

## ORDINANCE 23-5850

### AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THE REGULATIONS IN SECTIONS 27-1500, BE AMENDED TO ALLOW THE RECONSTRUCTION OF RESIDENTIAL STRUCTURES IN COMMERCIAL AND MIXED USE ZONE DISTRICTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1628, BMCC, provide for amendment to the text of the City Zoning regulations from time to time. The City Zoning Commission and staff have reviewed the proposed text amendment hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.*

**Section 2. ZONE REGULATION AMENDMENT** Section 27-1504.C(3)(a).2 is amended as follows:

**Sec. 27-1504. Nonconforming Uses**

C. Discontinuance.

3. Demolition, destruction, or obsolescence.

(a) Where nonconforming use status applies to: (1) a structure specific to a use (such as a gas station), or (2) structure and land in combination specific to a use, (such as an automobile dealership) removal or destruction of the structure shall presumptively eliminate the nonconforming status of the land and reconstruction shall be done in compliance with this zoning code.

1. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty (50) percent of the replacement cost of the at time of destruction.

2. The operation of a nonconforming residential use located in an N1-4, NX1-3, or RMH, NMU, CMU1, CMU2, CX, I1, DX, CBD, EBURD, or Public zone district shall not be terminated regardless of the amount of damage or destruction suffered by the structure in which the use is operated.

**Section 3. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 4. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 5. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other

provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 24<sup>th</sup> day of July, 2023.

PASSED, ADOPTED and APPROVED on second reading this 14<sup>th</sup> day of August, 2023.



CITY OF BILLINGS

BY:

A handwritten signature in black ink that reads "William A. Cole".

William A. Cole, Mayor

Attest:

BY:

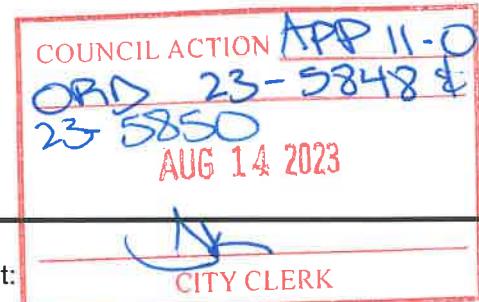
A handwritten signature in black ink that reads "Denise R. Bohlman".

Denise R. Bohlman, City Clerk

Zoning Code Allow rebuild of all R structures in all zone districts except HI

**City Council Regular**

**Date:** 08/14/2023  
**Title:** Zone Change 1031 - Text Amendments - Phase II - Action Options for Zoning Commission and City Council; Rebuild of Residential in Commercial and Mixed Use - 2nd reading  
**Presented by:** Nicole Cromwell  
**Department:** Planning & Community Services  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

**RECOMMENDATION**

The Zoning Commission recommends the following for each amendment:

- The Zoning Commission recommends approval of the Text amendment for Action Options on Special Review and Zone Changes (Sec. 27-1623 and 27-1628) and adoption of the ten review criteria on a 3-1 vote.
- The Zoning Commission recommends approval of the Rebuild of Residential uses in Commercial and Mixed Use districts (Sec 27-1504) and adoption of the findings of the ten review criteria on a 4-0 vote.

The City Council approved the amendments to Section 27-1623 and 27-1628 with adjustments made to the first reading ordinance to require a 60% majority vote of the Council to refer an item back to the Zoning Commission. The City Council approved the amendment to Section 27-1504 as proposed.

Two other amendments were not approved by the City Council. The amendment to Sections 27-307, 27-308, 27-802 and 27-804 related to the provision of open space in mixed residential developments and within newly annexed property through the Planned Neighborhood Development process, was not approved. The Zoning Commission had recommended approval. The Council referred this item to a future Council Work Session for further revision and amendment.

The amendment to Section 27-308 related to creating step-backs between new development in mixed residential zones adjacent to neighborhood districts was denied on first reading. The Zoning Commission also recommended denial of this amendment.

Planning staff recommends the City Council take second reading action consistent with first reading action for amendments to 27-1623, 27-1628 and 27-1504.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

In February 2021, the City Council adopted a new zoning code and zoning map for the entire city. The Council directed staff to continually monitor the new code to ensure the text of the regulations was working as intended and any corrections or housekeeping changes could be made. The Council also directed staff to monitor the implementation to consider any substantive changes to adjust the code, so it continues to provide support to the development goals of the adopted Growth Policy and general policies of Billings.

Planning staff brought forward a bundle of code corrections and amendments last year (June 2022). Those amendments were approved by the Council. Planning staff has been working on more substantive amendments to the code based on staff experience implementing the new code, information from professionals who use the code, and from the Council in its reviews of zoning applications. These substantive amendments include adjustments to Council action options for special reviews and zone changes, open space provisions in NX and PND district assembly, allowing rebuild of residential uses in commercial and mixed use zones by right, and step-backs of taller buildings between neighborhood and mixed neighborhood zones. These adjustments are not indicators of a "broken" set of regulations. Just as a new car or truck has a break-in period, so do new codes and regulations. As a completely new code, the need to monitor for glitches or "pain points" is important. These adjustments are just part of breaking in a new code. Planning staff believes this set of amendments should be the last significant adjustments needed for a few years. Planning staff and the City Council should re-visit the zoning and other land development codes regularly and when a new Growth Policy is adopted.

The City Council took action to initiate these amendments for review, public hearings and adoption at its meeting on April 24. The City Council's action was to begin the process of public review and adoptions. The City Council will act

on the specific amendments once the Zoning Commission provides a recommendation and once the Council holds a public hearing. The number of amendments requires these to be brought forward in two phases. The first phase of amendments was adopted by Council in May 2023. This second phase will include changes to the administrative procedures for special review and zone changes, open space provision in multifamily and PND district assemblies, rebuild of residential uses in commercial and mixed use zones, and step-backs between taller buildings in mixed residential districts adjacent to neighborhood districts. Planning staff has worked with several stakeholders over the last several months to craft the draft amendments. This report will describe each amendment and will include just one set of findings for the review criteria for all four ordinances. Each ordinance by city regulation may only address a single comprehensive subject, must have a public hearing and recommendation from the Zoning Commission and then must be voted on by the City Council at two separate meetings.

#### **Council action options for special review and zone changes - Sections 27-1623 and 27-1628**

The current code for Zoning Commission and Council actions on zone changes or special review requests is a limited set using the non-discretionary verb of "shall". It is important to applicants and the community to have predictability built in to a regulation, however, there also needs to be flexibility to balance the code and allow options and choices. The code as currently written does not allow much flexibility in decision-making. For example, the Zoning Commission does not have the option of granting a delay of action on a special review even though this option is allowed for a zone change. The City Council would also like the ability to return zone changes or special review requests to the Zoning Commission for further hearings including when changes to a site plan or zoning boundary are contemplated after the Zoning Commission hearing is complete.

The Zoning Commission met on June 6 and discussed the draft amendments. The Commission was concerned the amendment might create unintended loopholes and potentially put applications in an endless loop of delay and reviews. Planning staff updated the amendment based on these concerns. Staff has recommended a "one-time-only" limitation for hearing delays or Council sending an application back to the Zoning Commission for another hearing. Staff believes the changes to the draft diminish the concerns with loopholes and delays. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo. The City Council held a public hearing on July 24, 2023, and reviewed the proposed amendment. The City Council approved the first reading with amendments to require a 60% majority vote of the Council to refer an item back to the Zoning Commission.

#### **Open space provision in NX zones and PND district assembly - Sections 27-307, 27-308, 27-802 and 27-803**

The new 2021 code incorporated the requirement to provide open space and recreation space in multifamily developments of 3 acres or more and within any new property annexed to the city through the Planned Neighborhood Development (PND) process. Previously, the only way to require open space within a neighborhood was through the subdivision process. Some multifamily developments did not need to go through a subdivision process and the subdivision regulations allow the developer to "opt-out" from providing any on-site park or recreation space by giving the city an equivalent cash amount in lieu of dedicating parkland. The code for new multifamily developments over 3 acres does not specify any amount of open space or that it must be developed. There are three choices of open space type allowed. The language is also vague and hard to implement. Council directed staff to correct the code language to eliminate the vagueness and to be more specific on the size of open space and base it on the total area of multifamily development.

The Planned Neighborhood Development zone change process requires a minimum of 2 percent of the net area be designated as open space. There are 5 types of open space to choose from, but two of those are restricted to mixed use type developments. This code section requires development of the open space and continued maintenance either by a homeowner's association or by the city if it is accepted as public park land. Most of the open space designated through the PND process has not been accepted as public parkland because of its size and intended uses. The City Council has expressed concern the types of open space designated through the PND process are too small or provide little recreational opportunity in these new neighborhoods. The Council directed staff to increase the minimum percentage and put in some criteria for choosing an open space type. The proposed revisions eliminate the vagueness from the NX zone district requirements and increase the minimum designation of the open space through the PND process from 2 percent to 5 percent.

The Zoning Commission discussed the draft amendment on June 6, and was concerned with potential loopholes created by specifying a certain minimum acreage when the requirement would kick in, the lack of flexibility for mixed residential development in subdivisions that have already dedicated parkland or are within walking distance of a developed park. The Commission also expressed concern that open space did not have a minimum "depth or width" provision so un-useable areas might be designated for recreation. The Commission was also concerned with the added burden this places on mixed residential developments especially considering the crisis in housing the Billings area is currently experiencing. Mr. Doug Wild from the Home Builders Association also expressed concerns with the proposed revisions in light of the housing challenges.

Planning staff revised the draft amendment to address these concerns except for the potential to cost burden new mixed residential developments where no open space has been previously dedicated or developed. Until the 2021 zoning code amendments, open space provisions for new developments were exclusively handled through the subdivision process. The subdivision regulations do not require development of any dedicated parkland, only that it be provided. The open space dedicated through subdivision also must meet the city's standards for area, suitability for active recreation, and other park policies set by the city. In many cases, this leads a developer to provide cash-in-lieu of parkland dedication. While this provides revenue to the Parks Department, it does not provide the types of open space that are most usable for everyday outdoor activities in apartment communities such as outdoor dining, pocket park areas to accommodate a variety of recreation (sand boxes, play structures, benches, small areas fenced for dog play, etc.). Developers who provide these small spaces have to arrange for long term maintenance and cover liability. These amenities do add cost to monthly rents. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo. The City Council held a public hearing on the first reading ordinance on July 24, 2023, and did not adopt the ordinance on first reading. The City Council voted to refer this item to a future Council Work Session for refinement and adjustments. The amendment may come back to a future meeting of the City Council

#### **Allow re-build of residential uses in commercial and mixed use zones - Section 27-1504**

The new code for Mixed Use and commercial zone districts requires that a commercial (nonresidential) use be either on the same property or within the same building as a residential use. Many properties previously zoned commercial were allowed to have residential use as the sole use of the property without any paired commercial uses on the same property or in the same building. There are approximately 52 properties in commercial or mixed use zone districts in the Heights that are only developed with residential uses. There are about 95 such properties in the downtown area, about 70 properties between downtown and 24th St W, and about 35 properties in the Southwest Corridor and West Billings. While this is not a large number, many of these properties are owner occupied and for many are the only substantial family investment. These properties cannot receive a standard mortgage or insurance because the code does not allow a full re-build of the residence as it is.

The current code for re-build in any neighborhood zone district allows any residential use to be re-built in the district even if it is not conforming to the specific use limitations. For example, if there is a 4-unit structure in the N3 zone, a single family zone, then we can issue a re-build letter for a 4-unit structure. This amendment would extend this residential re-build allowance into the mixed use and commercial zones where residential uses are allowed but are required to be on the same lot as a commercial use or in the same structure as a commercial use.

The Zoning Commission discussed the draft ordinance on June 6, and had no concerns. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo. The City Council held a public hearing on this amendment on July 24, 2023, and approved the change on first reading.

#### **Step-backs of taller buildings between neighborhood and mixed residential neighborhood zone districts - Section 27-308**

The current code allows NX zones and N zones to be adjacent to each other. The NX2 and NX3 zone allows building heights up to 4 stories, while most N districts allow buildings between 1 and 3 stories. The code requires a larger setback for any structure in an NX2 or NX3 zone where the adjoining zone is a Neighborhood or Residential Manufactured Home zone. The additional rear setback is 20 feet and the additional side yard setback is 15 feet from property lines. Many Billings' homes in the N districts are single story with some 1-1/2 story or two-story homes. A four-story structure adjacent to a single story structure can be an abrupt change. In the Mixed Use (MU) zone districts any new structure where the property adjoins or is across an alley from a neighborhood zone district requires building setbacks of 30 to 50 ft depending on the number of stories on the commercial building. The City Council received complaints from residents in a neighborhood south of a new multifamily development on Central Avenue. The new multifamily structures met the required additional rear and side setbacks. The Council was concerned about the height difference between the homes - 1.5-story homes setback about 20 ft from rear property lines - and the new 3-story apartment buildings also setback 20 ft from the rear property line. The distance between the new multifamily and the existing single family homes is approximately 40 feet. The numerical height of the new 3-story multifamily buildings are about 35 to 36 feet. The numerical height of the existing homes is about 24 feet.

The Zoning Commission reviewed the draft amendment on June 6, and had concerns with the proposal. The primary concern was with the large setback required from a rear or side property line whenever a part of a structure is either over 2 stories or 35 ft above grade. The Commission was concerned the step back was disproportional to any negative impact between buildings. The Commission was concerned the 50-foot setback required for a building 36 feet tall was not necessary to maintain compatibility between essentially the same land use - residential dwellings. The Zoning Commission directed staff to research the requirement further to determine what is the potential for this issue to arise in the future - map where N districts are adjacent to NX2 or NX3 vacant parcels - and to provide

schematic scaled drawings of different step backs between buildings and property lines. City GIS staff developed a map showing where the potential exists for the step backs to be applied in the future. There are a handful of potential locations and all are on small lots. A 50 ft step-back for a building over 2 stories on these lots would likely require a variance or the redesign of the project to fit a 2-story or 35 ft maximum. It is likely fewer dwelling units would be available. In addition, it appears the potential future conflicts are not widespread. The map of these areas is attached.

The schematic drawings were prepared by Planning staff as hand sketches, but are scaled to show separation distances. Comfortable viewing angles (neck flexion) of either elevation or depression ranges between 40 and 80 degrees above or below the 0° angle of the horizon. For example, a viewer looking out a 3rd floor window could comfortably view objects below the window to a maximum of 80 degrees below their horizon. The viewer would have to lower their head to see at this angle. Similarly, a person standing in a backyard could comfortably elevate their head to see up to 80 degrees above their horizon to see a taller structure. Without moving the neck or head the maximum field of vision is less than 40 degrees either above or below the horizon. This information is important to understand the "view shed" of people within a taller structure or people on the ground. It also changes based on the location of the viewer. For example, if people on both properties are on ground level and there is a 6-ft tall opaque fence between the yards, there is zero visibility between the two groups of people. Trees and vegetation along property lines can also block a field of view between properties. Natural surveillance to and from public spaces such as a street or parking lot provides a good level of crime prevention. The backyard space has always been considered a private space. A privacy fence may or may not provide security for the backyard. The backyard can be a place where burglars and other criminals can commit crimes without anyone noticing. Taller fences - more than 6 feet - can be a deterrent as these are not easy to scale, but will not prevent a determined person from getting into a backyard. There are strategies that can be used to make a privacy fence more secure from trespassers including planting shrubs with thorns that make scaling a fence hazardous or building a fence that has alternating privacy and more open fence panels (trellis panels) to eliminate hiding places within the backyard.

There are several existing examples where multifamily developments adjoin neighborhood zone districts. This includes apartment buildings at 3430 Lynn Avenue, 640 Lake Elmo Drive, Killarney Street, S 28th St apartments, Avenues D and E apartments and several other locations. Most of these apartment developments fit in well with the surrounding uses. Many communities in the Midwest and in the Rock Mountains have a similar development style that includes small to medium apartment complexes adjacent to single or two family dwellings. Examples of this common urban form are attached.

Planning staff did not modify the proposed amendment for the increased step backs between new multifamily apartments and property lines adjoining or across and alley from an N zone district. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo. The Zoning Commission recommended denial of the text amendment. The City Council voted to deny (5-2) this amendment on first reading on July 24, 2023.

## STAKEHOLDERS

Planning staff worked with several groups of stakeholders over the last two years while implementing the new zoning code including the City Council, Home Builders Association, Billings Area Realtors, architects, engineers, planners and property owners. The amendments were produced by monitoring real life application of the code and collecting feedback over time from the various stakeholder groups. Planning staff shared the draft amendments with the stakeholders through direct email, placed a legal ad and posted the drafts on the Planning division's webpage and the Zoning Commission discussed the items during their June 6th meeting. Since posting the legal ad and prior to this Zoning Commission hearing, staff has received comment from Doug Wild, a member of the Home Builders Association. Generally the comments suggest that each amendment creates a slightly tougher regulatory environment which will impact cost. There were additional concerns specific to parkland requirements, step-backs and creating delays with applications. The Home Builder's Association sent in a letter of comment on the text amendments. There was general concern with adding requirements for mixed residential zones in a housing market that is very constrained.

## Zoning Commission

The Zoning Commission held a hearing on July 11, and reviewed the text amendments and received the staff recommendation and testimony from the public including John Halverson of Sanderson Stewart. The comments, discussion and motions are summarized by topic area below.

## Zoning Commission and Council Options text amendment (Sections 27-1623 and 27-1628)

The Commission asked questions regarding the potential for unnecessary delays because of disagreement over a recommendation rather than "new information" presented at the City Council hearing. The Commission was concerned the option for a "send back" to the Zoning Commission from the City Council might be overly used creating

bottlenecks and further delays. Staff clarified that Council and legal staff believe the option to send any item back to the Zoning Commission already exists, and the amendment may put sideboards on how this can be done. Staff explained the once-only limitation would not create too much delay particularly if the alternative is to withdraw or receive a denial. Both of those outcomes either require a 4-month or 12-month waiting period to re-apply. Commission member Goss stated he sat on a Planning Commission in another state that worked under similar provisions and send backs from the governing body were rare. He stated there are also some state laws that require a "raise it or waive it" limitation on land use hearings. Staff explained the conditions to send back an item to the Zoning Commission are the same limitations that apply to sending back a subdivision to the Planning Board for an additional review. The City Council only rarely has used this provision to send a subdivision back to the Planning Board. John Halverson stated he would like to ensure the imperative word "shall" remains within the administrative section of the code so that applications are not caught in an endless loop of indecision. He stated predictability is one of the hallmarks of a good zoning and land use regulation, so he urged the Commission to carefully weigh the benefits of the change.

The public hearing on this ordinance was closed and Commission member Dan Brooks made a motion to recommend approval for this amendment and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member David Goss and was approved on a 3 to 1 vote, with Commission member Trina White voting in opposition. Ms. White stated she believed the changes would not be beneficial to the development community.

#### **City Council - First Reading July 24, 2023**

The City Council held a public hearing and considered the Zoning Commission recommendation of approval. The Council heard testimony from Doug Wild, Home Builders Association president, voicing some concerns with potential for delay of new projects. Mr. Wild stated it has been a good working relationship with staff and at first the HBA was opposed. After learning more about the proposal, the HBA is mostly in favor as a delay gives a new option to applicants, so they are not always forced to accept a denial or a choice to withdraw. He stated he was in favor of the Council proposal to include a 60% minimum majority vote of the Council to send an item back to the Zoning Commission for another hearing. He stated he is optimistic this Council and any future Council would treat this tool as the exception and not the go-to every time an application encounters controversy.

The public hearing was closed and Council member Boyett made a motion to approve the text amendment and adoption of the findings of the ten review criteria. The motion was seconded by Council member Neese. Council member Gulick made a motion to amend the motion to add language to 27-1623.E.2(c.6) and 27-1628.E.2(d.6) to state a 60% majority vote to refer an item back to the Zoning Commission. The motion was seconded by Council member Neese. The amendment to the text was approved on a 8-0 voice vote. The main motion was then approved with the amendment on an 8-0 voice vote.

#### **Open Space in NX districts and PND text amendment (Sec. 27-307, 27-308, 27-802 and 27-803)**

The Zoning Commission received the staff report on this particular amendment concerning clarification and updates to the provision of open space for newly annexed property of 10 acres or more and to new mixed residential developments of 3 acres or more. The Commission also received testimony from John Halverson of Sanderson Stewart. The Zoning Commission asked about how this would be administered and whether the exemptions provided any loopholes that could be exploited. Staff pointed out the potential loopholes were closed in the re-drafted amendment. The Commission members had some concern the requirements may push up the costs of renting an apartment or may deter builders from developing new mixed residential neighborhoods. Staff explained the provisions are modest - 5% of the gross area of 3 acres is only 6,500 square feet. Mr. Halverson stated he wanted to make sure that a developer could put in several small parklets that equal 6,500 square feet in total but not each parklet is 6,500 square feet. Staff explained this is how they would calculate the submitted plans for open space areas as a cumulative amount for all areas for open space and recreation.

The public hearing on this ordinance was closed and Commission member David Goss made a motion to recommend approval for this amendment and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member Trina White and was approved on a 4 to 0 vote.

#### **City Council First Reading July 24, 2023**

The Council held its public hearing and received the Zoning Commission recommendation. Staff answered questions concerning the definition of terms in particular concerning the exemptions from providing open space. The Council had concerns with the lack of definition for "publicly accessible open space" and other terms used interchangeably throughout the code amendment. The Council concern about exemptions that extends 1/2 mile from a new development if a public park is within that radius. Council members asked whether the exemptions would apply to more recent developments. Staff presented Mayor Cole's concerns and suggested changes to sections of the proposed amendment to tighten language and to allow more flexibility when a trail or linear park

is proposed in a mixed residential zone. The Council received testimony from Doug Wild, HBA, and John Halverson from Sanderson Stewart concerning the amendment. Mr. Wild stated he was concerned with the narrow allowance to dedicate linear parks and to make those private trails would have to connect to public trails. Mr. Halverson stated he was in favor of most of the points made by Council and by Mr. Wild concerning this proposal. He stated his concern about whether the lack of open space or recreation area within mixed residential neighborhoods is an issue that is in the past. He stated he did not believe there was a genuine issue with the new code, but maybe lingering issues from the old code where no open space or recreation space was required. He stated it is also the tendency of communities to want to solve all problem by heaping the solution on mixed residential or multifamily developments. He stated this amendment may not be necessary as new projects are implementing the new code.

The public hearing was closed, and Council member Joy made a motion to approve the text amendment and adopt the findings of the ten review criteria. The motion was seconded by Council member Gulick. The Council debated the motion. There were concerns about the text as presented in particular with definitions and exemptions. Council member Purinton proposed a substitute motion to send the draft back to staff to amend the text to include definitions, re-tool the exemptions, the concept of internal and private trails versus public trails and other issues brought forward by the Council. There was no second to Council member Purinton's motion. A substitute motion was made by Council member Neese to refer this item to the Council's Operations Subcommittee for review. This motion was seconded by Council member Boyett. Several Council members objected to this motion. The motion failed on a vote of 2 in favor and 5 opposed. Further debate occurred about how to potentially amend the draft text. Council member Boyett made a substitute motion to send the text amendment to a future Council Work Session. The motion was seconded by Council member Rupsis. The motion was approved on vote of 6 in favor and 1 opposed. Council member Joy voted against the motion.

#### **Rebuild of Residential uses in Commercial and Mixed Use districts (Sec 27-1504)**

The Zoning Commission receive the staff report and recommendation for approval of this particular amendment. The Commission agreed it was important to preserve owner's equity in homeownership and allow these residences to be re-built in commercial or mixed use zones. There was no other testimony on this amendment.

The public hearing on this ordinance was closed and Commission member Dan Bröoks made a motion to recommend approval for this amendment and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member Trina White and was approved on a 4 to 0 vote.

#### **City Council First Reading July 24, 2023**

The Council conducted the public hearing and received the Zoning Commission recommendation and asked questions for clarification. Mr. Doug Wild, HBA, clarified for the Council that is a house burned down on a Light Industrial district the owner would not sell the land as residential property. The highest value is in the industrial zoning and the potential future uses.

Mayor Cole closed the public hearing. Council member Boyett made a motion to approve the zone change and adopt the findings of the ten review criteria. The motion was seconded by Council member Neese. The motion was approved on a unanimous voice vote.

#### **Step-backs for taller structures in NX adjacent to N districts (Sec 27-308)**

The Zoning Commission received the staff report and recommendation to approve the proposed amendment. The Zoning Commission voiced several concerns based on the draft ordinance and the research information presented by the Planning staff. The Zoning Commission did not believe the proposed step backs would improve any of the potential future locations where this might be an issue. The Zoning Commission looked at the handful of existing vacant NX zoned lots adjacent to N zoned lots and found the proposed amendment would not be beneficial to the stated growth policy of encouraging infill. Chair Michael Larson stated it appeared the issue seems to be an isolated situation and rare. Commission member Goss was concerned that if approved, the same sort of regulation could be adopted for structures in identical zone districts. He stated this would be especially challenging for areas north of Rimrock Rd. Commission members were curious what project spurred the initiation of the amendment. Staff explained the new Hunter's Point apartments in the 2900 block of Central was the catalyst. Mr. Halverson testified he was opposed the amendment. He stated the proposed amendment is a bad amendment, the step-back is arbitrary, is not compliant with Montana Supreme Court decisions that residential of any kind is compatible with residential development. He stated the amendment would defeat in-fill efforts and is discriminatory based on housing choice and socio-economic class. He stated a 3-story mansion in an N3 zone can be 5 ft from the rear property line, but a 3-story apartment building has to set back at least 50 feet from the same property line.

The public hearing on this ordinance was closed and Commission member Trina White moved to recommend denial finding that the proposal was not conforming to the goals of growth policy. The motion was seconded by Commission member Brooks. Mr. Brooks stated he believes the amendment is excessive and arbitrary. He stated the properties

that would be effected by the amendment do fit into the neighborhoods where they are located. The motion to recommend denial was approved on a 4-0 vote. Commission member Greg McCall arrived late to the hearing and abstained from voting.

#### **City Council First Reading July 24, 2023**

The Council opened the public hearing and received the Zoning Commission recommendation of denial for this text amendment. Council members asked staff for clarification on some points of the recommendation. Mr. John Halverson provided testimony in opposition to the text amendment. He stated the proposed amendment appeared to be arbitrary and the required step-back excessive. He stated the amendment would hinder infill projects by making them financially infeasible. He stated the overall trend is to make developing housing easier - not harder. He stated the proposed amendment is on its face discriminatory since a 3-story house in an N3 zone could be built within 5 feet of a rear property line, but somehow a 3-story apartment building is more offensive and must be at least 50 feet from a rear property line. He stated he agreed with Zoning Commission member Dan Brooks who called this amendment a solution looking for a problem. He stated the code is not yet "ripe" for amendment in this area. Council members discussed the proposal and the catalyst development - Hunter's Point Apartments - that led to the drafting of the amendment.

Mayor Cole closed the public hearing. Council member Joy made a motion to deny the proposed text amendment and adopt the findings of the ten review criteria supporting the motion to deny. The motion was seconded by Council member Purinton. Council members Neese and Rupsis both stated their support for future consideration of the amendment. The motion to deny was approved on a 5-2 vote. Council members Neese and Boyett voted against the motion.

#### **ALTERNATIVES**

The City Council may take one of the following actions, including the Zoning Commission recommendations on the proposed amendments:

- Approve and adopt of the findings of the ten review criteria for Zone Change 1031; or,
- Approve with specific changes to the draft ordinances for Zone Change 1031; or
- Deny one or more of the proposed amendments and adopt different findings of the ten review criteria for Zone Change 1031; or,
- Delay action on the zone change for up to 30 days.

The Council approved the text amendments for Sections 27-1623 and 27-1628, as well as Section 27-1504 on first reading on July 24, 2023.

The Council denied the text amendment for Section 27-308 regarding step back requirements on first reading on July 24, 2023.

The Council referred the text amendment concerning open space and recreation to a future Council Work Session at the first reading on July 24, 2023.

#### **FISCAL EFFECTS**

Adoption of code amendments may affect the Planning Division budget. Municode is the official codification company for Billings. Every amendment to the code has a fee that has usually been assessed and paid for by a department or division. However, the City Code is not particular to one Division or Department. It is utilized by many City staff and is designed to benefit and protect all City residents. It is appropriate and accurate for the cost sharing of codification costs for zoning code updates through the general fund.

#### **SUMMARY**

Before making a decision on the proposed amendments, the City Council shall consider the proposed findings of the ten review criteria as recommended by the City Zoning Commission. Please note the zoning commission recommends approval of all amendments except the step-back amendment related to 27-308. Findings specific to the denial are shown separately below. If the Council wishes to approve this amendment it will need to state alternative findings in its discussion on the motion.

1) Whether the new zoning is designed in accordance with the growth policy;

The proposed Zoning Amendments are consistent with the 2016 Billings Growth Policy Statement and Growth Guidelines:

#### **Growth Policy Statement:**

In the next 20 years, Billings will manage its growth by encouraging development within and adjacent to the existing City limits, but preference will be given to areas where City infrastructure exists or can be extended within a fiscally constrained budget and with consideration given to increased tax revenue from development. The City will prosper

with strong neighborhoods with their own unique character that are clean, safe, and provide a choice of housing and transportation options. The Zoning Commissions findings are grouped **Growth Guidelines:**

**Essential Investments** (relating to public and private expenditures to public values)

- Infill development and development near existing City infrastructure may be the most cost-effective

**Place Making** (enhance, maintain, preserve and improve existing public places):

- Public and private partnerships are valuable for creating enhanced entryways into Billings

**Community Fabric** (attractive, aesthetically pleasing, uniquely Billings)

- Attractive street scapes provide a pleasant and calming travel experience in urban and suburban neighborhoods

**Strong Neighborhoods** (livable, safe, sociable and resilient neighborhoods)

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income level
- Safe and livable neighborhoods can be achieved through subdivision design walkable access to public spaces
- Implementation of the Infill Policy is important to encourage development of underutilized properties

**Home Base** (healthy, safe and diverse housing options)

- A mix of housing types that meet the needs of a diverse population is important
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe

**Mobility and Access** (transportation choices in places where goods and services are accessible to all)

- Connecting people to places with transportation choices is vital to the well-being of Billings' residents, businesses and visitors
- Safe and accessible transportation systems benefit everyone's quality of life

**Prosperity** (promoting equal opportunity and economic advancement)

- A diversity of available jobs can ensure a strong Billings' economy
- Successful businesses that provide local jobs benefit the community
- Retaining and supporting existing businesses helps sustain a healthy economy

Since the growth policy is a general guiding document that contemplates the overall vision and growth of the community, these amendments that better tailor the regulations to meet local needs are not contrary to the document. The code amendments address the parts of the code that have created challenges or are too general. These amendments will allow the code to be adjusted to meet the community goals and match the expectations of the City Council, community developers, neighborhood builders and citizens. The proposed code amendments will allow the city to better meet the needs of all its residents, businesses and visitors now and into the future. These amendments will integrate nicely into the existing a code, and when working as a whole, will meet the intent of the growth policy.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The Zoning Commission found the proposed increased setbacks in the NX zone districts to be not conforming to the growth policy goals and guidelines. The Zoning Commission found the proposed amendment to be unnecessary and would be in direct conflict with the city growth policy to promote housing choice, in-fill development and encourage compact development.

2) Whether the new zoning is designed to secure from fire and other dangers:

The zoning amendments will not change the code in a way that will create safety concerns related to fire and other dangers. Once integrated, these amendments will not prevent the code from providing adequate building separations and density limits to provide security from fire and other dangers. Considering the nature of these specific amendments, this criteria does not directly relate to most amendments, more specifically, do not relate to Zoning Commission and City Council action options or rebuild of residential uses in commercial zones, but is more so applicable to the amendments related to open space provisions in mixed residential zones and PND zones.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The Commission found the proposed amendment to increase setbacks in the NX zone would not improve public

safety from fire or other dangers over the current setback requirements in the code. The existing code was found to be appropriate for this purpose. The alteration of the code still allows for appropriate setbacks and site requirements to ensure security of fire and other dangers.

3) Whether the new zoning will promote public health, public safety and general welfare;  
Public health, public safety and the general welfare will be promoted by the proposed zoning code amendments and the existing code as a whole. These amendments do not drastically alter the originally adopted code which was found to have met the criteria for promoting public health, safety and general welfare. The proposed adjustments to the provision of open space in mixed residential areas will provide more outdoor recreation space close to apartments and townhomes. The allowance for rebuild of residential structures in the commercial or mixed use districts will benefit the general welfare by preserving property investments in these areas.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The proposed step backs between mixed residential and neighborhood districts does not promote or increase the public health, safety or general welfare from existing conditions. The amendments work in coordination with the code as a whole to ensure the minimum standards for health, safety and welfare are being met.

4) Whether the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;

**Transportation:** The existing zoning code and these amendments as a whole should help the city provide safer transportation modes including non-motorized travel and safer routes to school. Sprawling development patterns of homogenous land uses separated by miles from different land uses is an unsustainable development pattern. It unnecessarily increases vehicle trips, drives up demand for parking spaces, wider and more abundant high speed arterial streets, contributes to air pollution and unhealthy life-styles. The existing code and the amendments will allow flexibility with design standards.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The proposed amendment to increase the setbacks in the NX zones is contrary to improving transportation systems and choices. The proposed amendment would contribute to the preserving a sprawling development pattern that increases the number and length of vehicle trips.

**Water & Sewer:** The proposed code amendments should have no effect on city water and sewer services.

**Schools and Parks:** Schools and parks should not be effected by these code amendments.

5) Whether the new zoning will provide adequate light and air;

The proposed zoning code amendments, as does the current zoning, provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air. The portions of the zoning code that pertain to adequate light and air are similar to criteria 2 and 3 which specify setback requirements, height requirements, and other siting requirements.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The amendment proposed to increase setbacks from 20 feet to 50 feet for new multifamily structures over 2 stories or 35 feet in the NX2/NX3 zones would not provide any additional benefit when those properties adjoin neighborhood zone districts. The proposed step back is not proportional and is arbitrary.

6) Whether the new zoning will effect motorized and non-motorized transportation;

The proposed zoning amendments will not directly effect motorized or non-motorized transportation. The proposed standards for the provision of open space in mixed residential and PND developments may help reduce trips from this area to access recreational areas.

7) Whether the new zoning will promote compatible urban growth;

The zoning amendments will promote compatibility with urban growth through adjustments to add certainty and flexibility, without compromising the intent of the new code. The zoning code as a whole, is compatible with the City's growth policy and vision for the community as it grows. These amendments should integrate nicely and continue to provide residents and builders with predictability.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The proposed amendment to increase setbacks in the NX zone district is not compatible with urban growth patterns. It promotes and encourages a sprawling pattern more appropriate for suburbs of cities.

8) Whether the new zoning considers the character of the district and the peculiar suitability of the property for particular uses;

All the amendments have been considered in a way that continues to carry out the intent of the zoning code as a whole and considers how open space, administrative options, preservation of property investments and building

separations can provide certainty and integrate in existing built environments. Generally, these amendments are consistent with existing fabric of both commercial and residential neighborhoods. Residential uses in commercial and mixed use areas fit into the neighborhoods where they are located. Ideally, commercial and mixed use zones would re-develop over time and make the next incremental investment in property improvements. Until that time, allowing these existing residences to be re-built will assist in preserving property value and prevent disinvestment.

9) Whether the new zoning will conserve the value of buildings;

In general, the code amendments should conserve the value of buildings throughout the City and the amendments do not alter the code in a way that would decrease values. In particular, some adjustments may ease some nonconformity burdens.

10) Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings.

The code amendments when working with the code as a whole encourage appropriate and compatible uses, design and siting of land in Billings.

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#### Attachments

Zoning Commission and Council Action Options 2nd reading corrected ordinance  
Rebuild of Residential in Mixed Use and Commercial districts 2nd reading ordinance

COUNCIL ACTION approved  
as Follows:

JUL 24 2023

db

Item 6.

**City Council Regular**

**Date:** 07/24/2023

Zone Change 1031 - Text Amendments - Phase II - Action Options for Zoning Commission and City Council; Open Space in NX districts and PND; Rebuild of Residential in Commercial and Mixed Use - Step-backs for structures in NX2/NX3

**Presented by:** Sec. 27-1623. - Special review uses - Action Options for Zoning Commission and City Council - APPROVED 8-0, indicating 60% majority vote of Council present, OWEN, CHORIKI, TIDSWELL ABSENT/EXCUSED

**Department:**

**Presentation:** Sec. 27-307. - NX1 district; Sec. 27-308. - NX2 and NX3 district; and Sec. 27-800 - Open Space - DELAYED TO A FUTURE WORK SESSION, APPROVED 6-1, SHAW EXITED MEETING, OWEN, CHORIKI, TIDSWELL ABSENT/EXCUSED, JOY

**Legal Review:** OPPOSED

**Project Number:** Sec. 27-1504.C(3)(a).2 - Reconstruction of Residential Structures in Commercial and Mixed-Use Zone Districts - APPROVED 7-0, SHAW EXITED MEETING, OWEN, CHORIKI, TIDSWELL ABSENT/EXCUSED

**RECOMMENDATION**

The Zoning Comm Sec. 27-308. NX2 and NX3 district. Related to Stepbacks for structures in NX2/NX3 zone districts. APPROVED TO DENY 5-2, SHAW EXITED MEETING, OWEN, CHORIKI, TIDSWELL ABSENT/EXCUSED, NEESE AND BOYETT OPPOSED

- The Zoning Commission recommends approval of the Text amendment for Action Options on Special Review and Zone Changes (Sec. 27-1623 and 27-1628) and adoption of the ten review criteria on a 3-1 vote.
- The Zoning Commission recommends approval of the Open Space in NX districts and PND (Sec. 27-307, 27-308, 27-802 and 27-803) and adoption of the findings of the ten review criteria on a 4-0 vote.
- The Zoning Commission recommends approval of the Rebuild of Residential uses in Commercial and Mixed Use districts (Sec 27-1504) and adoption of the findings of the ten review criteria on a 4-0 vote.
- The Zoning Commission recommends denial of the Step-backs for taller structures in NX adjacent to N districts (Sec 27-308) and adoption of the findings of the ten review criteria on a 4-0 vote.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

In February 2021, the City Council adopted a new zoning code and zoning map for the entire city. The Council directed staff to continually monitor the new code to ensure the text of the regulations was working as intended and any corrections or housekeeping changes could be made. The Council also directed staff to monitor the implementation to consider any substantive changes to adjust the code, so it continues to provide support to the development goals of the adopted Growth Policy and general policies of Billings.

Planning staff brought forward a bundle of code corrections and amendments last year (June 2022). Those amendments were approved by the Council. Planning staff has been working on more substantive amendments to the code based on staff experience implementing the new code, information from professionals who use the code, and from the Council in its reviews of zoning applications. These substantive amendments include adjustments to Council action options for special reviews and zone changes, open space provisions in NX and PND district assemblies, allowing rebuild of residential uses in commercial and mixed use zones by right, and step-backs of taller buildings between neighborhood and mixed neighborhood zones. These adjustments are not indicators of a "broken" set of regulations. Just as a new car or truck has a break-in period, so do new codes and regulations. As a completely new code, the need to monitor for glitches or "pain points" is important. These adjustments are just part of breaking in a new code. Planning staff believes this set of amendments should be the last significant adjustments needed for a few years. Planning staff and the City Council should re-visit the zoning and other land development codes regularly and when a new Growth Policy is adopted.

The City Council took action to initiate these amendments for review, public hearings and adoption at its meeting on April 24. The City Council's action was to begin the process of public review and adoptions. The City Council will act on the specific amendments once the Zoning Commission provides a recommendation and once the Council holds a public hearing. The number of amendments requires these to be brought forward in two phases. The first phase of amendments was adopted by Council in May 2023. This second phase will include changes to the administrative procedures for special review and zone changes, open space provision in multifamily and PND district assemblies, rebuild of residential uses in commercial and mixed use zones, and step-backs between taller buildings in mixed residential districts adjacent to neighborhood districts. Planning staff has worked with several stakeholders over the last several months to craft the draft amendments. This report will describe each amendment and will include just one set of findings for the review criteria for all four ordinances. Each ordinance by city regulation may only address a single comprehensive subject, must have a public hearing and recommendation from the Zoning Commission and then must be voted on by the City Council at two separate meetings.

Council action options for special review and zone changes - Sections 27-1623 and 27-1628

The current code for Zoning Commission and Council actions on zone changes or special review requests is a limited set using the non-discretionary verb of "shall". It is important to applicants and the community to have predictability built in to a regulation, however, there also needs to be flexibility to balance the code and allow options and choices. The code as currently written does not allow much flexibility in decision-making. For example, the Zoning Commission does not have the option of granting a delay of action on a special review even though this option is allowed for a zone change. The City Council would also like the ability to return zone changes or special review requests to the Zoning Commission for further hearings including when changes to a site plan or zoning boundary are contemplated after the Zoning Commission hearing is complete.

The Zoning Commission met on June 6 and discussed the draft amendments. The Commission was concerned the amendment might create unintended loopholes and potentially put applications in an endless loop of delay and reviews. Planning staff updated the amendment based on these concerns. Staff has recommended a "one-time-only" limitation for hearing delays or Council sending an application back to the Zoning Commission for another hearing. Staff believes the changes to the draft diminish the concerns with loopholes and delays. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo.

#### **Open space provision in NX zones and PND district assembly - Sections 27-307, 27-308, 27-802 and 27-803**

The new 2021 code incorporated the requirement to provide open space and recreation space in multifamily developments of 3 acres or more and within any new property annexed to the city through the Planned Neighborhood Development (PND) process. Previously, the only way to require open space within a neighborhood was through the subdivision process. Some multifamily developments did not need to go through a subdivision process and the subdivision regulations allow the developer to "opt-out" from providing any on-site park or recreation space by giving the city an equivalent cash amount in lieu of dedicating parkland. The code for new multifamily developments over 3 acres does not specify any amount of open space or that it must be developed. There are three choices of open space type allowed. The language is also vague and hard to implement. Council directed staff to correct the code language to eliminate the vagueness and to be more specific on the size of open space and base it on the total area of multifamily development.

The Planned Neighborhood Development zone change process requires a minimum of 2 percent of the net area be designated as open space. There are 5 types of open space to choose from, but two of those are restricted to mixed use type developments. This code section requires development of the open space and continued maintenance either by a homeowner's association or by the city if it is accepted as public park land. Most of the open space designated through the PND process has not been accepted as public parkland because of its size and intended uses. The City Council has expressed concern the types of open space designated through the PND process are too small or provide little recreational opportunity in these new neighborhoods. The Council directed staff to increase the minimum percentage and put in some criteria for choosing an open space type. The proposed revisions eliminate the vagueness from the NX zone district requirements and increase the minimum designation of the open space through the PND process from 2 percent to 5 percent.

The Zoning Commission discussed the draft amendment on June 6, and was concerned with potential loopholes created by specifying a certain minimum acreage when the requirement would kick in, the lack of flexibility for mixed residential development in subdivisions that have already dedicated parkland or are within walking distance of a developed park. The Commission also expressed concern that open space did not have a minimum "depth or width" provision so un-useable areas might be designated for recreation. The Commission was also concerned with the added burden this places on mixed residential developments especially considering the crisis in housing the Billings area is currently experiencing. Mr. Doug Wild from the Home Builders Association also expressed concerns with the proposed revisions in light of the housing challenges.

Planning staff revised the draft amendment to address these concerns except for the potential cost burden new mixed residential developments where no open space has been previously dedicated or developed. Until the 2021 zoning code amendments, open space provisions for new developments were exclusively handled through the subdivision process. The subdivision regulations do not require development of any dedicated parkland, only that it be provided. The open space dedicated through subdivision also must meet the city's standards for area, suitability for active recreation, and other park policies set by the city. In many cases, this leads a developer to provide cash-in-lieu of parkland dedication. While this provides revenue to the Parks Department, it does not provide the types of open space that are most usable for everyday outdoor activities in apartment communities such as outdoor dining, pocket park areas to accommodate a variety of recreation (sand boxes, play structures, benches, small areas fenced for dog play, etc.). Developers who provide these small spaces have to arrange for long term maintenance and cover liability. These amenities do add cost to monthly rents. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo.

### **Allow re-build of residential uses in commercial and mixed use zones - Section 27-1504**

The new code for Mixed Use and commercial zone districts requires that a commercial (nonresidential) use be either on the same property or within the same building as a residential use. Many properties previously zoned commercial were allowed to have residential use as the sole use of the property without any paired commercial uses on the same property or in the same building. There are approximately 52 properties in commercial or mixed use zone districts in the Heights that are only developed with residential uses. There are about 95 such properties in the downtown area, about 70 properties between downtown and 24th St W, and about 35 properties in the Southwest Corridor and West Billings. While this is not a large number, many of these properties are owner occupied and for many are the only substantial family investment. These properties cannot receive a standard mortgage or insurance because the code does not allow a full re-build of the residence as it is.

The current code for re-build in any neighborhood zone district allows any residential use to be re-built in the district even if it is not conforming to the specific use limitations. For example, if there is a 4-unit structure in the N3 zone, a single family zone, then we can issue a re-build letter for a 4-unit structure. This amendment would extend this residential re-build allowance into the mixed use and commercial zones where residential uses are allowed but are required to be on the same lot as a commercial use or in the same structure as a commercial use.

The Zoning Commission discussed the draft ordinance on June 6, and had no concerns. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo.

### **Step-backs of taller buildings between neighborhood and mixed residential neighborhood zone districts - Section 27-308**

The current code allows NX zones and N zones to be adjacent to each other. The NX2 and NX3 zone allows building heights up to 4 stories, while most N districts allow buildings between 1 and 3 stories. The code requires a larger setback for any structure in an NX2 or NX3 zone where the adjoining zone is a Neighborhood or Residential Manufactured Home zone. The additional rear setback is 20 feet and the additional side yard setback is 15 feet from property lines. Many Billings' homes in the N districts are single story with some 1-1/2 story or two-story homes. A four-story structure adjacent to a single story structure can be an abrupt change. In the Mixed Use (MU) zone districts any new structure where the property adjoins or is across an alley from a neighborhood zone district requires building setbacks of 30 to 50 ft depending on the number of stories on the commercial building. The City Council received complaints from residents in a neighborhood south of a new multifamily development on Central Avenue. The new multifamily structures met the required additional rear and side setbacks. The Council was concerned about the height difference between the homes - 1.5-story homes setback about 20 ft from rear property lines - and the new 3-story apartment buildings also setback 20 ft from the rear property line. The distance between the new multifamily and the existing single family homes is approximately 40 feet. The numerical height of the new 3-story multifamily buildings are about 35 to 36 feet. The numerical height of the existing homes is about 24 feet.

The Zoning Commission reviewed the draft amendment on June 6, and had concerns with the proposal. The primary concern was with the large setback required from a rear or side property line whenever a part of a structure is either over 2 stories or 35 ft above grade. The Commission was concerned the step back was disproportional to any negative impact between buildings. The Commission was concerned the 50-foot setback required for a building 36 feet tall was not necessary to maintain compatibility between essentially the same land use - residential dwellings. The Zoning Commission directed staff to research the requirement further to determine what is the potential for this issue to arise in the future - map where N districts are adjacent to NX2 or NX3 vacant parcels - and to provide schematic scaled drawings of different step backs between buildings and property lines. City GIS staff developed a map showing where the potential exists for the step backs to be applied in the future. There are a handful of potential locations and all are on small lots. A 50 ft step-back for a building over 2 stories on these lots would likely require a variance or the redesign of the project to fit a 2-story or 35 ft maximum. It is likely fewer dwelling units would be available. In addition, it appears the potential future conflicts are not widespread. The map of these areas is attached.

The schematic drawings were prepared by Planning staff as hand sketches, but are scaled to show separation distances. Comfortable viewing angles (neck flexion) of either elevation or depression ranges between 40 and 80 degrees above or below the 0° angle of the horizon. For example, a viewer looking out a 3rd floor window could comfortably view objects below the window to a maximum of 80 degrees below their horizon. The viewer would have to lower their head to see at this angle. Similarly, a person standing in a backyard could comfortably elevate their head to see up to 80 degrees above their horizon to see a taller structure. Without moving the neck or head the maximum field of vision is less than 40 degrees either above or below the horizon. This information is important to understand the "view shed" of people within a taller structure or people on the ground. It also changes based on the location of the viewer. For example, if people on both properties are on ground level and there is a 6-ft tall opaque fence between the yards, there is zero visibility between the two groups of people. Trees and vegetation along property lines can also block a field of view between properties. Natural surveillance to and from public spaces such

as a street or parking lot provides a good level of crime prevention. The backyard space has always been considered a private space. A privacy fence may or may not provide security for the backyard. The backyard can be a place where burglars and other criminals can commit crimes without anyone noticing. Taller fences - more than 6 feet - can be a deterrent as these are not easy to scale, but will not prevent a determined person from getting into a backyard. There are strategies that can be used to make a privacy fence more secure from trespassers including planting shrubs with thorns that make scaling a fence hazardous or building a fence that has alternating privacy and more open fence panels (trellis panels) to eliminate hiding places within the backyard.

There are several existing examples where multifamily developments adjoin neighborhood zone districts. This includes apartment buildings at 3430 Lynn Avenue, 640 Lake Elmo Drive, Killarney Street, S 28th St apartments, Avenues D and E apartments and several other locations. Most of these apartment developments fit in well with the surrounding uses. Many communities in the Midwest and in the Rock Mountains have a similar development style that includes small to medium apartment complexes adjacent to single or two family dwellings. Examples of this common urban form are attached.

Planning staff did not modify the proposed amendment for the increased step backs between new multifamily apartments and property lines adjoining or across and alley from an N zone district. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo.

## **STAKEHOLDERS**

Planning staff worked with several groups of stakeholders over the last two years while implementing the new zoning code including the City Council, Home Builders Association, Billings Area Realtors, architects, engineers, planners and property owners. The amendments were produced by monitoring real life application of the code and collecting feedback over time from the various stakeholder groups. Planning staff shared the draft amendments with the stakeholders through direct email, placed a legal ad and posted the drafts on the Planning division's webpage and the Zoning Commission discussed the items during their June 6th meeting. Since posting the legal ad and prior to this Zoning Commission hearing, staff has received comment from Doug Wild, a member of the Home Builders Association. Generally the comments suggest that each amendment creates a slightly tougher regulatory environment which will impact cost. There were additional concerns specific to parkland requirements, step-backs and creating delays with applications. The Home Builder's Association sent in a letter of comment on the text amendments. There was general concern with adding requirements for mixed residential zones in a housing market that is very constrained.

### **Zoning Commission**

The Zoning Commission held a hearing on July 11, and reviewed the text amendments and received the staff recommendation and testimony from the public including John Halverson of Sanderson Stewart. The comments, discussion and motions are summarized by topic area below.

#### **Zoning Commission and Council Options text amendment (Sections 27-1623 and 27-1628)**

The Commission asked questions regarding the potential for unnecessary delays because of disagreement over a recommendation rather than "new information" presented at the City Council hearing. The Commission was concerned the option for a "send back" to the Zoning Commission from the City Council might be overly used creating bottlenecks and further delays. Staff clarified that Council and legal staff believe the option to send any item back to the Zoning Commission already exists, and the amendment may put sideboards on how this can be done. Staff explained the once-only limitation would not create too much delay particularly if the alternative is to withdraw or receive a denial. Both of those outcomes either require a 4-month or 12-month waiting period to re-apply. Commission member Goss stated he sat on a Planning Commission in another state that worked under similar provisions and send backs from the governing body were rare. He stated there are also some state laws that require a "raise it or waive it" limitation on land use hearings. Staff explained the conditions to send back an item to the Zoning Commission are the same limitations that apply to sending back a subdivision to the Planning Board for an additional review. The City Council only rarely has used this provision to send a subdivision back to the Planning Board. John Halverson stated he would like to ensure the imperative word "shall" remains within the administrative section of the code so that applications are not caught in an endless loop of indecision. He stated predictability is one of the hallmarks of a good zoning and land use regulation, so he urged the Commission to carefully weigh the benefits of the change.

The public hearing on this ordinance was closed and Commission member Dan Brooks made a motion to recommend approval for this amendment and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member David Goss and was approved on a 3 to 1 vote, with Commission member Trina White voting in opposition. Ms. White stated she believed the changes would not be beneficial to the development community.

#### **Open Space in NX districts and PND text amendment (Sec. 27-307, 27-308, 27-802 and 27-803)**

The Zoning Commission received the staff report on this particular amendment concerning clarification and updates to the provision of open space for newly annexed property of 10 acres or more and to new mixed residential developments of 3 acres or more. The Commission also received testimony from John Halverson of Sanderson Stewart. The Zoning Commission asked about how this would be administered and whether the exemptions provided any loopholes that could be exploited. Staff pointed out the potential loopholes were closed in the re-drafted amendment. The Commission members had some concern the requirements may push up the costs of renting an apartment or may deter builders from developing new mixed residential neighborhoods. Staff explained the provisions are modest - 5% of the gross area of 3 acres is only 6,500 square feet. Mr. Halverson stated he wanted to make sure that a developer could put in several small parklets that equal 6,500 square feet in total but not each parklet is 6,500 square feet. Staff explained this is how they would calculate the submitted plans for open space areas as a cumulative amount for all areas for open space and recreation.

The public hearing on this ordinance was closed and Commission member David Goss made a motion to recommend approval for this amendment and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member Trina White and was approved on a 4 to 0 vote.

#### **Rebuild of Residential uses in Commercial and Mixed Use districts (Sec 27-1504)**

The Zoning Commission receive the staff report and recommendation for approval of this particular amendment. The Commission agreed it was important to preserve owner's equity in home-ownership and allow these residences to be re-built in commercial or mixed use zones. There was no other testimony on this amendment.

The public hearing on this ordinance was closed and Commission member Dan Brooks made a motion to recommend approval for this amendment and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member Trina White and was approved on a 4 to 0 vote.

#### **Step-backs for taller structures in NX adjacent to N districts (Sec 27-308)**

The Zoning Commission received the staff report and recommendation to approve the proposed amendment. The Zoning Commission voiced several concerns based on the draft ordinance and the research information presented by the Planning staff. The Zoning Commission did not believe the proposed step backs would improve any of the potential future locations where this might be an issue. The Zoning Commission looked at the handful of existing vacant NX zoned lots adjacent to N zoned lots and found the proposed amendment would not be beneficial to the stated growth policy of encouraging infill. Chair Michael Larson stated it appeared the issue seems to be an isolated situation and rare. Commission member Goss was concerned that if approved, the same sort of regulation could be adopted for structures in identical zone districts. He stated this would be especially challenging for areas north of Rimrock Rd. Commission members were curious what project spurred the initiation of the amendment. Staff explained the new Hunter's Point apartments in the 2900 block of Central was the catalyst. Mr. Halverson testified he was opposed the amendment. He stated the proposed amendment is a bad amendment, the step-back is arbitrary, is not compliant with Montana Supreme Court decisions that residential of any kind is compatible with residential development. He stated the amendment would defeat in-fill efforts and is discriminatory based on housing choice and socio-economic class. He stated a 3-story mansion in an N3 zone can be 5 ft from the rear property line but a 3-story apartment building has to setback at least 50 feet from the same property line.

The public hearing on this ordinance was closed and Commission member Trina White moved to recommend denial finding that the proposal was not conforming to the goals of growth policy. The motion was seconded by Commission member Brooks. Mr. Brooks stated he believes the amendment is excessive and arbitrary. He stated the properties that would be effected by the amendment do fit into the neighborhoods where they are located. The motion to recommend denial was approved on a 4-0 vote. Commission member Greg McCall arrived late to the hearing and abstained from voting.

#### **ALTERNATIVES**

The City Council may take one of the following actions, including the Zoning Commission recommendations on the proposed amendments:

- Approve and adopt of the findings of the ten review criteria for Zone Change 1031; or,
- Approve with specific changes to the draft ordinances for Zone Change 1031; or
- Deny one or more of the proposed amendments and adopt different findings of the ten review criteria for Zone Change 1031; or,
- Delay action on the zone change for up to 30 days.

#### **FISCAL EFFECTS**

Adoption of code amendments may affect the Planning Division budget. Municode is the official codification company

for Billings. Every amendment to the code has a fee that has usually been assessed and paid for by a department or division. However, the City Code is not particular to one Division or Department. It is utilized by many City staff and is designed to benefit and protect all City residents. It is appropriate and accurate for the cost sharing of codification costs for zoning code updates through the general fund.

## **SUMMARY**

Before making a decision on the proposed amendments, the City Council shall consider the proposed findings of the ten review criteria as recommended by the City Zoning Commission. Please note the zoning commission recommends approval of all amendments except the step-back amendment related to 27-308. Findings specific to the denial are shown separately below. If the Council wishes to approve this amendment it will need to state alternative findings in its discussion on the motion.

1) Whether the new zoning is designed in accordance with the growth policy;

The proposed Zoning Amendments are consistent with the 2016 Billings Growth Policy Statement and Growth Guidelines:

### **Growth Policy Statement:**

In the next 20 years, Billings will manage its growth by encouraging development within and adjacent to the existing City limits, but preference will be given to areas where City infrastructure exists or can be extended within a fiscally constrained budget and with consideration given to increased tax revenue from development. The City will prosper with strong neighborhoods with their own unique character that are clean, safe, and provide a choice of housing and transportation options. The Zoning Commissions findings are grouped

### **Growth Guidelines:**

#### **Essential Investments** (relating to public and private expenditures to public values)

- Infill development and development near existing City infrastructure may be the most cost-effective

#### **Place Making** (enhance, maintain, preserve and improve existing public places):

- Public and private partnerships are valuable for creating enhanced entryways into Billings

#### **Community Fabric** (attractive, aesthetically pleasing, uniquely Billings)

- Attractive street scapes provide a pleasant and calming travel experience in urban and suburban neighborhoods

#### **Strong Neighborhoods** (livable, safe, sociable and resilient neighborhoods)

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income level
- Safe and livable neighborhoods can be achieved through subdivision design walkable access to public spaces
- Implementation of the Infill Policy is important to encourage development of underutilized properties

#### **Home Base** (healthy, safe and diverse housing options)

- A mix of housing types that meet the needs of a diverse population is important
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe

#### **Mobility and Access** (transportation choices in places where goods and services are accessible to all)

- Connecting people to places with transportation choices is vital to the well-being of Billings' residents, businesses and visitors
- Safe and accessible transportation systems benefit everyone's quality of life

#### **Prosperity** (promoting equal opportunity and economic advancement)

- A diversity of available jobs can ensure a strong Billings' economy
- Successful businesses that provide local jobs benefit the community
- Retaining and supporting existing businesses helps sustain a healthy economy

Since the growth policy is a general guiding document that contemplates the overall vision and growth of the community, these amendments that better tailor the regulations to meet local needs are not contrary to the document. The code amendments address the parts of the code that have created challenges or are too general. These amendments will allow the code to be adjusted to meet the community goals and match the expectations of the City

Council, community developers, neighborhood builders and citizens. The proposed code amendments will allow the city to better meet the needs of all its residents, businesses and visitors now and into the future. These amendments will integrate nicely into the existing a code, and when working as a whole, will meet the intent of the growth policy.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The Zoning Commission found the proposed increased setbacks in the NX zone districts to be not conforming to the growth policy goals and guidelines. The Zoning Commission found the proposed amendment to be unnecessary and would be in direct conflict with the city growth policy to promote housing choice, in-fill development and encourage compact development.

2) Whether the new zoning is designed to secure from fire and other dangers;

The zoning amendments will not change the code in a way that will create safety concerns related to fire and other dangers. Once integrated, these amendments will not prevent the code from providing adequate building separations and density limits to provide security from fire and other dangers. Considering the nature of these specific amendments, this criteria does not directly relate to most amendments, more specifically, do not relate to Zoning Commission and City Council action options or rebuild of residential uses in commercial zones, but is more so applicable to the amendments related to open space provisions in mixed residential zones and PND zones.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The Commission found the proposed amendment to increase setbacks in the NX zone would not improve public safety from fire or other dangers over the current setback requirements in the code. The existing code was found to be appropriate for this purpose. The alteration of the code still allows for appropriate setbacks and site requirements to ensure security of fire and other dangers.

3) Whether the new zoning will promote public health, public safety and general welfare;

Public health, public safety and the general welfare will be promoted by the proposed zoning code amendments and the existing code as a whole. These amendments do not drastically alter the originally adopted code which was found to have met the criteria for promoting public health, safety and general welfare. The proposed adjustments to the provision of open space in mixed residential areas will provide more outdoor recreation space close to apartments and townhomes. The allowance for rebuild of residential structures in the commercial or mixed use districts will benefit the general welfare by preserving property investments in these areas.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The proposed step backs between mixed residential and neighborhood districts does not promote or increase the public health, safety or general welfare from existing conditions. The amendments work in coordination with the code as a whole to ensure the minimum standards for health, safety and welfare are being met.

4) Whether the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;

**Transportation:** The existing zoning code and these amendments as a whole should help the city provide safer transportation modes including non-motorized travel and safer routes to school. Sprawling development patterns of homogenous land uses separated by miles from different land uses is an unsustainable development pattern. It unnecessarily increases vehicle trips, drives up demand for parking spaces, wider and more abundant high speed arterial streets, contributes to air pollution and unhealthy life-styles. The existing code and the amendments will allow flexibility with design standards.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The proposed amendment to increase the setbacks in the NX zones is contrary to improving transportation systems and choices. The proposed amendment would contribute to the preserving a sprawling development pattern that increases the number and length of vehicle trips.

**Water & Sewer:** The proposed code amendments should have no effect on city water and sewer services.

**Schools and Parks:** Schools and parks should not be effected by these code amendments.

5) Whether the new zoning will provide adequate light and air;

The proposed zoning code amendments, as does the current zoning, provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air. The portions of the zoning code that pertain to adequate light and air are similar to criteria 2 and 3 which specify setback requirements, height requirements, and other siting requirements.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The amendment proposed to increase setbacks from 20 feet to 50 feet for new multifamily structures over 2 stories or 35 feet in the NX2/NX3 zones would not provide any additional benefit when those properties adjoin neighborhood zone districts. The proposed step back is not proportional and is arbitrary.

6) Whether the new zoning will effect motorized and non-motorized transportation;  
The proposed zoning amendments will not directly effect motorized or non-motorized transportation. The proposed standards for the provision of open space in mixed residential and PND developments may help reduce trips from this area to access recreational areas.

7) Whether the new zoning will promote compatible urban growth;  
The zoning amendments will promote compatibility with urban growth through adjustments to add certainty and flexibility, without compromising the intent of the new code. The zoning code as a whole, is compatible with the City's growth policy and vision for the community as it grows. These amendments should integrate nicely and continue to provide residents and builders with predictability.

**Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs**

The proposed amendment to increase setbacks in the NX zone district is not compatible with urban growth patterns. It promotes and encourages a sprawling pattern more appropriate for suburbs of cities.

8) Whether the new zoning considers the character of the district and the peculiar suitability of the property for particular uses;

All the amendments have been considered in a way that continues to carry out the intent of the zoning code as a whole and considers how open space, administrative options, preservation of property investments and building separations can provide certainty and integrate in existing built environments. Generally, these amendments are consistent with existing fabric of both commercial and residential neighborhoods. Residential uses in commercial and mixed use areas fit into the neighborhoods where they are located. Ideally, commercial and mixed use zones would re-develop over time and make the next incremental investment in property improvements. Until that time, allowing these existing residences to be re-built will assist in preserving property value and prevent disinvestment.

9) Whether the new zoning will conserve the value of buildings;

In general, the code amendments should conserve the value of buildings throughout the City and the amendments do not alter the code in a way that would decrease values. In particular, some adjustments may ease some nonconformity burdens.

10) Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings.

The code amendments when working with the code as a whole encourage appropriate and compatible uses, design and siting of land in Billings.

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**Attachments**

Draft Ordinance Zoning Commission and Council Action Options

Draft Ordinance Open Space in NX and PND

Draft Ordinance allow rebuild of residences in commercial and mixed use

Draft Ordinance step backs between NX and N districts

Map of vacant NX to N districts

Examples of multifamily adjacent to single family

Schematic drawings - step backs

HBA Comments on Proposed amendments

ORDINANCE 23-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS,  
PROVIDING Section 27-1623 SPECIAL REVIEW and 27-  
1628 ZONE CHANGE, BE AMENDED

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

**Section 1. RECITALS.** Title 76, Chapter 2, Part 3, MCA, and Section 27-1628, BMCC, provide for amendment to the text of the City Zoning regulations from time to time. The City Zoning Commission and staff have reviewed the proposed text amendment hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.

**Section 2. DESCRIPTION.** The text of Section 27-1623 and Section 27-1628 be amended to allow the Zoning Commission and the City Council more options for decisions related to special reviews and zone changes.

**Section 3. ZONE TEXT AMENDMENT.** The text of Section 27-1623.E is amended as follows:

**Sec. 27-1623. - Special review uses.**

E. Review and decision-making.

1. City zoning commission.

(a) The zoning commission shall consider each application in accordance with the provisions of this section, and at a public hearing at which time the application has been legally advertised.

(b) The zoning commission shall make a recommendation to the city council to:

- (1) Approve the application;
- (2) Conditionally approve the application;
- (3) Deny the application.

(c) Prior to closure of the public hearing, the zoning commission may also grant a request of the applicant to:

- (1) Allow the withdrawal of the application; or
- (2) Allow a delay not to exceed 60 days.
- (3) Only one delay request from the applicant will be granted by the zoning commission.

(d) The Zoning Commission on its own motion, may continue the public hearing to a date certain, in response to a finding for any of the decision criteria in subsection 27-1623.D., that requires additional information from the applicant. Only one continuance on its own motion can be considered by the zoning commission.

(e) Recommendations from the zoning commission shall be based on findings of fact for each criterion and shall be transmitted to the applicant or applicant's agent, and the

city council within fifteen (15) calendar days of the conclusion date of the public hearing before the commission.

(d) (f) The recommendation of the zoning commission shall be published in a newspaper of general circulation.

2. City council action.

(a) At least fifteen (15) calendar days after the first publication of notice of the zoning commission recommendations, a public hearing shall be held by the city council.

(b) Before taking any action on an application for a special review use, the city council shall first consider the findings and recommendations of the zoning commission.

(c) The city council shall:

(1) Approve the application;

(2) Conditionally approve the application;

(3) Deny the application;

(4) Allow withdrawal of the application; or

(5) Delay the application for a period not to exceed thirty (30) calendar days; or

(6) Refer the application back to the zoning commission for an additional public hearing based on a determination that 1) new information has been submitted that the applicant and public has not had a reasonable opportunity to examine and comment on, or 2) new information has been presented that was never submitted or considered by the zoning commission or staff. A city council referral back to the zoning commission will require publication of a new legal ad, posting of the property and mailing to the surrounding property. A referral back to the commission under this section may only be done once by the City Council.

**Section 4. ZONE TEXT AMENDMENT.**

The text of Section 27-1628.E is

amended as follows:

**Sec. 27-1628. - Zone change.**

E. Review and decision-making.

1. City zoning commission recommendation.

(a) The city zoning commission shall make a recommendation to the city council to:

(1) Deny the application;

(2) Approve the application; or

(3) Allow the application to be withdrawn.

(b) Prior to closure of the public hearing, the zoning commission may also grant a request, without prejudice to the applicant, to allow:

(1) Withdrawal of the application; or

(2) A delay of the public hearing not to exceed 60 days.

(3) Only one delay request by the applicant will be granted by the zoning commission.

(c) The Zoning Commission on its own motion, may continue the public hearing to a date certain, in response to a finding for any of the decision criteria in subsection 27-1628.D., that requires additional information from the applicant. Only one continuance on its own motion can be considered by the zoning commission.

~~(b) (d)~~ Recommendations from the zoning commission shall be based on findings of fact and shall be transmitted to the applicant or applicant's agent, and the city council within fifteen (15) calendar days of the conclusion date of the public hearing before the zoning commission.

~~(e) (e)~~ The recommendation of the zoning commission shall be published in a newspaper of general circulation.

~~(d) (f)~~ The zoning commission may, by a majority vote of the members present, delay action for a period not to exceed thirty (30) calendar days, without prejudice to the applicant. A report of the commission's recommendation, and the zoning coordinator's findings and conclusions shall be submitted to the city council.

## 2. City council action.

(a) The city council shall hold a public hearing within thirty (30) calendar days after the publication of the zoning commission recommendation.

(b) Before taking action on a zone change application, and after presentation of the zoning commission report, the city council shall hold a public hearing on the application.

(c) A second reading of the ordinance ~~as is~~ required by BMCC section 2-232.

(d) The city council shall:

(1) Approve the application;

(2) Deny the application;

(3) Allow withdrawal of the application; or

(4) Delay the application for a period not to exceed thirty (30) calendar days; or

~~(5) Refer the application back to the zoning commission for an additional public hearing based on a determination that 1) new information has been submitted that the applicant and public has not had a reasonable opportunity to examine and comment on, or 2) new information has been presented that was never submitted or considered by the zoning commission or staff. A city council referral back to the zoning commission will require publication of a new legal ad, posting of the property and mailing to the surrounding property. A referral back to the commission under this section may only be done once by the City Council.~~

**Section 5. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 6. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 7. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_ day of July 2023.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_ day of August 2023.

CITY OF BILLINGS

BY: \_\_\_\_\_

William A. Cole, Mayor

Attest:

BY: \_\_\_\_\_

Denise R. Bohlman, City Clerk

Zone Change \_\_\_\_\_, Text Amendment for Zoning Commission and Council actions on special review or zone changes

ORDINANCE 23-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS,  
PROVIDING Sections 27-307, 27-308 and 27-802 and 27-  
803 related to the provision of open space in multifamily  
zone districts and in Planned Neighborhood Development  
applications, BE AMENDED

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1628, BMCC, provide for amendment to the text of the City Zoning regulations from time to time. The City Zoning Commission and staff have reviewed the proposed text amendment hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.*

**Section 2. ZONE TEXT AMENDMENT.** The text of Section 27-307 be amended to revise the requirements for provision of open space in developments of three acres or more as follows:

**Sec. 27-307. - NX1 district.**

- D. Supplemental regulations.
- 5. Open space.

(a) One or more of the following open space types equal to or more than 6,500 square feet must be provided for every each three (3) contiguous acres of NX1 district or combination of NX1, NX2 or NX3 districts. All abutting land owned or under contract for purchase by owners of the subject property shall be considered part of the calculation of contiguous acres. Previously exempt parcels, may be subject to this subsection if contiguous parcels are added to the existing development.

(b) Exemptions

- (i) Developments of less than three contiguous acres are exempt from this requirement. See above for the calculation of area.
- (ii) NX1 or a combination of NX1, NX2 or NX3 developments where the most distant structure is ½-mile (radius) or less of a developed public park or publicly accessible open space are exempt from providing open space.
- (iii) Developments within a subdivision that dedicated and developed public parkland.

(c) Unless otherwise exempt, developments of more than 3 contiguous acres, shall provide a developed open space type or types equal to or greater than 5% of the gross contiguous area. For example, a contiguous six-acre development consisting of both NX1 and NX3 districts must provide and develop at least 13,068 square feet of one or more of the open space types. Fractions of square feet shall be rounded up to the next whole number. Developments of 10 or more contiguous acres shall provide at least two types of open space, one of which shall be a "Green" as defined below.

(a) (i) Parklet. A parklet is a landscaped open space with a minimum seventy (70) percent living plant material, with at least twenty (20) feet of street frontage. Parklets are

intended to provide a small resting space adjacent to the street and may include benches, bicycle parking, and small play areas for children.

(b) (ii) Green. A green is a larger, landscaped space, with at least fifty (50) feet of street frontage. A green need not have designated or developed play areas but can have benches, a playground with equipment or be large enough for informal recreational games such as kick ball, badminton, croquet or similar activities. Permanent installations are allowed such as picnic shelters, grilling stations, protected dog play areas, nets and fencing, back boards for basketball or horseshoes, or other outdoor recreational activities.

(c) (iii) Natural area. A natural area is a large area, defined to conserve a natural feature, such as a stream, wetland or woodland. At least fifty (50) feet of street frontage is required for a natural area.

(iv) Linear park with trail or bike path. A linear park with a developed trail or bike path is allowed if it is identified in the Billings Area Bike and Trail Master Plan or provides a connection between two existing trails or bike paths already developed and part of the master plan. Linear parks with trails or bike paths that are circular, internal only to the development and do not connect to adjacent trails or bike paths will not be considered.

**Section 3. ZONE TEXT AMENDMENT.** The text of Section 27-308 be amended to revise the requirements for provision of open space in developments of three acres or more as follows:

**Sec. 27-308. - NX2 and NX3 district.**

D. Supplemental regulations.

5. Open space.

(a) One or more of the following open space types equal to or more than 6,500 square feet must be provided for every each three (3) contiguous acres of NX2 or NX3 district or combination of NX1, NX2 or NX3 districts. All abutting land owned or under contract for purchase by owners of the subject property shall be considered part of the calculation of contiguous acres. Previously exempt parcels, may be subject to this subsection if contiguous parcels are added to the existing development.

(b) Exemptions

- (i) Developments of less than three contiguous acres are exempt from this requirement. See above for the calculation of area.
- (ii) NX1 or a combination of NX1, NX2 or NX3 developments where the most distant structure is ½-mile (radius) or less of a developed public park or publicly accessible open space are exempt from providing open space.
- (iii) Developments within a subdivision that dedicated and developed public parkland.

(c) Unless otherwise exempt, developments of more than 3 contiguous acres, shall provide a developed open space type or types equal to or greater than 5% of the gross contiguous area. For example, a contiguous six acre development consisting of both NX2 and NX3 districts must provide at least 13,068 square feet of one or more of the open space types. Fractions of square feet shall be rounded up to the next whole number. Developments of 10 or more contiguous acres shall provide at least two types of open space, one of which shall be a "Green", "Plaza" or "Square" as defined below.

(a) (i) Parklet. A parklet is a landscaped open space with a minimum seventy (70) percent living plant material, with at least twenty (20) feet of street frontage. Parklets are

intended to provide a small resting space adjacent to the street and may include benches, bicycle parking, and small play areas for children.

(b) (ii) Green. A green is a larger, landscaped space, with at least fifty (50) feet of street frontage. A green need not have designated or developed play areas but can have benches, a playground with equipment or be large enough for informal recreational games such as kick ball, badminton, croquet or similar activities. Permanent installations are allowed such as picnic shelters, grilling stations, protected dog play areas, nets and fencing, back boards for basketball or horseshoes, or other outdoor recreational activities.

(e) (iii) Natural area. A natural area is a large area, defined to conserve a natural feature, such as a stream, wetland or woodland. At least fifty (50) feet of street frontage is required for a natural area.

(iv) Linear park with trail or bike path. A linear park with a developed trail or bike path is an area of at least 30 feet in width that has a trail or bike path that is constructed in manner compliant with city adopted construction specifications. The designation and development of a linear park is allowed if it is identified in the Billings Area Bikeway and Trail Master Plan or provides a connection between two existing trails or bike paths already developed and part of the Billings Area Bikeway and Trail Master Plan. Linear parks with trails or bike paths that are circular, internal only to the development and do not connect to adjacent trails or bike paths will not be considered. Such amenity may be part of a "Green" or "Natural areas" as defined herein.

(v) Plaza. A plaza must share street frontage with a CMU, NMU, NO, NX or P2 zone district. A plaza may provide areas for seasonal shopping or similar community activities. A plaza will be developed with landscaping and pedestrian facilities throughout.

(vi) Square. A square is similar to a plaza except it is surrounded by street frontage on all sides. A square must be developed with landscaping and pedestrian facilities throughout.

**Section 4. ZONE TEXT AMENDMENT.** The text of Section 27-802, Table 27-800.1.

Types of Planned Neighborhood Districts, and Section 27-802.B.3 Minimum District Mix are amended as follows:

**Sec. 27-802. - Zoning districts.**

**Table 27-800.1. Types of Planned Neighborhood Districts.**

Zoning Districts																
Required Min. Acres	Types of PND	CMU1	CMU2	NMU	NO	NX1	NX2	NX3	N1	N2	N3	RMH	P1	P2	P3	
10	<b>Mixed-Use MU PND</b> Choose at least 2 districts: Pick 1 MU and Pick 1 NX or 1 N Min. % of net acres	L	L	P	P	P	P	L	P	P	P	P	R	P	P	
10	<b>Mixed Residential MR PND</b> Choose at least 2 districts: Pick 1 NX and Pick 1 N Min. % of net acres	-	-	L	P	P	P	P	P	P	P	P	R	P	P	
10	<b>Neighborhood N PND</b> Choose at least 2 N/NX districts Min. % of net acres	-	-	L	L	L	L	L	P	P	P	P	R	P	P	

**B.3 Minimum district mix regulations.**

(a) Unless Table 27-800.1 indicates otherwise, each type of planned neighborhood development requires a combination of at least two (2) development zoning districts with a percentage mix of ~~eight-eight (88)~~ ~~eighty-five (85)~~ percent maximum and ten (10) percent minimum measured by total net parcel area, plus the minimum required open space ~~(two (2) five (5) percent minimum)~~. For example, an applicant with a ~~12~~ net acre lot may choose to create a Neighborhood PND (N-PND) with a mix of: (1) ~~10.56 acres (eight-eight (88) percent) N3, 1.2 acres (ten (10) percent) N2, and the required .24 acres of P1 open space.~~

**Section 5. ZONE TEXT AMENDMENT.** The text of Section 27-803. Private Open Space Requirements is amended as follows:

**Sec. 27-803. - Private open space requirements.**

All PNDs must provide open space to ensure the walkability, sociability, and safety of residents and visitors.

A. *Natural features.* Where significant tree canopy or natural feature exist on the site, the open space shall be located in order to preserve the maximum amount of the existing trees or natural feature and maximize buffers from waterways and natural features.

B. *Types of open space.* The following types of open space are required.

1. The PNDs are required to provide one or more of the following:

- (a) *Plaza*. A plaza must share street frontage with a CMU, NMU, NO, NX or P2 zone district. A plaza may provide areas for seasonal shopping or similar community activities. A plaza may be used to meet the required minimum dedication of open space for a subdivision. A plaza will be developed with landscaping and pedestrian facilities throughout.
- (b) *Square*. A square is similar to a plaza except it is surrounded by street frontage on all sides. A square must be developed with landscaping and pedestrian facilities throughout. A square may be used to meet the required minimum dedication of open space for a subdivision.
- (c) *Parklet*. A parklet is a landscaped open space with a minimum seventy (70) percent living plant material and at least twenty (20) feet of street frontage. Parklets are intended to provide a small resting space adjacent to the street and may include benches, bicycle parking, and small play areas for children.
- (d) *Green*. A green is a larger, landscaped space, with at least fifty (50) feet of street frontage. A green need not have designated or developed play areas but can have benches, a playground with equipment or be large enough for informal recreational games such as kick ball, badminton, croquet or similar activities. Permanent installations are allowed such as picnic shelters, grilling stations, protected dog play areas, nets and fencing, back boards for basketball or horseshoes, or other outdoor recreational activities.
- (e) *Linear park with trail or bike path*. A linear park with a developed trail or bike path is an area of at least 30 feet in width that has a trail or bike path that is constructed in manner compliant with city adopted construction specifications. The designation and development of a linear park is allowed if it is identified in the Billings Area Bikeway and Trail Master Plan or provides a connection between two existing trails or bike paths already developed and part of the Billings Area Bikeway and Trail Master Plan. Linear parks with trails or bike paths that are circular, internal only to the development and do not connect to adjacent trails or bike paths will not be considered. Such amenity may be part of a "Green" or "Natural areas" as defined herein.
- (f) *Natural area*. A natural area is a large area, defined to conserve a natural feature, such as a stream, wetland or woodland. At least fifty (50) feet of street frontage is required for a natural area.

2) All of the above required open space may be counted towards the minimum required dedication of open space for a subdivision.

**Section 6. EFFECTIVE DATE**. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 7. REPEALER**. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 8. SEVERABILITY**. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_ day of July 2023.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_ day of August 2023.

CITY OF BILLINGS

BY: \_\_\_\_\_  
William A. Cole, Mayor

Attest:

BY: \_\_\_\_\_  
Denise R. Bohlman, City Clerk

Zone Change \_\_\_\_\_, Text Amendment for Open Space provisions in NX districts and PND applications

ORDINANCE 23-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS,  
PROVIDING THE REGULATIONS IN SECTIONS 27-1500,  
BE AMENDED TO ALLOW THE RECONSTRUCTION OF  
RESIDENTIAL STRUCTURES IN COMMERCIAL AND  
MIXED USE ZONE DISTRICTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1628, BMCC, provide for amendment to the text of the City Zoning regulations from time to time. The City Zoning Commission and staff have reviewed the proposed text amendment hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.*

**Section 2. ZONE REGULATION AMENDMENT** Section 27-1504.C(3)(a).2 is amended as follows:

**Sec. 27-1504. Nonconforming Uses**

C. Discontinuance.

3. Demolition, destruction, or obsolescence.

(a) Where nonconforming use status applies to: (1) a structure specific to a use (such as a gas station), or (2) structure and land in combination specific to a use, (such as an automobile dealership) removal or destruction of the structure shall presumptively eliminate the nonconforming status of the land and reconstruction shall be done in compliance with this zoning code.

1. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty (50) percent of the replacement cost of the at time of destruction.

2. The operation of a nonconforming residential use located in an N1-4, NX1-3, ~~or RMH, NMU, CMU1, CMU2, CX, I1, DX, CBD, EBURD, or Public zone~~ district shall not be terminated regardless of the amount of damage or destruction suffered by the structure in which the use is operated.

**Section 3. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 4. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 5. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other

provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_ day of July 2023.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_ day of August 2023

CITY OF BILLINGS

BY: \_\_\_\_\_

William A. Cole, Mayor

Attest:

BY: \_\_\_\_\_

Denise R. Bohlman, City Clerk

Zoning Code Allow rebuild of all R structures in all zone districts except HI

## ORDINANCE 23-\_\_\_\_\_

### AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING Section 27-308 related to the location and height of new structures adjacent to or close to Neighborhood (N) zone districts, BE AMENDED

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

**Section 1. RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Section 27-1628, BMCC, provide for amendment to the text of the City Zoning regulations from time to time. The City Zoning Commission and staff have reviewed the proposed text amendment hereinafter described. The Zoning Commission and staff have considered the ten (10) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the ten (10) criteria required by state law.*

**Section 2. DESCRIPTION.** The text of Section 27-308 be amended to allow additional stepbacks for new structures adjacent to or close to N zone districts.

**Section 3. ZONE TEXT AMENDMENT.** The text of Section 27-308 is amended as follows:

#### Sec. 27-308. NX2 and NX3 district.

The following site and structure regulations apply to any lot in the NX2 and NX3 district. Refer to section 27-303 for general regulations applicable to all districts and Table 27-300.7, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(5). See article 27-1800 for definitions and information on how to measure the following regulations:

Table 27-300.7. Site and Structure Regulations.

		Multi-Unit Building	Side-by-Side Units	REFERENCES
A.	BUILDING SITING			
5	Side Setback (feet)  Space Between Principal Buildings on Lot (feet)	5 minimum; <u>15 abutting Stepbacks required within 50 ft of N1, N2, N3, or RMH districts</u>  10 minimum		<u>See subsection 27-308.E for stepped-back stories.</u>
6	Rear Setback (feet)	10 minimum; <u>20 abutting Stepbacks required within 50 ft of N1, N2, N3, or RMH districts</u>		<u>See subsection 27-308.E for stepped-back stories.</u>

Sec. 27-308.E Height Step-backs within 50 feet of N1, N2, N3, or RMH districts.

Where N, or RMH zoning districts abut the parcel or are located across an alley from the parcel, any story over the second story or over thirty-five (35) feet above grade shall be set back from the rear or side property line a minimum of fifty (50) feet.

**Section 6. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 7. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 8. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_ day of July 2023.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_ day of August 2023.

CITY OF BILLINGS

BY: \_\_\_\_\_

William A. Cole, Mayor

Attest:

BY: \_\_\_\_\_

Denise R. Bohlman, City Clerk

Zone Change \_\_\_\_\_, Text Amendment for Stepbacks between NX and N/RMH zone districts

## City of Billings

Vacant NX2 or NX3 Zone Parcels  
adjacent to N-1-3, NO, PD, and RMH  
Zone District Parcels



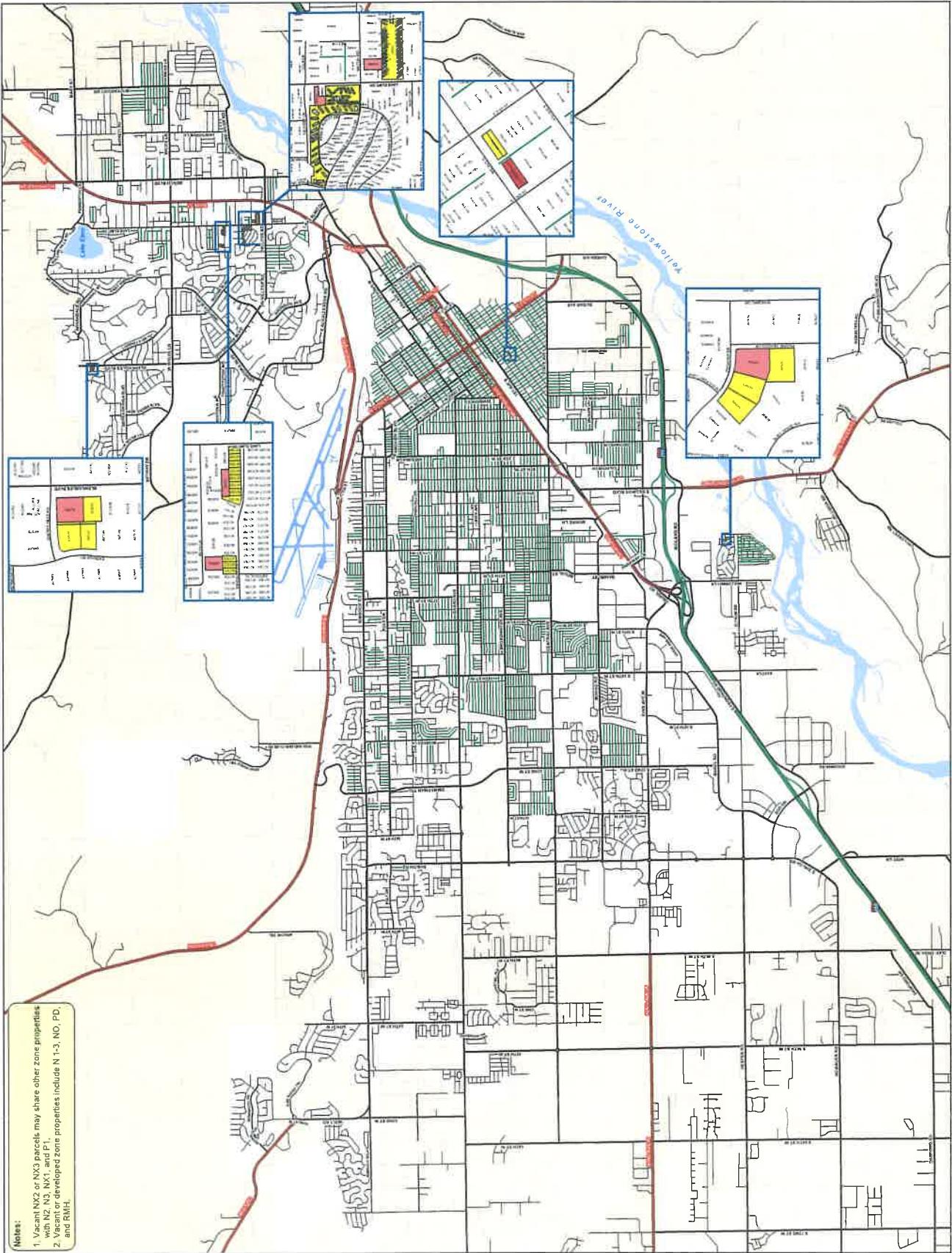
The parcel data contained in this map does not contain a legal survey. It is accurate to within 100 feet. The map is based on the Montana Department of Revenue's parcel data and is subject to change. It is not to be used for legal purposes. It is the property of the City of Billings and is to be used for informational purposes only. It is not to be reproduced without the written consent of the City of Billings.

### Legend

- Interstate Highway
- Interstate Ramp
- US or State Route
- Arterial Street
- Collector Street
- Residential Street
- Alleyway
- NX2 Vacant Parcel
- NX3 Vacant Parcel
- N-1-3, NO, PD, & RMH Tax Parcel
- Billings City Limits
- Yellowstone County



Scale in Miles  
0 0.75 1.5



Notes:  
1. Vacant NX2 or NX3 parcels may share other zone properties with N2, N3, N4, and P1, P2, and P3.  
2. Vacant or developed zone properties include N-1-3, NO, PD, and RMH.



Oak Park Neighborhood Chicago IL



Oak Park Neighborhood, Chicago, IL



Humboldt Ave Minneapolis MN



Humboldt Ave Minneapolis MN



N Terrace Fargo, ND



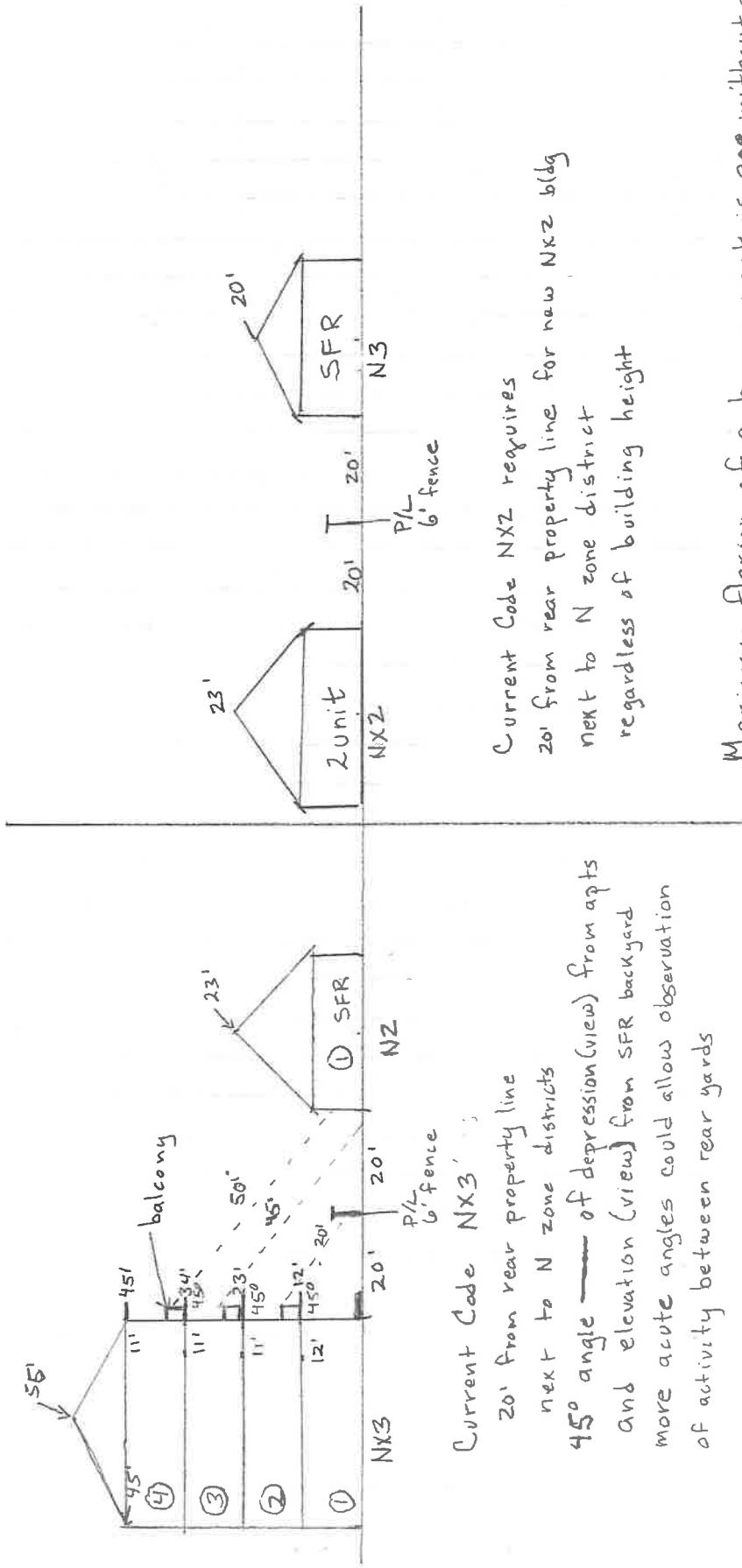
Franklin St Rapid City, SD



West St Patrick Street, Rapid City, SD

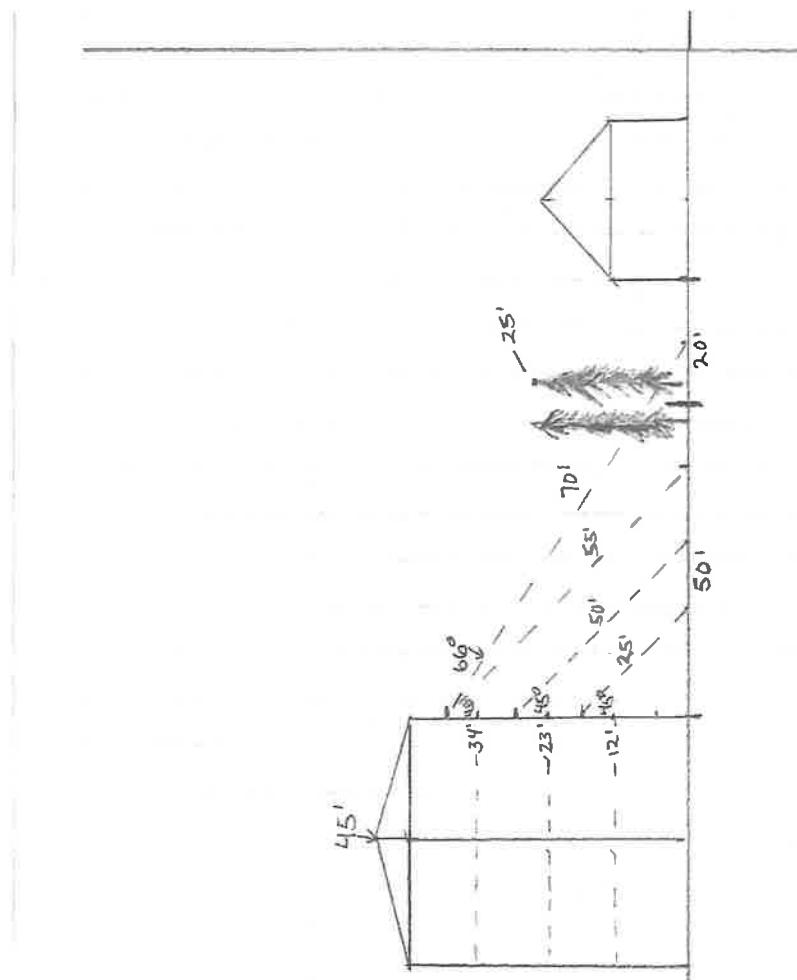


4th Ave N, Great Falls, MT



Maximum flexion of a human neck is  $80^\circ$  without pain

1 inch =  $30'$



Proposed NX2/NX3 50 ft setback for new structures greater than 2 stories or 35 ft in height

Visual perception at distances greater than 25 feet drops off

Human faces cannot be identified at distances greater than 150 feet

## Feedback on Proposed Zoning Code Amendments

1. Each one of them by itself may not be a major issue but they all do make development slightly tougher by adding additional requirements or timelines, so I am somewhat concerned with the overall approach since every time additional burden is added, development gets slightly tougher/more expensive, and housing attainability goes down.

### **Zoning code amendment 27-307 27-308**

1. In general, I think that the 5% of open space for a larger NX projects is appropriate. I suspect it is well over 2%, probably over 5%. I think that if this is the case, we should oppose the change.

### **Zone Code Amendments - Stepbacks for 2+ stories abutting N and NX**

1. It seems arbitrary and excessive, and what caused this to come up? How does this fit into the city's long term growth plan?
2. This is a bad idea. 50' height is arbitrary and excessive. Where's this amendment coming from? What prompted staff to take this up?
3. This change would require already approved 3 story plans to be reduced to 2 stories.
4. Changing the step-backs will have little impact on what neighboring homes can see from their homes. Additionally, rooftops and yards would still be visible from an upper floor. Visibility is 12 miles from a height of 50ft.

### **Zone Change 27-1623 and 27-1628**

1. This proposed amendment appears to be in violation of new state law signed into effect this legislative season. The Bill that passed and was signed by the Governor is SB131, requiring reviews to be completed within 20 working days.
2. This amendment would allow the zoning commission to delay their recommendation of a zone change by up to 60 days. Pushing an application off to a subsequent meeting. It also gives the option for the City Council to push a zone change request back to the zoning commission for another public hearing. If they "feel" that there are issues brought up during council meetings that were not addressed during the Zoning Commissions public meeting. My general opinion of these proposed code amendments is that it could easily end up delaying a zone change request by 3-4 months. Depending on the size of the project, costing a land developer \$30-40k in time and financing cost.