710.050.A.11.g.2*.

(c) Local streets that connect to existing local streets.

(d) Additional locations as identified by the Director of Transportation and Engineering.

(3) When required, the TIS must include the following information:

(a) Project description.

Identify location of project and describe the existing transportation network and facilities that serve the development. This should include all classifications of streets, active transportation facilities and transit service. Describe how the proposed development will connect to the existing system including the use of local streets that connect the proposed development to arterial or collector streets. Identify the timeline for build out of the development including any anticipated phases.

(b) Existing traffic volumes.

Provide information on existing traffic volumes collected within two years of the study, including bicycle and pedestrian volumes and existing transit routes and stops. Identify locations, dates, and times of data collection. Identify the peak hours of the existing transportation system. Locations near schools or special generators may need

to include counts to help identify the peak periods. Data collection should cover 3 days, typically Tuesday, Wednesday and Thursday. Provide information on seasonal adjustment factors used and the basis of the factors.

(c) Site trip generation.

Identify number of weekday trips that will be generated by the proposed development using the most recent version of the Institute of Transportation Engineers (ITE)Trip Generation Manual or approved alternative methodology. For mixed-use sites, include trip generation in the form of a table of each type of land use with corresponding ITE land use code, the independent variable, as appropriate, the trip rates used (daily and peak) and resulting trip generation. Include identification of the peak hours for the site as well as for the adjacent transportation system. Include adjustments, when appropriate, for pass by trips, internal trip capture, and any reductions based on mode split. Any adjustments must be detailed in the report and must be based on identified and accepted methods. For phased projects the trip generation for each phase should be identified. For redevelopment sites, include a comparison of existing trips with trips generated by the proposed development.

(d) Adjacent trip generation.

Identify current or proposed developments and the associated trip generation from those developments that will be added to the existing volumes to make up the total background volumes. Identify and describe methodology used to determine anticipated additional traffic growth.

(e) Trip distribution.

Identify how the trips generated by the site will be distributed to the transportation system through each intersection within the study area, as defined in *38.710.050.A.11.g.(2)*. Include any assumptions made and identify the methodology utilized to develop the trip distribution.

(f) Traffic assignment.

Utilizing the developed trip distribution, show how the existing and future trips are assigned to the streets serving the proposed development. Include figures that show traffic volumes on the transportation system. Include all streets, including local streets, which will distribute trips to transportation system. Include graphics, which show:

(i) A.M. and P.M. peak hour existing volumes;

(ii) A.M. and P.M. peak hour site generated volumes;

(iii) A.M. and P.M. peak hour current year total traffic;

(iv) A.M. and P.M. peak hour total traffic at year of build out; and

(v) Total daily traffic (with site-generated traffic shown separately).

(g) Capacity analysis.

Provide level of service analysis for existing and proposed arterial-arterial, collector-collector, and arterial-collector intersections and intersections of local streets with collectors and arterials. Provide level of service for the existing conditions and design year, defined as the projected year of full build out or 5 years from the date of application whichever is greater. Analysis must include evaluation of signalization warrants. Where appropriate, intersection capacity should be analyzed for both signalization and roundabout operation. Capacity analysis will utilize the methods identified in the most recent version of the Highway Capacity Manual.

(h) Crash Study.

Summarize crash history, including bicycle and pedestrian involved crashes, for the study area over the most recent 5 years of available data. Crash study should provide aggregate number of crashes as well as crash rates, collision types, and contributing factors (as available).

(i) Site operational analysis.

Identify any proposed modification to access spacing and demonstrate turning movements for fire apparatus and/or other applicable design vehicles.

(j) Recommended mitigations.

Identify mitigation strategies to address areas that do not meet the City of Bozeman Design and Construction Standards. Mitigations should be identified to address:

(i) Intersection capacity that does not meet the level of service standard identified in *38.400.060.B.3*;

(ii) Vehicular volumes requiring traffic calming for local streets in the study area that exceed the volume threshold per *38.400.060.B.3*;

(iii) Crash clusters; and

(iv) Barriers to safe bicycle and pedestrian movement as identified by the Director of Transportation and Engineering.

If the project is phased, include identification of when the mitigations are required.

(k) The information needed to demonstrate proposed compliance with *38.780*.

Special care is needed when concurrent construction is proposed.

12. Non-municipal utilities.

The developer must submit a copy of the subdivision plat to all relevant utility companies. With the preliminary plat, the developer must provide written documentation of the following:

a. Affected utilities.

(1) Indicate which affected utilities the subdivision plat has been submitted to for review and include a copy of responses.

(2) The developer must provide a written statement from the utility companies that the proposed subdivision can be provided with service.

(3) Non-municipal utility locations shall be coordinated with locations of municipal utilities.

13. Land use.

a. Indicate the proposed use and number of lots or spaces in each:

(1) Residential area. Types of structures and numbers of each (e.g., two- or four-unit dwelling structures);

(2) Condominium (number of units);

(3) Recreational vehicle park;

(4) Commercial or industrial; and

(5) Other (please describe).

14. Parks and recreation facilities.

The following information must be provided for all land used to meet parkland dedication requirements:

a. Park plan.

A park plan, including:

(1) Site plan with one-foot contour topographic survey for the entire property; showing proposed developer installed improvements on the initial park plan and proposed future improvements on the future park plan, and phasing proposed if any, exact product specifications are not required;

(2) Drainage areas;

(3) Utilities within, serving, and adjacent to the property;

(4) Existing or proposed utility easements within the property;

(5) The location of any critical lands (wetlands, riparian areas, streams, etc.) and location of watercourse setbacks and any permits from non-city agencies required to execute the proposed plan;

(6) Park conceptual landscaping plan, prepared by a qualified landscape professional in accordance with *38.710.090* unless the parks department has adopted an alternate plan standard, showing the location and specific types and species of plants, shrubs, trees as well as grass seed mixes.

(7) General description of land, including size, terrain, details of location and history, water features, and proposed activities;

(8) Trail design and construction showing compliance with adopted city standards and trail classifications;

(9) Appropriate sections from the design guidelines for city parks;

(10) Cost estimate, installation phasing and responsibility, and maintenance plan tasks and responsibility for custom features or atypical designs;

(11) If playground equipment will be provided with initial installation by the subdivider, information including the manufacturer, installation data and specifications, installer, type of fall zone surfacing, and age group intended for use; otherwise, a general identification of proposed function;

(12) Soils information and analysis;

(13) A description of how the proposed park plan is consistent with the goals of the city's current long-range plan for parks;

(14) A description of how the proposed park will meet the recreational needs of the residents of the development; and

(15) A phase I environmental assessment of the area proposed to be transferred to the city or property owner's association.

b. Irrigation information.

(1) Irrigation system design compliant with requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual; and

(2) If an existing well will be used for irrigation, a certified well log must be submitted showing depth of well, gpm, pump type and size, voltage, water rights, etc.

c. Phasing.

If improvements will be phased, a phasing plan must be provided including proposed financing methods and responsibilities.

d. Cash-in-lieu and improvements-in-lieu.

If the development includes a proposal for cash-in-lieu or improvements-in-lieu of park a specific justification responding to the review factors established by resolution of the city commission. If improvements-in-lieu are proposed specific costs of proposed improvements and costs to install must be provided.

15. Neighborhood center plan.

A neighborhood center plan must be prepared and submitted for all subdivisions containing a neighborhood center per *38.410.020.A*.

16. Lighting plan.

The following lighting information must be submitted for all development where lighting is proposed other than within the street right-of-way:

a. Proposed fixture locations, types, source of power, and demonstration of compliance with city lighting standards.

b. When requested by the city, the applicant must also submit a visual-impact plan that demonstrates appropriate steps have been taken to mitigate on-site and off-site glare and to retain the city's character.

c. Post-approval alterations to lighting plans or intended substitutions for approved lighting must only be made after city review and approval.

17. Miscellaneous.

a. Public lands.

Describe how the subdivision will affect access to any public lands. Where public lands are adjacent to or within 200 feet of the proposed development, describe present and anticipated uses for those lands (e.g., open space, recreation, etc.), and how public access will be preserved/enhanced.

b. Hazards.

Describe any health or safety hazards on or near the subdivision, such as mining activity or potential subsidence, high pressure gas lines, dilapidated structures or high voltage power lines. Any such conditions must be accurately described, and their origin and location identified. List any provisions that will be made to mitigate these hazards. Also describe any on-site or off-site land uses creating a nuisance.

c. Wildlands-urban interface.

Describe the subdivision's location within or proximity to the wildlands-urban interface (WUI) and ember zone designated by the most recent city-adopted hazard mitigation plan. Describe any hazard from the subdivision's proximity to the WUI. List any provisions that will be used to mitigate these hazards and reduce structure ignitability.

18. Affordable housing.

Describe how the subdivision will integrate with *38.340*. The description must be of adequate detail to clearly identify those lots complying with *38.340* requirements and to make the obligations placed on the affected lots readily understandable.

a. On all lots intended to comply with *38.340*, the building envelope must be depicted.

19. Submittal Requirements for Water rights.

a. Describe how the proposed subdivision intends to satisfy *38.410.110*.

b. Provide documentation of all water rights appurtenant to or in use upon associated with the property with the proposed subdivision. Documentation must include:

(1) A description of the research methods used to identify the water rights appurtenant to or in use upon associated with the property. The applicant must provide a written certification if no water rights are appurtenant to or associated with the property.

(2) Current Official water rights abstracts and share or stock certificates.

(3) All adopted Master's Reports or closing orders issued by the Montana Water Court.

(4) Title information establishing water right ownership. For water rights in divided split ownership describe the percent ownership interest attributable to the property.

(5) Maps showing the water rights points of diversion and the means of conveyance for the delivery of water to the subject property.

(6) Evidence clearly establishing and quantifying all beneficial use of water appurtenant to or associated with the property the water rights within the prior 5 year period.

(7) Any additional information that is reasonably e and necessary and is requested by for the City to determine if the water rights are useful for City purposes pursuant to Section *38.410.110.D.1*.

c. DNRC approval for any proposed appropriation or proposed use of water subject to MCA 85-2-306 or MCA 85-2-402 for which DNRC approval is required prior to beneficial use.

d. Indicate whether any of the items in *38.410.110.B* are applicable.

e. Describe any water efficiency and conservation offsets that will be implemented.

f. Identify the lots for which a payment of cash in lieu of water rights will occur and the lots for which a deferral will be sought.

Sec. 38.710.060. - **Final plat.**

A. The following materials must be provided with each application for final plat approval. Materials must be provided in the number of copies and form established by the director of community development.

1. The developer must submit with the application for final plat review and approval, a written narrative stating how each of the conditions of preliminary plat approval and noted code provisions or other demonstrations of compliance with standards have been satisfactorily addressed. This narrative must be in sufficient detail to direct the reviewer to the appropriate plat, plan, sheet, note, covenant, etc. in the submittal.

2. Written communication from the city engineer confirming that the following documents have been received:

   a. As-built drawings, i.e., copies of final plans, profiles, grades and specifications for public improvements, including a complete grading and drainage plan; and/or

   b. Approved and executed concurrent construction plan or improvements agreement.

   c. Copy of the state highway access or encroachment permit where a street created by the plat will intersect with a state highway.

3. **Noxious weed MOU.**

   Prior to final plat approval, a memorandum of understanding must be entered into by the weed control district and the developer. The memorandum of understanding must be signed by the district and the developer prior to final plat approval, and a copy of the signed document must be submitted to the community development department with the application for final plat approval.

4. Final park plan.

For all land used to meet parkland dedication requirements, a final park plan must be submitted to the city for review and approval prior to final plat. The final park plan must include all of the information listed in *38.710.050.A.14* and must include evidence of compliance with the installation requirements of *38.780*. The final park plan irrigation system must comply with requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

5. Landscape and irrigation plans.

a. Rights of way.

For all collector and arterial rights-of-way land proposed to be landscaped and irrigated, a detailed landscape and irrigation plan must be submitted for review and approval prior to final plat or installation, whichever occurs first. The detailed landscape and irrigation plan must comply with water conservation standards outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual and *38.540.050.D.* and *38.540.080.*, and must comply with the installation requirements of *38.780.*

b. Open space.

For all open space land proposed to be landscaped and irrigated, a final landscape and irrigation plan must be submitted for review and approval prior to final plat or installation, whichever occurs first. The detailed landscape and irrigation plan must comply with water conservation standards outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual, *38.540.080.*, and must comply with the installation requirements of *38.780*.

6. Irrigation system record drawings.

The developer must provide irrigation system as-builts, for all irrigation installed in public rights-of-way and/or land used to meet parkland dedication requirements, once the irrigation system is installed. The record drawings must, at a minimum, include the exact locations and type of lines, including accurate depth, water source, heads, electric valves, quick couplers, drains and control box.

7. Affordable housing.

If the plat has used the provisions of *38.340*, the developer must provide a description of how the subdivision has complied with *38.340*. The description must be of adequate detail to clearly identify those lots designated as subject to *38.340* compliance requirements and to make the obligations placed on the affected lots readily understandable.

8. Conditions of approval.

A sheet(s) of the plat depicting conformance with subdivision application approval must be submitted as set forth in 24.183.1107 ARM as may be amended and as required by the county clerk and recorder, and must:

a. Be entitled "Conditions of Approval of [insert name of subdivision]" with a title block including the quarter-section, section, township, range, principal meridian, county, and, if applicable, city or town in which the subdivision is located.

b. Contain any text and/or graphic representations of requirements by the governing body for final plat approval including, but not limited to, setbacks from streams or riparian areas, floodplain boundaries, no-build areas, building envelopes, or the use of particular parcels.

c. Include a certification statement by the landowner that the text and/or graphics shown on the conditions of approval sheet(s) represent(s) requirements by the governing body for final plat approval and that all conditions of subdivision application have been satisfied.

d. Include a notation stating that the information shown is current as of the date of the certification, and that changes to any land-use restrictions or encumbrances may be made by amendments to covenants, zoning regulations, easements, or other documents as allowed by law or by local regulations.

e. Include a notation stating that buyers of property should ensure that they have obtained and reviewed all sheets of the plat and all documents recorded and filed in conjunction with the plat, and that buyers of property are strongly encouraged to contact the local community development department and become informed of any limitations on the use of the property prior to closing.

f. List all associated recorded documents and recorded document numbers.

g. Include a tabulation of parkland credit for the entire subdivision and attributed to each lot.

h. Include a tabulation of open space.

i. List easements, including easements for agricultural water user facilities.

j. Include a notation stating that topsoil depth and topsoil quality requirements must be met on all future subdivided lots prior to installation of landscaping and irrigation, as outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

9. Documents.

The following documents must accompany the final plat:

a. A subdivision guarantee issued by an authorized title insurer or its title insurance producer;

b. Any covenants or deed restrictions relating to the subdivision;

c. The security required pursuant to *38.780.060*, securing the future construction of any remaining private or public improvements to be installed;

d. Unless otherwise provided in this chapter, copies of final plans, profiles, grades, and specifications for improvements, including a complete grading and drainage plan, with the certification of a professional engineer that all required improvements which have been installed are in conformance with the attached plans. The subdivider must file copies of final plans, profiles, grades, and specifications for improvements, including a complete grading and drainage plan, with the certification of a professional engineer that all required

improvements which have been installed are in conformance with the attached plans, with the city engineering division, and the city parks department. A statement must be included on the conditions of approval sheet stating where the plans can be obtained;

e. If a street, alley, avenue, road, or highway created by the plat will intersect with a state or federal right-of-way, a copy of the access or encroachment permit;

f. A subdivision guarantee for any off-site land intended to satisfy park dedication requirements. The subdivision guarantee must be dated no earlier than 30 calendar days prior to submittal;

g. Any deeds and real estate transfer certificate, or other documents for transfer of land and/or improvements to the city or the property owners' association or other entity;

h. Any deeds or documents for transfer of water rights; including but not limited to all required state department of natural resources and conservation documentation (e.g. ownership update form, permit, well log, groundwater certificate and/or change authorization);

i. A certificate of the examining land surveyor if a requirement for such is established by the clerk and recorder. The certificate may be provided on the plat or on a separate document to be recorded with the final plat as required by the clerk and recorder; and

j. Any other documents satisfying subdivision application approval required by the governing body to be filed or recorded.

10. For non-public improvements, the developer must provide certification by the architect, landscape architect, engineer or other applicable professional that all improvements, including, but not limited to, landscaping, irrigation, ADA accessibility requirements, private infrastructure, and other required elements were installed in accordance with the approved plans and specifications, or plat as applicable, unless a waiver of certification in whole or part is explicitly approved by the DRC.

Sec. 38.710.070. - **Site plan submittal requirements.**

A. Applications for all site plan approvals must be submitted to the community development department on forms provided by the community development director. Submittal level of detail for master site plans must be consistent with the intent and scope of the submittal per *38.740.020.B* and phasing per *38.740.110.G*.

B. General information.

1. Complete, signed application including the following:

a. Name of project/development;

b. Location of project/development by street address and legal description;

c. Name and mailing address of developer and owner;

d. Name and mailing address of engineer/architect, landscape architect, irrigation designer, and/or planner;

e. Listing of specific land uses being proposed; and

f. A statement signed by the owner of the proposed development of their commitment to comply with the requirements of this Code and any conditions considered necessary by the review authority;

2. Location map, including area within one-half mile of the site;

3. For all developments, excluding sketch and reuse/further development, a construction route map must be provided showing how materials and heavy equipment will travel to and from the site. The route must avoid, where possible, local streets or streets where construction traffic would pose a threat to public health and safety.

C. Site plan information.

The following information is required whenever the requested information pertains to zoning or other regulatory requirements of this chapter, existing conditions on-site or conditions on-site which would result from the proposed development:

1. Boundary line of property with dimensions;

2. Date of plan preparation and changes;

3. North point indicator;

4. Suggested scale of one inch to 20 feet, but not less than one inch to 100 feet;

5. Parcel and site coverage information:

   a. Parcel size in gross acres and square feet;

   b. Estimated total floor area with a breakdown by land use; and

   c. Location, percentage of parcel and total site, and square footage for the following:

      (1) Existing and proposed buildings and structures;

      (2) Driveway and parking;

      (3) Areas to remain undisturbed,

      (4) Landscaped areas, with and without irrigation,

      (5) Recreational uses areas, parks, school sites, etc., and

      (6) Public street right-of-way;

6. Total number, type and density per type of dwelling, and total net and gross residential density and density per residential parcel;

7. Location, identification and dimension of the following existing and proposed data, on-site and to a distance of 100 feet outside site plan boundary, exclusive of public rights-of-way, unless otherwise stated:

   a. Topographic contours at a minimum interval of one foot, or as determined by the review authority;

b. Adjacent streets and street rights-of-way to a distance of 150 feet, except for sites adjacent to major arterial streets where the distances must be 200 feet;

c. On-site streets and rights-of-way;

d. Ingress and egress points;

e. Traffic flow on-site;

f. Traffic flow off-site;

g. Utilities and utility rights-of-way or easements including but not limited to:

(1) Electric;

(2) Natural gas;

(3) Telephone, cable TV, optic fiber, and similar utilities;

(4) Water; and

(5) Sewer (sanitary, treated effluent and storm);

h. Surface water and groundwater, including:

(1) Holding ponds, streams and irrigation ditches;

(2) Watercourses, water bodies and wetlands;

(a) If wetlands information was provided with a prior subdivision, provide delineation of on-site wetlands per the subdivision work on the site plan. The developer must provide recertification from a wetlands professional per *38.610* that site wetlands mapped with the subdivision are still accurate or provide new delineation.

(b) If no wetlands delineation was done with a prior subdivision, the developer must complete such delineation of on-site wetlands consistent with the process in *38.610.*

(3) Floodplains as designated on the effective federal insurance rate map and delineated per requirements of *38.600* or that may otherwise be identified as lying within a 100-year floodplain through additional floodplain delineation, engineering analysis, topographic survey or other objective and factual basis;

(4) A floodplain hazard evaluation report in compliance with *article 6* of this chapter if not previously provided with subdivision review;

(5) Agricultural water user facilities and easements and contact requirements per *38.310.010* unless:

(a) Such information was previously provided through a subdivision review process; or

(b) The provision of such information was waived in writing during subdivision review of the land to be developed;

(6) Depth to the high water table must be determined from tests taken during the period of major concern;

i. Grading and drainage plan, including provisions for on-site retention/detention and water quality improvement facilities as detailed in a Stormwater Drainage Plan;

(1) All drainageways, streets, arroyos, dry gullies, diversion ditches, spillways, reservoirs, etc., which may be incorporated into the storm drainage system for the property must be designated:

(a) The name of the drainageway (where appropriate);

(b) The downstream conditions (developed, available drainageways, etc.); and

(c) Any downstream restrictions;

j. Slopes of greater than 15 % or other significant topographic features;

k. Sidewalks, walkways, drive aisles, loading areas and docks, bicycle facilities, including typical details and interrelationships with vehicular circulation system, indicating proposed treatment of points of conflict, a statement requiring lot accesses to be built to the standard contained in this section, the City of Bozeman Design and Construction Standards, and the City of Bozeman Modifications to Montana Public Works Standard Specifications;

l. Provision for site accessibility, including, but not limited to, wheelchair ramps, parking spaces, handrails and curb cuts, including construction details and the applicant's certification of ADA compliance;

m. Fences and walls, including typical details;

n. Exterior signs;

o. Exterior refuse, recycling, and composting collection areas, including typical details;

p. A site plan, complete with all structures, parking spaces, building entrances, traffic areas (both vehicular and pedestrian), vegetation that might interfere with lighting, and adjacent uses, containing a layout of all proposed fixtures by location and type. The materials required in *38.710.050.A.18*, if not previously provided;

q. Curb, asphalt section and drive approach construction details;

r. Landscaping and irrigation (detailed plan showing plantings, irrigation layout, and other relevant information as required in *38.710.090*);

s. Unique natural features, significant wildlife areas and vegetative cover, including existing trees and shrubs having a diameter greater than two and one-half inches, by species;

t. Snow storage areas.

All parking facilities containing five (5) or more parking spaces shall provide a snow management plan. The plan shall contain the following:

(1) Locations for snow storage, which may include on-site landscaped areas, and other open space for at least 15 % of the total area of the site used for parking, access drives, walkways and other paved surfaces;

(2) Snow storage is prohibited:

(a) Within the public right-of-way;

(b) Where it would obstruct line of sight or vision triangle;

(c) In a location where it blocks fire hydrants, emergency vehicle access or access to other properties;

(d) Where it will cause unmanageable freeze/thaw and icing of sidewalks, pathways and other paved surfaces;

(e) Where it obstructs on-site amenities, including but not limited to points of egress, mailboxes, storage areas, and trash enclosures;

(f) Within any access easement;

(g) Where placed in a manner which violates the Clean Water Act (CWA) and/or the Montana Pollutant Discharge Elimination System (MPDES), and/or any other federal, state or local law or statute.

(h) Where it will cause damage to trees located in the public right-of-way;

u. Location of city limit boundaries if within 200 feet of the development;

v. Historic, cultural and archaeological resources, describe and map any designated historic structures or districts, and archaeological or cultural sites; and

w. Public facilities, including schools, parks, trails, etc.;

8. Detailed plan of all parking facilities, including circulation aisles, access drives, bicycle racks, compact spaces, accessible spaces and motorcycle parking, on-street parking, number of employee and non-employee parking spaces, existing and proposed, and total square footage of each.

a. If electronic vehicle chargers are included or expected for future use identify location, path of electrical service, and layout for chargers and transformers;

9. The information related to transportation capacity required by *38.710.050.A.11*, subject to the following exceptions:

a. Such information was previously provided through a subdivision review process and the proposed development does not generate more trips than estimated during the subdivision review; or

b. The provision of such information was waived in writing during subdivision review of the land to be developed; or

c. The provision of such information is waived in writing by the DRC prior to submittal of a site plan application; or

d. The application for site plan approval involves the redevelopment of property located within the city's established neighborhood conservation overlay district. In such cases, the city may require the property owner to sign a waiver of right to protest creation of a special improvement district, or other form of agreement, assuring participation, on a fair share, pro-

rata basis, in future improvements to intersections in the vicinity of the development proposal; or

e. The application for site plan approval involves the adaptive reuse of an existing building, regardless of its location within the city, or the redevelopment of a property located within one of the city's urban renewal districts. In cases where an existing building or complex of buildings is to be torn down and replaced with a larger building or complex of buildings, the city engineer may require the information described in *38.710.050.A.11* to evaluate the additional traffic impacts resulting from development of the larger building or complex of buildings; or

f. Unless waived by the DRC, updated information will be required if previous approvals or waivers are more than five (5) years old.

10. Building design information (on-site):

    a. Building heights and elevations of all exterior walls of the building or structure;

    b. Height above mean sea level of the elevation of the lowest floor and location of lot outfall when the structure is proposed to be located in a floodway or floodplain area;

    c. Floor plans depicting location and dimensions of all proposed uses and activities; and

    d. All on-site utilities and mechanical equipment;

11. Description and mapping of soils existing on the site, accompanied by analysis as to the suitability of such soils for the intended construction. Soil in proposed landscaping areas must comply with requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

12. Temporary facilities plan showing the location of all temporary model homes, sales offices and/or construction facilities, including temporary signs and parking facilities;

13. Unless already provided through a previous subdivision review, a noxious weed control plan complying with *38.710.050.A.5.c*; and

14. Drafts of applicable supplementary documents as set forth in *38.720*;

15. The information necessary to complete the determination of density change and parkland provision required by *38.420.020.B*, unless such information was previously determined by the city to be inapplicable and written confirmation is provided to the applicant prior to submittal of a preliminary site plan application. If a new park will be created by the development the park plan materials of *38.710.050.A.14* must be provided;

16. Affordable housing.

If the application includes requests for incentives provided in *38.340*, describe how the site plan will satisfy any requirements of *38.340* which have either been established for that lot through the subdivision process or if no subdivision has previously occurred are applicable to a site plan. The description must be of adequate detail to clearly identify those lots and dwellings designated as subject to *38.340* compliance requirements and to make the obligations placed on the affected lots and dwellings readily understandable;

17. Phased site plans:

    a. A phasing plan showing the location of phase boundaries and that each phase will be fully functional if subsequent phases are not completed;

    b. A utilities plan showing that each phase will be able to be fully functional if subsequent phases are not completed;

    c. A revegetation and grading plan showing how disturbed areas will be revegetated to control weeds and site grading and drainage control will be maintained as phased construction proceeds;

    d. If the applicant intends for multiple phases to be under construction simultaneously, evidence of financial commitment from the project lender for the completion of all phases to be undertaken at once. Evidence of financial commitment may be provided at the time the building permits for the multiple phases are sought.

18. When *38.420.020* requires parkland dedication in association with a site plan, and cash-in-lieu of parkland will not be provided, the materials required by *38.710.050.A.14*.

19. The information related to water adequacy required by *38.710.050.A.19*, unless the information was previously provided through a subdivision review process and the proposed development does not generate more demand than addressed during the subdivision review.

    a. At the discretion of the Director of Utilities, updated information will be required if previous approvals or determination of no impact are more than 5 years old.

Sec. 38.710.080. - **Certificates of appropriateness.**

A. Submittal requirements for certificates of appropriateness.

All development proposals requiring certificates of appropriateness (e.g., located in a neighborhood conservation district or historic property/structure) must submit the following information in addition to any sketch plan, site plan or special development submittal requirements for the proposal:

1. Neighborhood conservation overlay district and historic property/structures.

Certain information must be provided to the appropriate review authority to review prior to granting or denying a certificate of appropriateness. The extent of documentation to be submitted on any project is dictated by the scope of the planned alteration and the information reasonably necessary for the appropriate review authority to make its determination. At a minimum, the following items must be included in the submission:

a. Completed application on form provided by the community development department;

b. One current picture of each elevation of each structure planned to be altered and such additional pictures of the specific elements of the structure or property to be altered that will clearly express the nature and extent of change planned. Except when otherwise recommended, no more than eight pictures may be submitted and all pictures must be mounted on letter-size sheets and clearly annotated with the property address, elevation direction (N, S, E, W) and relevant information;

c. Sketch plan or site plan information, as per *38.740*;

d. Historical information, including available data such as pictures, plans, authenticated verbal records and similar research documentation that may be relevant to the planned alteration;

e. Materials and color schemes to be used;

f. Plans, sketches, pictures, specifications and other data that will clearly express the applicant's proposed alterations;

g. A schedule of planned actions that will lead to the completed alterations;

h. Description of any applicant-requested deviation and a narrative explanation as to how the requested deviation will encourage restoration and rehabilitation activity that will contribute to the overall historic character of the community;

i. An illustration showing all internal and external elements of a structure to be removed or altered by a project. All elements to be removed or altered, and to what extent, must be clearly identified and must include those elements to be removed and reinstalled;

j. If demolition of a historic structure, as defined in *article 8*, is proposed a structural analysis and cost estimates indicating the costs of repair and/or rehabilitation to bring the structure to a habitable condition as established by the applicable technical codes in Article 10.02, versus the costs of demolition and redevelopment. Analysis must include cost estimates from more than one general contractor for the work. The cost comparison is between the cost to rehabilitate the structure to a condition which meets the building code standard for occupancy and demolition and construction of a new structure of the same type and scale to building code standards.

k. If a building is claimed to be unsafe evidence to support that claim;

l. For any nonconforming structure, an analysis of demolition to determine whether the threshold for loss of protected nonconforming status per *38.790.040.B* has been met or surpassed; and

m. Such other information as may be required by the community development department.

2. The city suggests that the applicant seek comments from the neighborhood or area.

Sec. 38.710.090. - **Submittal requirements for landscape and irrigation plans.**

A. Landscape and irrigation requirements apply to a lot or site subject to plan review and approval outlined in *38.740* of this chapter. A separate landscape and irrigation plan must be submitted as part of the site plan application. The landscape and irrigation plan must comply with requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

B. Preparation of landscape plan.

Landscape plans must be signed by one of the following qualified landscape professionals:

1. A state-registered landscape architect;

2. An individual with a degree in landscape design and two years of professional design experience in the state; or

3. An individual with a degree in a related field (such as horticulture, botany, plant science, etc.) and at least five years of professional landscape design experience, of which two years have been in the state.

C. Preparation of an irrigation plan.

Irrigation plans must be signed by one of the following qualified irrigation professionals:

1. A state-registered landscape architect with irrigation credentials;

2. A certified irrigation designer;

3. A licensed or certified irrigation contractor; or

4. An individual with the requisite skills and experience to design an irrigation system. The director may establish standards for the types of skills and experience required to qualify under this subsection.

D. Contents of landscape plan.

A landscape plan required pursuant to this chapter must contain the following:

1. Property and project information:

a. Date, scale, north arrow, and the names, addresses, and telephone numbers of both the property owner and the person preparing the plan;

b. Location of existing boundary lines and dimensions of the lot;

c. Approximate centerlines of existing watercourses, required watercourse setbacks, and the location of any 100-year floodplain; the approximate location of significant drainage features; and the location and size of existing and proposed streets and alleys, utility easements, utility lines, drive aisles and sidewalks on the lot and/or adjacent to the lot;

d. Project name, street address, and lot and block description;

e. Location, height and material of proposed screening and fencing (with berms to be delineated by one foot contours);

f. Locations and dimensions of proposed landscape buffer strips, including watercourse buffer strips;

g. Complete illustration of landscaping and screening to be provided in or near off- street parking and loading areas, including information as to the amount (in square feet) of landscape area to be provided internal to parking areas and the number and location of required off-street parking and loading spaces;

h. Size, height, location and material of proposed seating, lighting, planters, sculptures, and water features;

i. Location of street vision triangles on the lot (if applicable);

j. Designated snow removal storage areas;

k. Location of pavement, curbs, sidewalks and gutters;

l. Show location of existing and/or proposed drainage facilities which are to be used for drainage control;

m. Existing and proposed grade;

n. Planting plan for watercourse buffers, per 38.620, if not previously provided through subdivision review; and

o. Front and side elevations of buildings, fences and walls with height dimensions if not otherwise provided by the application. Show open stairways and other projections from exterior building walls.

p. Complete landscape legend with description of plant materials shown on the plan, including typical sysmbols, names (common and botanical), locations, quantieis, contain or caliper sizes proposed for installation, mature and initial heights, spread, and spacing. The location and type of existing trees over six inches in caliper (DBH) must be indicated, noting which will be retained and which are proposed to be removed.

2. Plant material and soil information:

a. A landscape plan required pursuant to this chapter must include plant material and soil information requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

E. Contents of irrigation plan.

An irrigation plan required pursuant to this chapter must contain the information listed in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

Sec. 38.710.100. - **Sketch plan submittal requirements.**

A sketch plan must be drawn to scale and in sufficient detail to demonstrate compliance with the requirements of this chapter. Sketch plans must be oriented with north at the top of the page and must also show site boundaries, street and alley frontages with names, street trees, water and sewer service locations, sidewalks, parking location and size, and location of all structures with distances to the nearest inch or nearest tenth of foot between buildings and from buildings to property lines.

The landscape and irrigation for a lot or site subject to sketch plan submittal requirements must comply with applicable requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

A Building Permit Landscape & Irrigation Self-Certification Form, as outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual must be submitted with an application for a building permit unless a waiver of certification in whole or part is explicitly approved by the review authority.

Sec. 38.710.110. - **Planned development zone general plan and final plan submittal requirements**

The following information must be presented in a PDZ general development plan for the entire property in an application for a PDZ rezoning, unless the review authority determines that one or more of the items is not necessary in light of the size, location, availability of existing services, or information already available to the city related to the proposed development:

A. An application form and required application fee.

B. One or more map or drawings showing (1) the existing conditions on-site and within 200 feet of the project boundary, and (2) the proposed final conditions for each of the following at a concept level of detail. Final plans, studies, and engineering detail will be required with applications for Final Development Plans.

1. Site boundaries (with dimensions and legal description);
2. Site topography (including existing features to be retained);
3. Watercourses, wetlands, agricultural water user facilities, irrigation facilities, and floodplain boundaries;
4. General land uses, including anticipated maximum number and type of dwelling units and anticipated maximum gross floor area of non-residential land uses for each portion of the property;
5. General lot and street network and access points to arterial and collector streets and current transit facilities and routes;
6. General locations of trails, bicycle paths, and pedestrian ways;
7. General location of parks and open space network;
8. Landscaping plan for public areas, property boundaries, and proposed street frontages;
9. General storm drainage retention/detention areas, and stormwater design plan; and
10. General locations of major water and sewer line locations and utility easements.
11. General phasing sequence and boundaries.

C. A map identifying a reference base district for each portion of the PDZ property, and a narrative explanation of any standards in each respective reference base district requested by the applicant that are to be adjusted or waived in that area, the extent of adjustment or waiver requested, and any non-standard uses proposed to be included;

D. Acknowledgment that any reference base district standards or other standard not explicitly modified by the PDZ is subject to change if the reference base district is amended.

E. If phasing of development is proposed, a separate phasing plan with phases clearly identified;

F. An explanation of the proposed land use and development density or intensity for each portion of the site and a calculation of each proposed land use as a percent of total site area; and.

G. Any additional information needed to confirm that the application meets the eligibility requirements in *38.250.010.E* for the type of PDZ being requested, as determined by the review authority.

H. The general or final plan must include revised documents necessary to demonstrate how the general and final plan addresses previous review comments and conditions of approval of the general plan and a written narrative stating how each of the conditions of approval and noted code provisions or other demonstrations of compliance with standards have been satisfactorily addressed. This narrative must be in sufficient detail to direct the reviewer to the appropriate plat, plan, sheet, note, covenant, etc. in the submittal.

I. The final plan must clearly identify the standards established through the PDZ that differ from the reference base district. The final plan must acknowledge in writing that any reference base district standard not explicitly established through the PDZ is subject to amendment and revision as the reference base district is amended. If the base district is later removed from the municipal code the city will apply the district which by the city's determination is the most similar district.

Sec. 38.710.120. - **Submittal materials for review of activities in or adjacent to wetlands and watercourses.**

A. An applicant for a permit under this chapter on a site where wetlands and/or watercourses may be present or adjacent to the subject property must submit a wetlands and watercourses delineation report including the following information:

1. If wetlands or watercourses are not present on or adjacent to the subject property, a letter signed by a qualified wetlands professional must be submitted to the city certifying there are no wetlands or watercourses within the subject property or adjacent to the property and describing the methods used to determine that wetlands or watercourses do not exist on or adjacent to the property.

2. If a wetland or watercourse is present or adjacent to the property, a wetland and watercourse delineation report must be submitted to the city. When required to determine the wetland or watercourse location and function, the delineation report must consider land outside the boundary of the property proposed for development.

   a. The wetland and watercourse delineation report must include the following which must have been developed within five (5) years of the date of the submission of the report:

      (1) Wetland and watercourse descriptions;

      (2) An Approved Jurisdictional Determination provided by the USACE;

      (3) A functional assessment of the wetland, made in compliance with an assessment tool currently accepted by USACE and/or the State of Montana.;

      (4) All data collected must support accurate confirmation of the three positive wetland indicators as included in the definition of wetland at *38.700.210*;

      (5) Wetland and watercourse acreages as determined by a licensed surveyor (the review authority may approve the use of other survey grade GPS methods);

      (6) Maps that depict property boundaries, watercourse centerlines, ordinary high-water marks delineated in accordance with the procedures specified in the current version

of the Ordinary High Water Mark Field Delineation Manual for Rivers and Streams sanctioned by the USACE Omaha District, watercourse setbacks, delineated wetland boundaries and buffers, and wetland acreages;

(7) Wetland data on forms established by the USACE;

(8) A determination of watercourse status issued by the Gallatin County Conservation District; and

(9) A narrative description of how the applicant will first avoid and if avoidance is not possible, minimize and mitigate impacts to wetlands and watercourses.

3. If development activities are proposed in or adjacent to watercourses or wetlands the following additional information is required in the wetlands and watercourse delineation report:

   a. A site plan consisting of an accurate scaled drawing which shows: the boundaries of the subject property; delineated wetland and watercourse boundaries; wetland buffer boundaries; watercourse setbacks; and all existing and proposed structures, roads, trails, and easements. The site plan must provide a table of existing wetland jurisdictional status, acreage and respective functional classes for each wetland, previously required wetland buffers and acreage for each wetland, and linear feet of all watercourses. In addition, all direct impacts to wetlands, watercourses, setbacks, and buffers must be depicted and summarized in a table on the site plan. The summary table must include: the wetland/watercourse identification number; labeling of the corresponding wetland buffer or watercourse setback with its width and acreage; the acreage of the subject property and of each wetland, watercourse, and wetland buffer or watercourse setback; notation of the wetland jurisdictional status; proposed impacts within all wetland buffers and watercourses setbacks; and, proposed mitigation methods and acreages.

   b. All indirect impacts must be summarized in a narrative section of the application.

   c. Application materials for all applicable permits identified in *38.220.020*.

   d. A wetland review checklist with each element confirmed as complete.

4. Mitigation Report. If in review of the required submittal materials the review authority determines adverse impacts to wetlands or watercourses will occur, the following information must be submitted to the city in the form of a mitigation report:

   a. The mitigation report must:

      (1) Identify proposed mitigation consistent with the priorities listed in *38.610.100* and the rationale for the applicant's preferred mitigation.

      (2) Include the following: the name and contact information of the applicant; the name, qualifications, and contact information for the primary author of the mitigation report; a description of the mitigation proposal; a summary of the direct and indirect impacts; identification of all local, state, and federal wetland or watercourse-related permits required for the proposed mitigation; and a vicinity map for the project.

(3) An assessment of existing conditions in the area of the proposed mitigation including vegetation community structure and composition, existing hydroperiod, existing soil conditions, and existing wetland functions.

(4) An assessment of the potential changes in wetland hydroperiod for the proposed project.

(5) A description of the proposed mitigation actions for wetlands, watercourses, setbacks, and buffer areas and how the design has been modified to first avoid, and if avoidance is not possible then minimize or reduce impacts to the wetland hydroperiod. Provide specifications for all proposed compensatory mitigation for unavoidable impacts to wetlands and their buffers and to watercourses and their setbacks. Include a map and table with all proposed mitigation areas and their required buffers.

(6) Field data that documents the existing conditions of the proposed mitigation sites.

(7) An analysis of the anticipated post development hydrologic and soil conditions on the project site hydrologic and soil conditions of the mitigation wetlands based on the proposed mitigation (e.g., data that demonstrate hydrologic conditions (e.g. piezometer data, staff/crest gage data, hydrologic modeling, visual observations; data that demonstrate soil conditions (e.g., data from hand-dug or mechanical soil pits or boring results). The applicant may not rely on NRCS soil survey data for establishing existing conditions.

(8) A planting plan and schedule by proposed community type and hydrologic regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, timing of installation, nutrient requirements, watering schedule, weed control, and, where appropriate, measures to protect plants from damage.

(9) A mitigation monitoring plan must include a period of not less than five years and establish the entity responsible for long-term operations, maintenance, and monitoring and the methods the applicant will use to ensure the mitigation meets the objectives established by the plan.

(10) Wetland mitigation performance criteria for mitigation wetlands and buffers (measurable standards reflective of expected development goals established for each year after the mitigation site is established, e.g., "At the end of five years there will be an 80 % survival of the planted shrubs and trees").

(11) Contingency plans which clearly define courses of action or corrective measures if performance criteria are not met including strategies for adaptive management and change in mitigation option and the entity responsible for implementing any required contingency plans.

b. The mitigation report must include scaled plan sheet(s) for the mitigation plan. The scaled plan sheet(s) must contain, at a minimum:

(1) The surveyed edges of existing wetlands and buffers; the proposed location and acreage of wetlands and buffer impacts; and the location of proposed wetland and buffer mitigation areas.

(2) Surveyed topography at half-foot contour intervals in the area of the proposed mitigation if any grading activity is proposed in the proposed mitigation area.

(3) Provide an existing and proposed mitigation design cross section for the wetland and/or buffer proposed mitigation areas.

c. A description of ongoing management practices that will protect and maintain the any nonimpacted wetland areas and the proposed mitigation wetland, watercourse, and buffer areas.

B. If agricultural water user facilities are present then the development application must include application materials required pursuant to *38.220.060*, *38.360.280*, and *38.410.060*.

C. An as-built plan of the affected area within six months of completion.

Sec. 38.710.130. - **Submittal materials for appeals of administrative project decisions.**

A. All appeals of administrative project decisions must include:

1. Name and address of the appellant;
2. The legal description, street address, and project number of the property involved in the appeal;
3. A description of the project that is the subject of the appeal;
4. Evidence that the appellant is an aggrieved person as defined in *38.800.020*;
5. Noticing materials required by *38.730*;
6. Required appeal filing fee; and
7. The specific grounds and allegations for the appeal, and evidence necessary to support and justify a decision other than as determined by the administrative review authority.

Sec. 38.710.140. - **Administrative interpretation or decision appeals.**

A. All appeals of administrative interpretations must include:

1. Name and address of the applicant;
2. The legal description and street address, and project number of the property, if any, involved in the appeal;
3. A description of the property, if any, that is the subject of the interpretation appeal including:

   a. A site plan drawn to scale showing the property dimensions, grading, landscaping and location of utilities, as applicable;

   b. Location of all existing and proposed buildings; and

   c. Drive accesses, drive aisles, access roads, parking spaces, off-street loading areas and sidewalks as applicable;

4. The names and addresses of the owners of the property and any other persons having a legal interest therein;
5. Noticing materials required by *38.730*;
6. Required filing fee; and
7. A written narrative explaining the basis of appeal, raising all grounds for appeal that the party may raise in district court, and evidence to prove that the decision or action of the official for which an appeal is made was incorrect or in violation of the terms of this chapter.

Sec. 38.710.150. - **Submittal materials for variances.**

A. An application for a variance must be accompanied by a development plan showing such information as the community development director may reasonably require for purposes of this chapter. The plans must contain sufficient information for the review authority to make a proper decision on the matter. Information listed below may be incorporated with other application materials if the variance is submitted in conjunction with another type of development application. The request must state the exceptional physical conditions and the peculiar and practical difficulties claimed as a basis for a variance. In all cases, the application must include, and will not be deemed filed until all of the following is submitted:

1. Name and address of the applicant;
2. The legal description of the property involved in the request for variance, including the street address, if any, of the property;
3. The names and addresses of the owners of the property and any other persons having a legal interest therein;
4. Noticing materials required by *38.730*;
5. A site plan drawn to scale showing the property dimensions, access roads, and the location of existing and proposed buildings, as applicable;
6. A clear description of the variance requested, reasons for the request, and identification of and proposed mitigation for adverse effects from the proposed variance;
7. Written justification supporting the criteria of *38.760.060.C.1*, *38.760.060.C.2*, *38.760.060.C.3* and, when applicable, *38.760.060.C.4*;
8. Evidence satisfactory to the review authority of the ability and intention of the applicant to proceed with actual construction work in accordance with said plans within six months after issuance of permit; and
9. Required filing fee.

Sec. 38.710.160. - **Submittal materials for telecommunications.**

A. The following information must be submitted for review of wireless facilities as applicable. Failure to provide required materials will result in a determination that the application is incomplete, and the application will not be processed.

1. Submittal materials.

Table 38.710.160-1

Telecommunication Submittal Materials	Micro-scale	Small-scale	Large-scale
A detailed written description of how the applicant has complied with, or will comply with, the applicable standards of this chapter;	X	X	X
An accurate photo simulation of the site with the proposed facility in place. The simulation must be to scale, and depict all planned and expected antennae, including colocation of other carriers, on the facility. Landscaping which is not existing or proposed on the accompanying site plan may not be included in the simulation unless it exists on adjoining properties;		X	X
A statement of whether the proposed facility is exempt or nonexempt from environmental review under the Rules of the FCC; If the facility is claimed to be exempt, a detailed and specific citation to the Rules of the FCC indicating the section which details the relevant exemption provisions must be included. If the facility is not exempt from environmental review, a copy of the environmental review must be provided with the application, and the approval from the FCC for the site must be provided to the city prior to the final site plan approval; and If the facility is claimed to be exempt from environmental review, a statement must be provided, under oath and notarized, that the proposed or existing facility does or will comply with FCC radio frequency emission guidelines for both general population/ uncontrolled exposures and occupational/controlled exposures as defined in the FCC rules. The provision of false information will result in the immediate revocation of permits or approvals granted upon the basis of the false information and the cessation of operation of the offending facilities;	X	X	X
When the applicant is a wireless service provider, proof that the applicant is licensed by the FCC to provide the wireless communication services that the proposed facility is designed to support, or that licensing by the FCC is not required;	X	X	X
A report providing a description of the large-scale wireless facility with technical reasons and justification for its design and placement;			X
A description of the maximum capacity of the large-scale wireless facility as proposed and how the facility can be retrofitted or modified to accommodate changing user needs;			X

Table 38.710.160-1

Telecommunication Submittal Materials	Micro-scale	Small-scale	Large-scale
Documentation establishing the structural integrity for the large-scale wireless facility's proposed use including documented loading calculations for wind, snow and seismic forces under circumstances of maximum capacity loading prepared by a professional structural engineer licensed to practice in the state. Loading criteria will be those set forth in the edition of the International Building Code most recently adopted by the city; and	X	X	X
A statement of how the colocation requirements of *38.330.040.B* are met.	X	X	X

2. In addition to the materials required above, for all large-scale wireless facilities 50 feet or greater in height, the applicant must submit:

   a. Propagation studies for the users of the proposed facility, including existing service coverage maps and whether the placement of the new site will require relocations of existing facilities, or a description of how and why the proposed site and facility size is required to provide service that is otherwise unavailable or substantially inadequate or is required for the introduction of a new service;

   b. A statement of intent of how colocation on the facility will be addressed;

   c. A statement of willingness to allow colocation at reasonable and customary rates by all technically feasible providers up to the structural capacity of the tower;

   d. An inventory of all surrounding buildings or other structures greater than 50 feet in height within a radius of one mile of the proposed location with a listing of height and suitability for hosting the proposed users of the large-scale wireless facility;

   e. An applicant must demonstrate in writing that there are no available openings on existing facilities which are feasible and that a new structure is necessary. Such demonstration must address the criteria in *38.330.040.B*;

   f. A detailed explanation of how the large-scale wireless facility will be maintained and how the maintenance and operations of the large-scale wireless facility will be transferred to a third party should the applicant no longer retain ownership. Unless otherwise approved by the city, the responsibility of maintenance and operations must transfer to the owner of the underlying property;

   g. An explanation of how the applicant will provide a financial security for the removal of the large-scale wireless facility in the event that it no longer serves telecommunications carriers. The financial guarantee must be 150 % of the estimated cost of facility removal and must be acceptable to the city; and

   h. A large-scale wireless facility may be reviewed as a multiple phase project and be constructed over time as provided for in *38.330.040*. An applicant intending to construct a new large-scale wireless facility must provide letters of intent adequate to meet the requirements for leases set forth in *38.330.040.B*.

Sec. 38.710.170. - **Submittal materials for regulated flood hazard areas.**

Applicable submittal materials required under *38.600.150*, Flood hazard evaluation, and *38.600.170*, Subdivision and plan review and approval, must be provided.

Sec. 38.710.180. - **Submittal materials for text or map amendments.**

A. An application for an amendment to the text of this chapter or the zoning map must be accompanied by materials providing such information as the community development director may reasonably require for purposes of this chapter. The application must contain sufficient information for the review authority to make a proper decision on the matter. In all cases, the application must include, and will not be deemed adequate for review until all of the following is submitted:

1. Information to establish that the applicant is an allowed entity per MCA 76-25-304(1) or 76-25-403(1) to submit an amendment. The city may establish additional requirements for applications affecting zoning district designation of properties not owned by the applicant(s).

2. Notice materials required per *38.730*.

3. Text or image materials necessary to address the required analysis in MCA 76-25-304 (2) or 76-25-403(2) as may be applicable to the subject of the proposed amendment and that demonstrates the proposed amendment is in substantial compliance with the criteria for amendments established by the state.

4. As needed, the application shall include data necessary to enable analysis and public comment and consideration of potential impacts resulting from the proposed amendment.

5. An application fee as authorized by *38.700.140*.

Sec. 38.710.190. - **Submittal materials for concept plans.**

A. Applications for all concept review must be submitted to the community development department on forms provided by the community development director. The following materials are required and additional materials may be identified on application forms.

1. Project Narrative providing a description of the overall project including design intent, project goals, project time frame, proposed uses, site improvements, buildings, anticipated parking demand and source of off-street parking.

2. List of questions regarding specific project input sought from the city.

3. Data regarding the existing zoning, site and building conditions, adjacent uses, available utilities and other related general information about adjacent land uses.

4. If existing structures are 50+ years old, provide color photos of all sides of the building.

5. If parkland is required, explain proposed way to satisfy per *38.420*, BMC and proposed integration with natural features..

6. Include a separate site plan displaying existing conditions such as lot boundaries, dimensions, setbacks, existing easements, access points, vehicular and pedestrian circulation, buildings, natural features, and topography.

7. Site plan displaying proposed development including:
    a. Existing and proposed utilities labeled.
    b. Setbacks (Form and Intensity minimums, Wetland, Watercourse) annotated with distances in feet.
    c. Pedestrian and vehicular circulation.
    d. Street vision triangles.
    e. Open space (if applicable).
    f. Anticipated parking demand and source of off-street parking.
    g. Building footprint.
8. Natural features: Preliminary scoping of wetlands and wetland boundaries with identification of whether they are expected to be jurisdictional to federal regulations, all proposed areas for fill, all watercourses with classification as identified by the Gallatin Conservation District, all agricultural irrigation facilities with identified ditch owners or operators and evidence of notice to the owners or operators.
9. Civil plan including:
    a. Proposed utilities- electric, natural gas, telephone, cable, water, sewer.
    b. Easements (in correct dimensions and width).
    c. Identify a stormwater strategy (surface vs. subgrade), and general location. Calculations not required.
    d. Topographic contours.
10. Proposed structure(s):
    a. Conceptual building elevations with overall height, roof pitch, and transparency locations.
    b. Floor plans with areas of each space identified with use (if known).
    c. Building materials intended.
11. Setbacks (property line, wetland, watercourse). All setbacks must be annotated with type. Show the building footprints and any proposed encroachments. Any setback or property line encroachments must be clearly shown and be noted with encroachment type (e.g. awning, weather protection, cantilever, lighting, eave, etc.).
12. Landscape plan including:
    a. If known, the landscape design approval pathway selected for compliance (prescriptive vs. performance);
    b. The general location of street trees, screening, landscape separation, and parking lot landscaping, as applicable to the project;

c. The general location and square footage of the proposed landscape types, such as:

(1) Turf;

(2) Seed Mix; and

(3) All other plants except for trees.

13. List the proposed landscape water supply source, location, and ownership (e.g. private or public) with a brief description of how this water will be used.

14. If phasing is proposed, a separate phasing plan with phases clearly identified. Include a description of each individual phase as related to the overall improvements.

15. Identify if the applicant intends concurrent construction and for what infrastructure.

16. The information related to water adequacy required by *38.710.030.A.14*, unless the information was previously provided through a subdivision review process and the proposed development does not generate more demand than addressed during the subdivision review.

a. At the discretion of the Director of Utilities, updated information will be required if previous approvals or determination of no impact are more than 5 years old.

DIVISION 38.720. - **SUPPLEMENTARY DOCUMENTS**

Sec. 38.720.010. - **General.**

When required, the supplementary documents described in this division, must be submitted in draft form with the preliminary plat or plan, and signed and notarized with the final plat or plan. The proper notary block must be used.

Sec. 38.720.020. - **Property owners' association.**

A. The city must approve the governing documents or amendments to the governing documents of a subdivision or other development if as part of the approval the city required the governing documents to include provisions that directly and materially address a condition of approval or other adopted standards related to the development including but not limited to *38.780.090*. Review of covenants by the City does not obligate the City to enforce the covenants.

B. When applicable. If the review authority determines a common area or open space, facility, or any other infrastructure is to be created or constructed as part of the development and such common area or open space, facility, or infrastructure is required to be either owned by or maintained by the property owners' association the developer must provide supplemental documents, as applicable, that (i) transfer ownership of common area, facility, or infrastructure to the property owners' association; (ii) provide for the perpetual maintenance of common area, facility, or infrastructure by the property owners' association; and (iii) identify if access to the common area open space or facility is available to the public or is restricted to the members of the property owners' association. Property owners' association bylaws or the declaration of covenants, conditions and restrictions must be prepared and recorded with the final plat or plan.

C. Bylaws or covenants, conditions and restrictions contents. The items listed below are required to be included in the property owners' association bylaws or declaration of covenants, conditions and restrictions and must be clearly identified within the documents. The covenants must at a minimum, provide:

1. The property owners' association will be formed before any properties are sold.
2. Membership is automatic and mandatory for each property or unit buyer and any subsequent buyer.
3. Means of enforcing the covenants, and of receiving and processing complaints.
4. Common area and facilities must be perpetually reserved.
5. The association is responsible for liability insurance, any applicable tax assessments and the maintenance of any common area or facilities.
6. Property or unit owners must pay a pro-rata share of the cost of any common expenses, with any assessment charged by the association becoming a lien where necessary on individual parcels.
7. The association may adjust the assessment to meet changed needs.

8. The conditions and timing of the transfer of ownership and control of common areas and facilities from the declarant to the association.

9. The written approval of the community development director is required before the association can be dissolved or the boundaries altered.

10. Regular maintenance program for items included in *38.780.090.A* and any other common area and facilities and that the association is responsible for the maintenance program.

D. If the property owners' association fails to install or maintain improvements according to approved plans, the city may, at its option, complete construction of improvements and/or maintain improvements in compliance with *38.720.030* and *38.780*. The city's representative, contractors and engineers have the right to enter upon the property and perform such work, and the property owners' association must permit and secure any additional permission required to enable them to do so. The city will bill the property owners' association for any costs associated with the installation or maintenance of improvements.

E. For a multiphase project, the property owners' association must be created for the entire project with the first phase.

F. To ensure continued maintenance of common areas and facilities, and on-going fulfillment of all obligations no property may be removed from the property owners' association without prior written approval by the community development director.

Sec. 38.720.030. - **Covenants.**

A. The city may require covenants to be recorded with the final plat, plan, condominium when it is determined they are necessary for the protection of the public health, safety and general welfare and compliance with conditions of approval or compliance with standards including but not limited to *38.780.090*. All city required covenants must run with the land. Covenants must be recorded with the Gallatin county clerk and recorder. The covenants may be required to include, but are not limited to, the following provisions:

1. That all county declared noxious weeds will be controlled as required in MCA 7- 22-21.

2. A section addressing agricultural uses of neighboring properties in the following form: "Lot owners and residents of the subdivision are informed that adjacent uses may be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in dust, animal odors and noise, smoke, flies, and machinery noise. Standard agricultural practices feature the use of heavy equipment, chemical sprays and the use of machinery early in the morning and sometimes late into the evening."

3. That all fences bordering agricultural lands must be maintained by the landowners in accordance with MCA 70-16-2, 81-4-1, or other relevant state law.

4. That any covenant which is required as a condition of the preliminary plat approval or other development may not be amended or revoked without the consent of the city.

5. Common area and facility maintenance plan. The developer must submit a legal instrument setting forth a plan consistent with *38.780.090* providing for the permanent care and maintenance of common areas and facilities. The same must be submitted to the city attorney and must not be accepted by the city until approved as to legal form and effect. Common areas

and facilities must be deeded to a property owners' association and, the applicant must record the proposed documents governing the association at the time of final plat filing. Creation of a special maintenance district satisfies this requirement.

6. Common area and facility maintenance guarantee and process. In the event the organization or any successor organization established to own and maintain common areas and facilities, must at any time fail to maintain the common areas or facilities in reasonable order and condition in accordance with the approved plan, the city may cause written notice to be served upon such organization or upon the owners of property in the development. The written notice must set forth the manner in which the common areas or facilities have failed to be maintained in reasonable condition. In addition, the notice must include the demand that the deficiencies noted be cured within 30 days thereafter and must state the date and place of a public meeting to be held within 14 days of the notice. At the time of public meeting, the city commission may modify the terms of the original notice as to deficiencies and may extend the time within which the same may be cured. If the deficiencies set forth in the original notice or modifications are not cured within the time set, the city may enter upon such common facilities and maintain the same for a period of one year, in order to preserve the taxable values of properties within the development and to prevent the common facilities from becoming a public nuisance. Such entry and maintenance must not vest in the public any right to use the common facilities not dedicated to public use. Before the one year period expires, the commission must, upon its own initiative or upon written request of the organization theretofore responsible for maintenance, call a public meeting and give notice of such meeting to the organization responsible for maintenance or the property owners' of the development. At the meeting, the organization responsible for maintenance and/or the residents of the development may show cause why maintenance by the city should not be continued for a succeeding year. If the city commission determines that it is not necessary for the city to continue such maintenance, the city must cease such maintenance at the time established by the city commission. Otherwise the city must continue maintenance for the next succeeding year subject to a similar meeting and determination at the end of each year thereafter.

    a. The cost of maintenance by the city must be a lien against the common facilities of the development and the private properties within the development. The city commission must have the right to make assessments against properties in the development on the same basis that the organization responsible for maintenance of the facilities could make such assessments. Any unpaid assessment must be a lien against the property responsible for the same, enforceable the same as a mortgage against such property. The city may further foreclose its lien on the common facility by certifying the same to the county treasurer for collection as in the case of collection of general property taxes.

    b. Should the property owners' association request that the city assume permanent responsibility for maintenance of facilities, all facilities must be brought to city standards prior to the city assuming responsibility. The assumption of responsibility must be by action of the city commission and all costs to bring facilities to city standards must be the responsibility of the property owners' association. The city may create special financing mechanisms so that those properties within the area affected by the property owners' association continue to bear the costs of maintenance.

    c. The city must assume permanent responsibility for maintenance of public areas and facilities when a dedicated funding mechanism is adopted.

7. Guarantee for open space preservation. Open space shown on the approved final plan or in the approved plat application must not be used for the construction of any structures not shown on the final plan.

8. Covenants and condominium declaration documents must require condominiums to be assigned street addresses in compliance with chapter 10, article 7 BMC. Addressing must not use X or other generic statements. Draft documents submitted for review prior to final approval must include correct addresses.

9. Stormwater facilities maintenance as required by chapter 40, article 4 BMC.

10. Maintenance of wetland mitigation required per *38.610*.

B. Landscaping and irrigation requirements included in private covenants must comply with this code and the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

C. A private covenant may not restrict or prohibit what federal, state, or local law requires. A private covenant may not require what a federal, state, or local law prohibits.

DIVISION 38.730. - **NOTICING.**

It is the purpose of this division to provide for adequate notice of governmental actions to those affected by such actions. Notice is required in order for citizens to be aware of decisions of local government and, when allowed by law, to participate in decision making which affects their interests and provides opportunity to receive information pertinent to an application that would not otherwise be available to the decision maker. The most important time for engagement with the public is during development of policy. In establishing standards for providing notice, the need for timely processing of applications and direction from state law is also recognized.

After a regulation has been adopted by the governing body, there is a presumption that all development in substantial compliance with the adopted regulation are in substantial compliance with the land use plan and zoning regulations; and the public has been provided a meaningful opportunity to participate.

Sec. 38.730.010. - **Contents of notice.**

A. The following elements must be included in notices issued pursuant to this chapter:

1. Address of the property, or its location by approximate distances from the nearest major street intersections, or other description to identify the affected property;
2. Legal description of the property;
3. The number, date, time and place of scheduled public hearings or meetings or the date of any final public comment deadline and method of submitting comments;
4. A description of how and where additional information regarding the action may be obtained including the address and phone number of the city; and
5. A brief description of the nature and subject of the notice.
6. Information on the scope of comments sought and how public may participate in the decision-making process.

B. Notices required for applications specific to individual sites must also include a map of the area of the development to indicate its general location and proximity to surrounding properties.

C. The following additional elements must be included in all notices required for text amendments to this chapter:

1. A summary explanation of the intent of the change, with reference to the exact text being available for public review.

Sec. 38.730.020. - **Notice requirements for application processing.**

A. The following minimum standards for timing, location of noticing area and type of notice must be provided.

1. Noticing provisions are cumulative with the maximum combination of noticing requirements being provided. When more than one newspaper publication of notice is required, only one of the required publication dates must fall within the minimum and maximum days required.

Publications for public hearings follow the requirements of MCA 7-1-4127 in addition to the requirements of *Table 38.730.020-1*.

2. Distance in *Table 38.730.020-1* is the distance from the exterior property boundary of the siteto all or part of another parcel of land. This distance includes the width of a right-of-way or other public ownership. If any portion of a parcel includes shared ownership, such as a condominium, then the notice distance includes the common area and the individual units within the specified distance.

3. Notice must be provided not less than 15 or more than 45 business days prior to the close of the public comment period or public hearing unless otherwise specified in this chapter.

    a. Notice for an interim zoning ordinance must be published at least 7 days before the public hearing.

4. Notices required to be mailed must be distributed by US first class mail.

5. For all developments which require mailed notice, the applicant must provide a list of names and addresses of all property owners, including names and addresses of owners of individual condominium units within the specified notice distance and the association of unit owners. The list must be drawn from the most current known property owners of record as shown in the records of the county clerk and recorder's office. An address shown as general delivery or similar nonspecific address is inadequate for the purposes of this standard. The required notice list also must include all parties required to be notified under *38.310.010*.

6. The community development director will establish procedures for mailing notice.

7. The applicant is responsible for mailing notice. The notice must be distributed such that notices are submitted to the United States Postal Service at least two business days before the beginning of the notice period. The return address on the envelopes must be the mailing address established by the community development director.

B. If for some reason a required property owner fails to receive mail notification of a scheduled public hearing or other public comment opportunity, or if one or more of the required posted signs in the area or on the site for which the public hearing or other public comment opportunity is being held is moved through no fault of the city, this in no way invalidates the legal notice requirements of the scheduled public hearing/ meeting or other public comment opportunity.

C. Notice may also be provided to property owners in any additional area that may be substantially impacted by an application as determined by the community development director. The community development director may use other means, such as electronic methods, in addition to posting, mailing, or publication to provide notice.

D. Publication of agendas for public meetings and hearings follow requirements of state law.

E. Content of public comment. The City is required to apply the standards adopted in this chapter to development applications. To be effective in influencing the outcome of a decision comments must focus on criteria and standards applicable to the application under review and provide supporting information as to opinions offered. See MCA 76-25-305 and 76-25-408.

Table 38.730.020-1. Minimum standards for timing, location of noticing area and method of notice.

Application	Distance	Notice Type
Ministerial Land Use Permits		
Subdivision exemptions	None	None
Sketch plans with and without Certificate of Appropriateness	None	None
Modifications of approved plans	None	None
Modifications of subdivision preliminary plat not requiring review per *38.100.070*	None	None
Final plats	None	None
Final plans	None	None
Special Temporary Use Permits	None	None
Non-Ministerial Land Use Permits		
Site plans	None	Post on-site, 38.310.010 mail
Preliminary plats	None	Post on-site, 38.310.010 mail
Special Use Permits	200	Post on-site, 38.310.010 mail
Floodplain permits per *38.600.200*	200	Mail, 38.310.010 mail
Variances – zoning or floodplain	200	Post on-site, 38.310.010 mail
Deviations	200	Post on-site. 38.310.010 mail
Appeals	None	Newspaper, post on-site
Noticing for MCA 76-2-402 claims	None	Newspaper, post on-site, agendas
Removal of property from legacy planned unit development	None	Post on-site
Demolition of a historic structure	None	Post on-site
Adoption of implementing ordinances and resolutions after any applicable public hearing has been held.	None	Agendas
Amendments		
Zone map amendments	300	Newspaper, post on-site, agendas, municipal website, agendas
Zone map amendments resulting from code changes	None	Newspaper, municipal website, agendas
Text amendments	None	Newspaper, municipal website, agendas
Interim zoning ordinance	None	Newspaper
Any other review process in Chapter 38 not specified above	None	

DIVISION 38.740. - **PLAN REVIEW**

Sec. 38.740.010. - **Introduction.**

A. All non-subdivision development proposals within the city will be subject to plan review and approval except repair, maintenance, grading below the minimum defined limits of this division, and interior remodeling, or other items specifically exempted in this chapter. Depending on the complexity of development and status of proposed use in the applicable zoning district, either sketch plans, site plans, master site plans, or special use permits (referred to as a "plan") will be required as specified in this division. Although work may be exempt from zoning review it may require review for other permits before construction may begin.

B. Special development proposals (e.g. variances) require other information to be submitted in conjunction with plans and are subject to requirements specific to the type of proposal. These additional submittal requirements and review procedures are outlined in *38.740.030*.

C. When a development is proposed within the neighborhood conservation overlay district additional standards apply. In such cases, additional submittal requirements and review procedures apply as outlined in *38.710.080*.

D. Special uses. Certain uses, while generally not suitable in a particular zoning district, may, under certain circumstances, be acceptable. When such circumstances can be demonstrated by the applicant to exist, a special use permit may be granted by the review authority. Conditions may be applied to the issuance of the permit. No special use permit may be granted for a use which is not specifically designated as a special use in this chapter.

E. Approval will be granted for a particular use and not for a particular person or firm.

F. This division is provided to meet the purposes of *38.100.040* and all other relevant portions of this chapter.

G. Applications subject to this division are reviewed under the authority established by *38.700*.

Sec. 38.740.020. - **Classification of plans.**

A. All developments, defined in *38.800.050,* but excluding subdivisions, within the city are subject to the plan review procedures and criteria of this chapter and the applicable submittal requirements of *38.710*. For the purposes of this chapter, plans will be classified as either a site plan or a master site plan.

1. Exception.

Those developments specified in *38.740.060* and other development proposals when so specifically identified by the community development director require only sketch plan review.

B. A master site plan is a generalized development plan that establishes building envelopes and overall entitlements for complex, large-scale projects that will require multiple years to reach completion. A master site plan coordinates complex projects but does not authorize construction. Use of a master site plan is required when one or more of the following characteristics are part of the development:

1. Initial development or redevelopment of an area of residential emphasis mixed-use (REMU) district greater than 10 acres;
2. Multiple buildings located on multiple contiguous lots not under common ownership and/or contiguous city blocks;
3. Multiple owners; or
4. Development phasing projected to extend beyond two years (see *38.740.080.A.2*).

C. Telecommunication facilities must be reviewed according to the regulations in *38.330*, in addition to this division.

D. Uses identified in *38.320* must be reviewed according to the standards and regulations contained in *38.320*, in addition to this division.

Sec. 38.740.030. - **Special development proposals—Additional application requirements, review procedures and review criteria.**

A. Application requirements. Applications for some development proposals (e.g. special use permits, flood plain development permits, variances, etc.) must include:

1. The required information for plans described in *38.710.070*;
2. Any additional application information required for specific reviews as listed in the following divisions of this chapter:
   a. *38.320*, Specific Use Standards;
   b. *38.330*, Wireless Facilities;
   c. *38.600*, Floodplain Regulations;
   d. *38.610*, Wetland Regulations; and
   e. *38.760*, Appeals, Deviations, Departures and Variance Procedures.

B. Review procedures and review criteria. Additional review procedures and review criteria for specific development proposals are defined in the following sections and divisions of this chapter:

1. *38.710.080*, Certificate of Appropriateness;
2. *38.740.100*, Special Use Permit;
3. *38.320*, Specific Use Standards;
4. *38.330*, Wireless Facilities;
5. *38.600*, Floodplain Regulations;
6. *38.610*, Wetland Regulations; and
7. *38.760*, Appeals, Deviations, Departures and Variance Procedures.

Sec. 38.740.040. - **Application of plan review procedures.**

A. These procedures apply to all non-subdivision developments within the city unless explicitly exempted in this chapter.

B. A plan, including when necessary a final plan, must be approved by the review authority prior to the issuance of any building permit.

C. No routing for final occupancy review may occur any development for which plan review is required until certification has been provided under *38.780.030* demonstrating that all terms and conditions of plan under approval have been complied with.

D. Unless a deviation or variance is explicitly sought and granted in association with a plan, all standards of this chapter apply whether explicitly mentioned in the record of the review or not. An omission or oversight of a nonconformity with the standards of this chapter in the site plan does not constitute approval of such nonconformance. Any nonconformance which was not the subject of an explicitly approved deviation or variance may be required to be cured at such time the city becomes aware of the nonconforming condition's existence.

E. In the event that the volume of site development applications submitted for review exceeds the ability of the city to process them simultaneously, preference in order of scheduling will be given to those projects which provide the most affordable housing in excess of minimum requirements, as measured by the total number of affordable units.

F. When a development subject to this article is located within the neighborhood conservation overlay district established by *38.240* a certificate of appropriateness is required in addition to other required review procedures.

G. Improvements depicted on an approved plan must be installed subject to the requirements *38.780*.

H. Review Pause.

1. The landowner of record may request that review of an application be paused. The request must be made in writing. The request must identify the application by city assigned review number and identify the period of the pause. A review may be paused more than one time. A review pause may not individually or cumulatively exceed one year. The request must be received by the city prior to approval or denial of an application.

2. Upon receipt of a written request the city will pause the review. At the city's sole discretion, additional notice per *38.730* may be provided to the public to advise of the pause or to advise of the restart of the review process.

I. Application termination. If an applicant does not provide the required information in response to written notice of incompleteness for a period of 180 days, the city may deem the application withdrawn and close the application. This period may be extended by the community development director upon written request by the applicant before the 180 days has lapsed.

J. Should an applicant choose not to provide required information after an application has been found incomplete, the city may proceed with review of the application. Lack of a complete application is an adequate basis for denial of the application regardless of other merit of the application.

K. Ministerial permits, as identified in *Table 38.730.020-1* are not subject to notice requirements otherwise identified in review procedures of this division.

Sec. 38.740.050. - **Special temporary use permit.**

A. Generally.

Uses permitted subject to a special temporary use permit are those temporary uses which are required for the proper function of the community or are temporarily required in the process of establishing a permitted use, constructing a public facility or providing for response to an emergency. Such uses must be so conducted that they will not be detrimental in any way to the surrounding properties or to the community. Uses permitted subject to a special temporary use permit may include:

1. Carnivals, circuses, special events of not over 72 consecutive hours;
2. Tent revival meetings;
3. Swap meets; or
4. Such other uses as may be deemed to be within the purpose of this section.

B. Exception:

Functions held within a public park and which are subject to a park user agreement are not required to obtain a special temporary use permit.

C. Application and filing fee.

Application for a special temporary use permit may be made by a property owner or their authorized agent. Information on fees is available at the community development department. Application for a special temporary use permit must be filed with community development which will charge and collect a filing fee for each such application, as provided in *38.700*. The review authority may require any information deemed necessary to support the approval or conditional approval of a special temporary use permit, including site plans per this division.

D. Decision.

Approval or conditional approval will be given only when the review authority finds the application is compliant with the standards of this division.

E. Conditions.

In approving a special temporary use permit, the approval must be made subject to a time limit, not to exceed one year per approval, and other conditions deemed necessary to assure that there will be no adverse effect upon adjacent properties. Such conditions may include, but are not limited to, the following:

1. Regulation of parking;
2. Regulation of hours;
3. Regulation of noise;

4. Regulation of lights;
5. Requirement of financial security or other guarantees for cleanup or removal of structure or equipment; and/or
6. Such other conditions deemed necessary to carry out the purpose of this section.

Sec. 38.740.060. - **Sketch plan review.**

A. Sketch plan submittal requirements.

1. Certain development applications (i.e., not in conjunction with other development) are required to submit only sketch plans which include the information specified in *38.710.100*. Sketch plan review may be conducted as part of building permit review or as an independent application.
2. Separate construction plans and compliance with landscaping and irrigation requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards manual are required for building permits when the proposal requires such permits. Additional information is also necessary when the proposal requires the issuance of a certificate of appropriateness (see *38.710.080* and *38.740.070*).
3. Projects and activities that qualify for sketch plan review are:
   a. Individual single-unit dwellings.
   b. Adding a single-unit dwelling or two-unit dwelling on an infill site.
   c. Individual duplex, triplex, and fourplex residential unit structures, or a multi-unit dwelling with not more than 8 dwellings on individual lots and independent of other site development.
   d. Accessory dwelling units.
   e. Group living for eight or fewer persons on a single lot.
   f. Fences which do not comply with *38.540.060.A*.
   g. Signs in compliance with the requirements of this chapter.
   h. Grading of sites, including regulated activities in areas with regulated wetlands, not in conjunction with a land development proposal and disturbing more than one-eighth but less than one-half acre, or movement of more than 30 but less than 100 cubic yards of material, or cut or fill of less than one cumulative foot, whichever is less;
   i. Special temporary uses per *38.740.050*;
   j. Reuse, change in use, or further development of sites per *38.740.130*;
   k. Essential services Type II primarily underground with no above ground structures larger than 400 square feet and accessory structures associated with these uses.
   l. Permitted activities in regulated flood hazard areas (i.e. floodplain permits) not in association with a development proposal qualifying as a site plan or subdivision.
   m. Other similar projects may be determined by the community development director to require only sketch plan review.

4. The community development director may determine submittal requirements in addition to those in *38.710.100*. Projects which do not require sketch plan review may still require review and permitting for non-zoning issues.

B. Sketch plan review procedures.

1. No certificate of appropriateness required.

Sketch plans for projects which do not require a certificate of appropriateness must be submitted to the community development department for a determination of compliance with the requirements of this chapter. Once compliance is achieved, the application will be approved for construction. In determining whether compliance is achieved the community development department must consider the individual circumstances of the site when the development is subject to *38.740.130*.

2. Certificate of appropriateness required.

Sketch plans, including the material required by *38.710.100*, and such additional information as may be required for projects which require a certificate of appropriateness as per *38.740.070* must be submitted to the community development department, who must review the proposal for compliance with this chapter, including compliance with the applicable overlay district requirements. Once compliance is achieved, the application will be approved for construction or referred to the appropriate permitting authorities.

C. Sketch plan review criteria.

Sketch plans must be reviewed for compliance with all applicable requirements of this chapter including overlay district requirements and the cessation of any current violations of this chapter. Determination of compliance may also consider lawful nonconforming conditions per *38.790*. Plan changes may be required. Where appropriate, the city may approve a sketch plan with restrictions which limit the duration of the use.

Sec. 38.740.070. - Certificates of appropriateness—Additional review procedures and review criteria.

A. Review procedures and criteria for certificates of appropriateness.

1. Certificates of appropriateness must be issued according to procedures and criteria specified in *38.710.080* and *38.240.020*, in addition to this section.

2. Sign proposals which specifically conform to the requirements of this chapter must be reviewed according to procedures and criteria outlined in *38.550*.

B. Demolition or movement of historic structures or sites located outside of the neighborhood conservation overlay district.

1. Demolition or movement of historic structures or sites located outside of the neighborhood conservation overlay district must be reviewed according to procedures and criteria outlined in *38.240.020.I*.

2. Certificates of appropriateness must be issued according to procedures and criteria specified in *38.710.080* and *38.240.020*, as applicable, in addition to this article.

Sec. 38.740.080. - **Plan review procedures.**

A. Conceptual review.

1. Conceptual review:

a. Purpose. Conceptual review is an opportunity for an applicant to review the requirements, standards and procedures that apply to their development proposal. Major problems can be identified and solved during conceptual review before a formal application is made. The primary focus of conceptual review is to identify site specific challenges and/or constraints, critical path elements which will affect review process, or submittal requirements.

b. Applicability. Conceptual review is required for development subject to *38.740.040* and not subject to *38.740.060*. Conceptual review may be waived by the community development director for development proposals that would not derive substantial benefit from such review.

c. Concept plan submittal. An applicant must submit the application materials required by the community development director as provided in the conceptual review checklist.

d. Staff review and recommendation. Upon receipt of a concept plan, and after review of such plan by the DRC, the city must furnish the applicant with written comments regarding such plan, including appropriate recommendations to inform and assist the applicant prior to preparing the components of the formal development application. The city may invite other public or quasi-public agencies which may be impacted by the development to comment. These agencies may include gas and electric utilities, state agencies, ditch companies, railroads, cable television service providers, and other similar agencies.

e. The applicant may as part of the concept review request a waiver from information required to be submitted with a plan review. The DRC may grant reasonable waivers from submittal of application materials required by these regulations where it is found that these regulations allow a waiver to be requested and granted. In order to be granted a waiver, the applicant must include with the submission of the concept plan a written statement describing the requested waiver and the reasons upon which the request is based

f. Formal application must address the comments provided with the conceptual review. A complete plan application must be submitted to the community development department within one calendar year of the date the concept comments are made available to the subdivider.

B. Development application submittal.

1. Development application forms. All development applications must use forms and procedures established by the community development director.

2. Fees. All fees established in the adopted fee schedule must be paid prior to the review authority commencing review of the application. The city manager may waive, reduce, or pay for a required plan review fee.

C. Review of applications.

1. The development review committee must review the application for completeness within 20 business days to determine if the application omits any of the submittal elements required by this chapter. If the application does not contain all of the required elements, a written explanation of what the application is missing must be provided to the property owner or their representative. The business days are met if the information is made available to the property owner or representative within the required time. A plan is reviewed against the criteria in effect on the date completeness is determined.

    a. The applicant shall provide the missing information within 30 business days of notification of incompleteness unless a longer period is agreed between city and applicant. The city may charge a fee for resubmittal of application materials. The city must review subsequent submissions of application material only for information found to be deficient during the original review of the application.

    b. A determination that an application is sufficient does not restrict the city from requesting additional information during the plan review process, nor does it ensure approval.

    c. If the applicant is nonresponsive to a request for additional information the termination provisions of *38.740.040* apply.

2. The DRC may grant reasonable waivers during concept review from submittal of application materials required by these regulations where it is found that these regulations allow a waiver to be requested and granted. In order to be granted a waiver the applicant must include with the submission of the preliminary plan a written statement describing the requested waiver and the reasons upon which the request is based. The review authority must consider each waiver at the time the plan is reviewed.

3. If in the opinion of the review authority the waived materials are necessary for proper review of the development, the materials must be provided before review is completed.

4. After accepting a sufficient application proposing development of a site, the review authority must make an initial determination:

    a. Whether the application, with or without variances or deviations, is in substantial compliance with all applicable regulations and the zoning map; and,

    b. Whether all impacts resulting from the proposed development have previously been analyzed and made available for public review during adoption, amendment, or update of the land use plan, zoning regulation, or zoning map.

5. If the review authority determines that the application is in substantial compliance, as defined in MCA 76-25-103, and impacts have previously been addressed, then public notice must be issued per *38.730* and opportunity to comment on the initial determination provided.

6. Unless public comment received on or before the last day of the comment period provided in subsection C.5 supports a determination that the proposed development fails to meet the requirements of subsection C.4, the review authority must issue written findings stating the results of the public comment and a final written decision approving, approving with conditions, or denying the application. The decision may be appealed as provided in 38.760.030.

7. If the review authority makes an initial determination that the criteria of subsection 4 are not met, or public comment received under subsection C.5 provides evidence that the proposed development, with or without variances or deviations from adopted standards, fails to meet either one or both of the requirements of subsection C.4, the review authority must:

    a. Request that the applicant collect any additional data and perform any additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the lack of substantial compliance with the zoning regulations or zoning map and any new or significantly increased potential impacts not previously identified and considered in the adoption, amendment, or update of the land use plan, zoning regulations, or zoning map;

    b. Collect any additional data or perform additional analysis the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the lack of substantial compliance with the zoning regulations or zoning map and any new or significantly increased potential impacts not previously identified and considered in the adoption, amendment, or update of the land use plan, zoning regulations, or zoning map; and

    c. Provide public notice of the planning administrator's initial or revised initial determination in accordance with C.4 of and a 15-business day written comment period during which the public must have the opportunity to participate and comment on the data collected and analysis performed pursuant to *subsections C.7.a* and *C.7.b*.

8. Any additional data, analysis, comment, or consideration described in subsection C.7 must be limited to the lack of substantial compliance with the zoning regulations or map and any new or significantly increased impacts potentially resulting from the proposed development, to the extent the impact was not previously identified or considered in the adoption, or amendment, or update of the land use plan, or zoning regulations, or zoning map.

9. After the public comment period provided in subsection C.7 has ended, the planning administrator shall issue written findings stating the results of the public comment and a final written decision approving, approving with conditions, or denying the application, which may be appealed as provided in *38.760.030*.

D. Mitigation.

The review authority may require the developer to design the development or take other actions to reasonably minimize potentially significant adverse impacts identified through the review required by this chapter. The review authority may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plan.

Sec. 38.740.090. - **Plan review decision and record.**

A. If the review authority, after recommendation from applicable advisory bodies and completion of any required public notice, determines the proposed plan complies with the standards and requirements of this chapter and other applicable regulations, the review authority must approve the proposed plan within 15 business days. Upon evidence based findings the review authority may require conditions and safeguards that must be met prior to final approval. Notice of action must be given in writing.

1. When considering the criteria for future phases of a master site plan, other than those for criteria 1—2, the evaluation may be of a more generalized demonstration of compliance, recognizing that a subsequent site plan will be submitted in the future which will provide evidence of specific compliance.

B. In establishing the record of the review, the review authority will use the following general outline of subjects:

1. Conformance to this chapter, including the cessation of any current violations;
2. Conformance with all other applicable laws, ordinances and regulations;
3. Conformance with special review criteria for applicable permit type as specified in *article 7*;
4. Conformance with the zoning provisions of *article 2* and *article 3*, including:
   a. Allowed uses (*38.300*);
   b. Zoning district standards (*38.210*, *38.220*, *38.230*, *38.240*, *38.250*, *38.260*);
   c. General land use standards and requirements (*38.310*);
   d. Applicable specific use standards (*38.320*);
   e. Wireless facilities;
   f. Affordable housing provisions (*38.330*, *38.340*) if applicable; and
   g. Any city approved modifications to standards established by a PUD or PDZ.
5. Conformance with the community design provisions of *article 4*, including:
   a. Transportation facilities and access (*38.400*), notably:
      (1) The impact of the proposal on the existing and anticipated traffic and parking conditions;
      (2) Pedestrian and vehicular ingress, egress and circulation, including:
         (a) Design of the pedestrian and vehicular circulation systems to assure that pedestrians and vehicles can move safely and easily both within the site and between properties and activities within the neighborhood area;
         (b) Non-automotive transportation and circulation systems design features to enhance convenience and safety across parking lots and streets, including, but not limited to, paving patterns, grade differences, landscaping and lighting;
         (c) Adequate connection and integration of the pedestrian and vehicular transportation systems to the systems in adjacent developments and general community; and
         (d) Dedication of right-of-way or easements necessary for streets and similar transportation facilities;
      (3) Loading and unloading areas;
   b. Community design and element provisions (*38.410*), notably:

(1) Lot and block standards;

(2) Provisions for utilities, including efficient public services and facilities;

(3) Site surface drainage and stormwater control;

(4) Grading;

c. Park and recreational requirements (*38.420*);

6. Conformance with the project design provisions of *article 5*, including:

a. Compliance with standards for architectural design, building mass, landscaping, historical character, orientation of buildings on the site and visual integration;

b. Design and arrangement of the elements of the plan (e.g., buildings, circulation, open space and landscaping, etc.) so that activities are integrated with the organizational scheme of the community, and other approved development and produce an efficient, functionally organized and cohesive development;

c. Design and arrangement of elements of the plan (e.g., buildings circulation, open space and landscaping, etc.) in relation to existing natural topography, natural water bodies and water courses, vegetation, and to contribute to the overall aesthetic quality of the site configuration;

d. Landscaping, including the enhancement of buildings, the appearance of vehicular use, open space and pedestrian areas, and the preservation or replacement of natural vegetation;

e. Open space;

f. Lighting;

g. Signage;

7. Conformance with environmental and open space standards set forth in *articles 4*, *article 5*, and *article 6*, including:

a. Stormwater controls ;

b. Watercourse and wetland protections; and

c. If the development is adjacent to an existing or approved public park or public open space area, public access to and use of that area;

8. Other related matters, including relevant comment from affected parties addressing information not previously addressed at land use plan, establishment of zoning standards or districts, or subdivision.

9. If the development includes multiple lots that are interdependent for circulation or other means of addressing requirements of this chapter, whether the lots are either:

a. Configured so that the sale of individual lots will not alter the approved configuration or use of the property or cause the development to become nonconforming; or

b. The subject of reciprocal and perpetual easements or other agreements to which the city is a party so that the sale of individual lots will not cause one or more elements of the development to become nonconforming; and

10. Phasing of items listed in *38.740.020.B*, including but not limited to buildings and infrastructure.

C. Plan approval may be denied upon a determination the application does not meet the standards of this chapter. Persons objecting to the recommendations of review bodies carry the burden of proof. A denial of approval must be in writing.

D. If material submitted with an application does not demonstrate full compliance with all requirements a final plan shall be submitted compliant with *38.740.110*.

E. Following approval of a master site plan, the applicant must submit to the community development department, individual site plans for specific areas within the master site plan. Each subsequent application for a site plan must be consistent with the approved master site plan and standards of this chapter. Evidence that the review criteria have been met through the master site plan review process may be incorporated by reference in order to eliminate duplication of review.

Sec. 38.740.100. - **Special use permit.**

A. A special use permit is reviewed in conjunction with another development process such as a site plan. The person applying for a special use permit must fill out and submit to the community development department the appropriate form with the required fee at the same time as the other permit. The request for a special use permit must follow the procedures and application requirements of this division.

B. The review authority, in approving a special use permit, must review the application against the review requirements of *38.740.090*.

C. In addition to the review criteria of *38.740.090*, the review authority must, in approving a special use permit, determine favorably as follows:

1. That the site for the proposed use is adequate in size and topography to accommodate such use, and all setbacks, spaces, walls and fences, parking, loading and landscaping are adequate to properly relate such use with the land and uses in the vicinity;

2. That the proposed use will have no material adverse effect upon the abutting property. Persons objecting to the recommendations of review bodies carry the burden of proof;

3. That any additional conditions stated in the approval are deemed necessary to protect the public health, safety and general welfare. Such conditions may include, but are not limited to:

a. Special setbacks, screening, and buffers;

b. Special fences, solid fences, and walls;

c. Regulation of noise, vibrations, lighting, and odors;

d. Regulation of hours for certain activities;

e. Time period within which the proposed use must be developed;

f. Location of use;

g. Other such conditions as will make possible the development of the city in an orderly and efficient manner consistent with the requirements of *38.100.050* and *38.100.070*.

D. In addition to all other conditions, the following general requirements apply to every special use permit granted:

1. The right to a special use permit is contingent upon the fulfillment of all special conditions imposed through the special use permit procedure; and

2. All of the conditions constitute restrictions running with the land use, apply and must be adhered to by the owner of the land, successors or assigns, are binding upon the owner of the land, their successors or assigns, must be consented to in writing, and must be recorded as such with the county clerk and recorder's office by the property owner prior to the issuance of any building permits, final plan approval or commencement of the special use.

E. Applications for special use permits may be approved, conditionally approved or denied by the review authority. If an application is denied, the denial constitutes a determination that the applicant has not shown that the conditions required for approval do exist. If the special use permit has been approved, the permit will be issued upon the signature of the review authority after completion of all conditions and final plan. The decision must be issued in writing.

F. Termination/revocation of special use permit approval.

1. Special use permits are approved based on an analysis of current local circumstances and regulatory requirements. Over time these things may change and the use may no longer be appropriate to a location. A special use permit will be considered as terminated and of no further effect if:

a. After having been commenced, the approved use is not actively conducted on the site for a period of two continuous calendar years;

b. Final zoning approval to reuse the property for another use is granted;

c. The use or development of the site is not begun within the time limits of the final plan approval in *38.740.110*.

2. A special use which has terminated may be reestablished on a site by either, the review and approval of a new special use permit application, or a determination by the community development director that the local circumstances and regulatory requirements are essentially the same as at the time of the original approval. A denial of renewal by the review authority may not be appealed. If the review authority determines that the special use permit may be renewed on a site then any conditions of approval of the original special use permit are also renewed.

3. If activity begins for which a special use permit has been given final approval, all activities must comply with any conditions of approval or code requirements. Should there be a failure to maintain compliance the city may revoke the approval through the procedures outlined in *38.700.160*.

Sec. 38.740.110. - **Final plan.**

A. When a plan is fully compliant with all applicable standards the review authority may approve the final plan. The owner must submit a statement of commitment to construct according to the final plan. Such statement must acknowledge that construction not in compliance with the approved final plan may result in delays of routing for final occupancy review or costs to correct noncompliance.

B. Plans not fully compliant with all applicable standards at initial review authority decision.

1. No later than six months after the date of the review authority approval of the plan, the applicant must submit to the community development department a final plan. The number of copies of the final plan to be submitted is established by the director of community development. The final plan must contain the materials required in *38.710.070*, *38.710.080*, and *38.710.010*, and whatever revisions to the preliminary site plan or master site plan are required to comply with any conditions of approval. Prior to the passage of six months, the applicant may seek an extension of not more than an additional six months from the director of community development.

2. In addition to the materials required in *subsection B.1* above, the applicant must submit a certification of completion and compliance stating that they understand any conditions of approval and the submitted final plans have complied with any conditions of approval or corrections to comply with code provisions. The owner must submit a statement of commitment to construct according to the final plan. Such statement must acknowledge that construction not in compliance with the approved final plan may result in delays of routing for final occupancy review or costs to correct noncompliance.

C. The approval of a final plan is effective for two years. Before expiration, the applicant may seek an extension of the final plan approval of not more than two additional years. An applicant may request a maximum of two extensions to the final plan approval. After expiration of a final plan or extension, the project is subject to a new application and review process. The review authority may grant an extension of a final plan approval if the criteria of *subsection E* of this section are met.

D. Following approval of a final master site plan, approval of the final master site plan is effective for not less than three but not more than five years with the initial duration to be specified during the final action of the review authority. Owners of property subject to the master site plan may seek extensions to not exceed five years. Approval of an extension must be granted if the community development director determines the criteria of *subsection E* of this section are met.

E. Any request for an extension must be in writing and be dated and signed by the owner of the undeveloped area or incomplete development for which the extension is sought. More than one extension may be requested for a particular development. Each request must be considered on its individual merits. An extension of the development approval under this division does not extend other city or non-city agency approvals, e.g. for design of infrastructure extensions, necessary to complete the project. When evaluating an extension request, the city must consider:

1. Changes to the development regulations since the original approval and whether the development as originally approved substantially complies with the new regulations;

2. Progress to date in completing the development as a whole and any phases;

3. Phasing of the development and the ability for existing development to operate without the delayed development;

4. Dependence by other development on any public infrastructure or private improvements to be installed by the development;

5. For extensions of approval greater than one year, the demonstrated ability of the developer to complete the development;

6. Overall maintenance of the site; and

7. Whether mitigation for impacts of the development identified during the preliminary plan review remain relevant, adequate, and applicable to the present circumstances of the development and community.

F. Upon approval of the final plan the applicant may obtain a building permit as provided for by this division.

1. Subsequent site plan approvals are required to implement a master site plan, and approval of a master site plan only does not entitle an applicant to obtain any building permits.

G. Phasing. The entitlement period for which a final plan is valid is specified in *subsection C* and *subsection D* above. Preliminary single-phase plan applications will only be accepted for development that can occur under building permits issued within this final plan approval period.

1. Any development that includes phases or where construction of a building would extend past the final plan approval period must proceed under the master site plan application process with a first phase plan for those portions that can be constructed under the single-phase final plan approval. The master site plan and first phase site plan may be reviewed concurrently as a single application. Each future project phase must submit a stand-alone site plan application following initial master site plan approval.

2. Each phase of a plan must not include more buildings than will be constructed with building permits issued within a one-year time frame. These subsequent site plan applications will be reviewed if consistent with the master site plan. Independent fees will be assessed for each required application.

3. A preliminary site plan application may be received where it is unclear whether the buildings or units can be constructed under building permits issued within two years of final plan approval. In this case, the review authority may request proof of a construction financing commitment prior to accepting the application. Applications, where it is clear that the buildings or units cannot be constructed under building permits issued within two years of final plan approval will be deemed unacceptable for review. Such applications must proceed pursuant to a master site plan with first phase site plan process.

H. Prior to the expiration of an approved plan, but not later than beginning of construction, a landowner may request to abandon approval of an application which received final approval per this section.

1. Such a request for abandonment must be in writing to the community development director, must clearly identify the project by the city's assigned application number, and must clearly state that the landowner is abandoning the application and all associated rights and privileges. The community development director may establish standards for the content, form, and supporting materials to be included in a request to abandon an approval.

2. The community development director may approve such an abandonment in writing.

3. An application abandoned under this section is void.

Sec. 38.740.120. - **Amendments to plans including the reuse, change in use, or further development of sites developed prior to the adoption date of a development standard.**

A. It is the purpose of this section to assure that issues of community concern are addressed during the redevelopment, reuse or change in use of existing facilities in the community. Specific areas of community concern include:

1. Public safety,
2. Mitigation of off-site environmental impacts and site character in relation to surroundings,
3. To encourage reinvestment and renewal of existing developed sites, and
4. To move existing sites toward compliance with current standards while recognizing the limitations that may exist in relation to an existing site.

The following procedures for amendments to approved plans, reuse of existing facilities, and further development of sites assure that these concerns are adequately and expeditiously addressed.

B. Any amendment to or modification of a plan approved for the application types and thresholds of review established in this *38.730* must be submitted to the community development department. Proposals for further development, reuse or change in use of sites must be reviewed as an amendment to an approved plan. All amendments must be shown on a revised plan drawing consistent with any established documentation standards and adequate to identify the existing conditions and proposed conditions created by the amendment. Amendments to approved plans must be reviewed and may be approved by the review authority upon determining that the amended plan is in substantial compliance with the originally approved plan. If it is determined that the amended plan is not in substantial compliance with the originally approved plan, the application must be resubmitted as a new application and will be subject to all standards and plan review and approval provisions of this chapter. Substantial compliance may be shown by demonstrating that the amendments do not exceed the following thresholds:

1. The proposed use is allowed under the same zoning district use classification as the previous use. Replacement of nonconforming uses must comply with the provisions of *38.790.010* of this chapter;
2. Changes proposed for the site, singly or cumulatively, do not increase by more than 20% any of the following: lot coverage by buildings, storage areas, parking areas or impervious surfaces, and/or do not result in an increase in intensity of use as measured by traffic generation, stormwater discharge, or other measurable off-site impacts;
3. The proposed use does not continue any unsafe or hazardous conditions previously existing on the site or associated with the proposed use of the property.

C. Modifications or amendments to a master site plan at the time an extension of approval is sought may be proposed by either the applicant or the review authority, and must be based on substantive current information that indicates that relevant circumstances have changed and that such

circumstances support the proposed modifications. Such circumstances may include market analyses, economic conditions, changes in surrounding land uses, changes in ownership, etc.

D. For building additions and/or remodels to all existing development, except single to four-household dwellings in any configuration, see *38.500.020* to determine how the design standards within *article 5* are applied.

Sec. 38.740.130. - **Building permits based upon approved sketch or site plans.**

Based upon the approved sketch or final plan and after any appeals have been resolved, a building permit for the site may be requested and may be granted pursuant to *38.700*. No building permit may be granted on the basis of an approved sketch or other plan whose approval has expired.

Sec. 38.740.140. - **Appeals.**

Appeals of decisions rendered in conjunction with this division may be taken as set forth in *38.760*.

DIVISION 38.750. - **SUBDIVISION PROCEDURES**

Sec. 38.750.010. - **Transfers of title.**

Unless the plat is located in an area where the state or the city does not have jurisdiction, no transfer of title may occur except as allowed in MCA 76-25-411.

Sec. 38.750.020. - **Effect of recording complying plat.**

The recording of any plat made in compliance with the Montana Land Use Planning Act has the effects established in MCA 76-25-411(4).

Sec. 38.750.030. - **Correction of errors, amendments or vacation of recorded final plats.**

A. Correction of errors.

Correction of errors by private parties that, in the opinion of the city, will not materially alter the plat may be made by the submission of a corrected final plat for the city's approval per *38.750.140*. The plat must be entitled "amended plat of the (name of subdivision) subdivision," and the reason for the correction must be stated on the face of the plat.

B. Material alterations.

Amendments that materially alter the final plat, or any portion thereof, must be made by the filing of an amended plat showing all alterations. The amended plat must be approved by the city under the review procedure as if it were a new application. The city may not approve an amendment which will place the plat in nonconformance with any applicable standard unless the required review is heldon the plat and noncompliance to from the standard approved pursuant to the procedures of this chapter. The plat must be entitled "amended plat of (the name) subdivision," and the reason for the amendment must be stated on the face of the plat.

C. Vacating recorded plats.

Any plat prepared and recorded as provided by this chapter may be vacated, in whole or in part, as provided by MCA 76-25-411.

Sec. 38.750.040. - **General review procedure.**

Every subdivision must be reviewed, approved by the review authority, and filed for record with the county clerk and recorder in accordance with the procedures contained herein before title to the subdivided land can be sold or transferred in any manner. Appeals of decisions made follow procedures of *38.760.030*.

Sec. 38.750.050. - **Pre-application plan review.**

A. The purpose of a pre-application plan review is to discuss this chapter and other applicable standards, to familiarize the developer with the standards, goals and objectives of applicable plans, regulations and ordinances, to identify requested waivers from submittal material, and to discuss the proposed subdivision as it relates to these matters.

B. Prior to the submittal of a subdivision application for a subdivision, the developer may submit an application for subdivision pre-application review.

C. Pre-application plan review. For subdivision pre-application review, the developer must submit a complete application for pre-application plan review, the appropriate review fee, and copies of all required pre-application information as set forth in *38.710.030*.

1. City review. The community development department coordinates the review within the City, and with outside agencies as needed.

   a. Agency review. The community development department will distribute the pre- application information to appropriate city or county departments and if needed to state and federal agencies for review and written comment. All written comments received from various agencies, along with the community development department's comments regarding whether the plans and data meet the standards, goals and objectives of applicable plans, ordinances, and this chapter, and for informational purposes identification of local regulations, state laws, and land use plan provisions that may apply to the subdivision process, will be forwarded to the applicant to aid in the preparation of the preliminary plat application. Comments are not assurance a preliminary plat will be approved.

   b. The community development department may provide a list of the public utilities, agencies of government, and other parties who may be contacted and their time frames for comment on the subdivision application. The comments collected by the community development department must be provided in writing to the subdivider or their agent within 30 business days of a complete application being received by the city. The 30 business day review period is met if the writing is made available to the applicant within the 30 business day review period.

   c. The applicant may during preapplication review request a waiver from information required to be submitted with a preliminary plat. In order to be granted a waiver the applicant must include with the submission of the subdivision pre-application a written statement describing the requested waiver and the reasons upon which the request is based. All waivers must be initially identified with the pre-application stage of review. The DRC is responsible for granting waivers, and the community development department staff must notify the developer in writing of any waivers granted from *38.710.050* after the pre-application review. All information not waived at the time of pre-application must be provided with the preliminary plat application.

2. Time for follow-up submittal. A complete subdivision preliminary plat application must be submitted to the community development department within one calendar year of the date the pre-application comments are made available to the subdivider.

Sec. 38.750.060. - **Concurrent Montana Land Use Planning Act and Sanitation and Subdivision Act review.**

For Sanitation and Subdivision Act review, the developer has the option of submitting a state department of environmental quality (DEQ)/local government joint application form in the place of a preliminary plat application form, and to request concurrent subdivision review by the state department of environmental quality and the city, pursuant to MCA 76-4-129. Subdivisions granted the exemption from sanitation review authorized in MCA 76-4-127 do not need to use this provision.

Sec. 38.750.070. - **Preliminary plat review.**

A. Subdivision application submittal. After a pre-application review, the developer may submit a subdivision application within one year of the date of the city's written comments as required by *38.750.050*. If the applicant has not submitted a preapplication review, then no waiver has been granted, and complete submittal materials must be provided. Subdivision applications must be submitted using forms and procedures established by the community development director, along with the appropriate review fee and all required subdivision application information as set forth in *38.710* to the community development department and must conform to the requirements of this chapter. The preliminary plat must be prepared by a surveyor licensed to practice in the state.

B. Completeness review of application.

The development review committee must review the application for completeness within 20 business days to determine if the application omits any of the submittal elements required by this chapter. If the application does not contain all of the required elements, a written explanation of what the application is missing must be provided to the property owner or their representative. The business days are met if the information is made available to the property owner or representative within the required time. A plat is reviewed against the criteria in effect on the date completeness is determined.

1. The applicant shall provide the missing information within 30 business days of notification of incompleteness unless a longer period is agreed between city and applicant. The city may charge a fee for resubmittal of application materials. The city must review subsequent submissions of application material only for information found to be deficient during the original review of the application.

2. A determination that an application is complete does not restrict the city from requesting additional information during the plan review process, nor does it ensure approval.

3. If the applicant is nonresponsive to a request for additional information the termination provisions of this section apply.

C. Unless a deviation or variance is explicitly sought and granted in association with a plan, all standards of this chapter apply whether explicitly mentioned in the record of the review or not. An omission or oversight of a nonconformity with the standards of this chapter in the site plan does not constitute approval of such nonconformance. Any nonconformance which was not the subject of an explicitly approved deviation, departure, or variance may be required to be cured at such time the city becomes aware of the nonconforming condition's existence.

D. Review Pause.

1. The landowner of record may request that review of an application be paused. The request must be made in writing. The request must identify the application by city assigned review number and identify the period of the pause. A review may be paused more than one time. A review pause may not individually or cumulatively exceed one year. The request must be received by the city prior to approval or denial of an application.

2. Upon receipt of a written request the city will pause the review. At the city's sole discretion, additional notice per *38.750.080* may be provided to the public to advise of the pause or to advise of the restart of the review process.

E. Application termination. If an applicant does not provide the required information in response to written notice of incompleteness for a period of 180 days, the city may deem the application withdrawn and close the application. This period may be extended by the community development director upon written request by the applicant before the 180 days has lapsed.

F. Should an applicant choose not to provide required information after an application has been found incomplete, the city may proceed with review of the application. Lack of a complete application is an adequate basis for denial of the application regardless of other merit of the application.

G. Ministerial permits, as identified in *Table 38.730.020-1* are not subject to notice requirements otherwise identified in review procedures of this division.

H. Review by affected agencies.

After application information is received, the community development department may provide the contents of the preliminary plat and supplementary information to relevant public utilities and public agencies for review and comment pertaining to the application consistency to standards and criteria. If the community development department must request review by a public utility, agency of government, and other parties regarding the subdivision application that was not identified during the pre- application review the community development department may notify the subdivider.

1. For all subdivisions the city requires review by all agencies represented on the DRC per *38.700.170*. The city may individually request review by other municipal, county, state, or federal agencies whose area of responsibility is affected by a proposed preliminary plat. The city may individually request review by providers of non-municipal utilities whose services are proposed to be used in or are impacted by a proposed preliminary plat.

Sec. 38.750.080. - **Subdivision notice and public comment.**

A. After accepting a complete application proposing subdivision of a site the review authority must make an initial determination:

1. Whether the application, with or without variances or deviations, is in substantial compliance with all applicable regulations; and,

2. Whether all impacts resulting from the proposed development have previously been analyzed and made available for public review during adoption, amendment, or update of the land use plan, zoning regulation, or zoning map.

B. If the review authority determines that the application is in substantial compliance and impacts have previously been addressed, then public notice must be issued per *38.730* and opportunity to comment on the initial determination provided.

C. Unless public comment received on or before the last day of the comment period provided in subsection 2 supports a determination that the proposed development fails to meet the requirements of subsection A, the review authority shall issue written findings stating the results of the public comment and a final written decision approving, approving with conditions, or denying the application. The decision may be appealed as provided in *38.760.030*.

D. If the review authority makes an initial determination or public comment received under *subsection B* provides evidence that the proposed development, with or without variances or deviations from

adopted standards, fails to meet either one or both of the requirements of *subsection A*, the review authority must proceed as follows:

1. Request that the applicant collect any additional data and perform any additional analysis necessary to provide the planning administrator and the public with the opportunity to comment on and consider the lack of substantial compliance with the zoning regulations or zoning map and any new or significantly increased potential impacts not previously identified and considered in the adoption, amendment, or update of the land use plan, zoning regulations, or zoning map;

2. Collect any additional data or perform additional analysis the planning administrator determines is necessary to provide the local government and the public with the opportunity to comment on and consider the lack of substantial compliance with the zoning regulations or zoning map and any new or significantly increased potential impacts not previously identified and considered in the adoption, amendment, or update of the land use plan, zoning regulations, or zoning map; and

3. Provide public notice of the planning administrator's initial or revised initial determination in accordance with *subsection B*, and a 15-business day written comment period during which the public must have the opportunity to participate and comment on the data collected and analysis performed pursuant to this paragraph.

E. Any additional data, analysis, comment, or consideration described in *subsection D* must be limited to the lack of substantial compliance with the zoning regulations or map and any new or significantly increased impacts potentially resulting from the proposed development, to the extent the impact was not previously identified or considered in the adoption, or amendment, or update of the land use plan, or zoning regulations, or zoning map.

F. If an applicant proposes a phased subdivision per MCA 76-25-410(7) additional public notice and review consistent with statute must be conducted.

Sec. 38.750.090. - **Decision.**

A. Criteria for city decision.

The basis for the review authority's decision to approve, conditionally approve or deny the subdivision is whether the subdivision application, agencies advice and recommendation, applicable public comment, and additional relevant information demonstrates that development of the subdivision complies with this chapter, the Montana Land Use Planning Act and other applicable adopted state and local ordinances, including, but not limited to, applicable zoning requirements.

When deciding to approve, conditionally approve or deny a subdivision application, the review authority must:

1. Review the preliminary plat, together with required supplementary information, to determine if it meets the requirements of this chapter, the development standards and policies of the city, the Montana Land Use Planning Act, and other applicable adopted state laws and local ordinances, including but not limited to applicable zoning requirements.

2. Determine whether impacts resulting from the development were previously analyzed and made available for public review and comment prior to the adoption of the land use plan including issue plans, zoning regulations, subdivision regulations, or any amendment thereto.

3. Consider applicable written comments from appropriate public agencies, utilities or other members of the public.

4. If the review authority finds that the proposed subdivision is in substantial compliance with the zoning and subdivision regulations and all impacts resulting from the development were previously analyzed and made available for public review and comment prior to the adoption of the land use plan, zoning regulations, and subdivision regulations, or any amendment thereto, the review authority must issue a written decision to approve, approve with conditions, or deny the preliminary plat within 15 business days from the date the application is determined to be complete.

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

    a. Meets the applicable requirements and standards of the Montana Land Use Planning Act and implementing state and local regulations; and

    b. Meets the survey requirements provided in the Administrative Rules of Montana;

6. Findings. Within 30 business days of the final action to approve, deny, or approve with conditions a subdivision, the review authority must issue written findings as required in the Montana Land Use Planning Act that discuss and weigh the applicable criteria. The findings must provide facts that support the decision to approve, conditionally approve, or deny a proposed preliminary plat, including any conditions placed on the approval that must be satisfied before a final plat may be approved. The written decision may be appealed as provided for in *38.760.030*.

B. Mitigation.

The review authority may require the developer to design the subdivision or take other actions to reasonably minimize potentially significant adverse impacts identified through the review required by this chapter. The review authority may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

C. Changes to conditions or design after approval.

1. Changes to conditions after approval may be requested and reviewed as allowed by *38.100.070*.

2. After issuance of the required findings of fact and completion of a preconstruction meeting with the engineering division a subdivider may begin on-site earthwork, site clearance, and installation of infrastructure.

    a. Any excavation and site disturbance must be in conformance with an approved Stormwater Pollution Prevention Plan as described in *40.04.350*.

3. Any changes to an approved preliminary plat that increases the number of lots or redesigns or rearranges six or more lots is subject to process requirements of 76-25-408(15).

Sec. 38.750.100. - **Duration of approval.**

A. Initial subdivision application approval period.

Upon approving or conditionally approving a subdivision application, the review authority must provide the developer with a dated and signed findings of fact and order. This initial approval must be in force for not less than one calendar year or more than five calendar years:

1. At the end of the period, the review authority may, at the written request of the developer, extend its approval for a single mutually agreed-upon period of time.
2. Any subsequent requests for extension of approval follow the same process as the initial request but are approved by the governing body.
3. Phased subdivisions reviewed under MCA 76-25-410(7) may not exceed a cumulative period for all phases to exceed 20 years. Phased subdivisions exceeding five years are subject to additional review and additional conditions may be attached to mitigate new or significantly increased impacts as authorized in *76-25-410*.

B. Extensions of preliminary plat approval period.

Any mutually agreed upon extension must be in writing and dated and signed by the subdivider or their authorized agent and by the review authority. More than one extension may be requested for a particular subdivision. Each request is considered on its individual merits. An extension of the subdivision approval under this chapter does not extend other city or non-city agency approvals, e.g. for design of infrastructure extensions, necessary to complete the project. When evaluating an extension request, the city must consider:

1. Changes to the development regulations since the original approval and whether the subdivision as originally approved is substantially compliant with the new regulations;
2. Progress to date in completing the subdivision as a whole and any phases, including maintenance of the remainder of the site in good condition;
3. Phasing of the subdivision and the ability for existing development to operate without the delayed development;
4. Dependence by other development on any public infrastructure or private improvements to be installed by the subdivision;
5. Demonstrated ability of the subdivider to complete the subdivision;
6. Whether mitigation for impacts of the subdivision identified during the preliminary plat review and findings of fact and order remain relevant, adequate, and applicable to the present circumstances of the subdivision and community.

Sec. 38.750.110. - **Notice of certification that water and waste services will be provided by local government.**

If the developer proposes a municipal facilities exclusion from the department of environmental quality (DEQ) sanitation in subdivisions review, the subdivision application must include a written request from the developer's professional engineer, licensed in the state, that indicates the intent to request the

municipal facilities exclusion, and details the extent of water, sewer and stormwater infrastructure that will be completed prior to final plat approval. A preliminary Stormwater Drainage Plan report must also be submitted with the written request. The city engineer must, prior to final plat approval, send notice of certification to the DEQ per MCA 76-4-127.

Sec. 38.750.120. - **Final plat.**

A. After the conditions of preliminary approval and the requirements for the installation of improvements have been satisfied, a final plat is required. The final plat must conform to the uniform standards for final subdivision plats as set forth in 24.183.1107 ARM as may be amended and to the standards required by the county clerk and recorder. The applicant is responsible to verify that they are complying with the most recently adopted clerk and recorder standards. Plans and data must be prepared under the supervision of a registered surveyor, licensed in the state, as their licensing laws allow.

1. Final plat submittal.

The final plat and all supplementary documents must be submitted to the community development department at least 30 business days prior to the expiration of subdivision application approval or any extension thereto. The submittal must include a final plat application form, the appropriate review fee, and all information required by *38.710.060*.

a. The final park plan, if one is associated with the plat, must be reviewed and approved prior to approval of the final plat. The installation of any park improvements to meet minimum development standards or conditions of approval are subject to *38.780* of this chapter.

2. County treasurer certification.

A final plat will not be accepted as complete until the county treasurer has certified on the required plat mylar print that no real property taxes and special assessments assessed and levied on the land to be subdivided are delinquent.

3. Review of subdivision guarantee, deeds, and covenants.

a. With the final plat, the developer must submit to the community development department a subdivision guarantee showing the names of the owners of record of the land to be subdivided and of any off-site land used to satisfy parkland dedication requirements, and the names of lienholders or claimants of record against the land, and the written consent to the subdivision by the owners of the land, if other than the developer, and any lienholders or claimants of record against the land. If necessary, the subdivision guarantee must be updated so that the subdivision guarantee is dated no earlier than 90 days prior to the city commission's action on the final plat.

b. Covenants must be submitted to the community development department with the final plat application if they are used to meet a requirement for approval.

c. If an improvements agreement will be required per *38.780.060* then the proposed associated security must be provided for review and approval by the city attorney.

d. Transfer of ownership of public land, dedicated park land, off-site land, private land, personal property, improvements and water rights; documents required.

(1) For the transfer of real property in satisfaction of required or offered dedications to the city, and required or offered donations or grants to the property owners' association (POA), the subdivider or owner of the property must submit with the application for final plat a warranty deed or other instrument acceptable to the city attorney transferring fee simple ownership to the city or the property owners' association (POA).

(2) For the transfer of personal property installed upon dedicated parkland or city-owned open space, or POA-owned parkland or open space, the subdivider must provide the city an instrument acceptable to the city attorney transferring all its rights, title and interest in such improvements including all applicable warranties to such improvements to the city or the POA.

(3) The subdivider or owner of the property must record the deed or instrument transferring ownership or interests at the time of recording of the final plat with the original of such deed or instrument returned to the city or POA as applicable.

(4) For the transfer of ownership interest in water rights or appurtenances, the subdivider or owner of the property must submit with the application for final plat a deed or other instrument acceptable to the city attorney transferring ownership to the city or POA, along with all required state department of natural resources and conservation documentation, certification and authorization.

e. Certificates.

(1) Public lands/improvements must be described in the certificate of dedication, listed in the certificate of completion, and be completed or subject to an improvements agreement.

(2) Private lands/improvements must be described and addressed in the certificate of donation/grant and completion of private improvements, be completed or subject to an improvements agreement.

4. Review by the community development department.

The community development department will review the final plat application to verify that all conditions and requirements for final approval have been met. If all conditions and requirements for final approval have been met, the community development department must forward a report to the city commission for their action.

a. A final plat application is considered received on the date the application is delivered to the governing body or the agent or agency designated by the governing body if accompanied by the review fee. Within 10 business days of receipt of a final plat, the review authority shall determine whether the final plat contains the information required and shall notify the subdivider in writing.

b. If the review authority determines that the final plat does not contain the information required under *subsection 1*, the review authority shall identify the final plat's defects in the notification.

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

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

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

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

5. Final plat approval.

a. The review authority must examine every final plat, and within 20 business days of the date of receipt of a complete final plat application to the community development department, must approve it if it conforms to the conditions of preliminary approval and the terms of this chapter.

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

c. After 5 years have elapsed since approval of a phased preliminary plat, the planning administrator shall review each remaining phase to determine if a phase may result in new or significantly increased potential impacts that have not been previously identified and considered in the adoption of the land use plan, zoning or subdivision regulations, or review and approval of the phased preliminary plat. If the planning administrator identifies any new or significantly increased potential impacts not previously identified and considered, the planning administrator shall proceed as set forth in *38.740.070*.

d. If necessary to mitigate impacts identified during review, the planning administrator may impose conditions on any phase before final plat approval is sought.

e. A final subdivision plat is not approved by the city unless all certificates, with the exception of certificates to be signed by applicable city officers and the county clerk and recorder, have been complied with, signed and notarized and all regulations and conditions of preliminary plat approval have been met. A final subdivision plat may not be filed with the county clerk and recorder unless all certificates, with the exception of the county clerk and recorder, have been complied with, signed and notarized. A final subdivision plat may not be approved by the review authority or filed by the county clerk and recorder unless it complies with the uniform standards for final subdivision plats as established 24.183.1107, ARM as may be amended and as required by the Gallatin County Clerk and Recorder.

f. If the final plat is approved, the city officer must so certify the approval in a printed certificate on the plat.

6. If the final plat is denied, the city shall cause a letter to be written to the developer stating the reasons therefore.

7. Filing.

The developer must file the approved, signed final plat and all other required certificates and documents with the county clerk and recorder within 60 days of the date of final approval.

Sec. 38.750.130. - Changes to filed subdivision plats.

Changes to a filed subdivision plat must be filed with the county clerk and recorder as an amended plat. An amended plat may not be filed unless it meets the filing requirements for a final subdivision plat specified in these regulations.

Sec. 38.750.140. - Subdivision exemptions.

A. Divisions of land exempt from the requirements of this chapter pertaining to subdivisions.

MCA 76-25-402 establishes exemptions from the usual subdivision review procedure and are incorporated by this reference. The exemptions may not be used to evade the law and are subject to zoning compliance.

B. Procedures and general requirements.

All certificates of survey or amended subdivision plats claiming an exemption inside city limits must be submitted to the community development department.

1. Submittal.

A claimant seeking an exemption under the Act and this chapter must submit to the community development department a claim on the appropriate application form, including a signed certificate of exemption, together with evidence to support the claim and any other information required by this chapter.

2. Review.

The community development department will review the claimed exemption to verify that it is the proper use of the claimed exemption. The city may not impose conditions on an exemption.

a. During this review, community development department staff will visit the proposed site, understand the nature of activity occurring on the site, and must identify any existing or potential zoning conflicts. The community development department must prepare a written evaluation of the claimed exemption, which must be provided to the claimant or the claimant's representative.

b. In assessing the claimant's purpose for the exemption, the community development department will evaluate all relevant circumstances including the prior history of the particular tract in question and the proposed configuration of the tract if the proposed exemption transactions are completed.

c. Where a rebuttable presumption is declared in this chapter, the presumption may be overcome by the claimant with evidence contrary to the presumption. If the community development department concludes that the evidence overcomes the presumption and that from all the circumstances the exemption is justified, the exemption will be allowed. If the community development department concludes that the presumption is not overcome and that from all the circumstances the exemption is not justified, the exemption will be disallowed.

d. If the exemption is allowed, the community development department must so certify in a printed certificate on the certificate of survey or amended plat within 20 business days of submission of a complete application.

e. If the exemption is disallowed, the community development department must provide written notification, within 20 business days of submission of a complete application, of its decision to the person claiming the exemption.

3. Filing requirements.

An amended plat or a certificate of survey of a division of land which is exempt from review must be filed within 180 days of the completion of the survey.

a. Certificates of survey.

A certificate of survey may not be filed by the county clerk and recorder unless it complies with the following procedures for divisions of land exempted from review as subdivisions.

(1) A certificate of survey of a division of land exempted from subdivision review under MCA 76-25-402, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.

(2) If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged recitation of the covenant.

(3) If a certificate of survey invokes the exemption for gifts and sales to members of the landowner's immediate family, the certificate must indicate the name of the proposed grantee, the relationship of the grantee to the landowner and the parcel to be conveyed to the grantee.

(4) If a certificate of survey invokes the exemption for the relocation of common boundary lines:

(a) The certificate of survey must bear the signatures of all landowners whose tracts of record will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of or eliminate a boundary line dividing two or more tracts of record, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation);

(b) The certificate of survey must show the boundaries of the area that is being removed from one tract of record and joined with another tract of record. The certificate of survey may, but is not required to, establish the exterior boundaries of the resulting tracts of record. Unsurveyed portions of the parcels must be labeled, "NOT A PART OF THIS CERTIFICATE OF SURVEY" or "NOT INCLUDED IN THIS CERTIFICATE OF SURVEY". However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation;

(c) If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting tract of record; and

(d) The certificate of survey must contain the following notation: "The area that is being removed from one tract of record and joined with another tract of record is not itself a tract of record. Said area must not be available as a reference legal description in any subsequent real property transfer after the initial transfer associated with the [certificate of survey or amended plat] on which said area is described, unless said area is included with or excluded from adjoining tracts of record."

(5) The certificate of survey must bear, or be accompanied by, a certification by the county treasurer that all taxes and special assessments assessed and levied on the surveyed land have been paid.

(6) For purposes of this section, when the parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner" and "owner" mean the seller of the parcel under the contract-for-deed.

(7) A certificate of survey must not be filed by the county clerk and recorder unless it complies with the uniform standards for certificate of surveys specified in *24.183.1104, ARM* as may be amended or as required by the county clerk and recorder.

(8) Certificates of survey that do not represent a division or aggregation of land, such as those depicting the retracement of an existing parcel and those prepared for informational purposes, must contain a statement as to their purpose and must meet applicable requirements of 24.183.1104. ARM for form and content. If the purpose of a certificate of survey is stated as a retracement or partial retracement, and if multiple tracts of record contained within the parcel's perimeter boundary on the certificate of survey are not individually shown, then the certificate of survey does not expunge the tracts of record unless it represents a division or aggregation of land, contains the acknowledged certificate of the property owner(s) citing the applicable exemption in its entirety, and conforms with the Administrative Rules of Montana for certificates of survey exempted from review as subdivisions.

b. Amended plats.

An amended plat must not be filed by the county clerk and recorder unless it complies with the uniform standards for final subdivision plats specified in *24.183.1107, ARM* as may be amended or as required by the Gallatin county clerk and recorder. A survey document that modifies lots in a platted and filed subdivision must be entitled "amended plat of the (name of subdivision)," but for all other purposes is to be regarded as a certificate of survey.

C. Exemption review criteria.

The following criteria must be used to ensure that exemptions are not claimed for the purposes of evading this chapter or the Act. Appeals regarding a final decision by the community development department that an exemption is an evasion of the Act may be taken as set forth in *38.760.030*.

1. A division of land is created to provide security for mortgages, liens or trust indentures for the purpose of construction, improvements to the land being divided or refinancing purposes.

a. The proper use of the exemption is to provide security for construction mortgages, liens or trust indentures, when a survey of the parcel has been required.

b. The city makes a rebuttable presumption that a division of land that is created to provide security is to evade the Act under the following conditions:

(1) If 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; or

(2) The security is provided for construction or improvements on, or refinancing for, land other than on the exempted parcel.

c. When the security for construction financing exemption is to be used, the landowner must submit, in addition to such other documents as may be required, a written statement explaining:

(1) How many parcels within the original tract will be created by use of the exemption;

(2) Who will have title to the remainder of the original parcel; and

(3) A signed and notarized 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.

d. The written statement and the instruments creating the security must be filed at the same time as the survey with the clerk and recorder.

2. Divisions for the purpose of relocating common boundary lines between adjoining properties.

a. The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land, without creating an additional parcel.

b. Certificates of survey showing the relocation of common boundary lines must be accompanied by:

(1) An original deed exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly described parcel that is acquiring additional land;

(2) Documentation showing the need or reason for the relocation (for example: structure encroachment, surveyor error, or enhancement of the configuration of the property); and

(3) The certificate of survey must bear the signatures of all landowners whose parcels are changed by the relocation, and show that the exemption was used only to change the location of a boundary line dividing two parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation).

c. The city makes a rebuttable presumption that a proposed relocation of common boundary lines is adopted for the purpose of evading the Act, if:

(1) The community development department determines that the documentation submitted according to this section does not support the stated reason for relocation, or an additional parcel is created.

3. Division for the purpose of a single gift or sale in each county to each member of the landowner's immediate family.

   a. Immediate family has the definition given in MCA 76-25-103.

   b. The proper use of the exemption as a gift or sale to a member of the immediate family is to convey one parcel of land to each member of the landowner's immediate family in each county, providing that the use of the exemption creates no more than one additional parcel per qualifying individual of less than 160 acres in size.

   c. A certificate of survey for a family transfer may include more than one exempt parcel if all parcels meet the criteria of this section.

   d. Certificates of survey showing the creation of new parcels of land pursuant to this exemption as a gift or sale to a member of the immediate family must be accompanied by an original deed transferring interest in the parcel being created, or a statement detailing where the deed is in escrow, how long it will be in escrow and authorization to contact the escrow agent for verification.

   e. The certificate of survey for an exemption for a family transfer must indicate the name of the grantee, the relationship of the grantee to the landowner and the parcel to be conveyed to the grantee.

   f. The city makes a rebuttable presumption that a family transfer is adopted for the purpose of evading this chapter and the Act if it is determined that one or more of the following conditions exist:

      (1) The exemption would create more than one additional parcel per qualifying individual of less than 160 acres.

      (2) The member of the landowner's immediate family would have received more than one exempted parcel in the county.

4. Division outside of platted subdivisions by gift, sale or an 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 and the property owner that the divided land will be used exclusively for agricultural purposes.

   a. An agricultural exemption is a division of land made outside of a platted subdivision by gift, sale or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land, revocable only by mutual consent of the city and the transferee/property owner, that the divided land will be used exclusively for agricultural purposes. No building or structure requiring water or sewer facilities must be utilized on such a parcel.

      (1) A change in use of the land for anything other than agricultural purposes subjects the division to this chapter and review as a subdivision under the Act.

5. All other exemptions included in MCA 76-25-402.

a. The exemption is presumed to comply with the Act if the purpose stated is consistent with the description of the exemption in MCA 76-25-402.

b. A certificate of survey or amended plat showing the creation of new parcels of land pursuant to the exemption is required when the exemption creates one or more parcels.

c. Before a court of record orders a division of land, the court must notify the governing body of the pending division and allow the governing body to present written comment on the division;

d. Lots created as described in this section that do not comply with the standards of this chapter are not "nonconforming" lots subject to *38.790.030* and are not individual buildable lots.

D. Correction of errors.

Correction of errors may be made by the submission of a corrected certificate of survey for the city's approval.

Sec. 38.750.150. - **Subdivision certificates.**

The certificates listed in this section must be shown on plats and certificates of survey, as appropriate. Other certificates than the following may be required when the city deems it appropriate. Necessary notarizations of signatures must be consistent with MCA 1-5.

A. Dedication or consent.

All plats of subdivisions must contain a certificate of dedication or certificate of consent signed by the subdivider. In the case of corporate ownership, the proper corporation officer must sign, a corporate notary form must be used, and the corporate seal must be affixed. The certificate of consent is used for plats and exemptions when there are no transfers of land interests to the public. The certificate must read as follows:

1. Certificate of dedication.

CERTIFICATE OF DEDICATION

(I), (We), the undersigned property owner(s), do hereby certify that (I) (We) have caused to be surveyed, subdivided and platted into lots, blocks, streets, and alleys, and other divisions and dedications, as shown by the plat hereunto included the following described tract of land to wit:

Description

(Exterior Boundary Description of Area Contained in Plat and Total Acreage)

The above-described tract of land is to be known and designated as (name of subdivision), City of Bozeman, Gallatin County, Montana; and the lands included in all streets, avenues, alleys, roads, highways, and parks, playgrounds, or public lands or other public improvements shown on said plat are hereby granted and donated to the City of Bozeman for the public use and enjoyment. Unless specifically listed herein, the lands included in all streets, avenues, alleys, roads, highways, and parks or public lands or other public improvements dedicated to the public are accepted for public use, but the city accepts no responsibility for maintaining the same. The owner(s) agree(s) that the city has no obligation to maintain the lands included in all streets, avenues, alleys, roads, highways, and parks, or public lands or other public improvements, hereby dedicated to public use. The lands included in all streets, avenues,

alleys, roads, highways, and parks, or public lands or other public improvements dedicated to the public for which the city accepts responsibility for maintenance include (list specific streets, avenues, alleys, roads highways, and parks or other public lands or other public improvements).

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

DATED this _____ day of _____, _____.

(Acknowledged and notarized signatures of all record owners of platted property)

2. Certificate of consent.

CERTIFICATE OF CONSENT

(I), (We), the undersigned property owner(s), do hereby certify that (I) (We) have caused to be surveyed, subdivided and platted into lots, blocks, and other divisions, as shown by the plat hereunto included the following described tract of land to wit:

Description

(Exterior Boundary Description of Area Contained in Plat and Total Acreage)

The above described tract of land is to be known and designated as (name of subdivision), City of Bozeman, Gallatin County, Montana.

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

DATED this _____ day of _____, _____.

(Acknowledged and notarized signatures of all record owners of platted property)

B. Mortgagee.

In those cases where the area being platted or the plat of subdivision is subject to any liens, mortgages, claims, or other encumbrances by parties or other owners, the following certificate is required:

CONSENT OF MORTGAGEE(S)

(I), (We), the undersigned mortgagee(s) or encumbrancer(s), do hereby join in and consent to the described plat, (I) (We) release (my) (our) respective liens, claims or encumbrances as to any portion of said lands now being platted into streets, avenues, parks or other public areas which are dedicated to the City of Bozeman for the public use and enjoyment.

DATED this _____ day of _____, _____.

(Acknowledged and notarized signature of all encumbrances of record)

C. Parkland.

1. Cash-in-lieu of parkland.

Where there will be a cash donation in-lieu of parkland dedication, plats of subdivision must show the following certificate:

CERTIFICATE ACCEPTING CASH DONATION IN-LIEU OF LAND DEDICATION

Finding dedication of parkland within the platted area of (Subdivision Name) would be undesirable for park and playground purposes, it is hereby ordered by the City of Bozeman, that land dedication for park purposes be waived and that cash-in-lieu, in the amount of dollars, be accepted in accordance with the provisions of the Montana Land Use Planning Act and the Bozeman Municipal Code.

DATED this _____ day of _____, _____.

Signature

City of Bozeman Director of Parks and Recreation

2. Off-site parkland dedication.

Where parkland will be provided off-site, in accordance with *38.420.090.A.4* or *38.420.090.A.4*, plats of subdivision must show the following certificate:

CERTIFICATE ACCEPTING OFF-SITE PARKLAND DEDICATION

Finding an alternative to dedication of parkland, for park and playground purposes within the platted area of (Subdivision Name) is desirable, it is hereby ordered by the City of Bozeman that land dedication for park purpose be provided off-site with land outside of the platted area of (Subdivision Name) in accordance with the provisions of the Montana Land Use Planning Act and the Bozeman Municipal Code. The off-site parkland dedication will be provided with the following described tract(s) of land or easement(s):

Description

(Exterior Boundary Description of Area Contained in Plat/Easement and Total Acreage)

DATED this _____ day of _____, _____.

Signature

City of Bozeman Director of Parks and Recreation

3. Parkland dedication to School District 7.

Where parkland will be provided in accordance with *38.420.100.A.6*, plats of subdivision must show the following certificate:

CERTIFICATE ACCEPTING PARKLAND

DEDICATION TO SCHOOL DISTRICT 7

In as much as an alternative to dedication of parkland, for park and playground purposes within the platted area of (Subdivision Name), would be desirable, it is hereby ordered by the City of Bozeman that required land dedication for park purposes be met with land dedicated to School District 7 in accordance with the provisions of the Montana Land Use Planning Act and the Bozeman Municipal Code. If School District 7 chooses to no longer use the land for school buildings and facilities, the ownership of the land must revert to the City of Bozeman for park purposes and School District 7 must transfer the land to the city with clear title and in a condition meeting the minimum development standards for parks established in *38.420.080*. The land dedication will be provided with the following described tract(s) of land:

Description

(Exterior Boundary Description of Area Contained in Plat and Total Acreage)

DATED this _____ day of _____, _____.

Signature

City of Bozeman Director of Parks and Recreation

Signature

Chairman, School District 7 Board of Trustees

D. Surveyor.

All subdivision plats or certificates of survey must contain a certificate of surveyor which must read as follows:

CERTIFICATE OF SURVEYOR

I, the undersigned, (Type or Print Name), Registered Land Surveyor, do hereby certify that between _____/_____/_____, _____, and _____/_____/_____, _____, I surveyed (Name of Subdivision or Certificate of Survey), and drew the same as shown on the accompanying plat (or certificate of survey) and as described in accordance with the provisions of the Montana Land Use Planning Act and the Bozeman Municipal Code.

DATED this _____ day of _____, _____.

Signature

Printed or Typed Name

Registration No.

(Seal of Surveyor)

E. Improvements.

1. Where improvements are to be installed prior to final plat approval, the final plat of subdivision must contain a certificate of completion of public improvements. The certificate must list all completed and accepted improvements, and must read as follows:

CERTIFICATE OF COMPLETION OF IMPROVEMENTS

I, (Name of Subdivider), and I, (Name of Subdivider's Registered Engineer), a registered professional engineer licensed to practice in the state of Montana, hereby certify that the following improvements, required to meet the requirements of Chapter 38 of the Bozeman Municipal Code or as a condition(s) of approval of (Name of Subdivision), have been installed in conformance with the approved plans and specifications, or financially guaranteed and covered by the improvements agreement accompanying this plat.

Installed Improvements: (List improvements in accordance with *subsection E.1* above).

Financially Guaranteed Improvements: (List improvements in accordance with subsection E.2 below). The subdivider hereby warrants said improvements against any and all defects for a period of two years from the date of acceptance by the City of Bozeman.

The subdivider grants possession of all public infrastructure improvements to the City of Bozeman and the city hereby accepts ownership of all public infrastructure improvements, subject to the above indicated warranty.

Signature of Subdivider	(Date)_____
Signature, Number, and Seal of Engineer	(Date)_____
Signature, Director of Public Works	(Date)_____

2. If all required subdivision improvements will not be installed prior to final plat approval, and the final plat will be recorded subject to an improvements agreement and financial guarantee, this certificate must be modified to also list all improvements not completed.

F. Acceptance of dedications.

When property or improvements are being transferred to the public this certificate is used. The city commission's designated agent must certify acceptance for public use of improvements associated with the plat of subdivision. Said certificate must read as follows:

CERTIFICATE OF ACCEPTANCE OF DEDICATIONS

I, Director of Transportation and Engineering, City of Bozeman, Montana, do hereby accept the dedication to the City of Bozeman for the public use of any and all lands shown on the plat as being dedicated to such use.

DATED this _____ day of _____, _____.

(Signature), Director of Transportation and Engineering

G. Exclusion from MDEQ review for sanitation.

The following certificate must be added to all subdivision plats to certify that adequate stormwater drainage and adequate municipal facilities will be provided.

CERTIFICATE OF EXCLUSION FROM MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY REVIEW

The (Name of Subdivision), Gallatin County, Montana, is within the City of Bozeman, Montana, a first-class municipality, and within the planning area of the Bozeman land use plan which was adopted pursuant to the Montana Land Use Planning Act, and can be provided with adequate stormwater drainage and adequate municipal facilities. Therefore, under the provisions of MCA 76-4-125, this subdivision is excluded from the requirement for Montana Department of Environmental Quality review.

DATED this _____ day of _____, _____.

(Signature), Director of Transportation and Engineering

City of Bozeman, Montana

H. County treasurer.

All final subdivision plats, and certificates of survey unless prepared for a subdivision exemption to provide security for construction mortgages, liens or trust indentures, must show the following executed certificate of county treasurer:

CERTIFICATE OF COUNTY TREASURER

I, (Name of County Treasurer), Treasurer of Gallatin County, Montana, do hereby certify that the accompanying plat (or certificate of survey) has been duly examined and that all real property taxes and special assessments assessed and levied on the land to be subdivided are paid.

DATED this _____ day of _____, _____.

(Signature), Treasurer of Gallatin County

I. Clerk and recorder.

All plats or certificates of survey must show the following certificate of clerk and recorder:

CERTIFICATE OF CLERK AND RECORDER

I, (Name of Clerk and Recorder), Clerk and Recorder of Gallatin County, Montana, do hereby certify that the foregoing instrument was filed in my office at _____ o'clock, (a.m. or p.m.), this _____ day of _____, _____, and recorded in Book _____ of Plats on Page _____, Records of the Clerk and Recorder, Gallatin County, Montana.

(Signature), Clerk and Recorder

J. Certification of use of exemption claim.

The following certificates must be provided in a printed certificate on the amended plat or certificate of survey for allowed exemptions from review as subdivisions:

1. Certificate of governing body to authorize exemption from subdivisions review.

CERTIFICATE OF GOVERNING BODY - USE OF EXEMPTION

I, (Community Development Director), do hereby certify that the accompanying (Certificate of Survey or Amended Plat) has been duly reviewed, and has been found to conform to the requirements of the Montana Land Use Planning Act, and the Bozeman Municipal Code.

DATED this _____ day of _____, _____.

(Signature), Community Development Director

2. Certificate of exemption.

Reference to exclude the survey from state department of environmental quality review can also be added to this certificate, as appropriate.

LANDOWNER CERTIFICATE OF EXEMPTION

(I), (We) certify that the purpose of this survey is to (state exemption), and therefore this survey is exempt from review as a subdivision pursuant to MCA (add appropriate subsection).

DATED this _____ day of _____, _____.

(Acknowledged and notarized signatures of all record owners of surveyed property)

K. Conditions of approval notifications and certifications.

The following certificate must be required on the conditions of approval sheet:

NOTIFICATIONS AND CERTIFICATIONS

(I), (We), the undersigned property owner(s), do hereby certify that the text and/or graphics shown on the Conditions of Approval sheet(s) represent(s) requirements by the governing body for final plat approval and that all conditions of subdivision application have been satisfied.

(I), (We), the undersigned property owner(s), do hereby certify that the information shown is current as of the date of this certification, and that changes to any land-use restrictions or encumbrances may be made by amendments to covenants, zoning regulations, easements, or other documents as allowed by law or by local regulations.

(I), (We), the undersigned property owner(s), do hereby certify that (I) (We) acknowledge that federal, state, and local plans, policies, regulations, and/or conditions of subdivision approval may limit the use of the property, including the location, size, and use as shown on the Conditions of Approval sheet or as otherwise stated. Buyers of property should ensure that they have obtained and reviewed all sheets of the plat and all documents recorded and filed in conjunction with the plat. Buyers of property are strongly encouraged to contact the local planning department and become informed of any limitations on the use of the property prior to closing.

DATED this _____ day of _____, _____.

(Acknowledged and notarized signatures of all record owners of platted property)

L. Certificate of completion of non-public improvements.

Where non-public improvements are to be installed prior to final plat approval, the final plat of subdivision must contain a certificate of completion of non-public improvements. The certificate must list all completed and accepted improvements, and must read as follows:

CERTIFICATE OF COMPLETION OF NON-PUBLIC IMPROVEMENTS

I, (Name of Subdivider), hereby certify that the following non-public improvements, required to meet the requirements of Chapter 38 of the Bozeman Municipal Code or as a condition(s) of approval of (Name of Subdivision), have been installed in conformance with any approved plans and specifications prepared in accordance with the standards of Chapter 38 or other City design standards, or have been financially guaranteed and are included with the subdivision improvements agreement accompanying and recorded with this plat.

Installed Improvements: *(LIST ITEMS EXCLUDING THOSE LISTED BELOW).*

Financially Guaranteed Improvements: *(LIST ITEMS OR STATE NONE).*

I, (Name of Subdivider) hereby warrant said improvements against any and all defects for a period of two years from the date of acceptance by (Name of Property Owners' Association). Unless specifically listed in the Certificate of Dedication, the city accepts no responsibility for maintaining the same.

The subdivider hereby grants ownership of all non-public infrastructure improvements to the (Name of Property Owners' Association) created by Document Number _____ (To be filled in when recorded)

By: *(Signature of Subdivider)*

Date: _____

M. Certificate of completion of water-related improvements.

When irrigation of public facilities are to be installed prior to final plat approval, the final plat of subdivision must contain a certificate of completion of water-related improvements. The Director of Parks must sign on behalf of the city if the improvements are located in a park and the Director of Transportation and Engineering must sign on behalf of the city if the improvements are located on other municipal property. If necessary both signatures must be provided. The certificate must list all completed and accepted improvements, including but not limited to all irrigation system record drawings, and must read as follows:

CERTIFICATE OF COMPLETION OF WATER-RELATED IMPROVEMENTS

I, (Name of Subdivider), hereby certify that the following improvements, necessary to meet the requirements of Chapter 38 of the Bozeman Municipal Code or as a condition(s) of approval of (Name of Subdivision), have been installed in conformance with the approved plans and specifications, or financially guaranteed and included with the improvements agreement accompanying this plat.

Installed Improvements: *(List improvements).*

Financially Guaranteed Improvements: *(List improvements).*

The subdivider hereby warrants said improvements against any and all defects for a period of two years from the date of acceptance by the City of Bozeman.

The subdivider hereby grants ownership of all public infrastructure improvements to the City of Bozeman and the city hereby accepts ownership of all public infrastructure improvements, subject to the above indicated warranty.

Signature of Subdivider (Date)_____

Signature, Director of _____ (Date)_____

N. Certificate of governing body.

The city commission's designated agent must certify approval of all plats of subdivision. Said certificate must read as follows:

CERTIFICATE OF GOVERNING BODY APPROVING PLAT

I, Community Development Director, City of Bozeman, Montana, do hereby certify that the accompanying plat has been duly examined and has found the same to conform to the law and approves it.

DATED this _____ day of _____, _____.

(Signature), Community Development Director

DIVISION 38.760. - **APPEALS, DEVIATIONS, DEPARTURES AND VARIANCE PROCEDURES**

Sec. 38.760.010. - **Purpose and review authority.**

A. This division is adopted:

1. To establish procedures for granting relief from the requirements of this chapter subject to the standards of this division in order to preserve equitable implementation of the law, prevent special treatment to particular parties and preserve the various rights established by the state and United States constitutions of all persons subject to this chapter;
2. To allow for appeals from decisions made approving, approving with conditions or denying applications for development approval;
3. To provide through appeals of interpretations a procedure for consideration of and resolution of disputes regarding the meaning and implementation of this chapter;
4. To provide through deviations a procedure for flexibility, as a means to support historic preservation, in the application of the standards of this chapter in overlay districts as provided for in this chapter;
5. To provide through departures a procedure for applicants to propose alternative design treatments provided such departures meet the purpose of the particular standard and any additional departure criteria set forth;
6. To provide through variances a procedure for relief from the occasional inequities created by the physical standards of this chapter when such standards create a substantially unequal burden on a particular parcel of land in a fashion that would otherwise prevent the reasonable use of property, owing to physical circumstances unique to that parcel;
7. To prohibit the granting of variances that would be contrary to the public interest and endanger public health, safety and welfare; and
8. To provide a procedure to request reasonable accommodation for individuals and groups seeking equal access to housing under applicable non-discrimination laws in the application of the standards of this chapter.

B. The review authority for each action in this division is established by *38.700.010*.

Sec. 38.760.020. - **Meeting and notice requirements.**

The community development director must give public notice as required by *38.730* of all public meetings or public comment periods.

Sec. 38.760.030. - **Appeals.**

A. All appeals follow the requirements of MCA 76-25-503 as expanded upon in this section.

B. Denial of requests for waiver or alteration of applicable regulations is not a decision subject to appeal of an administrative decision.

C. Filing of appeal. An appeal must be taken by filing with the department of community development a documented appeal and appeal fee. Upon receipt of the completed appeal the department of community development must inform the review authority from whom the appeal is being made of the submission of the appeal. An appeal of the decision of the planning commission to the city commission is a separate application and subject to separate filing, processing, and fee requirements.

D. Notice of appeal. Once a complete appeal has been filed and date for consideration of the appeal is set per *subsection G* below, notice of the appeal must be provided per *38.730*. The date, time and location for the consideration of the appeal before the appellate review authority must be included in the required notice of the appeal.

E. Scheduling. Upon receipt of a complete appeal application the city will timely schedule consideration of the appeal taking into account other previously scheduled agenda items.

F. Material. The material to be considered by the review authority is the record of the project review, including the review authority's decision being appealed, in addition to materials that may be submitted during the processing and review of the appeal.

G. Procedure of the appeal. At the consideration of the appeal, the following procedure must be followed:

1. Only arguments and evidence relevant to the application may be presented. The presentation must be made in the following order, subject to such limitations, in time and scope as may be imposed at the discretion of the presiding officer:

    a. Explanation of the application and nature of the appeal and presentation by administrative staff;

    b. Presentation of position by the appellant and/or representative;

    c. If requested, presentation by landowner if landowner is different than the appellant;

    d. Presentation by any person who is a proponent or an opponent of the application; and

    e. Motion, discussion and vote by the review authority.

2. No person making a presentation may be subject to cross-examination except that members of the appellate review authority and the city attorney may inquire of presenters for the purpose of eliciting information and for the purpose of clarifying information presented.

H. Alternative actions available to the appellate body. At the conclusion of the consideration of the appeal, the review authority may uphold, amend, or overturn the decision being appealed.

I. Standard of review. The review authority reviews an administrative decision de novo.

J. Construction hold. During the time of the appeal all construction must cease and may not commence unless authorized to do so by the appellate review authority.

Sec. 38.760.040. - **Administrative Deviations.**

All requests for deviations in the neighborhood conservation overlay district (NCOD) must be decided by the review authority established in *38.700.010*. Deviations may only be applied for in conjunction with submittal of a development proposal of a type authorized by *38.740*. Standards and criteria for award of deviations are contained in *38.240.020*. A deviation may be granted only in a specific instance permitting a nonconformity in order to accomplish the specific objectives of *38.240.020.G*, and provided the standards and criteria imposed are met. Deviations must not be granted for relief from procedural requirements, or to waive or vary the application of an ordinance provision imposing specific safety requirements, or to waive or vary the application of ordinances or statutes other than this chapter.

Sec. 38.760.050. - **Departures.**

A. Overview and purpose.

This chapter provides for a number of specific departure opportunities to development standards. The purpose is to provide applicants with the option of proposing alternative design treatments provided such departures meet the purpose of the particular standard and any additional departure criteria set forth for the particular departure opportunity.

B. Departures are voluntary.

This provision allows the flexibility for applicants to propose alternative designs on a voluntary basis, provided they meet the purpose of the standard and applicable departure criteria as noted above.

C. Applicability.

Departure opportunities are available only to those specific standards that allow for departures.

D. Procedures.

Permit applications that include departure requests go through the standard review procedures set forth in this article depending on the application type.

E. Approval criteria.

Project applicants must successfully demonstrate to the review authority how the proposed departure meets the purpose(s) of the standard and other departure criteria relevant to the specific standard.

F. Documentation.

The review authority must document the reasons for approving all departures (to be maintained with project application records) for the purpose of providing consistency in decision-making by the city.

Sec. 38.760.060. - **Variances.**

A. Application.

A request for one or more variance from land or building form design standards or subdivision design and improvement standards must be made by filing an application, with appropriate fees, with the community development department. Submittal must be in conjunction with an application for development and must be accompanied by the materials described in *38.710.150*.

B. Investigation of facts.

The review authority must cause to be made such investigation of facts bearing on the application as will provide necessary information to ensure that the action on each such application is consistent with the purpose of this chapter.

C. Criteria for consideration and decision.

In acting on an application for a variance, the review authority must designate such lawful conditions as will secure substantial protection for the public health, safety and general welfare, and must issue written decisions setting forth factual evidence that the variance meets the following standards in that the variance:

1. Is not detrimental to public health, safety, or general welfare; Is necessary due to conditions peculiar to the property, such as physical surroundings, shape, or topographical conditions;
2. Strict application of the regulations to the property results in an unnecessary hardship to the owner as compared to others subject to the same regulations and that is not self-imposed. Hardship does not include difficulties arising from actions, or difficulties otherwise self-imposed, by the applicant or previous predecessors in interest, or potential for greater financial returns;
3. May not cause a substantial increase in public costs; and
4. May not place the property in nonconformance with any other regulations.
5. In addition to the criteria specified above, in the case of a variance relating to the flood hazard provisions of *article 6*:
    a. Variances may not be issued for areas within a floodway if any additional increase in flood elevations or velocities after allowable encroachments into the floodway fringe would result;
    b. Variances may only be issued upon:
        (1) A determination that the granting of a variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create nuisances, cause fraud, victimize the public, or conflict with existing state and local laws;
        (2) A determination that the proposed use would be adequately floodproofed as specified in *article 6* of this chapter;
        (3) A determination that a reasonable alternate location outside the floodplain is not available;
        (4) A determination that the variance requested is the minimum necessary to afford relief, considering the flood hazard; and
        (5) Approval of the state department of natural resources and conservation, upon request from the city, prior to formally approving any permit application that is in variance to these regulations.

D. Authorization and limitations on approval.

1. The review authority may, after public notice, opportunity for public comment, and consideration of the application, deny, approve or conditionally approve all requests for variances meeting all the criteria of this section, including:

   a. Requests to modify dimensional or other numerical requirements of this chapter;

   b. Requests to modify flood hazard district requirements subject to the provisions of article 6 of this chapter, except that no variance may be granted to allow construction of buildings within the floodway of a 100-year frequency flood as defined in title 76, chapter 5, Montana Code Annotated (MCA 76-5-101 et seq.).

2. The scope and extent of the variance must be limited to the minimum relief necessary to provide reasonable use of the property.

3. In no case may the review authority grant variances to allow uses not already permitted pursuant to this chapter or alter administrative requirements of this chapter. Permission to change uses allowed on a parcel may be sought through a zone map amendment or an amendment to the text of the applicable zoning district.

4. Notifications of approval for variances related to flood hazard requirements of article 6 of this chapter must notify the applicant that:

   a. The issuance of a variance to construct a building below the 100-year floodplain elevation will result in increased premium rates; and

   b. Such construction below the 100-year flood elevation increases risks to life and property.

E. Effective time for decisions; variances void when.

The decision of the review authority is final except as provided in *38.760.030*. If a building permit or land use permit is not obtained for the subject property within one year from the date of the review authority's decision for site development or construction commenced within the approval period of a preliminary plat, the variance will be automatically canceled and become null and void. A variance is a lawful non-conformity. When a site is redeveloped the provisions of *38.790* and *38.550.200* apply.

F. Planned development zone.

Where the standards and requirements of this chapter are proposed to be modified through a planned development zone, the applicable process is a review of a planned development zone rather than a variance.

Sec. 38.760.070. - **Reasonable accommodation.**

A. Applicability.

1. A request for reasonable accommodation may be made by the following:

   a. Any disabled person, their representative, or any entity, when the application of a requirement of this chapter acts as a barrier to fair housing opportunities based on their physical or mental disability or handicap as defined under the applicable non-discrimination laws.

b. Any person, their representative, or any entity, when the application of a requirement of this chapter acts as a barrier to fair housing opportunities based on race, color, religion, sex, creed, familial status, marital status, age, or national origin, as defined under the applicable non-discrimination laws, or because of actual or perceived sexual orientation or gender identity.

2. A request for reasonable accommodation may include a modification or exception to the rules, standards, and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide equal opportunity to housing of their choice.

3. A reasonable accommodation is granted to the applicant that needs the accommodation and does not apply to successors in interest to the site.

4. A reasonable accommodation may be granted in compliance with this chapter without the need for the approval of a variance.

B. Procedure.

1. Application.

A request for reasonable accommodation must be submitted on an application form provided by the community development department or in the form of a letter to the community development director, and must contain the following information:

a. The applicant's name, address, and telephone number;

b. Address of the property for which the request is being made;

c. Authorization from the owner of the subject property for the applicant to request the reasonable accommodation;

d. The current actual use of the property;

e. The basis for the claim as follows:

(1) That the individual or group of individuals is considered physically or mentally disabled or handicapped under the applicable non-discrimination laws, including identification and description of the disability or handicap which is the basis for the request for accommodation and current, written medical certification and description of disability or handicap and its effects on the person's medical, physical or mental limitations; or

(2) That the individual or group of individuals is a protected class based on race, color, religion, sex, creed, familial status, marital status, age, or national origin, as defined under the applicable non-discrimination laws, including identification and description of the protected class which is the basis of the request for accommodation.

f. The code provision, regulation, procedure and/or policy from which reasonable accommodation is being requested;

g. The type and extent of reasonable accommodation sought;

h. The reason(s) why the accommodation is reasonable and necessary for the needs of the individual(s), including a summary of any potential alternatives contained in this chapter

considered in requesting the accommodation and why other alternatives contained in this chapter are not feasible;

i. Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the accommodation; and

j. Other supportive information deemed necessary by the department to facilitate proper consideration of the request, consistent with applicable non-discrimination laws.

2. Review with other land use applications.

If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval then the applicant must file the information required by *subsection 1* of this section for concurrent review of the request for reasonable accommodation with the application for discretionary approval.

3. Review authority.

a. Community development director.

A request for reasonable accommodation must be reviewed by the community development director if no approval is sought other than the request for reasonable accommodation. No fee may be charged for the review of such a request for reasonable accommodation.

b. Other review authority.

A request for reasonable accommodation submitted for concurrent review with another discretionary land use application must be reviewed by the authority responsible for the discretionary land use application. No fee in addition to that charged for the other discretionary land use application may be charged for the review of such a request for reasonable accommodation.

4. Review.

a. Community development director.

The director must make a written determination within 20 calendar days of the application being deemed complete and either grant, grant with conditions, or deny a request for reasonable accommodation. If necessary to reach a determination on the request for reasonable accommodation, the director may request further information from the applicant consistent with applicable non-discrimination laws, specifying in detail the information that is required. In the event that a request for additional information is made, the 20-day period to issue a decision must be stayed until the applicant responds to the request.

b. Other review authority.

The written determination on whether to grant or deny the request for reasonable accommodation must be made by the authority responsible for the discretionary land use application in compliance with the applicable review procedure for the discretionary review.

5. Notice.

a. Community development director.

No advance notice or public hearing is required for consideration of reasonable accommodation requests by the community development director.

b. Other review authority.

Requests for reasonable accommodation subject to review by other review authorities require public notice and a public review process pursuant to the requirements for the other discretionary land use application that is the subject of the review, including all public notice provisions pursuant to *38.730*.

6. Balancing rights and requirements.

In reviewing applications for requests for reasonable accommodation, the city must balance:

a. The privacy rights and reasonable request of an applicant for confidentiality; with

b. The land use requirements for notice and public hearing, factual findings and rights to appeal, in the city's requests for information, considering an application, preparing written findings and maintaining records for a request for reasonable accommodation.

c. Any document identifying the disability or medical condition of any specific person must be treated as confidential and is subject to disclosure by the city for any reason, including for compliance with the Open Records Act, unless ordered to do so by a court of competent jurisdiction and notice is given to the person who provided the document to the city. Specifically, any medical records regardless of source, including statements of medical providers, must not be disclosed. For any other type of document, such as an application or determination, the document may be subject to disclosure, but only after the nature or description of the person's disability or medical condition is redacted by the city. A statement regarding the city's handling of information subject to this provision must be printed on the city's reasonable accommodation application form, posted on the city's website, and printed at the bottom of any written document issued by the city determining a reasonable accommodation application.

C. Findings—Other requirements.

1. Findings.

The review authority must approve the application, with or without conditions, if it can make the following findings:

a. The housing will be used by a disabled person or a person from a protected class;

b. The requested accommodation is necessary to make specific housing available to a disabled person or a person from a protected class;

c. There are no uses identified in the allowed use table found in *38.300* for which the use proposed in the request for reasonable accommodation would qualify;

d. The requested accommodation would not impose an undue financial or administrative burden on the city; and

e. The requested accommodation would not require a fundamental alteration in the nature of the city land use planning and zoning program.

2. Other requirements.

a. An approved request for reasonable accommodation is subject to the applicant's compliance with all other applicable zoning regulations.

b. A modification approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land.

c. Where appropriate, the review authority may condition its approval on any or all of the following:

(1) Inspection of the property periodically, as specified, to verify compliance with this section and any conditions of approval;

(2) Removal of the improvements, where removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists;

(3) Time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;

(4) Recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;

(5) Measures to reduce the impact on surrounding uses;

(6) Measures in consideration of the physical attributes of the property and structures;

(7) Other reasonable accommodations that may provide an equivalent level of benefit and/or that will result in reduced variation or waiver of otherwise applicable standards specified for the zone district; and

(8) Other conditions necessary to protect the public health, safety and welfare.

DIVISION 38.770. - **TEXT AND ZONING MAP AMENDMENTS**

Sec. 38.770.010. - **Initiation of amendments.**

A. The city commission may, from time to time, amend this chapter. An amendment may be initiated by the city commission upon a vote of a majority of its members, on petition of at least 15% of the electors of the local government jurisdiction to which the regulations apply, as registered at the last general election, or upon petition from an owner of property within the city.

B. Whenever any person or entity allowed to initiate an amendment desires a change in regulations, they may file with the community development department, on forms provided by the city for this purpose, an application duly signed and notarized by that person or authorized representative of that entity requesting an amendment or change of regulations.

1. When the application initiated by an owner of property, bearing the property owners' signature, is filed with the department it must contain or be accompanied by:

   a. All the data and information pertinent to the understanding and judgment of the proposal, as may be prescribed by the commission for that purpose so as to ensure the fullest practicable presentation of facts for the permanent record; and

   b. A notarized statement by at least one of the owners of property within the area subject to the proposed changes attesting to the truth and correctness of all facts and information presented with the petition.

C. A land owner or group of landowners may a request to change zoning district including on property which they do not own, such as a request to establish a different zoning classification for a block or other group of properties, by filing with the community development department on forms provided by the city for this purpose an application duly signed by the owners of no less than 51 % of either the area of lots or number of lots of the affected property requesting an amendment for such property. When the application, bearing property owners' signatures, is filed with the department it must contain or be accompanied by:

1. All the data and information pertinent to the understanding and judgment of the proposal, as may be prescribed by the commission for that purpose so as to ensure the fullest practicable presentation of facts for the permanent record; and

2. A notarized statement by at least one of the owners of property within the area proposed to be changed attesting to the truth and correctness of all facts and information presented with the petition.

D. An application containing less than the required number of signatures is incomplete and invalid and will not be processed.

E. Should the applicant choose not to provide required information after an application has been found insufficient, the city may proceed with review of the application. Lack of sufficient application is an adequate basis for denial of the application regardless of other merit of the application.

F. Application termination. If an applicant does not provide the required information in response to written notice of insufficiency for a period of 180 days, the city may deem the application withdrawn and close the application. This period may be extended by the community development director upon written request by the applicant before the 180 days has lapsed.

G. Should an applicant choose not to provide required information after an application has been found insufficient, the city may proceed with review of the application. Lack of sufficient application is an adequate basis for denial of the application regardless of other merit of the application.

Sec. 38.770.020. - **Amendments; investigation requirements.**

A. Upon initiation of an amendment, the city must cause to be made an investigation of facts bearing on the amendment. The purpose of the investigation is to provide the necessary information to ensure that the decision on an amendment is consistent with the requirements of the Montana Land Use Planning Act. The city must evaluate the criteria of MCA 76-25-304(2) when considering amendments affecting zoning.

B. The city must evaluate the criteria of MCA 76-25-403(2) when considering amendments affecting the subdivision review process and standards applicable only to subdivisions.

C. The city commission must consider the recommendation of the planning commission and staff regarding the consistency of the proposed amendment with the zoning or subdivision purposes established in the Montana Land Use Planning Act

D. The governing body may not adopt or amend a zoning regulation, zoning map amendment, or subdivision regulation unless the governing body finds that:

1. The regulation or map amendment is in substantial compliance with the land use plan; and

2. The impacts resulting from development in substantial compliance with the proposed zoning or subdivision regulation or amendment to the zoning map have been made available for public review and comment and have been fully considered by the governing body.

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

4. A subdivision regulation is in substantial compliance with the zoning regulations.

Sec. 38.770.030. - **Public hearing procedures and requirements.**

A. The city commission and planning commission must hold one or more public hearings on the matters referred to in such initiation or petition at which parties in interest and the public must have an opportunity to be heard. Notice of public hearings is required per *38.230*. At the hearings, the city commission and planning commission must determine whether or not there are additional or new impacts not previously analyzed through the city's land use plan per the Montana Land Use Planning Act.

B. Any text amendment must be considered at public hearing(s) before the city commission, after receiving a recommendation from the planning commission. The planning commission must hold public hearing(s) on the amendment prior to making their recommendation.

C. Recommendations to the city commission and other official actions by the planning commission will only be official if made by at least a majority of a quorum of the body.

D. The City Commission may approve, deny, or modify before approval a proposed amendment.

E. If the city commission intends to adopt a zoning designation different than that applied for, the hearing must be continued for a minimum of two weeks to enable all parties to consider potential impacts of the different zoning designation.

DIVISION 38.780. - **IMPROVEMENTS AND SECURITIES**

Sec. 38.780.010. - **Purpose and applicability.**

A. This division provides standards and procedures relating to the installation of physical improvements and compliance with requirements related to development. As these improvements are necessary to meet requirements of the law and to protect public health, safety and general welfare and other purposes of this chapter it is also necessary to provide means by which their installation can be ensured. Such improvements may include, but are not limited to, design elements such as landscaping or architectural features; and infrastructure, such as parking facilities, storm drainage facilities, pedestrian walkways, irrigation, and public utilities. Furthermore, in some situations it is in the best interest of the person conducting development to be able to provide security for the completion of certain work and be able to begin utilization of a development sooner than would otherwise be possible if all improvements had to be physically installed before use could begin. This article therefore protects the public health, safety, and welfare and sources of public funding by:

1. Ensuring completion of required improvements or compliance with other requirements of development to an acceptable standard as required in Montana law or these regulations;
2. Providing a buyer or lessee protection while allowing a person undertaking development to proceed with sales or leases before the project is totally complete, especially for multi-phased projects;
3. Ensuring adequate warranty or maintenance, when appropriate, of improvements;
4. Providing for mechanisms to ensure performance of or conformance with conditions of approval or development requirements; and
5. Accomplishing the purposes listed in this *subsection A* through mechanisms that reduce the need to rely on costly litigation to accomplish those purposes.

B. This division applies to all subdivisions and site developments as follows:

1. Subdivisions must install or provide security for installation of improvements prior to final plat as set forth in this article.
2. Site developments, including all developments that are not subdivisions, must install improvements or provide security for installation prior to routing for final occupancy review or as set forth in this article.
3. The city may determine the nature and timing of required installation of improvements as part of the subdivision or site development process. When necessary to protect the health, safety, and general welfare of the public, and ensure the function and viability of development, installation of certain improvements may not be allowed to be delayed and must be installed before use of the property or sale of the property.

Sec. 38.780.020. - **Standards for improvements.**

A. General.

The developer must comply with the following procedures and standards for the installation of development improvements, including parks.

1. Construction routes.

For all developments, a construction route map must be provided showing how materials and heavy equipment will travel to and from the site. The route must avoid, where possible, local or collector streets or streets where construction traffic would disrupt neighborhood residential character or pose a threat to public health and safety.

2. Protection of existing improvements.

The developer, and the developer's contractors and suppliers are jointly and severally responsible to ensure that existing improvements are not damaged or rendered less useful by the operation of the developer, and the developer's contractors or suppliers. Such protection of improvements may include requirements for cleaning of vehicles leaving a construction site. This provision is intended to preclude damage to existing roads, streets, water, landscape, irrigation, sewer and drainage systems. The city may instruct the developer as to the streets or roads to be used for access by construction equipment, and the developer must require the same from the developer's contractors and their suppliers. The city may require the developer to post a security to guarantee repair of damages.

B. Improvements to be dedicated to the public.

1. Plans and specifications.

Engineering and survey plans, specifications and reports required in connection with public improvements and other elements of the subdivision, or other development required by the city, must be prepared by a registered engineer or a registered land surveyor as applicable, licensed in the state of Montana, as their respective licensing laws allow. The plans and specifications must be prepared in compliance with the City of Bozeman Design and Construction Standards, park design standards, the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual, and other regulations and policies, as applicable. Plans and specifications for non-engineering improvements must be prepared by a person whose qualifications are acceptable to the city department with responsibility for that type of improvements. Plans and specifications for non-engineering improvements must be prepared in compliance with any applicable adopted requirements of the City of Bozeman Design and Construction Standards.

2. Scope of work.

The purpose of these regulations is to provide standards by which the contractor and the developer must execute their respective responsibilities and guarantee proper construction and completion in every detail of the work in accordance with the plans, specifications and terms set forth under these regulations.

a. The developer must furnish the plans, specifications and typical sections for approval by the city.

b. The city may make or cause to be made any reasonable changes, alterations, amendments and additions to the standard specifications for infrastructure or park improvements.

c. The city may require all work to be done to support the subdivision or site development, including off-site improvements.

3. Control of work.

During the course of construction, and at the completion of each phase of a project, the developer's registered civil engineer, or other person acceptable to the city, must submit a statement that the improvements have been inspected and constructed in accordance with the approved plans and specifications. Prior to making any changes, the developer's engineer must notify and receive written approval or disapproval from the city for any changes in approved plans and specifications.

4. Improvement procedure.

a. Approval of the improvement plans and specifications must be completed before installation of improvements or entering into an agreement where security is to be provided for the completion of the improvements.

b. The procedure for submittal, review, and approval of improvement plans and specifications is contained in the City of Bozeman Design and Construction Standards, and must be followed by the developer and the developer's contractors. All plans and specifications related to park and public trail improvements must be submitted to the parks division for review and approval. All plans and specifications related to landscaping and irrigation must conform to requirements outlined in the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual.

c. After the preliminary plat has received approval or conditional approval, and before the final plat is submitted, the developer must either install the required improvements or enter into an agreement with the city securing the installation and performance of the improvements.

d. After a final site plan is approved, subject to *38.780.030*, and prior to final routing review for the occupancy of any buildings, the developer must either install the required improvements or enter into an agreement with the city securing the installation and performance of the improvements.

5. Sanitary facilities.

Water supply, sewage disposal and solid waste disposal systems must meet the minimum standards of the city and the Montana Department of Environmental Quality as required by MCA 76-4-101 through 76-4-135, and regulations adopted pursuant thereto, and are subject to the approval of the city.

C. Private improvements.

Improvements must be constructed as shown on the approved final site plan, final plat, or plans and specifications, as applicable. The developer is responsible for coordinating installation with all necessary parties and to restore to its original condition any public improvements, private improvements, or property damaged during installation of improvements.

Sec. 38.780.030. - **Completion of improvements.**

A. General.

The applicant must provide certification by the architect, landscape architect, engineer or other applicable professional that all improvements to be dedicated to the public were installed in accordance with the approved site plan, plans and specifications, or plat as applicable. For required private improvements, the applicant must provide certification by the architect, landscape architect, engineer or other applicable professional that all improvements, including, but not limited to, landscaping, irrigation, ADA accessibility requirements, private infrastructure, and other required elements were installed in accordance with the approved site plan, plans and specifications, or plat as applicable, unless a waiver of certification in whole or part is explicitly approved by the DRC.

1. Improvements to be dedicated to the public.

Improvements to be dedicated to the public, such as water mains, sewer mains, parkland and related improvements, landscape, irrigation, and public streets, must be:

a. Installed by the developer, or when authorized by the city secured per *38.780.060* and *38.780.080*, in accordance with the approved plans and specifications;

b. Certified by a registered professional civil engineer, licensed in the State of Montana, or other appropriate professional acceptable to the city;

c. Accepted by the cituy prior to the approval of the final plat, building permit, final routing for the review of the issuance of a cerficate of occupancy other identified benchmark as appropriate.

d. Provided with city ownership of water rights beneficially used for irrigation of the dedicated parkland.

2. Record drawings.

a. Record drawings and project certification complying with the City of Bozeman Design and Construction Standards, including timing for submittal of materials, must be provided by a civil engineer licensed in the State of Montana or other appropriate professional acceptable to the city prior to final plat approval for subdivisions, final routing for occupancy, or release of security associated with the improvements to be dedicated to the public.

b. Record drawings complying with the City of Bozeman Design and Construction Standards, including timing for submittal of materials, must be provided prior to final plat approval for subdivisions, final routing for occupancy, or release of security associated with the improvements to be dedicated to the public.

(1) Public street or road improvements must be developed to adopted city standards.

3. Public right-of-way lighting.

Lighting, as required in *38.560* must be incorporated into all development. Prior to final plat approval, lighting must be installed or secured. If the lighting is secured, it must be considered as part of the required street improvements and building permits must not be issued until the improvements are installed, except when concurrent construction is an identified purpose of

the initial project review and approved pursuant to the criteria established in *subsection D* of this section.

4. Private improvements and other required improvements.

Improvements, including, but not limited to, private parks or open space, landscaping, paving, and irrigation must be installed in accordance with the approved preliminary plat or site plan by the developer and inspected and found to comply with the city standards and requirements prior to the approval of the final plat, routing for final occupancy review, or other identified benchmarks as appropriate. All improvements required as part of a subdivision must be installed and accepted, or secured in accordance with an improvements agreement, prior to final plat approval.

B. Completion time for subdivisions.

1. Improvements.

All subdivision improvements, including parks, must be constructed and completed as approved by the city.

a. All public infrastructure improvements must be installed prior to the issuance of a building permit for any lot within a subdivision, except when concurrent construction of public infrastructure and private building improvements is an identified purpose of the initial project review and approved pursuant to the criteria established in subsection D below.

b. The subdivider must meet the requirements of either subsection (1) or (2) for completion of street improvements. The option must be specified in the preliminary plat submittal. Should the applicant not identify which option is desired, the option presented in subsection B.1.b.(1) of this section must be required. Altering the choice of option after approval of the development constitutes a material modification to the project and requires re-review of the project for modification to the approval subject to the provisions of *38.100.070*.

(1) The subdivision public infrastructure improvements must be installed prior to final plat approval. This requirement may be modified by the review authority where dictated by circumstances, such as cold weather conditions that do not permit paving or installation of landscape plantings, and where acceptable security for the ultimate development of the public infrastructure is provided; or

(2) The subdivider must enter into an improvements agreement guaranteeing the completion of the paving, curb, gutter, storm drainage, street lighting, sidewalks, required boulevard landscape and irrigation, or other street infrastructure improvements not yet completed. The improvements agreement must provide security, as explained in this division. However, at a minimum, the plans and specifications for the street improvements must be approved by the review authority prior to final plat approval. Building permits will not be issued until the street improvements are completed and accepted by the city, except when concurrent construction is an identified purpose of the initial project review and approved pursuant to the criteria established in *subsection D* of this section.

C. Completion time for site development.

Whenever any building lots or building sites are created inside the city limits, municipal water distribution systems, municipal sanitary sewer collection systems, streets, and stormwater collection, treatment, and detention or retention systems must be provided to the lot or site. Each building site must utilize and be connected to both the municipal water distribution and municipal sanitary sewer collection systems. Subject to the provisions of subsection 1. below, these improvements must be designed, constructed, and installed according to the standards and criteria as adopted by the city and approved by the review authority prior to the issuance of any building permits, except when concurrent construction is an identified purpose of the initial project review and approved pursuant to the criteria established in *subsection D* below.

1. Provision of municipal central water distribution, municipal sanitary sewer collection systems, streets, and stormwater systems means that the criteria in either a. or b. below are met as follows:

    a. Water, sewer, stormwater, and street services are installed and accepted by the city with service stubs being extended into the site, with such stubs being of adequate size to provide water and sewer service to the proposed development without modification to publicly owned infrastructure; or

    b. The water mains, sewer mains, stormwater system, and streets to be extended to provide service to the development are located within a publicly dedicated right-of-way or easement; will be constructed to city standards; are physically adjacent to the site proposed for construction; will be installed and are subject to acceptance by the city; and will be adequate in capacity to provide necessary service to the proposed development; and

    c. Water mains, sewer mains, stormwater system, and streets must meet all of the following requirements:

        (1) Any required on-site or off-site extensions of water mains, sewer mains, stormwater system, or streets to be dedicated to the public: must be located entirely within publicly held easements or rights-of-way; must serve only a single lot; are the subject of an irrevocable offer of dedication to the city upon completion of the project; the development is under the control of a single developer who must retain control of the entire project until final completion; all work is under the supervision of a single general contractor; and no subdivision of land is involved;

        (2) The DRC must determine when the standards of this *subsection C.1* are met. The fire department must consider whether adequate fire protection services are available from existing hydrants, and water supply exists to meet needs during construction. If adequate fire protection does not exist then concurrent infrastructure and development construction may not occur. Based on evaluation by the fire department, simultaneous construction of infrastructure to be dedicated to the public and private development construction may be permitted only within a defined portion of the site;

        (3) Approval of the final engineering design, including location and grade, for the infrastructure project must be obtained from the engineering department, and the Montana Department of Transportation when applicable, and Montana Department of Environmental Quality when applicable, prior to issuance of any building permit for the development; and

(4) A final occupancy review must not be completed until all on-site and off-site water, sewer, stormwater, and street improvements necessary to serve the site are installed and accepted or approved as applicable by the city.

D. Exception for concurrent construction.

In certain circumstances, the issuance of a building permit may be allowed prior to completion of the public infrastructure, provided that the following criteria are met, where applicable:

1. The city will have an opportunity to review and approve future proposed development through a site plan review or development is using the incentives of *38.340.030*;

2. The property owner must enter into an improvements agreement to ensure the installation of required infrastructure and other applicable improvements, to be secured by any security or securities found in *38.780.080*. If a financial security is used, the amount will be determined by the city and in an amount not less than 150 % of the cost of the improvements verified against city publicly bid unit prices, where such are available. If no publicly bid unit prices are available, an alternate cost estimate acceptable to the city may be used at the City's sole discretion. The security must be in the name of the city and must be at least six months longer than the time of performance required by the improvements agreement;

3. Improvements must be complete within two years of the date of the improvements agreement;

4. Approval of:

   a. The final engineering design, including location and grade, for any public infrastructure, except parks, must be obtained from the engineering department, Montana Department of Transportation when applicable, and the Montana Department of Environmental Quality when applicable, prior to issuance of any building permit for the development; and

   b. Final park plan and any associated infrastructure design for parks must be obtained from the parks department prior to issuance of any building permit for the development;

5. Building permits may be issued incrementally, dependent upon the status of installation of the infrastructure improvements. All building construction within the development must cease until required phases of infrastructure improvements as described in the improvements agreement have been completed, and inspected and accepted by the city;

6. The developer must provide and maintain hazard and commercial general liability insurance. Insurance policies must not be canceled without at least 45 days prior notice to the city. The commercial general liability policy must name the city as an additional insured. The developer must furnish evidence, satisfactory to the city, of all such policies and the effective dates thereof;

7. The developer must recognize, acknowledge and assume the increased risk of loss because certain public services do not exist at the site;

8. If public funds or other third party funding will be used to fund all or part of the installation of infrastructure, the improvements agreement between the developer and the city must identify the type or types of predetermined infrastructure funding. Public or third party funding may include, but is not limited to reimbursement, payment up front, creation of a special improvements district, or grants;

9. No occupancy of any structures or commencement of any use constructed or proposed within the boundaries of the development will be allowed until required infrastructure improvements have been completed, inspected, and accepted by the city, city ownership of water rights used to irrigate public parkland is obtained, and a final occupancy review has been completed;

    a. No occupancy of structures or commencement of any use is allowed when such action would constitute a safety hazard in the opinion of the city;

10. The developer must enter into an agreement with the city to address the provision of any services on an interim basis during construction, if deemed appropriate;

11. The developer must execute a hold harmless and indemnification agreement indemnifying, defending and holding harmless the city, its employees, agents and assigns from and against any and all liabilities, loss, claims, causes of action, judgments and damages resulting from or arising out of the issuance of a building permit under this section;

12. The developer must pay for any extraordinary costs associated with the project which the city may identify, including, but not limited to, additional staff hours to oversee the planning, engineering and construction of the project and infrastructure improvements, inspection of the infrastructure improvements and any extraordinary administrative costs;

13. The development must be under the control of a single developer and all work must be under the supervision of a single general contractor. The developer and general contractor must agree that there must be no third-party builders until required infrastructure improvements have been completed, and inspected and accepted by the city; and

14. Subsequent to preliminary plat or plan approval, a concurrent construction plan, addressing all requirements of this section, must be submitted for review and approval of the community development director in consultation with the city engineer and with a recommendation from the development review committee.

E. Limitations.

Notwithstanding the provisions of *subsection D* of this section, the city may limit the scope, type and number of projects eligible for concurrent construction consideration.

Sec. 38.780.040. - **Special provisions for timing of certain improvements.**

A. Park, pathway, and boulevard improvements.

1. These required improvements must be installed, or subject to an approved improvements agreement and financially secured, prior to final plat approval or prior to routing for final occupancy review subject to development review, excluding sketch plans.

2. Due to seasonal considerations, building permits may be issued and final occupancy reviews may be completed prior to installation of these improvements as long as the improvements are subject to an approved improvements agreement and are financially secured.

B. Community focal point improvements.

1. With the exception of neighborhood commercial and civic buildings and their grounds, neighborhood center improvements must be installed, or subject to an approved improvements agreement and financially secured, prior to final plat approval.

2. Due to seasonal considerations, building permits may be issued and final occupancy reviews may be completed prior to installation of improvements related to greens, plazas and squares as long as the improvements are subject to an approved improvements agreement and are financially secured.

Sec. 38.780.050. - **Acceptance of improvements.**

A. Improvements dedicated to the public.

1. Acceptance of street, road, and bridge improvements.

Before any subdivision street, whether new or existing, can be accepted into the city street system by the city, it must be built to meet or exceed the required standards. Any improvements made to county roads must meet or exceed standards set by the county road office, and must be reviewed and approved by the county road office. Any bridge improvement, within the city or the county, must meet or exceed standards set by the Montana Department of Transportation and county road office, and must be reviewed and approved by the county road office and the city, and accepted by the county road office into the county's bridge maintenance system.

2. Acceptance of park, water, sewer, storm drainage, landscape and irrigation improvements.

Before any public park, water, sewer, storm drainage, and landscape and irrigation improvement, whether new or existing, can be accepted into the city system by the city, it must be built to meet or exceed the required standards. Any improvement must meet or exceed standards set by the city, Montana Department of Environmental Quality, and county road office, as appropriate. Improvements must be reviewed and approved by the city and other agency, as applicable.

3. Record drawings.

Record drawings and project certification that all public infrastructure improvements comply with the City of Bozeman Design and Construction Standards must be provided by a civil engineer licensed in the State of Montana and must be submitted prior to final plat approval for subdivisions, per section 24.183.1107(5)(f), ARM as may be amended, or prior to routing for final occupancy review for site development, or other identified benchmark as appropriate.

4. The city may require verification that all liens have been released and payments made prior to accepting dedication of improvements.

B. Private improvements.

The city or its agent must conduct an "as-built" inspection to verify compliance and must approve final routing for occupancy review, final plat, or other conclusory action if all terms and details of the approval are in compliance. Except as provided in *38.780.060*, no final plat approval can be permitted, or approval for final routing for occupancy review, unless the terms and details of an approved plat or site development or sketch plan are met. Prior to routing for final occupancy review, the developer must certify the completion of the improvements as required in *38.780.030.A*.

Sec. 38.780.060. - **Improvements agreements.**

A. Improvements agreement required.

All improvements necessary or required to meet the standards of this chapter or conditions of approval must be the subject of an improvements agreement and be secured if final plat approval, approval for final routing for occupancy review, or other use of an approved development is allowed before the improvements are completed and inspected by the city.

1. Reservation.

The city reserves the right to deny the use of an improvements agreement when such improvements are necessary to provide for health, safety and welfare or adequate function of systems or on-site development.

B. When required.

1. When occupancy of a development subject to zoning review will commence prior to completion of all required site improvements; or
2. Subject to *subsection A.1*, when a subdivision is to be granted final plat approval prior to the completion of all required improvements, the applicant must enter into an improvements agreement with the city.
3. At the discretion of the community development director, certain projects receiving a certificate of appropriateness may be required to enter into an improvements agreement with the city at the time of final approval of the certificate of appropriateness.

C. Staging of installation; security.

If an improvements agreement is used to guarantee the completion of required improvements, including infrastructure, it may allow for the staged installation of improvements in defined areas and in accordance with an approved time schedule. At the city's discretion, the improvements in a prior increment may be required to be completed or payment or security provided for costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

1. Subdivision.

If an improvements agreement is used with a final subdivision plat to secure infrastructure improvements, a separate document must be filed with the clerk and recorder with the final plat that clearly states that building permits will not be issued until all water, sewer, storm drainage infrastructure, and streets are installed and accepted by the city. This requirement may be modified by the city for streets where dictated by circumstances, and where acceptable security for the ultimate development of the streets is provided. However, under no circumstances must the required gravel courses, curbs, gutters, or sidewalks be waived. No building permits will be issued for a subdivision within the city until all required water, sewer, storm drainage, required street lighting, and street gravel courses are installed and accepted, except when concurrent construction is an identified purpose of the initial project review and approved pursuant to the criteria established in *38.780.030.D*.

2. Site development.

If an improvements agreement is used with a site development to secure infrastructure improvements, a separate document must be filed with the clerk and recorder that clearly states that final occupancy review will not be completed until all water, sewer, stormwater systems and streets are installed and accepted by the city. This requirement may be modified by the city for streets where dictated by circumstances, and where acceptable security for the ultimate development of the required infrastructure is provided. However, under no circumstances can the required gravel courses, curbs, gutters, or sidewalks be waived. No building permit will be issued for a site development until all required water, sewer, storm drainage, required street lighting and street gravel courses are installed and accepted by the city, except when concurrent construction is an identified purpose of the initial project review and approved pursuant to the criteria established in *38.780.030.D*.

D. Standards for improvements agreements.

1. All agreements.

All improvements agreements must meet the following standards:

a. The agreement and security must be satisfactory to the city attorney as to form and manner of execution;

b. Detailed cost estimates and construction plans of all required on-site and off-site improvements must be made a part of the agreement;

c. Provide for security in the amount equal to 150 % of the estimated cost of the improvements verified against city publicly bid unit prices, where such are available. If no publicly bid unit prices are available, any cost estimate acceptable to the city may be used;

d. The term for the security referenced in *subsection C.1.c* above must be at least six months longer than the time of performance required by the improvements agreement;

e. The agreement must provide for the city to claim the security by certifying that the developer is in default of the performance to be secured;

f. Requests for partial release of security must only be in amounts such that the security will always equal 150 % of the value of the remaining uncompleted work, and such that not more than 90 % of the security is released prior to completion of all improvements. The city may take into account the location and scope of development phases in evaluating requests to reduce the amount of a financial security. The city may require verification that all liens have been released and payments made prior to releasing a portion of the security;

g. Provide for the city to require a replacement security in the event the issuer of the security becomes insolvent, enters receivership, or otherwise gives cause for the city to lack confidence in the ability of the issuer to honor the security;

h. Permit the city, in the event of default by the developer, to include in the costs to be recovered from the security those costs resulting from the need to call in the security, including but not limited to costs for the city attorney's time;

i. The financial security must be held in the possession of the city; and

j. Provide for the city to obtain ownership in any water rights used to irrigate public park prior to the release of security.

2. Subdivisions.

Improvements agreements for subdivisions must meet the following standards in addition to those listed in *subsection C.1* above:

a. The length of time of the agreement must not exceed one year from the date of final plat approval unless explicitly included as a term of the agreement and the security remains in force. The agreement must stipulate the time schedule the subdivider proposes and the city accepts for completing the required improvements;

b. The estimated cost of improvements must be provided by the subdivider's professional engineer and be consistent with publicly bid unit pricing, where such are available. If no publicly bid unit prices are available, any cost estimate acceptable to the city may be used. The city engineer has the discretion to require a second estimate of the cost of improvements, with the cost of obtaining the second estimate borne by the subdivider. The agreement must stipulate which type of security arrangements will be used; and

c. Security for improvements for internal subdivision streets, water, storm drainage and sewer mains, or other internal or external improvements must be reduced only upon recommendation of the city department with responsibility for the type of infrastructure that has been guaranteed.

3. Site development.

Improvements agreements for developments other than subdivisions must meet the following standards in addition to those listed in *subsection C.1* above:

a. If final routing for occupancy or commencement of the use is to occur prior to installation of the required improvements, the installation of those improvements must be secured in conformance with the requirements of this division;

b. All secured improvements must be completed by the developer within nine months of occupancy or the security must be forfeited to the city for the purpose of installing or contracting for the installation of the required improvements;

c. At the community development director's discretion, a developer may be permitted to extend the manner of security, in general for a period not to exceed one additional year. Factors including, but not limited to, progress of installation achieved to date and phasing of projects may be considered;

d. The city must determine which, if any, of the required improvements must be installed prior to final routing for occupancy, regardless of the use of an improvements agreement and security. Such determination must be based on a finding that unsafe or hazardous conditions will be created or perpetuated without the installation of certain improvements or that the property will have an unacceptable adverse impact on adjoining properties until such improvements are installed;

(1) Items include, but are not limited to walkways and signage necessary for ADA compliance, parking surfaces adequate to meet the needs of the uses to be conducted

during the term of the improvements agreement, or matters related to life safety are required to be installed prior to routing for occupancy; and

e. When all provisions are met for final routing for occupancy of a facility or commencement of a use prior to the installation of all improvements, and adequate security has been provided in accordance with the terms of an improvements agreement, the building official may issue a certificate of occupancy.

E. Notwithstanding the provisions of this section, the city may limit the scope, type and number of improvements eligible for being secured by an improvements agreement and require installation prior to final plat approval, issuance of building permits, final routing for occupancy, or other similary actions.

F. The community development director must sign improvements agreements on behalf of the city.

G. When an improvements agreement is used to allow the filing of a final plat prior to the completion of infrastructure, a notice of improvements agreement must be recorded along with the plat which indicates that certain infrastructure work is still not complete and identifying that work. When the work has been completed and is accepted by the city as complete, including if applicable the city obtaining ownership in any water rights used to irrigate city park, the city must record a notice of completion stating that the work that was the subject of the improvements agreement is complete.

Sec. 38.780.070. - **Payment for extension of capital facilities.**

A. The city may require a subdivider or other site developer to mitigate the impacts of subdivision or site development by the extension of existing capital facilities or the construction of new capital facilities. The review authority, established in *38.700.010*, may determine that the payment or the guarantee of payment for the construction of capital facilities are appropriate measures to coordinate with the city's planned capital facility improvements and to ensure public health, safety and welfare. Payment to the city of cash-in-lieu of constructing capital facilities by a subdivider or other site developer is a mechanism for meeting regulatory requirements and mitigating subdivision and other site development impacts. Should the review authority approve a request to pay cash-in-lieu, a subdivider or other site developer is not required to obtain a variance from the requirement that such facilities be constructed prior to development approval. The review authority, in its sole discretion, must determine the appropriate mitigation for any subdivision or site development impacts.

B. The city may require a subdivider or other site developer to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads or streets, sewer mains, water supply mains, and stormwater facilities for a subdivision or other site development. The costs must reasonably reflect the expected impacts directly attributable to the subdivision or other site development. The city may not require a subdivider or other site developer to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

C. The review authority may accept direct payment of cash-in-lieu of public street, water, sewer, and stormwater capital facilities required by this code. For process and standards for payment for park mitigation see *38.420.030*. A request to meet the terms of chapters 38 and 40 by payment of cash-in-lieu must be submitted by an applicant prior to a determination of adequacy or any advisory body recommendation during review of a development application. The city may choose to require payment of cash rather than require the construction of capital facilities as determined by the review

authority. A request received after determination of adequacy or advisory body recommendation is a material modification to the application and requires re-review and determination of adequacy.

1. The review authority, established in *38.700.010*, must evaluate proposals of cash-in-lieu of capital facilities and make a decision to approve, approve with conditions or deny such requests. In evaluating a request to pay cash-in-lieu, the review authority must consider the following criteria:

    a. Whether there is a danger to public health and safety of accepting cash-in-lieu rather than constructing the capital facilities;

    b. Whether the work described in the proposal is part of a project scheduled for commencement of construction on the most recently adopted capital improvement plan no later than three years from the date of submittal;

    c. Whether a public works project is pending that would substantially damage the work otherwise required to be constructed;

    d. Whether the installation of the otherwise required capital facilities would be disruptive to planned public improvements;

    e. Whether the city has made a determination of the reasonableness of the cost estimate of the work; and

    f. Whether the payment would enable a more efficient installation of required capital facilities.

2. The request to pay cash-in-lieu of capital facilities and the findings of the review authority must be considered in any final action to approve, approve with conditions, or deny a development application.

3. All cash paid in-lieu must be held by the city in a fund dedicated to the work for which the monies are paid.

4. As a condition of accepting cash-in-lieu, the city may require the property owner to execute a waiver of right to protest creation of a special improvement district, or other legal instrument, assuring participation, on a fair share, proportionate basis, in future capital facility improvements in the vicinity of the development proposal.

5. The city manager may adopt procedures by administrative order to implement this section.

6. The cash paid must include all component costs of the work deferred including but not limited to design, permitting, traffic management, construction, and record drawings. The cash paid must include a contingency amount to offset the uncertainty of cost estimating and potential escalation of costs.

7. Issuance of a refund is a material modification of a development per *38.100.070*. Refunds of cash paid in-lieu are not available if:

    a. A final plat which relied upon cash-in-lieu of facilities has been recorded;

    b. If building permits for a non-subdivision development have been issued; or

    c. If the city has published an invitation to bid on work which relies upon the paid cash for project funding.

D. Payback. A developer may install infrastructure which has more than incidental excess capacity which benefits future development. The city may provide a mechanism to allow a developer to be reimbursed by subsequent development for excess capacity. Developers that receive impact fees for excess capacity will not also be eligible for a payback district for the same capacity expansion. The city is not obligated to establish a payback. The city manager may establish by administrative order a process administrator and procedures for:

1. Application for payback;
2. Establishment of infrastructure and costs to which payback applies;
3. Area to which a payback applies;
4. Duration or extent for which a payback applies;
5. Conditions which terminate a payback; and
6. All procedural steps, including public notice and comment, necessary to establish, administer, and document a payback.

Sec. 38.780.080. - **Types of acceptable securities.**

A. Financial securities.

A variety of means of providing for the security of improvements agreements, ensuring adequate maintenance of required improvements and ensuring compliance with conditions of approval for various developments may be allowed. One or more of the following instruments may be used to provide a financial security for improvements to be completed. The method, terms, and amount of security must be acceptable to the city. Financial security is the primary method to provide security for installation of physical improvements.

1. Direct payment of cash to the city;
2. Cash escrows held by the city, or held by an approved escrow agent and subject to an executed escrow agreement;
3. Irrevocable letters of credit satisfactory to the city attorney as to form and manner of execution; or
4. Completion bonds satisfactory to the city attorney as to form and manner of execution.

B. Nonfinancial securities.

In addition to the possible financial securities listed above, the following nonfinancial securities may be used to ensure compliance with conditions of approval, ensure maintenance of required improvements and coordinate timing of development. When deemed appropriate, the city may use nonfinancial security methods in combination with a financial security method.

1. Granting of final permits;
2. Sequential approval of multi-phased projects, with subsequent phases prohibited from receiving approval until prior approved phases have complied with all requirements;

3. Formation of a special improvement or maintenance district. This method must not be considered completed until after all final actions have occurred and the district is in existence and the bonds sold;

4. Establishment of a property owners' association with duties to maintain certain improvements that must be enforceable by the city;

5. Irrevocable offer of dedication of improvements to be dedicated to the public after completion of the project; and

6. Recording of a special restrictive covenant or deed restriction which may only be released by written agreement of the city.

Sec. 38.780.090. - **Development or maintenance of common areas and facilities by developer or property owners' association.**

A. General.

For the purposes of this section, "common areas and facilities" include:

1. Public and private parkland;

2. Boulevard strips or street medians in public rights-of-way along external subdivision streets and adjacent to parks or open space;

3. Common open space (as defined in *38.800.040*);

4. Neighborhood centers (except for neighborhood commercial and civic uses and their grounds) as set forth in *38.410.020*;

5. Pathways (as defined in *38.800.170*);

6. Lighting;

7. Stormwater facilities,

8. Irrigation facilities installed in common areas; and

9. Private streets.

B. Development.

If common areas or facilities will be developed by a developer or a property owners' association, a development plan for the common area or facilities must be submitted with the preliminary plat application or zoning application for review and approval. The development plan must be reviewed and approved by the city prior to the installation of improvements in common areas or the installation of common facilities. An approved park master plan satisfies this requirement.

1. Landscaping and irrigation.

When landscaping or irrigation systems will be installed in common areas or facilities the development plan must be accompanied by a landscape and irrigation plan that was prepared by a qualified landscaping professional and complies with the most recent version of the City of Bozeman Landscape and Irrigation Performance and Design Standards Manual. When

landscaping or irrigation in common areas or facilities is installed by the subdivider, the subdivider must warrant these improvements against any and all defects for a period of two years from the date of installation of the landscaping and irrigation. When landscaping or irrigation in a park is installed by the subdivider, the subdivider must comply with the parks design standards and warrant these improvements against any and all defects for a period of two years from the date of installation of the landscaping and irrigation.

2. Discrete Irrigation Systems.

Irrigation systems that will be part of a privately owned and maintained common area or facility must be completely separate and entirely discrete from irrigation systems that are to be publicly owned and maintained by the city.

3. Tree permits.

If trees will be planted in dedicated city parkland or boulevard strips, tree planting permits must be obtained from the forestry division.

C. Maintenance.

When common areas or facilities will be maintained by the subdivider or by a property owners' association, a maintenance plan that complies with *38.720.030* must be submitted with the preliminary plat application for review and approval. The maintenance plan must include a maintenance schedule, and a mechanism to assess and enforce the common expenses for the common area or facility. The developer must provide all necessary maintenance until the improvements are transferred to a property owners' association, or other final custodian, at which point the property owners' association or other final custodian will be responsible for all necessary maintenance of common areas or facilities identified in the maintenance plan.

1. Stormwater Facilities.

Maintenance must be provided by the property owners' association for stormwater facilities, with the exception of storm sewer mains, inlets, and maintenance holes located in public streets, until the city establishes a stormwater maintenance district or other dedicated funding source and affirmatively accepts responsibility for maintenance. The provisions of *38.720* apply to this section.

2. Landscaping.

The maintenance plan must provide that any required or proposed landscaping must be maintained in a healthy condition at all times, and that any plant that dies must be replaced with another living plant that complies with the approved landscape plan.

3. Irrigation system.

The maintenance plan must provide that any required or proposed irrigation system must be maintained in an appropriate and efficient manner and kept in good operating condition, and that any components of the irrigation system that break must be fixed and replaced if necessary with components approved in the irrigation system design plan. Irrigation systems that will be part of a privately owned and maintained common area or facility must be completely separate and entirely discrete from irrigation systems that are to be publicly owned and maintained by the city.

4. Shade tree maintenance.

The forestry division must be responsible for the trimming, removal, or similar maintenance of shade trees in all city rights-of-way and on city-maintained property, including parks.

D. Maintenance area.

For a multiphase project with common areas and facilities, the maintenance mechanism must include all phases of the project, and must be created for the entire project with the first phase. No property can be removed from the maintenance area or mechanism without prior approval by the city to ensure continued maintenance of common areas and facilities, and on-going fulfillment of all obligations.

Sec. 38.780.100. - **Warranty.**

A. Publicly dedicated.

All publicly dedicated improvements must be subject to a warranty of not less than two years from date of acceptance by the city unless a different duration and scope is established by the City of Bozeman Design and Construction Standards, landscaping and irrigation design manual, and park design standards as applicable. The city manager may establish standards for the warranty including requiring a warranty agreement, the date the warranty must begin, requirements for the scope of the warranty, and other requirements necessary to ensure the warranty remains valid for the established period.

DIVISION 38.790. - **NONCONFORMING SITUATIONS**

Sec. 38.790.010. - **Nonconforming uses.**

A. Any use lawfully existing upon the effective date of the ordinance from which this chapter or any predecessor title or code is derived may be continued at the size and in the manner of operation existing upon such date except as specified in this division, or in the case of signage as specified in *38.550*.

B. Except as otherwise specified in this division, the right to operate and maintain a nonconforming use must terminate when the structure or structures housing such use are destroyed by any means to an extent of more than 50 % of its replacement cost at the time of destruction. However, in the event of damage by natural disaster to the extent described herein, a nonconforming use or uses may be reestablished through a special use permit procedure as set forth in *38.740*. Such restoration must comply to the maximum extent reasonably feasible with the requirements of this chapter.

C. When any lawful nonconforming use of any structure or land in any district has been changed to a conforming use, it must not thereafter be changed to any nonconforming use.

D. Whenever a lawful nonconforming use of a building, structure or land is discontinued for a period of 90 days, any future use of the building, structure or land must be in conformity with the provisions of this chapter.

E. Normal maintenance of a building or other structure containing or related to a lawful nonconforming use is permitted, including necessary structural repairs, provided such structural repairs do not enlarge, intensify or otherwise redefine the nonconforming use.

Sec. 38.790.020. - **Changes to or expansions of nonconforming uses.**

A. Lawful nonconforming non-residential use.

1. A lawful nonconforming non-residential use must not be changed except in conformance with the use requirements of the zone in which it is located. In addition, the review authority must consider whether the expansion is reasonable, natural and incidental to the growth and use of an existing business.

2. Proposals to expand nonconforming uses must not be approved if the expansion would encompass new land or property which was not in use at the time of the enactment of zoning or a change in zoning.

3. A lawful nonconforming non-residential use may be changed to another nonconforming use, provided that the proposed use is not of greater intensity than the original use, as determined by the criteria in *subsection A.2* below, and that a special use permit is obtained from the review authority. A lawful nonconforming non-residential use may be expanded only through the granting of a special use permit by the review authority. In considering the appropriateness of the special use permit application, the review authority must weigh the criteria set forth in 38.740.100.

4. To approve a special use permit to change or expand a nonconforming non-residential use, the review authority must determine that the proposed nonconforming use is more appropriate to the district than the existing nonconforming use, and that no unsafe or unhealthy conditions are perpetuated. In making such a determination, the review authority must weigh the following criteria in addition to the criteria applicable to all special use permits:

   a. Traffic impacts, both on-site and off-site;

   b. Off-street parking and loading requirements;

   c. The visual impact on the surrounding area;

   d. The degree of compliance with the adopted land use plan and this chapter;

   e. The level of conflict with other uses in the surrounding area;

   f. The presence of other nonconformities in the surrounding area;

   g. The degree to which any existing unsafe or hazardous conditions would be mitigated;

   h. The viability of the non-conforming structure; and

   i. On-site and off-site impacts from noise, dust, smoke, surface or groundwater contamination, or other environmental impacts.

B. Lawful nonconforming residential use.

1. The maintenance and reconstruction of existing nonconforming residential dwelling units is allowed in commercial and industrial zones, in compliance with applicable fire and building codes, including expansion of up to 20 % of the existing total residential area, without the need of a special use permit, as long as the number of dwelling units on the lot is not increased. In instances where new construction is allowed, all appropriate approvals such as a certificate of appropriateness or building permit must be obtained prior to the initiation of construction.

2. Lawful non-conforming dwelling units in residential or mixed-use zoning districts may be continued, revised, reconstructed, or replaced to maintain the same number of dwellings and configuration on the lot consistent with all standards except for the number of dwellings per building to maintain needed housing in the community and conform with standards to maintain number of dwellings.

Sec. 38.790.030. - **Nonconforming area and bulk requirements for existing lots.**

A. At the time of the enactment of the ordinance from which this chapter is derived if any owner of a plot of land consisting of one or more adjacent lots, as defined in *38.800.130*, in a subdivision of record does not have sufficient lot width to conform to the minimum lot width requirements, such plot of land may nevertheless be used as a building site. The lot dimension requirements of the district in which the piece of land is located may be reduced by the smallest amount that will permit a structure in compliance with minimum standards of the building code to be built upon the lot, with such reduction to be determined by the review authority designated in *38.700.010*.

   1. Existing buildings on nonconforming lots may be expanded without deviations or variances so long as the expansion does not increase or create one or more nonconformities.

2. In the residential districts and residential uses in mixed-use districts, the reduction must permit only a single-unit structure.

B. No lot, even though it may consist of one or more adjacent lots in common ownership at the time of passage of the ordinance from which this chapter is derived, may be reduced in size so that lot width or size of setbacks or any other requirement of this chapter is not maintained except as provided for in this chapter. This section views lots as merged for the purposes of planning and zoning regulation of bulk, size, or similar dimensional standards only, and does not aggregate individual parcels of land as tracts of record. This section does not apply when a portion of a lot is acquired for a public purpose.

Sec. 38.790.040. - **Nonconforming structures.**

A. Any nonconforming structure lawfully existing upon the effective date of the ordinance from which this chapter is derived may be continued at the size and configuration existing upon such date except as hereinafter specified, or in the case of signage as specified in *38.550* and lighting as specified in *38.560.110*.

B. The right to operate and maintain a nonconforming structure terminates when the structure is destroyed by any means to an extent of more than 50 % of its replacement cost at the time of destruction. However, in the event of damage by natural disaster a nonconforming nonresidential structure may be reestablished through a special use permit procedure as set forth in *38.740*. Such restoration must comply to the maximum extent feasible with the requirements of this chapter.

C. Normal maintenance of a lawful nonconforming structure is permitted, including necessary structural repairs provided such structural repairs do not enlarge the structure or intensify the use.

Sec. 38.790.050. - **Changes to or expansions of nonconforming structures.**

A. A lawful nonconforming structure must not be changed except in conformance with the requirements of the zone in which it is located or as provided in this division.

B. A lawful nonconforming structure may be expanded through the plan review process required by *38.240.020* and *38.740*. Unless the proposed expansion would create a new nonconformity or increase an existing nonconformity, no deviation or variance is required for the expansion.

C. If a lawful nonconforming structure is proposed to be changed or expanded in a manner which would increase the degree of nonconformity, or would create a new nonconformity, a deviation or variance must be properly granted prior to or in conjunction with the site development approval required in *38.240.020* and *38.740*.

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

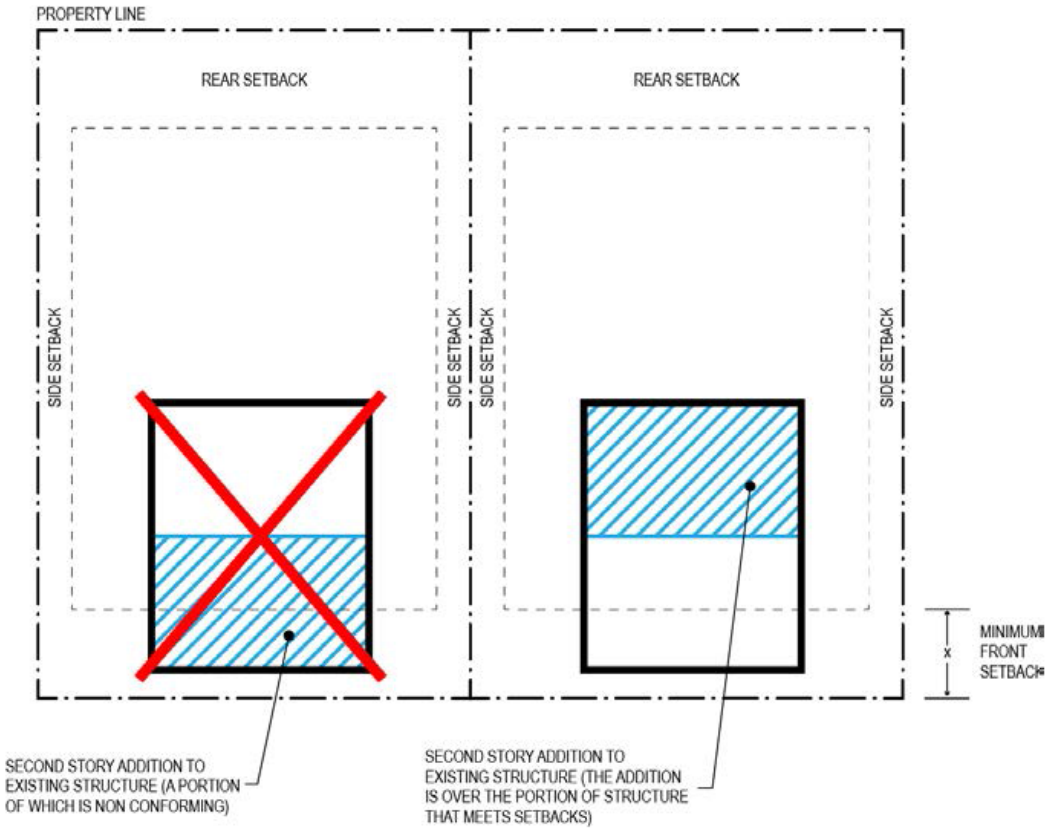


Figure 38.790.050-1. Clarifying acceptable and unacceptable examples of expanding nonconforming structures.

ARTICLE 8. -

DEFINITIONS

DIVISION 38.800. - TERMS AND INTERPRETATION 8-2

Sec. 38.800.010. - Definition of terms and interpretation of language. 8-2
Sec. 38.800.020. - A definitions. 8-2
Sec. 38.800.030. - B definitions. 8-5
Sec. 38.800.040. - C definitions. 8-6
Sec. 38.800.050. - D definitions. 8-9
Sec. 38.800.060. - E definitions. 8-11
Sec. 38.800.070. - F definitions. 8-14
Sec. 38.800.080. - G definitions. 8-15
Sec. 38.800.090. - H definitions. 8-17
Sec. 38.800.100. - I definitions. 8-18
Sec. 38.800.110. - J definitions. 8-19
Sec. 38.800.120. - K definitions. 8-19
Sec. 38.800.130. - L definitions. 8-19
Sec. 38.800.140. - M definitions. 8-21
Sec. 38.800.150. - N definitions. 8-23
Sec. 38.800.160. - O definitions. 8-24
Sec. 38.800.170. - P definitions. 8-25
Sec. 38.800.180. - Q definitions. 8-27
Sec. 38.800.190. - R definitions. 8-27
Sec. 38.800.200. - S definitions. 8-29
Sec. 38.800.210. - T definitions. 8-34
Sec. 38.800.220. - U definitions. 8-36
Sec. 38.800.230. - V definitions. 8-36
Sec. 38.800.240. - W definitions. 8-36
Sec. 38.800.250. - X definitions. 8-38
Sec. 38.800.260. - Y definitions. 8-38
Sec. 38.800.270. - Z definitions. 8-38

DIVISION 38.800. - TERMS AND INTERPRETATION

Sec. 38.800.010. - Definition of terms and interpretation of language.

A. Terms specifically defined in regulations issued by the department of justice and the department of transportation to implement the Americans with Disabilities Act or in referenced standards have those meanings. Terms defined in Title 76 MCA and applicable to the city have those meanings. Otherwise, all words in this chapter must be first defined as provided in this division and, if not defined herein, have the meaning established in 1.01.030 and if not defined there, have their customary dictionary definitions as defined in collegiate dictionaries in the sense that the context implies.

B. Words used in the present tense include the future tense; words used in the singular include the plural, and words used in the plural include the singular; the word "must" is always mandatory, the word "person" includes a firm, association, organization, partnership, trust, corporation or company, as well as an individual; the word "lot" includes the words "plot" or "parcel"; the word "building" includes the word "structure"; the words "used" or "occupied," as applied to any land or building, is construed to include the word "intended, arranged, or designed to be used or occupied"; the words "map" or "zoning map" mean the zoning map of the city that delineate the area to be governed by these regulations.

C. For the purposes of this chapter certain words and terms used herein are defined as follows:

Sec. 38.800.020. - A definitions.

Access or access way. The place, means or way by which pedestrians and vehicles have adequate and usable ingress and egress to property or use as required by this chapter.

Accessory building or use. A subordinate building, or portion of the principal building, located on the same lot as the principal building, or a subordinate use of land, either of which is customarily incidental to the principal building or to the principal use of land.

Accessory dwelling unit. An accessory residential building, either attached or detached, which contains a dwelling unit. See *38.320.120.B* for standards related to accessory dwelling units.

Activity. A thing that a person or group does or has done.

ADA. Americans with Disabilities Act.

Adaptive reuse. The development of a new use for an older building or for a building originally designed for a special or specific purpose.

Administrative design review (ADR) staff. Certain members of the planning staff charged with the design review, as defined in this division, of certain plans and proposals as specified in this chapter. The organization, composition and procedures of the administrative design review staff are subject to the requirements of *38.700*.

Adult business. An establishment which advertises, trades, exchanges, transfers, sells, presents, shows, offers or exhibits materials, activities, reproductions, likenesses, services and/or objects defined as

obscene by MCA 45-8-201(2). Adult business as defined in this section include, but are not limited to, adult bookstores, adult motion picture theaters, rap studios, massage parlors, exotic dance studios, nude art studios, nude photographic studios and nude body painting studios.

Affordable dwelling. A dwelling unit for rent that a developer has committed to making affordable pursuant to *38.340*.

Aggrieved party. 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.

Agriculture. The cultivation or tilling of soil or use of other growing medium for the purpose of producing vegetative materials for sale or for use in a commercial operation and/or the raising or tending of animals for commercial sale or use. Agriculture does not include gardening for personal use, keeping of house pets or animals as authorized under chapter 8, service animals as defined by the Americans with Disabilities Act, or landscaping for aesthetic purposes.

Agricultural water user facility. Those facilities, which include but are not limited to ditches, pipes, and other water-conveying facilities, which provide water for irrigation and stock watering on agricultural lands, with said lands being defined in MCA 15-7-202.

Alley. A permanent public thoroughfare providing a secondary means of access to abutting lands connecting two right-of-way streets.

Alteration.

A. Any act or process, except repair and light construction as defined herein, that changes one or more of the architectural features of a structure or site, including, but not limited to, the erection, construction, reconstruction, relocation of, or addition to a structure.

B. The term "alteration" may apply to any act or process that changes the interior architectural features of that portion of a public or private property commonly frequented by the general public, provided said public or private property is located within a designated historic district or listed individually on the National Register of Historic Places. However, changes upon interior elements of private residences, regardless of their location or historic status, are not considered alterations as defined in this section.

C. The term "alteration" further means any change or addition to a building within a regulated flood hazard area that either increases its exterior horizontal dimensions or increases its potential flood hazard; or means revisions or updates to a DNRC designated floodplain or floodway established by MCA 76-5-101 et seq.

Amusement and recreation. Uses that provide continuous or periodic entertainment or recreational activity.

Animal shelter. A facility providing care or boarding of domesticated animals, either for compensation or as a public service.

Animated sign. A sign depicting action, motion, light, or color change, or that change the sign displayed through electrical or mechanical means. Excludes those signs defined as revolving signs.

Antenna. One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc).

Apartment. A habitable room or suite of two or more habitable rooms meeting the requirements of the city's adopted International Building Code, located in an apartment building or used for residential purposes in non-residential or mixed-use buildings located within non-residential districts, as specified in this chapter. A studio unit is as an apartment under this definition. Townhouses and rowhouses are excluded from this definition.

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

Applicable non-discrimination laws. The Fair Housing Amendments Act of 1988, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Montana Human Rights Act, and the Montana Governmental Code of Fair Practices.

Applicant. A person who seeks a land use permit or other approval of a development proposal.

Architectural appearance. The architectural character and general composition of a structure, including, but not limited to, the kind and texture of the building's materials and the type, design and character of all windows, doors, light fixtures, signs and appurtenant exterior elements; and, interior architectural detail including, but not limited to, floors, fixtures, hardware, ornamentation and other elements that contribute to the building's architectural or historical significance.

Area of special flood hazard. The land in the floodplain within the community subject to inundation by a one percent or greater chance of flooding in any given year, i.e., the 100-year floodplain.

Articulation. The giving of emphasis to architectural elements (like windows, balconies, entries, etc.) that create a complementary pattern or rhythm, dividing large buildings into smaller identifiable pieces. See *38.520.040* for articulation standards.

Articulation interval. The measure of articulation; the distance before architectural elements repeat. See *38.520.040* for articulation standards.

Artificial obstruction/development. Any obstruction which is not natural and includes any dam, diversion, wall, bank stabilization method, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, road, bridge, conduit, culvert, building, refuse, automobile body, fill or other analogous structure or matter in, along, across or projecting into any regulated flood hazard area that may impede, retard or alter the pattern of flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of water would carry the same downstream to the damage or detriment of either life or property.

Arts center and/or entertainment center. A structure or facility for the presentation of the performing arts, including indoor motion picture theaters; theaters for live performances; indoor concert halls; and studios for arts education, such as dance or painting. Also includes entertainment activities such as arcades; bowling alleys or pool halls. The term "arts and entertainment center" does not include any business meeting the definition of adult business as defined by this chapter.

Automobile fuel sales or repair. The use of a site for the direct sale of fuel to the end user, or for the repair of automobiles, non-commercial trucks, motorcycles, motor homes, recreational vehicles or

boats. The term "automobile fuel sales or repair" includes the sale and on-site installation of parts, wheel and brake shops, body and fender shops, and similar repair and service activities, but excludes dismantling or salvage.

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

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

Sec. 38.800.030. - **B definitions.**

Base flood. A flood having a one percent chance of being equaled or exceeded in any given year. A base flood is the same as a 100-year flood.

Base flood discharge. The flow rate of a flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation. The elevation above sea level of the base flood in relation to the vertical datum used in a FEMA flood insurance study or a flood hazard evaluation.

Basement. A portion of a building located partly underground but having not less than half its floor-to-ceiling height below the grade of the adjoining ground. For purposes of *38.600*, a basement includes any floor elevation that is more than two feet below the lowest adjacent grade of a building on all sides.

Bed and breakfast. A single-household dwelling which remains owner-occupied at all times providing one or more guest rooms for compensation, and where food service is limited to breakfast which may be served to overnight guests only.

Bike shed. The area within which a bicyclist can reasonably travel to a destination in approximately 3 miles or 20 minutes, using existing and planned bicycle routes - both on-street and off-street - that meet locally adopted design and safety standards.

Blank wall. A ground floor wall or portion of a ground floor wall that does not meet the transparency requirements of the applicable zoning district. See *38.260.140.B* for blank wall treatment standards.

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

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

Building envelope. The three-dimensional volume on a lot lying between the front, side and rear setback lines and between ground level and the maximum allowable building height, amounting to the area available for potential building construction.

Building frontage. The maximum dimension of the building front measured on a straight line parallel to the street, but excluding façades facing alleys or drive aisles.

Business. A commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain.

Built environment. Man-made or modified structures that provide people with living, working, and recreational spaces.

Sec. 38.800.040. - **C definitions.**

Caliper. The diameter of a tree measured 12 inches above ground level. For multi-trunk trees, the caliper is the average of all trunk calipers

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

Canopy tree. A species of tree which normally bears crown foliage no lower than six feet above ground level upon maturity.

Carport. A structure, open on at least two sides, consisting of a roof and either walls or columns for the purpose of housing automotive vehicles and other chattels. The structure must be considered as an accessory building when detached from the principal building and as a part of the principal building when attached to the principal building along one or more sides of the carport or principal building.

Cash-in-lieu. An alternative method of mitigation for development impacts in place of construction of infrastructure, provision of water rights, or dedication of land.

Casino. An establishment whose primary use or activity is gambling, either in the form of gambling machines (video poker, keno, etc.), card games or other licensed gambling activity. A casino may have beverage and restaurant facilities as accessory uses. An establishment will be considered a casino for the purpose of these regulations if any of the following characteristics apply:

1. The establishment is referenced as a casino by signage, advertisement or by name;
2. More than one card table is on the premises; and/or
3. 15 or more gambling machines are on the premises.

Cemetery. Land used for the burial of the dead and dedicated for cemetery purposes, including crematories, mausoleums and mortuaries when operated in conjunction with and within the boundary of such cemetery.

Certificate of appropriateness. A permit issued by the pertinent review authority indicating its approval of plans to alter or construct a structure or alter a site within the Neighborhood Conservation Overlay District.

Certificate of survey. A drawing of a field survey prepared by a registered land surveyor for the purpose of disclosing facts pertaining to boundary locations.

Certified by a professional engineer. Certification of work produced by a duly qualified and licensed professional engineer through the placement of the professional engineer's signed stamp.

Channel. The geographical area within either the natural or artificial banks of a watercourse or drainway.

Church. A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

City. The City of Bozeman.

City commission. The City Commission is the governing body of the City of Bozeman.

Civic use. Public buildings or uses, including, but not limited to, college/university facilities, congregate postal facilities, schools, government offices, libraries, assembly uses, police stations, and fire stations.

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

Collocation. The placement of an antenna by two or more wireless service providers on a common antenna-supporting structure, or the addition or replacement of antennas on an existing structure. The term "collocation" does not include roof-mounted or surface-mounted wireless facilities or the placement of other antenna on an amateur radio antenna.

Commercial message. Any sign, wording, logo or other representation that directly or indirectly names, advertises or calls attention to a business, product, service or other commercial activity.

Common open space. Undeveloped land within a subdivision that has been designated, dedicated, reserved or restricted in perpetuity from further development and is set aside for the use and enjoyment by residents of the development. Common open space may not be part of individual residential lots. It must be substantially free of structures, but may contain historic structures and archaeological sites, and/or recreational facilities for residents, including but not limited to benches, picnic tables and interpretive signage as indicated on an approved development plan. Stormwater control facilities for the benefit of the subdivision may also be located within common open space.

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

Community center. A building or portion of a building used for nonprofit cultural, educational, recreational, religious or social activities which is open to the public or a designated part of the public, usually owned and operated by a public or nonprofit group or agency. Examples of community centers are schools, churches, Boys and Girls Clubs, and similar uses. Community center does not include fraternities, lodges or similar uses.

Community garden. An area of land managed and maintained by a group of community members used to grow and harvest food crops and/or nonfood, ornamental crops such as flowers, for personal or group use, consumption, donation or sale, or for educational purposes. The private use of private land (not intended to benefit the community at large) does not constitute a community garden.

Community residential facility. A facility licensed by the Montana Department of Public Health and Human services including:

1. Those occupied by persons having developmental disabilities and living together for the purpose of residential training, observation and/or common support, in which care is provided on a 24-hour per day basis;
2. A community group home for developmentally, mentally or severely disabled persons which does not provide skilled or intermediate nursing care;
3. A youth foster home or other facility for care of minors as defined in MCA 52-2-601 et seq.;
4. A halfway house operated in accordance with regulations of the state department of public health and human services for the rehabilitation of alcoholics or drug dependent persons;
5. A licensed adult foster care home;
6. An assisted living facility licensed under MCA 50-5-227;
7. A foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of MCA 52-2-621 through 52-2-623.
8. A nursing home. An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

Where a limitation of eight or fewer residents is imposed for the purpose of defining the necessary review process to establish this use, the operator of a residential facility, members of the operator's household or persons employed as staff are not counted as residents, except that the total number of all persons living at the facility may not exceed ten.

Conservation easement. The grant of a property right or interest from the property owner to the public or nonprofit conservation organization stipulating that the described land must remain in perpetuity in its natural and open state, precluding future or additional development (with the exception of any allowable structures or facilities).

Contiguous. A parcel of land next to, abutting, adjoining or touching another individual parcel of land, including tracts which are separated by public right-of-way.

Construction. The act of adding to an existing structure or erecting a new principal or accessory structure; the act of building by combining or arranging parts or elements; the thing so built.

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

1. The primary business is the sale of food or drink for consumption, either on or off premises, over a counter, or from an outdoor service window or automobile service window. Of the food or drink sold, at least 20 % is in disposable or carry-out containers; or
2. The use features a drive-in and/or drive-through component.

Cooperative household.

A. A cooperative household is a single housekeeping unit with five or more persons which exhibits four or more of the following characteristics:

1. A shared strong bond or common commitment to a single purpose, such as members of a religious order;
2. Are not legally dependent on others not living with them;
3. Can establish legal "domicile" as defined by state law;
4. Share a single household budget;
5. Share in the work of maintaining the premises;
6. Legally share in the ownership or possession of the premises, e.g., tenants in common on a deed or cosigners of a single lease; or
7. A relationship of a permanent and distinct character with a demonstrable and recognizable bond characteristic of a cohesive unit.

B. Cooperative housing does not mean any society, club, fraternity, sorority, association, lodge, organization or other individuals with a common living arrangement or whose basis for the establishment of the housekeeping unit is for a period of less than 12 months.

Covenant. An agreement that restricts the land and binds present owners and subsequent grantees and complies with MCA 70-17-2.

Crawlspace. For purposes of *38.600*, a building enclosure that has its interior floor area no more than five feet below the top of the next highest floor and no more than two feet below the lowest adjacent grade on all sides.

Sec. 38.800.050. - **D definitions.**

Day care center. A place in which supplemental care is provided to 16 or more non-resident persons on a regular basis and which is licensed by the state.

Day care home, family. A private residence in which supplemental care is provided to three to eight non-resident persons from separate families on a regular basis.

Day care home, group. A private residence in which supplemental care is provided to nine to 15 non-resident persons on a regular basis.

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

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

Departure. A provision allowing for applicants to propose alternative means of compliance with a specific standard on a voluntary basis, provided they meet the purpose of the standard. See *38.760.050* for procedures.

Design review. The aesthetic evaluation of certain development proposals.

Developer. For purposes of *38.340*, a developer is the person or legal entity, or their successor(s) in interest who: (a) submits an affordable housing plan for a subject property along with other submissions required for land use approvals, annexation, zoning, or permit reviews by the city, or (b)

is the owner of property subject to this division during the development phase or a successor in title, such as a builder or subsequent property owner, obligated to implement the affordable housing plan with respect to one or more lots or parcels of land or (c) receives incentives for the production of low income affordable housing.

Development. Any human-induced change to improve or alter real estate, including, but not limited to, subdivision of land, buildings or other structures, artificial obstructions, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Development envelope. Area(s) on a lot within which grading, lawns, pavement and buildings will be located.

Development review committee. That committee created by *38.700* and charged with reviewing designated plans and proposals.

Deviation. A modification of physical standards of this chapter as applied to a specific piece of property located within the neighborhood conservation overlay district.

Diameter Breast Height (DBH). The diameter of a tree at 4.5 feet above the ground.

Director. Community development director of the City of Bozeman and planning administrator per the Montana Land Use Planning Act.

Directional sign. An on-premises sign which is intended to convey information regarding the location of specific features of the site or to convey on-premises regulations including transportation and circulation regulations.

Disabled person. A person who has a medical, physical or mental condition that limits a major life activity, anyone who is regarded as having such a condition or anyone who has a record of having such a condition, and includes persons who have a handicap or a physical or mental disability as defined in applicable non-discrimination laws.

Division of land. The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to a portion of the tract, or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter and the Montana Land Use Planning Act. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

DNRC. Montana Department of Natural Resources and Conservation.

Drainway. Any depression two feet or more below the surrounding land serving to give direction to a current of water less than nine months of the year and having a bed and well-defined banks. Water flowing in a drainway may originate by natural or artificial means.

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

Drive-in business. Any business in which people are provided a service or a product, where a sale is made without the customer being required to leave the vehicle. Such businesses include, but are not

limited to, drive-in theater, drive-in bank, freestanding automated teller machine, drive-in laundry or dry cleaning pickup station, drive-in restaurant and any business offering take-home food services.

Dwelling. A building, or portion thereof, meeting the requirements of the city's adopted International Building Code and used by one household, as defined by this article, for residential purposes. Dwellings may exist in many configurations, including single-unit, two-unit, multiple-unit dwellings and group living. Dwellings do not include hotels or motels.

Dwelling unit. One or more rooms designed for or occupied exclusively by one household.

Sec. 38.800.060. - **E definitions.**

Easement. A grant by a property owner to the public, a specific person or persons, other than the owner, for a right to use land for a specific purpose or purposes.

Effective base flood elevation. The base flood elevation contained in the effective FEMA flood insurance study and its effective hydraulic model, including any effective FEMA revisions thereto.

Effective regulatory floodway. The regulatory floodway contained in the effective FEMA flood insurance study and its effective hydraulic model, including any effective FEMA revisions thereto.

Elevated building. A building without a basement that has it lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns. A building on a crawlspace is considered an elevated building.

Enclosure. For the purposes of *38.600*, that portion below the lowest elevated floor of an elevated building that is either partially or fully shut in by rigid walls, including a crawlspace, sub grade crawlspace, stairwell, elevator, or a garage below or attached.

Encroachment. For purposes of *38.600* any use, activity, or artificial obstruction within the regulated flood hazard area.

Encroachment analysis. A hydrologic and hydraulic analysis performed by a qualified professional engineer to assess the effects of a proposed use, activity, or artificial obstruction on the base flood elevation, flood flows and flood velocities.

Engineer (registered professional engineer). A person licensed in conformance with the Montana Professional Engineers Registration Act (MCA 37-67-101 through 37-67-332) to practice engineering in the state.

Engineering division. Engineering Division of the City of Bozeman's Department of Transportation and Engineering.

Essential services (Type I). Small-scale and below ground facilities, equipment and structures required for the provision of immediate customer service of public and quasi-public services within the city. Additional items may be determined by the community development director to be appropriately included in this definition. These facilities, equipment and structures include:

1. Public water distribution lines.
2. Public sanitary sewer collection lines.

3. Stormwater drainage collection lines, stormwater drainage retention/detention ponds, and drainageways.
4. Fire hydrants.
5. Electric service:
    a. Below ground distribution and local transmission lines, cables and appurtenances.
    b. Above ground distribution and local transmission lines, cables and appurtenances no greater in height than the minimum required by the National Electric Safety Code (NESC) plus 15 %.
    c. Electric vehicle chargers inside of buildings; or outside of buildings and providing 240 volt or less individual station charging capacity.
6. Natural gas service:
    a. Below ground distribution lines and appurtenances.
    b. Below ground transmission lines and appurtenances.
    c. Natural gas regulator/valve stations and appurtenances, with no above ground buildings.
7. Communications services:
    a. Below ground telephone lines and cables.
    b. Below ground cable television lines.
    c. Below ground electronic data transmission lines and cables.
8. Above ground utility boxes, not to exceed 20 square feet in footprint.
9. Single user building-mounted solar energy facility, and associated storage.
10. Public and amateur radio antennae and towers.

Essential services (Type II). Facilities, equipment and structures required for the provision of neighborhood level public and quasi-public services within the city. Additional items may be determined by the community development director to be appropriately included in this definition. Specific facilities, equipment and structures include:

1. Public water storage facilities; and pumping stations.
2. Public sanitary sewer or storm sewer lift stations.
3. Water fill stations for firefighting equipment.
4. Electric service:
    a. Transmission lines, cables and appurtenances operable prior to September 3, 1991 including the repair and replacement of the same as necessary to maintain their operation.
    b. Transmission lines, cables, and appurtenances 161 kV or less and no greater in height than the minimum required by the National Electric Safety Code (NESC) plus 25 %, other than those included in Essential Services (Type I).

c. Shared building-mounted solar energy facility, or other on-site generation, building mounted and associated storage.

d. Electric vehicle charger outside of a building and providing charging capacity greater than allowed as an Essential Service (Type I).

5. Natural gas service:

a. Natural gas regulator/valve stations and appurtenances, with above ground buildings not to exceed 150 square feet.

6. Communications services, except those included in essential services (Type 1), including above ground buildings not to exceed 150 square feet:

a. Telephone lines and cables.

b. Cable television lines.

c. Electronic data transmission lines and cables.

7. Above ground utility boxes, from 20—150 square feet, except those included in essential services (Type I).

8. Shared heating and cooling systems serving multiple buildings.

Essential services (Type III). Community-scale facilities, equipment and structures required for the provision of public services not otherwise listed as an essential services (Type I or II).

1. Public water treatment.

2. Sanitary sewer treatment.

3. Storm sewer treatment.

4. Police and fire stations.

5. Battery energy storage systems, electric substations and electrical transmission lines, cables and appurtenances, except those included in essential services (Type I) or essential services (Type II).

6. Natural gas regulator/valve stations and appurtenances, with above ground buildings in excess of 150 square feet.

7. Communications including but not limited to telephone satellite community dial offices; telephone exchanges and repeater stations, except those facilities which may be considered wireless facilities.

8. Gasoline, oil and coal pipelines.

9. Shared ground-mounted solar energy facility, and associated storage.

Establish. To construct, place, insert or excavate.

Evergreen tree or shrub. A tree or shrub of a species which normally retains its leaves/needles throughout the year.

Existing artificial obstruction or nonconforming use. For purposes of *38.600*, an artificial obstruction or nonconforming use that lawfully existed prior to the initial creation of city floodplain regulations on March 19, 1975, or any repeal and replacement or amendment thereto.

Existing base flood elevation. The base flood elevation computed by hydraulic modeling of the base flood discharge within the floodplain of the flooding source in its current existing condition.

Existing building or structure. For purposes of *38.600*, any buildings or structures for which the start of construction commenced before the effective date of the applicable flood insurance rate map.

Existing manufactured home park or subdivision. A manufactured home park or subdivision where the construction of facilities for servicing the manufactured home lots is completed before the effective date of the floodplain management regulations. This includes, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Existing regulatory floodway. The regulatory floodway computed by hydraulic modeling of the base flood discharge within the floodplain of the flooding source in its current existing condition.

Sec. 38.800.070. - **F definitions.**

Façade. The entire building front or street wall face of a building extending from the grade of the building to the top of the parapet or eaves and the entire width of the building elevation.

Farm stand. An accessory table, area, structure, or kiosk for the sale of food crops, products, and/or nonfood items such as ornamental crops (i.e. flowers). See *38.320.120.C* for related standards.

FEMA. Federal Emergency Management Agency.

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

Final plat. The final drawing of a subdivision and dedication required by this chapter and the Montana Land Use Planning Act to be prepared for filing for record with the clerk and recorder, and containing all elements and requirements set forth in this chapter and the Montana Land Use Planning Act.

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

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry lands from the overflow of a stream, or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood fringe. The portion of the floodplain of the regulated flood hazard area that is outside the limits of the regulatory floodway.

Flood insurance rate map. The official map used for flood insurance risk ratings and other regulatory purposes on which FEMA has delineated special flood hazard areas of the base flood as well as other flood hazard areas.

Flood insurance study. The official report containing technical information used to produce official flood insurance rate maps in which FEMA provides base flood discharges, base flood profiles, floodway data tables, hydraulic modeling, and other related flood hazard information.

Flood of 100-year frequency. A flood magnitude that has a one percent chance of occurring in any given year. The base flood.

Floodplain. Areas generally adjoining a watercourse or drainway that would be covered by the base flood. The floodplain is a regulated flood hazard area and may be partitioned into a regulatory floodway and flood fringe where specifically designated.

Floodplain Act. The Montana Floodplain and Floodway Management Act, MCA 76-5-101 et seq.

Floodplain administrator. Community official with authority to administer and implement the provisions of *38.600*. The floodplain administrator has been designated by the city commission to be the city engineer, who may delegate floodplain administrator duties to a member of the city engineering division staff.

Floodproofing. Any combination of structural and non-structural additions, changes, or adjustments to buildings or structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, and building or structure contents.

Floodway. The channel of a stream and the adjacent overbank areas that must be reserved in order to discharge a base flood (100-year flood) without cumulatively increasing the water surface elevation more than one-half foot.

Footcandle. A unit of light intensity stated in lumens per square foot and measurable with an illuminance meter.

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

Fraternity/sorority house. A group living facility occupied by and maintained exclusively for fraternity or sorority members, their guests or visitors and affiliated with and acknowledged as a fraternity/sorority house by an accredited institution of higher learning as defined in 38 U.S. Code Section 3452; and which operates to provide assembly space for the regular activities of the fraternity or sorority members.

Freestanding sign. Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure.

Front setback. A setback extending across the full width of all sides of a lot that abuts a street.

Sec. 38.800.080. - **G definitions.**

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

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

General development plan. A scale drawing(s) or other documents showing the general location of structures, uses, rights of way, parks, natural features, and utilities, existing and proposed, on subject

property or any other information as may be required by this chapter in association with a zone map amendment to establish a general pattern and plan of development for the area within a planned development zone.

General service establishment. A category of uses whose primary activity is the provision of assistance, as opposed to products, to individuals, businesses, industry, government, and other enterprises. Specific uses in this category include but are not limited to financial establishments, postal and courier services, repair shops, laundries, veterinary clinics, and other services where uses occur entirely within buildings, little or no outdoor storage, and no external impacts are anticipated. This term also includes vehicular parking lots and garages.

Ghost sign. A wall sign painted on the exterior wall of a building prior to June 22, 1997 and which advertises a business, product or service no longer found at that location or an expired political campaign.

Glare. The sensation produced by lighting that causes an annoyance, discomfort or loss in visual performance and visibility to the eye.

Golf course. A recreational facility used primarily for playing a 9- or 18-hole outdoor golf. Includes executive or par three golf courses, pitch and putt facilities, and associated support facilities such as a clubhouse or driving range.

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

Green. An open space available for unstructured recreation, with landscaping consisting of maintained grassy areas, trees and other vegetation.

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

Gross. The overall amount of area or number exclusive of any deductions.

Ground floor area. The square foot area of a building within its largest outside dimension computed on a horizontal plane at the ground floor level, exclusive of open porches, breezeways, terraces, garages, exterior stairways and secondary stairways.

Groundcover. Low growing, perennial species that create a mat of continuous cover over the ground, which makes it difficult for weeds to establish in the landscape.

Group living. A building, portion of a building or a complex of buildings under unified control and management which contains facilities for living, sleeping, sanitation, eating and cooking for occupancy for residential uses; and which does not otherwise meet the definition of another residential use defined in this chapter. Eating and cooking areas may be shared in whole or part.

Guest house. An attached or detached accessory building used to house guests of the occupants of the principal building, and which is never rented or offered for rent. Any guest house providing cooking

facilities (e.g., full-size dishwasher, more than a bar sink, or a stove, microwave, hot plate or similar equipment) is subject to evaluation as a dwelling unit.

Sec. 38.800.090. - **H definitions.**

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

Heavy retail and service establishment. Retail and/or service activities that may have exterior service or storage areas. This use category includes, but is not limited to sales of agricultural supplies, building materials, manufactured homes, and heating fuels, truck stops, and outdoor display/sales.

High visibility street corners and gateway sites. All commercially zoned and REMU districts intersecting an arterial or two arterial and collector street are defined as a high visibility street corner and warrant special design standards set forth in *38.520.050.C*.

Historic site. The location of a significant event, a prehistoric or historic occupation or activity where the location itself possesses significant historic, cultural or archaeological value. The value of a site must be based on the ability of the site to meet the eligibility requirements for historical significance as described by the National Register of Historic Places and as approved by the city. The most recent National Register Criteria for Evaluation as published by the U.S. Department of the Interior, National Park Service are the basis for determining whether a property is eligible for historical significance when a new or updated evaluation is prepared.

Historic structure. Any building or structure that is:

1. Listed in the State or National Register of Historic Places;
2. Designated as a historic property under local or state designation law or survey;
3. Certified as a contributing resource within a National Register listed or locally designated historic district; or
4. Eligible, as determined by the City of Bozeman, to be listed on the National or State Register of Historic Places either individually or as a contributing building to an existing or potential historic district.

The most recent National Register Criteria for Evaluation as published by the U.S. Department of the Interior, National Park Service are the basis for determining whether a property is eligible for historical significance when a new or updated evaluation is prepared.

Home-based business. Any business, occupation or activity undertaken for gain within a residential structure that is incidental and secondary to the use of that structure as a dwelling. See *38.320.120.F* for standards related to home-based businesses.

Hotel or motel. A building or a group of buildings in which lodging is provided and offered to transient guests for compensation; the term "hotel or motel" does not include a bed and breakfast, boardinghouse, lodginghouse, short term rental, or roominghouse.

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

1. Any number of people related by blood, marriage, adoption, guardianship or other duly-authorized custodial relationship;
2. Not more than four unrelated people; or
3. Two unrelated people and any children related to either of them.
4. Any group of persons authorized by the federal fair housing act to occupy an individual dwelling as a single housekeeping unit.
5. Persons or groups granted a request for a reasonable accommodation to reside as a single housekeeping unit pursuant to *38.760.070*.
6. "Household" does not include:
    a. Any society, club, fraternity, sorority, association, lodge, combine, federation, coterie, cooperative housing or like organization;
    b. Any group of individuals whose association is temporary or seasonal in nature;
    c. Any group of individuals who are in a group living arrangement as a result of criminal offenses; or
    d. Any group of individuals living in a structure permitted as transitional or emergency housing pursuant to this chapter.

Sec. 38.800.100. - **I definitions.**

Illuminance. The quantity of light measured in footcandles. The density of light on a surface when the surface is uniformly illuminated.

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

Incidental sign. A sign, generally informational, that has a purpose secondary to the use of the zone lot on which it is located, such as "no parking," "entrance," "loading only," "telephone," and other similar directives. No sign with a commercial message, which is designed with the intent to be legible from a position off the zone lot on which the sign is located, will be considered incidental.

Infill. The development or redevelopment of vacant, abandoned, or underutilized properties within or wholly surrounded by the City, and where water, sewer, streets, and fire protection have already been developed and are provided. Infill is development proposed or located within land that has been subdivided or otherwise developed, and annexed, for at least 35 years.

Institution - public, nonprofit, quasi-public. Any public, quasi-public, or private non-profit facility or use which provides a cultural or other essential service to members of the public. This includes public or private colleges and universities, post offices, museums, libraries, art galleries, and other similar uses.

Irrigation. Supplemental water that is artificially applied to an area for the purpose of fostering plant growth and health.

Irrigation district. A district established pursuant to Title 85, Chapter 7.

Sec. 38.800.110. - **J definitions.**

(Reserved).

Sec. 38.800.120. - **K definitions.**

(Reserved).

Sec. 38.800.130. - **L definitions.**

Land use permit. An authorization to complete development in conformance with an application approved by the local government.

Land use plan. The land use plan and future land use map adopted in accordance with the Montana Land Use Planning Act including issue plans and area plans.

Landmark. A site, structure or object designated as a "landmark" pursuant to the procedures prescribed in *38.240*, that is worthy of preservation, restoration or rehabilitation because of its historic land planning or architectural significance and officially recognized through listing in the National Register of Historic Places. A landmark is subject to all neighborhood conservation overlay district procedures and requirements.

Landscape architect. A person licensed to practice landscape architecture in the state.

Landscaped area. The area of a lot where landscaping has been or is proposed to be installed. It also includes landscape design elements such as rock mulch and wood mulch. It does not include footprints of buildings or structures, sidewalks, driveways, walkways, or other hardscaped areas, such as decks or pervious pavers.

Landscaping. An area with vegetative plantings, such as shrubs, perennials, and turfgrass, creeping or rooting groundcovers, seed mixes, or other living plants.

Large scale wireless facility. A wireless facility 25 feet or greater in height from the base to the highest point including attachments. Examples of supporting structures are monopoles, self-supporting (lattice) towers, guy-wire supported towers and other similar structures. When calculating the height of a facility, other structures designed for other uses such as buildings or water towers may not be included in the calculation.

Large tree. A tree of a species which normally reaches a height of 25 feet or more upon maturity, and usually has a single stem.

Letter of map change. An official response from FEMA upon review of an application to amend or revise the FEMA special flood hazard area or flood insurance study for purposes of flood insurance ratings or flood hazard determinations. FEMA letters of map change include:

1. Letter of map amendment. A letter of determination from FEMA that amends the special flood hazard area where a building or a portion of property is situated upon natural ground that is higher than the base flood elevation and is thus not subject to mandatory flood insurance.

2. Letter of map revision based on fill. A letter of determination from FEMA that revises the special flood hazard area on a property based on the placement of sufficient quantities of fill to elevate the property or portion thereof above the base flood elevation. A building placed on fill must have

its lowest floor, including the bottom of a crawlspace, above the base flood elevation to avoid mandatory flood insurance.

3. Letter of map revision—Floodway. A letter of determination from FEMA that revises the special flood hazard where a building or a portion of property is located on natural ground that is higher than the base flood elevation and has been inadvertently located within the regulatory floodway and is thus not subject to mandatory flood insurance.

4. Letter of map revision. An official FEMA revision to the effective flood insurance study and flood insurance rate map incorporating physical changes to the floodplain that alter the base flood elevation and location of special flood hazard areas.

Levee. A embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water to provide protection from temporary flooding.

Levee system. A flood protection system that consists of a levee, or levees, and associated structures, such as drainage and closure devices, which are constructed and operated in accordance with sound engineering practices.

Light construction. Any change not construed as an alteration or repair, including paving of established driving and parking areas (subject to the requirements of *38.530*); construction of patios not greater than 120 square feet in size; construction of sidewalks not wider than five feet; and landscaping (but not including major changes in grading or site surface drainage).

Light fixture. A complete lighting unit consisting of a light source and all necessary mechanical, electrical and decorative parts.

Light source. A single artificial point source of light that emits measurable radiant energy in or near the visible spectrum.

Limited access. A way or means of allowing physical entrance to land at controlled locations or points. A "no access" strip or line may be placed on a plat as a means of limiting access.

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

Lodginghouse. A building with not more than ten guest rooms where lodging with or without meals is provided for compensation to persons not meeting the definitions of household, community residential facility, cooperative household, group living, or other defined residential use. Also referred to as a boardinghouse.

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

Lot line. A line which forms the boundary between a lot and any adjacent properties or rights-of-way. Includes primary street, side street, side, rear, and alley lot lines. See *38.260.010.B* for standards related to lot line designation.

Lot measurements.

A. Lot depth. The horizontal distance of a line measured at a right angle to the front lot line and running between the front lot line and rear lot line of a lot.

B. Lot width. See *38.260.020*.

C. Lot frontage. All sides of a lot that abuts a street are frontage. On curvilinear streets, the arc between the side lot lines is considered the lot frontage.

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

Lot types.

A. Corner lot. A lot at a junction of, and fronting on, two or more intersecting streets.

B. Interior lot. A lot other than a corner or through lot.

C. Double frontage or through lot. A lot having frontage on two parallel, or approximately parallel, streets.

D. Reverse frontage lot. A double frontage or through lot that is not accessible from one of the parallel or non-intersecting streets on which it fronts.

Lot with residential adjacency. Any of the following:

1. A building site in a residential zoning district, if the site abuts or is directly across a street or alley from a residential zoning district;

2. A building site in a non-residential zoning district, if the site abuts or is directly across a street or alley from a residential zoning district.

Low-profile sign. A freestanding sign composed of a solid structure between finished grade and the top of the sign. Also referred to as a monument sign.

Lowest floor. Any floor of a building including a basement used for living purposes, storage, or recreation. This includes any floor that could be converted to such a use.

Sec. 38.800.140. - **M definitions.**

Maintenance. For purposes of *38.600*, customary and historical cleaning and removal of accumulated silt, branches, trees, sticks and other debris as well as minor repair or restoration activities of existing buildings, structures or artificial obstructions to the size, shape, position and height existing immediately prior to deterioration that are not substantial improvements.

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

Manufacturing, artisan. Production of goods by the use of hand tools or small-scale, light mechanical equipment occurring solely within an enclosed building where such production requires no outdoor

operations or storage, and where the production, operations, and storage of materials related to production occupy no more than 3,500 square feet of gross floor area. Typical uses have negligible negative impact on surrounding properties and include woodworking and cabinet shops, ceramic studios, jewelry manufacturing and similar types of arts and crafts, production of alcohol, or food processing.

Manufacturing, heavy. The creation of products either with machinery or by hand according to an organized plan and with the division of labor. These uses contain land use intensity impacts typically associated with large industrial uses, their accessory outdoor storage uses, and large building areas. This use category includes, but is not limited to wrecking yards, building material manufacturing, chemical plants, concrete and asphalt plants, and freight facilities.

Manufacturing, light. Small scale fabrication of and/or assembly of goods from previously prepared materials that occurs entirely indoors and features low levels of trucking access typical of standard retail or general service establishments.

Manufacturing, moderate. Refers to a category of uses that accommodate moderate intensity levels of manufacturing and assembly activities, storage, warehousing, services, associated offices and similar uses. This use category includes, but is not limited to contractors, call centers, textiles, wood products, printing, pharmaceuticals, machinery manufacturing, research and development, regional distribution, and crematories. These uses may feature some outdoor activities and/or storage and/or moderate levels of associated trucking access.

Mean sea level. The city's adopted vertical datum or other datum to which base flood elevations are referenced.

Medical or dental offices, clinics and centers. An establishment where patients are admitted for special study and treatment by licensed health care professionals, including acupuncturists, dentists, and chiropractors. Includes public health facilities, hospitals, and other medical facilities not defined elsewhere in this division.

Meeting hall. An enclosed hall, building, or portion of a building used for the purpose of hosting conferences, banquets, luncheons, club meetings, and other similar public or private activities, and not meeting the definition of community center.

Micro-scale wireless facility. A wireless facility less than 10 feet in height from the base to the highest point, including attachments. When calculating the height of a facility, other structures designed for other uses, such as buildings or water towers, may not be included in the calculation.

Mining. The extraction of sand, gravel or other material from the land in the amount of 400 cubic yards or more and the removal thereof from the site without processing.

Ministerial permit. A permit granted upon a determination that a proposed project complies with the applicable regulations and meets all established standards set forth in the applicable regulations. The determination must be based on objective standards, involving little or no personal judgment, and must be issued by the planning administrator.

Minor subdivision. A subdivision that creates five or fewer lots from a tract of record.

Missing middle housing. A residential building containing two, three, or four dwellings in any configuration, as well as townhouses and cottage housing.

Mitigation. Measures undertaken to avoid, minimize, rectify, reduce, or compensate for adverse impacts to the natural or built environment.

Mixed-use building. A development containing residential and non-residential principal uses within the same building, designed and operated as a unified project.

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

Mortuary. An establishment providing services involving the care, preparation, or arrangement of human or animal remains, and conducting memorial services, other than a cemetery. Includes crematorium, funeral home, and pet crematorium.

Multi-unit dwelling. A building designed for five or more attached dwelling units in which the individual dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways. In a mixed-use building, any dwelling unit located within that mixed-use building is considered a multi-unit dwelling.

Mural. A visual representation using texture, colors, forms, or symbols, which does not meet the definition of a sign, placed on a solid, nontransparent vertical surface such as a wall of a building.

Sec. 38.800.150. - **N definitions.**

Natural environment. The physical conditions which exist within a given area, including land, water, mineral, flora, fauna, noise, light, and objects of historic or aesthetic significance.

Natural ground. The elevation of the ground surface existing at the time an area becomes located within a FEMA special flood hazard shown on the effective flood insurance rate that remains unaffected by construction techniques such as placement of fill, landscaping, and berms.

Neighborhood conservation overlay district. An area designated as the neighborhood conservation overlay district on the city zoning map pursuant to the procedures set forth herein.

New construction. Development commenced on or after the effective date of the ordinance from which this chapter is derived.

No-rise. A technical analysis conducted in accordance with FEMA procedures and certified by a qualified professional engineer that shows a proposed use, activity or artificial obstruction located in the regulatory floodway causes a rise of no more than 0.00 feet to the existing base flood elevation.

Non-residential buildings or structures. Buildings or structures that are not used for residential purposes including commercial, industrial, institutional, agricultural and accessory buildings or structures, and manufactured homes used for non-residential purposes.

Non-broadcast telecommunication facility. A facility used for the transmission or enhancement of telecommunications which does not include the presence of antennas, as defined in this chapter. A non-broadcast telecommunication facility does not include office use, materials storage or other similar uses.

Non-canopy tree. A large tree which in its native state has at maturity canopy vegetation less than six feet above the ground.

Non-commercial speech. Any sign wording, logo or other representation that does not directly or indirectly name, advertise or call attention to a business, product, service or other commercial activity.

Nonconforming. An existing sign, building, structure, or use of land which was lawfully established prior to the effective date of any ordinance adopting a regulation resulting in the sign, building, structure, or use of land no longer complying with a regulation.

Sec. 38.800.160. - **O definitions.**

Off-premises sign. A sign which advertises or directs attention to products or activities that are not provided on the parcel upon which the sign is located.

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

Official floodplain maps. The flood insurance rate maps and flood insurance study provided by the FEMA for Gallatin County, Montana, inclusive of the City of Bozeman, dated April 21, 2021 (FEMA Flood Insurance Study No. 30031CV001b), and incorporating any approved letters of map change listed pursuant to *38.600.110.A.1*.

100-year flood. A flood having a one percent chance of being equaled or exceeded in any given year. A 100-year flood is the same as a base flood.

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

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

Ordinary high-water mark. The outermost line caused by water impressing on land and covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A floodplain adjacent to surface waters is not considered to lie within the surface water's high-water marks.

Outside storage. A use engaged in the storage, not within a fully enclosed structure or building, of manufactured products, supplies, equipment, or the bulk storage of materials other than those that are inflammable or explosive or that present hazards or conditions commonly recognized as offensive.

Overlay district. A zoning district superimposed upon an underlying zone which establishes special requirements in addition to, or in lieu of, those of the underlying zone.

Owner. For purposes of *38.600* an owner is any person or entity that has dominion over, control of, or title to an artificial obstruction.

Sec. 38.800.170. - **P definitions.**

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

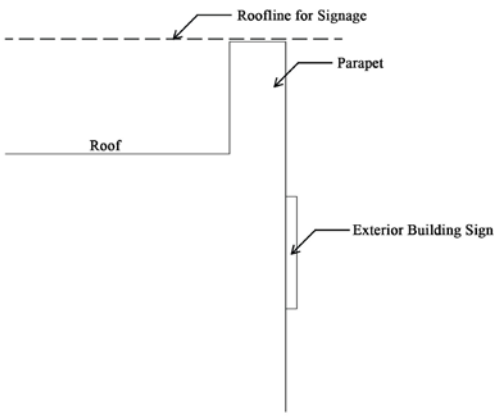


Figure 38.800.170-1. Parapet (for signage).

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

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

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

Pathway. A facility that accommodates the recreational and/or transportation needs of those using active transportation modes to move throughout the community.

Paved parking space. An area covered by an impervious dust-free surface of asphalt or concrete designed to specifications of the city.

Pedestrian-oriented open space. Publicly accessible spaces that enliven the pedestrian environment by providing opportunities for outdoor dining, socializing, relaxing and provide visual amenities that can contribute to the character of the neighborhood. See *38.260.040.C.3* for pedestrian-oriented open space design criteria.

Pennant. Any lightweight plastic, fabric or other material, whether or not containing a message of any kind, suspended from a rope, wire or string, usually in series, designed to move in the wind.

Permitted use. A use that may be approved by issuance of a ministerial permit.

Pervious pavement. A paving material that permits water penetration to a soil depth of 18 inches or more. Pervious, or permeable, pavement may consist of nonporous surface materials poured or laid in sections not exceeding one square foot in an area and collectively comprising less than two-thirds of the total surface area.

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

Personal property. Any movable or intangible thing that is subject to ownership and not classified as real property.

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

Planned unit development (PUD). A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks or any combination thereof that compose a planned mixture of land uses built in a prearranged relationship to each other.

Planning commission. The advisory body with duties assigned by the city commission regarding land use planning, subdivision, and zoning. The city commission has designated the community development board as the planning commission.

Plat. A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

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

Pole sign. A freestanding sign which is supported by a column or other structural member that is permanently attached to the ground, or a ground-mounted structure and provides a minimum of eight feet of visible, vertical clearance between the bottom of the sign and finished grade.

Portable sign. Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A- or T-frames; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.

Preliminary plat. A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by the Planning Administrator.

Primary access. The major access to a subdivision. The major access generally carries the most traffic as determined by the traffic engineering study.

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

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

Private street. A right-of-way usable by the public but maintained by a property owners' association.

Production, manufacturing and generation facility (electric or gas). A public or private utility facility or piece of infrastructure which produces or stores energy.

Projecting sign. Any sign affixed to a building or wall in such a manner that its leading edge extends more than six inches beyond the surface of such building or wall and is perpendicular to such building or wall.

Property owner. Any person, firm, corporation or other entity shown as being the legal owner of a tract, parcel or lot in the records of the county clerk and recorder.

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

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

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

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

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

Public utility. The meaning provided in 69-3-101, except that for the purposes of the Montana Land Use Planning Act, the term includes a county water or sewer district as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

Sec. 38.800.180. - **Q definitions.**

(Reserved).

Sec. 38.800.190. - **R definitions.**

Real property. Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property also includes easements.

Rear setback. A setback extending across the full width of the lot located adjacent to the rear lot line.

Reasonable accommodation. A process for providing flexibility in the application of city land use and zoning regulations and procedures, or even waiving certain requirements, when necessary to eliminate barriers to equal housing opportunities guaranteed under applicable non-discrimination laws. It may include flexible application of regulations such as: the definition of household; authorized uses in zone districts; setback area modifications for ramps, handrails or other such accessibility improvements; hardscape additions, such as widened drive aisles, parking area or walkways; building additions for accessibility; or reduced off-street parking where the disability clearly limits the number of people operating vehicles. Reasonable accommodation does not include

an accommodation which would (1) impose an undue financial or administrative burden on the city or (2) require a fundamental alteration in the nature of the city's land use and zoning program. Reasonable accommodations are subject to all laws that require or regulate planning, zoning or subdivision and platting.

Recreational vehicle. A vehicular-type portable structure without permanent foundation, which is built on a single chassis; which is 400 square feet or less when measured at the largest horizontal projection; which is designed to be self-propelled or permanently towable by a light-duty truck; which is primarily designed not for use as a permanent dwelling but as temporary living accommodations for recreational, camping and travel use and including, but not limited to, travel trailers, truck campers, camping trailers and self-propelled motor homes.

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

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

Regulated flood hazard area. Land area which has been specifically identified in *38.600.110* as subject to base flood hazards, which may consist of the special flood hazard area, regulatory floodway, and flood fringe where specifically designated.

Regulatory floodway. That portion of the special flood hazard area designated by FEMA in the official flood insurance study and flood insurance rate maps as being the regulatory floodway that must be reserved in order to discharge the base flood without cumulatively increasing the base flood elevation more than one-half-foot.

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

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

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

Restaurant. An establishment which prepares and sells ready-to-eat food and beverages for on- or off-premise consumption. Includes coffee shop, tea shop, bakery, cafe, ice cream parlor, diner, juice bar, and other similar uses.

Retail. A facility involved in the rental or sale of new or used tangible personal property for any purpose other than for resale.

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

Review Authority. The entity charged with making a decision on a subject. Authority per subject is established in *38.700.010*.

Revolving sign. Any sign which all, or a portion of, mechanically rotates either on an intermittent or constant basis around a central axis.

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

Riprap. Stone, rocks, concrete blocks, or analogous materials that are placed along the bed or banks of a watercourse or drainway for the purpose of preventing or alleviating erosion.

Roadway. That portion of the street or road right-of-way which is improved or is proposed to be improved to carry traffic and provide for the on-street storage of automobiles; where curb is provided, the roadway is measured from back-of-curb to back-of-curb.

Roof sign. Any sign erected and constructed on or over the roof of a building, supported by the roof structure, or extending vertically above any portion of the roof. Roof signs do not include signs located on a mansard roof if the sign is mounted vertically and integrated with the roof. For the purpose of this division, architecturally integrated mansard signs and other architecturally integrated signs located below the principal roofline are classified as wall signs.

Rowhouse. A dwelling unit that shares one or more common or abutting walls with one or more dwelling units. A rowhouse does not share common floors/ceilings with other dwelling units.

Rowhouse cluster. A building consisting of three or more rowhouses.

Sec. 38.800.200. - **S definitions.**

Salvage yard. An establishment where two or more motor vehicles not in running condition and/or two or more unlicensed motor vehicles, or parts thereof, are stored in the open and are not being restored to operation; or any land, building or structure used for the wrecking, dismantling, storage or abandonment of motor vehicles or parts thereof.

School. Any:

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

School - business, trade, technical, or vocational. An educational use that offers technical or professional training or higher education, where the courses of instruction relate primarily to the industrial arts and vocational and technical subjects.

Scour depth. The maximum depth of streambed scour caused by erosive forces of the base flood. Scour may be categorized as localized or general depending upon its location and proximity to artificial obstructions.

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

Security lighting. All outdoor lighting used for, but not limited to, illumination for walkways, roadways, equipment yards, parking lots and outdoor security where general illumination for safety or security of the grounds is the primary concern.

Setback. The required distance from the property line to the nearest part of the applicable building, structure or sign, measured perpendicularly to the property line. Setback also refers to a space on the same lot with a principal building, which is open and unoccupied from the ground upward or from the ground downward other than by steps, walks, terraces, drive aisles, lamp posts and similar structures, and unobstructed by structures, except as otherwise provided in this chapter. Watercourse setbacks are measured from the watercourse, not from a building or property line.

Setback line. That line that is the required minimum distance from the street right-of-way or public access easement line or any other lot line that establishes the area within which structures must be placed, as specified in this chapter. For watercourse setbacks, the setback line is measured from the high water mark of the watercourse.

Sewer, public. Any sanitary sewer line owned and maintained by the city, whether or not installed by the city.

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

Shopping mall. A multi-tenant retail structure where tenants are located on both sides of a covered walkway with direct pedestrian access to all establishments from the walkway.

Short term rental. A vacation home, tourist home as defined in MCA 50-51-102, a dwelling as defined in *38.800.050*, accessory dwelling unit, or room within a vacation home or dwelling, which is rented to the general public for compensation for transient occupancy as provided for in *38.320.060.B*.

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

Sign. Any device, fixture, placard or structure that uses any color, form, graphic, illumination, symbol or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.

Single-room occupancy development. A development with dwelling units in which residents rent a private bedroom with a shared kitchen and bathroom facilities. A single room occupancy development may be conducted within another allowed residential use.

Single-unit dwelling. A building designed for one dwelling unit that is detached from any other dwelling unit. A single-unit dwelling may be built on-site, a factory built home, or a manufactured home as these terms are defined in MCA 76-25-103.

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

Small-scale commercial center. Commercial uses oriented at serving the needs of areas of 1-2 square miles. These areas are typified by smaller scale shops and services, and a high level of pedestrian, bicycle and transit opportunities. Small-scale commercial centers are intended to support and help give identity to regions of the city by providing a visible and distinctive focal point. A small-scale commercial center may also contain uses that draw from more than the immediate vicinity, especially when located adjacent to arterial streets. Activities commonly expected in this classification are daycares, smaller scale groceries, bakeries, coffee shops, retail stores, small restaurants without drive-through facilties, offices, and similar uses, and may include residences above other uses.

Small-scale wireless facility. A wireless facility less than 25 feet in height from the base to the highest point including attachments. Examples of supporting structures are monopoles, self-supporting (lattice) towers, guy-wire supported towers and other similar structures. When calculating the height of a facility, other structures designed for other uses such as buildings or water towers may not be included in the calculation. This definition excludes those facilities meeting the definition of a micro-scale wireless facility.

Small tree. A tree of a species which normally reaches a height of less than 25 feet upon maturity.

Soil. A medium in which plants will grow.

Solid waste landfill. An area or facility devoted to the long-term storage of solid waste.

Solid waste transfer station. A solid waste management facility which collects and temporarily stores solid waste for transfer to a different processing facility or solid waste landfill.

Special flood hazard area. Land area which has been specifically identified by FEMA on a flood insurance rate map as being subject to the base flood. The special flood hazard area contains the regulatory floodway. Any building with a federally backed loan located in the special flood hazard is mandated by federal law to carry flood insurance.

Square. Open space that may encompass an entire block, is located at the intersection of important streets, and is set aside for civic purposes, and consists of paved walks, lawns, trees and civic buildings.

Stable, commercial. Any building or complex of buildings and pastures which is designed, arranged, used or intended to be used for equestrian purposes, where less than 75 % of the capacity is for the use of the owner or resident of the property. A public stable is an agricultural activity.

Stable, private. Any building located on a lot which is designed, arranged, used or intended to be used for horses for the private use of the owner of the lot.

Start of construction. The commencement of clearing, grading, filling or excavating to prepare a site for construction, and for purposes of *38.600* start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair,

reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Stealth or camouflaged. Placement of a wireless facility in such a way that it may not be discerned as being separate from the principal use of a site. This may be accomplished through visual screening, use of color or encasement of the facility within an existing structure such as a steeple. A stealth installation may also include the placement of a new structure to contain the facility so long as the new structure complies with the height, setback and other requirements of the zoning code or is otherwise exempt from those requirements.

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

Story. The part of a building included between the surface of one floor and the surface of the next floor above, or if there is no floor above, then the ceiling above. A mezzanine does not count as a story.

Street corner site. A residentially zoned lot with at least two street lot lines which intersect or a lot found at the internal curve of a street and having a primary street lot line of at least 75 feet.

Street frontage. Any property line separating a lot from a street other than an alley.

Street, public. Any street which has been dedicated to the public or is otherwise publicly owned. Any street not a public street is deemed a private street.

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

1. Alley. A street used primarily for vehicular access to the rear of properties which abut and are served by public or private streets.

2. Arterial. A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing limited access to adjacent land. Arterial streets are generally designated in the city transportation plan, however, streets not depicted in the city transportation plan may be designated as arterials by the review authority specified in *38.700.010*.

    a. Principal arterial. Serves the major centers of activity, the highest traffic volume corridors, and the longest trip distances in an urbanized area. This group of streets carries the highest proportion of the total traffic within the urban area with typical loads of 10,000 to 35,000 vehicles per day. Most of the vehicles entering and leaving the urban area, as well as most through traffic bypassing the central business district, utilize principal arterials. Significant

intra-area travel, such as between central business districts and outlying residential areas, and between major suburban centers, are served by major arterials.

b. Minor arterial. Interconnects with and augments the urban principal arterial system. It accommodates trips of moderate length and at a somewhat lower level of travel mobility than principal arterials, and it distributes travel to smaller geographic areas. With an emphasis on traffic mobility, this street network includes all arterials not classified as principal arterials while providing access to adjacent lands. Minor arterials typically carry 5,000 to 15,000 vehicles per day.

3. Collector. A street or road that provides equal priority to the movement of traffic, and to the access of residential, business and industrial areas. This type of roadway differs from those of the arterial system in that the facilities on the collector system may traverse residential neighborhoods. The system distributes trips from the arterials to ultimate destinations. The collector streets also collect traffic from local streets in the residential neighborhoods, channeling it into the arterial system. Collectors typically carry 2,000 to 10,000 vehicles per day. Collector streets are typically designated in the city transportation plan, however, additional streets may be designated as collectors by the review authority specified in *38.700.010*.

4. Cul-de-sac. A street having only one outlet for vehicular traffic and terminating in a turnaround area.

5. Dead-end street. A street having only one outlet for vehicular traffic.

6. Half-street. A portion of the width of a street, usually along the outside perimeter of a subdivision, where the remaining portion of the street must be located on adjacent property.

7. Local street. A street having the primary purpose of permitting access to abutting lands and connections to higher systems. Generally, service to higher speed traffic movements are intentionally discouraged. They typically carry 1,000 to 3,000 vehicles per day but can carry in excess of 6,000.

8. Loop. A local street which begins and ends on the same street, generally used for access to properties and to control traffic access to arterials or collectors.

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

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

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

Subdivider. Any person, firm, corporation or other entity who causes land to be subdivided or who proposes a subdivision of land.

Subdivision. A division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold, or otherwise transferred, and includes any resubdivision, or condominium. The term also means an

area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

Subdivision guarantee. A form of guarantee that is approved by the commissioner of insurance and is specifically designed to disclose the information required in MCA 76-25-413.

Substantial compliance. Substantial compliance has the meaning assigned in 76-25-103.

Substantial damage. For purposes of *38.600*, damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before damaged condition would equal or exceed 50 % of the market value of the building or structure before the damage occurred.

Substantial improvement. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 % of the market value of the structure either:

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

Suitable fill. Fill material which is stable, compacted, well graded, and pervious; not adversely affected by water and frost; devoid of trash or similar foreign matter, tree stumps or other organic material; and is fitting for the purpose of supporting the intended use, building, or structure.

Surveyor (registered land surveyor). A person licensed in conformance with the Montana Professional Engineers, Registration Act (MCA 37-67-101 through 37-67-332) to practice surveying in the state.

Swap meet. Any permanent or temporary sales or lot where the sale or trade of goods, materials and merchandise takes place outside any permanent structure, from within temporary structures or from vehicles and where several sellers or traders may congregate for the purpose of selling or trading.

Sec. 38.800.210. - **T definitions.**

Temporary irrigation. A temporary watering system designed to transport and distribute water to landscape plants for a limited period, primarily used during the establishment period, after which time the irrigation is terminated or abandoned.

Temporary protective measures. A use, activity, or artificial obstruction that is readily implemented upon commencement of a flooding emergency for the purpose of protecting existing buildings, structures, and life safety that is not located in the channel of the regulatory floodway and is readily removed upon cessation of the flooding emergency.

Temporary sign. Any advertising display that appears to be intended or is determined by the code official to be displayed for a limited period of time rather than permanently attached to the ground or a structure.

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

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

Transit stop. Improvements and facilities at selected points along transit routes for passenger pickup, dropoff and waiting. Facilities and improvements may include shelters, benches, signs, structures and other improvements to provide security, protection from the weather and access to nearby services.

Townhouse. A dwelling unit, located on its own lot, which shares one or more common or abutting walls with each wall having no doors, windows or other provisions for human passage or visibility with any other dwelling units, each located on its own lot. A townhouse does not share common floors/ceilings with other dwelling units. Each of the attached dwelling units must have:

1. Independent water and sewer service lines and metering pursuant to the applicable plumbing code and all other city regulations;
2. Individual services for all private utilities; and
3. A two hour fire separation separating the dwelling unit from any adjoining dwelling units.

Townhouse cluster. A building consisting of three or more dwelling units, each meeting the definition of a townhouse, placed side-by-side and/or back-to-back.

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

Transitional and emergency housing. The use of a site by a government or non-profit agency for individuals and/or households who are making the transition from homelessness to community living or who are in need of emergency housing. Other names for this use include warming center, transitional shelters, transitional living programs and transitional housing programs. This type of use may include on-site related services and facilities for residents and may also include services and facilities for non-residents if permitted by the underlying zone.

Trellis. A frame supporting open latticework used as a screen or a support for growing vines or plants.

Truck, bus or rail terminal. A facility intended for freight or passenger pick-up, transfer, or distribution by rail, truck, or bus, including associated facilities such as a rail yard.

Truck, bus repair, washing, & fueling. The use of a site for the provision of fuel to commercial trucks or buses, or for the repair or cleaning of commercial trucks, buses, and vehicles.

Turfgrass or turf. A relatively high water use ground cover surface of grass and the surface layer of earth held together by its roots, including but not limited to cool season lawn grasses.

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

Sec. 38.800.220. - **U definitions.**

Upper Story. Any story located above the ground story. The top-most story of a building is considered a half story, rather than a full story, when it is entirely contained within the roof form of the building and occupies less than 50% of the floor area of the story immediately below.

has a clear height of more than 7.5 feet, measured from the finished floor to the finished

ceiling;

Uniformity ratio. In outdoor lighting, a measure indicating how evenly light is distributed across a surface as expressed in a ratio of one value to another, such as average to minimum, or maximum to minimum. Using ratios, perfect uniformity would be 1:1.

Urban farm. A facility where food crops or nonfood, ornamental crops such as flowers are cultivated, processed, and distributed. Urban farming is generally practiced for profit or food producing activities.

Usable lot area. The portion of an area of a lot exclusive of setbacks or other building restrictions within which structures subject to setbacks may be placed.

USACE. When referred to in this chapter, USACE means the United States Army Corps of Engineers.

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

Sec. 38.800.230. - **V definitions.**

Variance. A modification not otherwise authorized by administrative action in this chapter of the provisions of this chapter and requiring specific findings per *38.760.060* as applied to a specific piece of property.

Vertical building modulation. A stepping back or projecting forward of vertical walls of a building face, within specified intervals of building width and depth, as a means of breaking up the apparent bulk of a structure's continuous exterior walls. Vertical building modulation may be used to meet façade articulation standards set forth in *38.520.040*.

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

Sec. 38.800.240. - **W definitions.**

Walk shed. The geographic area from which a destination can be reached on foot within approximately 1 mile or 20 minutes, measured along existing and planned pedestrian routes, including on-street and off-street facilities, that meet locally adopted design and safety standards.

Wall sign. Any sign painted on, attached to or erected against the wall of a building, structure, canopy or awning with the exposed face of the sign parallel to the plane of said wall or structure. The sign must be attached in a manner so that it does not extend six inches beyond the wall.

Warehousing. A use engaged in storage, wholesale, and distribution of manufactured products, supplies, equipment, excluding bulk storage of materials that are inflammable or explosive or that present hazards or conditions commonly recognized as offensive.

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

Watercourse. Any stream, river, creek, drainage, waterway, gully, ravine or wash in which some or all of the water is naturally occurring, such as runoff or springs, and which flows either continuously or intermittently and has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow. In the event of a braided or other multiple channel configuration of a watercourse, the area of the watercourse is that area lying between the two outermost high-water marks, as defined in this chapter. The term "watercourse" does not mean any facility created exclusively for the conveyance of irrigation water or stormwater. The city may consult with other agencies with expertise in this matter when there is a question of whether a particular water body is a watercourse.

Watercourse Setback. A fixed distance applied from the ordinary high-water mark.

Way-finding signage. A set of coordinated signs which are intended to give directional guidance to and within a defined district and to assist pedestrians or vehicles in finding areas of common interest or convenience.

Wetland. Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, and meet the established criteria briefly described below:

1. Vegetation. A prevalence of hydrophytic vegetation. Hydrophytic species, due to morphological, physiological, and/or reproductive adaptation, have the ability to grow, effectively compete, reproduce, and/or persist in anaerobic soil conditions.;

2. Soils. A hydric soil is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part.; and

3. Hydrology. The area is inundated either permanently or periodically, or the soil is saturated to the surface at some time during the growing season of the prevalent vegetation at a duration sufficient to induce anaerobic and reducing conditions.

Wetland Buffer. Except for the minimum buffer established by this chapter, a variable distance applied from the edge of a delineated wetland and determined by the review authority based on an analysis of the resource and expected adjacent activities as necessary to protect the wetland from adverse impacts to its function and value.

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

Wildlife. Animals that are neither human, domesticated, nor feral descendants of commonly domesticated animals.

Wildlife habitat. The place or type of habitat where wildlife naturally lives.

Window sign. Any sign painted, attached, glued or otherwise affixed to a window or suspended within 18 inches behind a window for the purpose of being visible from the exterior of the building.

Wireless facility. An unstaffed facility for the transmission or reception of radio frequency (RF), microwave or other signals for commercial communications purposes, typically consisting of an equipment enclosure, an antenna support structure and one or more antennae. This definition excludes amateur radios, Essential Services (Type I), satellite earth stations and private receive-only antennae, such as for the reception of television signals.

Wrecking yard. A place, lot or area where the primary function is that of dismantling, storage, abandonment or sale of goods and materials as parts or scraps.

Sec. 38.800.250. - **X definitions.**

(Reserved).

Sec. 38.800.260. - **Y definitions.**

(Reserved).

Sec. 38.800.270. - **Z definitions.**

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