

TOWN OF PLAINS

MUNICIPAL CODE OF THE TOWN OF PLAINS

ADOPTED, _____, 2012

ORDINANCE NO. _____

**AN ORDINANCE REVISING, AMENDING AND CODIFYING ORDINANCES
FOR THE TOWN OF PLAINS.**

WHEREAS, the Town Council of Plains has reviewed and considered its ordinances as required by §7-5-107, MCA;

WHEREAS, additions, deletions and amendments have been proposed to the to the Ordinances and these changes have been reviewed by the Mayor and Town Council with the advice of Town personnel;

WHEREAS, it is in the best interest of the Town of Plains and its citizens to make the necessary changes to its ordinances and to readopt and codify these changes;

NOW, THEREFORE, BE IT ORDAINED by the Town Council, Town of Plains the following;

SECTION 1. The attached Ordinances, together with appendices and schedule of fees are hereby adopted and codified on the effective date below written.

SECTION 2. From and after the date of passage of this Ordinance, the official code of the Town of Plains shall be known as the Municipal Code of the Town of Plains.

SECTION 3. There is hereby adopted, as a method of perpetual codification, the loose-leaf type of binding together with the continuous supplemental service whereby each newly adopted Ordinance of a general nature, amending, altering, adding to or deleting provisions of the Municipal Code is identified by the proper catch line, and is inserted in the proper place in each of the official copies. Each such insertion shall be made within thirty (30) days following the date of adoption by the Council, and each new provision shall become effective thirty (30) days following adoption.

SECTION 4. All previous versions of the Municipal Code of the Town of Plains, its amendments and supplements, are hereby expressly repealed and replaced with this Municipal Code.

BE IT FURTHER ORDAINED, that the Town Clerk-Treasurer is hereby instructed to publish the readopted "Book of Ordinances" and to make the same available for public inspection and copying during normal business hours of the Town.

Date:

First reading: ____ ayes ____ nays ____ abstentions

Date:

Second Reading: ____ ayes ____ nays ____ abstentions

Effective date:

Mayor

Attest:

Clerk-Treasurer

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Chapter 1.00
Official Code

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1.00.010	Official Code of Plains
1.00.020	Title of Code
1.00.030	Amending This Code
1.00.040	Repealing Ordinance: Effect of
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1.00.010 Official Code of Plains. This compilation, revision and codification of the general ordinances of the Town of Plains is hereby declared to be and shall hereafter constitute the official code of general ordinances of the town of Plains, Montana.

1.00.020 Title of Code. This code shall hereafter be known and referred to as the Official Code of the town of Plains, Montana, and a copy or copies of such code in printed form shall be received without further proof as the ordinances of permanent and general effect in the town of Plains, in all courts and administrative tribunals of this state.

1.00.030 Amending this Code. Any ordinance amending this code shall set forth in full the section or sections of the code being amended, and this shall constitute a sufficient compliance with any statutory requirement that no ordinance or any section thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or amended section in full.

1.00.040 Repealing Ordinance: Effect Of. The repeal of ordinances as provided shall not affect any right which has accrued, any duty imposed, any penalty incurred, or any action or proceeding as commenced under or by virtue of the ordinance repealed, or the tenure of office of any person holding office at the time when they take effect; nor shall the repeal of any ordinance thereby have the effect of reviving any ordinance theretofore repealed or superseded.

1.00.050 Rules For Construction. In the construction of the official code and all ordinances amendatory thereof or supplementary thereto the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the legislative body or repugnant to the context:

- a. INTENT TO DEFRAUD: Whenever, by any of the provisions of the official code, an intent to defraud is required in order to constitute an offense, it is sufficient if an intent appears to defraud any person, association or body politic or any combination of persons.
- b. LIABILITY OF EMPLOYERS AND AGENTS: When the provisions herein contained prohibit the commission or omission of an act, not only the person actually doing the prohibited thing or omitting the directed act, but also the employer and all other persons concerned or aiding or abetting the person shall be guilty of the offense described and liable to the penalty set forth.
- c. TITLE OF SECTIONS AND SUBSECTIONS: The title of any section or subsection of this official code shall be deemed to in no wise restrict, qualify or limit the effect of the provisions set forth and contained in such section or subsection.

d. EFFECT OF CONSTITUTIONALITY: Should any portion of this official code be declared by any court of competent jurisdiction to be unconstitutional or void, such adjudication shall in no way affect the remaining portion of this official code.

e. DEFINITIONS:

The singular number includes the plural.

Words used in the present include the future.

Words used in the masculine gender include, as well, the feminine and neuter.

The word "person" includes bodies politic and corporate, partnerships, associations and corporations.

The word "signature" includes any name, mark or sign written with the intent to authenticate any instrument of writing.

The word "oath" includes "affirmation", and the word "swear" includes the word "affirm". Every mode of oral statement under oath or affirmation is embraced in the term "depose".

The word "official time" whenever used shall mean standard time in the town of Plains.

The word "day" shall mean any twenty-four (24) hour period from midnight to midnight; and the word "month" shall mean a calendar month unless otherwise expressed; and the word "quarter" shall mean any three (3) month period, ending with the last day of March, June, September and December; and the word "year" shall mean any one (1) calendar year unless otherwise expressed.

The word "shall" is mandatory, "may" is discretionary.

The word "property" includes both real and personal property.

The term "land", "real estate", and "real property" includes lands, tenements, hereditaments, water rights, possessory rights and claims.

The term "personal property" includes every description of money, goods, chattels, effects, evidence of rights of action, and all written instruments by which any pecuniary obligation, right or title to property is created, acknowledged, transferred, increased, defeated, discharged or diminished, and every right or interest therein.

The word "public thoroughfare" includes streets, alleys, lanes, courts, boulevards, public ways, public squares, public places and sidewalks.

The word "owner" applied to a building or land shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of a part of such building or land.

The word "tenant" or "occupant" applied to a building or land shall include any person who occupies the whole or any part of such building or land whether alone or with

others.

Words prohibiting anything being done, except in accordance with a license or permit or authority from a board of officers, shall be construed as giving such board of officers power to license or permit or authorize such thing to be done.

Whenever the word "council" is used it shall be construed to mean the Town Council of this Town.

The word "officer" shall include officers and boards in charge of departments and the members of such boards, and such reference as the use of the word "city" or "town" shall mean this municipality.

"Clerk" or "treasurer" and others shall mean the Town Clerk or Town Treasurer as the case may be applicable.

The term "willfully" when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make intent to violate law or to injure another or to acquire an advantage.

The terms "neglect", "negligence", and "negligently" impart a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concern.

The term "knowingly" imparts a knowledge that the fact exists which brings the act or omission within the provisions of these ordinances. It does not require any knowledge of the unlawfulness of such act or omission.

Chapter 1.02
Ward Boundaries

Sections:

- 1.02.010 Changing Ward Boundaries
- 1.02.020 Annexation to Ward

1.02.010 Changing Ward Boundaries. The Ward boundaries of the Town of Plains be amended and changed to conform to the following descriptions:

Ward No. 1: Beginning at a point on the South boundary of the town where said boundary is intersected by the centerline of the Northern Pacific Railway Company's main line right-of-way; thence West along said South boundary to the center of First Street; thence North along the centerline of First Street to Pierce Street; thence, Northeasterly along the centerline of Pierce Street to the centerline of the Northern Pacific Railway Company's main line right-of-way; thence Southeasterly along the centerline of the Northern Pacific Railway Company's main line right-of-way to the point of beginning.

Ward No. 2: All that part of the town lying Northeasterly of the centerline of the Northern Pacific Railway Company's main line right-of-way through the town.

Ward No. 3: Beginning at the intersection of the centerlines of Pierce Street and First Street in the town; thence Northeasterly along the centerline of Pierce Street to the centerline of the Northern Pacific Railway Company's main line right-of-way; thence Northwesterly along the centerline of the Northern Pacific Railway Company's main line right-of-way to the North boundary of the town; thence West along said North boundary to the Northwest corner of the town; thence South along the West boundary of the town to the South Boundary; thence Southeasterly along the South boundary to the centerline of First Street; thence North along the centerline of First Street to the point of beginning.

1.02.020 Annexation to Ward. When property is annexed within the Town limits by petition and approval by the town council, the council shall designate the ward in which the property will lie.

Chapter 1.04
Elections

Sections:

- 1.04.010 Elections in Accordance with State Statutes
- 1.04.020 Qualification of Electors

1.04.010 Elections in Accordance with State Statutes. All primary and general elections shall be held in accordance with the statutes of the state of Montana.

1.04.020 Qualification of Electors. Any person shall be qualified to vote in any and all Town elections provided they are a resident of the Town or an area which has been annexed and certified as such by the Clerk and Recorder of Sanders County.

Chapter 1.06
Polling Place

Sections:

- 1.06.010 One Polling Place
- 1.06.020 Establishment of Polling Place Not to Affect Number of Wards or Precincts, or Membership Comprising the Town Council
- 1.06.030 Polling Place to be Within Town Limits

1.06.010 One Polling Place. The Town shall have but one (1) polling or voting place or municipal elections.

1.06.020 Establishment of Polling Place Not to Affect Number of Wards or Precincts, Membership Comprising the Town Council. The establishment of one polling or voting place shall in no way affect the number of wards or precincts in the Town, nor shall the membership comprising the town council be in any way affected.

1.06.030 Polling Place to be Within Town Limits. The one polling or voting place provided for in Section 1.06.010 shall be in such place within the Town as designated by the council.

Chapter 1.08
General Penalty

Sections:

- 1.08.010 General Penalty
- 1.08.020 Execution of a Fine

1.08.010 General Penalty. Whenever in any provision of this Code or other ordinance of the town any act is prohibited or is made or declared to be unlawful, a misdemeanor or an offense, or whenever in any such provision or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is otherwise provided therefore, any person upon conviction for the violation of any such provision of this Code or ordinances shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months or by both such fine and imprisonment, for each such offense. Each day any violation of any provision of any ordinance shall continue, shall constitute a separate offense.

In the construction and interpretation of this section, the revocation of a license or permit shall not be considered as a recovery or penalty so as to bar any other penalty being enforced.

1.08.020 Execution of a Fine.

- A. If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case;
- B. If the judgment is for a fine and imprisonment, the defendant must be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

Chapter 1.10
Passage and Posting of Ordinances

Sections:

- 1.10.010 Referred to Committee
- 1.10.020 Passage of Ordinances
- 1.10.030 Posting of Notice of Passage

1.10.010 Referred to Committee. Whenever an ordinance is introduced and presented by a member of the council at any regular meeting thereof or at any special meeting duly called for such purpose, the mayor shall then and there cause such ordinance to be read. After the first reading of said ordinance the same may be referred by the mayor to some suitable committee which shall take said ordinance under advisement and consideration until the next regular meeting of the council, at which time such committee must report thereon. Such ordinance shall then be read for the second time and shall thereupon be ready for final vote upon its adoption.

1.10.020 Passage of Ordinances. Any ordinance passed by the council shall not become effective until thirty (30) days after its passage, except general appropriation providing for the ordinary and current expenses of the municipality, excepting also emergency measures, and in the case of an emergency measure, the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive two-thirds (2/3) vote of all members of the council elected. In times of emergency, an ordinance shall include only such measures as are immediately necessary for the preservation of peace, health and safety.

1.10.030 Posting of Notice of Passage. Notice of ordinance passage shall be posted at Town Hall immediately subsequent to enactment. A copy of such ordinance shall be open and available for public inspection.

TITLE 2 - ADMINISTRATION AND PERSONNEL

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Chapter 2.00
SALARIES AND BONDS

Sections:

- 2.00.010 Salaries
- 2.00.020 Bonding of Officers

2.00.010 Salaries. The salaries of the officers and employees of the town shall be set annually by resolution, ordinance, or by formal adoption of the annual budget by the Town council.

2.00.020 Bonding of Officers. All officers and employees of the Town shall be bonded for the faithful performance of their duties; said bond to be executed by a duly authorized surety company, the premiums thereon to be paid by the town.

Chapter 2.02
ELECTIVE AND APPOINTIVE OFFICERS

Sections:

- 2.02.010 Elective and Appointive Officers
- 2.02.020 Qualifications

2.02.010 Elective and Appointive Officers. The officers of the town shall consist of elective officers and appointive officers. The elective officers shall be: a mayor and two aldermen from each ward as provided by law; the appointive officers shall be: a town attorney, a town clerk-treasurer, a Town judge, a police chief, and such other officers as the council may from time to time create or authorize or as may be allowed by law and authorized by the council, who shall be appointed by the mayor, with the advice and consent of the town council.

2.02.020 Qualifications. All elective and appointive officers shall possess qualifications provided by law and the council shall have the power, at any time, to abolish any office, the appointment to which is made by the mayor, with the advice and consent of the council, and to discharge, at any time, any officer so appointed by a majority vote of the council; and it may consolidate any office, the appointment to which is made by the mayor, with the advice and consent of the council, and may require any elective or appointive officer to perform any duties of any officer whose office has been abolished, or the duties of any other office now or hereafter created.

Chapter 2.04
TOWN COUNCIL

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2.04.010 Meetings and Agenda. The council shall hold its regular meetings for the transaction of municipal business on the first Monday in each month, and such other meetings to which the council may be adjourned or which may be called. Special meetings may be called by the mayor or at the request of three (3) members of the council. Notice of all meetings shall be made in accordance with the Montana Code Annotated. All regular meetings shall be held in the Town Hall in the Council's Chambers. Items shall be placed upon the agenda by the Mayor or upon request by three members of the Council.

2.04.020 Standing Committees. At the first regular meeting of the council in January of each year, the mayor shall appoint committee members of the council for the ensuing year as follows:

Committee on Finance and Insurance
Committee on Streets and Alleys
Water and Wastewater Committee

2.04.030 Special Committees. The mayor may appoint such special committees as deemed necessary for the efficient operation of the town.

2.04.40 Duties of Committees. To the Committee on Finance and Insurance shall be referred all matters relating to the general condition, revenues and expenditures of the municipality and said committee shall audit all books of account of all the municipal officers and shall investigate and report on the financial condition, revenues and expenditures of the municipality, from time to time, and as directed by the council. To the Committee on Streets and Alleys shall be referred all matters relating to the streets and alleys of the municipality and it shall investigate and report on the condition of the same from time to time and as directed by the council. The Water/Wastewater Committee shall hear all matters relating to the water and sewer systems.

2.04.50 Quorum. A majority of the members of the council constitutes a quorum for the transaction of business, but less number may meet and adjourn at any time stated and may compel the attendance of absent members under such rules and penalties as the council may prescribe.

2.04.060 President of the Council. At the first meeting in January of each year, the council shall elect one of its members as president of the council who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor and in the absence of the president, the

council may appoint one of its members to act in his place.

2.04070 Meeting Called to Order. The council shall convene and be called to order by the mayor, or in his absence, by the president of the council, and in the absence of both the mayor and president of the council, by the appointed alderman at seven o'clock (7:00) p.m. on the days designated for said meeting and the clerk shall proceed to call the roll and record in the minutes the names of all members present and announce whether or not a quorum is present.

2.04.080 Order of Business. At all meetings of the council the order of business shall be as follows:

- Call to Order
- Pledge of Allegiance
- Reports of Officers
- Public Comment
- Minutes
- Claims and Payroll
- Unfinished business
- New business
- Reports of Committees
- Presentation of communications

For good cause the mayor may, upon motion and majority vote, change the order of business.

2.04.090 Voting Majority Elects. The ayes and nays must be called and recorded in the final passage of any ordinance, bill or resolution or making of any contract and the voting on the election or appointment of an officer must be viva voce and the majority of the whole number of members elected is requisite to appoint or elect an officer and such vote must be recorded.

2.04.100 Rules of Order. The proceedings of the council shall in all cases be governed by Robert's Rules of Order so far as the same are applicable.

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2.06.010 Qualifications. No person shall be eligible for the office of mayor unless such person be a citizen of the United States and a resident of the town or area which has been annexed by the town for a period of two (2) years next preceding his election. He shall reside in the town during his term of office.

2.06.020 Mayor to be Chief Executive Officer. The mayor shall be the chief executive officer of the town and shall see that all ordinances of the town are duly respected, observed and enforced within the town limits.

2.06.030 Powers. The mayor shall have the power:

To nominate, and, with the consent of the council, to appoint all non-elective officers of the town, provided for by the council, except as provided in this title.

To suspend, and, to remove, with the consent of the council, any non-elective officer, stating in the suspension or removal the cause thereof.

To cause the ordinances of the town to be executed, and to supervise the discharge of official duty by all subordinate officers.

To communicate to the council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the town, with such recommendations as the mayor may deem proper.

To recommend to the council such measures connected with the public health, cleanliness and ornament of the town and the improvement of the government and finances as the mayor deems expedient.

To approve all ordinances and resolutions of the council adopted by it, and, in case the same do not meet the mayor's approbation, to return the same to the next regular meeting of the council, with objections in writing, and no ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by a two-thirds (2/3) vote of the whole number of members of the council.

To veto any objectionable part of a resolution or ordinance, and approve the other parts. If the mayor fails to return any resolution or ordinance as aforesaid, the same takes effect without further action.

To call special meetings of the council, and when so called the mayor must state by message

the object of the meeting and the business of the meeting must be restricted to the object stated.

To cause to be presented, annually, a full and complete statement of the financial condition of the town.

To bid in for the town any property sold at a tax or judicial sale where the town is a party or interested.

To procure and make safe the seal of the town.

To take and administer oaths.

To call on every citizen of the town, over the age of eighteen (18) years, to aid in the enforcement of the laws and ordinances in case of riots; and any person who does not obey such call forfeits to the town a fine not exceeding twenty-five dollars (\$25.00).

To require of any of the officers of the town to exhibit their books and papers.

To grant pardons and remit fines and forfeitures for offenses against town ordinances, when in the mayor's judgment public justice would be thereby subserved. All pardons shall be reported to the council.

To perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

2.06.040 Mayor to Act as Chair of the Council. The mayor shall be present at the meetings of the council and shall act as the chair thereof, and when there is a tie upon any question before the council the mayor shall give the casting vote; shall have power to veto any resolution or ordinance or any part thereof; shall sign all warrants on the town treasury and all permits or permissions granted by the council, and all contracts made by and on behalf of the town with any other party.

2.06.050 Absence of the Mayor. In the absence of the mayor from the town or from his inability from any cause to discharge the duties of office, the president of the council shall exercise all the powers and discharge all the duties of the mayor. In case of absence or inability of the mayor and president of the council, the council may appoint one of its number to act in place. The president or member of the council while performing the duties of the mayor shall be styled the Acting Mayor. Any acting mayor performing the duties of the mayor shall be entitled to the salary of the mayor.

2.06.060 Mayor to Appoint Officers. He shall at the first meeting of the council after the election each year, and from time to time thereafter, appoint, subject to confirmation of the council, all necessary officers of the town and shall in like manner appoint any other officer whose office is created by ordinance.

Chapter 2.08
CLERK-TREASURER

Sections:

2.08.010	Appointment
2.08.020	Duties

2.08.010 Appointment. The mayor shall, subject to the advice and consent of the council, appoint a clerk-treasurer who shall hold office for the duration of appointment or until a successor is appointed and qualified. Any reference to a town treasurer in this Code shall mean the town clerk-treasurer.

2.08.020 Duties. It shall be the duty of the town clerk-treasurer:

- a. To receive all moneys that come to the town, either from taxation or otherwise and to pay the same out of the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.
- b. To perform such duties in the collection of taxes, licenses or assessments as are or may be prescribed by law or ordinance.
- c. To present at the regular meeting of each month to the council a full and detailed statement of the amounts of money belonging to the town, received and disbursed during the preceding month and the state of each particular fund, which statement must be verified by his oath.
- d. To keep the books and accounts of the town in such manner as to correctly present the condition of the finances thereof which must always be open to the inspection of the mayor, council or any member thereof.
- e. To keep a separate account of each fund or appropriation and the debits and credits thereof.
- f. To give every person paying a receipt therefor, specifying the date of payment, the amount and for what paid.
- g. To render at any time an account to the council, showing the money on hand and the condition of the treasury.
- h. To keep a register of all warrants paid, which must show the date, amount and number and the person to whom and the fund from which the same was paid.
- i. To annually make out and submit to the town council a detailed account of all receipts and expenditures during the previous year.
- j. To pay out, in the order which they are registered, all warrants presented for payment when there are funds in the treasury to pay the same.
- k. To deposit all public moneys in possession and under control, excepting such as may be required for current business, in any solvent bank or banks located in such town,

subject to national supervision or state examination, as the council shall designate, and no other.'

l. To attend all meetings of the council, to record and sign the proceedings thereof and all ordinances, bylaws, resolutions and contracts passed, adopted or entered into, and to sign, number and keep a record of all licenses, commissions or permits granted or authorized by the council.

m. To record all ordinances, resolutions and bylaws passed and adopted by the council.

n. To enter in a book kept for that purpose the date, amount, the person in whose favor and for what purpose warrants are drawn upon the town treasury.

o. To countersign and cause to be published or posted, as provided by law, all ordinances, bylaws or resolutions passed and adopted by the council.

p. To file and keep all records, books, papers or property belonging to the town and to deliver the same to his successor when qualified.

q. To prepare and process financial statements as required by Montana Law.

r. To perform such other duties as the town council may prescribe.

Chapter 2.10
TOWN ATTORNEY

Sections:

- 2.10.010 Qualification; Term of Office
- 2.10.020 Duties

2.10.010 Qualification; Term of Office. The attorney to be appointed shall be a person who has been licensed to practice as an attorney in this state. He shall hold his office for two (2) years, unless suspended or removed as provided by this chapter.

2.10.020 Duties. It shall be the duty of the attorney to attend before the town court and other courts of the municipality and he shall generally do and perform such other acts as pertain to the office. The town attorney shall, when required, draw for the use of the council, contracts and ordinances for the government of the municipality and, when required, give to the mayor or council, written opinions on questions pertaining to the duties and the rights, liabilities and powers of the municipality. For such service, the town attorney shall receive such salary and fees as may be fixed by the council from time to time. Nothing herein shall be taken or construed as preventing the council from employing additional counsel in special cases and providing for the payment of such service. The town attorney may be suspended or removed from office by the council for the neglect, violation or disregard of the duties required by this section, or the other ordinances of the municipality.

Chapter 2.12
TOWN JUDGE

Sections:

2.12.010	Town Court; When Open
2.12.020	Town Judge to Keep Docket
2.12.030	Procedure in Instituting an Action
2.12.040	Issuance of Warrant
2.12.050	Duty of Officer Arresting
2.12.060	Bail
2.12.070	Money Deposited in Lieu of Bond
2.12.080	Receipt Given
2.12.090	Report Filed with Clerk
2.12.100	Manner of Conducting Trials

2.12.010 Town Court; When Open. The Town court shall be open as the Town judge may designate, whenever there are cases for disposition.

2.12.020 Town Judge to Keep Docket. The Town judge shall keep a docket of proceedings in said court, in which shall be entered daily, as they occur, a synopsis of the proceedings in each case, from the arrest to final judgment, and an entry of the appeal, if any appeal is taken.

2.12.030 Procedure in Instituting an Act. Actions for the violation of any law of the municipality must be commenced by citation or complaint. The citation or complaint shall also contain a brief statement of the acts constituting the offense for which the person is arrested, the date of the offense and reference to the title of the chapter or ordinance, number and section thereof charged.

2.12.040 Issuance of Warrant. Upon filing the complaint, the Town judge may, if the complaint charges the violation of any municipal ordinance, issue a warrant to any police officer and the officer must serve the warrant by taking the defendant into custody and bringing him before the Town judge.

2.12.050 Duty of Officer Arresting. The officer making the arrest shall make due return on his warrant; and if any officer arrests a person without a warrant, said officer shall forthwith file in the Town court a complaint against the person arrested as provided in this chapter.

2.12.060 Bail. Any person arrested for a violation of a municipal law may be admitted to bail by giving bonds with security, to be approved by the Town judge. The bond shall be conditioned that the defendant will appear at the time named therein before the Town court and answer to the charge for which he has been arrested. The bond shall be filed in the Town court, and if the defendant fails to appear at the time mentioned in the bond, the Town judge may declare the bond forfeited.

2.12.070 Money Deposited in Lieu of Bond. Any person arrested for the violation of a municipal law, in lieu of the bond mentioned in the preceding section, may deposit with the Town judge or police officer, such sum as may be specified by either of said officers, who shall give to the person arrested a receipt for the money so deposited in lieu of bail;

2.12.080 Receipt Given. When a fine imposed by the Town judge for the violation of a muni-

cipal law is to be paid in money, the judge shall issue a receipt therefor. A copy of such receipt shall be held as documentation to the clerk-treasurer of the payment

2.12.090 Report Filed with Clerk-Treasurer. The Town judge shall make out and file a monthly report to the clerk-treasurer. Such report shall detail the number of cases tried, the person convicted, the fine and cost imposed and whether the same has been paid, the number of days any person convicted has been sentenced to confinement. Before filing the same, he shall pay over to the clerk-treasurer all moneys received in payment of fines.

2.12.100 Manner of Conducting Trials. All proceedings in the Town court shall be conducted in the same manner as are trials in criminal cases before justices of the peace under the laws of Montana and all persons tried before the Town court shall have the same remedies and rights of appeal as now are or may hereafter be prescribed by law in criminal cases before justices of the peace. The Town judge shall have the same right and authority to punish for contempt and maintain order in court that justices of the peace have.

Chapter 2.14
TOWN COURT

Sections:

- 2.14.010 Town Court Established
- 2.14.020 Concurrent Jurisdiction
- 2.14.030 Exclusive Jurisdiction
- 2.14.040 When Substitute for Judge Called

2.14.010 Town Court Established. A Town court is established in the Town of Plains.. On judicial days, the court shall be open for all business, civil and criminal.

2.14.020 Concurrent Jurisdiction. Town court has concurrent jurisdiction with the justice's court of all misdemeanors punishable by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding six (6) months or by both fine and imprisonment.

2.14.030 Exclusive Jurisdiction. The Town court has exclusive jurisdiction over proceedings for the violation of an ordinance of the Town, both civil and criminal.

2.14.040 When Substitute for Judge Called. The Town judge or mayor may call in a Justice of the peace or some qualified resident of the Town to act in the judge's place, whenever the judge is a party in a case; interested in a case; related to either party in a case by consanguinity or affinity within the sixth degree; or sick, absent, or unable to act.

Chapter 2.16
POLICE CHIEF

Sections:

- 2.16.010 Duty of Police Chief
- 2.16.020 Power of Police Chief

2.16.010 Duty of Police Chief. It shall be the duty of the police chief to file and enter complaint against every person known to him to have violated a town ordinance, to arrest any and all persons found violating the town ordinances; to bring any person arrested for any offense before the town court if in session, or place such person in the appropriate detention center to be dealt with according to law.

2.16.020 Power of Police Chief. The police chief shall have full power and authority to enforce the town ordinances, to enter all places of business which are open to the general public in the town and to enforce said ordinances by quelling disturbances, making arrests, signing complaints and bringing the offenders before the proper judicial authority.

Chapter 2.18
RESERVE AND AUXILIARY POLICE OFFICERS

Sections:

2.18.010	Purpose
2.18.020	Reserve and Auxiliary Police Officers Authorized
2.18.030	State Law to Apply
2.18.040	Mayor to Appoint Officers

2.18.010 Purpose. It is the judgment of the Town council that there is and will continue to be a need for reserve and auxiliary police officers within the Town.

2.18.020 Reserve and Auxiliary Police Officers Authorized. Reserve and auxiliary police officers as the same are defined and regulated by Title 7, Chapter 32, Part 2, M.C.A., as amended, are hereby authorized.

2.18.030 State Law to Apply. The provisions of Title 7, Chapter 32, Part 2, M.C.A., as amended, pertaining to the qualifications, training and general regulations of reserve and auxiliary police officers, are hereby adopted and by this reference are made a part hereof.

2.18.040 Mayor to Appoint Officers. Reserve and auxiliary police officers shall be appointed by the mayor upon the recommendation and consent of the chief of police and town council.

Chapter 2.20
VOLUNTEER FIRE DEPARTMENT

Section:

2.20.010 Creation of a Volunteer Fire Department

2.20.010 Creation of a Volunteer Fire Department. There is hereby created in the town a Volunteer Fire Department. The officers of the fire department shall consist of a chief, and such other officers as the chief may designate.

Chapter 2.22
PLANNING BOARD

Sections:

2.22.010	Creation of a Planning Board
2.22.020	Terms and Vacancies of Members
2.22.030	Time of Regular and Special Meetings
2.22.040	Appointments and Elections
2.22.050	Growth Plan
2.22.060	Additional Duties and Powers

2.22.010 Creation of a Planning Board. There is hereby created a planning board of the town, which shall consist of seven (7) members to be appointed as follows:

One member to be appointed by the town council from its membership;

One member to be appointed by the town council who may, in the discretion of the council, be an employee of or hold public office in the town or the county of Sanders;

One member to be appointed by the mayor upon the designation by the county commissioners of Sanders County;

Four citizen members to be appointed by the mayor; citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the town, shall hold no other office in the town government, and shall be residents of the town.

2.22.020 Terms and Vacancies of Members. The terms of the members who are officers of any governmental unit represented by the board shall be coextensive with their respective terms of office to which they have been elected or appointed, except that the town council may, on its first regular meeting of each year, appoint another to serve as its representative. The terms of the other members shall be two (2) years except that of the first four (4) citizen members appointed, two (2) shall serve for one (1) year only, in order that a minimum number of terms shall expire in any year.

Any vacancy occurring on the board by expiration of term, shall be filled by appointment as provided for in Section 2.22.010; any vacancy occurring prior to expiration of term shall be filled for the unexpired term only.

The town clerk shall certify members appointed by the town council. The certificate shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

Any citizen member may be removed from office by a majority vote of the town council.

All members of the planning board shall serve without compensation except that, if the town council deems it advisable, the secretary may receive such compensation as may be fixed from time to time by the council.

When the planning board determines that it is necessary for members or employees to attend, in another town, county or state, a regional or national conference or interview dealing with

planning or related problems, the planning board may pay the actual expenses of the attending members or employee, provided the amount has been made available in the board's appropriation.

2.22.030 Time of Regular and Special Meetings. The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July and October. Special meetings of the planning board may be called by the president, or by two (2) members upon written request to the secretary. The secretary shall send to all members, at least two (2) days in advance of a special meeting, a written notice fixing the time and place of the meeting.

A majority of members shall constitute a quorum; no action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

2.22.040 Appointments and Elections. At its first regular meeting each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president. The board may appoint and prescribe the duties of a secretary, and such employees as are necessary for the discharge of the duties and responsibilities of the board. The board may make contracts for special or temporary services and professional services.

The town shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts.

2.22.050 Growth Plan. To assure the promotion of public health, safety, morals, convenience, order or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a growth plan and shall serve in an advisory capacity to the town council. The planning board may also propose policies for:

- a. subdivision plats;
- b. the development of public ways, public places, public structures, and public and private utilities;
- c. the issuance of improvement location permits on platted and unplatted lands;
- d. the layout and development of public ways and services to platted and unplatted lands.

The Town Council shall give consideration to recommendations of the planning board but shall not be bound by such recommendations.

2.22.060 Additional Duties and Powers. In addition to the powers and duties conferred upon the planning board by statute, the board shall have the following powers and duties:

- a. To prepare and recommend to the town council, a comprehensive plan of public improvements, looking to the present and future development and growth of the town. Such a plan will be known as the growth plan. Such plan shall include reasonable requirements in reference to streets, alleys, and public grounds within corporate limits and in contiguous territory outside of and distant not more than one and one-half miles from such limits, and not included in any municipality, such requirements to be effective whenever such lands

shall be subdivided after the adoption of the master plan.

b. To prepare and recommend to the town council from time to time such changes in the plan or any part thereof as may be deemed necessary by the town council or by the planning board.

c. To prepare and recommend to the town council from time to time plans or recommendations for specific improvements in pursuance of such growth plan.

d. To arrange and conduct any form of publicity relative to its activities for the general purpose of public understanding.

e. To cooperate with municipal or regional planning commissions and other agencies or groups to further the local planning program and to assure harmonious and integrated planning for the area.

f. To prepare, publish and distribute reports, proposed ordinances and proposed resolutions and other material relating to the activities authorized to the board.

Chapter 2.24
PLAINS PUBLIC LIBRARY DISTRICT

Sections:

2.24.010	Creation of Library District
2.24.020	Name of Library District
2.24.030	Services to be Provided
2.24.040	Convenience and Necessity
2.24.050	Estimated Cost of Services and Methods of Financing District
2.24.060	Method of Administering District
2.24.070	Maximum Property Tax Mill Levy for Property Taxes in District
2.24.080	Approval of Interlocal Library Contract
2.24.090	Termination

2.24.010 Creation of Library District. There is hereby created, for the use of the citizens encompassed therein, a free public library, under such regulations as may be prescribed by a board of directors hereinafter provided. The library will be regulated by the terms of the Interlocal Library Contract providing for a joint library consisting of the legally described school district of Plains High School, Montana.

2.24.020 Name of Library District. The name of the multi-jurisdictional library district is to be the Plains Public Library District.

2.24.030 Services to be Provided. The Plains Public Library District is to provide expanded and improved library services that will enhance the level of such library services available for the educational and recreational needs of the citizenry.

2.24.040 Convenience and Necessity. The formation of the Plains Public Library District is for the convenience and necessity of the Town of Plains and Sanders County as a whole, but more in particular, the legally described area of Plains High School District.

2.24.050 Methods of Financing District. The cost of services of the district will be financed by obtaining a district-wide levy; the sum of the district levy and county levy will not exceed five mills. Additional services may be provided through grants of other non-mill levied sources.

2.24.060 Method of Administering District. The operation of the multi-jurisdictional library district shall be governed by a board of trustees who shall be appointed and hold office in the manner and for the terms described. The town council shall appoint two members, both of whom must be residents of the district, one of whom must be a town resident, one of whom shall serve a term of one year, and the other shall serve a term of four years. The board of county commissioners shall appoint two residents of the district, one of whom shall serve a term of two years, and one of whom shall serve a term of three years. The board of county commissioners and the town council shall jointly appoint the fifth member, who shall serve a term of five years. Thereafter, each person appointed shall serve a term of five years, and vacancies on the board shall be filled by appointment by the town council, or the board of county commissioners, or both, depending upon which of those bodies appointed the original trustee for that particular term.

2.24.070 Maximum Property Tax Mill Levy for Property Taxes in District. The maximum property tax mill levy for property taxes in the library district is five mills, unless an additional levy is

provided for in accordance with the laws of the State of Montana.

2.24.080 Approval of Interlocal Library Contract. The interlocal library contract with Sanders County is hereby adopted and approved.

2.24.090 Termination. In the event of the termination of the Plains Public Library District, the furniture, equipment, monies and other assets acquired prior to the effective date of the interlocal library contract, shall be returned to each unit of government according to the units original contribution. Assets acquired after effective date of the agreement shall be divided on a pro-rata basis according to proportion of contributions to the annual library budgets. In no event shall assets of the Plains public library be used for non-library purposes unless express permission is granted by both governing bodies. All real property shall likewise be distributed and reassigned for library purposes unless there is an express agreement to the contrary. Employees retained by the Plains public library shall retain all rights and benefits as accrued while employed under this agreement.

TITLE 3 - REVENUE AND FINANCE

Chapters:

- 3.00 CAPITAL IMPROVEMENT FUND
- 3.02 MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM
- 3.04 VOLUNTEER FIREFIGHTERS RETIREMENT

Chapter 3.00
Capital Improvement Fund

Sections:

3.00.010 Capital Improvement Fund

3.00.010 Capital Improvement Fund. There is hereby created a Capital Improvement Fund for the town government into which money may be distributed as collected from the tax levies for capital improvements in the Town of Plains.

Chapter 3.02
Municipal Police Officers' Retirement System

Sections:

3.02.010 Municipal Police Officers' Retirement System

3.02.010 Municipal Police Officers' Retirement System. The town does hereby join the Municipal Police Officers' Retirement System of the State of Montana and the town consents to be bound to provisions of state law regarding such retirement system.

Chapter 3.04
Volunteer Firefighters Retirement

Sections:

3.04.010 Volunteer Firefighters Retirement

3.04.010 Volunteer Firefighters Retirement. The provisions of the laws of the State of Montana relating to volunteer firefighters retirement and firefighter's retirement or disability funds, the management thereof, and the power given to the firefighters relief association, shall govern the organization, management and control of the firefighters retirement system.

TITLE 4
WATER AND WASTEWATER

Chapters:

4.02 WATER REGULATION

4.04 WASTEWATER REGULATION

4.06 MAINLINE EXTENSIONS

Chapter 4.02
Water Regulation

Sections:

4.02.010	Water/Wastewater Committee
4.02.020	Connections to the Water Service
4.02.030	Meter Ownership
4.02.040	Maintaining Service Lines
4.02.050	Maintaining Mains and Meters
4.02.060	Extending Water Mainlines
4.02.070	Water Turn-Ons
4.02.080	Change of Ownership
4.02.090	Notice of Vacancy
4.02.100	Turning Water On and Off
4.02.110	System Shut Off By Town
4.02.120	Water Outside Town Limits
4.02.130	Water Rates
4.02.140	Reading Meters and Estimating Usage
4.02.150	Payment of Bills
4.02.160	Failure to Pay Bills
4.02.170	Disconnects
4.02.180	Illegal Use of Water System
4.02.190	Blocking Access to Water Meter
4.02.200	Reserve Fund
4.02.210	Consumer Contract
4.02.220	Accidents or Injuries
4.02.230	Violation Penalties

4.02.010 Water/Wastewater Committee. The Mayor shall appoint at the first regular meeting of the Town Council after each election, three members from said Town Council who shall constitute the committee on water and wastewater. Each Committee member shall serve for a term of four years or until their successors are appointed. The Water/Wastewater Committee shall hear all disputes and new installation requests concerning the water/wastewater works and shall make recommendations to the Town Council concerning these matters.

4.02.020 Connections to the Water Service. All individual dwelling units, multiple dwelling units and commercial/businesses within the limits of the Town of Plains shall be required to be individually serviced and metered by the Town water system. All new and expanded commercial/businesses, new and expanded dwelling and all new and expanded mixed uses shall be required to be serviced and metered in accordance with standards hereinafter stated. Meters shall be installed and placed in service by the Town under the direction of the Public Works Department (PWD). The PWD shall determine the appropriate size of service and meter. Only employees of the PWD shall open, shut off, or repair any water meter in service.

All current users, except as otherwise stated, shall be charged a base rate on the basis of the number of electric meters servicing the property. Such charges shall not include any building with an electric meter that is not serviced by sewer and or water. A dwelling unit(s) shall be charged the base rate multiplied by the number of electric service meters. For commercial uses a base rate of 1.79 times the dwelling base rate will be charged multiplied by the number of electric meters.

Motels, hotels, RV parks and other multiple part time occupancy commercial businesses will be charged a rate of one dwelling unit base per four occupancy units.

Assisted living businesses will be charged one dwelling unit base per 4 rooms.

Schools and medical facilities will be charged at the present base rate subject to and in accordance with future expansion/remodels *Amended March 22, 2007, Ord. 244; Further amended January 5, 2011 Ord. 249.*

4.02.030 Meter Ownership. Meters, pits, containers, lids and fittings are the property of the Town of Plains. Meters, meter containers, lids and other fittings are installed by the Town after payment of the hook-up fee by the user.

4.02.040 Maintaining Service Lines. All property owners are responsible for the upkeep and maintenance of the pipes and plumbing from the meter to and on their property. They shall keep All service lines from the meter in good repair to prevent waste or leakage of water, and shall be liable for and indemnify the Town for all costs and damages which may accrue to the Town by reason of their failure to do so. It is the responsibility of the property owner to identify leaks in their systems, and have them promptly repaired.

4.02.050 Maintaining Mains and Meters. All installation, repair or replacement of pipes and/or plumbing involving the mains to and through the meter shall be performed by the Public Works Department, and all expenses shall be the responsibility of the Town of Plains.

4.02.060 Extending Water Mainlines. The full cost of mainline extensions shall be borne by the applicant or applicants for service requiring any extension of a water mainline. The PWD has the authority to make arrangements with equipment operators, contractors, and plumbers to accomplish the work, unless the total cost is such that formal bidding procedures are required. No water shall be turned on until the fees of such extension and hook-up are paid in full.

4.02.070 Water Turn-Ons. No water shall be supplied upon any premises for any purpose except upon the request of the owner or his/her duly authorized agent.

4.02.080 Change of Ownership. In the event of a transfer of ownership of a property with supplied water, the seller, purchaser, or real estate agent may request that the meter be read at a specific time to establish the final bill for the seller. Either the seller or purchaser may direct that the water be turned off.

4.02.090 Notice of Vacancy. It is the property owner's responsibility to notify the Town when his/her property becomes vacant and whether the water is to be turned off or left on. Base rates will continue to be assessed and paid without regard to termination of service. *Amended January 5, 2011 Ord 249*

4.02.100 Turning Water On and Off. Any time that a water service is turned off at the request of the property owner or his/her agent there will be no charge to have the water meter turned off or back on. In the event that water is turned off for nonpayment, a turn-off and turn-on charge shall be assessed and paid prior to service being restored. Such charge will be set by Resolution by the Town Council. *Amended January 5, 2011 Ord 249*

4.02.110 System Shut Off By Town. In case of an emergency, or to make needed repairs or

extensions, or for any necessary purpose, the Town of Plains shall have the right to shut off or interrupt water service without notice, and to keep it shut off as long as may be necessary. If the shut off can be scheduled in advance, the Public Works Department will make every effort to notify users of the time of shut off and approximate duration.

4.02.120 Water Outside Town Limits. No water shall be supplied outside the limits of the Town of Plains except those agreed to prior to April 3, 1995. Water may be purchased and hauled out of Town at the rate established by Resolution after signing a purchase contract with the Town. Water may be hauled out of the Town only from sites designated by the PWD.

4.02.130 Water Rates. Water rates, both the base rates and the rates charged for usage above the basic allowance, will be fixed by Resolution of the Town Council.

4.02.140 Reading Meters and Estimating Usage. Normally, billings for water usage are completed by the 25th of each month. If meters cannot be read due to inclement weather, usage maybe estimated based upon prior consumption. Adjustments will be made as soon as possible. Complaints for adjustment will be referred to the Water and Wastewater Committee for resolution. The Water/Wastewater Committee shall recommend to the Town Council any adjustments.

4.02.150 Payment of Bills. The recorded owners of the property shall be responsible for payment of all water charges incurred herein. All bills for water are due and payable on the first day of each month, and shall be delinquent at the close of business on the 15th day of each month in which they are due unless such day falls on a legal holiday or Saturday or Sunday, in which event they shall be delinquent on the close of the next business day. *Amended January 5, 2011 Ord 249*

4.02.160 Failure to Pay Bills. When any water bill for any premises is delinquent (see Section 4.02.150), a penalty set by Resolution of the Town Council will be assessed on the first business day following said delinquency. If said delinquency is not paid by the due date of the bill for the following month, then two month's charges are delinquent, and penalties will be assessed for the second delinquency. Property will be posted with a shut-off notice the second business day after the second consecutive month of delinquency. The notice will include all past due amounts including all fees, penalties, and expenses which must be paid in full by twelve noon of the due date (four business days from posting) stated on the notice or service shall be discontinued. Fees for turn-off and turn-on fee, if service is discontinued as set by resolution of the town council, will be assessed.

The Mayor and the Chairman of the Water and Sewer Committee may consider requests for hardship and may vary such service termination upon the terms and conditions set forth by the Mayor and the Chairman. *Amended January 5, 2011 Ord 249*

4.02.170 Disconnects. The Town, by order of the Mayor, may allow the discontinuance of water and sewer services upon request to and recommendation of the Water and Wastewater Committee. If a discontinuance is approved and the owner requests resumption of services, a new hook-up fee will be charged.

4.02.180 Illegal Use of Water System. Any residential or business customer of the Town of Plains water system who shall willfully turn on the waterline after the same shall have been shut off by or under the direction of the Town for nonpayment of water charges or who shall

unlawfully take water from such water system shall be guilty of a misdemeanor.

4.02.190 Blocking Access to Water Meter. No residential or business customer of the Town of Plains water system shall block access to the water meter.

4.02.200 Reserve Fund. The Town hereby establishes a reserve fund specifically for replacement and upgrading of the water system. The clerk-treasurer has responsibility to invest with the advice and consent of mayor and council.

4.02.210 Consumer Contract. Rules and regulations enumerated in this ordinance shall constitute a part of a contract entered into by every consumer of Town water and the failure to know and follow these rules will not excuse anyone from the penalty for infringement or violation of these rules.

4.02.220 Accidents or Injuries. The Town of Plains will not be responsible for any accident or injury to a property owner or renter which may occur by reason of any pipes, water heaters or house or business fixtures used upon any of the premises being supplied with water, or which may occur by reason of the shutting off of the water, for the non-payment of water charges fixed herein, or for any other reason, such as frozen or broken water lines.

4.02.230 Violation Penalties. Any person violating any of the provisions of this Ordinance shall become liable to the Town for any expense, loss, or damage occasioned the Town by reason of such violation. Any person willfully or purposefully violating any provision of the Ordinance shall be guilty of a misdemeanor and punishable by a fine of five hundred dollars (\$500.00) for each day of occurrence and/or imprisonment of up to six (6) months in jail for each violation.

Chapter 4.02
Wastewater Regulation

Sections:

4.04.010	Definitions
4.04.020	Water and Wastewater Committee
4.04.030	Discharging Wastes
4.04.040	Connections to the Public Sewer
4.04.050	Application for Sewer Hookup
4.04.060	Inspections
4.04.070	Inspection Procedures
4.04.080	Broken or Damaged Sewer Mains
4.04.090	Warranty of Work
4.04.100	Sewer Disturbances
4.04.110	Use of Old Building Sewer Lines
4.04.120	Sewer Design
4.04.130	Sewer Elevation
4.04.140	Illegal Sewer Connections
4.04.150	Emergency Sewer Shut-Offs
4.04.160	Separate Sewer
4.04.170	Cost of Sewer Installations
4.04.180	Specifications for Laying Of Sewer Pipe
4.04.190	Sewer Cap Offs
4.04.200	Users Not on Town Water
4.04.210	Sewer Outside Town Limits
4.04.220	Availability Fee
4.04.230	Extending Sewer Mainlines
4.04.231	Limit to Service Line Extension by Town
4.04.240	Sewer Rates
4.04.250	Sewer Estimates
4.04.260	Payment of Bills
4.04.270	Failure to Pay Bills
4.04.280	Illegal Use of Sewer System
4.04.290	Blocking Access to Water Meter
4.04.300	Wastewater Facilities Replacement Fund
4.04.310	Discharge of Water or Wastes
4.04.320	Grease Traps
4.04.330	Pretreatment
4.04.340	Additional Structures Required
4.04.350	Requirements
4.04.360	Measurement and Tests
4.04.370	Agreements
4.04.380	Power and Authority of Inspectors
4.04.390	Cap-Offs
4.04.400	Violations; Penalties

4.04.010 Definitions.

Biochemical Oxygen Demand (BOD) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20

degrees Celsius, expressed in milligrams per liter.

Building Drain shall mean that part of the lowest horizontal piping of a drainage system, which receives the discharge from waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning two feet (2') (0.6 meters) outside the building wall.

Building Sewer shall mean the extension from the building drain to the public sewer system..

Floatable oil is oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. Wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

Garbage shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

Natural outlet shall mean any outlet including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

pH shall mean the logarithm of the reciprocal of the hydrogen ion concentration. The concentration is the weight of hydrogen ions in grams per liter of solution.

Properly shredded garbage shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch (1.27 centimeters) in any dimension.

Sludge shall mean any discharge of water or wastewater, which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen minutes, more than five times the average twenty-four hour concentration or collection system and/or performance of the wastewater treatment works.

Suspended solids shall mean total suspended matter (TSS) that either floats on the surface of, or is in suspension in water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in "Standard methods for examination of water and wastewater" and referred to as nonfilterable residue.

PWD shall mean Public Works Director..

Unpolluted Water is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

Polluted Waters: Any of the following: storm water, surface water, ground water, roof runoff, subsurface drainage or cooling water.

Watercourse shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

Operator, town operator, wastewater operator: Hereafter shall mean the PWD or his appointed representative.

Town of Plains Standard Procedures: Uniform Plumbing Code.

4.04.020 Water and Wastewater Committee. The Mayor shall appoint at the first regular meeting of the Town Council after each election, three members from said Town Council who shall constitute the Committee on Water and Wastewater. Each Committee member shall serve for a term of four years or until their successors are appointed. The Water and Wastewater Committee shall hear all disputes and new installation requests concerning the water and wastewater works and shall make recommendations to the Town Council concerning these matters.

4.04.030 Discharging Wastes. It shall be unlawful to discharge to any natural outlet within the Town, or in any area under jurisdiction of said Town, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Ordinance.

4.04.040 Connections to the Public Sewer. The owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, except irrigation, situated within the Town and abutting on any street, alley, or right of way in which there is now located or may in the future be located a public sanitary sewer of the Town, is hereby required at the owners expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provision of this Ordinance, within 180 days (weather permitting) after date of official notice to do so and prior to occupancy.

4.04.050 Application for Sewer Hookup. Applicant shall request a sewer hookup permit from the Town Clerk and shall submit one drawing showing all proposed improvements. Applicant or representative shall appear before the Water/Wastewater Committee with his/her request. The Water/Wastewater Committee will recommend to Council for approval. Upon Council approval of the hookup permit the applicant will pay the appropriate sewer hookup fee.

4.04.060 Inspections. The applicant for the building sewer permit shall notify the Town Clerk when the building sewer is ready for inspection and connection to the public sewer system. The inspection and connection shall be made under the supervision of the PWD or his appointed representative.

4.04.070 Inspection Procedures.

- (a) Location of sewer lines – the PWD will assist in the location of sewer lines in the vicinity of the proposed excavation.
- (b) After the excavation has been made, if applicable, the PWD will inspect any disturbed or exposed water or sewer line to insure that no damage has been done to the lines. If the excavation is for a new sewer service (to a line without an existing stub-out), during this inspection the town operator will aid the contractor in tapping the sewer main with the use of town supplied tapping drill and contractor supplied pipe and fittings. In addition, a field diagram shall be made of the sewer service layout and filed with the Town Clerk.
- (c) Prior to backfill the installation and excavation shall be inspected.
- (d) During the backfilling procedure, to insure that Town standard procedures and

materials are used, the project shall be inspected reviewed and corrected, if necessary.

- (e) A final inspection will be made after resurfacing is completed.

4.04.080 Broken or Damaged Sewer Mains. During excavation the contractor may accidentally break or damage a sewer main. To prevent any health hazard or pollution potential the line must be repaired as quickly as possible with the proper materials. The contractor shall take immediate steps to mitigate any damages, and shall immediately notify the PWD.

4.04.090 Warranty of Work. The PWD may inspect the progress of the excavation work at any point in time and generally daily monitoring of the project takes place. Town inspections are not a guarantee or warranty that the contractor has or will properly perform the work. The Town assumes no liability for any damages that may arise or be occasioned or caused by the permittee's workmanship.

4.04.100 Sewer Disturbances. No unauthorized persons shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof, without first obtaining a written permit from the PWD.

4.04.110 Use of Old Building Sewer Lines. Old building sewers may be used in connection with new buildings only when they are found, on examination by the PWD, to meet all requirements of this Ordinance.

4.04.120 Sewer Design. The size, slope, alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavation, placing of the pipe, jointing and backfilling the trench, shall all conform to the requirements, applicable rules and regulations set forth by the State of Montana and Town of Plains. See the PWD for these regulations.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer system, the sewage shall be lifted by a means approved by the PWD and discharged into the building sewer.

4.04.140 Illegal Sewer Connections. No person(s) shall make connection of roof downspouts, foundation drains, areaway drains, sump pumps, or other sources of surface runoff or groundwater to a building sewer or building drain, which in turn is connected directly or indirectly to a public sewer system.

4.04.150 Emergency Sewer Shut-Offs. In case of fire or other emergency, or in making needed repairs or extensions, or for any purpose deemed necessary by the PWD, the Town of Plains shall have the right to shut off or interrupt sewer services without notice, and to keep it shut off as long as may be necessary.

4.04.160 Separate Sewer. A separate and independent building sewer is required for every building; except where a building stands at the rear of another on an interior lot, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. The Town does not and will not assume any obligations or responsibility for damage caused by or resulting from any such single connection

aforementioned.

4.04.170 Cost of Sewer Installations. All costs and expenses incidental to the installation and connection of the building sewer from the building to the property line shall be borne by the property owner. All costs and expenses incidental to the installation and connection of the building sewer from the property line to the main sewer shall be borne by the Town of Plains.

4.04.180 Specifications for Laying Of Sewer Pipe.

- a. Contractor must install pipe according to State and local codes.
- b. Angle of grade of pipe must be 2% or more.
- c. There shall be no angles in pipe greater than 45 degrees.
- d. Pipe must be at least four inches in diameter in size.
- e. PROPERTY OWNERS: Minimum quality pipe to be used in system: SDR 35 PVC.
- f. For going through cesspools, which have been drained and refilled, the minimum quality pipe to be used: shall be schedule 40 PVC.
- g. Cleanouts:
 1. Each horizontal drainage pipe shall be provided with a cleanout at its upper terminal and at the end of each run of piping, which is more than 100 feet (30.4 m) or fraction thereof in length.
 2. Each cleanout shall be installed so that it opens in a direction opposite to the flow of the soil or waste.
 3. Each cleanout extension shall be considered as drainage piping and each 90-degree cleanout extension shall be extended from a "Y" type fitting or other approved fitting of equivalent sweep.
 4. Each cleanout for an interceptor shall be outside of such interceptor.

4.04.190 Sewer Cap Offs. The Town, by order of the Mayor, may allow the discontinuance of water and sewer services upon request and to the recommendation of the Water/Wastewater Committee. Sewer line will be capped off five feet from the property line at the owner's expense under the supervision of the PWD. Owner must first fill out a sewer cap off form and both the owner and the PWD shall sign it. The cap for the sewer line will be glued on or in the line. If the sewer line is to be used again, there will be a full sewer hook-up fee charged.

4.04.200 Users Not on Town Water. All users that do not use the Town water system, or whose water consumption is not metered shall pay the minimum set rate plus a set rate for each 1000 gallons of water based on an average of similar customers on the metered system.

4.04.210 Sewer Outside Town Limits. No sewer shall be supplied outside of the limits of the Town of Plains.

4.04.220 Availability Fee. Users that have had their water shut off will be assessed the minimum set sewer rate and the minimum set sewer rate shall be applied to all premises, whether vacant or inhabited, if a sewer hook up is installed to the owners lot and not capped off.

4.04.230 Extending Sewer Mainlines. The full cost of mainline extensions shall be borne by the applicant or applicants for service requiring any extension of a sewer mainline. The PWD has the authority to make arrangements with equipment operators, contractors, and plumbers to accomplish the work, unless the total cost is such that formal bidding procedures are required. No water shall be turned on until the costs of such extension and hook-up are paid in full.

4.04.240 Sewer Rates. All users of the sewer (residential, business, trailer courts, apartments and multiple residences) are assessed a minimum monthly fixed rate plus the current rates established, for actual water used, as determined by Resolution of the Town Council. Sewer rates are set each April for the coming year, based upon winter water usage, averaged (usage from November 15th to April 15th).

4.04.250 Sewer Estimates. The clerk-treasurer or her deputy, if any, shall estimate sewer usage for households when the meters cannot be read or sewer rates have not been set previously. The Water and Wastewater Committee shall recommend to the Town Council any adjustments.

4.04.260 Payment of Bills. The record owner of property shall be responsible for payment of all sewer charges incurred herein. All bills for sewer are due and payable on the first day of each month, and shall be delinquent at the close of business on the 15th day of each month in which they are due, unless such day falls on a legal holiday or weekend day (Saturday or Sunday), in which event they shall be delinquent on the close of office hours on the next business day.

4.04.270 Failure to Pay Bills. When any sewer bill for any premises is delinquent (see section 26) late payment fees will be charged on the first business day following said delinquency. If said delinquency is not paid by the due date of the bill for the following month, then two month's charges are delinquent, and penalties will be assessed for the second delinquency. Property will be posted with a shut-off notice the second business day after the second consecutive month of delinquency. The notice will include all past due amounts including all fees, penalties, and expenses which must be paid in full by twelve noon of the due date (four business days from posting) stated on the notice or service shall be discontinued. Fees for turn-off and turn-on fee, if service is discontinued as set by resolution of the town council, will be assessed.

The Mayor and the Chairman of the Water and Sewer Committee may consider requests for hardship and may vary such service termination upon the terms and conditions set forth by the Mayor and the Chairman. *Amended January 5, 2011 Ord 249*

4.04.280 Illegal Use Of Sewer System. Any residential or business customer of the Town of Plains water and wastewater system who shall willfully turn on the waterline or sewer line after the same shall have been shut off by or under the direction of the Town for nonpayment of sewer charges or who shall unlawfully make use of such sewer system shall be guilty of a misdemeanor.

4.04.290 Blocking Access to Water Meter. Any residential or business customer of the Town of Plains water and wastewater system who shall willfully block access to the water meter when notified their water will be turned off shall be guilty of obstructing a public servant.

4.04.300 Wastewater Facilities Replacement Fund. A reserve fund called the wastewater facilities replacement fund is hereby established within the wastewater utility fund for the purpose of providing funds to be expended for obtaining and installing equipment, accessories and appurtenances during the useful life (20 years) of wastewater treatment facilities necessary to maintain the capacity and performance for which such facilities are designed and constructed.

4.04.231 Limit to Service Line Extension by Town. In situations where the Town is required to provide sewer service line extension to the property of the user across public property, the Town will charge a minimum fee of \$10.00 per foot or the actual cost, if greater, for all service line made that is greater than the width of the existing abutting roadway or alleyway. *Amended March 22, 2007*

4.04.310 Discharge of Water or Wastes. Except as provided in the limitations and regulations established by the Water Quality Bureau of the Montana Department of Health and Environmental Sciences, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

- a. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas.
- b. Any waters containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal system, to injure or interfere with any sewage treatment process, constitute hazard to humans or animals, create a public nuisance, or create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works.
- c. Any waters or wastes having a pH lower than 5.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater works.
- d. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, underground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- e. Polluted waters.

4.04.320 Grease Traps. Grease, oil and sand interceptors shall be provided when, in the opinion of the PWD, they are necessary for the proper handling of liquid wastes containing elements of excessive amounts as specified in Section 31 except that such interceptors shall not be required for private living quarters or single dwelling units. All interceptors shall be of a type and capacity approved by the PWD and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal by appropriate means of the captivated

material and shall maintain records of the dates and means of disposal, which are subject to review by the PWD. Currently licensed waste disposal firms must perform any removal and hauling of the collected material not performed by the owner.

4.04.330 Pretreatment. Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

4.04.340 Additional Structures Required. When required by the PWD, the owner of any property carrying industrial wastes into the Town's sewer system shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observations, sampling and measurement of the wastes. Such structures, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the PWD. The structure shall be installed by the owner at owners expense and shall be maintained so as to be safe and accessible at all times.

4.04.350 Requirements. The PWD may require a user of sewer service to provide information needed to determine compliance with this Ordinance. These requirements may include:

- a. Wastewater discharge peak rate and volume over a specified time period.
- b. Chemical analyses of wastewaters.
- c. Information on raw materials, processes and products affecting wastewater volume and quality.
- d. Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use and control.
- e. A plot of sewer on the users property showing sewer and pretreatment facility location.
- f. Details of wastewater pretreatment facilities.
- g. Details of systems to prevent and control the losses of materials through spills to the municipal sewer.

4.04.360 Measurement and Tests. All measurements, tests and analysis of the characteristics of waters and wastes to which references are made in this Ordinance shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association. Sampling methods, locations, times, durations, and frequencies are to be determined on an individual basis subject to approval by the PWD.

4.04.370 Agreements. No statement contained in this Ordinance shall be construed as preventing any special agreement or arrangement between the Town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Town for treatment.

4.04.380 Power and Authority of Inspectors.

- a. The PWD and other duly authorized employees of the Town bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the community system in accordance with the provisions of this Ordinance.
- b. The PWD or other duly authorized employees are authorized to obtain information concerning industrial processes, which have a direct bearing of the kind and source of discharge to the wastewater collection system. The industry may withhold information considered confidential. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.
- c. The PWD and other duly authorized employees, or his authorized replacement, shall be permitted to enter all private properties through which the Town holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the easement pertaining to the private property involved.

4.04.390 Cap-Offs. All permanent cap-offs of sewer service lines shall be made under the supervision of the public works director. Upon filling out a sewer cap-off permit and receipt of any fee established therefor, a property owner as current user of sewer services may request the town to abandon service and cap off the existing service line. A minimum of five feet of service line from the owner's property line will be exposed and removed. Both ends of such service shall be capped, at the property owner's expense, with town approved materials. The public works director shall place an as-built drawing on the sewer cap-off permit and place it in the files of the town. In the event the sewer line is to be used again, the full sewer hook-up fee shall be charged and collected prior to hook-up. No fee for sewer service will be charged while the sewer cap is in place.

4.04.400 Violations; Penalties. Any person violating any of the provisions of this Ordinance shall become liable to the Town for any expense, loss, or damage occasioned the Town by reason of such violation. Any person violating any provision of the Ordinance shall be guilty of a misdemeanor and punishable by a fine of five hundred dollars (\$500.00) for each day of occurrence and/or imprisonment of up to six (6) months in jail for each violation.

Chapter 4.06
Mainline Extension

Sections:

4.06.010 Mainline Extension

4.06.010 Mainline Extension. When a water or wastewater mainline is extended, the cost of all such extension shall be borne by the applicant. Applicant shall pay the cost of extension including engineering, review, inspection, and DEQ approval and review. No water shall be turned on or allowed to flow through the extensions until the costs of such connection shall have been paid in full. Furthermore, the applicant shall post a bond, letter of credit, or other security, sufficient to guarantee the fitness of purpose of the mainline extension for one (1) year from the time of final inspection and acceptance by the Town of Plains. In the event of failure of the extension, or any portion thereof, the Town of Plains may, without notice to applicant, utilize the proceeds of such security to immediately repair any defects or damage. *Amended August 6, 2008. Ord 246.*

TITLE 5
BUSINESS AND BUSINESS LICENSING

Chapters:

5.02 STREET VENDORS

5.04 BUSINESS LICENSE

5.06 LIQUOR REGULATIONS

Sections:

5.02.010	Definitions of Street Vendors
5.02.020	Prohibition against Street Vendors
5.02.030	Compliance with Health and Safety Regulations
5.02.040	Street Vending Operations Conducted on Public Ways
5.02.050	Prohibited Conduct
5.02.060	License Fees
5.02.070	Application for License
5.02.080	Issuance of License
5.02.090	Exhibition of License upon Demand
5.02.100	Revocation
5.02.110	Exemptions
5.02.120	Violation

5.02.010 Definitions of Street Vendors. Every person, partnership, company or corporation, whether for profit or nonprofit, who at nonpermanent stands, structures, display racks or from vehicles situated on the public way or in commercial parking lots, and every person who travels about from place to place and transports by any mode or conveyance and sells, offers or exhibits for sale any goods, wares or merchandise, and every person who personally solicits orders for the future delivery of any goods, wares or merchandise, either by or without sample, including peddlers and hawkers, is a street vendor within the meaning of this Ordinance, provided, however, that this Ordinance shall not apply to wholesale dealers selling to dealers or merchants, nor shall it apply to any person or the representative of any person, company or corporation doing business at a fixed place of business within the Town limits of Plains, and taking orders for the future delivery of any goods, wares or merchandise, kept at or in connection with and handled through such fixed place of business.

5.02.020 Prohibition against Street Vendors. It shall be unlawful for any street vendor, as defined in this Ordinance, to conduct any business in the Town without first obtaining a license and paying the fees as set forth herein.

5.02.030 Compliance with Health and Safety Regulations. All business license applicants shall comply with health and safety regulations enacted by the town, county, and the state. The operation of any street vendor shall be subject to immediate shutdown by the health department in the event of a violation of such regulations.

5.02.040 Street Vending Operations Conducted on Public Ways. Street vending operations conducted on public ways shall be subject to the following rules:

- a. Street vending in the public ways or on property leased or owned by the Town shall be permitted only at locations where the street vendor does not obstruct visibility of motorists at street, alley or driveway intersections;
- b. sidewalks, patrons shall be served only upon the sidewalk;
- c. Street vending operations shall not be located within fifteen feet (15) of any fire hydrant, shall not block ingress or egress into any building;

- d. Except in the case of street vending operations conducted by businesses adjacent thereto, no street vendor shall locate any apparatus closer than ten (10) feet to a door of any structure;
- e. A five-pound ABC fire extinguisher is required if a heating or cooking appliance is used by the street vendor.

Street vending operations conducted on parking lots shall be subject to the following rules:

- a. Street vending facilities shall be located at least fifteen (15) feet away from any traffic or fire lane in a parking lot. Street vending operations shall be situated so as to minimize pedestrian traffic across any such lanes.
- b. A five-pound ABC fire extinguisher is required if a heating or cooking appliance is used by the street vendor.

Garage, yard or rummage sales shall be subject to the following rules:

- a. Persons or organizations conducting occasional yard, rummage or garage sales shall not be considered street vendors for purposes of this ordinance. However, such vendors shall provide adequate parking space for patrons so that such sale does not create a public nuisance or endanger life and safety.
- b. Persons or organizations conducting more than three (3) yard, rummage or garage sales in any one month will be subject to the provisions of this ordinance.

5.02.050 Prohibited Conduct. No vendor shall:

- a. Leave any stand unattended;
- b. Sell food or beverages for immediate consumption unless he or she has available for public use his or her own or a public lifter receptical which is available for his or her patrons' use;
- c. Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales made by the vendor;
- d. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the stand;
- e. Set up, maintain or permit the use of any table, crate, cart, rack, or any other device to increase the selling or display capacity of his or her stand, where such items have not been described in his or her application;
- f. Sound or permit the sounding of any device which produces a loud and raucous noise, or use or operate any loud speaker, public address system, radio, sound amplifier or similar device to attract the attention of the public;
- g. Store, park or leave any stand overnight on any street or sidewalk; or

- h. Construct or display a sign that is illuminated or exceeding nine (9) square feet in size.

5.02.060 License Fees. Street vendors, as defined in Section 1, shall obtain a license at City Hall by paying such fees as are from time to time defined by resolution of the Town Council. This sum is payable at the time the application is filed.

5.02.070 Application for License. Any person or firm desiring to secure a street vendor's license shall apply therefore to the Town Clerk on forms provided by the town. Such application shall state as to each street vendor:

- a. The name and address of each vendor;
- b. The name and address of the person, firm or corporation by whom employed; if the firm be a partnership, showing the names and addresses of all partners; if the employing firm be a corporation, showing the address of the principal place of business;
- c. The length of service of each vendor with such employer;
- d. The place of residence and nature of employment of vendor during the last preceding year;
- e. The nature or character of goods, wares, merchandise or services to be offered by vendor;
- f. The personal description of vendor, and other such credentials as to identify the vendor.
- g. A brief descriptive list of articles to be offered for sale, or services to be performed.
- h. Whether payments or deposits of money are collected when orders are taken, or in advance of final delivery.
- i. The length or duration of the permit.

5.02.080 Issuance of License. Upon filing of the application prescribed in Section 7, in proper form, and upon the payment to the Clerk of the sum required, the Clerk shall issue and deliver to the applicant a license to carry on the business described in such application. Such license shall be non-transferable and shall have printed on the face thereof, in bold type, the words "non-transferable". The Clerk shall endorse upon each application the date of issuance of the license, the inclusive dates for which the license is valid, and shall file such application in his/her office.

5.02.090 Exhibition of License Upon Demand. Every vendor doing business under the provisions of this Ordinance must, upon demand of any official of the Town, exhibit his/her license and permit, the same to be inspected by the official making such demand.

5.02.100 Revocation. If the police chief, or his designee, shall find that the business conducted is contrary to the well-being and/or safety of the town, the chief shall immediately notify the vendor to suspend all operations. Such notice is subject to appeal upon the making of written application to the mayor of the town. The mayor shall call for a hearing to be held within 24 hours of receipt of the written appeal to determine the merits of the appeal. The hearing board

shall consist of the mayor, the town clerk-treasurer, and one council member. The decision of the hearing board shall be final and conclusive.

5.02.110 Exemptions. The following activities are exempt from the provisions of this article to the extent hereinafter provided:

- a. Community-sponsored activities. If the town council determines that a vending business is a short-term community sponsored activity, the council may exempt that vending business from any or all provisions of this ordinance.
- b. Nonprofit organizations. Nonprofit organizations must comply with all provisions of this article except that such organizations shall not be charged a permit fee.
- c. Merchant organization. The Mayor may exempt legitimate organized merchant associations sponsoring short-term vending activities from any of the provisions of this ordinance, except such association shall supply insurance coverage for such event.
- d. Children's stands. Temporary stands run by minor children for the sale of lemonade, cookies, worms, vegetables, etc. are exempt from the licensing provisions herein but shall comply with all health and safety standards of this ordinance providing the stands are not in place for more than a week at any one time.

5.02.120 Violation. Any person violating the provisions of this Ordinance shall, upon the first conviction thereof, be fined not to exceed Fifty Dollars (\$50.00). Upon a second offense, a fine of One Hundred Dollars (\$100.00) shall be imposed and upon third and subsequent offense a fine not to exceed Three Hundred Dollars (\$300.00) shall be imposed.

Chapter 5.04
Business Licenses

Sections:

5.04.010	Definitions.
5.04.020	Scope of provisions.
5.04.030	License -- Required.
5.04.040	Interstate Commerce.
5.04.050	License -- Application.
5.04.060	License -- Issuance decision.
5.04.070	License -- Multiple businesses.
5.04.080	License -- Appeals.
5.04.090	Inspection -- Supervision.
5.04.100	License -- Suspension or revocation.
5.04.110	License fees -- Generally.
5.04.120	License fees -- Prorating.
5.04.130	License fees -- Dispositions.
5.04.140	License -- Term.
5.04.150	Lien on property.
5.04.160	Violation -- Prosecution.
5.04.170	Violation -- Penalty.

5.04.010 Definitions. When used in this title, the following words and phrases, shall have the meanings ascribed to them in this section, unless otherwise noted:

"Business" means any and all industries, pursuits, occupations, professions and retail and wholesale businesses, except those carried on in a temporary manner by nonprofit organizations as projects for fundraising.

"License" means any license required by this title except beer and liquor licenses.

"Licensee" means any person holding any license required by this title.

5.04.020 Scope of provisions. No provision contained in this title shall be construed as to license any business prohibited by any law of the United States or of the state, or by any ordinance of this town.

5.04.030 License -- Required. No person shall carry on business within the town without obtaining a town business license, except where that person is specifically exempted from municipal business licenses under the laws of the state.

5.04.040 Interstate Commerce. Nothing in this title shall operate so as to interfere with the power of the Congress of the United States to regulate commerce between the states, as such power is defined by the Supreme Court of the United States.

5.04.050 License -- Application. To apply for a business license, the applicant shall file a completed business license application form with the town treasurer. Blank forms shall be available at the office of the town treasurer. The license fee shall accompany the license. The information stated in the application shall be true to the best of the applicant's knowledge, and the applicant shall swear and subscribe to this fact before the town treasurer, or any officer

authorized to take oaths. The application shall state:

The name of the applicant;

- a. Place of permanent residence;
- b. Local business address, if any;
- c. Date of arrival in the town;
- d. City or county from which last license held, if any;
- e. Description of the business to be licensed and its locations;
- f. Whether the applicant shall act as principal or agent of the principal. If the applicant is acting as agent, the principal's acknowledgement of the agency must accompany the application.

5.04.060 License -- Issuance decision. License applications, together with the license fees, shall be filed with the town clerk-treasurer. In his discretion, or in the discretion of the mayor, such applications may be approved, or may be held until the next regular meeting of the town council, when they shall be submitted to the council for consideration. The council may decline to issue a requested license if its issuance would be detrimental to the public health, welfare or safety.

5.04.070 License -- Multiple businesses. When a person is carrying on two or more different lines of business at a single place of business, he shall obtain the most inclusive license of those applicable. When a person is carrying on two or more different lines of business at different places of business, but not more than one line of business at each place of business, he shall obtain a separate license for each place of business.

5.04.080 License -- Appeals. Any decision regarding the issuance of a license, the classification of the business to be licensed or the license fee to be paid, may be appealed by the applicant. Upon notice of the appeal, the town clerk shall refer the matter to the mayor, who shall decide the matter. The applicant may appeal the decision of the mayor to the town council. The town council shall consider the appeal at its next regular meeting, or at a meeting called especially for considering the appeal. If an appeal is made to the council, the applicant shall pay such license fee, if any, as if set by the mayor. Should the council approve a lesser license fee, the applicant shall be entitled to a refund. No appeal or refund shall be allowed unless it is requested within thirty days from the date of the mayor's decision.

5.04.090 Inspection -- Supervision. Every person licensed under the provisions of this chapter shall be subject to regulation, inspection, control and supervision under the general police power of the town, and under all of the ordinances now in force or which may be adopted in aid of such police power and regulation.

5.04.100 License -- Suspension or revocation. Whenever the mayor determines that any licensee under this title is conducting his business in a manner detrimental to the public health, safety or welfare, he may suspend the license by serving notice of the suspension on the licensee, or on the person in charge at the licensee's place of business. At the next regular meeting of the town council, or at any special meeting called to consider the suspended license,

the mayor shall report the suspension, and the reasons for the suspension, to the town council. The town council may then continue the suspension for a period not to exceed sixty days, or may revoke the license. The council's order concerning the license shall be recorded in the minutes of the council, and if the license is suspended or revoked, notice of the council's order shall be served on the licensee, or on the person in charge of the licensee's place of business.

5.04.110 License fees -- Generally. The fees for the licenses required by this title shall be set forth in the table of fees in the appendix to this code.

5.04.120 License fees -- Prorating. In the case of all licenses except nonresident salesman licenses issued after the beginning of the license term, the license fee shall be computed pro rata on the basis of the number of months remaining in the term. However, no allowance shall be made for any period less than one month.

5.04.130 License fees -- Disposition. All of the fees collected under the provisions of this title shall be deposited and kept in the business licenses account of the general fund of the town. From this fund all the expenses of the administration of this title shall be paid, and the balance remaining shall be applied to the expense of maintaining and operating the health and police departments of the town.

5.04.140 License -- Term. All business licenses will be renewed and due on January 1 of each fiscal year

5.04.150 Lien on property. All property held or used in any business for which a license is required is liable for such license, and is subject to a lien for the amount of the fee for such license.

5.04.160 Violation -- Prosecution. Prosecutions for violation of this title shall be in the police court of the town, upon written complaint of the mayor, town treasurer, chief of police or any citizen of the town.

5.04.170 Violation -- Penalty. Persons violating any provision of this title shall be subject to the general penalty. In addition, a civil judgment for the amount of the license fee due and unpaid may be entered against the defendant.

Chapter 5.06
LIQUOR REGULATIONS

Sections:

5.06.010	Definitions
5.06.020	License Fees
5.06.030	Application
5.06.040	Nontransferable, Exception
5.06.050	Qualifications
5.06.060	Restrictions
5.06.070	Exceptions
5.06.080	Renewal of Suspended License
5.06.090	Compliance with State Laws

5.06.010 Definitions. The following words and phrases when used in this chapter shall have the meanings respectively ascribed to them:

- a. Council shall mean the council of this town.
- b. Club shall mean a national fraternal organization with permanent quarters or rooms, except college fraternities, or associations of individuals organized for social purposes and not for profit, with a permanent membership and in existence for two (2) years.
- c. State Liquor Store shall mean stores operated by the Montana Department of Revenue located in the Town.
- d. License shall mean an all-beverage license, beer, wine or both issued by the town to a qualified person under which it shall be lawful for the licensee to sell or dispose of alcoholic beverages at retail as provided in this chapter.
- e. Interdicted Person shall mean a person to whom the sale of liquor is prohibited under the laws of the state.
- f. All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given the ordinary meaning.

5.06.020 License Fees. Licenses may be issued to qualified applicants, as herein provided, whereby the licensee shall be authorized and permitted to sell alcoholic beverages at retail in accordance with the provisions of this chapter. Qualified applicants shall include persons, hotels, clubs and fraternal organizations. Each licensee, under the provisions of this chapter, shall pay an annual license fee for each license as established by the Town Council from time to time. Where a license hereunder is issued for a period commencing subsequent to the first of the current year a pro rata charge may be made therefor, but nothing herein contained shall be construed to entitle any licensee hereunder to any refund of any portion of the license fee in the event of the discontinuing of such business, or the suspension or revocation of his license.

5.06.030 Application. Prior to the issuance of a license as herein provided, the applicant shall file with the town treasurer an application in writing, signed by the applicant, and directed to the council, which application shall specify the location by street and number of the premises where the business is to be carried on under the license applied for, the names of the person or

persons conducting the business, of the same if a partnership, and if the same is a fraternal order, such fact must therein be set forth. The application must be accompanied by satisfactory evidence that the applicant has the licenses as herein provided. The application must be accompanied with the license fee. Upon the filing of the application prescribed herein, accompanied by the evidence required and upon payment of the required license fee, the clerk-treasurer shall issue and deliver to the applicant a license to carry on the business of which the applicant owns and holds a subsisting license issued to such applicant for such business at such location by said department.

5.06.040 Nontransferable, Exception. Every license issued under this chapter shall set forth the name of the person to whom issued and the location by street and number of the premises where the business is to be carried forth under such license. If it is a partnership it shall set forth further names of the persons conducting the business. Such license shall be signed by the licensee and shall be nontransferable; however, a transfer of any such license may be made on application to the council, accompanied by satisfactory evidence of the consent of the state department of revenue to such transfer of the license by it issued under said Montana law. In the event a license is transferred pursuant to this section, the transferee shall pay a transfer fee in the amount of ten percent, but not less than \$15, of the applicable license fee if such transfer of license application is made during the same calendar year for which such license is paid. Such license shall be posted in a conspicuous place on the premises in respect to which it is issued and shall be exhibited to any member of the police department. Every license issued under the provisions of this chapter is separate and distinct and no person, except the licensee named therein, shall exercise any of the privileges granted thereunder and all licenses are applicable only to the premises in respect to which they are issued. All licenses shall expire on June 30th of each year.

5.06.050 Qualifications. No person, club, or fraternal organization shall be entitled to a license under this chapter unless such person, club, or fraternal organization shall have, in respect to the same premises for which a license under this chapter is sought a subsisting license issued pursuant to Montana law.

5.06.060 Restrictions. No licensee shall sell, deliver or give away or cause or permit to be sold, delivered or given away, any liquor to:

- a. Any minor actually under the age of twenty-one (21) years.
- b. Any person who is actually, apparently or obviously intoxicated.
- c. No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail on any day between two o'clock (2:00) a.m. and eight o'clock (8:00) a.m.

It shall be unlawful for any licensee to sell or keep for sale or have on his premises for any purpose whatever, any liquor except that purchased from a State Liquor Store and any licensee found in possession of, or selling or keeping for sale any liquor which was not purchased from a State Liquor Store shall, upon conviction, be punished, and if the town council shall be satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by such licensee, or by his agents, servants or employees, it shall be mandatory that the council immediately revoke the license of such licensee.

Amended November 4, 2010 Ord 247

5.06.070 Exceptions. It shall be unlawful for any person who has not been issued a license under this chapter to sell or keep for sale any alcoholic beverage; provided, however, that nothing herein contained shall be deemed to apply to those engaged in the sale of alcoholic beverages at the various State Liquor Stores, or In the dining or buffet car of any railroad in connection with regularly operated train service, when the person serving such liquor is in the employ of said railroad and is acting within the scope of his employment in so doing, provided, a license has been issued to said railroad under said code by the Montana Department of Revenue and the same, or a duplicate thereof, is displayed in such car.

5.06.080 Renewal of Suspended License. After suspension or revocation of a license the council shall have the power to reinstate the same if in its discretion a proper showing therefor has been made.

5.06.090 Compliance With State Laws. It shall be the duty of each and every person having any connection whatsoever with beverage licenses issued under this chapter to comply fully with all state laws relating thereto.

TITLE 6 - RESERVED

Chapters:

TITLE 7 -HEALTH AND WELFARE

Chapters:

- 7.02 DUMPING OF GARBAGE
- 7.04 BURNING OF RUBBISH
- 7.06 NUISANCES
- 7.08 NOISE
- 7.10 MOBILE HOMES

Chapter 7.02
DUMPING OF GARBAGE

Sections:

7.02.010	Littering Public or Private Properties Unlawful; Exceptions
7.02.020	Litter Defined
7.02.030	Public or Private Property Defined
7.02.040	Dumping Garbage or Other Debris or Refuse

7.02.010 Littering Public or Private Properties Unlawful; Exceptions. It is unlawful for any person or persons to dump, deposit, throw or leave or to cause or permit dumping, depositing, placing, throwing or leaving of litter on any public or private property in this state, unless:

- a. Such property is designated by the state or by any of its agencies or political subdivisions for the disposal of such material, and such person is authorized by the proper public authority to use such property;
- b. Into a litter receptacle or container installed on such property;
- c. He is the owner or tenant in lawful possession of such property, or has first obtained consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of said tenant or owner.

7.02.020 Litter Defined. The term "litter" as used herein shall mean all rubbish, waste material, refuse, garbage, trash, debris or other foreign substances of every kind and description, including abandoned motor vehicles.

7.02.030 Public or Private Property Defined. The phrase "public or private property" as used herein shall include, but not be limited to, the right-of-way of any road or highway; any body of water or watercourse or the shores or beaches thereof; any park, playground, building, refuge or conservation or recreation area, and any residential or farm properties or timberlands.

7.02.040 Dumping Garbage or Other Debris or Refuse. It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

- a. In or upon any highway, road, street or alley of this town, or within two hundred (200) yards of such public highway, road, street or alley, or public recreational property.
- b. On privately owned property, provided this subsection shall not apply to the owner, his agents or those disposing of debris or refuse with the owner's consent.

Chapter 7.04
BURNING OF RUBBISH

Sections:

7.04.010	Unlawful to Burn Rubbish
7.04.020	Incinerators
7.04.030	Burning Season
7.04.040	Unlawful to Burn Garbage; Definition of Garbage

7.04.010 Unlawful to Burn Rubbish. It shall be unlawful for any person, firm, partnership, association or corporation to burn, in any yard, lot, street or alley, within the Town any material without a permit. An application for a permit can be obtained from the town clerk-treasurer. All applications will be reviewed by the fire chief or designee, who may then issue a permit for any burning to be done. The burning will be done in compliance with the terms of the permit. The permit shall specify the time of day, weather conditions, size/amount of material, proximity of buildings and other property. All responsible persons burning must also display the necessary precautions and supervision needed to maintain a safe and controlled burn. Fire extinguishing equipment along with a rake and shovel must be immediately available. The chief or designee is authorized to require that open burning be immediately discontinued if they determine that smoke emissions are offensive to occupants of surrounding property or if the open burning is determined by the chief or designee to constitute a hazardous condition. Burning of any petroleum products, asphalt shingles, asbestos, and rubbish containing paper products or treated wood will not be permitted.

7.04.020 Incinerators. Burning of any material in a container is prohibited unless the container meets the requirement of the following:

- a. Free-standing incinerators shall be constructed of concrete or masonry and shall have a completely enclosed combustion chamber. Incinerators shall be equipped with a permanently attached spark arrester. The spark arrester shall be constructed of iron, heavy wire mesh or other noncombustible material with openings not larger than one inch (12.7 mm).
- b. Free standing incinerators shall not be located within 10 feet (3048 mm) of combustible walls, roofs or other combustible material; building openings; or property lines. Incinerators shall not be located within 5 feet (1524 mm) of noncombustible buildings or structures.
- c. Incinerators shall be maintained in good condition at all times.
- d. The chief or designee is authorized to require incinerator use to be immediately discontinued if they determine that smoke emissions are offensive to occupants of surrounding property or if the use of the incinerator is determined by the chief or designee to constitute a hazardous condition.

7.04.030 Burning Season. The burning season for the Town of Plains shall be the same as the State. All burning by permit shall be done during these dates: From March 1 to November 30 of each year. No permits will be issued during the remaining time period.

7.04.040 Unlawful to Burn Garbage; Definition of Garbage. It shall be unlawful for any person,

firm, partnership, association or corporation to burn garbage in the town. The word garbage is defined as refuse, animal or vegetable matter from a kitchen, market or store.

Chapter 7.06
NUISANCES

Sections:

7.06.010	Unwholesome or Unsound Substances
7.06.020	Foul or Nauseous Substances
7.06.030	Pens, Stables
7.06.040	Burning Offal
7.06.050	Manure
7.06.060	Slaughtering Animals
7.06.070	Dead Animals
7.06.080	Obstructing Sidewalks
7.06.090	Police Chief to Inspect the Town
7.06.100	Abatement of Nuisances
7.06.110	Outdoor Privies and Toilets

7.06.010 Unwholesome or Unsound Substances. It shall be unlawful and a nuisance for any person or persons to deposit, place, throw, cast or otherwise put upon his own, adjoining or other premises, street, alley or public place within the town, any bones, putrid or refuse meat of any kind, or any hides or skins, except for the necessary purpose of shipping or disposing of the same; or any unwholesome or unsound substance, or any material or substance that will become unsound or unwholesome, or offal, or garbage, or any dead animal, or any substance that will tend to contaminate the atmosphere.

7.06.020 Foul or Nauseous Substances. It shall be unlawful and a nuisance for any person or persons to cause, permit or suffer any nauseous, foul or putrid liquid or substance, or any liquid or substance likely to become foul or nauseous, to remain or be upon any premises controlled or occupied by him or them, or to flow, or permit to flow any such above-named liquid or substance out of his or their premises, or from those controlled by him or them, upon any other premises, or any street, alley or public place within the town limits.

7.06.030 Pens, Stables. It shall be unlawful and a nuisance for any person or persons to maintain, keep or suffer to be kept within the town limits any pen, stable or enclosure for swine, sheep, cattle or horses, or other animals, in a filthy or unclean condition, or in any condition so that the same is offensive to neighbors or passersby, injurious to the health or contaminates the atmosphere of any neighborhood or place.

7.06.040 Burning Offal. It shall be unlawful and a nuisance for any person or persons to burn, boil or otherwise destroy any offal, bones, tallow or grease, or other substance, the smoke whereof contaminates the atmosphere, or to carry on any kind of manufacturing business from which a stench, smoke or other impurities will arise or come from which will contaminate the atmosphere, or render the same nauseous or unhealthful within the town limits.

7.06.050 Manure. It shall be unlawful and a nuisance for any person or persons to throw, pile or deposit any manure, dirt, offal, garbage or other offensive substance in or on any street, alley, public or private place, or to place any hay, straw, or other combustible material in or on any street, alley or public place within the town limits, or to burn any hay, straw, paper, wood boxes, manure or other rubbish in any street or alley except by written permission of the public works director and fire chief.

7.06.060 Slaughtering Animals. It shall be unlawful and a nuisance for any person or persons to slaughter, kill or dress any stock of any kind, or to butcher any animals in the town limits; or to exhibit, for the purposes of sale, or other purposes, any fish, live fowls or any game on any sidewalk.

7.06.07 Dead Animals. It shall be unlawful and a nuisance to suffer, permit to remain, or cause to remain any dead animal upon any street, alley, public or private place within the town limits, or within one (1) mile thereof, and any person or persons, being the owner of, in charge of, having in his or their custody, or being responsible for, any such dead animal, and who shall permit the same after its death to remain upon such street, alley, public or private place for a greater length of time than three (3) hours after such death, or after the death thereof is known, shall be guilty of creating and maintaining a nuisance. It shall be the duty of the person or persons responsible for such dead animal to at once remove such animal to a distance of at least one (1) mile from the town limits and bury or burn the same.

7.06.080 Obstructing Sidewalks. It shall be unlawful and a nuisance for any person to allow to flow from the roof, or to permit or cause to flow from the roof, by means of a gutter or otherwise, upon any sidewalk, any water; or to place upon, except for temporary purposes, any goods, wares or merchandise upon any sidewalk in such manner as to prevent the free use of such sidewalk by the public.

7.06.090 Police Chief to Inspect the Town. The police chief shall at all times inspect the different parts of the town and see that the provisions of this chapter are not violated, and in case he shall find that anyone is violating the provisions of this chapter he shall notify such person at once to abate any nuisance herein mentioned; but such notice shall not be necessary in order to prosecute anyone criminally for violating any of the provisions of this chapter.

7.06.100 Abatement of Nuisances. When any judgment has been entered against anyone for creating, keeping or maintaining a nuisance it shall be the duty of the city judge to order such person to abate such nuisance within such time as he may order, and in case such person shall fail to abate such nuisance within the time ordered by the city judge, then the police chief shall be ordered at once to abate the same and the city judge shall render judgment against the defendant for the cost of such abatement. Or in case the further continuance of any nuisance, after discovery thereof by the chief, is dangerous to the health of the town, the police chief shall proceed at once to abate the same and the cost thereof shall be taxed in the judgment against the defendant. All costs taxed against anyone for the abatement of a nuisance shall be considered as a part of the penalty assessed for the creating and maintaining of a nuisance.

7.06.110 Outdoor Privies and Toilets. It shall be unlawful and a nuisance for any person, natural or corporate, to build or construct or have built or constructed any outdoor privy or outdoor toilet within the boundaries of the town.

Chapter 7.08
NOISE

Sections:

7.08.010	Purpose
7.08.020	Definitions
7.08.030	Prohibited Acts
7.08.040	Exceptions

7.08.010 Purpose. This ordinance is enacted to protect, preserve and promote the health, safety, welfare, peace and quiet for the citizens of the Town of Plains through the reduction, control and prevention of noise. The intent of this ordinance is to establish standards which will eliminate and reduce unnecessary noises which are physically harmful or otherwise detrimental to the enjoyment of life, property and maintenance of business.

7.08.020 Definitions.

"Plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.

7.08.030 Prohibited Acts. The following acts are declared to be loud, objectionable, and unnecessary noises, are therefore a public nuisance, and are prohibited by this ordinance:

- a. *Defect in Vehicle or Operation of Vehicle.* The operation of an automobile or motorcycle which creates squealing, squealing of tires, loud and unnecessary grating, grinding, exploding-type, rattling or other noises.
- b. *Loud Speakers, Amplifiers for Advertising.* The use, operation, or permitting the use or operation of any radio receiving set, musical instrument, phonograph, loud speaker, amplifier, or other device for the production or reproduction of sound which is cast upon the public streets.
- c. *Horns, Signaling Devices, etc.* The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle except as a danger warning; the creation, by means of other signaling device, of unreasonably loud or harsh sound; and the sounding of any such device for unnecessary and/or unreasonable periods of time.
- d. *Radios, Phonographs, etc.* The use, operation, or permitting the use or operation of any radio or television receiving set, musical instrument, phonograph, or other machine or device for the production or reproduction of sounds in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or chamber in which such a machine or device is operated and who are voluntary listeners thereto.
- e. *Dogs, Cats and Other Animals.* The keeping of any dog, cat or other animal which shall become a nuisance to another person in the vicinity where such dog, cat or

other animal is kept, by frequent or continued barking, howling, yelping or screaming.

- f. *Vocal Disturbances.* Yelling, shouting, whistling, singing or making any other loud vocal disturbance so as to disturb, destroy, or endanger the peace of persons in the immediate vicinity of the noise or disturbance.
- g. *Construction Noise.* Noises emanating from the excavation, demolition, alteration or repair of buildings, structures, property or highways between the hours of 10:00 P.M. and 5:00 A.M., except for emergency repairs necessary to protect people or property.
- h. *Parties and Other Social Events.* Loud or offensive noises caused by a person attending and/or caused or permitted by a person in charge of a party or social event which are plainly audible from another property or from the street. A person shall be deemed to be in charge of a party or social event when the event occurs on private property and the person is present at the party or social event, resides at the premises involved and has authorized the use of the premises for the party or social event. There may be more than one person in charge for purposes of this ordinance.

7.08.040 Exceptions. This Ordinance shall not be construed to prohibit the following:

- a. A vocal disturbance, whether or not it is electronically amplified, by spectators or participants in an athletic event or assembly sponsored by a public entity or private school between the hours of 5:00 A.M. and 11:00 P.M.
- b. A public address system being operated to request medical or vehicular assistance or to warn of a hazardous road condition.
- c. An emergency or public safety device operating in its official capacity.
- d. Any device owned and operated by the town or a gas, electric, communications or water utility company operating in its official capacity.
- e. Any person, organization, group or business that has obtained a prior waiver from the mayor.

Chapter 7.10
MOBILE HOMES

Sections:

7.10.010	Definition
7.02.020	Manufacture Date

7.10.010 Definition. "Mobile Home" means any single family residential dwelling unit on a permanent chassis, built offsite in a factory, having one or more sections, a roof rated for snow loads in this jurisdiction, wall, roof and siding material consistent with on site built homes in the area, designed to be used with or without a permanent foundation. This definition does not include travel trailers or recreational vehicles.

7.10.020 Manufacture Date. No mobile home or trailer shall be used or occupied within the Town unless it was manufactured later than July 1, 1986. This requirement shall also apply to all non-conforming mobile homes or trailers being replaced pursuant to the provisions of these ordinances.

7.10.030 Skirting. Mobile homes shall be skirted within thirty days after set up. The skirting shall be made of fire resistant material.

TITLE 8
ANIMALS

Chapters:

8.02 DOGS

8.06 GRAZING OF ANIMALS

8.08 REGULATING PRESENCE OF LIVESTOCK AND POULTRY IN TOWN

Chapter 8.02
DOGS

Sections:

8.02.010	Definitions
8.02.020	License Fees
8.02.030	Running At Large Prohibited
8.02.040	Dog Bites to be Reported
8.02.050	Duty of Owners to Register Dogs
8.02.060	Town Clerk to Issue Metallic Tags
8.02.070	Providing for Dog Impoundment
8.02.080	Unlicensed Dogs to be Impounded
8.02.090	Unlawful to Operate Dog Kennels in Town
8.02.100	Dogs that Disturb the Peace Prohibited
8.02.110	Dogs that Injure Persons or Property Prohibited
8.02.120	Regulating the Use of Public Property by Animals and their Respective Owners and, Caretakers.
8.02.130	Violations-Penalty

8.02.010 Definitions. When used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section.

- a. "Dog" shall mean and include both male and female.
- b. "At Large" shall mean off the premises of the owner and not under the immediate control of the owner or a member of the immediate family, either by leash, cord or chain, not to exceed six feet (6') in length. Any dog not so restrained shall be considered to be "at large".
- c. "Dog Bite" shall mean a laceration or puncture that has broken the skin and inflicted by the bite of a dog.
- d. "Impound" means to sequester a dog at a place provided by the town for the impounding of dogs.
- e. "Officer" means for the purpose of dealing with dogs, any law officer of the Town of Plains.
- f. "Owner" is the person(s) who claims ownership or harbors a dog or lets it habitually remain or feeds it about his or her house, store, enclosure, or premises.

8.02.020 License Fees. Every person obtaining a license for a dog shall pay therefor the sum of five dollars (\$5.00). The said license is for the keeping or harboring of said animal in accordance with the provisions of this chapter, and such animal shall be registered by name, if any, and a general description. All licenses provided for by this chapter must be obtained on or before the first day of March of each calendar year, and for every license after said date there shall be a penalty of five dollars (\$5.00) added to the license fee; provided, however, that such penalty may be remitted by the town treasurer upon satisfactory proof to him that any dog upon which a license is applied for was not brought into the town at any time prior to March 1st. At the time the application is made for the license, the owner shall state the name, breed, color, sex,

coat and any identification marks The owner shall also provide proof of current rabies vaccination. Licenses shall not be issued to any person under the age of eighteen (18) years unless a parent or guardian signs the application as co-owner.

8.02.030 Running at Large Prohibited. It shall be unlawful for the owner or keeper of any dog to permit such dog to run at large within the town. All dogs shall be leashed or confined upon the owners or caretakers property.

8.02.040 Dog Bites to be Reported. If any dog bites any person in the town, such dog bite shall be reported immediately to an officer by such person, his parent, or guardian. If the dog can be captured, it shall be isolated in strict confinement and observation in a kennel or veterinary hospital. Seventy-Two (72) hours after capture, the dog shall be destroyed by a veterinary who shall make an examination for the presence of rabies. In the event the owner of such dog is identified, the owner shall be liable for all expenses incurred for capture, impoundment, and veterinary fees. At the request of the dog's owner, the requirement for destruction after seventy two hours shall be suspended, and the dog shall be held in impoundment for a total of fourteen days. After such time, the dog shall be examined by a veterinary and upon certification of no evidence of rabies, the dog shall be returned to the owner upon the payment of all fees incurred. The town shall not be liable for any costs incurred.

8.02.050 Duty of Owners to Register the Dog. It shall be unlawful for any person to keep, harbor, or maintain in the town any dog unless it is duly licensed as provided by ordinance.

8.02.060 Town Clerk to Issue Metallic Tags. Upon the receipt of a proper application, proof of vaccination and the license fee, the town clerk shall issue to the applicant a license certificate and a metallic tag. The shape of the tag shall be changed each year and shall have stamped thereon the year for which it was issued and the number corresponding with the number on the certificate. Every owner is required to provide each dog with a substantial collar, upon which to attach the license tag securely, which if off the owner's premises without a license tag shall be deemed not to be licensed, even though a license has been issued for such dog. In the event that a dog tag is lost or destroyed, a duplicate shall be issued by the town clerk upon presentation of an affidavit to that effect, a receipt or duplicate receipt showing payment of the license fee for the current year, and the payment of a fee of one dollar (\$1.00) for each such duplicate. License tags are not transferable from one dog to another and it shall be unlawful for any person to cause or permit a license tag to be placed upon a dog for which it was not issued. Any dog found with a license tag issued for another dog shall be deemed to be not licensed. No refunds shall be made on any dog license issued.

8.02.070 Providing for Dog Impoundment. The town council shall contract with a licensed veterinarian or kennel operator to confine dogs impounded by a town law enforcement officer.

8.02.080 Unlicensed Dogs to be Impounded. Unlicensed dogs, or dogs found at large and not under restraint shall be taken up by any law enforcement officer and impounded. Any dog may be taken up and impounded by using a tranquilizer gun.

8.02.90 Unlawful to Operate Dog Kennels in Town. It shall be unlawful for any person to maintain or operate, or cause to be maintained or operated, at any place within the limits of the town any dog kennel, dog pen, dog house, dog hospital, or any other place or establishment where the veterinary or medical treatment of dogs is given or available under any circumstances, or where any dog may be kept or raised for purposes of sale, or where the breeding of dogs is conducted or carried on as a business or commercial venture of any kind.

8.02.100 Dogs that Disturb the Peace Prohibited. It shall be unlawful for any person to own, keep, harbor, or maintain any dog, which unreasonably annoys or disturbs any persons within the town limits by undue barking or howling.

8.02.110 Dogs that Injure Persons or Property Prohibited. It shall be unlawful for any person to own, keep, harbor, maintain, or handle any dog, male or female, which causes damage or injury to any person or property, or which chases persons or motor vehicles, bicycles, or other vehicles, or which charges at or otherwise menaces and frightens any pedestrian or other person lawfully using public ways.

8.02.120 Regulating the Use of Public Property by Animals and their Respective Owners and, Caretakers. The purpose of this subsection is to regulate the use of public property, including school district property by animals, animal owners, and animal caretakers. No animal owners or animal caretakers shall allow or permit any such animal in or upon any public park, public property, or school district property, within the Town of Plains at which time said animal or animals may urinate or defecate upon said public property. In the event an animal owner or animal caretaker does bring or allow an animal under his/her control upon public property and thereafter the animal defecates, it shall be the animal owner or caretaker's responsibility to immediately remove such excrement or waste matter of said animal from the public property.

8.02.130 Violation-Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars (\$20.00) or more than one hundred dollars (\$100.00) on the first offense, and not less than thirty dollars (\$30.00) or more than three hundred dollars (\$300.00) for a second or subsequent offense, or imprisonment in jail for not more than ten (10) days.

Chapter 8.06
GRAZING OF ANIMALS

Section:

8.06.010 Unlawful for Animals to Graze.

8.06.010 Unlawful for Animals to Graze. The picketing, tying or grazing of horses, mules, cattle, sheep, swine or goats in, upon or over any street or alley or any public place within the corporate limits of the town, or over the right-of-way of the Northern Pacific Railway Company, is prohibited.

Chapter 8.08
REGULATING PRESENCE OF LIVESTOCK
AND POULTRY IN TOWN

Sections:

8.08.010	Fowl
8.08.011	Exception
8.08.012	Penalty
8.08.013	Enforcement
8.08.020	Livestock Running at Large Prohibited
8.08.030	Hogs and Swine
8.08.040	Livestock within Town Limits

8.08.010 Fowl. It shall be unlawful for any person, firm or corporation to keep or maintain domestic or exotic fowl including but not limited to chickens, turkeys, ducks or geese within the corporate limits of the town except as herein granted. *Amended December 1, 2010 Ord 248*

8.08.011 Exception. The prohibition to keeping chickens in this chapter does not apply to the keeping of up to 8 female chickens in accordance with the requirements:

- a. The chickens must be kept on a single-family parcel(s), and chickens may be kept on a parcel(s) under one ownership with more than one dwelling if all residents and the owner consent in writing to allowing the chickens on the property. When chickens are kept on a multi-dwelling parcel(s) the owner of the chickens shall keep a copy of the signed approval document for inspection upon request by animal control personnel.
- b. The owner shall obtain an annual permit from the Town Treasurer. The permit fee shall be established by resolution of the Town Council.
- c. The chickens shall be provided with a covered, predator-proof chicken house that is thoroughly ventilated, of sufficient size to admit free movement of the chickens during daylight hours, designed to be easily accessed, cleaned and maintained by the owners and be at least 2 square feet per chicken in size. Such enclosure shall be adequately fenced to contain the chickens and to prevent access to the chickens by dogs and other predators. THE ATTACHED CHICKEN RUN SHALL BE COVERED BY WIRE OR AVIAN NETTING AND CONSTRUCTED IN SUCH A WAY TO BE PREDATOR PROOF.
- d. No chicken house shall be located closer than 20 feet to any residential structure occupied by someone other than the chicken owner, custodian, or keeper. All chicken houses shall be set back at least 20 feet from the front property line.
- e. The chickens shall be shut into the chicken house at night, from sunset to sunrise.
- f. Stored feed must be kept in a rodent- and predator-proof container.

Amended December 1, 2010 Ord 248

8.08.012 Penalty. It is unlawful for the owner, custodian, or keeper of any permitted chicken(s) to allow the animal(s) to be a nuisance to any neighbors, including but not limited to: noxious

odors from the animals or their enclosure; and noise of a loud, persistent, and habitual nature. An owner, custodian, or keeper of an animal who is found guilty of any provision of this chapter shall be guilty of a misdemeanor and fined an amount not less than twenty-five dollars or more than five hundred dollars. *Amended December 1, 2010 Ord 248*

8.08.013 Enforcement. Upon receiving a complaint of a possible violation, the Police Department shall investigate the complaint and determine if a violation exists. If a violation is found, the police officer shall issue a notice of violation and warning. If the violation is corrected within ten (10) days of the notice, no further action is taken. If correction is not made or if a second violation occurs, the owners will be asked to remove the chickens from the Town limits within ten (10) days of notice to remove.

Failure to so remove the animals shall result in a criminal citation for public nuisance. *Amended December 1, 2010 Ord 248*

8.08.020 Livestock Running at Large Prohibited. It is hereby provided that livestock, consisting of horses, cattle, mules, sheep, goats and swine, or any such animals, shall not be allowed to run at large in the town.

8.08.030 Hogs and Swine. It shall be unlawful for any person, firm or corporation to keep or maintain any hogs or swine within the corporate limits of the town.

8.08.040 Livestock Within Town Limits. No person, firm or corporation shall keep any cattle, horses, sheep, mules or goats within the corporate limits of the town, without first having obtained from the town council, a permit to do so. No permit shall be issued to any person, firm or corporation to keep more than two (2) of any such animals at one time, unless the applicant shall be equipped to furnish necessary shelter and pen or enclosure of not less than fifty (50) square feet for each animal, which shelter, pen or enclosure shall not be less than three hundred (300) feet from any dwelling house.

TITLE 9 - PUBLIC PEACE, SAFETY AND MORALS

Chapters:

- 9.02 CURFEW
- 9.04 COMBUSTIBLES AND EXPLOSIVES
- 9.06 FIREWORKS AND FIREARMS
- 9.08 CIVIL DEFENSE
- 9.10 OPEN CONTAINER

Chapter 9.06
CURFEW

Sections:

9.02.010	Curfew Established
9.02.020	Unlawful for Parent or Guardian to Allow Minors Out During Curfew
9.02.030	Duty of Police Officers
9.02.040	Unlawful for Parent or Guardian to Not Take Custody of Minor

9.02.010 Curfew Established. It shall be unlawful for any person under the age of 18 years to be upon the streets, alleys, parks, or other public places of the town between the hours of 11:00 p.m. and 5:00 a.m., except on the days of Friday and Saturday, and the Sunday preceding Labor Day, when the time shall be extended to 1:00 a.m., unless such person shall be accompanied by a parent, legal guardian, or any other adult person lawfully and properly accompanying said minor person.

9.02.020 Unlawful for Parent or Guardian to Allow Minors Out During Curfew. It shall be unlawful for any parent, legal guardian, or any other adult person having the legal care and custody of any minor person under the age of 18 years to allow or permit any such person to go upon or be upon any street, alley, park, or any other public place during curfew.

9.02.030 Duty of Police Officers. Any police officer or any other law enforcement officer is authorized by virtue of his office to take charge of any person under the age of 18 years violating the provisions of this chapter, and it shall be the duty of the officer taking charge of any such person to take the minor into custody and notify the parent or guardian of the violation of the terms of this chapter. The officer shall further notify the parent or legal guardian that the minor child will be held until the parent or guardian can take charge of the minor or the officer may refer the matter to child protective services.

9.02.040 Unlawful for Parent or Guardian to Not Take Custody of Minor. It shall be unlawful and shall be considered a separate offense under this chapter for any parent, guardian, or any other adult person having the legal care and custody of any person under the age of 18 years to refuse to take the minor child.

Chapter 9.04
COMBUSTIBLES AND EXPLOSIVES

Sections:

- 9.04.010 Unlawful to Store Combustibles and Explosives in Large Quantities
- 9.04.020 Unlawful to Sell Combustibles and Explosives

9.04.010 Unlawful to Store Combustibles and Explosives in Large Quantities. It shall be unlawful for any person, association or corporation to keep or store within the town limits and within one mile thereof any gunpowder, blasting powder, giant powder, nitroglycerine, dynamite or other highly explosive and combustible substances, materials or articles, in any greater or excessive quantities than one hundred (100) pounds, or any greater quantity or number than five hundred (500) giant caps, or articles of like nature, at any one time.

9.04.020 Unlawful to Sell Combustibles and Explosives. It shall be unlawful for any person, association or corporation, after dark, to sell, barter, lend, give away, or in any manner draw, dispose of any powder, dynamite, caps, coal oil, kerosene, gasoline or other explosives or combustible substances or materials, except in original packages, by the aid of any lamp, lantern, candle, match or other artificial light except electric light.

Chapter 9.06
FIREWORKS AND FIREARMS

Section:

9.06.010 Unlawful to Discharge Fireworks and Firearms within the Town Limits.

9.06.010 Unlawful to Discharge Fireworks and Firearms Within the Town Limits. It shall be unlawful for any person to explode, burn, ignite or fire off any rocket, firecracker, roman candle, torpedo or any other kind or species of fireworks or pyrotechnic display containing any substance of an explosive nature, within the exterior boundaries of the town, nor shall any person fire off or discharge any gun, pistol or other weapon within the town limits. The Town Council may, by written proclamation, posted by the Mayor in two public places, permit the use of fireworks on national and state holidays and on such other days as it deems proper.

Chapter 9.08
CIVIL DEFENSE

Sections:

- 9.08.010 Civil Defense Plan Established
- 9.08.020 Duty of Mayor
- 9.08.030 Duty of County Civil Defense Director

9.08.010 Civil Defense Plan Established. The County of Sanders and the Towns of Hot Springs, Plains and Thompson Falls have provided for an integrated civil defense plan and for operations during periods of emergency.

9.08.020 Duty of Mayor. The mayors of the Towns of Hot Springs, Plains and Thompson Falls and the Board of County Commissioners of Sanders County shall, during periods of emergency caused by enemy attack, catastrophe, or disaster, jointly direct and control the operations of the Civil Defense Plan. The mayor is hereby authorized and directed to take, during such periods of emergency, such actions as are reasonably necessary to prevent or minimize loss of life and property.

9.08.030 Duty of County Civil Defense Director. The county civil defense director, under policy guidance of the board of county commissioners, in coordination with the mayors, is responsible to recommend actions, prepare budget requests, train, assign personnel, license, mark and stock public shelters, prepare and administer the civil defense program, and coordinate the development of the Civil Defense Plan and supporting documents for approval by the Mayors of Hot Springs, Plains and Thompson Falls and Commissioners of Sanders County.

Chapter 9.10
OPEN CONTAINER

Sections:

9.10.010	Definitions
9.10.020	Public Drinking, Display, Exhibition Prohibited
9.10.030	Notice

9.10.010 Definitions. The following words and phrases used in this ordinance shall be defined as follows:

"Liquor" or "liquors" and "beer" shall mean and be defined as any alcoholic, spirituous, vinous, fermented, malt or other liquor which contains more than one percent (1%) of alcohol by weight.

"Public places" means and includes all streets, avenues, alleys, stadiums, athletic fields, public parks, sidewalks, public parking lots and motor vehicles when parked or operated on streets, avenues, alleys, athletic fields, public parks or public parking lots within the town limits of the Town of Plains, Montana. For purposes of this section, a public parking lot shall be deemed to be any parking lot, whether owned by the town or by private individuals, to which the general public has access to park.

"Public drinking" means and includes the drinking or consuming of beer or liquor in any public place as defined in this section, or within or upon any motor vehicle while parked or operated in any public place as defined in this section.

"Motor vehicle" shall mean every vehicle which is self propelled by which any person or property is, or may be, transported or drawn upon a public highway.

"Public display or exhibition of beer or liquor" shall mean and include the carrying and exhibiting of open cans or bottles of beer, or the carrying and exhibiting of glasses or other types of containers, containing beer or liquor, to any public place as defined in this section, or to, in, on or within any motor vehicles while parked or operated on any public place as defined in this section; but does not include carrying or transporting such beer or liquor from retail liquor or beer establishments in sacks, cases, boxes, cartons or other similar containers with unbroken seals when no display or exhibition is made, nor transporting from private residences.

9.10.020 Public Drinking, Display, Exhibition Prohibited. Public drinking and public display or exhibition of beer or liquor as defined herein is hereby prohibited, and it shall be unlawful for any person to engage in public drinking as herein defined within the limits of the Town of Plains, Montana; and it shall be unlawful for any person to engage in any public display or exhibition of beer or liquor as herein defined within the Town of Plains, Montana.

EXCEPTIONS:

- a. Church officials or clergy using wine for sacramental purposes.

9.10.030 Notice. The owner of every business licensed to sell liquor and beer at retail within the town limits of the Town of Plains shall be provided with a notice by the Chief of Police of the Town of Plains, and shall post this notice in a conspicuous place inside said premises adjacent to each exit. This notice shall read as follows:

NOTICE

It is a misdemeanor punishable upon conviction by a fine of not less than fifty dollars (\$50.00), or by imprisonment not less than thirty (30) days or by both such fine and imprisonment, to leave any premises licensed to sell beer or liquor at retail with an open container of beer or liquor.

Failure to post such notice shall be deemed a misdemeanor and punishable as such.

TITLE 10 - VEHICLES AND TRAFFIC

Chapters:

10.02 TRAFFIC CODE

10.04 SCHOOL ZONE

10.06 WEIGHT OF VEHICLES AND LUG WHEELS

10.08 ONE-WAY VEHICULAR TRAFFIC AND TRUCK ROUTE

10.10 PARKING OF MOTOR VEHICLES

Chapter 10.02
TRAFFIC CODE

Section:

10.02.010 Adoption of Traffic Code by Reference

10.02.010 Adoption of Traffic Code by Reference. The town hereby adopts all provisions of Montana State Law as found in Title 61, Montana Codes Annotated, regarding the regulation of traffic, drivers of vehicles, seat belts, licensing of vehicles and hereby grants authority and jurisdiction to the police and Town Court over all such laws and offenses not in conflict herewith.

Chapter 10.04
SCHOOL ZONE

Sections:

10.04.010	Establishment of a School Zone
10.04.020	Prohibitions in School Zone
10.04.030	School Zone Signs
10.04.040	Operative Hours

10.04.010 Establishment of a School Zone. There is hereby established a school zone in the town, which school zone includes all streets and highways bounding property owned by the school district and used for school purposes.

10.04.020 Prohibitions in School Zone. It shall be unlawful for any person operating a motor vehicle in a school zone to proceed at a rate of speed in excess of fifteen (15) miles per hour.

10.04.030 School Zone Signs. The public works director, at the suggestion and approval of the town council, shall place or cause to be placed appropriate and standard signs designating the school zones.

10.04.040 Operative Hours. This chapter shall be operative only during the hours of seven o'clock a.m. and five o'clock p.m. each day school is in session.

Chapter 10.06
WEIGHT OF VEHICLES AND LUG WHEELS

Sections:

- 10.06.010 Weight of Vehicles
- 10.06.020 Lug Wheels Prohibited

10.06.010 Weight of Vehicles. The weight per inch in width of tire surface for all vehicles shall be set by the town council by resolution and proclamation as necessary.

10.06.020 Lug Wheels Prohibited. The use of all kinds of lugs on vehicles, metal or otherwise which are injurious to the streets of the town is prohibited.

Chapter 10.08
ONE-WAY VEHICULAR TRAFFIC AND TRUCK ROUTE

Sections:

- 10.08.010 One-way Traffic Rittenour Drive
- 10.08.020 One-way Traffic Lewellen Lane
- 10.08.030 One-way Traffic Boyer Street
- 10.08.040 Truck Route Established

10.08.010 One-way Traffic Rittenour Drive. It shall be unlawful for any person to operate a motor vehicle over and upon Rittenour Drive between Johnson Street and Lewellen Lane in the town, in a direction other than from South to North, except for the purpose of crossing Rittenour Drive.

10.08.020 One-way Traffic Lewellen Lane. It shall be unlawful for any person to operate a motor vehicle over and upon Lewellen Lane in the town, in a direction other than from East to West, except for the purpose of crossing Lewellen Lane.

10.08.030 One-way Traffic Boyer Street. It shall be unlawful for any person to operate a motor vehicle over or upon Boyer Street between Railroad Avenue and McGowan Street in a direction other than from West to East, except for the purpose of crossing Boyer Street.

10.08.040 Truck Route Established. The truck route through the town (excepting Highway 200) shall be Willis Street commencing at its intersection with Highway 200 and thence in a westerly direction to the county bridge crossing the Clark Fork River.

Chapter 10.10
PARKING OF MOTOR VEHICLES

Sections:

- 10.10.010 No Parking near Fire Hydrant
- 10.10.020 Motor Vehicles to Park at Forty-Five Degree Angle
- 10.10.030 Left-Hand Turns for Parking Prohibited.
- 10.10.040 Parking Trucks
- 10.10.050 No Parking Area McGowan Street Alleyway

10.10.010 No Parking near Fire Hydrant. No motor vehicle shall be parked within the Town limits within twenty feet of any fire hydrant.

10.10.020 Motor Vehicles to Park at Forty-Five Degree Angle. In parking any motor vehicle on the north easterly side of Railroad Avenue between Hubbard Street and Clayton Street in the town, the driver thereof shall park the same at a forty-five degree angle, or as designated, with the curb of said street. Such forty-five degree angle parking is also designated for:

- a. West side of Lynch Street in front of Town Hall;
- b. South side of Willis Street between Stanton Street and Oak Street;
- c. East side of Lynch Street in front of Fred Young Park; and
- d. East side of Rittenour Drive between Johnson Street and Lewellen Lane.

10.10.030 Left-Hand Turns for Parking Prohibited. No left turns shall be allowed on Railroad Avenue, except at driveways or intersections from Hubbard to Clayton Street.

10.10.040 Parking Trucks. It shall be unlawful to park any truck, excluding pickups, campers or van type vehicles on the north side of that part of Railroad Avenue which extends between the intersections of Hubbard Street and Clayton Street and Railroad Avenue, except for the purposes of loading and unloading, and in that event the period of parking shall be limited strictly to the time required for loading and unloading.

10.10.050 No Parking Area. No vehicle shall be parked in the alley located between Railroad Avenue and McGowan Street, beginning at Boyer and ending at the property of the McGowan Commercial Company, or its successor, except for the loading and unloading of such vehicles. The person driving, or having control of such vehicle, shall be in attendance of such vehicle while it is being loaded or unloaded. This no parking area shall be posted with appropriate and standard signs. Any unattended vehicle left parked in this alley shall be towed away at the owners' expense.

TITLE 11
FLOODPLAIN REGULATIONS

Chapters:

- 11.02 GENERAL PROVISIONS AND PROCEDURES
- 11.04 DEFINITIONS
- 11.06 FORMS AND FEES
- 11.08 JURISDICTIONAL AREA
- 11.10 USES ALLOWED WITHOUT A PERMIT
- 11.12 PROHIBITED USES, ACTIVITIES AND STRUCTURES WITHIN THE JURISDICTIONAL AREA
- 11.14 PERMIT APPLICATION REQUIREMENTS
- 11.16 APPLICATION EVALUATION
- 11.18 DEVELOPMENT STANDARDS - FLOODWAY
- 11.20 DEVELOPMENT STANDARDS - FLOOD FRINGE OR FLOOD PLAIN WITH NO FLOODWAY
- 11.22 EMERGENCIES
- 11.24 VARIANCES
- 11.26 APPEALS
- 11.28 ENFORCEMENT
- 11.30 PENALTIES

Chapter 11.02

GENERAL PROVISIONS

Sections:

11.02.010	Flood Plain Hazard Management Regulations
11.02.020	Statutory Authority
11.02.030	Purpose
11.02.040	Methods to Reduce Losses
11.02.050	Jurisdictional Area
11.02.060	Flood Plain Administrator
11.02.080	Regulation Interpretation
11.02.090	Warning and Disclaimer Of Liability
11.02.100	Severability
11.02.110	Disclosure Provision
11.02.120	Amendment of Regulations
11.02.130	Public Records
11.02.140	Land Divisions and Subdivision Review
11.02.150	Disaster Recovery

11.02.010 FLOOD PLAIN HAZARD MANAGEMENT REGULATIONS

These regulations are known and may be cited as the “Town of Plains Flood Plain Hazard Management Regulations;” hereinafter referred to as “these regulations.”

11.02.020 STATUTORY AUTHORITY

1. Authorization for these regulations is contained in the Flood Plain and Floodway Management Act, Title 76, Chapter 3 Montana Code Annotated.
2. The authority to regulate development in specifically identified flood hazard areas is granted to communities by state statute 76-5-101 and Municipalities have authority to adopt regulations as provided for in Section 7-1-4123, MCA to promote the general public health, safety, and welfare.
3. Flood hazard areas specifically adopted herein as Regulated Flood Hazard Areas have been delineated and designated by the Department of Natural Resources and Conservation and/or the Federal Emergency Management Agency pursuant to 76-5-201, MCA.
4. Authority for municipalities and counties to adopt Flood Plain hazard mitigation regulations appears in Section 76-5-101 through 406, MCA.

11.02.030 PURPOSE

The purpose of these regulations is to promote the public health, safety and general welfare of the residents and to minimize public and private losses due to flood conditions in Regulated Flood Hazard Areas. These provisions are designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;

3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business and public service interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;
6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and to
7. Ensure compliance with the minimum standards for the continued participation in the National Flood Insurance Program for the benefit of the residents.

11.02.040 METHODS TO REDUCE LOSSES

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flooding or that may cause excessive increases in flood heights or velocities;
2. Require that uses of land vulnerable to floods, including public facilities, be developed or constructed to minimum standards or to otherwise minimize flood damage;
3. Regulate the alteration of natural floodplains, stream channels, and natural protective barriers which are needed to accommodate floodwaters;
4. Regulate filling, grading, dredging and other development which may increase flood damage;
5. Prevent or regulate the construction of flood barriers which will impact other land, flood water depth or velocity of floodwaters;
6. Distinguish between the land use regulations applied to the floodway within the Regulated Flood Hazard Area and those applied to that portion of the Regulated Flood Hazard Area not contained in the floodway;
7. Apply more restricted land use regulations within the floodway of the Regulated Flood Hazard Area; and
8. Ensure that regulations and minimum standards balance the greatest public good with the least private injury. (MCA 76-5-102)

11.02.050 JURISDICTIONAL AREA

These regulations apply only to the flood hazard areas specifically adopted herein as Regulated Flood Hazard Areas and are more fully described in Chapter 11.08. The requirements and approvals for alterations to the specific jurisdictional area are in Chapter 11.08 as well. Areas within the Regulated Flood Hazard Area have specific areas identified as a Flood Plain, Floodway, or Flood Fringe that have differing uses allowed and building standards that apply.

11.02.060 FLOOD PLAIN ADMINISTRATOR

A Flood Plain Administrator is hereby officially appointed and is the responsibility of the office of Mayor and is maintained to serve to administer and implement the provisions of these regulations. (44CFR59.22(b)(1))

11.02.070 ABROGATION AND GREATER RESPONSIBILITY

It is not intended by these regulations to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or underlying zoning. However, where these regulations impose greater restrictions, the provision of these regulations must prevail. (44 CFR 60.1)

11.02.080 REGULATION INTERPRETATION

In the interpretation and application of these regulations, all provisions must be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under state statutes. (44 CFR 60.1)

11.02.090 WARNING AND DISCLAIMER OF LIABILITY

These regulations do not imply that land outside the Regulated Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made hereunder.

11.02.100 SEVERABILITY

If any section, clause, sentence, or phrase of these regulations is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding will in no way affect the validity of the remaining portions of these regulations.

11.02.110 DISCLOSURE PROVISION

All property owners or their agents in the Regulated Flood Hazard Areas shall notify potential buyers or their agents that such property is located within the Regulated Flood Hazard Areas and is subject to regulation and any permitted uses that are transferred. Information regarding Regulated Flood Hazard Areas and the repository for Flood Plain maps is available in the Flood Plain Administrator's office. (ARM 36.15.204(2)(g))

11.02.120 AMENDMENT OF REGULATIONS

Once adopted, these regulations may be amended after a public hearing and notice.

11.02.130 PUBLIC RECORDS

Records including permits and applications, elevation and flood proofing certificates, certificates of compliance, fee receipts, and other matters relating to these regulations must be maintained by the Flood Plain Administrator and are public records and must be made available for inspection and for copies upon reasonable request. A reasonable copying cost for copying documents for members of the public may be charged and may require payments of the costs before providing the copies. (44 CFR 60.3(b)(5)(iii) & 44 CFR 59.22 (a)(9)(iii))

11.02.140 LAND DIVISIONS AND SUBDIVISION REVIEW

Any land divisions and subdivision approval including new or expansion of existing of manufactured home parks and development within the Regulated Flood Hazard Area must be designed to meet the following criteria:

1. The base flood elevations and boundary of the Regulated Flood Hazard area are determined and considered during lot layout and building location design;

2. Locations for future structures and development are reasonably safe from flooding; (44CFR 60.3)
3. Adequate drainage is provided to reduce exposure to flood hazards; (44 CFR 60.3 (a)(4)(iii))
4. Public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage; and (44 CFR 60.3(a)(4)(ii))
5. For development within the Regulated Flood Hazard Area, required permits must be obtained before development occurs. (44CFR 60.3(b))

11.02.150 DISASTER RECOVERY

Upon completion of structure condition survey within the Regulated Flood Hazard Area, the Flood Plain Administrator shall notify owners a permit may be necessary before repair or reconstruction is commenced of those structures that have:

1. Sustained 30% or more in flood damages;
2. Been swept away;
3. One or more collapsed or missing walls;
4. Cannot be reoccupied without major structural work; or
5. More than two feet of water over the first floor.

Structures that have suffered substantial damage or will undergo substantial improvements require permits and must be upgraded to meet the minimum building standards herein during repair or reconstruction.

Flood Plain Administrators coordinate assistance and provide information to structure owners concerning Hazard Mitigation and Recovery measures with Federal Emergency Management Agency, Montana Department of Natural Resources and Conservation, and other state, local and private emergency service organizations.

Chapter 11.04

DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted as to give them the meaning they have in common usage and the most reasonable application. For the purpose of this ordinance, the following definitions are adopted:

Alteration – Any change or addition to an artificial obstruction that either increases its external dimensions or increases its potential flood hazard. (ARM 36.15.101(2)) See Substantial Improvement

Artificial Obstruction– Any obstruction which is not natural and includes any dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, road, bridge, conduit, culvert, building, refuse, automobile body, fill or other analogous structure or matter in, along, across, or projecting into any Regulated Flood Hazard Area that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property. (ARM 36.15.101(3) & MCA 76-5-103(1))

Base Flood (Flood of 100 Year Frequency) – A flood having a one percent (1%) chance of being equaled or exceeded in any given year (ARM 36.15.101(4) & (44 CFR 59.1

Base Flood Elevation (BFE) – The elevation above sea level of the base flood in relation to the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988 or unless otherwise specified. (ARM 36.15.101(5))

Channel – The geographical area within either the natural or artificial banks of a watercourse or drain way. (MCA 76-5-103(2))

DNRC – Montana Department of Natural Resources and Conservation

Development – means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. (44 CFR59.1)

Encroachment – activities or construction within the **Flood Plain** including fill, new construction, substantial improvements, and other development.

Establish – To construct, place, insert, or excavate. (MCA 76-5-103(7) (ARM 36.15.101(9))

Existing Manufactured Home Park or Subdivision – A manufactured home park or subdivision where the construction of facilities for servicing the manufactured home lots is completed before the effective date of floodplain management regulations. This includes, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads. (44 CFR 59.1)

Existing Structures – Structures where construction is completed before the effective date of floodplain management regulations.

Existing use or artificial obstruction – nonconforming uses and artificial obstructions existing before the effective date of floodplain management regulations.

Expansion To An Existing Manufactured Home Park Or Subdivision – means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads. (44 CFR 59.1)

FEMA – Federal Emergency Management Agency

Flood Plain (Regulated Flood Hazard Area) – A Flood Plain whose limits have been designated pursuant to Part 2, Chapter 5 of Title 76, MCA, and is determined to be the area adjoining the watercourse that would be covered by the floodwater of a base flood, a flood of a 100-year frequency, except for sheet flood areas that receive less than 1 foot of water per occurrence. The Regulated Flood Hazard Area consists of the **Floodway** and **Flood Fringe** where specifically designated. (MCA-76-5-103(4)), (MCA 76-5-103(10), (ARM 36-15-101(11))

Flood of 100 Year Frequency (Base Flood) – means a flood magnitude expected to recur on the average of once every 100-years or a flood magnitude that has a 1% chance of occurring in any given year. (MCA 76-5-103(9)) (44 CFR 59.1)

Flood Fringe – the portion of the Flood Plain outside the limits of the **floodway**. (ARM 36.15.101(10))

Floodway – the limits of which have been designated pursuant to Part 2, Chapter 5 of Title 76, MCA and is the channel and the areas adjoining the channel that are reasonably required to carry the discharge of the base flood without cumulatively increasing the water surface by more than one half foot. (MCA 76-5-103(11)) (MCA 76-5-103(5))

Flood Plain Administrator – community official or representative appointed to administer and implement the provisions of this ordinance.

Flood Proofing – any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, HVAC systems, structures and their contents. ((44 CFR 59.1)

Lowest Floor – any floor used for living purposes, storage, or recreation. This includes any floor that could be converted to such a use. (ARM 36-15-101(14))

Manufactured Home – a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities and includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. (ARM 36.15.101(15))

Manufactured Home (Mobile Home) – a structure, transportable in one or more sections built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. The term does not include a **Recreational Vehicle**. (44 CFR 59.1)

New Construction – Structures for which the **start of construction** commenced on or after the effective date of these ordinances and includes any subsequent improvements to such structures. (44 CFR 59.1)

New Manufactured Home Park Or Subdivision – means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads and is completed on or after the effective date of floodplain management regulations adopted by a community. (44 CFR 59.1)

Owner – any person who has dominion over, control of, or title to an obstruction.(76-5-103(13))

Recreational Vehicle – A vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily for use as temporary living quarters for recreation, camping, travel, or seasonal use, not for use as a permanent dwelling. (44 CFR 59.1)

Regulated Flood Hazard Area – The jurisdictional area of these ordinances and includes the Flood Plain, Flood Fringe and Floodway.

Riprap – Stone, rocks, concrete blocks, or analogous material that is placed within the Flood Plain for the purpose of preventing or alleviating erosion. (ARM 36.15.101(18))

Scour Depth – The maximum depth of streambed scour caused by erosive forces of the 100-year flood discharge.

Start of Construction – Commencement of clearing, grading, filling, or excavating to prepare a site for construction. (36.15.101(20))

Structure – a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home. (44 CFR 59.1) Also, bridge, culvert, dam, diversion, wall, revetment, dike, or other projection that may impede, retard, or alter the pattern of flow of water.

Substantial Damage – damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would exceed 50 percent of the market value of the structure before the damage occurred. (44 CFR 59.1)

Substantial Improvement – any repair, reconstruction or improvement of a structure where the cost equals or exceeds fifty percent (50) of the market value of the structure either:

1. Before the improvement or repair is started , or
2. If the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement considered to occur when the first construction of any wall ceiling, floor or other structural part of the building commences. The term does not include:
 1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or

2. Any alteration of a structure listed on the national register of historic places or state inventory of historic places. (ARM 36.15.101(21))

Suitable Fill – fill material which is stable, compacted, well graded, and pervious, not adversely affected by water and frost, devoid of trash or similar foreign matter, tree stumps or other organic material; and is fitting for the purpose of supporting the intended use and/or permanent structure. (ARM 36.15.101(22))

Violation – means a failure of a structure or other development to be fully compliant with these regulations.

Chapter 11.06

FORMS AND FEES

Sections:

- 11.06.10 Forms
- 11.06.20 Fees

11.06.10 Forms

1. Flood Plain Permit Application – is the “Joint Application for Proposed Work in Montana’s Steams, Wetlands, Regulated Flood Hazard Areas, and Other Water Bodies”, or other designated form.
2. Flood Plain Permit Compliance Report – required to be submitted by the Applicant to the Flood Plain Administrator once the permitted project in the Regulated Flood Hazard Area is completed or within the designated time stipulated on the Flood Plain permit. An elevation and or flood proofing certificate may be required were specified as part of the compliance report.
3. Flood Plain Variance Application – required to be submitted by the Applicant to the Flood Plain Administrator for review of the proposed project prior to the initiation of the project requiring a variance.
4. Flood Plain Appeal – is to be submitted by the Applicant to the Flood Plain Administrator for review of the proposed project prior to the initiation of the project.
5. Flood Plain Emergency Notification – is to be used by persons to notify the Flood Plain Administrator of projects undertaken during an emergency to safeguard life or structures. This is not a permit application and the person must take additional steps, outlined in Section 9.
6. Official Complaint Form – may be used by any person to notify the Flood Plain Administrator of an activity taking place without an official signed Flood Plain permit. Persons may make complaints without use of this form.

11.06.20 Fees

Reasonable fees may be adopted for permit applications, notices, variances, inspections, certifications or other administrative actions required by these Regulations.

Chapter 11.08

JURISDICTIONAL AREA

Sections:

- 11.08.010 Regulated Flood Hazard Areas
- 11.08.020 Interpretation of Flood Plain Boundaries
- 11.08.030 Alteration of Jurisdictional Area

11.08.010 REGULATED FLOOD HAZARD AREAS

Regulated Flood Hazard Area are those areas identified in:

- a. Sanders County and Incorporated Areas Flood Insurance Study dated June 5, 2012
 - b. Flood Insurance Rate Maps – 300074 1750D – Effective Date June 5, 2012
_ 300074 1775D – Effective Date June 5, 2012
 - c. Clark Fork River Study that was adopted January 30, 2001 by the Department of Natural Resources, Sanders County, and the Town of Plains.
1. The Regulated Flood Hazard Area (Flood Plain) specifically described or illustrated in the specific study including maps and has been delineated, designated and established by order of the DNRC or FEMA pursuant to 76-5-201, MCA.
 2. Use allowances, design and construction requirements in these regulations vary by the specific areas identified as Flood Plain, Floodway and Flood Fringe.

11.08.020 INTERPRETATION OF FLOOD PLAIN BOUNDARIES

1. The mapped boundaries illustrated in the referenced studies in this Section are a guide for determining whether property is within the Regulated Flood Hazard Area.
2. A determination of the outer limits and boundaries of the Flood Plain or Flood Fringe and Floodway within the Regulated Flood Hazard Area includes an evaluation of the maps as well as the particular study data of the referenced study in this Section.
3. Boundary points of the Regulated Flood Hazard Area may be illustrated for guidance on reference maps but the boundary is the actual intersection of the applicable base flood elevation with the natural adjacent terrain of the watercourse or channel.
4. The Floodway boundary is as illustrated on the reference maps and studies.
5. Any owner or lessee of property who believes his property has been inadvertently included in the Regulated Flood Hazard Area may submit scientific and/or technical information to the Flood Plain Administrator. Changes to the National Flood Insurance Rate Maps for the National Flood Insurance Program thru a FEMA Letter of Map Change process are the responsibility of the owner or lessee.

6. The Flood Plain Administrator may require elevation information performed by an engineer or land surveyor or other information as needed for any development that may be considered to be subject to these regulations. The Flood Plain Administrator's interpretation of the boundaries and decision may be appealed for the purpose of these regulations.

11.08.030 ALTERATION OF JURISDICTIONAL AREA

1. An alteration is a change to the existing boundary to the specific maps and data of the referenced studies in this Section that form a basis for the Regulated Flood Hazard Area.
2. An alteration may be based on an annexation, new data and information or when technical or scientific flood data shows that the base flood elevation has changed or was erroneously established and the boundaries of the Regulated Flood Hazard Area are incorrect.
3. Any alteration must be based on reasonable hydrological certainty.
4. Any alteration requires an amendment of the specific flood study in this Section and approval of the DNRC and a Letter of Map Change process thru FEMA.
5. Alteration of a Floodway width or location cannot exceed a theoretical increase in flood heights of 0.5 feet or affect private property rights. The Flood Plain Administrator shall maintain a record of all alterations.(ARM 36.15.502 and 36.15.505)
6. Permits must be required for all alterations other than naturally caused changes or changes due to errors.
7. An alteration is not required when property located within the Flood Plain is shown to be naturally above the base flood elevation. (ARM 36.15.505(2))
8. Except in a Flood Fringe, alteration approval from DNRC is required if property is to be raised to a level above the Base Flood Elevation by suitable fill and where the encroachment by the fill causes a rise in the Base Flood Elevation of more than 0.5 feet. No portion of the fill may be within the floodway. ((36.15.505)(1)(b))
9. No alteration of a Regulated Flood Hazard Area is required when property located within the Flood Plain is elevated with fill to at or above the base flood elevation. The jurisdictional area is not altered with the addition of fill.

Chapter 11.10

USES ALLOWED WITHOUT A PERMIT

Sections:

11.10.010 General

11.10.010 GENERAL. In addition to existing nonconforming uses and artificial obstructions established before the effective date of Flood Plain Hazard Management Regulations, the following open space uses shall be allowed without a permit in the Regulated Flood Hazard Area, provided that such uses are not prohibited by any other resolution or statute, do not require structures, and do not require alteration of the Flood Plain such as fill, grading, excavation or storage of materials or equipment. (ARM 36.15.601) and (ARM 36.15.701)(1))

1. Agricultural uses, not including related structures, such as tilling, farming, irrigation, ranching, harvesting, grazing, etc; (ARM 36.15.601(1)(a))
2. Accessory uses, not including structures, such as loading and parking areas, or emergency landing strips associated with industrial or commercial facilities; (ARM 36.15.601(1)(b))
3. Forestry, including processing of forest products with portable equipment; (ARM 36.15.601(1)(d))
4. Recreational vehicle use provided that they be on the site for fewer than 180 consecutive days or be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system with wheels intact, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; (44 CFR 60.3(c)(14))
5. Residential uses such as lawns, gardens, parking areas, and play areas; (ARM 36.15.601(1)(e))
6. Maintenance of an existing use or artificial obstruction; (MCA 76-5-404(3)(b))
7. Public or private recreational uses not requiring structures such as picnic grounds, swimming areas, parks, campgrounds, golf courses, driving ranges, archery ranges, wildlife management and natural areas, alternative livestock ranches (game farms), fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails; (ARM 36.15.601(a)(c))
8. Fences such as those that have a low impact to the flow of water such as barb wire fences and wood rail fences and shall not include permanent fences crossing channels; and (ARM 36.15.601(2)(b))
9. Irrigation and livestock supply wells, provided that they are located at least 500 feet from domestic water supply wells; (ARM 36.15.601(2)(a)) with the top of casing 18" above the BFE.

Chapter 11.12

**PROHIBITED USES, ACTIVITIES AND STRUCTURES
WITHIN THE JURISDICTIONAL AREA**

Sections:

- 11.12.010 Floodway
- 11.12.020 Flood Fringe or Flood Plain Without a Floodway

11.12.010 FLOODWAY The following artificial obstructions and nonconforming uses are prohibited in the floodway within the Regulated Flood Hazard Area:

1. A building or structure for living purposes, place of assembly or permanent use by human beings. (MCA 76-5-403(1) and ARM 36.15.605)(1a)) including commercial and industrial buildings,(ARM 36.15.605(2b), and mobile homes and manufactured homes; (ARM 36.15.605(2)(a))
2. A structure, fill or excavation that would cause water to be diverted from the Floodway, cause erosion, obstruct the natural flow of waters or reduce the carrying capacity of the Floodway. (MCA 76-5-403(2)). Excavation or fill where compatible and related and incidental to an allowed use where permitted, is not prohibited;
3. The construction or storage of an object (artificial obstruction) subject to flotation or movement during flood level periods; (MCA 76-5-403(3) and ARM 36.15.605(1)(c))
4. Solid and Hazardous waste disposal and individual and multiple family sewage disposal systems unless otherwise allowed pursuant to ARM 17.36.101-116 and ARM 17.36.309-345; (ARM36-15-605(2c))
5. Storage of toxic, flammable, hazardous or explosive materials; and ARM 36.15.605(2d))
6. Cemeteries, mausoleums, or any other burial grounds.

11.12.020 FLOOD FRINGE OR FLOOD PLAIN WITHOUT A FLOODWAY The following artificial obstructions and nonconforming uses are prohibited in the Flood Fringe or Flood Plain without a Floodway of the Regulated Flood Hazard Area:

1. Solid and hazard waste disposal;(ARM 36-15-703(1))
2. Storage of toxic, flammable, hazardous or explosive materials; (ARM 36-15-703(2))
3. Cemeteries, mausoleums, or any burial grounds; and

4. Critical facilities, including buildings and associated facilities that provide essential community care and emergency operation functions such as schools, hospitals, and nursing home facilities, fire stations and police stations; (44CFR 60.22)

Chapter 11.14

PERMIT APPLICATION REQUIREMENTS

Sections:

- 11.14.010 General
- 11.14.020 Required Information

11.14.010 GENERAL A permit is required within the Regulated Flood Hazard Area for a person to:

1. Establish or alter an artificial obstruction, nonconforming use or development; (ARM 36.15.101(3) & MCA 76-5-103(1)) (44 CFR 60.1 & MCA 76-5-404(2), ARM 36.15.204), (ARM 36.15.101(2));
2. Artificial obstructions, nonconforming uses and uses not specifically listed requires a permit except as allowed without a permit in Section 5 or prohibited as specified in Sections 6;
3. Alter, reconstruct or repair an existing structure that has experienced substantial damage or substantial improvement;
4. Except as provided in Sections 5, Uses Allowed without a Permit and Section 6, Prohibited Uses; and
5. Except existing artificial obstructions or nonconforming uses established in the Flood Plain before the effective date of floodplain management regulations.

11.14.020 REQUIRED INFORMATION

The permit application shall include, but is not limited to the following:

1. A completed and signed Flood Plain Permit Application (most communities use the Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies Form);
2. The required review fee;
3. Plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed project (i.e.; landscape alterations, existing and proposed structures, including the placement of manufactured homes, etc.) and the location of the foregoing in relation to the Regulated Flood Hazard Areas;
4. A copy of other required applicable permits which may include but is not limited to a 310 permit, SPA 124 permit, Section 404 Permit, a 318 Authorization, 401 Certification or a Navigable Rivers Land Use License or Easement from other permits from federal, state, and local agencies, for the proposed floodplain project and must show that the application is not in conflict with other relevant and applicable permits; and

5. Additional information related to the specific use or activity that demonstrates the design criteria and construction standards are met or exceeded as specified in Section 9 and 10 (Development Standards).

Chapter 11.16

APPLICATION EVALUATION

Sections:

- 11.16.010 Application Review
- 11.16.020 Notice Requirements For Flood Plain Permit Applications
- 11.16.030 Permit Criteria
- 11.16.040 Decision
- 11.16.050 Flood Plain Permit Application Approval

11.16.010 APPLICATION REVIEW

1. The Flood Plain Administrator shall review and evaluate the application and shall approve, approve with conditions, or deny the application within 60 days (or a time specified) of receipt of a correct and complete application. (MCA 76-5-405(2))
2. The Flood Plain Administrator shall determine whether the application contains the applicable elements required in these regulations and shall notify the applicant of the Flood Plain Administrator's determination.
3. If the applicant corrects the identified deficiencies and resubmits the application, the Flood Plain Administrator shall notify the applicant whether the resubmitted application contains all the elements required by these regulations, as applicable.
4. This process shall be repeated until the applicant submits an application containing all the elements required by these regulations and Flood Plain permit application, or the application is withdrawn.
5. If after a reasonable effort the Flood Plain Administrator determines that the application remains incomplete, the Flood Plain Administrator shall deny the application and notify the applicant of missing elements. No further action shall be taken on the application by the Flood Plain Administrator until the application is resubmitted.
6. A determination that an application contains the appropriate information for review does not ensure that the Flood Plain permit application will be approved or conditionally approved and does not limit the ability of the Flood Plain Administrator in requesting additional information during the review process.

11.16.020 NOTICE REQUIREMENTS FOR FLOOD PLAIN PERMIT APPLICATIONS

Upon receipt of a complete application for a permit, the Flood Plain Administrator shall:

1. Prepare a notice containing the facts pertinent to the application and shall publish the notice at least once in a newspaper of general circulation in the area;

2. Notice shall also be served by first-class mail upon adjacent property owners. The State National Flood Insurance Program Coordinator located in DNRC shall also receive notice by the most efficient method;
3. The notice shall provide a reasonable period of time, not less than 15 days, for interested parties to submit comments on the proposed activity; and (ARM 36.15.204(2)(c))
4. In riverine situations, provide notice to MDNRC, FEMA and adjacent communities prior to any alteration or relocation of a watercourse of the Flood Plain.(44 CFR 60.3 (b)(6))

11.16.030 PERMIT CRITERIA

Permits shall be granted or denied on the basis of whether the proposed new construction, substantial improvement, or alteration of an artificial obstruction meets the requirements of the Flood Plain and Floodway Management Act of 76-5-101et.seq., the minimum standards adopted by the Montana Department of Natural Resources and Conservation in Administrative Rules 36.15.601 to and including 35.15.903 and the minimum standards and criteria in Chapters 11.18 and 11.19.

11.16.040 DECISION

The Flood Plain Administrator shall approve, conditionally approve, or deny the proposed application. The Flood Plain Administrator shall notify the applicant of his action and the reasons thereof within 60 days of receipt of the application unless otherwise specified. A copy of the permit is to be provided to DNRC. (ARM 36.15.204(2)(e))

11.16.050 FLOOD PLAIN PERMIT APPLICATION APPROVAL

Upon approval or conditional approval of the Flood Plain permit application, the Flood Plain Administrator shall provide the applicant with a permit and include but not limited to the following requirements and conditions:

1. Set forth the time limit of up to one year for completion of the project or development. A request for an extension for completion for up to an additional year must be made 30 days prior to the completion deadline;
2. The permittee shall notify all subsequent property owners and their agents and potential buyers of the Flood Plain development permit issued on the property and that such property is located within a Regulated Flood Hazard Area; (ARM 36.15.204(2)(g))
3. Maintain the obstruction or use to comply with the conditions and specifications of the permit; and
4. Submit a certificate of compliance report and elevation certificate where applicable within 30 days of completion or other time as specified.

Chapter 11.18

DEVELOPMENT STANDARDS IN THE FLOODWAY

Sections:

- 11.18.010 General Standards
- 11.18.020 Mining Of Material Requiring Excavation From Pits Or Pools
- 11.18.030 Railroad, Highway And Street Stream Crossings
- 11.18.040 Limited Filling For Road, And Railroad Embankments
- 11.18.050 Buried Or Suspended Utility Transmission Lines
- 11.18.060 Storage Of Materials And Equipment
- 11.18.070 Domestic Water Supply Wells
- 11.18.080 Buried And Sealed Vaults For Sewage Disposal In Campgrounds And Recreational Areas
- 11.18.090 Public And Private Campgrounds
- 11.18.100 Structures Accessory Or Appurtenant
- 11.18.110 Construction Of Or Modifications To Surface Water Diversions
- 11.18.120 Flood Control And Bank Protection Measures

11.18.010 GENERAL STANDARDS The following goals and criteria shall be considered and incorporated into the design of the use or artificial obstruction in the Floodway in addition to the minimum development standards herein:

1. All projects in the Floodway must undergo an encroachment review where required herein to determine their effect on flood flows.
2. Assure that the carrying capacity of the altered or relocated watercourse is maintained.
3. Projects must be designed and constructed ensure that they do not increase the flood hazard on other properties and be reasonably safe from flooding.
4. The danger to life and property due to backwater or diverted flow caused by the obstruction or use; (MCA 76-5-406) (ARM 36.15.216(2)(a))
5. The danger that the obstruction or use may be swept downstream to the injury of others; (MCA 76-5-406) (ARM 36.15.216(2)(b))
6. The availability of alternative locations; (MCA 76-5-406) (ARM 36.15.216(2)(c))
7. The construction or alteration of the obstruction or use in such manner as to lessen the flooding danger; (MCA 76-5-406) (ARM 36.15.216(2)(d))
8. The permanence of the obstruction or use; (MCA 76-5-406) (ARM 36.15.216(2e))
9. The anticipated development in the foreseeable future of the area which may be affected by the obstruction or use; (MCA 76-5-406) (ARM 36.15.216(2f))

10. The safety of access to property in times of flooding for ordinary and emergency services; (44CFR 60.22 (c)(7))
11. Relevant and related permits for the project have been obtained;
12. Conform to the additional minimum standards and provisions of this ordinance as specified for the use or artificial obstruction specified herein; and
13. Such other factors as are in harmony with the purposes of these regulations, the Montana Flood Plain and Floodway Management Act, and the accompanying Administrative Rules of Montana. (MCA 76-5-406) (ARM 36.15.216(2)(g))

11.18.020 MINING OF MATERIAL REQUIRING EXCAVATION FROM PITS OR POOLS
provided that:

1. A buffer strip of undisturbed land of sufficient width as determined by an engineer to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the excavation;
2. The excavation meets all applicable laws and regulations of other local and state agencies; and
3. Excavated material is stockpiled outside the Flood Plain.(ARM 36.15.602(1))

11.18.030 RAILROAD, HIGHWAY AND STREET STREAM CROSSINGS provided that:

1. Crossings are designed to offer minimal obstructions to the flood flow; (ARM 36.15.602(2))
2. Where failure or interruption of transportation facilities would result in danger to public health or safety:
 1. Bridge lower chords shall have freeboard to at least two (2) feet above the BFE to pass ice flows, the 100 year flood discharge and any debris associated with the discharge;
 2. Culverts are designed to pass the 100-year flood discharge and maintain at least two (2) feet freeboard on the crossing surface.
3. If possible, normal overflow channels are preserved to allow passage of sediments to prevent aggradations;
4. Mid stream supports for bridges, if necessary, must have footings buried below the maximum scour depth; and
5. An encroachment analysis prepared by an engineer shows that the stream crossings will not increase the elevation of the Base Flood Elevation by more than 0.5 feet nor cause a significant increase in flood velocities. Any increase beyond a half foot rise requires a variance approval and more than a half foot is an alteration of the Regulated Flood Hazard Area and must be approved by the Department. FEMA approval of any increase must accompany the application.

11.18.040 LIMITED FILLING FOR ROAD, AND RAILROAD EMBANKMENTS not associated with stream crossings and bridges provided that:

1. The fill meets the suitable fill requirements herein;
2. Reasonable alternate transportation routes outside the floodway are not available;
3. The encroachment is located as far from the stream channel as possible; (ARM 36.15.602(3))
4. The project includes mitigation of impacts to other property owners in the vicinity of the project and the natural stream function; and
5. An encroachment analysis prepared by an engineer shows that the stream crossings will not increase the elevation of the Base Flood Elevation by more than 0.5 feet nor cause a significant increase in flood velocities. Any increase beyond a half foot rise requires a variance approval and more than a half foot is an alteration of the Regulated Flood Hazard Area and must be approved by the Department. FEMA approval of any increase must accompany the application.

11.18.050 BURIED OR SUSPENDED UTILITY TRANSMISSION LINES provided that:

1. Suspended utility transmission lines are designed such that the lowest point of the suspended line is at least six (6) feet higher than the Base Flood Elevation;
2. Towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows;
3. When technically feasible, the crossing will not disturb the bed and banks of the stream and alternatives such as alternative routes, directional drilling, and aerial crossings are considered; and
4. Utility transmission lines carrying toxic or flammable materials are buried to a depth of at least twice the calculated maximum scour depth determined by an engineer for the base flood. (ARM 36.15.602(4))

11.18.060 STORAGE OF MATERIALS AND EQUIPMENT provided that:

1. The material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; and
2. The material or equipment is readily removable within the limited time available after flood warning. Storage of flammable, toxic or explosive materials shall not be permitted.(ARM 36.15.602(5))

11.18.070 DOMESTIC WATER SUPPLY WELLS provided that:

1. They are driven or drilled wells located on ground higher than surrounding ground to assure positive drainage from the well;
2. They require no other structures (e.g. a well house);

3. Well casings are water tight to a distance of at least twenty five (25) feet below the ground surface and the well casing height shall be a minimum of eighteen (18) inches above the base flood elevation;
4. Water supply and electrical lines have a watertight seal where the lines enter the casing;
5. All pumps and electrical lines and equipment are either of the submersible type or are adequately flood proofed; and
6. Check valves are installed on main water lines at wells and at all building entry locations. (44 CFR 60.39(a)(5) & ARM 36.15.6602(6))

11.18.080 BURIED AND SEALED VAULTS FOR SEWAGE DISPOSAL IN CAMPGROUNDS AND RECREATIONAL AREAS provided they meet applicable laws and standards administered by DEQ. Only those wastewater disposal systems that meet the requirements and separation distances under ARM 17.36.101-116 and ARM 17.36.301-345 are allowed. (44 CFR 60.3(a)(6))

11.18.090 PUBLIC AND PRIVATE CAMPGROUNDS not requiring structures provided that:

1. Access roads require only limited fill and do not obstruct or divert flood waters;
2. If the development is substantial as determined by the permit issuing authority, an encroachment analysis prepared by an engineer must demonstrate the development will not increase the elevation of the Base Flood Elevation by more than 0.5 feet nor cause a significant increase in flood velocities. Any increase beyond a half foot rise requires a variance approval and more than a half foot is an alteration of the Regulated Flood Hazard Area and must be approved by the Department. FEMA approval of any increase must accompany the application; (ARM 36.15.602(2))
3. No dwellings or permanent mobile homes are allowed.
4. Recreational vehicles and travel trailers ready for highway use with wheels intact, with only quick disconnect type utilities and securing devices, and have no permanently attached additions; and
5. There is no large-scale clearing of riparian vegetation within 50 feet of the mean annual high water mark. (ARM 36.15.602(8))

11.18.100 STRUCTURES ACCESSORY OR APPURTENANT to the uses permitted such as boat docks, loading and parking areas, marinas, sheds, emergency airstrips, permanent fences crossing channels, picnic shelters and tables and lavatory, provided that:

1. The structures are not intended for human habitation or supportive of human habitation;

2. If the structures are substantial as determined by the permit issuing authority, an encroachment analysis prepared by an engineer must show that the structure will not increase the elevation of the Base Flood Elevation by more than 0.5 feet nor cause a significant increase in flood velocities. Any increase beyond a half foot rise requires a variance approval and more than a half foot is an alteration of the Regulated Flood Hazard Area and must be approved by the Department. FEMA approval of any increase must accompany the application. (ARM 36.15.602(2));
3. The structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the channel as possible;
4. Only those wastewater disposal systems that meet the requirements and separation distances under ARM 17.36.101-116 and ARM 17.36.301-345 are allowed;
5. Service facilities within these structures such as electrical, heating and plumbing are flood proofed;
6. The structure will be firmly anchored to prevent flotation; (ARM 36.15.602(9))
7. The use does not require fill and/or substantial excavation; and
8. No large scale clearing of riparian vegetation within 50 feet of the mean annual high water mark.(ARM 36.15.602(9))
9. The structure use cannot be changed or altered without permit approval.

11.18.110 CONSTRUCTION OF OR MODIFICATIONS TO SURFACE WATER DIVERSIONS provided that the design is prepared by an engineer and includes:

1. An encroachment analysis shows that the diversion will not increase the elevation of the Base Flood Elevation by more than 0.5 feet nor cause a significant increase in flood velocities. Any increase beyond a half foot rise requires a variance approval and more than a half foot is an alteration of the Regulated Flood Hazard Area and must be approved by the Department. FEMA approval of any increase must accompany the application. (ARM 36.15.602(2));
2. Minimize potential erosion from a base flood;
3. Safely withstand up to the 100-year flood; and (ARM 36.15.603)
4. Construction is under the supervision of an engineer.

11.18.120 FLOOD CONTROL AND BANK PROTECTION MEASURES if substantial as determined by the permit issuing authority must be designed by an engineer and include an encroachment analysis showing that the structure will not increase the elevation of the Base Flood Elevation by more than 0.5 feet nor cause a significant increase in flood velocities. Any increase beyond a half foot rise requires a variance approval and more than a half foot is an alteration of the Regulated Flood Hazard Area and must be approved by the Department. FEMA approval of any increase must accompany the application. The design shall also show compliance with the following additional criteria:

1. LEVEE AND FLOODWALL construction or alteration if:
 1. The proposed construction or alteration of a levee or floodwall is designed and constructed with suitable fill and to safely withstand a 100- year frequency flood;
 2. Except to protect agricultural land only, are constructed at least 3 feet higher than the elevation of the base flood;
 3. Protection of structures of more than one land owner requires engineering and construction to meet state and federal levee standards and be publically owned for the purpose of construction, operation and maintenance; and
 4. For any increase in the base flood the following information must be provided:
 1. The estimated cumulative effect of other reasonably anticipated future permissible uses;
 2. The type and amount of existing flood prone development in the affected area; and
 3. There is no detrimental impact to existing or foreseeable development.
2. RIPRAP, BANK STABILIZATION PROJECTS, PIER AND ABUTMENT PROTECTION, BANK ALTERATION OR STREAM RESTORATION projects if:
 1. designed to withstand a 100-year flood; and
 2. Not increase erosion upstream, downstream, or adjacent to the site.(ARM 36.15.606(1)(b))
3. CHANNELIZATION PROJECTS where the excavation and/or construction of an artificial channel for the purpose of diverting the entire flow of a stream from its established course (ARM 36.15.101(7)) and provided they do not increase velocity to a level that will cause erosion. (ARM 36.15.606(1)(c))
4. DAMS provided that:
 1. They are designed and constructed in accordance with the Montana Dam Safety Act and applicable safety standards; and
 2. They will not increase flood hazards downstream either through operational procedures or improper hydrologic/hydraulic design. (ARM 36.15.606(1)(d))

Chapter 11.20

**DEVELOPMENT STANDARDS - FLOOD FRINGE OR
FLOOD PLAIN WITH NO FLOODWAY**

Sections:

11.20.010	Uses Requiring Permits
11.20.020	General Requirements
11.20.030	Residential
11.18.040	Non-Residential

11.20.010 USES REQUIRING PERMITS – All uses allowed in the Floodway subject to the issuance of a permit according to the provisions of these regulations shall also be allowed by permit within the Flood Fringe or Flood Plain with no Floodway. Additionally, new construction, substantial improvements, alterations to structures (including, but not limited to residential, commercial, agricultural and industrial, and suitable fill shall be allowed subject to the minimum development standards in the General Standards in 11.18 and this section. (ARM 36.15.701(2)):

11.20.20 GENERAL REQUIREMENTS are:

1. Flood Damage. Constructed by methods and practices that minimize flood damage and are reasonably safe from flooding; (44 CFR 60.3(a)(3)(iii))
2. Materials. Reasonably safe from flooding and constructed with materials resistant to flood damage; and (44 CFR 60.3(a)(3)(ii))
3. Structures or fill. Not be prohibited by any other statute, regulation, ordinance, or resolution; and must be compatible with subdivision, zoning and any other land use regulations, if any; (ARM 36.15.701(3)(a)) ((ARM 36.15.701(3)(b))
4. All structures Designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
5. Certification Adequacy of structural elevations, compaction and flood-proofing design and construction to withstand the flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, buoyancy, and uplift forces associated with the base flood must be certified by an engineer, architect, or other qualified person;
6. All residential, occupied commercial, and industrial structures. Safe access during times of flooding up to the 100-year flood for ordinary and emergency services if there are no reasonable alternate locations for structures and access not subject to flooding;
7. Encroachment Limit Allowable encroachment for developments in the Flood Plain cannot exceed 0.5 feet An encroachment analysis is not required for any development in the Flood Fringe where a Floodway has been designated;

8. Electrical Systems All electrical systems must be:

1. All incoming power service equipment including all metering equipment, control centers, transformers, distribution and lighting panels and all other stationary equipment must be located at least two feet above the BFE.
2. Portable and movable electrical equipment may be placed below the elevation of the BFE, provided that the equipment can be disconnected by a single plug and socket assembly of the submersible type;
3. The main power service lines shall have automatically operated electrical disconnect equipment or manually operated electrical disconnect equipment located at an accessible remote location outside the Flood Plain or two feet above the BFE; and
4. All electrical wiring systems installed below the elevation of the 100 year flood shall be suitable for continuous submergence and may not contain fibrous components. (ARM 36.15.901)

9. Heating and Cooling Systems must:

1. Be installed with float operated automatic control valves so that fuel supply is automatically shut off when flood waters reach the floor level where located;
2. Have manually operated gate valves installed in gas supply lines. The gate valves must be operable from a location above the BFE;
3. Be installed in accordance with the provisions of Electrical Systems Flood proofing; and
4. Have furnaces and cooling units and ductwork installed at least two (2) feet above the BFE. (ARM 36.15.902)

10. Plumbing Systems must meet the following criteria:

1. Sewer lines, except those to be buried and sealed, must have check valves installed to prevent sewage backup into permitted structures; and
2. All toilets, stools, sinks, urinals, vaults, and drains must be located so the lowest point of possible entry is at least two (2) feet above the BFE. (ARM 36.15.903)

11. Structural Fill: Used to elevate structures, including but not limited to residential, commercial, and industrial structures, provided that:

1. Must be suitable fill;
2. The filled area is at or above the BFE;
3. The fill is compacted to minimize settlement and has been compacted to 95 percent of the maximum density and compaction of earthen fill must be certified by a registered professional engineer;
4. No portion of the fill is within the floodway; and

5. The fill slope must not be steeper than 1 ½ horizontal to 1 vertical unless substantiating data justifying a steeper slope is provided and adequate erosion protection is provided for fill slopes exposed to floodwaters. The erosion protection for fill slopes exposed to velocities of four feet per second and less may consist of vegetative cover consisting of grasses or similar undergrowth as approved by the permit issuing authority. Slopes exposed to velocities greater than four feet per second shall be protected by armoring with stone or rock slope protection. (ARM 36.15.701&702)

12. Water And Sewage Systems provided that:

All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other services designed and located so as to prevent waters from entering or accumulating within the components during conditions of flooding or to prevent impairment or contamination during flooding.

11.20.030 RESIDENTIAL The new construction, alterations, and substantial improvements of residential dwellings including manufactured homes and recreational vehicles on site for more than 180 consecutive days must be constructed such that:

1. The lowest floor elevation (including basement) including electrical, heating, duct work, ventilation, plumbing and air conditioning equipment and other services is two (2) feet above the Base Flood Elevation by either elevating with suitable fill, stem walls, pilings or other acceptable means;
2. Replacement manufactured and mobile homes in an existing mobile home park or subdivision may be elevated on a concrete or mortared block foundation, or other suitable permanent foundation, and anchored to prevent flotation or downstream movement; (ARM 36.15.702(1)(a)(ii) & 44 CFR 60.3(c)(2))
3. Crawl space must be designed so that the crawl space floor is at or above the BFE. Crawl spaces having an inside dimension of more than 5 feet from the ground to the living floor level must meet the requirements in this section for a basement;
4. Where existing streets, utilities, lot dimensions, or additions onto existing structures, make strict compliance with these provisions impossible, a lesser amount of fill or alternative flood proofing measures may be permitted only by variance approval; (ARM 36.15.702(a))
5. All manufactured homes for residential use shall:
 1. Use methods and practices which minimize flood damage;
 2. Elevate the lowest floor two (2) feet above the base flood elevation;
 3. Elevated on suitable fill or raised on a permanent foundation;
 4. Construct the foundation of reinforced concrete, reinforced-mortared block, reinforced piers, or other foundation elements of equal strength; and

5. Secure the chassis including additions by anchoring to the foundation system so that it will resist flotation, collapse or lateral movement;
6. Anchoring may include, but are not limited to:
 1. Over-the-top ties to ground anchors be provided at each of the four (4) corners of the mobile home, with two additional ties per side at intermediate locations for manufactured homes less than fifty (50) feet long;
 2. Frame ties to ground anchors be provided at each corner of the home with five (5) additional ties per side at intermediate points, for manufactured homes more than fifty (50) feet long; and
 3. Components of the anchoring system capable of carrying a force of 4,800 pounds.
7. Adequate surface drainage and access for a hauler. (44 CFR 60.3(c)(6)&(12))

11.18.040 NON-RESIDENTIAL The new construction, alteration, and substantial improvement of commercial and industrial buildings must be constructed on suitable fill stem wall, pilings or other suitable means such that the lowest floor elevation (including basement) is two (2) feet above the BFE, or the building must be adequately dry or wet flood proofed to an elevation no lower than two (2) feet above the BFE. (ARM 36.15.702(2) & 44 CFR 60.3(c)(3) & (4)).

1. Wet Flood proofing: Building designs to allow internal flooding of the lowest floor must:
 1. Limit uses to parking, loading areas, and storage of equipment or materials not appreciably affected by floodwaters;
 2. Materials for walls and floors must be resistant to flooding to an elevation two (2) feet or more above the BFE;
 3. Equalize hydrostatic forces on walls by designing for entry and exit of floodwaters that include screens, louvers, valves, and other coverings or devices that:
 1. Automatically allow entry and exit of floodwaters;
 2. Have two or more openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 3. Have the bottom of all openings no higher than one foot above grade. (ARM 36.15.702(2)(a) & 44 CFR 60.3(c)(5))
2. Dry Flood proofing Buildings designed to not allow internal flooding of the lowest floors and used for a purpose other than parking, loading, or storage of materials resistant to flooding shall be dry flood proofed and must be:
 1. Flood proofed to an elevation no lower than two (2) feet above the BFE;
 2. Constructed of impermeable membranes or materials for floors and walls and watertight enclosures for all windows, doors and other openings; and

3. Designed to withstand the hydrostatic pressures and hydrodynamic forces resulting from the base flood.
3. Manufactured homes proposed for use as commercial or industrial buildings must be elevated and anchored, rather than flood proofed.
4. Agricultural Structures provided that:
 1. Uses solely for agricultural purposes and used exclusively in connection with the production, harvesting, storage, drying, or raising agricultural commodities including raising of livestock;
 2. Not intended for human habitation;
 3. Have low flood damage potential;
 4. Located on higher ground and as far from the channel as possible;
 5. Offer minimum obstruction to flood flows;
 6. Adequately anchored to prevent flotation or collapse;
 7. Meet the electrical, heating and plumbing systems flood proofing requirements; and
 8. Confinement facilities must meet the elevation or dry flood proofing requirements.(ARM 36.15.701(3)(e)) (44 CFR 60.3(c)(3)(ii) & 44 CFR 60.3(b)(5)(ii))

Chapter 11.22

EMERGENCIES

Sections:

- 11.22.010 General
- 11.22.020 Emergency Application Requirements
- 11.22.030 Permit Evaluation

11.22.010 General

Emergency repair and replacement of severely damaged public transportation facilities, public water and sewer facilities, flood control works, and private projects are subject to the permitting requirements of these regulations.

The provisions of these regulations are not intended to affect other actions that are necessary to safeguard life or structures, during periods of emergency.

11.22.020 Emergency Application Requirements

1. Prior to any action, the property owner and or the person responsible for taking emergency action shall notify the Flood Plain Administrator and submit an Emergency Notification Form within five (5) days of the action taken as a result of an emergency.
2. Within 30 days of initiating the emergency action, a person who has undertaken an emergency action must submit a Flood Plain Permit Application that describes what action has taken place during the emergency and describe any additional work that may be required to bring the project in compliance with these regulations. Unless otherwise specified by the Flood Plain Administrator.
(ARM 36.15.217)

11.22.030 Permit Evaluation

1. A person, who has undertaken an emergency action, may be required to modify or remove the project in order to meet the approved permit requirements.

Chapter 11.24

VARIANCES

Sections:

- 11.24.010 General
- 11.24.020 Variance Application Requirements
- 11.24.030 Notice Requirements for Flood Plain Variance Application
- 11.24.040 Evaluation of Variance Application
- 11.24.050 Decision
- 11.24.060 Judicial Review

11.24.010 GENERAL A variance may be allowed from the minimum development standards of these regulations that would permit construction in a manner otherwise as required or prohibited by these regulations. (44 CFR 59.1)

11.24.020 VARIANCE APPLICATION REQUIREMENTS

1. A completed Flood Plain Permit Application and required supporting material and including a finding of the Flood Plain Administrator that a variance application may be submitted.
2. Additionally, a completed Variance Application specific to the variance request including facts and information addressing the criteria in this section;
3. If the Flood Plain permit application and variance application is deemed not correct and complete, the Flood Plain Administrator shall notify the applicant of deficiencies within a reasonable time not to exceed 30 days. Under no circumstances should it be assumed that the variance is automatically granted.

11.24.030 NOTICE REQUIREMENTS FOR FLOOD PLAIN VARIANCE APPLICATION

Public Notice of the Flood Plain Permit and Variance Application shall be given pursuant to Chapter 11.16 including giving notice to DNRC.

11.24.040 EVALUATION OF VARIANCE APPLICATION

1. In addition to the applicable application and minimum development standards in Section 9 and 10, a variance shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief and the findings of each of the following: (44 CFR 60.6(a)(4))
 1. Showing a good and sufficient cause; (44 CFR 60.6(a)(3))
 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; (44 CFR 60.3(a)(3)) & ARM 36.15.218(b))

3. No basements are allowed and no residential dwelling has the lowest floor elevation below the Base Flood Elevation.
 4. Crawl Spaces cannot be more than 2 feet below the exterior lowest adjacent grade and have an inside dimension from interior ground to the bottom of the living floor of less than 5 feet. The crawl space must meet the Dry Flood proofing requirements in Section 10.4.2.
 5. A determination that the granting of a variance will not result in increased flood heights to existing insurable buildings, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances; (44 CFR 60.3(a)(3) & (ARM 36.15.218(a)).
 6. The proposed use is adequately flood proofed; (ARM 6.15.218(c))
 7. Reasonable alternative locations outside the Flood Plain are not available; (MCA 76-5-406(3) & ARM 36.15.218(d))
 8. The danger to life and property by water that may be backed up or diverted by the obstruction or use; (MCA 76-5-406(1))
 9. The danger that the obstruction or use will be swept downstream to the injury of others;(MCA 76-5-406(2))
 10. The construction or alteration of the obstruction or use in such a manner as to lessen the danger; (MCA 76-5-406(4))
 11. The permanence of the obstruction or use; (MCA 76-5-406(5)).
 12. The anticipated development in the foreseeable future of the area that may be affected by the obstruction or use; (44 CFR 60.6(a)(3), MCA 76-5-406(6) & ARM 36.15.218)).
 13. The applicant's failure to comply with the Flood Plain regulations did not result in a self imposed hardship;
 14. No adverse affect to existing properties or structures; and
 15. Any increase to the BFE in a Floodway has been approved by FEMA for flood insurance purposes and any increase to the BFE in the Floodway or Flood Plain of more than 0.5 feet is an alteration of the regulated flood hazard area has been duly amended as well as approved by the MTDNRC. (44 CFR 60.6(a)(1))
2. Special Considerations for variance approval:
1. If the new construction or substantial improvements on a lot of one-half acres or less is contiguous to and surrounded by lots of existing structures constructed below the base flood level a variance may be approved. However, as lot sizes increase beyond one-half acre additional technical justification may be required; and (44CFR60.6(a).

2. Historic Structures – variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure. (44 CFR 60.6(a))

11.24.050 DECISION

1. The {Board of Adjustment, County Commission, or other panel}
 1. Evaluate the application against the criteria in this section, the application requirements and minimum development standards in Chapters 11.18 and 11.20;
 2. Shall hear, make findings, and approve, conditionally approve or deny a variance within 60 days of a complete application.
 3. Attach conditions to the granting of variance including a project completion date and inspections during and after construction.
 4. Notify the applicant that the approval of the variance that the issuance of a variance to construct a structure below the base flood level may result in increased premium rates for flood insurance.
2. The Flood Plain Administrator shall maintain a record of all actions involving a variance, including the Boards findings and decision and shall send a copy of each variance granted to DNRC.(44 CFR 60.6(a)(6) & MCA 76-5-405)
3. The Flood Plain Administrator shall report such variances issued in the biennial report submitted to FEMA. (44 CFR 60.6(a)(6))

11.24.060 JUDICIAL REVIEW

Any person or persons aggrieved by the decision may appeal such decision in the courts of competent jurisdiction. (MCA 76-5-209(1))

Chapter 11.26

APPEALS

Sections:

11.26.010	General
11.26.020	Appeals Requirements
11.26.030	Notice and Hearing
11.26.040	Decision
11.26.050	Judicial Review

11.26.010 GENERAL An appeal is a formal review by the {Board of Adjustment, County Commission, or other panel} of the Flood Plain Administrator's order, or granting or denial of a flood development permit.

11.26.20 APPEALS REQUIREMENTS An Appeal to the Board shall include:

1. The basis of the appeal and supporting information including specific findings and conclusions of the Flood Plain Administrator decision being appealed;
2. An appeal must be submitted by an applicant or anyone who may be aggrieved by the Flood Plain Administrator's decision or order;
3. Appeals must be received within 30 days of the date of the decision or order of the Flood Plain Administrator; and
4. Additional information specific to the appeal request may be requested.

11.26.030 NOTICE AND HEARING

1. Notice of the pending appeal and public hearing shall be provided pursuant to Chapter 11.16. The Flood Plain Administrator may notify DNRC and FEMA of pending appeals.
2. Hold a public hearing within 30 days of the Notice unless set otherwise.

11.26.040 DECISION

A judgment on an appeal shall be made within 30 days of the hearing unless set otherwise. The decision must grant the permit or support the order, deny the permit or withdraw the order, or remand the application or order to the Flood Plain Administrator. A decision on an appeal of a permit or order cannot grant or issue a variance.

11.26.050 JUDICIAL REVIEW

Any person or persons aggrieved by the decision may appeal such decision in the courts of competent jurisdiction. (MCA 76-5-209(1))

Chapter 11.28

ENFORCEMENT

Sections:

11.28.010	Investigation Request
11.28.020	Notice to Enter and Investigate Lands or Waters
11.28.030	Notice to Respond And Order to Take Corrective Action
11.28.040	Administrative Review
11.28.050	Appeal of Administrative Decision
11.28.060	Failure to Comply With Order to Take Corrective Action
11.28.070	Judicial Review

11.28.010 INVESTIGATION REQUEST An investigation of an artificial obstruction or nonconforming use within the Regulated Flood Hazard Area may be made by the Flood Plain Administrator, either on his own initiative, or on the written request of three titleholders of land which may be affected by the activity within the Regulated Flood Hazard Area. The names and addresses of the persons requesting the investigations shall be released if requested. (MCA 76-5-105)

11.28.020 NOTICE TO ENTER AND INVESTIGATE LANDS OR WATERS The Flood Plain Administrator may make reasonable entry upon any lands and waters for the purpose of making an investigation, inspection or survey to verify compliance with these regulations.

1. The Flood Plain Administrator shall provide notice of entry by mail, electronic mail, phone call, personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered.
2. If none of these persons can be found, the Flood Plain Administrator shall affix a copy of the notice to one or more conspicuous places on the property for five (5) days.
3. If the owners do not respond, cannot be located or refuse entry to the Flood Plain Administrator, the Flood Plain Administrator may only enter the property through a Search Warrant.

11.28.030 NOTICE TO RESPOND AND ORDER TO TAKE CORRECTIVE ACTION When the Flood Plain Administrator determines that a violation may have occurred, the Flood Plain Administrator may issue written notice to the owner or an agent of the owner, either personally or by certified mail. Such notice and order shall cite the regulatory offense and include an order to take corrective action within a reasonable time.

11.28.040 ADMINISTRATIVE REVIEW The order is final, unless within five (5) working days or any granted extension, after the order is received, the owner submits a written request for an administrative review before the Flood Plain Administrator. A request for an administrative review does not stay the order.

11.28.050 APPEAL OF ADMINISTRATIVE DECISION Within ten(10) working days or any granted extension of receipt of the Flood Plain Administrator's decision concluding the administrative review, the property owner or owner's agent may appeal the decision to the Board.

11.28.060 FAILURE TO COMPLY WITH ORDER TO TAKE CORRECTIVE ACTION

Remedies may include administrative or legal actions, or penalties through court.

11.28.070 JUDICIAL REVIEW Any person aggrieved by the decision may appeal the decision to a court of competent jurisdiction.

11.28.080 OTHER REMEDIES This section does not prevent efforts to obtain voluntary compliance through warning, conference, or any other appropriate means. Action under this part shall not bar enforcement of these regulations by injunction or other appropriate remedy.

Chapter 11.28

PENALTIES

Sections:

- 11.30.010 Misdemeanor
- 11.30.020 Declaration to the Federal Flood Insurance Administrator

11.30.010 MISDEMEANOR Violation of the provisions of these regulations or failure to comply with any of the requirements, including failure to obtain permit approval prior to development on the Flood Plain, shall constitute a misdemeanor and may be treated as a public nuisance.

Any person who violates these regulations or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100 or imprisoned for not more than 10 days or both. Each day's continuance of a violation shall be deemed a separate and distinct offense. (MCA 76-5-110)

11.30.020 DECLARATION TO THE FEDERAL FLOOD INSURANCE ADMINISTRATOR

Upon finding of a violation and failure to take corrective action as ordered will cause the Flood Plain Administrator to submit notice and request a 1316 Violation Declaration to the Federal Insurance Administrator. The Federal Insurance Administrator has the authority to deny new and renewal of flood insurance for a structure upon his finding of a valid violation declaration.

The Flood Plain Administrator shall provide the Federal Insurance Administrator the following declaration:

1. The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;
2. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;
3. A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
5. A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.
(44CFR73.3)

TITLE 12 - STREETS AND SIDEWALKS

Chapters:

- 12.02 STREET GRADES
- 12.04 CONSTRUCTION OF SIDEWALKS
- 12.06 REGULATING USE OF STREETS AND SIDEWALKS
- 12.08 BICYCLES, SKATE BOARDS, SKATES, OR SCOOTERS UPON SIDEWALKS
- 12.10 POLLUTION ON SIDEWALKS
- 12.12 DITCHES
- 12.14 CONSTRUCTION OF STREETS
- 12.16 NAMING STREETS

Chapter 12.02
STREET GRADES

Section:

12.02.010 Establishing Street Grades

12.02.010 Establishing Street Grades. The grades of the streets within the corporate limits of the town of Plains, as surveyed and marked upon the ground by James H. Bonner, civil engineer, and shown in a map and a profile book prepared by him and filed with the town clerk on April twenty-fifth, 1910, are hereby declared to be the established grades for the streets of this town, and all streets, when graded, shall be made to conform to such established grades, and all street crossings and sidewalks that may be built within the corporate limits of the town shall also conform to such established grades, and it shall be unlawful for any person or persons to build or construct a sidewalk that shall fail to conform to the established grade. Provided, however, that until any street is actually graded, temporary street crossings and sidewalks may be built thereon, with the approval of the streets and alleys committee, which need not conform to the established grade, such street crossings and sidewalks to be re-laid so as to conform to the established grade when the street is finally graded.

Chapter 12.04
CONSTRUCTION OF SIDEWALKS

Sections:

- 12.04.010 Sidewalks to Correspond with Provisions of this Chapter
- 12.04.020 Sidewalk and Parking Areas
- 12.04.030 Width of Sidewalks
- 12.04.040 Street Grades
- 12.04.050 Method of Construction to be Approved by Public Works Director
- 12.04.060 Town Council to Order Construction of Sidewalks
- 12.04.070 Notice of Sidewalk Construction
- 12.04.080 Length of Time to Construct a Sidewalk
- 12.04.090 Reports to the Town Council
- 12.04.100 Failure to Construct Sidewalks Properly
- 12.04.110 Maintenance and Repair
- 12.04.120 Hazardous Conditions--Public Safety Measures
- 12.04.130 Snow Removal Responsibility
- 12.04.140 Unsafe Sidewalks
- 12.04.150 Removal of Obstruction of Sidewalk
- 12.04.160 Obstruction Prohibited

12.04.010 Sidewalks to Correspond with Provisions of this Chapter. All sidewalks hereafter constructed in the town shall correspond to the provisions of this chapter, unless otherwise ordered by the town council.

12.04.020 Sidewalk and Parking Areas. Except as hereinafter provided, there shall be reserved for sidewalk and parking purposes upon and along each side of all streets that are sixty feet (60') or more in width, a space ten feet (10') in width, and upon and along each side of all streets that are less than sixty feet (60') in width and fifty feet (50') or more in width a space eight feet (8') in width, and upon and along each side of all streets that are less than fifty feet (50') in width a space five feet (5') in width.

12.04.030 Width of Sidewalks. The width of sidewalks upon the space reserved as provided in the preceding section shall be as follows: Upon all streets where ten feet (10') in width is reserved, all sidewalks shall be four feet (4') in width and shall be placed three feet (3') from the property line and three feet (3') from the roadway. Upon all streets where eight feet (8') in width is reserved the sidewalk shall be four feet (4') in width and shall be placed two feet (2') from the property line and two feet (2') from the roadway, and upon all streets where five feet (5') in width is reserved the sidewalk shall embrace the entire width so reserved, or else shall be placed one foot (1') from the property line and close to the roadway and shall be four feet (4') in width at the option of the adjacent property owner. Provided, however, that upon the north side of Railroad Street between Clayton Street and Hubbard Street the space of eight feet (8') shall be reserved for sidewalk purposes, and the sidewalk shall embrace the entire width so reserved. The Streets and Alleys Committee of the town council may permit the construction of smaller sidewalks, of a temporary character, whenever in its judgment; it is advisable to do so.

12.04.040 Street Grades. Whenever the town council shall deem it necessary to establish grades upon any street or streets in the town it shall authorize the streets and alleys committee

to employ a competent civil engineer for that purpose, who shall establish such grades and shall mark the same upon the ground, and shall also furnish the town clerk-treasurer with a grade sheet showing the grades and the location of the markings so that the same may be readily identified at any time.

12.04.050 Method of Construction to be Approved by Public Works Director. Nothing in this chapter shall be held to prohibit the construction of sidewalks of good brick, cement or other suitable material; provided, however, that the approval of the PWD of such material and the method of construction of such sidewalk shall first be obtained.

12.04.060 Town Council to Order Construction of Sidewalks. Whenever there is any place in the town where a sidewalk is needed and where no good and sufficient sidewalk has already been constructed, the town council, by a two-thirds vote may order, and on petition of two-thirds of the owners of the abutting property, the council shall order a sidewalk to be built in any place needed. All orders for a sidewalk shall be passed by a two-thirds vote of all the members of the council. All orders of the council requiring a sidewalk to be constructed shall specifically set forth the street or streets on which such sidewalk is to be laid and between what points of any street or streets.

12.04.070 Notice of Sidewalk Construction. After the passage of any order to construct a sidewalk, passed in the manner set forth in the preceding section, the town clerk-treasurer shall forthwith notify each owner of the property affected, by having served upon such owner, a notice. The notice aforesaid shall be personally served upon any person residing in the town by giving to such person a copy of such notice if he can be found; otherwise, by leaving such copy at his residence or place of business. If the owner of any property along which a sidewalk has been ordered laid, resides out of and cannot be found in the town, then such notice shall be by the public works director placed in the post office at Plains, directed to the last known post office address of such person, with the postage prepaid thereon, and after five (5) days after such notice has been so deposited, such person shall be deemed to have been served with such notice. The PWD, in case the owner resides out of Plains and cannot be found therein, shall also post a copy of the notice on the property affected. All notices shall be served by the PWD, and personal service shall be made in all cases when the same can be done; otherwise service shall be made by mail and posting as above provided. The PWD shall make a return on all notices, stating the manner of service and the time thereof.

12.04.080 Length of Time to Construct a Sidewalk. Every person required to lay a sidewalk shall have sixty (60) days after service of notice to lay or construct such sidewalk. At the expiration of sixty (60) days after service of notice the PWD shall make a report to the council showing whether or not any sidewalk ordered to be constructed has been laid. After the receipt of such report by the council, if it shall be found therefrom that any sidewalk has not been laid within the time allowed, then the town council shall, by resolution, order that the same shall be laid at the expense of the town in the following manner: The council shall cause a notice to be posted for ten (10) days asking for bids for the construction of such a sidewalk, giving specifications. After the expiration of ten (10) days the council shall meet and receive all bids for the construction of such sidewalk; each bid must be sealed and must specify the price for which a sidewalk will be laid along or in front of each lot; the construction of such sidewalk shall then be let to the lowest responsible bidder. After the construction price has been paid for constructing a sidewalk in front of each lot the town clerk-treasurer shall notify the owner of any lot or lots to the effect that the town has caused a sidewalk to be constructed in front of his premises, the amount of the cost thereof, and that unless the said amount is paid to the town treasurer

within fifteen (15) days the town clerk-treasurer will cause such sum to be levied and assessed against his property; provided, that where one person owns more than one lot affected by a sidewalk, all such lots may be treated as one lot.

12.04.090 Reports to the Town Council. If any person shall fail to pay to the town clerk-treasurer the cost of any sidewalk, within the time specified in Section 12.04.080, such failure shall be reported to the council. The council shall, at any regular meeting and must, on or before the first day of September of each year, levy an assess against any delinquent property the cost and construction of a sidewalk along or in front of such property, specifying each lot and stating the amount assessed against the same. Immediately thereafter the town clerk shall file with the county clerk a certified copy of such order of the council. The county clerk will enter such costs as taxes against each lot affected, and will certify the same up to the county treasurer the same as other taxes are certified. All sums of money due to the town for the construction of any sidewalk against any property shall be levied and assessed and collected substantially as other taxes, and such sums so due shall be a lien against such property so affected.

12.04.100 Failure to Construct Sidewalks Properly. Any person ordered to construct a sidewalk and failing to construct such sidewalk in accordance with the provisions of this chapter, shall be deemed in violation of these ordinances and shall be subject to the penalty provided herein.

12.04.110 Maintenance and Repair. It shall be the duty of the owner(s) of any premises within the limits of the town to keep the sidewalk in front of and adjoining their premises in good, safe and substantial condition. The owners shall see that all breaks or unsoundness be repaired with all possible dispatch.

12.04.120 Hazardous Conditions--Public Safety Measures. When by any reason of the construction or repair of sidewalks from any cause whatsoever any sidewalk is rendered dangerous or impassable to the public, such sidewalk or portion of sidewalk shall be barricaded for the public's safety.

12.04.130 Snow Removal Responsibility. It shall be the duty of the owners and tenants of any premises within the limits of the town to keep the sidewalk in front of and adjoining the premises clean and safe for pedestrians, and to remove with reasonable dispatch snow, ice, slush, mud and any other impediment to safe and convenient foot travel.

12.04.140 Unsafe Sidewalks. Whenever any sidewalk is in an unsafe condition for pedestrians, it shall be the duty of the PWD to place a suitable obstruction on either side of that part of the sidewalk which is in a suitable obstruction on either side of that part of the sidewalk which is an unsafe condition and notify the owner or occupant of the abutting property that such sidewalk must be repaired. If the abutting property is unoccupied or the owner cannot be found within the town, then the PWD shall post a notice on such property requiring the walk to be repaired. If the walk is not properly repaired within twenty-four (24) hours from the giving of the notice as herein provided then the PWD shall report that fact to the Mayor and the Mayor may cause the sidewalk to be repaired or removed by the town.

12.04.150 Removal of Obstruction of Sidewalk. Any person who takes down or removes or in any way interferes with an obstruction placed on any sidewalk as provided in the above section, shall commit the offense of criminal mischief, and upon conviction thereof shall be punished as provided by this Code.

12.04.160 Obstruction Prohibited. None of the duties or privileges imposed or conferred by this Chapter shall in any way be deemed to authorize or allow the obstruction of any street, either during or after any work upon any sidewalk, except under permit therefor. No material removed from any sidewalk shall be placed upon any portion of any adjacent street, alley, place or square, except permit therefor be granted. All refuse, lumber or debris remaining after the completion of any sidewalk repair or renewal shall be removed from the street forthwith, and any owner, lessee or tenant of abutting property who shall fail to remove any such obstruction from any street, alley place or square within forty-eight (48) hours after being notified by the PWD to do so, shall be deemed guilty of maintaining a public nuisance and shall be subject to the penalties prescribed therefor. In case of failure to remove obstructions after such notice, the PWD shall cause the same to be removed and shall charge the full cost of such removal to such owner, lessee, or tenant, and the charge shall become a lien upon such abutting property and shall be collected as hereinbefore provided for the collection of cost of construction or repair of sidewalks.

Chapter 12.06
REGULATING USE OF STREETS AND SIDEWALKS

Sections:

12.06.010	Streets and Sidewalks to be Kept Free of Obstructions
12.06.020	Written Permission Required from Public Works Director
12.06.030	Unlawful To Injure Streets and Sidewalks; Permission Required
12.06.040	Wagons and Carts Prohibited
12.06.050	Littering Prohibited
12.06.060	Animals to be Securely Fastened
12.06.070	Lights Required on Excavations
12.06.080	Playing Ball in Streets Prohibited

12.06.010 Streets and Sidewalks to be Kept Free of Obstructions. All streets, alleys, sidewalks, crossings, displays, and public places within the town limits shall be kept free and clear of any and all kind of obstructions, encroachments or encumbrances, and all posts, poles, telephone and telegraph wire or wires of any kind, unless such posts, poles or wires of any kind have been erected with the consent of the council.

12.06.020 Written Permission Required from Public Works Director. Any person, association or corporation desiring to encumber or obstruct any street for a temporary length of time shall first obtain the written permission of the public works director (PWD) therefor.

12.06.030 Unlawful To Injure Streets and Sidewalks; Permission Required. It shall be unlawful for any person to tear up, injure or destroy any street, alley, sidewalk, crossing or public place; or dig any hole, excavation or add rocks, dirt, earth or other material in or to any street, alley, sidewalk, crossing or other public place without the written consent of the public works director first had and obtained, or hinder, delay, interfere with or impede any improvement of any street, alley, sidewalk, crossing or public place, except on the orders or under the direction of the public works director. It shall be unlawful for any person to construct any building, fence or other obstruction in any street, alley, sidewalk, crossing or public place; and it shall be unlawful for any person to place in any street, alley or public place any lumber or other material which will obstruct the same, except for a temporary purpose, without the written permission of the public works director first had and obtained, and the term "temporary purpose" is hereby defined to be not in excess of five (5) days.

12.06.040 Wagons and Carts Prohibited. It shall be unlawful for any person, by means of a wagon, cart, carriage, sleigh or other vehicle, with or without horses, to obstruct or impede the free use of any street, alley, sidewalk, crossing or public place.

12.06.050 Littering Prohibited. It shall be unlawful for any person to place, throw, permit to be placed, thrown or in any manner placed in any street, alley, or public place, any paper, straw, debris, rubbish, sawdust, ashes, excelsior, ice, refuse or any other material that will tend to litter the streets, alleys or public places within the town.

12.06.060 Animals to be Securely Fastened. It shall be the duty of every person who shall have in charge as driver, any horse or team attached to a wagon, carriage or other vehicle, while such horse or animal is standing in the streets, alleys, public or private places, to hold the lines attached thereto, or to otherwise hitch, secure or fasten such animal to a suitable and safe fastening.

12.06.070 Lights Required on Excavations. Any person who shall dig any cellar, pit, hole, excavation or opening in any street, alley, public place or within twenty feet (20') thereof shall place a temporary fence or railing around the same at night, and in addition thereto hang or place thereat a lighted lantern or lanterns sufficient to warn persons and animals of such pit, hole, cellar, excavation or other opening.

12.06.080 Playing Ball in Streets Prohibited. It shall be unlawful for any person to engage in any game of ball or any other game whatever in any street, alley or public place of said town; or to engage in any pastime in such streets or alleys that will prevent or obstruct the free use thereof by the public.

Chapter 12.10
POLLUTION OF SIDEWALKS

Sections:

- 12.10.010 Unlawful to Pollute Sidewalks
- 12.10.020 Violations; Penalty

12.10.010 Unlawful to Pollute Sidewalks. It shall be unlawful for any person to pollute the sidewalks within the corporate limits of the town by spitting or expectorating saliva, tobacco juice upon the same, or to deposit thereon any other filthy or obnoxious substances or liquids which impair their cleanliness and are offensive to the senses, or are likely to contaminate the pedestrians passing over or using such sidewalks.

12.10.020 Violations; Penalty. Any person violating any of the provisions of this chapter shall, upon conviction, be fined in any sum not exceeding five dollars (\$5.00) for the first offense, and being convicted of a second offense shall be fined in any sum not less than five dollars (\$5.00) or more than twenty-five dollars (\$25.00).

Chapter 12.12
DITCHES

Sections:

- 12.12.010 Obtaining Permits for Digging Ditches
- 12.12.020 Permit Fees
- 12.12.030 Duty of Town Council

12.12.010 Obtaining Permits for Digging Ditches. Every person, group or organization who shall desire to open into any street or alley for any purpose a ditch into or across said street or alley shall first obtain a permit from the public works director and shall be personally responsible to the town for any damage to said street or alley caused by them in the performance of said work.

12.12.020 Permit Fees. The town shall issue a permit to any applicant upon the payment of a fee for same as may be established by the town council.

12.12.030 Duty of Town Council. The town council shall supervise the refilling of all ditches which cut into or across any street or alley and shall repair any damage done to the surface thereof and collect the cost of the repairs from the person, group or organization causing such damage.

Chapter 12.14
CONSTRUCTION STANDARDS FOR STREETS

Sections:

- 12.14.010 Right of Way
- 12.14.020 Surface Construction
- 12.14.030 Drainage
- 12.14.040 Grade
- 12.14.050 Cul-de-sacs
- 12.14.060 Dead End Streets
- 12.14.070 Alignment of Intersections
- 12.14.080 Visibility at Intersections
- 12.14.090 Signs
- 12.14.100 Culverts and Bridges

12.14.010 Right of Way. Street right of way, surface and width shall conform to the following minimum standards:

	<u>Arterial</u>	<u>Collector</u>	<u>Local</u>
Right of Way	60 feet	60 feet	60 feet
Paved Surface	33 feet	26 feet	24 feet

12.14.020 Surface Construction. Street surfaces shall be laid over a properly compacted sub-grade and shall consist of:

- a. A geo textile (woven) mat which shall be installed over the existing excavated material.
- b. A sub base of well graded 3 inch minus pit run material 18 to 24 inches in depth.
- c. A base of well graded 3/4 inch minus crushed gravel a minimum of 4 inches in depth
- d. A wearing surface consisting of a minimum 2 inch asphalt pavement.
- e. Curbs, gutters and sidewalks may be required for any street at the discretion of the Town Council.

12.14.030 Drainage. Street surfaces shall be crowned so as to slope away from the center line at a grade of 2 percent, or otherwise designed and constructed for proper drainage. Drainage should generally rely on infiltration into shallow U or V shaped vegetated swales on both sides of the street. The Town Council may require subsurface drainage along any street where such drainage is necessary to protect the street from slumping, frost heaving, or other ground water related damage.

12.14.040 Grade. The maximum grade at any street shall be 8 percent except at intersections, where the maximum grade at and within 60 feet along both approaches shall be a maximum of 3 percent.

12.14.050 Cul-de-sacs. The minimum cul-de-sac radius shall be 30 feet. The maximum length of a cul-de-sac street shall be 1500 feet. Alternatives to the construction of a cul-de-sac may be proposed provided that the alternative is approved by the Town Council.

12.14.060 Dead End Streets. Dead end streets other than approved cul-de-sacs are prohibited.

12.14.070 Alignment of Intersections. All intersections shall be at a 90 degree angle with the approaching roads running at 90 degrees for at least 50 feet before the intersection.

12.14.080 Visibility at Intersections. Clear vision triangles shall be provided at all intersections. A clear vision triangle is defined by extending a line between two points, each of which shall be 30 feet from the intersection of the right of way along the lot lines. No parking and no solid fence or wall, planter, hedge, shrub or other visual obstruction more than 3 feet in height above grade shall be permitted in a clear vision triangle. No trees will be permitted on street right of way.

12.14.90 Signs. The contractor, owner or developer shall install all uniform traffic and pedestrian signs required for safe traffic and pedestrian movement as required by the town council.

12.14.100 Culverts and Bridges. All culverts and bridges shall be designed by a licensed professional engineer and shall be approved by the Board of County Commissioners of Sanders County. Bridges and culverts are subject to the shoreline buffer and flood plain requirements of the Town of Plains, and Sanders County. Bridges and culverts shall be designed for passage of flood waters during a 100 year flood event. The minimum gross vehicle load supported by any bridge or culvert shall be 48,000 pounds. There shall be a minimum 50 foot, 90 degree direct approach to all bridges and culverts.

Chapter 12.16
NAMING STREETS

Sections:

12.16.010	Placement of Signs
12.16.020	Naming Criteria
12.16.030	All Roads to be Named

12.16.010 Placement of Signs. Street name signs shall be the responsibility of the Town of Plains, and be in place as soon as possible after the passage of this ordinance.

12.16.020 Naming Criteria. The following criteria shall govern the naming system:

- a. No two roads shall be given the same name.
- b. No two roads should have similar-sounding names.
- c. Each road shall have the same name throughout its entire length.

12.16.030 All Roads to be Named. All roads that serve two or more properties shall be named regardless of whether the ownership is public or private. A "road" refers to any highway, road, street, avenue, lane, private way, or similar paved, gravel, or dirt thoroughfare. "Property" refers to any property on which a more or less permanent structure has been erected or could be placed. A road name assigned by the Town of Plains shall not constitute or imply acceptance of the roadway as a public way.

TITLE 13 - SUBDIVISION ORDINANCES

Chapters:

- 13.00 DEFINITIONS
- 13.02 GENERAL PROVISIONS
- 13.04 GENERAL PROCEDURES
- 13.06 REVIEW AND APPROVAL PROCESS MINOR SUBDIVISIONS
- 13.08 REVIEW AND APPROVAL PROCESS MAJOR SUBDIVISIONS
- 13.10 DIVISION OF LANDS EXEMPT FROM REVIEW
- 13.12 DESIGN AND IMPROVEMENT STANDARDS
- 13.14 RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES – LAND
SUBDIVISIONS CREATED BY RENT OR LEASE
- 13.16 CONDOMINIUMS
- 13.18 ADMINISTRATIVE PROVISIONS

Chapter 13.00
Definitions

Section:

13.00.010 Definitions

13.00.010 Definitions.

Whenever the following words or phrases appear in these ordinances, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense include the future; the singular, unless otherwise specifically defined in a particular section, includes the plural, and the plural the singular; the word "shall" is always mandatory, and the word "may" indicates use of discretion in making decisions.

1. ACCESS (LEGAL AND PHYSICAL): Legal access means that each lot in a subdivision abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties from a public road to each lot in the subdivision. Physical access means that the street or road conforming to the subdivision design standards provides vehicular access from a public street or road to each lot in the subdivision.

2. ADJOINING LANDOWNER (ADJACENT PROPERTY OWNER): The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.

3. AGRICULTURE: All aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

4. AGRICULTURAL WATER USER FACILITIES: Those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.

5. BLOCK: A group of lots, tracts or parcels within well-defined and fixed boundaries.

6. CERTIFICATE OF SURVEY: A drawing of a field survey prepared by a professional land surveyor for the purpose of disclosing facts pertaining to boundary locations.

7. CLUSTER DEVELOPMENT: A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped. [76-3-103(2), MCA].

8. COMPREHENSIVE PLAN, MASTER PLAN, OR GROWTH POLICY: means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to Title 76, Chapter 1, MCA, before October 1, 1999, or a policy that was adopted pursuant to Title 76, Chapter 1, MCA, on or after October 1, 1999.

9. CONDOMINIUM: A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.

10. COVENANT (RESTRICTIVE COVENANT): A limitation contained in a deed or other document that restricts or regulates the use of the real property.

11. DEDICATION: The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted. [76-3-103(3), MCA].

12. DEQ: The Montana Department of Environmental Quality.

13. DIVISION OF LAND: The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the MSPA. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land. [76-3-103(4), MCA].

14. DWELLING UNIT: Any structure or portion thereof providing complete, independent and permanent living facilities for one household.

15. EASEMENT: Authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.

16. ENGINEER (PROFESSIONAL ENGINEER): A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana.

17. FIRST MINOR SUBDIVISION: A proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA, since July 1, 1973. [76-3-609(2), MCA].

18. FLOOD: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage [76-5-103 (8), MCA].

19. FLOOD OF 100 YEAR FREQUENCY: A flood magnitude which has a one percent chance of occurring in any given year, or is a flood magnitude which is expected to recur on the average of once every 100 years [76-5-103 (9), MCA].

20. FLOODPLAIN: The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100 year frequency [76-5-103 (10), MCA].

21. FLOODWAY: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainage [76-5-103 (11), MCA].

22. GOVERNING BODY: The Town Council of the Town of Plains.

23. IMPROVEMENT AGREEMENT: A contractual agreement that may be required by the governing body to ensure the construction of such improvements as required by local subdivision ordinances. The improvement agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance or property bonds, private or public escrow agreements, or similar financial guarantees.

24. LANDOWNER: All individuals, groups, or parties with a title interest in the property. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM). For all other purposes of these ordinances, the terms "property owner," "landowner," and "owner" mean both the seller and the purchaser under a contract for deed.

25. LOCAL SERVICES: Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the benefit of their citizens.

26. LOT: A parcel, plot, or other land area created by subdivision for sale, rent, or lease.

27. LOT MEASUREMENT:

- a. Lot Depth -- The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. Lot Width -- The average width of the lot.
- c. Lot Frontage -- The width of the front lot line.
- d. Lot Area -- The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements. The minimum lot size shall be 7,500 sq feet per family or business.

28. LOT TYPES:

- a. Corner Lot: A lot located at the intersection of two streets.
- b. Interior Lot: A lot with frontage on only one street.
- c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.
- d. Flag Lot: A lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.

29. MAJOR SUBDIVISION: A subdivision that creates six or more lots..

30. MINOR SUBDIVISION: A subdivision that creates five or fewer lots

31. **MOBILE (MANUFACTURED) HOME:** A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, “trailer homes,” “house trailers,” and “manufactured homes” whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

32. **MOBILE (MANUFACTURED) HOME SPACE:** A designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

33. **MOBILE (MANUFACTURED) HOME PARK:** A tract of land that provides or will provide spaces for two or more mobile homes.

34. **MOBILE (MANUFACTURED) HOME PAD:** That area of a mobile home space which has been prepared for the placement of a mobile home.

35. **MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS:** Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.

36. **MONUMENT (PERMANENT MONUMENT):** Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

37. **MSPA:** Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA.

38. **NATURAL ENVIRONMENT:** The natural environment is defined as the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic and aesthetic significance.

39. **OPEN SPACE:** Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.

40. **OVERALL DEVELOPMENT PLAN:** The plan of a subdivision design proposed to be subdivided in stages.

41. **PLANNED UNIT DEVELOPMENT (P.U.D.):** A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use [76-3-103 (10), MCA].

42. **PLANNING BOARD:** A planning board formed pursuant to Title 76, Chapter 1, MCA.

43. **PLAT:** A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

- a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body as more specifically set forth in these ordinances and the MSPA.
- b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these ordinances and the MSPA. (Title 76, Chapter 3, MCA).
- c. Amended Plat: The final drawing of any change to a filed platted subdivision , or any lots within a filed platted subdivision.
- d. Vacated Plat: A plat which has been voided under the provisions of MCA 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.

44. PRE-APPLICATION SKETCH (OR DRAWING): A legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision, all as more particularly set forth herein.

45. PUBLIC HEALTH AND SAFETY: The prevailing healthful, sanitary condition of well being for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.

46. PUBLIC IMPROVEMENT: Any structure or facility constructed to serve more than one lot in a subdivision which is dedicated to the public or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.

47. PUBLIC ROAD OR STREET: A road or street is public if its right-of-way has been dedicated or acquired for public use.

48. PRIVATE IMPROVEMENT: Private improvements are the same types of improvements as defined under PUBLIC IMPROVEMENTS, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.

49. PRIVATE ROAD: A road is private if its right-of-way has neither been dedicated nor acquired for public use. A private road may be open to use by the general public or public access may be restricted.

50. RECREATIONAL CAMPING VEHICLE: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

51. RECREATIONAL VEHICLE PARK: A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and

sleeping purposes.

52. RECREATIONAL VEHICLE SPACE: A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.

53. REVIEWING AUTHORITY: The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.

54. RIGHTS-OF-WAY: A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.

55. STATE: The State of Montana.

56. STREET TYPES: For purposes of these ordinances, street types are defined as follows :

- a. Alley: A public or private way reserved as a secondary means of access to the rear or side of lots which abut on and are served by public roads.
- b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
- c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
- d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
- e. Half-Street: A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
- f. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
- g. Loop: A local street which begins and ends on the same street, generally used for access to properties.
- h. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

57. SUBDIVIDER: Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land [76-3-103(15), MCA]. When used in these ordinances, the term "subdivider" may also include the property purchaser on a contract for deed or its agent, or the landowner's agent, if the landowner has provided the subdivision administrator written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.

58. SUBDIVISION: A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes [76-3-103(16), MCA].

59. SUBDIVISION ADMINISTRATOR: The person or persons authorized by the governing body to perform the duties of review and administration set forth in these ordinances.

60. SUBSEQUENT MINOR SUBDIVISION: Any subdivision of five or fewer parcels that is not a first minor subdivision.

61. SURVEYOR (PROFESSIONAL LAND SURVEYOR): A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.

62. SURVEYOR (EXAMINING LAND SURVEYOR): A professional land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

63. SWALE: A drainage channel or depression designed to direct surface water flow.

64. TITLE REPORT (ABSTRACT OF TITLE, SUBDIVISION GUARANTEE, OR PLATTING REPORT): A report from a title service company on the condition of title to the property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter.

65. TOPOGRAPHY: General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.

66. TOWNHOUSE LOT: Arrangement under which units share a common wall, and individuals own their own units and hold separate title to the land beneath the unit.

67. TRACT OF RECORD: An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office [76-3-103(17)(a), MCA].

68. VICINITY SKETCH: A map at a scale suitable to locate a proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information

necessary to determine the general location of the proposed subdivision.

69. WILDLIFE: Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy.

70. WILDLIFE HABITAT: The place or area where wildlife naturally lives or travels through.

Chapter 13.02
General Provisions

Sections:

- 13.02.010 Title
- 13.02.020 Purpose
- 13.02.030 Jurisdiction

13.02.010 Title. These ordinances will be known and may be cited as “The Subdivision Ordinances of the Town of Plains;” hereinafter referred to as “these ordinances.” Authorization for these ordinances is contained in the Montana Subdivision and Platting Act (“MSPA”). [Title 76, Chapter 3, MCA.].

13.02.020 Purpose. The purposes of these ordinances are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services; to protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey (76-3-102, MCA).

These ordinances are intended to comply with Part 5 of the MSPA, and are intended to promote:

- a. The orderly development of the jurisdictional area.
- b. The coordination of roads within subdivided land with other roads, both existing and planned.
- c. The dedication of land for roadways and for public utility easements.
- d. The improvement of roads.
- e. The provision of proper physical and legal access, including obtaining necessary easements.
- f. The provision of adequate open spaces for travel, light, air, and recreation.
- g. The provision of adequate transportation, water, drainage, and sanitary facilities.
- h. The avoidance or minimizing of congestion.

- i. The avoidance of subdivisions which would involve unnecessary environmental degradation.
- j. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public improvements.
- k. The avoidance of excessive expenditure of public funds for the supply of public improvements and services.
- l. The manner and form of making and filing of any plat for subdivided lands.
- m. The administration of these ordinances by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.

13.02.030 Jurisdiction. These ordinances govern the subdivision of land within the jurisdictional area of the Town of Plains. If a proposed subdivision lies partly within the Town of Plains and partly within the county, the preliminary plat must be submitted to, and approved by, both the town and the county. When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality will combine public hearings and otherwise coordinate the subdivision review process and annexation procedures whenever possible. These ordinances supplement all other ordinances, and where they are at variance with other laws, ordinances, ordinances, or resolutions, the more restrictive requirements apply. Other ordinances include, but are not limited to, zoning ordinances, floodplain ordinances, building codes, development codes, and fire codes.

Chapter 13.04
General Procedures

Sections:

13.04.010	Preliminary Plats
13.04.020	Subdivision Application and Preliminary Plat Submittal
13.04.030	Review Process
13.04.050	Final Plat Initial Review
13.04.060	Restrictive Covenants – Approval, Content and Enforcement by Governing Body
13.04.070	Public Improvements Agreement; Guaranty
13.04.080	Amending Approved Preliminary Plats Before Final Plat Approval
13.04.090	Final Plat Approval
13.04.100	Final Plat Filing
13.04.110	Amending Filed Plats

13.04.010 Preliminary Plats.

- a. Construction Timing. Construction work shall not occur on a proposed subdivision until the governing body has given conditional approval of the preliminary plat.

- b. Transfers of Title. Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met (76-3-303, MCA):
 1. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
 2. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;
 3. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
 4. That the contracts contain the following language conspicuously set out therein: “The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner;”

5. That the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid; and
 6. A copy of the contracts and escrow agreement described above must be submitted to the planning board (or subdivision administrator). The name of the purchaser and purchase price may be blacked out.
- c. Permission to Enter. The governing body or its designated agent(s) or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider for the governing body, its agents, and affected agencies to enter the subject property. This consent applies to members of the public attending a noticed public meeting for a site visit.
- d. Pre-application Process
1. Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the planning board or the subdivision administrator. The meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the subdivision administrator.
 2. At the time of the pre-application meeting request, the subdivider shall provide to the planning board or the subdivision administrator a sketch of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions.
 3. The sketch may be a freehand sketch drawn directly on a print of a topographic map of the area proposed for division at a scale of 1 inch to 400 feet or larger that is adequate to show the property and must include the following:
 - A. Information on the current status of the site, including:
 1. location;
 2. approximate tract and lot boundaries of existing tracts of record;
 3. description of general terrain;
 4. natural features on the land, including water bodies, floodplains geologic hazards, and soil types;
 5. existing structures and improvements;
 6. existing utility lines and facilities serving the area to be subdivided;

7. existing easements and rights of way;
 8. existing zoning or development ordinance standards;
 9. existing conservation easements;
 10. existing covenants or deed restrictions;
- B. Documentation on the current status of the site, including:
1. ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;
 2. water rights, including location of Agricultural Water Facilities;
 3. any special improvement districts; and
 4. rights of first refusal for the property.
- C. Information on the proposed subdivision, including:
1. tract and proposed lot boundaries;
 2. proposed public and private improvements;
 3. location of utility lines and facilities;
 4. easements and rights of way; and
 5. parks and open space and proposed conservation easements.
- e. At the pre-application meeting:
1. the planning board or the subdivision administrator shall identify, for informational purposes, the state laws, local ordinances and growth policy provisions that may apply to the subdivision review process including, but not limited to, zoning ordinances, floodplain ordinances, building codes and fire codes;
 2. the planning board or the subdivision administrator shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment by the subdivision administrator or planning board on the subdivision application. The subdivision administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
 3. the planning board or the subdivision administrator shall identify particular additional information the planning board or the subdivision administrator anticipates will be required for review of the subdivision application. This does

not limit the ability of the planning board or the subdivision administrator to request additional information at a later time.

- f. Unless the subdivider submits a subdivision application within [180 days] of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

13.04.020 Subdivision Application and Preliminary Plat Submittal. The subdivider shall submit to the planning board or the subdivision administrator a subdivision application addressing these topics and containing the following materials, all described in more detail in forms provided by the subdivision administrator, as applicable:

- a. A completed and signed Subdivision Application Form;
- b. The required review fee;
- c. A preliminary plat;
- d. A Vicinity Sketch;
- e. A topographic map;
- f. A grading and drainage plan;
- g. Engineering plans for all Public and Private Improvements;
- h. Overall development plan if development is in phases;
- i. Abstract of Title (or Title Report);
- j. Lienholders' acknowledgement of subdivision;
- k. Documentation of legal and physical access;
- l. Documentation of existing easements, including those for Agricultural Water User Facilities;
- m. Existing covenants and deed restrictions;
- n. Existing water rights;
- o. Existing mineral rights;
- p. Names and addresses of all adjoining property owners;
- q. Proposed road plans and profiles;
- r. Encroachment permits from Montana Department of Transportation or the local jurisdiction;
- s. Proposed easements;
- t. Proposed disposition of water rights;
- u. Proposed disposition of mineral rights;
- v. Parkland dedication calculations;
- w. Environmental assessment and/or summary of probable impacts;
- x. Transportation impact analysis or transportation plan;
- y. Fire risk rating analysis and fire prevention plan;
- z. Weed management plan and re-vegetation plan;
- aa. Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
- bb. FIRM or FEMA panel map and letter identifying floodplain status;
- cc. Required water and sanitation information;
- dd. A form of Subdivision Improvements Agreement, if proposed;
- ee. Letter requesting a revocation of agricultural covenants;
- ff. Letter indicating locations of cultural or historic resources;
- gg. Variance request or approval;

- hh. Re-zoning application or approval;
- ii. Flood hazard evaluation;
- jj. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
- kk. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.

13.04.030 Review Process. For both minor and major subdivisions, the initial review process is as follows:

a. Element Review

Within 5 working days of receipt of a subdivision application and fee, the planning board or the subdivision administrator shall determine whether the application contains all of the applicable materials required and shall give written notice to the subdivider of the planning board or the subdivision administrator's determination. If the planning board or the subdivision administrator determines that elements are missing from the application, the planning board or the subdivision administrator shall return the application and identify those elements in the notification, and no further action shall be taken on the application by the planning board or the subdivision administrator until the application is resubmitted. The subdivider may correct the deficiencies and resubmit the application. If the subdivider corrects the deficiencies and resubmits the application the planning board or the subdivision administrator shall have 5 working days to notify the subdivider whether the resubmitted application contains all the materials required, as applicable. This process shall be repeated until the subdivider submits an application containing all the materials required or the application is withdrawn.

b. Sufficiency Review

Within 15 working days after the planning board or the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in subsection (a) above, the planning board or the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these ordinances and shall give written notification to the subdivider of the planning board or the subdivision administrator's determination. If the planning board or the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the planning board or the subdivision administrator shall identify specific required information in its notification and return the application to the subdivider, and no further action shall be taken on the application by the planning board or the subdivision administrator until the material is resubmitted. The subdivider may correct the deficiencies and resubmit the application, or withdraw the application. If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the planning board or the subdivision administrator shall have

15 working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these ordinances. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these ordinances, or the application is withdrawn. A determination that an application contains sufficient information for review as provided in this subsection (b) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the subdivision administrator, planning board, or the governing body to request additional information during the review process. A determination of sufficiency by the planning board or the subdivision administrator pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

c. Applicable Ordinances.

Subdivision review and approval, conditional approval or denial shall be based on those ordinances in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If ordinances change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new ordinances.

13.04.040 Final Plats. The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the governing body and must incorporate all required modifications and comply with all conditions imposed at the time of subdivision application and preliminary plat approval.

13.04.050 Final Plat Initial Review.

a. Final Plat Submittal. The final plat approval application form (an example of which can be found in Administrative Materials Section B), and all supplementary documents must be submitted to the planning board or the subdivision administrator at least 30 working days prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:

1. the final plat application;
2. the final plat review fee;
3. a statement from the project surveyor or engineer outlining how each condition of approval has been satisfied;
4. a Title Report or updated Abstract dated no less than 30 days prior to the date of submittal;
5. the DEQ or local Environmental Health Department approval;
6. the final Grading and Drainage Plan, including all road plans and profiles, state or local encroachment permits, and the Traffic Impact Analysis (if

required);

7. all engineering plans;
8. any homeowner association documents, including bylaws, covenants, and/or declarations;
9. county and/or city attorney approvals; and
10. one 11" x 17" and one 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats.

b. Review by the Planning Board or the Subdivision Administrator

1. The planning board or the subdivision administrator shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The planning board or the subdivision administrator will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received. Final plat applications will not be considered complete by the planning board or the subdivision administrator until all conditions of preliminary approval have been satisfied.

2. If the planning board or the subdivision administrator determines that the final plat differs from the approved or conditionally approved preliminary plat, the applicant shall be required to submit an amended application.

3. The planning board or the subdivision administrator may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these ordinances, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

13.04.060 Restrictive Covenants – Approval, Content and Enforcement by Governing Body.

- a. The governing body may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the governing body, be set forth in a separate heading identifying them as plat approval covenants, and indicating: "These covenant(s) may not be repealed or amended without prior written consent of the Plains Town Council.
- b. The governing body may require that all restrictive covenants it has required as a condition of plat approval contain the following language: "The Plains Town Council is a party to this restrictive covenant and may enforce its terms."
- c. If common property is to be deeded to a property owners' association, the covenants and by-laws which govern the association must, at a minimum,

provide for the:

1. Formation of a property owners' association concurrently with the filing of the final subdivision plat. Articles of Incorporation shall be filed with the Secretary of State's office;
2. Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;
3. Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
4. Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
5. Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
6. Adjustment of assessments to meet changing needs;
7. Means of enforcing the covenants, and of receiving and processing complaints;
8. Transition of control of the association from the Declarant to the homeowners.
9. Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
10. Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

13.04.070 Public Improvements Agreement; Guaranty. As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements [76-3-507, MCA]. No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as roads or fire fighting facilities, have been installed and engineering plans have been filed.

If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 125% by the highest bid. As the public improvements are installed, the subdivider shall provide a letter to the Plains Town Council indicating such, and including a copy of the engineered plans. The county engineer or consulting engineer designated by the governing body shall review and certify all public improvements have been installed in conformance with the plans and specifications. Prior to the release of the guarantee, a copy of the plans, stamped by the project surveyor or engineer in accordance with their licensing provisions, shall be filed in the clerk and recorder's office with reference to the final subdivision plat.

13.04.080 Amending Approved Preliminary Plats Before Final Plat Approval.

If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the planning board or the subdivision administrator for review. Within 5 working days of receiving the proposed changes, the planning board or the subdivision administrator shall determine whether the changes to the preliminary plat are material pursuant to subsection below. If the planning board or the subdivision administrator determines the changes are material, the planning board or the subdivision administrator shall require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee. If the planning board or the subdivision administrator determines the changes are not material, the planning board or the subdivision administrator shall accept the changes and notify the subdivider and the governing body of its decision.

The following changes, although not an exhaustive list, may be considered material:

- configuration or number of lots;
- road layout;
- water and/or septic proposals;
- configuration of park land or open spaces;
- easement provisions;
- designated access; or
- change to conditions of approval.

A subdivider whose proposed changes to the preliminary plat have been deemed material by the planning board or the subdivision administrator may appeal the planning board or the subdivision administrator's decision to the Plains Town Council by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

If the subdivider and planning board or the subdivision administrator determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the Plains Town Council through a properly noticed public hearing in order to determine if the condition may be waived or amended.

13.04.090 Final Plat Approval. The Plains Town Council shall examine every final subdivision plat and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these ordinances, or deny it. If the final plat is approved, the governing body shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat. If the final plat is denied, the governing body shall write a letter stating the reason for denial and forward a copy to the subdivider. The governing body will return the final plat to the subdivider within 10 working days of the action. The subdivider may then make

any necessary corrections and resubmit the final plat for approval. The governing body may withdraw approval of a final plat if it determines that material information by the subdivider is inaccurate.

13.04.100 Final Plat Filing. After it is approved, the final plat may not be altered in any manner except as provided herein. The county clerk and recorder may not accept any plat for filing that does not bear the governing body's approval in proper form or that has been altered. The clerk and recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, and Final Subdivision Plats.

13.04.110 Amending Filed Plats. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six or more lots, or abandons or alters a public road right-of-way or parkland dedication must be reviewed and approved by the governing body. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The governing body may not approve an amended final plat without the written consent of the owners and lienholders of all lots which will be modified by the proposed amendment. The governing body may not approve an amendment that will place a lot in non-conformance with the standards contained herein or with local zoning ordinances unless the governing body holds a public hearing on the amendment and issues a written variance from the standards. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats.

Chapter 13.06
REVIEW AND APPROVAL PROCESS
FOR MINOR SUBDIVISIONS

Sections:

13.06.010	Minor Subdivisions
13.06.020	First Minor Subdivision Review
13.06.030	First Minor Subdivision Application and Preliminary Plat Submittal
13.06.040	First Minor Subdivision Exceptions
13.06.050	First Minor Subdivision Review Process
13.06.060	First Minor Planning Board Consideration and Recommendation
13.06.070	Subdivider's Preference for Mitigation
13.06.080	First Minor Subdivision Governing Body Decision and Documentation
13.06.090	First Minor Subdivisions Amended Applications
13.06.100	First Minor Subdivision Final Plat
13.06.110	Subsequent Minor Subdivisions

13.06.010 Minor Subdivisions. Subdivisions containing five or fewer parcels shall be reviewed as set forth in this chapter.

13.06.020 First Minor Subdivision Review. The pre-application process and initial review process set forth in General Procedures, apply to this section.

13.06.030 First Minor Subdivision Application and Preliminary Plat Submittal. The subdivider shall submit to the planning board or to the agent or agency designated by the council a subdivision application containing the materials identified by this Title and in the pre-application meeting, and sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record.

13.06.040 First Minor Subdivision Exceptions. The following do not apply to first minor subdivisions:

- a. preparation of an environmental assessment;
- b. parkland dedication;
- c. public hearing requirements; and
- d. review of the subdivision application for the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, *if* the subdivision is proposed in a jurisdictional area that has adopted zoning ordinances that address those impacts.

13.06.050 First Minor Subdivision Review Process. Within 35 working days, the Plains Town Council shall approve, conditionally approve or deny the proposed subdivision according to these ordinances, unless the subdivider and the planning board or the subdivision administrator agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins once the planning board or the subdivision administrator has given notice to the subdivider that the subdivision application is sufficient for review. Notification constitutes the date when the reviewing agent or agency sends the notice to the subdivider.

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 35-working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

13.06.060 First Minor Planning Board Consideration and Recommendation. In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application and preliminary plat with the following:

- a. these ordinances, including but not limited to the standards set forth;
- b. applicable zoning ordinances;

The MSPA, including but not limited to 76-3-608(3), as delineated herein; and other applicable regulations.

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):

- a. the subdivision application and preliminary plat;
- b. the summary of probable impacts and mitigation;
- c. an officially adopted growth policy;
- d. subdivision administrator's staff report and recommendation; and
- e. any additional information authorized by law.

Within 10 working days after the public meeting, the planning board shall submit the following, in writing, to the subdivider and the governing body:

- a. recommended findings of fact based on the evidence above that discuss and consider the subdivision's compliance with and impact on the items listed in above of these ordinances;
- b. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat; and
- c. a recommendation for approval or denial of any requested variances.

The planning board or subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and these ordinances. The planning board shall forward all comments regarding water and sanitation to the governing body.

13.06.070 Subdivider's Preference for Mitigation. No later than two working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the planning board or the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences [76-3-608(5)(b), MCA].

13.06.080 First Minor Subdivision Governing Body Decision and Documentation. The Plains Town Council may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- a. provides easements for the location and installation of any planned utilities, both on and off site;
- b. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- c. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by these ordinances; and
- d. assures that the requirements of 76-3-504 (1)(j), MCA, regarding the disclosure and disposition of water rights as set forth have been considered and will be accomplished before the final plat is submitted.
- e. assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in have been considered and will be accomplished before the final plat is submitted.

In approving, conditionally approving, or denying a first minor subdivision application, the governing body shall consider whether the proposed subdivision complies with:

- a. these ordinances, including but not limited to, the standards set forth;
- b. applicable zoning ordinances;
- c. other applicable ordinances;
- d. the MSPA, including but not limited to the following impacts:
 1. impact on agriculture;
 2. impact on agricultural water user facilities;
 3. impact on local services;
 4. impact on the natural environment;
 5. impact on wildlife and wildlife habitat; and

6. impact on public health and safety.
7. proposed mitigation.

In making its decision to approve, conditionally approve, or deny a proposed first minor subdivision the governing body may consider and weigh the following, as applicable:

- a. the subdivision application and preliminary plat;
- b. the summary of probable impacts and mitigation;
- c. an officially adopted growth policy;
- d. subdivision administrator's staff report and recommendations;
- e. planning board recommendation; and
- f. any additional information authorized by law.

Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other ordinances. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.

The governing body shall collect public comments regarding water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

- a. reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; or
- b. local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the above subsections.

When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:

- a. contain information regarding the appeal process for the denial or imposition of conditions;
- b. identify the ordinances and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
- c. provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
- d. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
- e. set forth the time limit for approval below.

Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.

At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.

The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider.

After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.

The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

13.06.090 First Minor Subdivisions – Amended Applications. If the subdivider changes the subdivision application or preliminary plat before the governing body makes its decision, the subdivider shall submit the amended application or preliminary plat to the planning board or the subdivision administrator for review. Within 5 working days of receiving the amended application or preliminary plat, the planning board or the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material. The 35-working day review period is suspended while the planning board or the subdivision administrator considers the amended application or preliminary plat. If the planning board or the subdivision administrator determines the changes are not material, the 35-working day review period resumes when the planning board or the subdivision administrator mails notice of the decision to the subdivider. If the planning board or the subdivision administrator determines the changes are material, the planning board or the subdivision administrator shall require the

subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application. A new fee may be required by the planning board or the subdivision administrator if changes are determined extensive.

By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period.

The following changes, although not an exhaustive list, may be considered material:

- a. configuration or number of lots;
- b. road layout;
- c. water and/or septic proposals;
- d. configuration of park land or open spaces;
- e. easement provisions; and
- f. designated access.

A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the planning board or the subdivision administrator the subdivider may appeal the decision to the governing body. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material. The 35-working day review period is suspended until the governing body decision on the appeal is made. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall require the subdivision application and preliminary plat to be resubmitted. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the 35-working day review period resumes as of the date of the decision. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 35-working day review period provided.

13.06.100 First Minor Subdivision Final Plat. The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements.

13.06.110 Subsequent Minor Subdivisions. A Subsequent Minor Subdivision is any subdivision with five or fewer lots that is not a first minor subdivision. Subsequent minor subdivisions shall be reviewed as major subdivisions. All the requirements and procedures of these ordinances must be followed for subsequent minor subdivisions. However, a park dedication is not required.

Chapter 13.08
REVIEW AND APPROVAL PROCESS
FOR MAJOR SUBDIVISIONS

Sections:

13.08.010	Major Subdivisions
13.08.020	Subdivision Application and Preliminary Plat Submittal
13.08.030	Time Period for Approval, Conditional Approval, or Denial
13.08.040	Public Hearing – Notice and Procedures
13.08.050	Planning Board Hearing, Consideration and Recommendation
13.08.060	Subdivider's Preference for Mitigation
13.08.070	Subsequent Public Hearing
13.08.080	Governing Body Decision and Documentation
13.08.090	Amended Applications
13.08.100	Major Final Plats

13.08.010 Major Subdivisions. Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots, or subdivisions of five or fewer lots that do not otherwise qualify for review as first minor subdivisions under 76-3-609, MCA and these ordinances. The pre-application process and initial review process set forth in General Procedures apply to this section.

13.08.020 Subdivision Application and Preliminary Plat Submittal.

- a. The subdivider shall submit to the planning board or to the agent or agency designated by the governing body a subdivision application containing the materials identified herein and in the pre-application meeting.
- b. The requirement for preparing an environmental assessment, does not apply,
 1. The proposed subdivision is totally within an area covered by a growth policy adopted pursuant to sections 76-1-601 through 76-1-606, MCA; and
 2. The governing body has adopted zoning ordinances pursuant to sections 76-2-301 through 76-2-328, MCA and
 3. The governing body has adopted a strategy for development, maintenance, and replacement of public infrastructure pursuant to section 76-1-601(3)(e), MCA.
- c. The planning board (or governing body where no planning board exists) may waive the requirement for preparing any portion of the environmental assessment when the proposed subdivision is in an area covered by a growth policy adopted pursuant to sections 76-1-601 through 76-1-606, MCA, and the proposed subdivision will be in compliance with the policy.
- d. When an exemption from preparing any portion of the environmental assessment is sought, the applicant shall meet with the planning board, explain why the exemption is appropriate, and if granted the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the preliminary plat of the subdivision when it is submitted for review and shall be filed with the final plat.

13.08.030 Time Period for Approval, Conditional Approval, or Denial. Within 60 working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to these ordinances, unless the subdivider and the planning board or the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to these ordinances. A subdivision application is deemed submitted for review, and the 60-working day period begins when the planning board or the subdivision administrator notifies the subdivider or the subdivider's agent, in writing, that the application contains sufficient information to conduct the review. Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 60-working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the planning board or the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

13.08.040 Public Hearing – Notice and Procedures. The planning board shall hold a public hearing on the subdivision application when a hearing is required by these ordinances. The planning board shall give notice of the time, date and location of the hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. At least 15 days prior to the date of the hearing, the planning board shall give notice of the hearing by certified mail to the subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat. The planning board shall require that notice be posted at a conspicuous place on the site of the proposed subdivision.

13.08.050 Planning Board Hearing, Consideration and Recommendation. After the subdivision application is deemed to have all the required elements and to contain detailed, supporting information that is sufficient to allow for review, and the subdivision administrator has prepared a staff report, the planning board shall schedule and hold a public hearing on the subdivision application.

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application with the following:

- a. these ordinances, including but not limited to the standards set forth herein;
- b. applicable zoning ordinances;
- c. The MSPA, including but not limited to 76-3-608(3), as delineated herein of these ordinances; and
- d. other applicable ordinances.

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):

- a. the subdivision application and preliminary plat;
- b. the environmental assessment;
- c. the summary of probable impacts and mitigation ;
- d. an officially adopted growth policy;
- e. information provided at public hearing(s);
- f. subdivision administrator's staff report and recommendation; and
- g. any additional information authorized by law.

Within 10 working days after the public hearing, the planning board shall submit the following in writing to the subdivider and the governing body:

- a. recommended findings of fact based on the evidence above that discuss and consider the subdivision's compliance with and impact on these ordinances; and
- b. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;
- c. a recommendation for approval or denial of any requested variances; and
- d. a finding as to whether any public comments or documents presented for consideration at the planning board's public hearing constitute information or analysis of information that the public has not had a reasonable opportunity to examine and on which the public has not had a reasonable opportunity to comment.

The planning board or planning staff shall collect public comment regarding the water and sanitation information required by the MSPA and these ordinances. The planning board shall forward all comments regarding water and sanitation to the governing body.

13.08.060 Subdivider's Preference for Mitigation. No later than two working days before the meeting or hearing at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference.

13.08.070 Subsequent Public Hearing. The governing body shall determine whether public comments or documents presented for consideration at the public hearing constitute either:

- a. information or analysis of information that was presented at the planning board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or

- b. new information or analysis of information that has never been submitted as evidence or considered by the planning board, in which case the governing body shall proceed as set forth below.

If the governing body determines that public comments or documents presented at the public hearing constitute new information or an analysis of information regarding the subdivision application that the public has not had a reasonable opportunity to examine and on which the public has not had a reasonable opportunity to comment, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision.

If the governing body determines the information or analysis of information is either not relevant or not credible, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information.

If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall direct the planning board to schedule a subsequent public hearing.

The planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

New information or analysis of information is considered to be credible if it is based on one or more of the following:

- a. physical facts or evidence;
- b. corroborated personal observations;
- c. evidence provided by a person with professional competency in the subject matter;
or
- d. scientific data.

If a subsequent public hearing is held pursuant to subsection above, it must be held within 45 days of the governing body's determination request a subsequent hearing. Only the new information or analysis of information shall be considered at the subsequent public hearing.

Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider and each adjoining

landowner to the land included in the preliminary plat. The governing body shall require the notice be posted at a conspicuous place on the site of the proposed subdivision.

If a subsequent public hearing is held, the 60-working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60-working day review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

13.08.080 Governing Body Decision and Documentation. The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- a. provides easements for the location and installation of any planned utilities;
- b. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- c. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by these ordinances;
- d. assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth herein have been considered and will be accomplished before the final plat is submitted;
- e. assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth herein have been considered and will be accomplished before the final plat is submitted; and
- f. provides for the appropriate park dedication or cash-in-lieu.

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider whether the proposed subdivision complies with:

- a. these ordinances, including, but not limited to, the standards set forth herein;
- b. applicable zoning ordinances;
- c. other applicable ordinances;
- d. the MSPA, including but not limited to the following impacts:
 1. impact on agriculture
 2. impact on agricultural water user facilities
 3. impact on local services
 4. impact on the natural environment

5. impact on wildlife and wildlife habitat;
6. impact on public health and safety; and
- e. proposed mitigation.

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider and weigh the following, as applicable:

- a. the subdivision application and preliminary plat;
- b. the environmental assessment;
- c. the summary of probable impacts and mitigation;
- d. an officially adopted growth policy;
- e. comments, evidence and discussions at the public hearing(s);
- f. subdivision administrator's staff report and recommendations;
- g. planning board recommendation; and
- h. any additional information authorized by law.

Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other ordinances.

For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.

For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body shall condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.

The governing body shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the

subdivision application and preliminary plat.

The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the preceding subsections.

When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:

- a. contain information regarding the appeal process for the denial or imposition of conditions;
- b. identify the ordinances and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
- c. provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
- d. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
- e. set forth the time limit for approval, pursuant to subsection (f) below.

Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.

At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year. The governing body may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the governing body and the subdivider as provided herein.

After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

13.08.090 Amended Applications. If the subdivider changes the subdivision application or preliminary plat after the planning board or the subdivision administrator makes a determination

of sufficiency but before the Planning Board hearing, the subdivider shall submit the amended application to the planning board or the subdivision administrator for review.

Within 5 working days of receiving the amended application or preliminary plat, the planning board or the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material. The 60-working day review period is suspended while the planning board or the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material. If the planning board or the subdivision administrator determines the changes are not material, the 60-working day review period resumes when the planning board or the subdivision administrator mails notice of the decision to the subdivider. If the planning board or the subdivision administrator determines the changes are material, the planning board or the subdivision administrator shall either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or proceed with the 60-working day review period upon certification from the planning board or the subdivision administrator that the application is sufficient for review.

If the subdivider changes the subdivision application or preliminary plat after the Planning Board hearing but before the governing body hearing, the subdivider shall submit the amended application or preliminary plat to the planning board or the subdivision administrator for review. Within 5 working days of receiving the amended application or preliminary plat, the planning board or the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material. The 60-working day review period is suspended while the planning board or the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material. If the planning board or the subdivision administrator determines the changes are not material, the 60-working day review period resumes when the planning board or the subdivision administrator mails notice of the decision to the subdivider. If the planning board or the subdivision administrator determines the changes are material, the planning board or the subdivision administrator shall either require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and may require payment of a new application fee; or schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the planning board or the subdivision administrator's determination to schedule a new planning board hearing shall be provided as set forth in section IV-A-3. A supplemental staff report shall be prepared to address the changes to the original application.

If a new Planning Board hearing is held pursuant to above, the 60-working day review period is suspended for the time period between notice of the planning board or the subdivision administrator's determination and 10 working days after the date of the second planning board hearing.

By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided.

The following changes, although not an exhaustive list, may be considered material:

- a. configuration or number of lots;
- b. road layout;

- c. water and/or septic proposals;
- d. configuration of park land or open spaces;
- e. easement provisions; and
- f. designated access.

A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the planning board or the subdivision administrator may appeal the planning board or the subdivision administrator's decision to the governing body by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material. The 60-working day review period is suspended until the governing body decision on the appeal is made.

If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision application should be resubmitted or scheduled for rehearing in front of the planning board pursuant to subsections (b)(iv)(A) or (B).

If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the 60-working day review period resumes as of the date of the decision.

By appealing the decision of the planning board or the subdivision administrator, the subdivider agrees to suspension of the 60-working day review period provided in subsection (i) above.

13.08.100 Major Final Plats. The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements.

Chapter 13.10
Divisions of Land Exempt from Review

Sections:

13.10.010	Purpose
13.10.020	General Criteria to Determine Whether a Proposal is an Attempt to Evade the MSPA
13.10.030	Divisions of Land Entirely Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act
13.10.040	Divisions of Land Which May be Exempt from Review and Surveying
13.10.050	Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations
13.10.060	Relocation of Common Boundary
13.10.070	A Gift or Sale to a Member of the Immediate Family
13.10.080	Divisions of Land Proposed for Agricultural Use Only
13.10.090	Relocation of Common Boundaries Involving Platted Subdivisions
13.10.100	Procedures and Review of Subdivision Exemptions
13.10.110	Review
13.10.120	Appeals
13.10.130	Remaining Parcels of Land
13.10.140	Identification Codes

13.10.010 Purpose. The MSPA provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3. These regulations address the more commonly used exemptions.

13.10.020 General Criteria to Determine Whether a Proposal is an Attempt to Evade the MSPA. The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading the MSPA, shall consider all of the surrounding circumstances. These circumstances include the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

13.10.030 Divisions of Land Entirely Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act. The governing body will examine the divisions of land set forth in this section to determine whether or not the requirements of the MSPA and these regulations apply to the division. The fee for this examination is set forth in the schedule of fees of the Ordinance Book Appendix. The requirements of these regulations and the MSPA do not apply unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, or as otherwise specifically provided, when:

A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30. Before a court of record orders a division of land, the court shall notify the governing body of the pending division and allow the governing body to present written comments on the subdivision.

A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.

This exemption applies:

- a. to a division of land of any size;
- b. if the land that is divided is only conveyed to the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of the MSPA and these regulations; and
- c. to a parcel that is created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the provisions of the MSPA and these regulations.
 1. Under policies by 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 person who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.
 2. This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed lot.
 3. This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a small parcel of the tract because the smaller tract is required as security for a building construction loan.
 4. When this exemption is to be used, the landowner must submit to the planning board or the subdivision administrator:
 - A. a statement of how many interests within the original tract will be created by use of the exemption;
 - B. the deed, trust indenture or mortgage for the exempted interest (which states that the interest is being created only to secure a construction mortgage, lien or trust indenture);
 - C. a statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted interest is conveyed; and
 - D. a signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

- a. it will create more than one new building site;
- b. the financing is not for construction or improvements on the exempted parcel, or for re-financing;
- c. the person named in the "statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed" is anyone other than the borrower of funds for construction;
- d. title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
- e. there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
- f. it appears that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose; or
- g. the division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.

A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

A division of land creates cemetery lots;

A division of land is created by the reservation of a life estate;

A division of land is created by lease or rental for farming and agricultural purposes;

A division of land is in a location over which the state does not have jurisdiction; or

A division of land is created for public rights-of-way or public utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these ordinances.

13.10.040 Divisions of Land Which May be Exempt from Review and Surveying. Generally condominiums are subject to review as subdivisions, but under certain circumstances they may be exempt from review, provided they are constructed on land divided in compliance with these ordinances and the MSPA, and the approval of the original division of land expressly contemplated the construction of the condominiums and 76-3-621, MCA, is complied with; or the condominium proposal is in conformance with applicable zoning ordinances.

Generally, subdivisions created by rent or lease are exempt from the surveying and filing requirements of the MSPA and these ordinances, but must be submitted for review and approved by the governing body before portions may be rented or leased.

When the land upon which an improvement is situated has been subdivided in compliance with the MSPA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the MSPA or these ordinances.

The sale, rent, lease, or other conveyance of one or more parts of a building, structure or other improvement, whether existing or proposed, is not a division of land and is not subject to the requirements of the MSPA or these ordinances.

A division of state-owned land is not subject to the MSPA or these ordinances unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

The MSPA and these ordinances do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.

Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA and these ordinances. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. [44 A.G. Op. 25 (1992)]. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

13.10.050 Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Ordinances. Unless the method of disposition is adopted for the purpose of evading these ordinances or the MSPA, the following divisions of land are not subdivisions under these ordinances and the MSPA, but are subject to the surveying requirements of 76-3-401, MCA, and zoning ordinances adopted under Title 76 chapters 2 or 3. A division of land may not be made under this section unless the County Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid. The Clerk and Recorder shall notify the subdivision administrator if a land division described in this section or 76-3-207(1), MCA, is submitted to the Clerk and Recorder prior to the survey being submitted to the subdivision administrator for evasion review.

13.10.060 Relocation of Common Boundary. The intended purpose of this exemption is to allow a change in the location or the elimination of a boundary line between adjoining properties outside of a platted subdivision and to allow a one-time transfer of a tract to effect that relocation or elimination without subdivision review. Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification set forth in ARM 24.183.1104 (1)(f) [Appendix A] must be included on the certificate of survey. Certificates of survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected. The proper use of

the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.

The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if:

- a. the reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation; or
- b. the proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

13.10.070 A Gift or Sale to a Member of the Immediate Family. The intent of this exemption is to allow a landowner to convey one parcel outside of a platted subdivision to each member of his or her 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. The term "immediate family" means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts.

A certificate of survey (or recording of an instrument of conveyance) that uses this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance [ARM 24.183.1104(1)(f)]. Also, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.

One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under the MSPA and these ordinances. However, the use of the exemption may not create more than one new parcel per eligible family member.

Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading the MSPA. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the MSPA. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these ordinances. The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these ordinances.

13.10.080 Divisions of Land Proposed for Agricultural Use Only. This exemption is intended to allow a landowner to create a parcel for gift, sale, or agreement to buy and sell, outside a platted subdivision, without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it.

A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with 76-3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey. The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant.

"Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked.

The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA:

- a. The parties to the transaction 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. The covenant must be signed by the property owner, the buyer, and the members of the governing body.
- 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 have been or will be built on it.
- c. The parcel must meet the criteria for an agricultural designation under section 15-7-202, MCA.

13.10.090 Relocation of Common Boundaries Involving Platted Subdivisions. The MSPA allows certain revisions to subdivisions platted since July 1, 1973, which include relocation of common boundaries and the aggregation of lots for five or fewer lots within a platted subdivision or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision (but a restriction or requirement on either continues to apply), without review. If a change is made to a platted subdivision which results in an increase in the number of lots or redesigns or rearranges six or more lots, the governing body must review and approve the amended plat and an amended plat must be filed with the clerk and recorder. Relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision [76-3-207(1)(e), MCA] is allowed, because no additional parcels are created. Subdivision review is not necessary because the relocation does not create any additional division of land.

If the resulting lots are inconsistent with the approved subdivision and the uses in it, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA. If the resulting lots do not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

13.10.100 Procedures and Review of Subdivision Exemptions. Any person seeking exemption from the requirements of the MSPA shall submit to the planning board or the subdivision administrator (1) a certificate of survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the parcel under the contract-for-deed (ARM 24.183.1104)

13.10.110 Review. When a division of land for which an exemption is claimed is submitted to the planning board or the subdivision administrator, the planning board or the subdivision administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g., county attorney, sanitarian, treasurer, and clerk and recorder). The planning board or the subdivision administrator and governing body agents shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these ordinances.

Landowners or their agents are encouraged to meet with the planning board or the subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with the criteria in this chapter.

The planning board or the subdivision administrator shall make a written determination of whether the use of the exemption is intended to evade the purposes of the MSPA, explaining the reasons for the determination.

If the planning board or the subdivision administrator finds that the proposed use of the exemption complies with the statutes and the criteria set forth in this section, the planning board or the subdivision administrator shall notify the governing body and advise the clerk and recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the planning board or the subdivision administrator finds that the proposed use of the exemption does not comply with the statutes and the criteria in this chapter, the planning board or the subdivision administrator shall advise the clerk and recorder not to file or record the documents, and the materials will be returned to the landowner.

The planning board or the subdivision administrator shall consider all of the surrounding circumstances when determining whether an exemption is claimed for the purpose of evading the MSPA. These circumstances may include but are not limited to: the nature of the claimant’s business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

13.10.120 Appeals. Any person whose proposed use of an exemption has been denied by the planning board or the subdivision administrator because the proposed division of land has been deemed an attempt to evade the MSPA, and these ordinances, may appeal the planning board or the subdivision administrator's 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 MSPA or these ordinances, and, thereby rebut a presumption.

If the planning board or the governing body concludes that the evidence and information overcome the presumption that the exemption is being invoked to evade the MSPA or these ordinances, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the governing body has found not to be an attempt to evade the MSPA or these ordinances, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

If the person proposing to use an exemption chooses not to rebut a presumption when the planning board or the subdivision administrator deems the use of the exemption an attempt to evade the MSPA and these ordinances, or if the governing body determines that the proposed use of an exemption was for the purpose of evading the MSPA or these ordinances, the landowner proposing to use the exemption may submit a subdivision application for the proposed land division.

13.10.130 Remaining Parcels of Land. Occasionally parcels of land are created after the rest of the land has been subdivided or after an exemption is used to divide the land. The term "remainder" has been used to refer to that portion of an original tract which is not itself created for transfer but which is left after other parcels are segregated for transfer. A "remainder" less than 160 acres in size, contiguous to a proposed subdivision, will be considered a lot in that subdivision and will not evade review as a "remainder." If an exemption by a certificate of survey is used, the remaining tract of land is a separate parcel which must be surveyed. A landowner claiming that a parcel is a "remainder" shall present evidence that the parcel is in fact intended to be retained and not to be transferred. Examples of such evidence include the existence of the landowner's residence on the parcel or building plans for a structure to be built by or for the landowner.

13.10.140 Identification Codes. To assist in the implementation of this review process and to monitor those parcels by exemption the Clerk and Recorder may cause the following identification codes to be added to the numbering of recorded certificates of survey filed after the effective date of these ordinances.

CO ... Court order [76-3-201(1)(a), MCA]
ME ... Mortgage Exemption [76-3-201(1)(b), MCA]
LE ... Life Estate [76-3-201(1)(e), MCA]
RB ... Relocation of Common Boundary [76-3-207(1)(a), MCA]
FC ... Family Conveyance [76-3-207(1)(b), MCA]
AE ... Agricultural Exemption [76-3-207(1)(c), MCA]
OS ... Occasional Sale (used prior to April 6, 1993)
AL ... Aggregation of Lots [76-3-207(e), MCA]

Chapter 13.10
Design and Improvement Standards

Sections:

13.12.010	Conformance with Ordinances
13.12.020	Impacts of the Proposed Subdivision
13.12.030	Natural Environment
13.12.040	Lands Unsuitable for Subdivision
13.12.060	Improvement Design
13.12.070	Lots
13.12.080	Blocks
13.12.090	Streets and Roads
13.12.100	Drainage Facilities
13.12.110	Water Supply Systems
13.12.120	Sewage Treatment Systems
13.12.130	Solid Waste
13.12.140	Utilities
13.12.150	Water Course and Irrigation Easements
13.12.160	Disposition of Water Rights
13.12.170	Park Land Dedication – Cash in Lieu – Waivers – Administration
13.12.180	Fire Protection
13.12.190	Noxious Weeds.

13.12.010 Conformance with Ordinances. The design and development of a subdivision must conform with any applicable zoning or other ordinances.

13.12.020 Impacts of the Proposed Subdivision.

Impacts on Agriculture. Proposed subdivisions shall mitigate adverse impacts on agriculture by meeting or exceeding the following design standards:

- a. Prime agricultural lands on adjacent properties will be protected from adverse impacts by requiring that a 200 ft open space buffer be established between any structures and adjacent prime agricultural lands.
- b. Prime agricultural lands located on the site will be protected from adverse impacts by requiring that at least 30% of the property be maintained as open space.
- c. Open space shall consist primarily of lands designated as prime agricultural lands.
- d. Open space will be protected in perpetuity through a conservation easement;
- e. Open space may contain dedicated parkland, wildlife, river, and stream buffers, and up to 1/3 of open space areas may be used for community water and community wastewater systems. 100-year Floodplains and hillsides with slopes greater than 25% must be subtracted from the total amount of required open space.
- f. Protected lands will be clustered so that they abut neighboring open lands;
- g. The development will include a weed plan adopted by the County for the management of weeds within buffer, open space, and yards.

Impact on agricultural water user facilities. Proposed subdivisions shall mitigate adverse impacts on agriculture water user facilities by meeting or exceeding the following design standard: the development shall be consistent with the provisions of 76-3-504, MCA;

Impact on local services. Proposed subdivisions shall mitigate adverse impacts on local services by meeting or exceeding the following design standards:

- a. Whenever feasible, all streets and alleys shall connect to other streets within the neighborhood/development and connect to existing or projected through streets, as part of an interconnected street network, outside of the development;
- a. All streets will be aligned in accordance with the local government's transportation plan and the developer will either develop planned arterials and collectors in accordance with transportation plans or donate right of way for arterials and collectors in accordance with transportation plans;
- b. The development shall meet the road standards established in the subdivision ordinances;
- c. All developments shall waive their right to protest the creation of an special improvement districts or road improvement district; and
- d. All Developments shall have safe and adequate access on county roads or state or federal highways within the traffic impact area of the development. Safe and adequate access exists when traffic volumes do not exceed the capacity of the road; when operating conditions on the road and at intersections do not fall below the specified or existing level of service (LOS); and when paved and unpaved sections and structures can accommodate projected traffic. If a LOS is not specified for any road section within the traffic impact area then the applicant shall work with the County to identify the existing LOS. Traffic impact area at a minimum must include:
 1. Internal roads;
 2. Adjacent roads;
 3. Off-site roads to the nearest county collector or arterial road or state or federal highway;
 4. Off-site roads where traffic from the development will account for at least ten percent of the average daily traffic on those roads; and
 5. Intersections where traffic from the proposed development will account for at least five percent of the traffic volume on any approach leg of the intersection.

If safe and adequate access cannot be provided or maintained within the traffic impact area, as a result of the proposed development's projected traffic, then in order to mitigate those impacts the developer shall either construct the necessary improvements to ensure safe and adequate access or provide payment in lieu to the applicable department to cover the costs of the

constructing the improvements necessary to ensure safe and adequate access.

Impact on natural environment. Proposed subdivisions shall mitigate adverse impacts on the natural environment by meeting or exceeding the following design standards:

- a. All structures and roads shall meet the applicable setback standard (i.e., distance from the ordinary high water mark of the water body and any structures) and vegetated buffer standard, in which existing native species may not be removed. Setback distances shall be measured from the ordinary high water mark of the water body and no structure shall be allowed within the setback area:
 1. Type I watercourses as defined under MCA 23-2-301 - 250 ft setback, 100 ft buffer;
 2. Type II watercourses, generally defined as all main tributaries of type I water courses - 200 ft setback, 75 ft buffer;
 3. Type III watercourses, generally defined as all tributaries of type II watercourses; all intermittent streams; and reservoirs - 100 ft setback, 50 ft buffer;
 4. Type IV watercourses, which for these purposes are considered drainage channels capable of carrying or collecting stormwater and snowmelt runoff, and irrigation district canals - 50 ft setback, 30 ft buffer;
 5. Within a designated urban growth area - 75 ft setback, 30 ft buffer.
- b. The following minimum buffer areas must be establish from the boundary of a wetland identified by the County, the Army Corps of Engineers, U.S. Fish and Wildlife Service, DNRC, or FWP. If the subdivision application reveals a potential wetland on the site then the applicant is responsible for delineating the wetland's boundaries on maps, plats, and site plans submitted as part of the subdivision application. Buffers from wetland boundaries within which structures and improvements may not be built, except for those for educational or scientific purposes, include:
 1. Wetlands of one acre or less - 50 ft;
 2. Wetlands of more than one acre - 100 feet

Impacts on wildlife and habitat. Proposed subdivisions shall mitigate adverse impacts on wildlife and wildlife habitat by meeting or exceeding the following design standards:

- a. Critical wildlife habitat and corridors will be protected from adverse impacts by requiring that a 200 ft open space buffer be established between any structures and any critical wildlife habitat and corridors;
- b. Open space will be protected in perpetuity;
- c. Protected lands will be clustered so that they abut neighboring open lands; and

- d. The development will include a weed plan adopted by the County for the management of weeds on the buffer, open space, and yards.

Impacts on public health and safety. Proposed subdivisions shall mitigate adverse impacts on public health and safety by meeting or exceeding the following design standards:

- a. No structure shall be located within the 100-year floodplain;
- b. No mixing zone from a septic or other wastewater treatment system shall be permitted to cross the development's property line;
- c. Subsequent minor and major subdivisions shall provide substantial and credible evidence that the cumulative impact of all of the water supply systems that will be used to supply the development will not harm any existing senior water rights.

For developments that will be served by community water supply systems, the governing body may require that the subdivider receive a water right prior to final plat approval;

For developments that will be served by single family wells that produce less than 35 gallons per minute, the subdivider must provide substantial and credible evidence that the cumulative impact of all the wells together as a connected system will not harm any existing senior water rights; or

Developments that will be served by public water supply systems do not need to show any additional evidence other than DEQ approval before final plat approval.

Subsequent minor and major subdivisions that will have an adverse impact may be denied approval by the governing body or the governing body shall require the subdivider and subsequent owners to disclose to potential buyers that "police, fire, and emergency services cannot respond within 5 minutes for 90% of all emergencies that might take place within this development" until such time as the subdivider or subsequent owners can demonstrate to the town that police, fire, and emergency services can respond within 5 minutes for 90% of all emergencies that might take place at the development.

The governing body may impose additional conditions to mitigate adverse impacts on public health or safety that may result from the proposed subdivision or associated improvements.

13.12.030 Natural Environment. The design and development of subdivisions must provide satisfactory building sites, which are properly related to topography, and should, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and other existing vegetation.

13.12.040 Lands Unsuitable for Subdivision. Land that the governing body determines is unsuitable for subdivision because of natural or human caused hazards may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

13.12.050 Floodplain Provisions. Land located in the floodway of a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the governing body to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by

state or local floodplain or floodway ordinances. If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide in detail to the floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation, a flood hazard evaluation, including the calculated 100 year frequency water surface elevations and/or 100 year floodplain boundaries. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. After the floodplain Management Section of the Water Resources Division has prepared a report delineating the floodway, the subdivider must submit it to the planning board (or subdivision administrator) along with the Environmental Assessment required for the preliminary plat. This requirement is waived if the subdivider contacts the Water Resources Division and that agency states in writing that available data indicate that the proposed subdivision is not in a flood hazard area.

13.12.060 Improvement Design. Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared by a professional engineer or a professional land surveyor as their respective licensing laws allow in accordance with the MSPA and these ordinances.

13.12.070 Lots. Each lot must contain a satisfactory building site and conform to health department regulations, applicable zoning ordinances and these ordinances. No lot may be divided by a municipal or county boundary line. No lot may be divided by a public road, alley or utility right-of-way or easement. Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary access to a lot. Corner lots must have driveway access to the same street or road that provides access to interior lots. Corner lots must be designed to provide acceptable sight distances for safe vehicular movement. No lot may have an average depth greater than three times its average width. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines. Through lots are prohibited except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

13.12.080 Blocks. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography. Unless impractical, block length must not be more than 1,600 feet. Blocks must be wide enough to allow for two tiers of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the governing body approves a design consisting of irregularly shaped blocks indented by cul-de-sacs. Rights-of-way for adequate and safe pedestrian access, at least 10 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

13.12.090 Streets and Roads. The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them. Roads must meet the design specifications in Table 1 as well as the road profiles adopted by the Town. Where streets terminate, either a cul-de-sac or "T" turnaround must be provided at the terminus. Cul-de-sacs and "T" turnarounds must conform to the design

specifications in Table 1. All streets must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners' association. Residential driveways must not have direct access to primary highways. Any vehicular access onto a state highway must be approved by the Montana Department of Transportation. Local streets must be designed so as to discourage through traffic.

Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the governing body may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.

Half streets are prohibited except when they are essential to the development of the subdivision and when the governing body is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.

The alignment of all streets and roads must provide adequate sight distances.

Intersections. The following requirements apply to intersections:

- a. streets must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.
- b. two streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.
- c. no more than two streets may intersect at one point.
- d. intersections of local streets with major arterials or highways must be avoided.
- e. intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.
- f. hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.
- g. the grade of approaches to major highways may not exceed five percent.

Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names.

Proposed road plans and profiles as required are subject to approval by the Public Works director.

All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in accordance with the specifications and standards prescribed in these ordinances using materials approved by the governing body. Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Subgrades must

be properly rolled, shaped, and compacted, and must be approved by the governing body. Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and storm drains.

Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of Table 1.

Easements must be granted by each property owner in a signed and notarized document. The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the governing body.

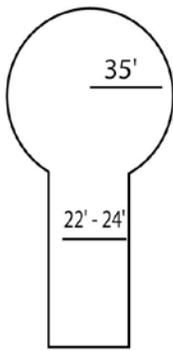
Street lights will be required in subdivisions proposed within or adjacent to areas with existing street lighting. Street lighting may be required in other areas when necessary to protect public safety.

Street or road signs and traffic control devices of the size, shape, and height approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the *Manual on Uniform Control Devices* available from the Montana Department of Transportation.

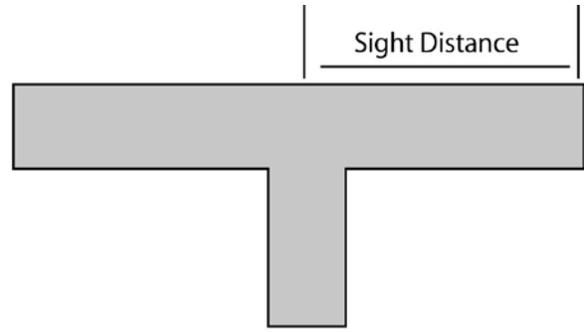
When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.

TABLE 1: Road Design Standards for Subdivisions

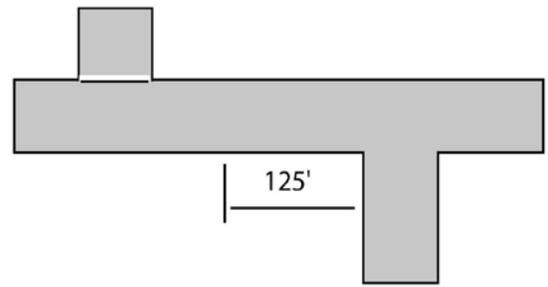
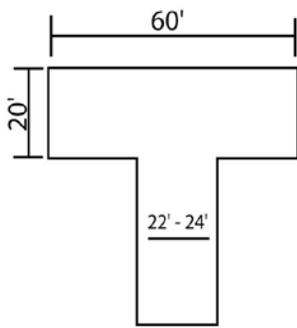
Minimum Design Standards		Minor Collector	Local Road
1.	Minimum right-of-way width	60 ft.	
a.	level terrain		50 ft.
b.	hilly terrain		60 ft.
2.	Minimum roadway width	26 ft.	24 ft.
3.	Minimum curb radius or edge of pavement at intersections	25 ft.	15 ft.
4.	Maximum grades	8%	10%
5.	Approaches onto Public Roads		
a.	minimum sight distance	200 ft.	150 ft.
b.	minimum width	35 ft.	30 ft.
c.	maximum grade for 20'	5%	5%
6.	Curvature		
a.	design speed	30 mph	20 mph
b.	maximum curve	23	53.5
c.	minimum radius	249 ft.	107 ft.
7.	Cul-de-sacs/Turnarounds		
a.	maximum road length	-	1000 ft.
b.	cul-de-sac: minimum outside right-of-way radius	-	40 ft.
c.	cul-de-sac: minimum outside roadway radius	-	35 ft.
d.	"T" turnaround: backup lengths (2 required)	-	30 ft. each
8.	New bridges		
a.	curb-to-curb widths	26 ft.	24 ft.
b.	design load capacity	20 tons	20 tons
c.	vertical clearance	4.5 ft.	14.5ft.



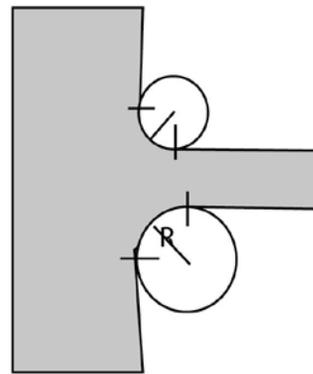
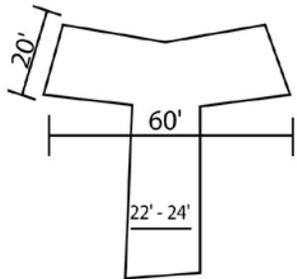
Cul-de-sac



Sight Distance



Intersection Offset



Curb Radius

13.12.100 Drainage Facilities. The drainage system and facilities required for any surface run-off affecting the subdivision are subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size must also be reviewed and approved under Title 76, Chapter 4, MCA, by the DEQ. A grading and drainage plan as required is subject to approval by the Public Works Director or Road Department Superintendent. . Curbs and gutters or swales will be required based on the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.

Culverts and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other drainage facilities must be large enough to accommodate potential run-off from upstream drainage areas.

The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate widths. Drainage systems must not discharge into any sanitary sewer facility. Drainage systems must be designed and certified by a professional engineer. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.

13.12.110 Water Supply Systems. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the Montana DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.303, and 17.36.305. By this reference these DEQ standards are incorporated into and made a part of these ordinances. Unless defined elsewhere in these ordinances, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101. The governing body may not approve the final plat of a subdivision containing lots of less than 20 acres in size, unless the subdivision has been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA. Any central water supply system must provide adequate and accessible water for fire protection.

13.12.120 Sewage Treatment Systems. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of disposing of sewage from each lot in the subdivision must comply with the design standards adopted by the DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.312, and 17.36.320 through 17.36.326. By this reference these DEQ standards are incorporated into and made a part of these ordinances. Unless defined elsewhere in these ordinances, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101. For subdivisions that will create one or more parcels containing less than 20 acres, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA before the governing body can approve the final plat. For subdivisions containing parcels containing 20 acres or more, the subdivider shall have demonstrated that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot before the governing body may approve the

final plat.

13.12.130 Solid Waste. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method must comply with the standards adopted by the DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.309. By this reference this DEQ standard is incorporated into and made a part of these ordinances. Unless defined elsewhere in these ordinances, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101. Before the governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101, et seq., MCA. For subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres, the proposed method of storing and disposing of solid waste generated within the subdivision in the subdivision must comply with the local environmental health department regulations.

13.12.140 Utilities. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision. Utilities must be placed underground, wherever practical. Underground utilities, if placed in a street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Underground facilities must be installed after the street has been brought to grade and before it is surfaced. Where practical, overhead utility lines must be located at the rear property line. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line. Utility easements must be 15 feet wide unless otherwise specified by a utility company or governing body. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway department. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

“The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as ‘Utility Easement’ to have and to hold forever.”

13.12.150 Water Course and Irrigation Easements. Except as noted below, the subdivider shall establish within the subdivision ditch easements that:

- a. are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

- b. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
- c. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

The subdivider need not establish irrigation easements as provided above if:

- a. the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
- b. the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and
- c. the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the county clerk and recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

13.12.160 Disposition of Water Rights. If a subdivision will create lots averaging less than five acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:

- a. reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;
- b. if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
- c. reserved and severed all surface water rights from the land proposed for subdivision.

13.12.170 Park Land Dedication – Cash in Lieu – Waivers – Administration. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:

- a. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- b. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
- c. 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
- d. 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.

A park dedication is not required for:

- a. minor subdivisions;
- b. subdivision lots larger than five acres;
- c. nonresidential subdivision lots;
- d. subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
- e. subdivisions which will create only one additional parcel.

The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.

The governing body will waive the park dedication requirement if it determines that:

- a. the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and
- b. the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required;
- c. the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and the provision of this long-term protection will result in the reduction of

the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated;

- d. the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections above, is reduced by an amount equal to or exceeding the area of the dedication required; or
- e. the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required.

The local governing body may waive the park dedication requirement if the subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and the area of land to be subject to long-term protection equals or exceeds the area of dedication required

Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided to a school district, adequate to be used for school facilities or buildings.

The governing body will administer funds dedicated to the public under this section in accordance with 76-3-621, MCA.

For the purposes of this park dedication requirement:

- a. "cash donation" means the fair market value of the unsubdivided, unimproved land; and
- b. "dwelling unit" means a residential structure in which a person or persons reside.

13.12.180 Fire Protection. All subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, and forested areas. Measures must include:

- a. The placement of structures so as to minimize the potential for flame spread and to permit adequate access for fire fighting equipment.
- b. The presence of adequate fire fighting facilities on site, including an adequate water supply and water distribution system.
- c. The availability, through a fire protection district or other means, of fire protection services adequate to respond to fires that may occur within a subdivision.

13.12.190 Noxious Weeds. A weed control plan shall be developed and implemented for every new subdivision. An agreement with the [name of county] Weed Control Board shall be signed and notarized by the subdivider, and the agreement must be recorded with the final plat.

Chapter 13.14
Land Subdivisions Created by Rent or Lease

Sections:

13.14.010	Definition
13.14.020	Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes
13.14.030	Procedures for Review
13.14.040	Improvements
13.14.050	Final Plan Review
13.14.060	DPHHS License
13.14.070	Design Standards for Subdivision Spaces Created by Rent or Lease
13.14.080	Additional Provisions
13.14.090	Mobile/Manufactured Home Park Standards
13.14.100	Streets
13.14.110	Electrical Systems
13.14.120	Gas Systems
13.14.130	Recreational Vehicle Park Standards

13.14.010 Definition. A subdivision created by rent or lease, including a mobile home/manufactured home or recreational vehicle park, is any tract of land divided by renting or leasing portions of it. The land is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common). Plans, not plats, are submitted to the planning board or the subdivision administrator for review. The plan shows spaces, not lots. The plan must comply with applicable zoning.

13.14.020 Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes.

Recreational Camping Vehicles. Developments which are subject to subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under section VII-F Recreational Vehicle Park Standards, below.

Mobile/Manufactured Homes. Developments which are subject to subdivision review because they will provide two or more spaces for mobile/manufactured homes will be reviewed under this chapter.

Subdivisions for Lease or Rent. Land subdivision created by rent or lease will be reviewed under the procedures described in Chapter 13.08 Major Subdivisions, or Chapter 13.06 Minor Subdivisions, as may be appropriate, except that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat, following the Final Plat procedure.

Land subdivisions created by rent or lease are subject to the applicable standards contained in these chapters.

13.14.030 Procedures for Review. Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes and subdivisions created for rent or lease are exempt from the surveying and filing requirements of the MSPA. However, these subdivisions must be submitted for review and approved by the governing body before portions of the

subdivision may be rented or leased. The subdivider shall submit a completed application in accordance with Chapter 13.04 and a plan of the proposed development, conforming to the requirements for preliminary plats.

The procedure used to review subdivisions for rent or lease will depend on the number of spaces within the proposed subdivision. Proposed subdivisions containing six or more spaces must be reviewed pursuant to Chapter 13.08 of these ordinances. Proposed subdivisions containing five or fewer spaces must be reviewed pursuant to Chapter 13.06 of these ordinances. The subdivider shall submit to the subdivision administrator the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the space layout and the proposed location of the mobile home, recreational vehicle, or other unit on the land included in the plan.

13.14.040 Improvements. The subdivider shall install all required improvements before renting or leasing any portion of the subdivision. The governing body or its agents will inspect all required improvements in order to assure conformance with the approved construction plans and specifications.

13.14.050 Final Plan Review. In lieu of filing a final plat, the subdivider shall submit a final plan to the subdivision administrator complying with the requirements of Final Plats in Section II. The final plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the (office of the city clerk, clerk and recorder, planning or other).

13.14.060 DPHHS License. If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also a “trailer court,” “work camp,” “youth camp,” or “campground” as those terms are defined in section 50-52-102, MCA, the governing body will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under Title 50, Chapter 52, MCA.

13.14.070 Design Standards for Subdivision Spaces Created by Rent or Lease. Subdivisions created by rent or lease must comply with the provisions of Chapter 13.12.

13.14.080 Additional Provisions.

The governing body may require provision for:

- a. storage facilities on the lot or in compounds located within a reasonable distance;
- b. a central area for storage or parking of boats, trailers, or other recreational vehicles;
- c. landscaping or fencing to serve as a buffer between the development and adjacent properties;
- d. an off-street area for mail delivery; and
- e. street lighting.

13.14.090 Mobile/Manufactured Home Park Standards. Mobile/manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes. All mobile/manufactured homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park. The mobile/manufactured home pad must be located at least 10 feet from the street that serves it. The size of the mobile/manufactured home pad must be suitable for the general market to be served and must fit the dimensions of mobile/manufactured homes anticipated. A mobile/manufactured home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space. The governing body may require that the mobile/manufactured home pad be improved to provide adequate support for the placement and tie-down of the mobile home.

No mobile/manufactured home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures. No detached structure, such as a storage shed, may be located within five feet of any mobile/manufactured home or its attached structures. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile/manufactured home space. The driveway must be located to allow for convenient access to the mobile/manufactured home, and be a minimum of 10 feet wide. One guest parking space must be provided for each 10 mobile/manufactured home spaces. Group parking may be provided.

The limits of each mobile/manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.

Each mobile/manufactured home must be skirted within 30 days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire-resistant material similar to that of the mobile/manufactured home exterior.

13.14.100 Streets. Streets within a mobile/manufactured home park must meet the standards specified in Chapter 13.12. Streets must be designed to allow safe placement and removal of mobile homes. Streets must be designed to provide safe access to public roads. Roads within the mobile/manufactured home park must be designed to provide safe traffic circulation and parking. One-way roads must be at least 15 feet wide; two-way roads must be at least 24 feet wide.

13.14.110 Electrical Systems. Electrical systems must be designed and installed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installations must be designed and constructed in accordance with the applicable state electrical standards.

13.14.120 Gas Systems. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the applicable provisions of the "National Fuel Gas Code" (NFPA Pamphlet 54-1981) and the "Standard for the Storage and Handling of Liquefied Petroleum Gases" (NFPA Pamphlet 58-1981). A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to

the point of connection of the liquefied petroleum gas container. Each mobile/manufactured home lot must have an accessible, listed gas shutoff installed. This valve must not be located under a mobile home. Whenever the mobile home lot gas outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

13.14.130 Recreational Vehicle Park Standards. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking. Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle. No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way. The density of a recreational vehicle park must not exceed 25 recreational vehicle spaces per acre of gross site area.

Chapter 13.16
Condominiums

Sections:

13.16.010	Procedures
13.16.020	Review Where Land Will Not be Divided
13.16.030	Condominium Subdivisions Involving Land Divisions
13.16.040	Standards
13.16.050	Unit Ownership Act

13.16.010 Procedures. Unless exempted by section 76-3-203, MCA, all condominium developments are subdivisions subject to the terms of the MSPA as follows:

13.16.020 Review Where Land Will Not be Divided. If no division of land will be created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Subdivisions Created by Rent or Lease, with the following exception: final approval will not be given until the subdivider has either installed all required improvements, or has entered into a subdivision improvements agreement.

13.16.030 Condominium Subdivisions Involving Land Divisions. If a proposed condominium development will involve a division of land, the subdivision must be reviewed under the procedures contained in Chapter 13.08 and 13.04 for sections applicable to final plats.

13.16.040 Standards. Condominium developments must comply with applicable standards contained in Chapter 13.12 Design and Improvement Standards.

13.16.050 Unit Ownership Act. Condominium developments must comply with all provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-703, MCA.

Chapter 13.18
Administrative Provisions

Sections:

13.18.010	Fee Schedule
13.18.020	Variances
13.18.030	Variances from Floodway Provisions Not Authorized
13.18.040	Procedure for Variance
13.18.050	Amendment of Ordinances
13.18.060	Administration
13.18.070	Violation and Penalties
13.18.080	Appeals
13.18.090	Adoption of Uniform Standards for Monumentation, Certificates of Survey, and Final Subdivision Plats

13.18.010 Fee Schedule. The fee schedule for all reviews, inspections and variances is found at the Appendix to Ordinances and may from time to time be amended by resolution of the town council.

13.18.020 Variances. The governing body may grant variances from Chapter 13.12 Design and Improvement Standards, of these ordinances when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these ordinances.

The governing body will not approve a variance unless it finds that:

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the ordinances will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self imposed;
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not place the subdivision in nonconformance with any adopted zoning ordinances.

13.18.030 Variances from Floodway Provisions Not Authorized. The governing body will not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

13.18.040 Procedure for Variance. The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The

planning board will consider the requested variance and recommend its approval or denial to the governing body. In granting variances, the governing body may impose reasonable conditions to secure the objectives of these ordinances. When a variance is granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

13.18.050 Amendment of Ordinances. Before the governing body amends these ordinances it will hold a public hearing on the proposed amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation in the county not less than 15 days or more than 30 days before the date of the hearing.

13.18.060 Administration. Except as provided in 76-3-303, MCA, and these ordinances, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the MSPA and these ordinances. The cost of this action shall be imposed against the party not prevailing.

13.18.070 Violation and Penalties. Any person, firm, corporation, or other entity who violates any of the provisions of the MSPA or these ordinances is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these ordinances shall be deemed a separate and distinct offense.

13.18.080 Appeals. A person who has filed with the governing body an application for a subdivision under the MSPA and these ordinances may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a ordinance adopted pursuant to the MSPA that is arbitrary or capricious.

A party identified in subsection (d) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

The following parties may appeal as an aggrieved party:

- a. the subdivider;
- b. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
- c. the county commissioners of the county where the subdivision is proposed; and

d. the Town of Plains if a subdivision is proposed within 1 mile of its limits.

13.18.090 Adoption of Uniform Standards for Monumentation, Certificates of Survey, and Final Subdivision Plats. The Town of Plains hereby adopts the uniform standards for monumentation, certificates of survey and final subdivision plats as promulgated and stated in the model subdivision regulations and as adopted for filing by Sanders County.

TITLE 14 - PUBLIC WAYS AND PROPERTY

Chapters:

14.02 REGULATION OF ENCROACHMENTS

14.04 GRAVEL PIT

Chapter 14.02
REGULATION OF ENCROACHMENTS

Sections:

14.02.010	Title
14.02.020	Scope
14.02.030	Definitions
14.02.040	Regulations
14.02.050	Projection and Clearance
14.02.060	Purpose

14.02.010 Title. This chapter shall be known as the "Town of Plains Uniform Right-of-way Encroachment Code".

14.02.020 Scope. The purpose of this code is to provide standards for the regulation and control of encroachments and private use of public rights-of-way within the incorporated limits of this town.

This code will insure full compliance by this incorporated municipality with all applicable federal, state and local laws in the interest of the public safety and the free and safe flow of traffic.

14.02.030 Definitions.

- a. "Encroachments" shall include all private devices placed upon the public right-of-way, including devices which overhang or underlie the right-of-way.
- b. "Curb Line" shall be the line at the face of the curb nearest to the street or roadway. In the absence of a curb, the curb shall be established by the town officials.

14.02.040 Regulations. No private signs, eaves, marquees, or similar structures will be allowed to encroach on the public rights-of-way of this town, within its incorporated limits, except as provided herein and then only by permit issued by the proper author and revocable on ten (10) days written notice to the permittee. No gainful private or commercial use of the public right-of-way will be allowed. Examples: non emergency servicing of vehicles, parking or placing of portable advertising devices on the public right-of-way.

14.02.050 Projection and Clearance. The outermost portion on an overhanging device must be at least two feet behind the face of the curb, or where there is no curb, from the shoulder of the roadway, and the lowest portion of an overhanging device should be at least ten feet above the top of the curb, sidewalk, or roadway shoulder elevation.

14.02.060 Purpose. It is the purpose and intent of this code to provide minimum standards to safeguard life, health, property and public welfare by regulating and controlling the placement of all signs and sign structures within the incorporated limits so as to prevent the obstruction of view of any official traffic sign, signal, or device.

Chapter 14.04
GRAVEL PIT

Sections:

- 14.04.010 Permit to Purchase Gravel
- 14.04.020 Unlawful Removal-Penalty

14.04.010 Permit to Purchase Gravel. Any person, firm, or corporation wishing to obtain gravel from the Town's Gravel Pit must purchase a permit to do so. Cost of the permit will be based upon the number of yards of gravel purchased and established periodically by the Town Council. Upon approval and issuance by the Town Clerk, the Clerk shall issue the permit and a placard or sticker that shall be displayed at all times in or on the vehicle loading the gravel.

14.04.020 Unlawful Removal-Penalty. Any person, firm, or corporation hauling gravel without a permit and placard will be fined not less than \$100.00 and not less than \$10.00 per yard for every yard of gravel taken from the Town's gravel pit.

TITLE 15 - BUILDINGS AND CONSTRUCTION

Chapters:

15.02 PROTECTION OF PROPERTY

15.04 STREET NUMBERS REQUIRED

15.06 SETBACK REQUIREMENTS

15.08 MINIMUM LOT SIZE, OFF-STREET PARKING AND ALLEY OR ROADWAY
ACCESS

Chapter 15.02
PROTECTION OF PROPERTY

Sections:

- 15.02.010 Stovepipes Prohibited
- 15.02.020 Construction of Flue or Chimney
- 15.02.030 Houses to be Equipped with Brick or Stone Flues

15.02.010 Stovepipes Prohibited. It shall be unlawful for any person owning a building within three hundred feet of another building within the incorporated limits of the town, to use or cause to be used any single wall stovepipe as a flue in any house or building whatever. Any person using such stovepipe shall replace the same with triple wall metal pipe, a brick flue or chimney within sixty (60) days after being notified to do so by the public works director.

15.02.020 Construction of Flue or Chimney. If any owner of any house or building in which any stovepipe is, or may be used, as or in the place of a flue or chimney, shall refuse or neglect to construct therein in place of such stovepipe, a flue or chimney as provided in Section 15.10.010 hereof, it shall be the duty of the public works director to cause such premises to be provided with a good flue or chimney, and the expense of construction thereof shall be a lien upon such premises, in the same manner as by law provided for the collection of taxes that are due and delinquent.

15.02.030 Houses to be Equipped With Brick or Stone Flues. It shall be unlawful for any person to erect any building or house wherein any stove, furnace or range, or any other means may be used for heating or cooking, without providing the same with a good and safe flue or flues of brick or stone.

Chapter 15.04
STREET NUMBERS REQUIRED

Sections:

- 15.04.010 Owners Must Install Street Numbers
- 15.04.020 Town Clerk-Treasurer to Assign Numbers

15.04.010. Owners Must Install Street Numbers. The owners of all businesses and residences in the Town of Plains shall install street numbers on their buildings. The individual numbers shall be a minimum of four (4) inches high. The numbers shall be placed on the structure at a height of six (6) feet from the ground, shall face the street upon which the building fronts and shall be clearly visible from the street which the building fronts.

15.04.020. Town Clerk-Treasurer to Assign Numbers. The town clerk-treasurer of the Town of Plains shall assign numbers to buildings; and these numbers shall be on water/sewer bills and also listed in City Hall.

Chapter 15.06
SETBACK REQUIREMENTS

Sections:

15.06.010	Definitions
15.06.020	Setbacks
15.06.030	Permits
15.06.040	Plans
15.06.050	Review
15.06.060	Variance

15.06.010 Definitions. The use of the following words and phrases shall have the meaning ascribed to them in this section:

- a. Accessory Building, Structure or Use means the building, structure or use on the same lot with, and secondary or subordinate to, the principal building structure or use and is not-habitable.
- b. Lot Lines means lines bounding a lot with the front lot line being the line of the building wall containing the street address, excluding driveway access.
- c. Setback means the minimum horizontal distance between the street wall of a building and the street line, or the wall of a building and the adjacent lot line.
- d. Side Yard means an open unoccupied space on the same lot between the building and the side line of the lot.
- e. Street Wall means the main wall nearest to and fronting on a street.

15.06.020 Setbacks. Setbacks from existing lot lines for buildings within the Town shall be as follows: a) a minimum of twenty (20) feet back from the street right of way or front of the lot, b) a minimum of fifteen (15) feet from the back of the lot, and a minimum of five (5) feet from each side of the lot. On corner lots, the side yard shall generally conform to the frontage line of improvements on the adjoining properties. Accessory buildings shall meet the stated set back requirements. If no alleyway exists at the rear of the property the rear set back shall be five feet for accessory buildings. Buildings on the East side of Railroad Avenue (US Hwy 200) from Hubbard Street to Central Avenue and the West side of Lynch Street from Willis Street to Central Avenue are exempted from the setback requirements. *Amended June 2, 2007 Ord 245*

15.06.030 Permits. A compliance permit for setback shall be required. The applicant for the permit shall provide plans of the proposed improvements and receive approval for such plans prior to commencing any construction. The compliance permit fee shall be \$35.00.

15.06.040 Plans. Two copies of the site plans of the proposed improvements shall be submitted to the Town Clerk. The site plans shall be drawn to a scale of not less than one inch equal to twenty feet, showing locations of all pertinent buildings, driveways, streets, parking arrangements, circulation patterns, traffic signs and markings, landscaping, pedestrian walks, curbing, drainage and other pertinent features such as existing sewer and water lines, utilities, and the nearest fire hydrant which must be within 500 feet.

15.06.050 Review. The public works director shall review the plans for conformity with the standards set forth above. If such plans are in conformance, a compliance permit shall be issued and signed by the public works director.

15.06.060 Variance. For good cause or hardship, a variance to these regulations may be granted by the town council upon review and recommendation by the planning board. If any individual or entity fails to apply for a variance prior to beginning construction, a variance will not be granted.

Chapter 15.08
MINIMUM LOT SIZE, OFF-STREET PARKING AND ALLEY ACCESS

Sections:

15.08.010	Minimum Lot Size-Residential
15.08.020	Off-Street Parking Definitions
15.08.030	Parking Requirement
15.08.050	Joint Use Off-Street Parking Areas
15.08.060	Expanded Building or Land Use
15.08.070	Employee Parking
15.08.080	Minimum Number of Spaces Required
15.08.090	Alley Access

15.08.010 Minimum Lot Size-Residential. Every lot hereafter created used for single family residential purposes shall provide a lot area of not less than seven thousand five hundred (7,500) square feet. per family. Every lot used for duplex residential purposes shall provide a lot area of not less than ten thousand (10,000) square feet. Every lot used for triplex or multiplex, greater than a triplex, for residential purposes shall provide a lot area of not less than fifteen thousand (15,000) square feet for multiple story construction, and twenty thousand (20,000) square feet for single story construction. A variance from minimum lot size may be given by the Town Council, upon the advice of the Plains Planning Board, where the provisions of this Ordinance will cause undue hardship or where single family use is proposed to be made of lots created prior to the enactment of this Ordinance. *Amended June 2, 2007 Ord 245*

15.08.020 Off-Street Parking Definitions. For the purpose of these sections, the following words and phrases shall have the meanings respectively ascribed to them by this Section.

"Gross floor area" shall mean gross useable floor area of the building.

"Gross leasable area" shall mean gross leasable area of building.

"Efficiency unit" shall mean a living unit without a separate bedroom and may be within a single unit or multifamily units.

"Parking space" shall mean an area sufficient to park one automobile. Parking area shall be used for automobile parking only, with no sales, dead storage, repair work, dismantling or servicing of any kind being permitted thereon.

"Lodging, rooming and boarding houses" shall include any dwelling in which one or more rooms is rented to a person or persons.

"Reservoir space requirements" shall mean space required for automobiles waiting to enter a facility.

15.08.030 Parking Requirement. Adequate off-street parking shall be provided for various types of land use or business establishments. Land use, either new or modified, or buildings, either remodeled so as to increase parking needs or new structures, shall meet the off-street parking requirements and standards as herein provided Off-Street parking requirements shall be provided, within the property lines of the property to be developed or modified, and shall not be located within the public rights-of-way of streets or alleys.

15.08.040 Street Parking Design Standards. The following standards shall be taken into consideration as minimum requirements for off-street parking areas.

A. Off-street parking shall be located as herein specified: Where a distance is specified, such distance shall be the walking distance measured from the nearest point of the parking facility to the nearest point of the building that such facility is required to serve.

1. For one and two-family dwelling: On the same building site with the building they are required to serve.

2. For multiple dwellings: On the same building site with the building they are required to serve.

3. For uses other than those above: Not more than 200 feet away.

B. An off-street parking space shall be at least 9 feet in width and at least 18 1/2 feet in length, exclusive of access drives or yard area. Such spaces shall have a minimum vertical clearance of at least 8 feet.

C. Adequate drainage structures shall be provided within the off-street parking area to handle surface water. If a storm drain system does not exist, concrete drainage sumps shall be provided. A drainage sump shall be provided for each 10,000 square feet of parking area or as required by the city council.

D. No lighting used to illuminate a parking area or its sign shall face or have its source directly visible from any residential district and shall not be a nuisance or hazard to passing traffic.

E. Any uses having more than 3,500 square feet of required parking shall have 6% of the gross required parking area landscaped with trees and shrubs. This landscaping shall be properly maintained and shall be of a profile so as not to interfere with street traffic.

F. All traffic control devices, such as parking stripes designating vehicle stalls, directional arrows or signs, pin-down curbs, curbing and other developments shall be installed and completed as shown on the approved plan.

G. Where exclusive pedestrian walks are used in the parking lots, they shall be protected by a physical barrier, such as, raised or pin-down curbs.

H. All traffic signs shall conform to the Manual on Uniform Traffic Control Devices.

15.08.050 Joint Use Off-Street Parking Areas. The Town Public Works Director may authorize the joint use of parking facilities for the following uses or activities under conditions specified:

A. Up to fifty (50) percent of the parking facility required by this Section for primarily "night-time" uses, such as theaters, bowling alleys, bars and related uses may be supplied by certain other types of building or uses herein referred to as "day-time" uses, such as banks, offices, furniture stores, manufacturing or wholesale and related uses.

B. Up to fifty (50) percent of the parking facilities, by this Section for primarily "day-time"

uses, may be supplied by primarily "night-time" uses.

C. Up to ninety (90) percent of the parking facilities, required by this Section for a church or for an auditorium incidental to a public or parochial school, may be supplied by the off-street parking facilities provided by uses primarily of a "day-time" nature.

D. The joint use parking facility shall be located within two hundred (200) feet of either building or land on which the parking facility is required.

E. The applicant for the joint use parking facility shall show that there is no substantial conflict in the principal operating hours of the two buildings or uses for which joint use of off-street parking facilities is proposed.

F. The applicant shall present a properly drawn legal instrument executed by the parties concerned for joint use of the off-street parking facilities and approved as to form and manner of execution by the Town Attorney and recorded with the office of the County Clerk and Recorder. Such instrument shall also be filed with the Town Clerk.

15.08.060 Expanded Building or Land Use. Whenever any building is enlarged in height and/or ground coverage, the off-street parking shall be provided for said expansion or enlargement in accordance with the requirements as stated in the schedule provided in this Section. However, no parking space need be provided, in the case of enlargement or expansion, where the number of parking spaces required for such enlargement or expansion is less than ten (10) percent of the parking spaces specified in the schedule for the building. Nothing herein shall be construed to require off-street parking spaces for the portion of such buildings existing at the time of passage of this ordinance.

15.08.070 Employee Parking. The parking requirements provided herein shall take into consideration employee parking and the employer shall make the off-street parking available to employees.

15.08.080 Minimum Number of Spaces Required. The required off-street spaces shall be in conformance with the following schedule and where alternative standards prevail, the greater applies in conflicting computations. Where two (2) or more uses (mixed occupancy) apply, the total of the activities computed separately shall prevail, except as provided for in joint use.

A. To-wit uses:

<u>USE</u>	<u>PARKING SPACES AVAILABLE</u>
Residential	The required parking spaces for one or two-family dwellings may be provided in a covered garage.
Single Family	Two (2) per dwelling unit.
Multi-Family	Two (2) per dwelling unit
Efficiency Unit	One (1) per dwelling unit.
One or two	One and one-half (1 1/2) per dwelling unit.

Three or More Bedroom	Two (2) per dwelling unit.
Lodging/Rooming Boarding Houses	One (1) per rooming unit plus two (2) per resident manager.
Hotels & Motels	One (1) per rentable room plus one (1) for each four (4) employees.
Hospitals	One (1) for each four (4) beds, plus one (1) per each staff doctor and one (1) per each two (2) employees.
Medical & Dental	One (1) for each two hundred (200) gross square feet of floor area.
Convalescent Homes	One (1) per each five (5) beds.
Mortuaries	One (1) per seventy-five (75) square feet of gross floor area used for assembly.
Theaters Similar Enclosed Places	One (1) per each four (4) seats.
Other Retail Outlets	One (1) for each seven hundred fifty square feet of retail floor area.

15.08.090. Alley Access. No dedicated alleyway or roadway less than 30 feet in width shall be used as the primary public street access to any property.

SCHEDULE OF FEES
Town of Plains

Vendor Permits \$10.00 per day – limited to 7 successive days

Dog Licenses

After January 1 and prior to March 1 of each year

Not spayed or neutered with rabies vaccination	\$12.00
Spayed or neutered with rabies vaccination	\$ 7.00

After March 1 of each year

Not spayed or neutered with rabies vaccination	\$15.00
Spayed or neutered with rabies vaccination	\$10.00

Gravel Permits \$ 4.00 per yard

Police Services

ATV / Trailer Inspections	\$ 5.00
Background Checks	\$ 5.00
Fingerprinting	\$10.00
VIN Inspection	\$15.00
Impound Fee	\$15.00 per day, after released, until picked up

Liquor Licenses

All beverage	\$250.00
Beer and Wine on premises	\$200.00
Beer off premises	\$200.00
Wine off premises	\$200.00
Veterans all beverage	\$150.00

Rent Council Room \$10.00

(For Profit – non profit is free)

Pool Schedule

<u>Prices:</u>	<u>In Town</u>	<u>Out of Town</u>
Daily	\$ 3.00	\$ 4.00
Lap or Aerobics	\$ 3.00	\$ 4.00
Family Season Pass	\$50.00	\$60.00
Single Season Pass	\$30.00	\$40.00
Pool Rental	\$50.00 per hour	
Swimming Lessons	\$25.00 for first child, \$10.00 for each additional child.	

Subdivision Review Fees

<u>Number of Lots</u>	<u>Fee</u>
1-5 (Minor Subdivision)	\$300.00 plus 10.00 per lot

6-50 (Major Subdivision)	\$400.00 plus 10.00 per lot
51-100 (Major Subdivision)	\$500.00 plus 10.00 per lot
100 up (Major Subdivision)	\$700.00 plus 10.00 per lot
Final Plat Review and Inspection	\$100.00 fee plus \$5.00 per lot
<u>Floodplain Processing Permit</u>	\$50.00
<u>Setback Compliance Permit</u>	\$35.00

