

ORDINANCE NO. 12-5553

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING Division 1, Section 27-502 through 27-503; Section 27-505 through 27-507 AND REVISING Division 2, Section 27-511 through 27-512; Section 27-514; Section 27-516, 27-518 and adding a new Section 27-519 ADOPT THE REVISION AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA, and Section 27-1502, BMCC, provide for amendment to the City Zoning Regulations from time to time. The City Zoning Commission initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. 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 proposed amendments to the City Zoning Regulations.*

Section 2. DESCRIPTION. The zoning regulation shall apply to all land within the City of Billings.

Section 3. AMENDMENT. That the Billings, Montana City Code be amended by revising Section 27-500 as follows:

**Sec. 27-500. Historic Preservation.**

Division 1. Generally

Sec. 27-502. Definitions.

Alteration: Any act or process that changes one (1) or more of the exterior architectural appearance features of a structure, including, but not limited to, the erection, construction, reconstruction or removal of any structure. Alterations and changes may include, but are not limited to, covering original materials and features, replacing a window, re-pointing brickwork, sandblasting, and the removal of paint by chemical or other means.

Appeal: An applicant may appeal a recommendation of the Yellowstone Historic Preservation Board (YHPB) to the Billings City Council.

Applicant: The owner of record of an Historic Site and/or Local Register property; the lessee thereof with the approval of the owner of record in notarized

form; or a person holding a "bona fide" contract to purchase an Historic Site and/or Local Register property.

Certificate of Appropriateness: A signed and dated document that shall be submitted to the Yellowstone Historic Preservation Board for recommendation of the appropriateness of any new construction, demolition, exterior alteration or change of location of an historic site or structure located within a Historic District or designated on the Local Register. This certification is required prior to the issuance of a building permit, demolition permit or sign permit.

Local Register: Means a list of properties designated by the City of Billings based on Local Register criteria and procedures, and properties listed to the National Register of Historic Places that have petitioned to be listed to the local register.

Sec. 27-503. (f)

(15) Review and forward a recommendation to the City Administrator or his/her designee on a Certificate of Appropriateness as requested by applicants. The application may be recommended for approval as presented, approval with modifications, denied or delayed as set out in this Article.

Sec. 27-505. Local Review and Designation, Surveys and Research.

Historic designation on the local registry is the process by which a building, structure, site, or district is recognized as having historic, architectural or archaeological significance. It is the primary means for identifying and protecting Billings' historic resources. The preservation board shall assist in developing an ongoing survey and research effort in the City of Billings to identify neighborhoods, areas, sites, structures, and objects that have historic, community, architectural, or aesthetic importance, interest or value. As part of the survey, the preservation board shall review and evaluate any prior surveys and studies by any unit of government or private organization and compile appropriate descriptions, facts, and photographs. Before the preservation board shall on its own initiative nominate any landmark for historic designation, it shall first develop a plan and schedule for completion of a survey of the City of Billings to identify potential landmarks. The preservation board shall then systematically identify potential landmarks and adopt procedures to nominate in groups based upon the following criteria.

To qualify as a historic site or historic district, the individual properties, structures, sites, or buildings, or groups of properties, structures, sites or buildings must have significant character, interest, or value as part of the historical, cultural, aesthetic, and architectural heritage of the city, county, state or nation. To qualify as a historic site or district, the property or properties must fulfill one (1) or more of the criteria set forth in subsection (1) below and meet the criteria set forth in subsections (2)a. and (2)d. below.

(1) A building, structure, site, or district will be deemed to have historical or cultural significance if it meets one (1) or more of the following criteria:

- a. Is associated in a significant way with the life or activities of a major person important in city, county, state, or national history (for example, the homestead of a local founding family);
- b. Is the site of a historic event with significant effect upon the city, county, state, or nation;
- c. Is associated in a significant way with a major historic event, whether cultural, economic, social, military, or political;
- d. Exemplifies the historical, political, cultural, economic, or social trends of the community in history; or
- e. Is associated in a significant way with a past or a continuing institution which has contributed substantially to the life of the city and/or county.

(2) A building, structure, site, or district is deemed to have architectural or aesthetic significance if it fulfills one (1) or more of the following criteria; except that to qualify as a historic interior, the interior must meet the criteria contained within subsections (2)b. and (2)d.:

- a. Portrays the environment in an era of history characterized by one (1) or more distinctive architectural styles;
- b. Embodies those distinguishing characteristics of an architectural style, period, or method of construction;
- c. Is a historic or outstanding work of a prominent architect, designer, landscape architect, or builder; or
- d. Contains elements of design, detail, material, or craftsmanship of outstanding quality or which represented, in its time, a significant innovation or adaption to the environment.

(3) A building, structure, site, or district will be deemed to have historic significance if, in addition to ~~er in the place of~~ the previously mentioned criteria in (1) and (2), the building, structure, site, or zone meets historic development standards as defined by and listed in the regulations of and criteria for the National Register of Historic Places as prepared by the United States Department of the Interior under the Historic Preservation Act of 1966, as amended. Said regulations, as amended from time to time, are made part of this chapter as if fully set forth herein.

(4) Classification of Structures and Buildings. All historic buildings, structures, archaeological sites, districts, and neighborhoods classified and designated on the ~~local register city historic preservation survey~~, will be approved by the city council and be made an overlay to the city and county, zoning maps and land use plans. Such buildings, structures, districts, neighborhoods, and the like will be divided into two (2) classes:

- a. Contributing. Those buildings, structures, archaeological sites, or districts classified as historic shall possess identified historical and

architectural merit of a degree warranting their preservation. All buildings, structures, archaeological sites, and the like, listed in the city historic survey, as adopted and approved by the city council and county commission, will be considered worthy of preservation and may be designated as a historic site or a historic district.

b. Noncontributing. Those buildings and structures within a historic district not listed in the city historic preservation survey, and those buildings and structures determined by the preservation board to be of no contributing value.

(5) All commercial districts listed in the National Register of Historic Places within the City of Billings automatically become part of the Local Register. Commercial buildings individually listed in the National Register of Historic Places within the City of Billings may petition to become part of the Local Register by request of the owner of record of said National Register property. This petition must be submitted to the Billings City Council.

(6) Individually listed residential buildings and/or residential districts listed in the National Register of Historic Places within the City of Billings may petition to become part of the Local Register. Individuals may apply on their own behalf. Residential Historic Districts may petition to become part of the local register with a minimum of 2/3 approval by the owner(s) of the properties within the district.

Sec. 27-506. National Register of Historic Places; Nomination Review.

(e) Any person or organization supporting or opposing the nomination of a property to the national register shall be afforded the opportunity to make their views known in writing or in person at meetings of the board. Such comments shall be notarized where they contain factual assertions. All such correspondence regarding a nomination proposal shall become part of the permanent record concerning that proposal and shall be forwarded with approved proposals to the state historic preservation officer. In the case of disapproved nomination proposals, letters of support or comment shall be made a part of the permanent record concerning that proposal, and a list of such letters shall accompany the official copy of the disapproved nomination proposal when it is forwarded to the state historic preservation officer.

Sec. 27-507. Designation of Historic Districts.

(a) The following area within the city is designated as the Billings ~~t~~Townsite ~~h~~Historic ~~d~~District:

Beginning at the northwest corner of the right-of-way intersection of North 26th Street and 1st Avenue North, located in the original Town of Billings, said point being the point of beginning; thence, southeasterly along the westerly right-of-way line of North 26th Street to the

southerly right-of-way line of Montana Avenue, thence northeasterly along said southerly right-of-way line of Montana Avenue 280± feet, thence southeasterly along a bearing perpendicular to the bearing of the southerly right-of-way line of Montana Avenue to the centerline of the Burlington Northern Railroad right-of-way thence northeasterly along said railroad right-of-way line to a point which is the extension of the easterly right-of-way line of North 22nd Street, thence northwesterly along said extension of the easterly right-of-way line of North 22nd Street and along the easterly right-of-way line of North 22nd Street to the northeast corner of the right-of-way intersection of North 22nd Street and 1st Avenue North, thence southwesterly along the northerly right-of-way line of 1st Avenue North to the point of beginning. Included within this area, but not limited to it, are Blocks 111, 112, 113 and 114 of the original Town of Billings.

Beginning at the northwest corner of the right-of-way intersection of North 26<sup>th</sup> Street and Montana Avenue, located in the Original Town of Billings, said point of beginning; thence southwesterly to the easterly right-of-way line of North 27<sup>th</sup> Street and Montana Avenue; thence southeasterly along the eastern right-of-way of North 27<sup>th</sup> Street to the center line of the Burlington Northern right-of-way, thence northeasterly to the eastern boundary of the existing Billings Townsite Historic District, then following the eastern border of the existing district to the point of beginning.

(b) The following area within the city is designated as the Billings Old Town Historic District:

Beginning at the east side of North 30<sup>th</sup> Street mid-block alley entrance, located in the Original Town of Billings, said point of beginning; thence easterly along alley to the northeast corner of the building at 2815 Montana Avenue; thence south to the centerline of Montana Avenue; thence turns easterly and continues along the centerline until reaching the intersection of 27<sup>th</sup> Street and Montana Avenue; thence south to the southern edge of the Burlington Northern right-of-way; thence easterly along said right-of-way to the east side of the building at 2601 Minnesota Avenue; thence south to the centerline of Minnesota Avenue; thence westerly to the intersection of Minnesota Avenue and South 26<sup>th</sup> Street; thence south to the mid-block alley entrance; thence westerly to the centerline of South 27<sup>th</sup> Street; thence south to the intersection of South 27<sup>th</sup> Street and 1<sup>st</sup> Avenue South; thence westerly along the centerline of 1<sup>st</sup> Avenue South to the west boundary of the building at 24 South 30<sup>th</sup> Street; thence north to the northwest boundary of the building at 24 South 30<sup>th</sup> Street; thence easterly to the centerline of South 30<sup>th</sup> Street; thence north of the intersection of South 30<sup>th</sup> Street and Minnesota Avenue centerline;

thence easterly along said centerline to the intersection of Minnesota Avenue and South 29<sup>th</sup> Street; thence north along South 29<sup>th</sup> Street centerline to the intersection of North 29<sup>th</sup> Street and Montana Avenue; thence westerly to the intersection of Montana Avenue and North 30<sup>th</sup> Street; thence north along North 30<sup>th</sup> street centerline to the point of beginning.

(b) Existing or Additional historic districts may be expanded or created by amendment of this section as provided for under Section 27-1002 Section 27-1502 of this article. Provision shall be made for public participation in the expansion of existing historic districts or the development of any new historic district.<sup>1</sup>

Division 2. Certificate of Appropriateness for Demolition and Building Permits.

Sec. 27-511. Approval of Building, Exterior Remodeling and Demolition Permits.

No permit for building, alteration or demolition (excluding permits for interior work) exterior remodeling or demolition of any building or structure currently listed or part of a district listed on the City of Billings Local Registry situated wholly or partially within the historic district shall be granted by the city administrator or his/her designee until the historic preservation board has advised the city administrator or his/her designee concerning the application for a Certificate of Appropriateness therefore pursuant to the procedures and criteria set forth in this article. The board may advise the city administrator to approve the application as presented, approve with modifications, deny or delay based upon advice given by the board and the criteria set forth in Sections 27-514 and 27-515 of this article, or disapprove the application or to approve the application with modifications. The city administrator's decision to approve or disapprove the application or to approve the application with modifications shall be based upon advice given by the board and the criteria set forth in this article.

The owner or the owner's agent is responsible for applying for a Certificate of Appropriateness prior to, or concurrently with, any application for building, demolition, or alteration.

Sec. 27-512. Procedures For Historic Preservation Board Review and Advice on a Certificate of Appropriateness and City Administrator Approval.

Procedures shall conform to the following:

(2) Within thirty (30) days after receipt by the board of any such application, or thirty (30) days after receipt by the board of any additional information or drawings requested from the applicant, the board shall advise the city administrator whether it recommends approval as presented approves, approval approves with modification, denial or delay of the permit or disapproves the permit. If the board

does not advise the city administrator within such thirty-day period it will be deemed conclusive evidence that the board has advised that the application be approved without modification. The foregoing thirty-day period may be extended by the board for an additional thirty-day period upon consent of the applicant.

(4) Notice of the application and hearing shall be given by:

- a. Publication of the same in a newspaper of general circulation in the city at least seven (7) days prior to the date set for the hearing;
- b. Posting the same on the property affected by the application and in three (3) other conspicuous places in the historic district at least fifteen (15) days prior to the date set for the hearing; and
- c. Mailing the same to the applicant at the address stated on the application at least fifteen (15) days prior to the date set for the hearing.

(5) The historic preservation board may continue the hearing to a subsequent time. Any person may appear at the hearing and present such evidence or testimony at the board deems relevant to its decision. Following the hearing, the board shall advise the city administrator to approve as presented either approve, approve with modifications, deny or delay or disapprove the application.

(6) The historic preservation board's advice with regard to each application and the reasons therefore, shall be in writing, shall be preserved and shall be available for public inspection in the office of the Historic Preservation Officer.

(7) The city administrator or his/her designee will notify, by certified mail, return receipt requested to the applicant and/or his/her agent of the final decision. The final decision by the city administrator shall be reduced to writing and shall be mailed by certified mail, return receipt requested, or personally served on applicant.

Sec. 27-514. Design Review Protection, Historic Preservation Guidelines, and Certificate of Appropriateness. Standards For Review, Demolition and Building Permits.

In considering an application for a Certificate of Appropriateness for a building or demolition permit, the preservation board shall be guided by the Secretary of Interior Standard's for the Treatment of Historic Properties with guidelines for preserving, rehabilitation, restoring and reconstructing historic buildings and the following general standards.

- (1) Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration of the building, structure or site and its environment. or to use a property for its originally intended purpose.

Sec. 27-516. Criteria for Demolition Permits.

(a) No application for a permit to demolish a structure located within the Billings Local Register shall be approved unless:

(3) The Yellowstone Historic Preservation Board city administrator with recommendations from the City of Billings Building Official has determined that the structure poses an immediate threat to public safety.

(b) No disapproval of a permit to demolish shall be in effect for more than six (6) months after the board's recommendation, city administrator's decision. During such six (6) month period, the historic preservation board may take or encourage the taking of whatever steps seem likely to lead to the structure's preservation. The board may work with the property owner to seek alternative economic uses for the property, may consult with private civic groups, interested private citizens and other public boards or agencies, and may investigate the potential use of the power of eminent domain when preservation of a structure is in the public interest. The board may make such recommendation thereabout to the city administrator or the council as it deems appropriate.

Sec. 27-518. Criteria for Building and Exterior Remodeling Permits.

No application for a permit for building (excluding interior of noncontributing structures) or exterior remodeling within the historic district which is subject to this article shall be approved if it is found that the project will have an adverse effect on the historic or architectural significance or integrity of the structure to be remodeled or the historic district as a whole, or if it is found that the project will detract from the overall effect of the historic district and thereby adversely affect the value of other property within the historic district. In making their findings, the historic preservation board and the city administrator shall consider, among other matters, the design, size and scale of the project; the character of materials to be used; the project's relationship to neighboring structures and the historic district as a whole; and applicable fire and safety laws and regulations.

Sec. 27-518 519. Public Improvements.

Any public improvements installed within the historic district shall be compatible with the criteria for approval of permits for building or exterior remodeling set forth in this article to the extent that such installation does not conflict with the requirements of the Manual on Uniform Traffic-Control Devices.

Sec. 27-519. Penalty.

Violations of this article are designated as municipal infractions and punishable by civil penalties as specified in Section 18-1304.

Section 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. EFFECTIVE DATE.

This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading March 26, 2012.

PASSED, ADOPTED AND APPROVED on second reading April 9, 2012.



CITY OF BILLINGS:

BY: Thomas W. Hanel  
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk

ZC #854 – Text Amendment Section 27-500 Historic Preservation