

## ORDINANCE NO. 02-5221

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA, CITY CODE BE AMENDED BY ENACTING A NEW SECTION 23-1501; PROVIDING A PROCEDURE FOR REVIEW OF APPLICATIONS FOR EXEMPTIONS OF CERTAIN DIVISIONS OF LAND FROM LOCAL REVIEW UNDER THE PROVISIONS OF THE MONTANA SUBDIVISION AND PLATTING ACT, SECTION 76-3-101, ET SEQ., MCA, DEFINING EXEMPTIONS, PROVIDING A STATEMENT OF INTENT FOR EACH EXEMPTION, ESTABLISHING REQUIRED DOCUMENTATION TO BE SUBMITTED WITH EACH APPLICATION FOR EXEMPTION, AND SETTING FORTH STANDARDS THAT WILL BE APPLIED TO EACH APPLICATION FOR EXEMPTION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

**Section 1.** That Chapter 23 of the Billings, Montana, City Code be amended so to add a new section 23-1501 which shall read as follows:

### **Section 23-1501. Exemptions from Local Review for Certain Subdivisions.**

*(a) Purpose.* The State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the development is an attempt to evade the Montana Subdivision and Platting Act (MSPA), Section 76-3-101, et. seq. MCA. The following procedures, criteria and requirements shall be used to review an exemption from subdivision review and to determine whether the division of land is for the purpose of evading the MSPA.

*(b) Procedures and General Requirements.*

1. Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et. seq., MCA) shall submit to the Clerk and Recorder (1) a certificate of survey, exempt amended plat, or where a survey is not required an instrument of conveyance, and (2) evidence of, and a notarized statement affirming, entitlement to the claimed exemption signed by the landowner.
2. When a certificate of survey, exempt amended plat, or instrument of conveyance is submitted to the Planning Department, the Planning Department shall cause the documents to be examined by the designated agents of the governing body: (the City or County Public Works Department, City or County Attorney, Sanitarian, Treasurer, and Clerk and Recorder). The agents shall examine the proposed land division to determine whether it complies with the requirements set forth in this Resolution, the Montana Subdivision and Platting Act, and the Montana Sanitation in Subdivisions Act. (76-4-101, et seq., MCA)

3. After the review to evaluate compliance with the requirements contained in this section, the designated agents shall submit written comments as to whether the use of the exemption is intended to evade the purposes of the Act, after which a written recommendation will be presented to the governing body for its review.
4. If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, they shall recommend to the Clerk and Recorder to file the certificate of survey, exempt amended plat, or record the instrument of conveyance and accompanying documents. If the agents find that the proposed use of the exemption does not comply with the statutes and these criteria, they shall advise the Clerk and Recorder of their determination and recommend whether or not to file or record the documents, and upon his/her concurrence, the Clerk shall return the materials to the landowner with an explanation as to why the recordation was declined.
5. Any person whose proposed use of an exemption has been denied by the designated agents may appeal the agents' decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the Act.

If the governing body concludes that the information provided by the developer overcomes the recommendation by staff that the exemption is being used to evade the Act, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an exempt amended plat or an instrument of conveyance recorded) if the governing body has signed a certificate of an exemption as provided in Appendix A, Section H of these regulations.

6. Landowners or their representatives are strongly encouraged to meet with the Governing Body's designated agents to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.

The agents may issue an advisory opinion only, which opinion shall not constitute a commitment by the local officials when the documents creating the proposed land division are submitted to the Clerk and Recorder.

7. The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading MSPA, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: (1) the nature of the use of the parcel, (2) the prior history of uses of the particular tract in question, (3) the proposed configuration of the tracts if the proposed exempt transaction is completed, and (4) any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review (State ex rel. Dreher v. Fuller).

8. Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be presumed to be adopted for purposes of evading the Act. A "pattern of development" occurs whenever 3 or more parcels of less than 160 acres each with common covenants or facilities pertaining to each parcel have been divided from the original tract.
9. If the use of an exemption is determined to be an evasion of MSPA, the landowner may submit a subdivision application for the proposed land division.

*(c) Exemption As A Gift Or Sale To A Member Of The Immediate Family (76-3-207(1)(b), MCA).*

1. Statement of Intent: The intention of this exemption is to allow a landowner to convey one parcel to each member of the immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.
2. "Immediate family" is defined as the spouse, children by blood or adoption, or parents of the grantor (76-3-103(7), MCA).
3. Any certificate of survey filed that would use this exemption to create a parcel for conveyance to a family member must clearly identify the name of the grantee, the grantee's relationship to the landowner, and the parcel to be conveyed under this exemption, and be accompanied by, or contain, the landowner's written certification of compliance. The certificate of survey or other instrument must also cite the statutory exemption claimed and include the language provided in Appendix A Section H of these regulations. Also, the certificate of survey or instrument of conveyance shall be accompanied by a deed or other conveying document.
4. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under this Resolution. However, the use of the exemption may not result in more than one remaining parcel of less than 160 acres.
5. Any proposed use of the family conveyance exemption to divide a tract that was previously created through use of an exemption shall be presumed to be an evasion of the Act if it creates a pattern of development consistent with an overall plan with characteristics such as common roads, utility easements, restrictive covenants, open space or common marketing. This presumption will not be rebutted by previous ownership of the tracts, and pertains to remaining tracts of less than 160 acres as well as to those tracts that were previously created through the use of one or more of the exemptions.

6. Any proposed use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with characteristics such as common roads, utility easements, restrictive covenants, open space or a common marketing or promotional plan shall be presumed to be a use of the exemption as an evasion of the Act.

*(d) Exemption To Provide Security For A Construction Mortgage, Lien Or Trust Indenture (76-3-201(1)(b) MCA).*

1. Statement of Intent: Under policies of many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a landowner who is buying a tract using financing or a contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.
2. When claiming this exemption, the landowner shall submit the following documents to the City County Planning Office:
  - a. A signed statement from both the landowner and the lending institution that the creation of the exempted parcel is necessary for the owner to secure construction financing through a construction mortgage, lien or trust indenture on the exempted parcel.
  - b. Any certificate of survey that uses this exemption must bear the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision, cite the statutory exemption claimed, and include the language provided in Appendix A, Section H of these regulations.
3. The use of this exemption will be presumed to have been adopted for the purpose of evading MSPA if:
  - a. It will create a site for more than one dwelling unit;
  - b. The loan is for someone other than the owner of record or the recorded contract purchaser of the parcel to be divided.
  - c. It will create a pattern of development which is equivalent to a subdivision with characteristics such as common roads, sewer, water, utility easements, restrictive covenants, open space or a common marketing or promotional plan.

*(e) Exemption For Agricultural Purposes (76-3-207 (1)(c), MCA)*

1. Statement of Intent: The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial, or industrial buildings will be built.
2. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the Montana Department of Environmental Quality (MDEQ), provided the applicable exemption is properly invoked by the property owner.
3. The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes of evading MSPA:
  - a. The parties to the transaction by gift, sale, or agreement, must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by the property owner, the buyer or lessee and the governing body. An example of an acceptable covenant is provided in Appendix A, Section H.
  - b. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings will be built (e.g., a statement signed by the buyer).
  - c. Any change in use of the land for anything other than agricultural purposes subjects the parcel to full review as a subdivision.
  - d. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked and the land division is reviewed under MCA Title 76, Chapter 3.
  - e. A certificate of survey that uses this exemption must bear the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision, cite the exemption claimed, and include the language provided in Appendix A, Section H of these regulations.

*(f) Relocation Of Common Boundary (76-3-207(1) (a, d and e), MCA).*

1. Statement of Intent: The intended purpose of this exemption is to allow a change in the location of a boundary line between two parcels and to allow a one-time transfer of a tract to effect that change in location without subdivision

review.

2. If the relocation of a common boundary would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision. If a temporary tract is created, language shall be added to indicate that the temporary tract is merged forever with the adjacent tract.
3. Within a platted subdivision, a division of lots that redesigns or rearranges the boundaries of six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the County Clerk and Recorder.
4. Certificates of survey or amended plats claiming this exemption must be clearly distinguished between the existing boundary location and the new boundary. This shall be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line and labeling each as "existing" and "new" boundary lines.. The appropriate certification must be included on the certificate of survey as provided Appendix A, Section H of these regulations.

*(g) Remainder Parcels.*

1. Statement of Intent: A "remainder" parcel is that part of an original tract that is left following the segregation of other parcels from the tract for the purpose of transfer. A "remainder" may not be created for the purpose of conveyance and must be retained by the owner. A "remainder" that is created by the segregation of a subdivision from a larger original tract is not part of the subdivision nor is it subject to the surveying requirements of the MSPA. Although the term "remainder" does not appear in the MSPA, the possibility that remainder parcels may exist is implicit in the express provisions of the MSPA (Attorney General Letter opinion to Robert McCarthy, April 22, 1987).
2. A landowner claiming that a parcel is a "remainder" must present evidence that the parcel is in fact intended to be retained and is not to be transferred. Examples of such evidence include the existence of the landowner's residence on the parcel; building plans for a structure to be built by or for the landowner. Any further subdivision of the "remainder" will be reviewed as a major plat.

## ***APPENDIX: CERTIFICATES***

**A. General.** The following represent the general format for the certificates to be shown all on plats. Other certificates than those shown may be required by the Governing Body, when deemed appropriate. A corporate notary shall be used in place of an individual notary when appropriate

**B. Dedication or Consent.** All parts of subdivisions must contain a Certificate of Dedication or Certificate of Consent. In the case of corporate ownership, the proper corporation officers must sign, the corporate notary form must be used and the corporate seal must be affixed. The certificate shall include, but not be limited to the following information:

### **CERTIFICATE OF DEDICATION**

(I), (We), the undersigned property owner(s), do hereby certify that (I), (We), have caused to be surveyed, subdivided and platted into lots, blocks, roads and alleys, and other divisions and dedications, as shown by this plat hereunto included, the following described tract of land, to wit:

*Description*  
(*Exterior boundary description of Area Contained in the Plat and Total Acreage*)

The above described tract of land is to be known and designated as \_\_\_\_\_, Yellowstone County, Montana; and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever. The roadways dedicated to the public are accepted for public use, but the County accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the roads hereby dedicated to public use.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*(Signature)*  
(Typed or Printed Name of Each Owner)

(Notary)

### CERTIFICATE OF CONSENT

(I), (We), the undersigned property owner(s), do hereby certify that (I), (we), caused to be surveyed, subdivided and platted into lots, parcels, blocks, roads, and alleys, and other divisions and dedications, as shown by this plat hereunto included the following tract of land, to wit:

*Description*  
*(Exterior boundary description of Area Contained in the Plat and Total Acreage)*

The above-described tract of land is to be known and designated as \_\_\_\_\_, Yellowstone County, Montana.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*(Signature)*  
(Typed or Printed Name of Each Owner)

(Notary)

**C. Mortgagee.** In those cases where the area being platted on the plat of the subdivision is subject to any liens, mortgages, claims, or other encumbrances by party(ies) or other owner(s) the following certificate shall also be required:

### CONSENT OF MORTGAGEE(S)

(I), (We), the undersigned mortgagee(s), do hereby join in and consent to the described plat, releasing our respective liens, claims or encumbrances as to any portion of said lands now being platted into roads, avenues, parks, or other public uses and dedicated to the use of the public forever.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*(Signature)*  
(Typed or Printed Name of Each Owner)

(Notary)

**D. Cash-in-lieu of Park.** Where the park requirements are being waived in lieu of cash, plats of subdivisions shall show the following certificates:

**CERTIFICATE ACCEPTING CASH-IN-LIEU OF PARK DEDICATION**

Inasmuch as dedication of parkland within the platted area of (Subdivision Name) would be undesirable for park and playground purposes, it is hereby order by the Board of county Commissioner, Yellowstone County, that land dedication for park purposes be waived and that cash-in-lieu, to the amount of \_\_\_\_\_ dollars be accepted in accordance with the provision of the Montana Subdivision and Platting Act, Section 76-3-101 through 76-3-625, MCA, and the Yellowstone County Subdivision Regulations.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature)  
(Board of County Commissioners)

(Signature)  
(Board of County Commissioners)

(Signature)  
(Board of County Commissioners)

**E. Surveyor.** All plats of subdivisions shall contain a Certificate of Surveyor and shall read as follows:

**CERTIFICATE OF SURVEYOR**

I, THE UNDERSIGNED (type or Print Name), (Registered Land Surveyor), do hereby certify that between \_\_\_\_\_, 2\_\_\_\_ and \_\_\_\_\_, 2\_\_\_\_, I surveyed (Name of Subdivision, \_\_\_\_\_, and described the same as shown on the accompanying plat and platted in accordance with the provisions of the Montana Subdivision and Platting Action, Section 76-3-101 through 76-3-625, MCA and the Yellowstone County Subdivision Regulations.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature)  
(Typed or Printed Name)

Registration Number

(Seal of Surveyor)

**F. County Commission.** The County Commission shall certify approval of the plat of the subdivision. Said certificate shall read as follows:

**CERTIFICATE OF COUNTY COMMISSIONERS**

I, (Chairman of the Board of County Commissioners), Yellowstone County, Montana, do hereby certify that the accompanying plat been duly examined and have found the same to conform to the law, approve it, and hereby accept the dedication to public use.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*(Signature)*  
(Board of County Commissioners)

*(Signature)*  
(Board of County Commissioners)

*(Signature)*  
(Board of County Commissioners)

**G. County Treasurer.** All final subdivision plats shall show the following Certificate of the County Treasurer.

**CERTIFICATE OF COUNTY TREASURER**

I, (Name of County Treasurer), Treasurer of Yellowstone County, Montana, do hereby certify that the accompanying plat has been duly examined and that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*(Signature)*  
Treasurer of Yellowstone County

**H. Exemption Certificates.** The following represents examples of certificates to be used on certificates of surveys for the following types of exemptions: relocation of common boundaries, land gift or sale to family member, agricultural exemption, and security for constructions.

**CERTIFICATE OF EXEMPTION  
(RELOCATION OF COMMON BOUNDARY)**

I (We) certify that the purpose of this survey is to relocate common boundaries between adjoining properties existing outside of a platted subdivision. Therefore this survey is exempt from review as subdivision pursuant to Section 76-3-207 (1) [ *designate specific section (a), (d), or (e)* ], MCA.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature)  
Property Owner(s)

**CERTIFICATE OF EXEMPTION  
(FAMILY GIFT OR SALE)**

I (We) certify that the purpose of this survey is to create Tract # \_\_\_\_\_ for transfer of ownership as a family gift or sale and that no prior family sale has been conveyed to ((name), our (my) (relationship) \_\_\_\_\_ and that this exemption complies with all conditions imposed on its use. Therefore this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(b), MCA, and the Yellowstone County Subdivision Regulations.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signature)  
Property Owner(s)

**CERTIFICATE OF EXEMPTION  
(FOR AGRICULTURAL PURPOSES)**

I (We) certify that the purpose of this survey is to create Tract #\_\_\_\_\_, as shown on this certificate of survey, for gift or sale, which is to be used for agricultural purposes only, and that this exemption complies with all conditions imposed on its use. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(c), MCA and the Yellowstone County Subdivision Regulations.

I also hereby enter a covenant, to run with the land, that Tract \_\_\_\_\_ as shown hereon, will be used exclusively for agricultural purposes only. No building or structure requiring water or sewer facilities shall be utilized on Tract \_\_\_\_\_. This covenant is revocable only by the mutual consent of the governing body and the property owner.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*(Signature)*  
Property Owner(s)

**CERTIFICATE OF EXEMPTION  
(SECURITY FOR CONSTRUCTION)**

I certify that the purpose of this survey is to create a parcel of land to provide security for construction or loan purposes and that this exemption complies with all conditions imposed on its use. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-201(1)(b) MCA and from review by the Montana Department of Environmental Quality (16.16.605(1)(b)).

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*(Signature)*  
Property Owner(s)

**J. Exemption Certificates.** If the exemption is approved after appeal to the City Council, the City Council shall so certify in a printed certificate on the certificate of survey.

I, the Mayor of the City of Billings, do hereby certify that the use of the exemption claimed on the accompanying Certificate of Survey has been duly reviewed, and has been found to conform to the requirements of the MSPA, Section 76-3-101, et. Seq., MCA, and the Yellowstone County (City of Billings ) Subdivision Regulations.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*(Signature)*  
\_\_\_\_\_  
Mayor, City of Billings

*(Signature)*  
\_\_\_\_\_  
Attest: City Clerk

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 4. 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 26th day of August, 2002.

PASSED, ADOPTED and APPROVED on second reading this 9th day of September, 2002.

# CITY OF BILLINGS

By: \_\_\_\_\_  
Charles F. Tooley Mayor

ATTEST:

By: Marita Herold, CMC/AAE City Clerk