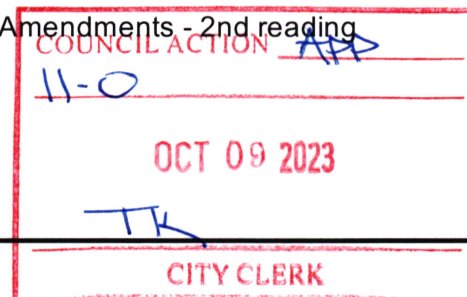


City Council Regular

Date: 10/09/2023
 Title: Zone Change 1034 - Phase III Zoning Text Amendments - 2nd reading
 Presented by: Nicole Cromwell
 Department: Planning & Community Services
 Presentation: No
 Legal Review: Not Applicable
 Project Number: N/A

ORD 23-5852 - 23-5857



RECOMMENDATION

The Zoning Commission recommends approval as follows:

- 1. Updates to Administrative Relief provisions Section 27-1614** -- Provide uniformity between administrative relief provisions for all zone districts including incorporation of landscape and off-street parking relief provisions. The Zoning Commission recommends approval, and adoption of the findings of the ten review criteria on a 5-0 vote.
- 2. Landscape Plan clarifications for residential (one and two family) lots Section 27-1618** -- Amend the administrative provisions for a Landscape Plan to clarify plans are not required with building permits for one or two-family dwellings on individual platted lots. The Zoning Commission recommends approval, and adoption of the findings of the ten review criteria on a 5-0 vote.
- 3. Housekeeping amendments to correct errors and cross-references in other city codes.** The Zoning Commission recommends approval of all the minor amendments and adoption of the findings of the ten review criteria on a 5-0 vote, except for the proposed amendments to Sections 27-1405.A (3-5) and 27-1803 definitions related to signs. The Zoning Commission sent the amendments related to signs back to Planning staff for further information development and study.
- 4. Special Review criteria Section 27-1623** -- Amend this code section to allow the Council to require updates to existing sites or structures when considering a special review use. The Zoning Commission recommends approval, and adoption of the findings of the ten review criteria on a 5-0 vote.
- 5. Zoning at Annexation Section 27-1615** -- Allow an administrative process to determine the most appropriate zone for smaller parcels with existing county zones identical to a city zone district, or when the most appropriate zone change process for a parcel of more than 10 acres is not the Planned Neighborhood Development (PND) in Section 27-800. The Zoning Commission recommends approval, and adoption of the findings of the ten review criteria on a 5-0 vote.

The City Council held a public hearing on September 25, and approved the text amendments as recommended by the Zoning Commission. A second reading of the ordinances is required to approve the amendments.

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 the Neighborhood building and siting standards, the sign code, the Planned Neighborhood Development (PND) process, open space requirements for PNDs and multifamily developments, zoning at annexation as well as the right to rebuild residential structures in mixed-use and commercial zone districts. 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 phases. This first phase included changes to the Neighborhood Districts building and siting standards, the code section on fence materials and the sign code. The City Council took action on these first amendments at its May 22, Regular Business Meeting. The Council approved the first phase of the amendments on June 12. The Council then considered the second phase of amendments on July 24, after the Zoning Commission hearing and recommendations from July 11.

Planning staff has worked with several stakeholders over the last several months to craft the draft amendments. At the May 2, 2023, hearing on the first set of amendments, the Zoning Commission asked for the next two phases to include one discussion meeting and then a public hearing meeting. The discussion meeting is intended to provide the Zoning Commission the opportunity to better study the amendments and ask questions of staff and make suggested edits prior to the public hearing. This is the public hearing for the third phase amendments. This phase of amendments includes the following:

- Updates to Administrative Relief provisions Section 27-1614 -- Provide uniformity between administrative relief provisions for all zone districts including incorporation of landscape and off-street parking relief provisions
- Landscape Plan clarifications for residential (one and two family) lots Section 27-1618 -- Amend the administrative provisions for a Landscape Plan to clarify plans are not required with building permits for one or two-family dwellings on individual platted lots.
- Housekeeping amendments to correct errors, provide clarity and fix conflicts with cross-references in other city codes
- Special Review criteria Section 27-1623 -- Amend this code section to allow the Council to require updates to existing sites or structures when considering a special review use.
- Zoning at Annexation Section 27-1615 and 27-800 -- Allow an administrative process to determine the most appropriate zone for smaller parcels with existing county zones identical to a city zone district, or when the most appropriate zone change process for a parcel of more than 10 acres is not the Planned Neighborhood Development (PND) in Section 27-800.

Administrative Relief

Section 27-1614 of the code allows Planning staff to grant minor relief from some code requirements such as setbacks, height, build-to-zone ranges, door and window requirements and other adjustments for new construction where a physical limitation exists that prevents an owner from following the code exactly. Administrative relief is intended to be a small adjustment to the code to fit existing circumstances. It is not a substitute for a formal variance and when a request exceeds the small amount allowed, a variance is required. Similar to variances, the Planning staff must find the request is to make an adjustment that maintains the intent of the requirement, does not adversely affect adjoining property and conditions may be applied to the approved request. The code has two additional "administrative relief" options that are not included in the process outlined in this section: Landscaping waivers and waivers of maximum (and minimum) off-street parking. The proposed draft amendment would allow all requests for administrative relief and waivers to be processed similarly ensuring there will be uniform application of criteria and standards. The ordinance approved on first reading is attached.

Landscape Plan

Section 27-1618 of the Administrative Procedures section of the code specifies how and when landscape plans shall be submitted for approval. Typically, these plans are submitted along with a building permit, a master site plan, a zoning compliance permit (county), or special review application. The first set of housekeeping amendments in 2022, clarified the street frontage landscaping required for single and two-family lots in Section 27-1203. A similar clarification and amendment is required in Section 27-1618, to ensure conformity throughout the code related to landscape plans for residential developments. Unless the development of one or two-family homes is covered by a master site plan approval (unit ownership, condominiums, townhomes), landscape plans are not required. Each lot is still required to provide one street tree for each 40 feet of street frontage, but these are not required to be shown on a building permit or zoning compliance permit for lot development or re-development. There are also inconsistencies between Section 27-1200 and 27-1618 that will be resolved with this amendment. The ordinance approved on first reading is attached.

Housekeeping Amendments

Small corrections and adjustments are still coming to light as we work with and apply the new zoning code. These adjustments will bring more clarity and reduce confusion for builders, architects, engineers, lawyers and planners as we apply the code to new projects and buildings. These housekeeping amendments include changes to the zoning regulation as well as adjustments to other parts of the city code that have incorrect references to the zoning code. The ordinances approved on first reading are attached.

Special Review Criteria

Section 27-1623 includes criteria for decision makers including the types of issues or areas where conditions may be imposed. The current code does not specify that deficiencies in existing site development can be addressed through the special review process. For example, a site may have some but not all the required street frontage landscaping, the type of planting required for a buffer yard, less than the required off-street parking for the existing or proposed use, or a sign type or sign area that is nonconforming to the code. These deficiencies are not mentioned in the special review criteria, but improvements could have a beneficial or mitigating impact on the proposed special review use. The amendment will add language to the decision criteria so the Zoning Commission and Council can consider upgrades to existing sites for new uses requiring special review. The ordinance approved on first reading is attached.

Zoning at Annexation

Section 27-1615 and 27-800 govern how zoning is changed and applied at the time of annexation to the city. The City and County now only have a handful of zone districts that are identical - Heavy Commercial (CX), Light Industrial (I1) and Heavy Industrial (I2), and the Public zone districts (P1-3). Some properties close to the city limits also have other "urban" zone districts applied to match the existing development pattern such as Neighborhood Residential 1-3, Mixed Residential 1-3 and Mixed Use zone districts. All of these properties can be annexed with the existing zoning in place and do not require a change to the zoning. During the past two years, the city has also annexed parcels that are inappropriate to apply the Planned Neighborhood Development zone change process because of the size, location and intended use of the property. These properties include a 20-acre parcel added to the Billings Operations Center on Midland Road and a few others. There were other annexations that were required to submit a zone change application even though the city zone district choice was obvious - an annexation of an N4 County zoned parcel surrounded by N3 City zoning. These situations are not uncommon. The current code does not consider these situations. The proposed amendment will set parameters when a zone change application is not required, when a landowner may choose to not go through the PND process, and what happens when an annexation is approved, but the zoning is not. The ordinance approved on first reading is attached.

STAKEHOLDERS

Planning staff published a legal ad, posted the final draft ordinances to the city's webpage and contacted the stakeholders groups with the time, date and location of the public hearing. Planning staff has not received any comments in writing or by phone call from interested persons.

Zoning Commission - Discussion August 1, 2023

The Zoning Commission discussed the draft text amendments on August 1, 2023, at a regular meeting. The Zoning Commission suggested edits to the proposed amendments regarding Administrative Relief related to the provision of doors and windows on front facades. Those changes and updates were made to the draft.

Zoning Commission - Public Hearing September 5, 2023

The Zoning Commission held a public hearing on September 5, 2023, and received the staff report and details of each proposed amendment to the code. The Zoning Commission asked questions regarding the housekeeping amendment ordinance that covers several sections of the zoning code. Staff clarified these amendments to the code. There was a longer discussion on the proposed changes to the sign code related to clarification of standards and definitions of freestanding signs.

The Zoning Commission received testimony from several persons who either owned or worked for sign companies in Billings. There was a general concern that the proposed amendments were not to clarify the definitions in the sign code but to make a substantial change to the code. Tom Gross of Sign Products, Inc., Michael Taylor of Sign Pro, Mark Lynde, Rachel Kelly and Kevin Kliewer, all employees of Sign Pro.

Rachel Kelly commented the sign code should not restrict the creativity of sign designers or the desire of business owners to have certain styles, colors or size of signs. She stated the proposed amendments are not necessary and would restrict her ability to design a sign to a customer's wishes. She stated the permitting process should be fair and equitable for all types of businesses or entities. She stated overly strict sign regulations will drive businesses outside the area where more liberal sign codes apply. She stated this has happened in Bozeman where businesses are going to Belgrade and Three Forks.

Mr. Lynde testified in opposition to the sign code amendments. He asked the Zoning Commission if they had received his email earlier in the day. The Commission members stated they had received Mr. Lynde's email. He stated all signs meet the minimum the 5-foot property line setbacks. The sign structure is part of the overall sign design. He stated making every taller sign a pole sign would stifle the good designs of sign companies. He stated Sign Pro has already submitted a "monument" sign designed for the new City Hall that is 10 feet tall. He stated the pole signs on Grand Avenue has cluttered the area. He stated there is no logical reason to change the definitions. He stated the proposed amendments would stifle the sign designs they could use for their customers.

Michael Taylor, owner of Sign Pro, provided a print of a sign designed for 406 Windows at their new location on S 31st St W. Mr. Taylor asked the Commission whether the sign was a pole sign or a monument sign. Mr. Taylor pointed out the sign had a solid base, but there were three poles that extended upward from the base to the ornamental cap. The three poles held the sign faces for the business. Mr. Taylor stated the difference between a pole sign and a monument sign was merely the height of the sign - not how it appeared to be constructed. Mr. Taylor stated the sign example he provided should be considered a pole sign. He stated the industry describes a pole sign as a single pole structure and a pylon sign has at least two poles. He stated the new sign code was just a template forced on the city by the consultant. He stated there is no concern with the clear vision area since those are enforced regardless of the type of the sign. He stated the code should just be enforced as written - even if it is not clear to some people. He stated Sign Pro designed a sign retrofit to put a new sign over 3 existing poles for a business on King Ave West. The Planning staff called this sign a monument sign - not a pole sign. He stated the sign code that was forced on the community was intended to make Billings a "walking community". Billings is not a walking community and that means we need taller signs, and bigger signs. We just need to fix the definition of signs - monument and pole signs.

Tom Gross of Sign Products Inc. testified in opposition to the sign code changes. He stated he agrees with the previous testimony from the owners and employees of Sign Pro. He stated the clad pole signs look good. He stated he spent some time looking at the proposed 8-foot minimum clearance. He stated this is a necessary feature where you have people walking close to or under the sign. He stated not every pole sign needs to be 8 feet or more above the grade. He stated these signs tend to be not as attractive as a clad pole sign or pylon sign with cladding. He stated the image of Billings includes these types of signs, and they fit in with the character of the community.

Kevin Kliwer stated he observed the city has an abundance of good and aesthetically pleasing graphic designs and buildings. He stated there are lots of good materials to be used on signs such as brick, stone, dry-vit, stucco, and other cladding. These are all structural sound materials, and we have to prove these are sound materials and will not harm the public.

Chair Michael Larson closed the public hearing. Commission member Dan Brooks made a motion to recommend approval of all the draft ordinances and adoption of the findings of the 10 review criteria, but excluding Sections 27-1405.A (3-5) and Section 27-1803 related to sign definitions be referred back to Planning staff for further information development and study. The motion was seconded by Commission member Greg McCall and approved on a unanimous vote.

Commissioner Greg McCall stated the sign code needs to be clear. He stated those who served on the Sign Code Working Group worked on a code that was Billings specific and was not "forced on" the community by the consultant team. He stated the community is trying to have a vision of more walkable areas. He understands that many areas of the city are not this way and signs do need to be larger in some setting. He stated when change happens it can be uncomfortable. Commission member David Goss stated he would vote for the motion, but there is still a clear problem with the code definitions. He stated the clarity of the definitions need to be fixed. He stated the answers are there. Chairman Michael Larson stated sign codes are always complex issues, but there is more thought needed before the Zoning Commission considers these changes. He stated he would direct staff to present more options and context for the definitions as well as consideration for the testimony received at the hearing.

The Zoning Commission considered the remaining amendments and voted unanimously to recommend approval and adoption of the 10 review criteria for these amendments.

City Council Public Hearing and 1st reading September 25, 2023

The City Council held a hearing on September 25, 2023, and received the Zoning Commission recommendation and discussed the proposed amendments to the zoning regulations and other city codes. The City Council received testimony from Doug Wild of the HBA in favor of the amendments.

The City Council made motions on each proposed amendments separately.

1. Updates to Administrative Relief provisions Section 27-1614 -- Council member Gulick made a motion to approve the amendment on first reading and adopt the findings of the 10 review criteria. The motion was seconded by Council member Shaw and approved on an 8 to 0 vote.
2. Landscape Plan clarifications for residential (one and two family) lots Section 27-1618 -- Council member Shaw made a motion to approve the amendment on first reading and adopt the findings of the 10 review criteria. The motion was seconded by Council member Gulick and approved on an 8 to 0 vote.
3. Housekeeping amendments to correct errors and cross-references in other city codes -- Council member Joy made a motion to approve the amendments on first reading and adopt the findings of the 10 review criteria. The motion was seconded by Council member Gulick and approved on an 8 to 0 vote.
4. Housekeeping amendment to Sections 14-300 and 24-600 -- Council member Shaw made a motion to approve

the amendment on first reading and adopt the findings of the 10 review criteria. The motion was seconded by Council member Gulick and approved on an 8 to 0 vote.

5. Special Review criteria Section 27-1623 -- Council member Joy made a motion to approve the amendment on first reading and adopt the findings of the 10 review criteria. The motion was seconded by Council member Gulick and approved on an 8 to 0 vote.
6. Zoning at Annexation Section 27-1615 -- Council member Gulick made a motion to approve the amendment on first reading and adopt the findings of the 10 review criteria. The motion was seconded by Council member Shaw and approved on an 8 to 0 vote.

ALTERNATIVES

The City Council may take one of the following actions:

- Approve the text amendments on second reading and adopt of the findings of the ten review criteria for all or some of the amendments included in Zone Change 1034; or,
- Approve the text amendments on second reading with specific changes to the one or more of the draft ordinances included in Zone Change 1034; or
- Deny on second reading one or more of the ordinances included and adopt different findings of the ten review criteria for those ordinances included in Zone Change 1034; or,
- Delay action on second reading for one or more of the proposed text amendments for up to 30 days; or
- Refer on second reading one or more of the proposed text amendments back to the Zoning Commission for further review based on new information received at the Council public hearing.

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 final decision on the proposed text amendments, the City Council will consider the following findings of the ten review criteria as recommended by the Zoning Commission, and as approved by the City Council on first reading on September 25, 2023.

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.

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.

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 administrative relief actions, landscape plans, special review criteria or zoning at annexation. 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 special review criteria to allow existing site developments to be improved to meet the new code, and zoning choices at annexations will help promote public health and safety by allowing appropriate conditions and options for approval. 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 amendments proposed for phase three do not have any specific relationship to the transportation network or impacts related to transportation.

Water & Sewer: The proposed code amendments should have no effect on city water and sewer services as the amendments are not directly related to utilities like water and sewer.

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

Public Safety Services: Public health and safety should be improved by the code amendments to allow future site improvements for special review uses, and eliminate cross-reference errors in traffic regulation and fire prevention codes.

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. The amendment that is most related to this criteria is the proposed amendment to Administrative Relief. The current code could allow a zero side or rear setback. It was not the intention of the code writers to allow this via administrative relief. An owner could still request this through a variance but not as an administrative process.

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

The proposed zoning amendments will not directly affect motorized transportation. The proposed amendments may have a minor effect on non-motorized transportation. The amendment includes a housekeeping update to the city code on bicycles and in what districts it may be allowed to ride on a public sidewalk. The current code references cite old zone districts that no longer exist. The amendment specifically replaces these old districts with the new districts.

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.

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 administrative options, special review uses, and annexation options can provide certainty and integrate in existing built environments. Generally, these amendments are consistent with existing fabric of both commercial and residential neighborhoods.

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.

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.

Attachments

Administrative Relief 2nd reading ordinance

Landscape Plan 2nd reading ordinance

Further Zoning Housekeeping 2nd reading ordinance

Non Zoning Housekeeping 2nd reading ordinance

Special Review Criteria 2nd reading ordinance

Zoning at Annexation 2nd reading ordinance

ORDINANCE 23-5853

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING Section 27-1618 LANDSCAPE PLAN PROCESS, 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 Sections 27-302 and 27-1502, BMCC, provide for amendment to the text of the 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 27-1618 be amended to clarify landscape plan submittal is not required for one and two-family developments and to conform the plan submission between the city and county landscape code sections.

Section 3. ZONE TEXT AMENDMENT. The text of Section 27-1618 is amended as follows:

Sec. 27-1618. Landscape plan.

A. Applicability. Landscaping in compliance with this zoning code shall be required for any new construction, and expansion of existing structures. All plans submitted in support of a building permit or zoning compliance permit shall include a landscape plan where required. **No landscape plan submittal is required for any one or two-family building permit applications except those located within a development covered by a Master Site Plan approval (Sec. 27-1619). Any building permit for a one or two-family dwelling within a Master Site Plan approved location shall indicate on the site plan the landscaping required by the approved Master Site Plan.**

B. Authority. A landscape plan may be submitted for review by a property owner or the property owner's agent, including the landscape professionals described in subsection 27-1618.C.

C. Procedures.

1. *Common procedures.* Common procedures for landscape plan review are identified in Table 27-1600.1 and are summarized here for applicant convenience.

2. *Specific procedures.* Landscape plans shall be prepared as follows:

- (a) Lots of ~~one~~ **1.5 acres** or larger: The plan shall be prepared by a Montana licensed landscape architect.
- (b) Lots smaller than ~~one~~ **1.5 acres**: The applicant is encouraged to work with a nurseryman or landscape design professional to meet the requirements of this article.

.....

E. *Post approval.*

4. *Administrative relief.* Administrative relief is provided to add flexibility in the application of a specific landscaping regulation when a standard is inapplicable or inappropriate to a specific use or design proposal. Administrative relief may be applied up to a total of ten (10) individual landscape standards for any site.

The application shall follow the procedures in Section 27-1614 – Administrative Relief.

(a) *Policies.*

- (1) The planning division recognizes that the specific landscape requirements in article 27-1200 cannot and do not anticipate all possible landscape situations. In addition, the planning division recognizes that there may be landscape proposals which conform to the purpose, intent and objectives of the landscape regulations, but were not anticipated in the specific regulations. Therefore, the planning division may grant administrative relief in the event of these situations and proposals.
- (2) The reasonable development of a site may require the granting of administrative relief to some of the requirements. Although all of the categories of landscape requirements are considered important, the planning division generally assigns the following priorities for compliance with the landscape requirements:
 - i. First, adjacent residential uses should be buffered;
 - ii. Second, an attractive appearance of the project should be provided along adjacent streets by landscaped setbacks and trees;
 - iii. Third, the parking areas and building elevations which form major public views of the project should be visually softened and enhanced by trees and other plantings.
- (3) Compliance with the requirements, such as the third priority above, should not be "forced" into a site design. For both visual effect and

ease of maintenance, relatively few, but larger landscaped areas, which are integrated with the other elements of the site design, are generally encouraged. In addition, relatively numerous and smaller landscaped areas, which are not integrated with the other elements of the site design, are generally discouraged.

- (4) However, the granting of administrative relief should not always mean that a requirement is reduced without compensation. For example, the granting of a reduced bufferyard depth should be compensated by the planting of additional trees, shrubs or other plants.

(b) *Application.*

- (1) A written request for administrative relief shall be submitted to the ~~zoning coordinator either before or in conjunction with the building permit review process.~~ **following the procedures in Section 27-1614.** The written request shall include a justification in terms of the findings necessary to grant administrative relief. ~~The written request shall close with a section for the planning division's use which will include a block for the decision of approval/denial, the zoning coordinator signature, and decision date.~~ The written request with decision shall be attached to the plan or retained in the applicable file, as appropriate.
- (2) The zoning coordinator must make all of the following findings in order to grant administrative relief:
 - i. The strict application of the regulation in question is unreasonable given the development proposal or the measures proposed by the applicant or that the property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same general area and such conditions will not allow a reasonable use of the property in its current zone in absence of relief;
 - ii. The intent of the landscaping section and the specific regulation in question is preserved;
 - iii. The granting of the administrative relief will not result in an adverse impact upon surrounding properties; and
 - iv. Proportional compliance is not appropriate for the location and development planned.
- (3) The zoning coordinator shall render a decision on the request within thirty (30) calendar days of receipt of the request and all required information. An appeal of the zoning coordinator's decision may be made to the board of adjustment with jurisdiction over the property, within thirty (30) calendar

days after the decision. At this time, the appeal will be put on the agenda for the next board of adjustment meeting which allows for the required public notice.

Section 4. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 5. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 6. 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 25th day of September, 2023.

PASSED, ADOPTED and APPROVED on second reading this 9th day of October, 2023.



CITY OF BILLINGS

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

Attest:

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

Zone Change 1034, Text Amendment for Landscape Plan process