

PLANNING & ZONING COMMISSION



Wendy McClure
Commission Chair

~Agenda~

Mike Ray
Staff Liaison

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208.883.7008

<http://id-moscow.civicplus.com/agendacenter>

Wednesday
June 24, 2020

7:00 PM

Council Chambers
206 E 3rd Street

Call to order

1. Approval of minutes from June 10, 2020 [ACTION ITEM]

ACTION: Approve minutes as presented; approve minutes with amendments; or provide staff further direction.

2. Public Comment

(Time limit 15 minutes. Members of the Public may speak to the Commission regarding matters NOT on the Agenda nor currently pending before the Planning and Zoning Commission. Please state your name and address for the record and limit your remarks to three minutes.)

3. Approval of Reasoned Statement of Relevant Criteria and Standards [ACTION ITEM]:

1. Proposal for rezone of a 30-acre parcel of land located at approximately 2800 South Highway 95 within the Area of City Impact. – LUP2020-0012

ACTION: Review the draft Relevant Criteria and Standards document and approve the document; or approve the document with modifications; or provide Staff further direction as deemed necessary.

4. Public Hearing: Legislative Hearing Providing for the Repeal of Moscow City Code Title 5, Chapter 1; Providing for the Amendment of Moscow City Code Title 4, Chapter 1, Chapter 4, and the Addition of Chapter 12; Providing for Amendments to the Bulk and Placement Regulations Table; Providing for the Addition of Traditional and Conservation Subdivision Options; and Providing for the Establishment of Procedures and Standards for Lot Line Adjustments, Lot Divisions and Subdivision Plats [ACTION ITEM]

The Commission has been working on updating the City's Subdivision Code for the last year and a half, including the lot division and lot line adjustment process. New subdivision concepts of conservation and traditional subdivisions have been incorporated into the proposed draft as well. The Commission formed a subdivision review committee who met to review the draft subdivision code on October 18, 2019 and November 15, 2019 and provided recommendations for consideration by the Commission. The Commission reviewed the recommendations at their December 11, 2019 meeting and directed staff to amend the ordinance based upon some of the recommendations.

ACTION: After conducting the public hearing and consideration of testimony received, recommend approval of the proposed Ordinance to City Council with no conditions; or recommend approval of the Ordinance with modifications; or recommend denial of the Ordinance; or take such other action deemed appropriate.

5. Small Cell Wireless Facilities Draft Ordinance [ACTION ITEM]:

Telecommunications service providers are currently in the process of deploying 5G/small cell wireless technology throughout the developed world. 5G high speed deployment will bring much higher data

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speeds and traffic, but requires small cell installations to accommodate the data demand. Telecommunications services are largely governed by the Federal Communications Commission (FCC) and the Telecommunications Act, but local governments are allowed to adopt certain regulations at the local level. With the likelihood of 5G/small cell deployment in Moscow, Staff has been working on drafting an ordinance to address them in the Zoning Code. The draft ordinance was presented to the Sustainable Environment Commission at their regular meeting on June 16, 2020 to discuss a unified recommendation with the Planning and Zoning Commission. The SEC voted to recommend that the Planning and Zoning Commission proceed with the current ordinance and the SEC will continue to research health effects and the changing legal landscape to potentially make recommendations in the future.

ACTION: Review the 5G/small cell wireless facilities draft ordinance and provide Staff further direction as deemed necessary.

5. Transportation Commission Meeting Report

ACTION: Receive report and provide staff further direction if necessary.

6. Announcements

ACTION: Read any correspondence received and provide staff further direction if necessary.

Adjourn

PLANNING & ZONING COMMISSION



Wendy McClure
Commission Chair

~Meeting Minutes~
June 10, 2020

Mike Ray
Staff Liaison

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208.883.7008

McClure called the meeting to order at 7:00 p.m.

MEMBERS PRESENT: Wendy McClure, Chair; Rich Beebe, Scott Gropp, Mike Nelsen, Nels Reese, Victoria Seever

via Zoom: Joel Hamilton, Robb Parish

MEMBERS ABSENT: Dennis Wilson

ALSO IN ATTENDANCE: Mike Ray, Sandra Kelly, Anne Peterson

1. Approval of minutes from May 13, 2020 [ACTION ITEM]

Seever moved approval of the minutes as presented, seconded by Nelsen. Motion carried by acclamation.

2. Public Hearing: Proposal for rezone of a 30-acre parcel of land located at approximately 2800 South Highway 95 within the Area of City Impact. – LUP2020-0012 [ACTION ITEM]:

Proposed rezone of a 30-acre area of land located at approximately 2800 South Highway 95 within the Area of City Impact from the Agriculture/Forestry (AF) Zone to the Farm Ranch (FR) Zone. The subject property is within the Moscow Area of City Impact. The City of Moscow Planning and Zoning Commission will make a recommendation to the Latah County Board of County Commissioners regarding this matter.

Ray reviewed the specifics of the rezone request, noting that the parcel is surrounded on the east, west and north by properties zone Agriculture/Forestry (AF). Properties to the south are outside the Area of City Impact. The proposed Farm/Ranch (FR) zoning is appropriate for the current use. Staff recommended approval of the rezone request with no conditions.

McClure opened the public hearing at 7:08 p.m.

Sean Wilson, 2780 N Mountain View Rd, presented on behalf of the applicant. He pointed out the portion of the property surrounding Early Bird Supply is not being requested for rezone at this time because they anticipate the next time the Comp Plan map gets amended that the area will be changed to a commercial designation because of the new Highway 95 alignment.

Wilson said the allowed uses within the FR zone describes exactly what the Clydes plan for the property. He also pointed out that well water is easily accessible in that area.

Public hearing closed at 7:14 p.m.

Seever thought it was a straightforward request and she saw no issues. She moved to recommend approval to Latah County Commissioners, and to direct staff to prepare the Reasoned Statement. Motion carried unanimously by acclamation.

3. Report on Subdivision Code Ordinance

Ray announced the code amendment has been noticed for public hearing at the June 24th meeting. No one had comments or concerns since the last draft was reviewed.

4. Report on 5G/Small Cell Ordinance

Ray announced that the next step in the process is to discuss the matter with the Sustainable Environment Commission meeting next Tuesday, June 16th, at 6 p.m. Ray and McClure will participate in that meeting which will be conducted via zoom, to discuss the draft ordinance to hopefully arrive at a joint recommendation between SEC and Planning & Zoning. Seever asked how someone who doesn't have computer access can participate. Ray said he will follow-up with the SEC staff liaison.

5. Announcements

Hamilton announced that Transportation Commission has not met in quite a while.

The meeting adjourned at 7:25 p.m.

Wendy McClure, Chair

**BEFORE THE PLANNING AND ZONING COMMISSION
OF THE CITY OF MOSCOW, COUNTY OF LATAH,
STATE OF IDAHO**

REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS

REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS REGARDING A REQUEST FOR THE REZONE OF A THIRTY (30) ACRE AREA OF LAND LOCATED AT APPROXIMATELY 2800 SOUTH HIGHWAY 95 FROM THE AGRICULTURE FORESTRY (AF) ZONE TO THE FARM RANCH (FR) ZONE WITHIN THE AREA OF CITY IMPACT OF THE CITY OF MOSCOW, IDAHO.

WHEREAS, the applicant filed an application for a Rezone in the Moscow Area of City Impact on April 30, 2020; and

WHEREAS, this matter came before the Moscow Planning and Zoning Commission during a duly noticed public hearing on June 10, 2020; and

WHEREAS, having reviewed the application, including all exhibits entered, and having considered the issues presented by the applicant and the opponents:

THE PLANNING AND ZONING COMMISSION OF THE CITY OF MOSCOW, IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION, HEREBY CONCLUDES:

I. RELEVANT FACTS AND CONCLUSIONS

1. The Planning and Zoning Commission considered the request pursuant to the City of Moscow 1999 Comprehensive Plan, City of Moscow Zoning Ordinance, the Local Land Use Planning Act, the Moscow Area of City Impact Agreement, and other applicable development regulations.
2. Per the Moscow Area of City Impact Agreement with Latah County, the Moscow Planning and Zoning Commission is to conduct one hearing and forward a recommendation on to Latah County.
3. The subject property is a thirty (30) acre area of land generally located at approximately 2800 S Highway 95 within the Area of City Impact.
4. The subject property is currently undeveloped and being utilized as agricultural property.
5. The subject property is surrounded by primarily agricultural land to the east, Early Bird Building Supply to the north, a rural residential house to the west, and a private drive that provides access to six houses to the south.
6. Within the 2019 Moscow Comprehensive Plan, which has been adopted within the Area of City Impact, the subject property is currently designated as Rural and Agricultural.
7. According to the 2019 Comprehensive Plan, Rural and Agricultural designated areas are intended to,

“allow continued use for agricultural purposes with allowances for limited residential development at very low densities. Lands with this designation should be preserved for agricultural use and development should be directed to areas in closer proximity to the City where municipal utilities are available and land can be efficiently developed and serviced. Areas shown as Agriculture on the Future Land Use Plan are outside of the 10-year growth area (refer to Chapter 5, Public Utilities, Services, and Growth Capacity) and beyond the area for which the City is prepared to provide adequate facilities and services during the horizon of this Plan. Generally, these are found around the periphery of the City and throughout the Area of City Impact. The residential development options allow septic/well and septic/public water (where applicable and warranted) at very low densities, consistent with the intended agricultural character. Appropriate current zones for lands with this designation are Agriculture/ Forestry (AF) and Farm, Ranch, and Outdoor Recreation (FR).”

8. The subject property and adjacent properties immediately to the east, west, and north are currently zoned Agriculture/Forestry (AF). Properties to the south are located outside of the Area of City Impact in Latah County.
9. The applicant is proposing to rezone the 30-acre area from the Agriculture/Forestry (AF) Zone to the Farm Ranch (FR) Zone.
10. According to the City of Moscow Zoning Code, the purpose of the FR Zoning District is to,
“intended to permit current agricultural, outdoor recreation and other open land uses to be maintained and at the same time to set minimum standards for the development of similar new uses in order that this open zoning district be protected against spasmodic, disorderly and indiscriminate development until such time as another appropriate use of the land in this zoning district has been determined. It is also intended that newly annexed areas of the City be placed in this classification until land use studies determine the character and appropriate use of such areas.”
12. Uses permitted within the FR Zone include single family dwellings, market and community gardens, group child care facilities, public parks and recreation facilities, and bed and breakfast inns.

BASED ON THE ABOVE RELEVANT FACTS AND CONCLUSIONS, THE PLANNING AND ZONING COMMISSION OF THE CITY OF MOSCOW HEREBY FINDS THE FOLLOWING RELEVANT CRITERIA AND STANDARDS:

II. RELEVANT CRITERIA AND STANDARDS

1. **1. The proposed rezone is consistent with Comprehensive Plan goals, objectives, and implementation actions.** The proposed rezone is consistent with the 2019 Comprehensive Plan Land Use Designation of Rural and Agricultural.
2. **The proposed rezone would provide for the logical and orderly location of land uses and community services and facilities.** The proposed FR Zone is compatible with the surrounding land uses which are primarily agricultural or rural residential in character.
3. **The uses expected to occur as a result of the rezone will be compatible with the surrounding area.** The proposed zoning is consistent with adjacent zoning districts and will create a logical

and orderly zoning configuration for the subject area. The adjacent properties in all directions are all primarily agricultural and residential.

4. **The size, type, and density of development expected to occur as a result of the rezone will not place an undue burden upon delivery of services provided by any political subdivision within the planning jurisdiction.** The proposed zoning and uses are suitable for the area and will not unduly burden the neighborhood of public infrastructure.
5. **The size, type, and density of development expected to occur as a result of the rezone can be adequately served by the existing transportation network, public facilities and services.** The subject property has street access via Highway 95, which can adequately serve any proposed development allowed in the FR Zone. Currently there is insufficient public utility services in the area and the Commission finds that annexation should not be required at this time.

III. DECISION

Based on the above Reasoned Statement of Relevant Criteria, the Planning and Zoning Commission of the City of Moscow recommends approval of the rezone request for the thirty (30) acre property from the Agriculture Forestry (AF) Zone to the Farm Ranch (FR) Zone to Latah County with no conditions.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF MOSCOW this
____ day of _____, 2020.

Wendy McClure, Chair
Planning and Zoning Commission

ORDINANCE NO. 2020 -

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE REPEAL OF MOSCOW CITY CODE TITLE 5, CHAPTER 1; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 4, CHAPTER 1, CHAPTER 4, AND THE ADDITION OF CHAPTER 12; PROVIDING FOR AMENDMENTS TO THE BULK AND PLACEMENT REGULATIONS TABLE; PROVIDING FOR THE ADDITION OF TRADITIONAL AND CONSERVATION SUBDIVISION OPTIONS; PROVIDING FOR THE ESTABLISHMENT OF PROCEDURES AND STANDARDS FOR LOT LINE ADJUSTMENTS, LOT DIVISIONS AND SUBDIVISION PLATS; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the subdivision code is intended to promote the public health safety and welfare of present and future residents, and to ensure the logical and orderly subdivision of land within the City; and

WHEREAS, the procedures and standards for lot line adjustments and lot divisions is being inserted within the City Code to provide an abbreviated process for the adjustments of one or more common lot lines and the division of property not classified as a subdivision; and

WHEREAS, subdivision design standards are being inserted to promote the public health, safety, and welfare; implement the goals, objectives, and policies of the City's Comprehensive Plan, Parks and Recreation Master Plan, Multimodal Transportation Plan and Comprehensive Utility Plans; promote the orderly and functional development of lots, neighborhoods, and the community; provide efficient circulation through coordinated and connected street, bike and pedestrian path systems, secure adequate infrastructure for streets, emergency services, parks, recreation facilities, and utilities necessary to serve proposed subdivisions; ensure that subdivision development mitigates its impact upon service delivery within the community and does not place an undue financial burden upon the public to provide the public services required by subdivision developments; and

WHEREAS, Traditional and Conservation Subdivision options are being established to provide more options for smaller lot sizes, traditional neighborhood design, preservation of a greater amounts of open space, and preservation of sensitive areas; and

WHEREAS, the City wishes to insert certain narrative portions of the Zoning Code into the Bulk and Placement Regulations Table for ease of use; and

WHEREAS, on June 24, 2020 the Planning and Zoning Commission conducted a public hearing upon the amendments contained herein and recommended approval to the City Council; and

WHEREAS, on _____, the Moscow City Council conducted a public hearing and considered and adopted the amendments contained herein;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, IDAHO, AS FOLLOWS:

SECTION 1: That Moscow City Code Title 5, Chapter 1 be repealed in its entirety:

Sec. 1-1. — Definitions.

- A. ~~Subdivider~~ includes developer, and may be an individual, corporation, association, firm or group who undertakes the subdividing of a lot, tract, or parcel of land for the purpose of transfer of ownership or the development of lots for residential purposes or for the purpose of commercial development.
- B. ~~Subdivision~~. The division or development of a developed or undeveloped lot, tract, or parcel of land, platted or unplatted and laid out or to be laid out in building lots, for homes or commercial developments which may or may not include streets, highways, alleys, or other portions of the same intended to be dedicated to public use.
- C. ~~Zoning Code~~. The Zoning Code means Title 4 of this Code.

Sec. 1-2. — Approval of Plat.

— No plat shall be recorded, or offered for record, nor shall any land be offered for sale with reference to such plat, until the said plat has been approved in writing by the Planning and Zoning Commission and Council, which shall ascertain, before approving it, that the said plat has satisfied all of the requirements of this Chapter and the Zoning Code.

Sec. 1-3. — Appeals.

— Any aggrieved person whose plat or parcel of land has been rejected or disapproved by the Planning and Zoning Commission may petition the Council for a hearing.

Sec. 1-4. — Authority and Permits.

- A. 1. Requirements of this Chapter are authorized by Article XII, Section 2 of the Idaho Constitution; Title 50, Chapter 13 of the Idaho Code; Title 67, Chapter 65 of the Idaho Code and by any and all other delegation of State authority relevant to this Chapter, as amended or subsequently codified.
- 2. Standards for subdivisions required by this Chapter are imposed pursuant to authority in Idaho Code Section 67-6518, as amended or subsequently codified.
- 3. No public improvement(s) required by this Chapter pursuant to Idaho Code Section 67-6513 (including, but not limited to, such subsections 5-1-5(D) and 5-1-5(E) herein) shall be greater than necessary to mitigate the effects of such subdivision development on the ability of the City to deliver services without compromising quality of service delivery or imposing substantial additional costs upon City residents to accommodate the proposed subdivision, as of the time of the application for subdivision development.
- B. No permits shall be issued by the City for the construction of any building or other improvement requiring a permit, upon any land for which a plat is required by this Chapter unless and until the requirements hereof shall have been fully complied with.
(Res. 99-01, 2/16/99; Ord. 99-09, 3/1/99)

Sec. 1-5. — General Requirements.

— The following shall be considered minimum requirements and shall apply except when specifically permitted to deviate by the Planning and Zoning Commission.

- A. ~~Property Lines~~: Blocks shall not be longer than six hundred sixty feet (660') between street intersections, unless, because of some peculiar conditions, a longer block shall be approved by the Planning and Zoning Commission. Side lines of lots shall be at right angles or radial to the street lines;

unless a variation from the rule will give a better street and lot plan. Such variation must be approved by the Planning and Zoning Commission. Lots with double frontage shall be avoided where practicable. Building setback lines, if shown, shall show a building setback not less than that required by the zoning provisions of the City. Monuments at lot corners, block corners, points of street intersections, and such other points as may be necessary to make the retracing of the lines as shown on the final plat reasonably convenient; shall be in conformity with the Idaho Code and the standards of the City.

- B. ~~Streets and Alleys: All subdivision streets shall conform to the highway plan for the City, both as to location and width. The minimum width of right of way for streets shall be fifty feet (50'). The arrangement of streets in new subdivisions shall make reasonable provision for the continuation of the principal existing streets in adjoining subdivisions, or their proper projections when adjoining property is not subdivided. Insofar as they may be made for new streets of a width deemed advisable by the Planning and Zoning Commission. In general, such streets shall be at least as wide as the existing streets, except that in no case shall the width of the right of way be less than the minimum specified herein. The street and alley arrangement must also be such as to cause no hardship to owners of adjoining property when they plat their land and seek to provide for convenient access thereto. This arrangement must also provide for continuing a reasonable number of through utility lines. Dead end streets shall have a turnaround at the end with a minimum radius of forty feet (40') right of way unless the street is intended for access, in the future, to adjoining property. Reserve strips on outer boundaries of a subdivision may be established to control access to a partial width street, upon approval of the Planning and Zoning Commission and provided that such subdivision be accompanied by agreement to dedicate such strip or strips when sufficient ground is made available for public use to permit widening of said strip to its normal width. No other reserve strips controlling access to public ways shall be permitted, except when the control and disposition of land comprising such strips are placed within the jurisdiction of the City under conditions specified by the Planning and Zoning Commission and attached to the plat. Streets shall intersect each other as near as practicable to right angles. Street names shall be approved by the Planning and Zoning Commission to conform with the uniform plan for street names heretofore or hereafter adopted by the City. All streets and alleys shall be completed to the grades which have been officially approved or determined, or shown upon approved plans and profiles. The minimum width of any dedicated alley shall be twenty feet (20'). Alleys may be required in all blocks where the lots are less than fifty feet (50') in width, along the rear line of business property, and in the rear of all lots fronting major thoroughfares. Where alleys are not provided, easements of not less than ten feet (10') in width shall be provided on each side of all rear lot lines and side lines where necessary, for poles, wires, conduits, storm or sanitary sewers, gas and water lines. Easements of greater width may be required along lines across lots or along boundaries where necessary for surface overflow or for the extension of main sewers or other utilities. No irrigation ditches shall be permitted on public roads except where acquired by vested rights or where crossing public roads.~~
- C. ~~Land Required for Other Public Purposes: Land required for public purposes other than for streets, alleys, or utilities may be dedicated to the City if approved and accepted by the Council.~~
- D. ~~Utilities: All water mains, valves, hydrants and connections to the City water distribution system, all sewer mains, manholes, appurtenances and connections to the City sewer system, including all storm sewers, inlets, appurtenances, and connections, if necessary, shall be provided and installed by the subdivider. These installations shall all be in accordance with the standards and specifications of the City.~~
- E. ~~Streets and Alleys:~~
1. ~~All streets shall be constructed in accordance with the Standard Construction Specifications and Drawings adopted by the Council from time to time. When requested by a developer, the City Engineer shall make specific findings that application to an individual subdivision of the City Standard Construction Specifications and Drawings, in whole or in part, is necessary to mitigate the effects of subdivision development on the ability of the City to deliver services without compromising quality of service delivery or imposing substantial additional costs upon City residents to accommodate the~~

proposed subdivision development. Such specific findings by City Engineer shall be made prior to approval of any improvements required by Sections 5-1-5(E) and/or (D) of this Code and within forty-five (45) days following the receipt by the City of developer's completed application for the building permit. If the developer fails to request such specific findings before the completion of the application for building permit, such failure to so request shall act as acceptance by the developer of the improvements required by the Standard Construction Specifications and Drawings and shall waive developer's right to object to the required public improvements. Any aggrieved person may appeal such findings of the City Engineer to the Council.

2. All costs of the improvements required by this subsection E. shall be borne by the owners or subdividers.

3. No building permit shall be issued for a principal structure unless improvements required by Section 5-1-5, subsections D. and E., have been shown on plans submitted to and approved by the City Engineer and constructed, bonded for, or specifically waived by the Council. These improvements shall be required for all streets adjacent to the lot on which the structure is to be constructed.

F. Dedication of Parkland:

1. With any subdivision, re-subdivision or lot division filed or applied for after December 15, 1985, lands shall be dedicated, or payment in lieu of dedication shall be paid, to the City in order that adequate sites for public parks may be properly located and preserved as the City develops, and in order that the cost of providing additional public parkland may be most equitably apportioned on the basis of the additional need created by individual development. This provision shall not apply to any re-subdivision or lot division that would result in the creation of no more than one additional single family residential lot; nor shall it apply to land for which parkland had previously been dedicated to satisfy the requirements of this Section. It is the intention of the City to develop each parcel of land dedicated to meet this requirement for park purposes when the area is occupied by residents.

2. Amount of land to be dedicated:

a. The amount of land to be dedicated shall be a portion of the net developable area. The net developable area will be computed by calculating, from the plat or site plan, the land area exclusive of proposed or existing streets and other public lands.

b. The amount of land to be dedicated shall be a percentage of the net developable area, as follows unless the result of applying the percentage is demonstrated by the applicant or developer to be manifestly unjust:

Single Family Residence Zoning Districts (FR, SR, R-1, and R-2)	5%
Two Family Dwelling Zoning Districts (R-3)	7%
Multiple Residence Zoning Districts (R-4, and RO)	9%
Commercial Zoning Districts (NB, RTO, CB, GB, I, and MB)	9%

c. An agreement between the City and the applicant or developer may be executed permitting the payment in lieu of dedication over a period of time for commercial zoning districts (NB, RTO, CB, GB, MB and I) if the City determines such payment in lieu of dedication is in the best interest of the City. Payment in lieu of dedication may be paid as development takes place.

d. If the Zoning District classification for a parcel of land is subsequently changed at the request of an owner to a Zoning District requiring a higher proportion of land for park land purposes, or from a Zoning District not requiring dedication to one that does, then dedication of the park land or additional park land required for the subdivision by this Section, or payment in lieu of dedication, becomes due before the Zoning District change becomes effective.

3. Where private space for park purposes is provided in a proposed subdivision, re-subdivision or lot division, such areas may be credited proportionately against the requirement for park land dedication or payment in lieu of dedication if the Council finds that:

— a. Such arrangement will be consistent with the program for development of public park lands in the area; and

— b. The proposed park land will provide benefits to the users equivalent to those that would be provided by the credited portion of public park land; and

— c. The land is reasonably suitable for the proposed park use; and

— d. Adequate written assurances, in the form of the development agreement and a financial commitment, are submitted guaranteeing that the space will be developed in a timely fashion for the park activity for which the land is intended; and

— e. The long-term preservation of the space, the right of the public to access and to use the space, and its adequate operation and maintenance are provided for in a written agreement enforceable by the City, a copy of which shall be recorded in the office of the Latah County Recorder.

4. Land Suitability: Land is acceptable for dedication to meet the requirements of this Section if in the judgment of the Council the land is suitable for beneficial park and open space use considering its location, size, configuration, public access, topography, surroundings, compliance with standards for parks established in the Moscow Parks and Recreation Plan and the Moscow Comprehensive Plan, and the needs of the public in that area. Land acceptable for dedication is not necessarily required to be located within a proposed subdivision; however, the land must conveniently serve park land needs of residents of the subdivision. The Council shall consider recommendations received from the Parks and Recreation Commission on the suitability of a particular parcel of land proposed for dedication.

5. Payment in Lieu of Dedication: In the event that the City determines in good faith that proposed dedication does not meet land suitability standards and that there are no alternative proposals which satisfy the conditions of land suitability, then payment in lieu of the land dedication shall be required for all or any portion of land necessary to meet the requirements of this Section.

— a. The amount of payment in lieu of dedication shall be the current fair market value of land suitable to meet the parkland dedication requirement of this Section. The payment in lieu of dedication shall be computed by averaging the value of the land exclusive of improvements, (both public and private), and multiplying by the percent required for park dedication. This value shall be determined prior to granting final approval of the subdivision, resubdivision or lot division.

— b. If the value of such land cannot be determined satisfactorily by the City and the developer, the following procedure shall determine value:

— (1) The parties shall each submit an offer of value to the other, in writing. For ten (10) days thereafter either party may accept the other's offer of value.

— (2) If neither offer is accepted, an appraiser, selected jointly by the City and the developer shall determine the value.

— (3) If the parties cannot agree on selection of an appraiser, the names of two (2) Member Appraisal Institute appraisers, one (1) designated by each party, shall be placed in a container, and one appraiser's name shall be picked at random by the Mayor. This appraiser shall then proceed to determine value.

— (4) The party who has submitted the value closest to that ultimately determined to be fair market value by the appraiser shall be considered the prevailing party. The party not prevailing shall pay for the appraisal-related expenses. Either party may appeal the decision of the appraiser to the district court. The court shall consider the matter as a review consistent with the administrative procedures act. The prevailing party shall be paid court costs and reasonable attorney fees by the party not prevailing.

— c. Payment in lieu of dedication shall be held by the City in a secure account until it is spent. Payment in lieu of dedication shall be spent for the acquisition of those new park lands that in the judgment of the Council will most conveniently serve the people who will use the development for which payment in lieu of dedication were collected. If the Council finds that the development is served by an adequate amount of park land, then the payment in lieu of dedication may be used to purchase

landscaping materials or for other capital improvements to develop the park lands most conveniently serving the needs of those who will be users of the development.

—d. The Council may make such arrangements with a subdivider through a contract to permit the payment in lieu of dedication over a period of time.

—e. Payment in lieu of dedication shall be expended as provided herein within ten (10) years of the last receipt of such payment in lieu of dedication in the development unless such expenditure is impractical or would result in waste.

6. Dedicated park land may be sold or traded only if the proceeds are used to acquire other park lands which in the judgment of the Council will better serve those who would be users of the park land sold.

7. Where the Council requires more than single point access to a parcel of land proposed for dedication, the City shall be responsible for a proportional share of the improvements serving the park land beyond those provided at the single access point.

8. Where Council determines it to be in the best interest of the City, the applicant or developer may execute and file an agreement specifying the period of time and the conditions pursuant to which a combination of parkland dedication and development of such parkland shall occur.

G. Areas of Special Flood Hazard (as defined in Title 4 of this Code):

1. All subdivision proposals shall be consistent with the need to minimize flood damage.

2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

4. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain fifty (50) or more lots or five (5) or more acres.

5. Utilities:

—a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

—b. New and replacement sanitary sewage systems shall be designed to minimize infiltration of flood waters into the systems and discharge from the systems into flood waters.

H. Stormwater Runoff Control: All subdivisions shall conform to the stormwater runoff control requirements contained in Title 5, Chapter 15 of this Code.

Ref: Idaho Code § 67-6513; Res. 99-01, 2/16/99; (Ord. 85-15, 11/18/85; 86-05, 4/7/86; 86-31, 12/15/86; 88-13, 11/21/88; 97-04, 4/21/97; 97-07, 4/7/97; 97-08, 4/7/97; 97-09, 4/7/97; 99-23, 7/6/99; 99-25, 7/19/99; 99-32, 10/4/99; 2000-11, 6/19/00; 2007-17, 12/03/2007)

Sec. 1-6. — Acreage Subdivision.

—When a parcel is subdivided into larger tracts than required for individual building lots, such parcel shall be divided so as to allow for the opening of major streets and the ultimate extension of minor streets.

Sec. 1-7. — Property Within One Mile of the City.

—Property partially or totally within one mile as measured to the nearest recorded city limits line of the City when subdivided, platted, or replatted shall be done as required in the Idaho Code.

Sec. 1-8. — Preliminary Plats.

—In seeking to subdivide land into building lots and to dedicate streets, alleys or other land for public use, the owner shall submit five (5) copies of a preliminary plat (which plat may be in pencil), so marked, to the Planning and Zoning Commission for its approval, before submitting the final plat. The preliminary plat, along with the required fees and the names and addresses of adjoining property owners, shall be submitted at least fourteen (14) days before the Planning and Zoning Commission hearing date. A public hearing shall be held by the Planning and Zoning Commission which shall act on the application within forty-five (45) days of the hearing date. The Planning and Zoning Commission shall forward its

recommendation on the preliminary plat to the Council. The Council shall review the preliminary plat and recommendation, and shall accept or reject the preliminary plat as submitted, accept it with specified changes, or return the matter to the Planning and Zoning Commission for further public hearing and recommendation.

A. The preliminary plat shall be drawn to a scale not smaller than one inch (1") equals two hundred feet (200') and shall show:

- 1. Existing property lines, streets, and alleys with their names, buildings, water courses, other features and section corners.
- 2. The title under which the proposed subdivision is to be recorded and the name of the subdivider.
- 3. The location of existing sewer and water lines, streets, and other utilities.
- 4. Date, north point, scale and name of surveyor or engineer.
- 5. The names of all adjoining subdivisions with lines of abutting lots, the owners and departing property lines of adjoining properties not subdivided, and the locations, names and widths of existing streets and alleys and similar facts regarding property which is immediately adjacent. The Planning and Zoning Commission may require a contour map showing contour intervals consistent with the shape of the ground.

B. Preliminary plats will be checked for:

- 1. Conformity to the highway plan of the City and the State.
- 2. Conformity to the probable development of adjacent properties.
- 3. Conformity to the existing street system of the City.
- 4. Lot size and arrangement.
- 5. Necessary public utility easements.
- 6. Proposed protective covenants.
- 7. Conformity to the existing zoning regulations.
- 8. Availability of water and sewage facilities.

C. Relevant Criteria and Standards. Approval or denial of preliminary plats shall be based upon the following criteria:

- 1. The proposed subdivision is in conformance with all applicable City Code requirements;
 - 2. The proposed subdivision is in general conformance with the Comprehensive Plan;
 - 3. Public Services and utilities are available or can be made available and are adequate to accommodate the proposed subdivision; and
 - 4. The proposed subdivision will not be detrimental to the public health, safety, or general welfare.
- Names of all proposed streets and alleys must be approved by the Planning and Zoning Commission. One (1) copy of the approved preliminary plat will be kept on file for public examination and one shall be returned to the owner. Such approval of the preliminary plat shall be valid for a period of twelve (12) months from the date of approval of the preliminary plat by the City Council. Before the expiration of the initial twelve (12) month period of approval, the applicant may request of the Council a one (1) time extension of the preliminary plat approval for an additional period not to exceed six (6) months (i.e., for a total time period not to exceed eighteen (18) months from the date of the City Council preliminary plat approval).

(Ord. 2010-22, 10/18/2010; 2016-04, 04/04/2016)

Sec. 1-9. — Final Plat.

— The final plat, including the legal description of the exterior boundaries of the subdivision, must be prepared in accordance with the Idaho Code. The original tracing together with four (4) prints shall be submitted to the Planning and Zoning Commission for its approval at least two (2) days before the Planning and Zoning Commission meeting. If approved, the tracing and prints shall have endorsed thereon the approval of the Planning and Zoning Commission, and the acceptance of the Council. Of the prints, so endorsed, one copy shall be retained by the Planning and Zoning Commission; one copy shall be delivered to the Council; and two (2) copies shall be returned to the subdivider along with the original tracing. Approval of the Planning and Zoning Commission shall be void unless the original tracing, bearing the

endorsements of the City Engineer and the Council, is offered to the Latah County Clerk and Recorder for filing within one hundred eighty (180) days from the date of the Planning and Zoning Commission's approval. Upon written request by the subdivider, the Planning and Zoning Commission may grant one hundred eighty (180) day extensions if the Planning and Zoning Commission finds conditions in the area have not significantly changed since the Planning and Zoning Commission's original approval. The final plat shall be checked for conformity with the approved preliminary plat, and shall show:

- A. The boundaries of the property, the names and widths of all proposed streets and alleys and the boundaries of all other portions intended to be dedicated to the public use.
- B. The exact length and bearing of the center lines of all streets and rights of way and the exterior boundary of the plat.
- C. The angle of departure of adjoining property, street and alley lines.
- D. Widths and names of abutting streets and alleys, the names and boundaries of all subdivisions which have been previously recorded, and adjacent thereto, must be shown upon the plat offered for record, in dotted lines, to show their relationship to the subdivision offered for record; if adjoining land is unplatted show same as such.
- E. All lot areas and symbols for all lots and blocks. All lots and blocks must be numbered separately.
- F. All dimensions, both linear and angular, for locating boundaries of subdivision, lots, streets, alleys, public easements and private easements. The linear dimensions shall be expressed by bearings. All curves shall be circular arcs and shall be defined by the radius, central angle, tangent, arc and chord distances. The description and location of all monuments shall be shown, and chord bearing, if not tangent. All dimensions, both linear and angular, are to be determined by an accurate control survey in the field which must balance and close within a limit of one in five thousand (1 in 5,000). Plat dimensions shall be adjusted to close precisely. The owner shall show that the County has checked the plat as required by the Idaho Code and the owner shall be responsible for any fee imposed therefor.
- G. A definite tie between not less than two (2) prominent points on the exterior boundary of the subdivision and the triangulation system of the County as established by the United States Government and supplemented by the County, either by bearing and distance or by rectangular coordinate. The said tie may be made to a line of a County plat, or a plat of a neighboring subdivision which conforms to the above requirements.
- H. The title under which the subdivision is to be recorded, with the name of the surveyor platting the tract. The surveyor shall in every case have a valid certificate of registration with the Idaho Board of Registration of Professional Engineers and Professional Land Surveyors. The name and title of the subdivision shall not duplicate the name of any existing subdivision. I. — Date, north point, scale. Minimum scale shall be one inch equals one hundred feet (1"=100'). Street profiles showing continuity to adjoining property shall be required where the contour of the surface warrants such consideration. (Ord. 99-25, 7/19/99)

Sec. 1-10. — Subdivision Improvements; Agreement and Security.

- A. Before the final subdivision plat is signed by the Mayor, all Developers shall be required to complete all of the improvement work required under Sections 5-1-5(D) and (E) of this Chapter. Such Developer shall dedicate said public improvements and property to the City free and clear of all liens and encumbrances on the dedicated property and public improvements.
- B. In lieu of completing all of the required public improvements, before approval of the final site plan by the Council the Developer may execute and file an agreement with the City specifying the period of time within which the Developer shall complete all improvement work required under Sections 5-1-5(D) and (E) of this Chapter, and providing that if the Developer shall fail to complete such work within the specified period or fail to maintain such improvements and correct deficiencies therein as may be directed by the Council or the Director of Public Works during a period of one (1) year following completion and acceptance of such improvements, the City may, at its option, direct the completion of such work and recover the full cost and expense thereof from the Developer. The agreement may also provide for:

1. Construction of the improvement in units;
 2. An extension of time under conditions therein specified;
 3. The termination of the agreement upon the completion of proceedings under a local improvement district for the construction of improvements deemed by the Council to be at least the equivalent of the improvements specified in said agreement and required to be constructed by the Developer; and/or
 4. Proportional refund or release of security for completed improvements to the Developer from any Developer security which is set forth in Section 5-1-5(C) of this Chapter and filed with the agreement.
- C. 1. To assure such Developer's full and faithful performance of the agreement set forth at 5-1-10(B) of this Chapter, the Developer shall also file with the agreement one of the following forms of security:
- a. certified check;
 - b. cashier's check;
 - c. cash;
 - d. irrevocable letter of credit from a certified bank or financial institution;
 - e. any other form of security which is approved by the Council.
2. Any form of security as set forth at 5-1-10(C)(1)(a through e) of this Chapter shall be in an amount as determined by the City, sufficient to cover the cost of said public improvements which are required by the Council and the maintenance, corrections, and inspections, engineering and administration thereof. The amount of the security shall be the City Engineer's estimated cost of the work to be completed plus ten percent (10%) contingency plus twelve percent (12%) engineering and administration costs.
3. The City may accept cash in the amount of the City Engineer's estimated cost of the required public improvements plus ten percent (10%) contingency plus twelve percent (12%) Engineering and Administration costs in lieu of the security required in this subsection C if the City Engineer determines it to be in the best interest of the City to do so. Cash paid to the City pursuant to this subsection shall be utilized to pay the cost of completing said public improvements and shall relieve Developer from any further payment and/or expense regarding said public improvements.
- D. In the event the Developer shall fail to complete all improvement work in accordance with the provisions of this Chapter and Title and in accordance with the agreement and the City shall have completed same, the City may utilize the security to pay costs of completing said public improvements, including construction, engineering, and administration.
- E. No extension of time, or releases of any form of security required herein shall be made except upon certification by the City Engineer that work covered Hereby has been satisfactorily completed.
(Ord 98-32, 9-8-98; 99-25, 7/19/99; 2001-09, 05/07/01)

Sec. 1-11. Subdivision Development Fee Schedule.

- The Council shall, from time to time, adopt and amend subdivision fees by resolution.

SECTION 2: That Moscow City Code Title 4, Chapter 1 be amended as follows:

Sec. 1-7. Nonconformities.

A. Intent:

1. Within the zoning districts established by this Zoning Code or amendments thereto, there exist lots, structures, uses of land and structures, and characteristics of uses and structures which were lawful before this Zoning Code was enacted or amended, but which would be prohibited, regulated, or restricted under the terms of this Zoning Code or future amendment. It is the intent of this Zoning Code to permit these nonconformities to continue until they are removed, destroyed or lost by time, but not to encourage their survival. Further it is the intent of this Zoning Code that nonconformities shall not be enlarged, expanded or extended, nor be

used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.

2. Nonconforming uses are declared by this Zoning Code to be incompatible with permitted uses in the same zoning district. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this Zoning Code by attachment to a building or by the addition of other uses, of a nature which would otherwise be prohibited in the same zoning district.

3. To avoid undue hardship, nothing in this Zoning Code shall be deemed to require a change in the City-approved plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Zoning Code and upon which actual building construction has since been diligently pursued. Actual construction includes the placing of construction materials in permanent position and fastening in a permanent manner. Where excavation, demolition, or removal of an existing building has been substantially begun in preparation for rebuilding, such excavation, demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on.

B. Nonconforming Lots of Record:

1. In any zoning district in which single family dwellings are permitted, where any single lot of record existing as of the effective date of adoption of this Zoning Code has been previously approved by the City, a single family dwelling and customary accessory buildings may be erected on such lot. This provision shall apply even if such lot otherwise fails to meet the requirements for area or width, or both, which are generally applicable in the district. Such lot shall conform to yard dimensions and requirements other than those applying to lot area or width for the zoning district in which such lot is located. Variance of yard requirements may be granted only pursuant to the procedure set forth in this Zoning Code.

2. Legal lots of record that have been approved by the City Council prior to the adoption of this Zoning Code and which do not abut a public street right-of-way shall be excepted from meeting street frontage requirements so long as sufficient permanent legal access is available (via public right-of-way, private access easement, or other legal means) to provide safe and convenient access for servicing, fire protection, and required off-street parking.

C. Nonconforming Use of Land (or land with minor structures only): Where at the time of passage of this Zoning Code, or of an amendment thereto, lawful use of land exists which would not be permitted by the regulations imposed by this Zoning Code or an amendment, and where such use involves no individual structure with a replacement cost exceeding Two Thousand Dollars (\$2,000), such use may be continued as long as it remains otherwise lawful, provided:

1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Zoning Code; and

2. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that physically occupied by such use on the effective date of adoption or amendment of this Zoning Code; and

3. If any such nonconforming use of land ceases for any reason for a period of more than thirty (30) days, any subsequent use of such land shall conform to the regulations specified by this Zoning Code for the zoning district in which such land is located. This provision shall

not apply when the discontinuance or abandonment is caused by government action impeding access to the premises; and

4. No additional structure not conforming to the requirements of this Zoning Code shall be erected in connection with such nonconforming use of land.

D. Nonconforming Structures: Where a lawful structure exists on the effective date of adoption or amendment of this Zoning Code that could not be built under the terms of this Zoning Code by reason of standards for area, lot coverage, height, yards, the structure's location on the lot, or other requirements concerning the structure, such structure may be retained if it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in any manner which increases its nonconformity, except as provided in M.C.C. 4-1-8(D)(4) below; and

2. Should such nonconforming structure or nonconforming portion of structure be destroyed by no fault of the owner (fire, flood, natural disaster, etc.), it may be reconstructed having the same zoning nonconformities, but no more than as existed before the damage occurred;

3. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved; and

4. A nonconforming structure may be enlarged or altered with the same zoning nonconformities through the issuance of a Conditional Use Permit.

E. Nonconforming Uses of Structures or of Structures and Premises in Combination: If lawful use of individual structures with a replacement cost of Two Thousand Dollars (\$2,000) or more, or of such structures and land in combination, exists on the effective date of adoption or amendment of this Zoning Code that would not be allowed in the zoning district under the terms of this Zoning Code, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Zoning Code in the zoning district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zoning district in which it is located. An exception would be when destruction of an existing structure and use in combination occurs by no fault of the owner (fire, flood, natural disaster, etc.), the structure and use in combination may be replaced to its original size and use prior to the destruction; and

2. Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of this Zoning Code, but no such use shall be extended to occupy any land outside such building; and

3. Any structure, or structure and land in combination, in or on which a nonconforming use is replaced by a permitted use, shall thereafter conform to the regulations for the zoning district in which it is located. The nonconforming use shall not thereafter be resumed; and

4. When a nonconforming use of a structure, or of a structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three (3) year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which the structure is located. This provision shall not apply when the discontinuance or abandonment is caused by government action impeding access to the structure or premises;

F. Repairs and Maintenance:

1. Ordinary repairs and maintenance may be done on any nonconforming structure or nonconforming portion of a structure.
2. Further, upon order of any official charged with protecting the public safety, any building or part thereof declared to be unsafe by such official may be strengthened or restored to a safe condition.

SECTION 3: That Moscow City Code Title 4, Chapter 4 be amended as follows:

Sec. 4-1. Introduction.

This section establishes parcel and building standards for developments within all zoning districts. The standards vary depending upon the zone in which the development is located within as well as the building type. All residential and non-residential development must comply with the standards contained within the Bulk and Placement Regulations Table below. General exceptions to parcel and building standards as well as standards of how to measure setback requirements can also be found within this section.

Sec. 4-2. Bulk and Placement Regulations Table.

BULK & PLACEMENT REGULATIONS TABLE

	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Minimum Lot Requirements																
Minimum lot area (expressed in square feet unless otherwise noted, no minimum lot area for non-residential uses)																
Single family detached	40 acres ¹¹	3 acres	1 acre	9,600	7,000	6,000	5,000 ¹	5,000 ¹	5,000 ¹	-					-	
Twinhome	-	-	-	-	-	3,250	2,250	2,250	2,250	-					-	
Townhouse	-	-	-	-	-	2,000 ²	1,800	1,800	1,800	-					-	
Two family dwelling	-	-	-	-	-	7,000	5,000 ¹	5,000 ¹	5,000 ¹	-					-	
Multiple family dwelling	-	-	-	-	-	-	5,000 ¹	5,000 ¹	5,000 ¹	-					-	
Minimum lot width (in feet, no minimum lot width for non-residential uses)																
Single family detached	150	125	100	80 ³	60 ³	60 ³	50	50	50	-					-	
Twinhome	-	-	-	-	-	30	25	25	25	-					-	
Townhouse	-	-	-	-	-	20	18	18	18	-					-	
Two family dwelling	-	-	-	-	-	60 ³	50	50	50	-					-	
Multiple family dwelling	-	-	-	-	-	-	50	50	50	-					-	
Minimum frontage on a public street other than an alley (in feet)																
Standard lot	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40
Lot on cul-de-sac or turnaround	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Flag lot	20 ¹⁵	20 ¹⁵	20 ¹⁵	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴	20 ¹⁴
Twinhome	-	-	-	-	-	20	20	20	20	-	20	20	20	-	20	20
Townhouse	-	-	-	-	-	20	18	18	18	-	18	18	18	-	18	18
Minimum Setbacks⁹ (in feet)																
Front ¹⁰	30	25	25	25	20	15	15	10	20	25				10	10	
Rear	35	30	30	20	20	20	20	20	20	20 ⁴						
Side Yard Minimum	35	20	20	5	5	5	5 ^{5/6}	5 ^{5/6}	10	20 ⁴						
Side Yard Combined Minimum				15	15 ⁵	15 ⁵	15 ^{5/6}	15 ^{5/6}								
Street Side	20	17	17	17	15	13	13	10	10	20				10		
Exceptions to Minimum Setbacks Listed Above																
Twinhome and Townhouse Exterior Side Setback	-	-	-	-	-	8	8	8	8	-						
Garage Door Front Setback (when door faces said street)	20	40	40	25	20	20	20	20	20	25						
Garage Door Street-Side Setback (when door faces said street)	20	20	20	20	20	20	20	20	20	20						
Accessory Structure Side & Rear Setback (detached, 200 sq ft or less) ¹¹	0	0	0	0	0	0	0	0	0	0						
Accessory Structure Rear Setback (detached, greater than 200 sq ft) ¹²	5	5	5	5	5	5	5	5	5	5						
Common Open Space (minimum 400 square feet per lot or as required below, whichever is greater, residential uses only)																
						75/du	75/du	75/du			75/du	75/du				
	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Maximum Building Height⁸ (in feet)																
Principal Structure	35	35	35	35	35	35	40	40	40	65	65	65			65	
Accessory Structure (detached, GREATER than 200 sq ft, and encroaching into required rear yard setback for the parcel)																
Building Height	35	35	35	35	35	35	40	40	40	65	65	65				
Wall Height ⁷	14	14	14	14	14	14	14	14	14	14	-	-				
Accessory Structure (detached, 200 sq ft OR LESS, and encroaching into principal structure side or rear yard setbacks)																
Building Height	12	12	12	12	12	12	12	12	12	12	-	-				

Notes

where space is blank there is no minimum/maximum requirement, " - " = not applicable, use not permitted in that zone

du = dwelling unit

¹ Or 800 square feet per dwelling, whichever is greater

² Average net density of a townhouse development shall not be more than fourteen and one-half (14.5) units per acre

³ Minimum lot width for lots that have rear alley access is reduced by 10 feet

⁴ Or equal to the height of the building, whichever is greater, when adjacent to R-1, R-2, R-3, or R-4 Zones

⁵ Side yard combined minimum of 15 feet only applies to lots 55 feet or more in width

⁶ Minimum side yard setback for multiple family developments on lots greater than 20,000 square feet shall be no less than 10 feet

⁷ Dormers may be allowed to exceed 14 feet provided they do not occupy more than fifty percent (50%) of the length of the wall, each wall measured separately

⁸ Building height is defined in Section 4-1-6 of this Code. For the exceedance of maximum building height for non-residential structures in certain zones, refer to Section 4-3-4. Height limitations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, solar panels, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

⁹ Minimum setbacks as specified on this table are for building walls. For permitted projections into minimum setback areas, refer to Section 4-5-4(C) of this Code

¹⁰ Where established front setbacks are less than the minimum required for such Zone, refer to Section 4-5-4(E) of this Code for an alternate front setback requirement

¹¹ Roof drainage must be contained on-site

¹² The accessory structure shall not occupy more than fifty percent (50%) of the area of the required rear yard for the parcel

¹³ Exception to minimum forty (40) acre lot size: No more than one (1) parcel of land less than forty (40) acres may be divided from an existing parcel of forty (40) acres or more in the AF zoning district (a 1/4-1/4 section or full Government Lot shall be treated as a forty (40) acre parcel for the purposes of this Zoning Code). The small parcel shall be at least one (1) acre in area and must be registered with the Office of the Latah County Clerk and the City Community Development Department. Such exceptions must be reviewed and approved by the Council and the Board of Latah County Commissioners.

¹⁴ The flagpole portion of flag lots shall not exceed one hundred fifty feet (150') in length and shall not be less than twenty feet (20') in width at any point.

¹⁵ Access may be provided by a permanent access easement of no less than twenty feet (20') in width at any point and may be greater than one hundred fifty feet (150') in length as long as sufficient Fire Department access is provided.

Sec. 4-3. Traditional Subdivision Option

A. Purpose. This section is intended to allow for a subdivision development option that encourages a traditional neighborhood development pattern which is characterized by smaller lot sizes, a mixture of housing types, neighborhood open space, and a gridded street system with alleys that is pedestrian oriented.

B. Application. The use of this section is optional and allows for an alternative to conventional subdivision development. Applications for traditional subdivisions shall follow the same process as outlined in M.C.C. 12-1-3 of this code. The use of this section supersedes minimum lot area, lot width, setbacks, and maximum building height requirements found within Section 4-2 of this Code, but all other City standards still apply.

C. Common Open Space.

1. General. The amount of open space required as part of a traditional subdivision is stated within the design standards table in Section 4 below and depends on the zoning district which the property is located within. The Parks and Recreation Commission shall make a recommendation to City Council on the suitability of an area of land proposed for open space dedication. When determining the suitability of land proposed to be dedicated, the following standards should be taken into consideration. In the case of unique circumstances that require deviation from these standards, the Council shall have the authority to approve such deviations.

2. Standards. Land proposed for common open space should:

- Meet functional parkland dedication requirements of Section 1-5-6.
- Be dedicated to the public and managed by the City of Moscow.
- Be located in one contiguous area unless determined to be more beneficial in multiple locations.

D. Traditional Subdivision Development Standards.

1. Streets. Traditional subdivisions shall utilize a network of streets and alleys that form an interconnected grid pattern. Cul-de-sacs, or other dead-end street configurations, shall only be allowed in limited situations where the street cannot be continued or extended due to

extreme topography, existing development, or a natural or manmade physical barrier that precludes such street extension.

2. Lots. Building lots shall be designed for vehicular access to the rear of the lots via alley access to allow the front building wall of dwellings to be located closer to the street in order to reinforce traditional neighborhood design and maintain a pedestrian-oriented environment. Alleys shall serve all building lots unless special circumstances exist which preclude access such alley extension.

3. Bulk and Dimensional Standards.

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TRADITIONAL SUBDIVISION					
	R-1	R-2	R-3	R-4	RO
Minimum development size (in acres)					
	5	5	5	5	5
Minimum lot area (in square feet)					
Single family detached	5,500	5,000	4,000	2,500	2,500
Twinhome	-	-	3,250	2,250	2,250
Townhouse	-	-	2,000	1,800	1,800
Minimum lot width (in feet)					
Single family detached	50	45	40	40	40
Twinhome	-	-	30	25	25
Townhouse	-	-	20	18	18
Minimum Setbacks² (in feet)					
Front ³	10	10	10	10	10
Rear	20	20	20	20	20
Side Yard Minimum	5	5	5	5	5
Street Side	10	10	10	10	10
Common Open Space					
	9%	11%	12%	14%	14%
Effective Maximum Net Density (units per acre)					
	7.9	8.7	21.7	24.2	24.2
Maximum Building Height¹ (in feet)					
	35	35	35	40	40
Notes					
where space is blank there is no minimum/maximum requirement, " - " = not applicable, use					
du = dwelling unit					
¹ Building height is defined in Section 4-1-6 of this Code. For the exceedance of maximum building height for non-residential structures in certain zones, refer to Section 4-3-4. Height limitations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, solar panels, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.					
² Minimum setbacks as specified on this table are for building walls. For permitted projections into minimum setback areas, refer to Section 4-5-4(C) of this Code					
³ Where established front setbacks are less than the minimum required for such Zone, refer to Section 4-5-4(E) of this Code for an alternate front setback					

Sec. 4-4. Conservation Subdivision Option

- A. Purpose. This section is intended to allow for a subdivision development option that allows and encourages subdivision development at a higher density, while preserving sensitive areas such as floodplains, steep slopes, wetlands, critical habitat, natural areas, as well as general open space.
- B. Application. The use of this section is optional and allows for an alternative to conventional subdivision development. Applications for cluster subdivisions shall follow the same process as outlined in Section 1-3 of this code. The use of this section supersedes minimum lot area, lot width, setbacks, and maximum building height requirements found within M.C.C. 4-4-2, but all other City standards still apply.
- C. Common Open Space.
1. General. The amount of open space required as part of a conservation subdivision is stated within the design standards table in Section 4 below and depends on the zoning district which the property is located within. The Parks and Recreation Commission shall make a recommendation to City Council on the suitability of an area of land proposed for open space dedication. When determining the suitability of land proposed to be dedicated, the following standards should be taken into consideration. In the case of unique circumstances that require deviation from these standards, the Council shall have the authority to approve such deviations.
 2. Standards. Land proposed for common open space should:
 - a. Meet functional parkland dedication requirements of Section 1-5-6.
 - b. Be dedicated to the public and managed by the City of Moscow.
 - c. Be located in one contiguous area unless determined to be more beneficial in multiple locations.
 - d. Prioritize preservation of important natural areas such as agricultural land, floodplains, wetlands, steep slopes, wildlife habitat, riparian area, or other natural features. However, in the event that there are no natural areas identified upon the property, the utilization of the conservation subdivision for preservation of open space in accordance with the design standards table may still be permitted.
- D. Bulk and Dimensional Standards.

CONSERVATION SUBDIVISION						
	SR	R-1	R-2	R-3	R-4	RO
Minimum development size (in acres)						
	5	5	5	5	5	5
Minimum lot area (in square feet)						
Single family detached	22,000	6,500	5,000	4,000	2,500	2,500
Twinhome	-	-	-	3,250	2,250	2,250
Townhouse	-	-	-	2,000	1,800	1,800
Minimum lot width (in feet)						
Single family detached	70	50	45	40	30	30
Twinhome	-	-	-	30	25	25
Townhouse	-	-	-	20	18	18
Minimum Setbacks² (in feet)						
Front ³	20	15	15	10	10	10
Rear	20	15	15	10	10	10
Side Yard Minimum	10	5	5	5	5	5
Street Side	15	15	15	10	10	10
Common Open Space						
	10%	12%	14%	16%	18%	18%
Effective Maximum Net Density (units per acre)						
	1.98	6.7	8.7	21.7	24.2	24.2
Maximum Building Height¹ (in feet)						
	35	35	35	35	40	40
Notes						
where space is blank there is no minimum/maximum requirement, "-" = not applicable, use not permitted in that zone						
du = dwelling unit						
¹ Building height is defined in Section 4-1-6 of this Code. For the exceedance of maximum building height for non-residential structures in certain zones, refer to Section 4-3-4. Height limitations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, solar panels, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.						
² Minimum setbacks as specified on this table are for building walls. For permitted projections into minimum setback areas, refer to Section 4-5-4(C) of this Code						
³ Where established front setbacks are less than the minimum required for such Zone, refer to Section 4-5-4(E) of this Code for an alternate front setback requirement						

Sec. 4-3. — Exceptions to Height Regulations.

~~— The height limitations contained in the district regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, solar panels, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.~~

DRAFT

Sec. 4-45. Setbacks.

- A. Definition. A setback is the distance that buildings or uses must be removed from their property lines. Every lot typically has front, rear, and side setbacks that are determined by the underlying zoning district and the building type upon the lot.
- B. Setbacks Measurement. Setbacks are measured from the property line unless otherwise indicated. When measuring front and street side yard setbacks for lots that abut a Local Residential Street, as designated upon the Thoroughfare Plan within the City's Comprehensive Plan, the front and street side setbacks shall be measured from the building lot side of the public sidewalk to the nearest point of the wall of the main building on the lot, as shown in Figure 1 below. In such cases where sidewalks do not exist in front or street side of a building lot, the Zoning Administrator shall determine the point of measurement based upon the location of adjacent principal structures, the likelihood of future sidewalk installation, and the anticipated location of such future sidewalk.
- C. Permitted Projections into Required Setbacks. Architectural features that do not provide indoor floor space, including eaves, bay windows, decks, carports, and unwallled porches, may project up to twenty-four inches (24") into required side yards and up to forty-eight inches (48") into required front, street side and rear yards.
- D. Exceptions to Required Setbacks: Structures of thirty inches (30") or less in height from grade to the top of the structure are exempt from setback requirements. Deck railings are not to be included when measuring the height of structures for the purposes of this setback exemption so long as they do not exceed forty-two inches (42") in height and where the rails and material constitute not more than seventy percent (70%) of the railing area.
- E. Alternate Front Setback Requirement. In any zoning district where established front yards are less than the minimum required front yard for such district, the Zoning Administrator may grant modifications to the front yard setback of new principal buildings on the subject property provided:
 - 1. The minimum front yard setback is at least equal to the average setback of the principal buildings located on the lots abutting said subject property; or
 - 2. Sixty percent (60%) or more of the principal buildings, within a numbered block on the same side of the street as the subject property, are set back less than the required zoning front yard setback; the average setback of the existing nonconforming structures may be used to establish the minimum front yard of all properties fronting on that side of the street.
- F. Setbacks for Flag Lots. The setback requirements for flag lots are determined by the underlying zoning district the lot is within. The front setback requirement shall be measured by drawing a radius of the front setback distance from the center of the flagpole portion of the lot where it enters the main portion of the lot as shown in Figure 2 below.

(Ord. 2015-01, 01/20/2015)

FIGURE 1

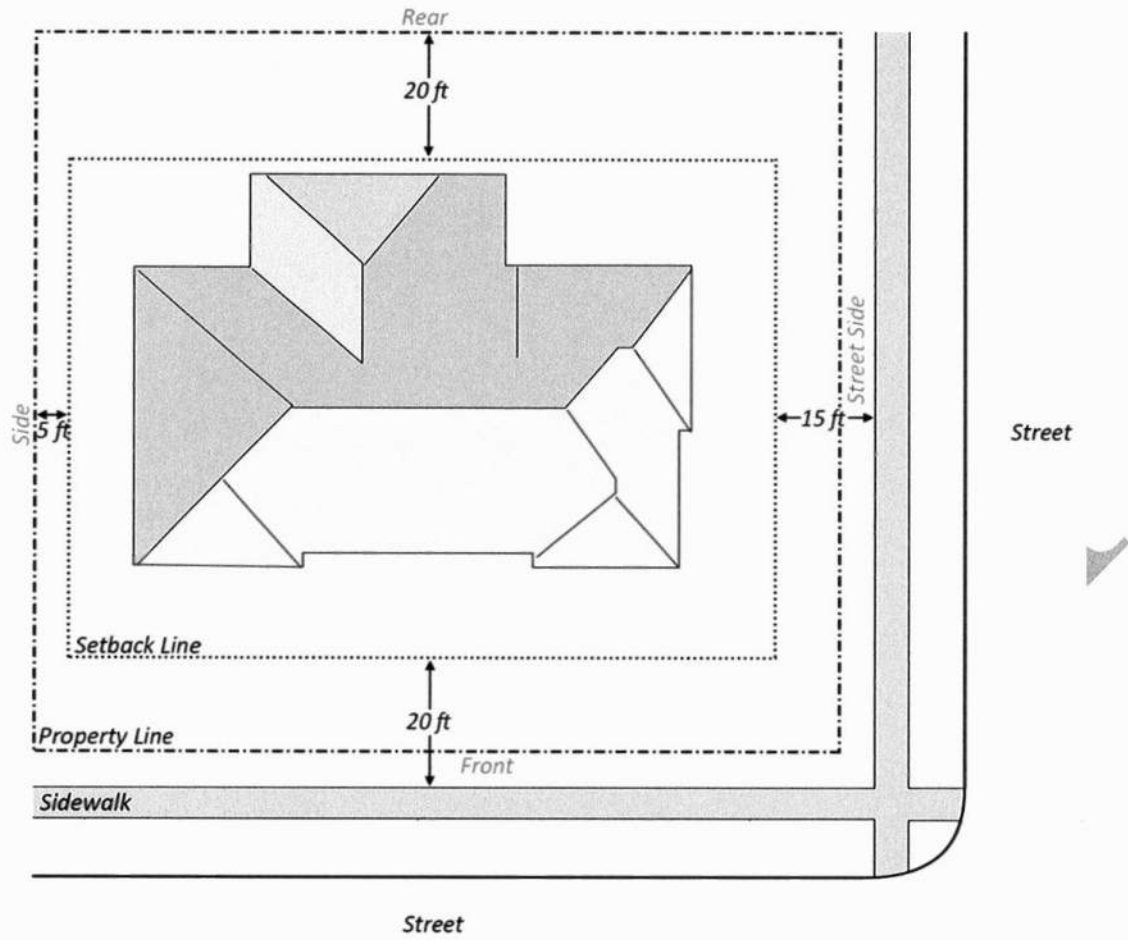
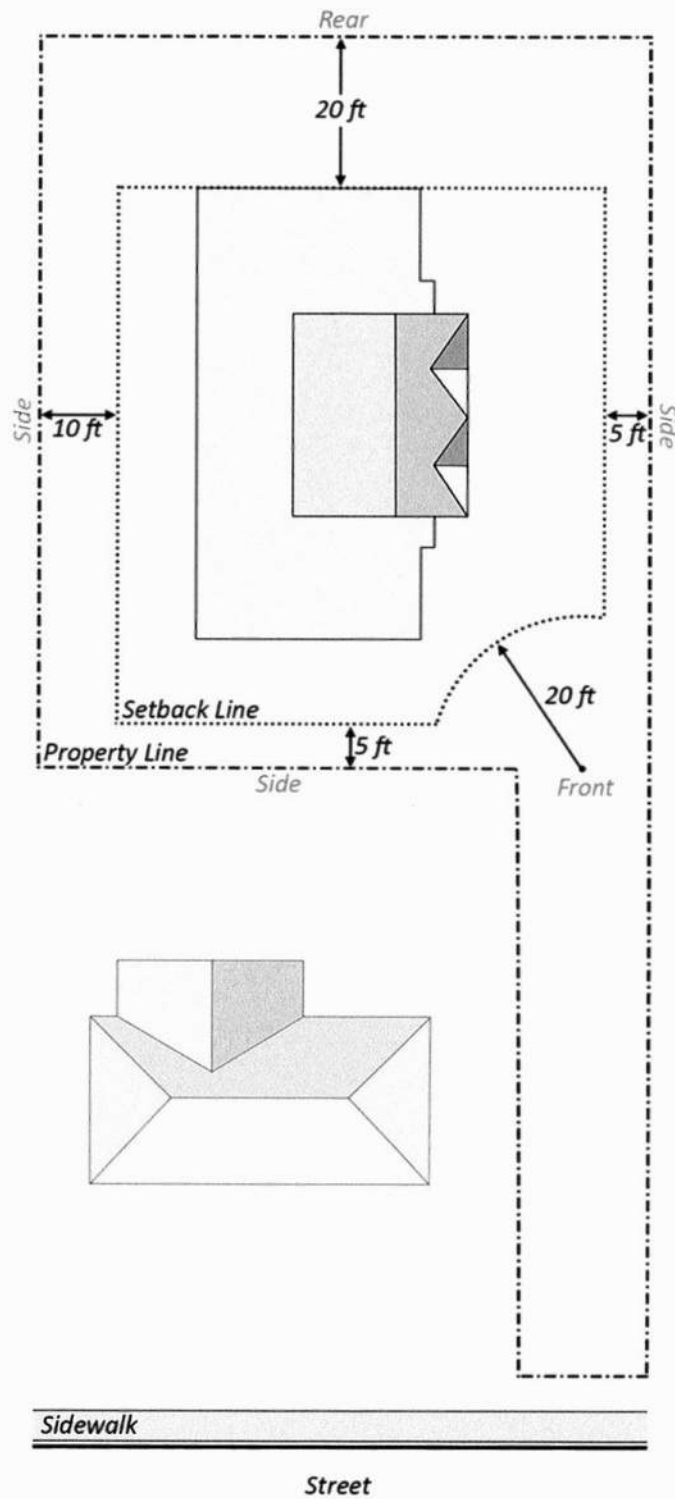


FIGURE 2



Sec. 4-5. Access to Lots and Buildings.

—Except as provided below, every lot shall abut a public street right-of-way (other than an alley) for a minimum distance of forty feet (40').

- 1. Lots on cul-de-sacs and vehicle turnarounds shall abut a public street right-of-way for a minimum distance of twenty feet (20').
- 2. Approved flag lots shall abut a public street right-of-way for a minimum distance of twenty feet (20'), and the flagpole portion of flag lots shall not exceed one hundred fifty feet (150') in length and shall not be less than twenty feet (20') in width at any point.
- 3. Approved twinhome lots shall abut a public street right-of-way for a minimum distance of twenty feet (20'). Approved townhouse lots shall abut a public street right-of-way for a minimum distance equal to the minimum lot width of the applicable Zoning District.
- 4. Legal lots of record that have been approved by the City Council prior to the adoption of this Zoning Code and which do not abut a public street right-of-way shall be excepted from this requirement where sufficient permanent legal access is available (via public right-of-way, private access easement, or other legal means) to provide safe and convenient access for servicing, fire protection, and required off-street parking.
- 5. Lots within the Agriculture/Forestry (AF), Farm Ranch (FR), and Suburban Residential (SR) Zoning Districts where access is provided by a permanent access easement of no less than twenty feet (20') in width at any point.
- 6. Flag poles and access easements within the Agriculture/Forestry (AF), Farm Ranch (FR), and Suburban Residential (SR) Zoning Districts may be greater than one hundred fifty feet (150') in length as long as sufficient Fire Department access is provided.—

SECTION 4: That Moscow City Code Title 4, Chapter 12 be inserted as follows:

Sec. 12-1 Lot Line Adjustments.

- A. General. Lot line adjustments provide for a change in the location, configuration or alignment of a lot line or lot lines common between two (2) or more lots and do not create an additional lot or lots.
- B. City Approval Required. City approval must be obtained prior to the conveyance of land for the intended purpose of changing the location, configuration or alignment of a lot line or lot lines common between two (2) or more lots. Such City review and approval provides the opportunity to ensure that any such lot line adjustments are in accordance with applicable City Code requirements and will not create any violations to required lot area, width, yards and other provisions of this Code.
- C. Submittal. Requests for lot line adjustments shall be submitted to the Zoning Administrator. Such request shall include one (1) paper copy along with one digital copy (in PDF format) of a preliminary lot line adjustment plan drawn to an engineer's scale not smaller than one inch equals fifty feet (1"= 50') and not larger than one inch equals twenty feet (1"= 20') and shall include existing plat and tax parcel numbers and ownership information for the subject properties. Plan shall clearly and accurately depict all existing and proposed lot line configurations, including dimensions and lot areas and shall include a north arrow and depiction of any easement or right-of-way within or adjacent to the subject land. Where the

subject lots contain private improvements, including but not limited to buildings, structures, driveways, sidewalks, fences, or walls, etc. or is adjacent to any improved public right-of-way, such improvements shall be clearly and accurately depicted on a separate site plan of the same scale and dimension. Any proposal or requirement to grant or adjust any easement(s) to accommodate any private or public improvements or access resulting from the proposal shall be clearly depicted on the lot line adjustment plan.

- D. Review. Upon receipt of a lot line adjustment request, the Zoning Administrator shall forward the request to the City Engineer, Fire Marshal, and Building Official for review and comment. After consideration of all comments received, the Zoning Administrator may approve the proposed lot line adjustment as requested, approve with conditions or required revisions, or deny the proposed lot line adjustment. Upon determination of decision, the Zoning Administrator shall mail notice of the decision to the applicant. Such notice shall provide a summary of the Administrator's decision and the process and deadline for submission of an appeal.
- E. Appeal. The applicant may appeal the Zoning Administrator's decision to the City Council within fifteen (15) days of the date of notice of the Zoning Administrator's decision. Such appeals shall be processed in accordance with this Code.

Sec. 12-2 Lot Divisions.

- A. General. Lot Divisions provide for the division of a parcel land or a platted lot to create no more than **four (4)** additional lots for sale, use or development. **The division of property where the proposed division requires the extension of a public street right-of-way shall be processed as a subdivision in accordance with Section 1-3 of this Code. Minor right-of-way dedications such as the dedication of additional property to accommodate the widening of the public street in accordance with adopted street standards shall not be considered the extension of a public street right-of-way for the purposes of this Section.** Conveyance or acquisition of land resulting from legal condemnation procedures or acquisition of street rights-of-way by a public agency shall not be deemed lot division for purposes of this Code.
- B. City Approval Required. City approval must be obtained prior to the conveyance of land for the intended purpose of creating a new building lot, and no such new lot shall be eligible for a building permit until such City approval has been obtained.
- C. Submittal. Requests for lot divisions shall be submitted to the Zoning Administrator. Such request shall include one (1) paper copy along with one digital copy (in PDF format) of a preliminary lot division plan drawn to an engineer's scale not smaller than one inch equals fifty feet (1"= 50') and not larger than one inch equals twenty feet (1" = 20') and shall include existing plat and tax parcel numbers and property ownership for the subject property. Plan shall clearly and accurately depict all existing and proposed lot line configurations, including dimensions and lot areas, and shall include a north arrow and depiction of any easement or right-of-way within or adjacent to the subject land. Where the subject land contains private improvements, including but not limited to buildings, structures, driveways, sidewalks, fences, or walls, etc. or is adjacent to any improved public right-of-way, such improvements shall be clearly and accurately depicted on a separate site plan of the same scale and dimension. Any proposal or requirement to grant or to adjust any easement(s) to accommodate any private or public improvements or access resulting from the proposal shall be clearly depicted on the preliminary lot division plan.

- D. Review. Upon receipt of a preliminary lot division request, the Zoning Administrator shall forward the request to the City Engineer, Fire Marshall and Building Official for review and comment. Notice of the proposed request shall also be mailed to property owners within six hundred feet (600') of the subject property. Such notice shall provide fifteen (15) days for the submission of written comments upon the proposed lot division.
- E. Preliminary Approval. After consideration of all comments received, the Zoning Administrator may approve the proposed lot division as requested, approve with conditions or required revisions, or deny the proposed lot division. Upon determination of decision, the Zoning Administrator shall mail notice of the lot division decision to the applicant and all property owners within six hundred feet (600') of the subject property. Such notice shall provide a summary of the Administrator's decision and the process and deadline for submission of an appeal.
- F. Appeals. Any affected party may appeal the Zoning Administrator's decision to the City Council within fifteen (15) days of the date of notice of the Zoning Administrator's decision. Such appeals shall be processed in accordance with this Code.
- G. Final Approval. The Zoning Administrator's decision shall not be final until the expiration of the preliminary lot division appeal period and the submission of a Record of Survey map based upon a land survey of the subject property and drawn by a professional surveyor or engineer licensed to conduct such work in the State of Idaho drawn to an engineer's scale not smaller than one inch equals fifty feet (1" = 50') and not larger than one inch equals twenty feet (1" = 20') and prepared and recorded in accordance with Idaho Code Title 55, Chapter 19. Such Record of Survey shall depict the new boundary lines and location of property boundary monuments in accordance with the approved preliminary lot division and any conditions of approval. Upon review of the Record of Survey, and determination of conformance and/or completion of any required conditions of approval, the Zoning Administrator shall issue a letter of final approval and the new lot shall be eligible for a building permit.

Sec. 12-3 Subdivisions.

- A. General. Subdivisions are the division of land that results in the creation of more than **four (4)** additional lots for sale, use or development, **or any division that includes the extension of a public street right-of-way.**
- B. City Approval Required. No subdivision plat shall be recorded, or offered for record, nor shall any land be offered for sale with reference to such plat, until the said plat has been approved in writing by the City Council, which shall ascertain, before approving it, that the said plat has satisfied all of the requirements of this Code.
- C. Subdivision Parkland Dedication Required. All subdivisions administered and approved under this Code shall include lands dedicated, or fee paid in lieu subject to City approval, to the City in accordance with this Code so that adequate sites for public parks may be properly located and preserved as the City develops, and in order that the cost of providing additional public parkland may be equitably apportioned on the basis of the additional need created by the individual development.
- D. Subdivision Public Improvements Required.
 - 1. Requirements of this Code are authorized by Article XII, Section 2 of the Idaho Constitution; Title 50, Chapter 13 of the Idaho Code; Title 67, Chapter 65 of the Idaho Code

and by any and all other delegation of State authority relevant to this Code, as amended or subsequently codified.

2. Standards for subdivisions required by this Code are imposed pursuant to authority in Idaho Code Section 67-6518, as amended or subsequently codified.

3. No public improvement(s) required by this Code pursuant to Idaho Code Section 67-6513 shall be greater than necessary to mitigate the effects of such subdivision development on the ability of the City to deliver services without compromising quality of service delivery or imposing substantial additional costs upon City residents to accommodate the proposed subdivision, at the time of the application for subdivision development. Such improvements may include the extension of streets, sidewalks, utilities or similar improvements outside the subject property where such improvements are deemed necessary to maintain the quality of service delivery to the proposed subdivision without imposing substantial additional cost upon City residents.

4. All costs of public improvements required by this Code shall be borne by the owner or subdivider, unless oversize costs are appropriate and applicable due to anticipated City growth, as determined by the City Engineer. When determining whether oversize costs are appropriate and applicable, the City Engineer shall take into consideration present and anticipated community needs and any relevant plans and policies adopted by the City.

5. No permits shall be issued by the City for the construction of any building or other improvement requiring a permit, upon any land for which a plat is required by this Code unless and until the requirements hereof have been fully met.

E. Preliminary Plat Submittal. Every subdivision applicant shall conduct a pre-application conference and neighborhood meeting in accordance with this Code. Subdivision applications shall include one (1) digital copy in AutoCAD dwg file format and one (1) digital copy in PDF file format of the preliminary plat drawings, three (3) twenty four inch by thirty six inch (24" x 36") paper copies of the preliminary plat and associated grading plan drawn to an appropriate engineering scale of an even ten foot increment no smaller than one inch equals fifty feet (1" = 50') and no larger than one inch equals one hundred feet (1" = 100'). The grading plan shall show clearly labeled existing and proposed contour lines of a five foot (5') or lesser contour interval. The content of the preliminary plat drawing shall including the following elements and comply with the Subdivision Design Standards of this Code.

1. Plat name and the name of any subdivision being replatted;

2. Name, mailing address, and phone number of the land owner;

3. Name, mailing address, phone number and signed stamp of the registered land surveyor preparing the plat;

4. Metes and bounds legal description of property to be platted;

5. Plat location by section, township, and range;

6. Plat preparation date;

7. North arrow and drawing scale;

8. Vicinity map showing location of proposed plat in relation to surrounding neighborhoods or larger area;

9. Gross acreage contained within the plat boundary;

10. Existing and proposed topography of the land indicated by clearly labeled contours at five (5') feet intervals or less, except where a slope is in excess of fifty percent (50%), then the interval may be ten (10') feet. All elevation data shall be based on current City of Moscow datum. Topography data shall extend a minimum of fifty (50') feet outside the plat boundary;

11. Boundary lines of the preliminary plat;
 12. City limits lines, if applicable;
 13. Section lines and section corners used to locate the plat;
 14. Ownership of all unplatted adjacent lands;
 15. Names of any and all adjacent plats;
 16. All adjacent property and right-of-way lines which intersect with or are shared in common with the preliminary plat boundary;
 17. Proposed lot, block, street, and alley layout, labeled and dimensioned, and including street names, right-of-way widths, and lot sizes;
 18. All existing and proposed easements both on and immediately adjacent to the preliminary plat;
 19. Location, width, and names of existing or prior platted and proposed streets, alleys, railroad, or utility rights-of-way or easements, parks or other public spaces, pedestrian walkways, and existing permanent structures to be retained within and adjacent to the proposed plat. (In a replat, the original lots, blocks, streets, and easements shall be shown in dotted lines in scale with the proposed replat);
 20. Net acreage of preliminary plat, exclusive of dedicated right-of-way or other public lands;
 21. Any proposed dedicated parkland;
 22. Location and boundaries of stormwater detention and treatment tract(s);
 23. Lot and block numbering;
 24. Existing and proposed zoning district(s) and any related zoning district boundary lines;
 25. Datum used to determine ground elevations;
 26. Location of any flood way and/or flood plain boundaries;
 27. Location and boundary lines of any delineated wetlands, lake, pond, or other significant natural resource land feature;
 28. Existing tax assessor parcel number(s) within the preliminary plat boundary;
 29. Existing and proposed water and sewer lines and utilities on, under, or over the land showing approximate size, grades, and locations; and
 30. Location of all ditches, culverts, catch basins, and other parts of the preliminary design for the control of surface water drainage.
- F. Preliminary Plat Review. Upon receipt of a preliminary plat application, the Zoning Administrator shall distribute copies of the preliminary plat to the City Engineer, Parks and Recreation Director, and Fire Marshal for review, comment or recommendation. Upon determination that the application is complete, the subdivision request shall be scheduled and noticed for public hearing as a Type 2 Quasi-Judicial Hearing, before the Planning and Zoning Commission and City Council pursuant to this Code.
- G. Relevant Criteria and Standards. Approval or denial of preliminary plats shall be based upon the following criteria:
1. The proposed subdivision is in conformance with all applicable City Code requirements;
 2. The proposed subdivision is in general conformance with the Comprehensive Plan;
 3. Public Services and utilities are available or can be made available and are adequate to accommodate the proposed subdivision; and
 4. The proposed subdivision will not be detrimental to the public health, safety, or general welfare.
- H. Subdivision Phasing. Subdivision development may be phased subject to City approval. Such approval shall be made in consideration of required development access, access to proposed

public parks and other facilities, and other similar considerations. Phasing plans approved as part of the subdivision approval shall not be modified without prior City Council approval.

- I. Preliminary Plat Approval. Approval of the preliminary plat shall be valid for a period of twelve (12) months from the date of approval of the preliminary plat by the City Council. Before the expiration of the initial twelve (12) month period after approval, the applicant may request of the Council a one- (1) time extension of the preliminary plat approval for an additional period not to exceed six (6) months (i.e., for a total time period not to exceed eighteen (18) months from the date of the City Council preliminary plat approval).
- J. Final Plat Submittal. Final subdivision applications shall include one digital copy in AutoCAD dwg format and one digital copy in PDF format and three (3) eighteen inch by twenty seven inch (18" x 27") paper copies of the final plat and drawn to a scale of no less than one inch equals one hundred feet (1" = 100'). The final plat shall be drawn to such a scale and contain lettering of such size as to insure the clarity of all lines, bearings, dimensions and all other text and symbols. The final plat shall be in accordance with any conditions of preliminary plat approval, comply with all provisions of Idaho State Code Title 50, Chapter 13, and the Subdivision Design Standards of this Code, and shall include the following:
 1. The title under which the subdivision is to be recorded, including the County, State, Section and Township and Range in which the subdivision is located. The name and title of the subdivision shall not duplicate the name of any existing subdivision in Moscow or the surrounding area.
 2. The name and certification of the surveyor preparing the plat to the accuracy of the field survey and plat and that all work was done under their direct supervision. The surveyor shall in every case have a valid certificate of registration with the Idaho Board of Registration of Professional Engineers and Professional Land Surveyors.
 3. A description of the boundary of the subdivision in bearings and distances with a certification by the property owner or owners verifying ownership and dedicating all rights-of-way and any other appropriate sites and easements for public use.
 4. Date, north point, scale.
 5. Certification of approval by the City of Moscow Planning and Zoning Commission, including approval date.
 6. Certification of approval of the plat and acceptance of the dedications by the Moscow City Council, including approval date, and approval of connection to City public water system.
 7. Certification shall be signed by the Mayor and attested by the City Clerk.
 8. Certification of approval by the City Engineer.
 9. Certification of approval by the County Surveyor.
 10. Certification of filing by the County Recorder.
 11. Certification of satisfaction of the sanitary restrictions, to be endorsed by the county recorder at the time of filing, of subsequent thereto, when the sanitary restrictions shall have been satisfied.
 12. Certification of approval by the Latah County Treasurer.
 13. Initial point and tie to at least two (2) government corners. If any portion of the plat boundary is congruent with, parallel with, adjoining, adjacent to, or including a section line, quarter section line, or quarter quarter section line, ties to said section lines and corners shall be shown by bearing and distance, along with bearings and distances between the corners.
 14. Bearing reference based on nearest section line.

15. Boundary of subdivision shown in bold lines with bearings, distances, and curve data for each segment in concurrence with the legal description.
16. Adjacent plats showing subdivision name, lots, blocks, streets, easements, pathways, and all pertinent information including widths and names of abutting streets and alleys, recording numbers, dimensions and labels. Adjoining unplatted property shall be labeled "Unplatted" and show the name of the owner.
17. Show exact location, widths, exact length and bearing of the center lines of all streets, alleys, pedestrian walkways, and easements with centerlines shown for streets and alleys. Include names of all streets.
18. Location and description of all monuments. City of Moscow standard street monuments shall be placed along street centerlines at all intersections, angle points, points of curvature, and points of tangency created by the plat. Street monuments may be placed at the point of intersection ("PI") of curves in lieu of placement at the "PC" and "PT" if the point falls within the street surface, and at the discretion of the City Engineer.
19. Lots, Blocks, and other tracts or parcels. Blocks shall be numbered consecutively throughout the subdivision and shall not be divided by streets. Blocks may be divided by alleys. Lots shall be numbered consecutively throughout each block.
20. All lots, tracts, parcels, or other areas created by the plat shall show all bearings, distances, curve data, and areas. Lot areas shall be shown in square feet for all lots less than one acre in size. Areas of lots one acre or larger shall be shown in acres.
21. Dimensions for each segment of all lots, streets, easements, tracts, parcels, and any other element created by the plat. Linear dimensions shall be shown in decimal feet, rounded to the nearest one hundredth of a foot. Angular dimensions shall be shown in degrees, minutes, and seconds rounded to the nearest second. Curves shall include curve data consisting of radius, interior angle, tangent, chord distance, and chord bearing for each curve. Curves may be numbered for inclusion into a curve table to provide clarity to the plat. Short lines may also be numbered for inclusion into a line table if necessary.
22. Street profiles showing continuity to adjoining property shall be required where the contour of the surface warrants such consideration.
- K. Final Plat Review and Approval. Upon receipt of a final plat submittal, the Zoning Administrator shall distribute copies of the final plat to the City Engineer, Parks and Recreation Director, and Fire Marshal for review, comment or recommendation. The final plat shall be reviewed for conformance to the approved preliminary plat, and conditions or modifications required by preliminary plat approval, and for final plat standards of Idaho Code and this Code. Upon determination that the final plat is in conformance with the requirements of this code and any conditions of approval of the preliminary plat, the Zoning Administrator shall schedule consideration of the final plat by the City Council as a regular agenda item.
- L. Duration of Final Plat Approval. The City Council approval of the final plat shall be void unless the original tracing, bearing the endorsements of the City Engineer and the Council, is offered to the Latah County Clerk and Recorder for filing within one hundred eighty (180) days from the date of the City Council's approval. Proof of recordation shall be provided to the City Engineer. Upon written request by the applicant, the City Council may grant a single one hundred eighty (180) day extension if the City Council finds conditions in the area have not significantly changed since the Council's original approval.
- M. Development and Monumentation Agreements. The Mayor shall not sign the approved final plat until the required public improvements are completed and monumentation is set, or

agreements to provide for the completion of said public improvements and monumentation have been entered into in accordance with this Code.

Sec. 12-4 Replatting.

- A. General. Replatting of all or a portion of an existing plat shall be processed as a subdivision plat in accordance with the requirements of this Code.

Sec 12-5 Subdivision Design Standards.

- A. Purpose. The purposes of these Subdivision Design Standards is to promote the public health, safety, and welfare, the goals, objectives and policies of the City's Comprehensive Plan, Parks and Recreation Master Plan, Multimodal Transportation Plan and Comprehensive Utility plans, and to promote the orderly and functional development of lots, neighborhoods, and the community. The standards contained herein are intended to provide efficient circulation through coordinated and connected street, bike and pedestrian path systems, secure adequate infrastructure for streets, emergency services, parks, recreation facilities, and utilities necessary to serve proposed subdivisions. The standards contained herein are also intended to ensure that subdivision development mitigates its impact upon service delivery within the community and does not place an undue financial burden upon the public to provide the public services required by subdivision developments.
- B. Applicability. These Subdivision Design Standards shall apply to all subdivision applications received by the City.

Sec. 12-5-1 Subdivision or Development Name.

- A. A.—To facilitate wayfinding and the provision of emergency response services, the name of a subdivision or development shall not be the same or substantially similar to the name of an existing subdivision development, or street, which is located within the City or the Area of City Impact.

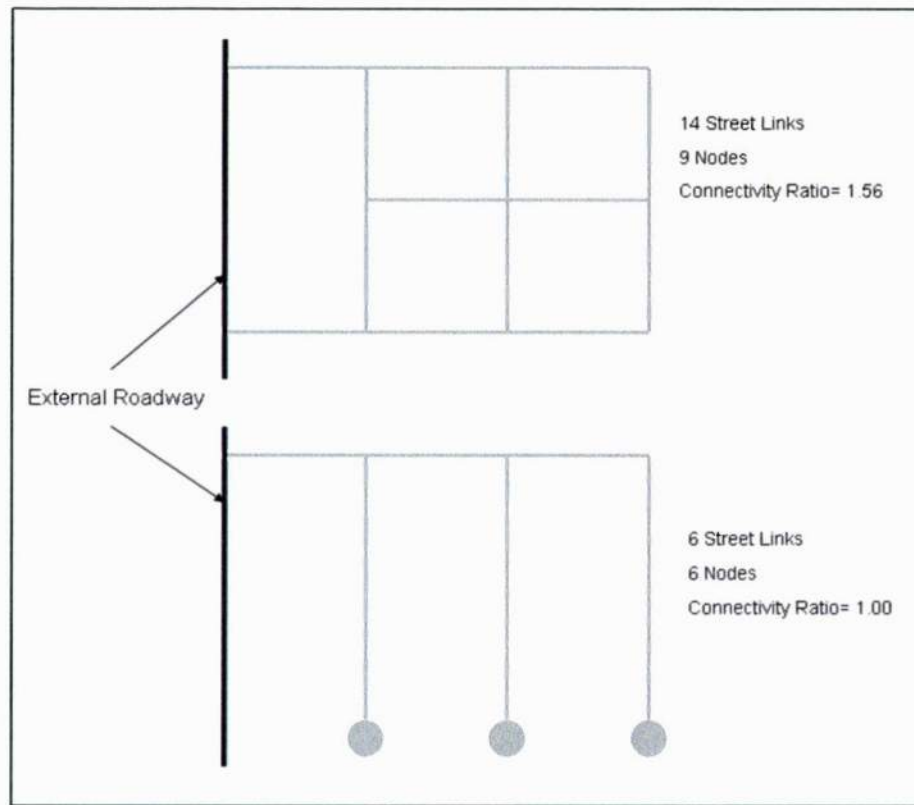
Sec. 12-5-2 Street Standards and Access.

- A. Street Standards.
1. Streets, alleys, sidewalks and pathways shall be constructed in accordance with City of Moscow Street Standards adopted by resolution of the Council. Requirements for public improvements may be less than those specified in the most current City Standard Construction and Specification Drawings, subject to approval by the City Engineer and based upon consistency with the nature and status of the existing street along the entire block length and considerate of changes to required City Street Standards since the existing street was constructed.
 2. Streetlights shall be installed by the developer at locations designated by the City Engineer.
 3. Prior to installation, the developer shall pay the City for the cost of the street name signs and for the installation in the subdivision.
 4. Regulatory traffic signage, (i.e. no parking signs, stop signs, one-way signs, etc.) shall be installed by the developer in a manner consistent with City installation procedures and methodology and in conformance with the approved construction drawings and the current edition of the Manual of Uniform Traffic Control Devices (MUTCD).

5. Horizontal and vertical alignment of City streets shall generally conform to American Association of state Highway and Transportation Officials (ASHTO) standards unless otherwise approved by the City Engineer.
- B. Number of Access Points. Access to subdivisions shall conform to the public street and alley right-of-way standards and shall provide for general traffic circulation, shall support the delivery of City services, and shall meet the requirements of emergency service providers.
 1. All residential development shall provide a minimum number of access points as follows:
 - a. Less than 30 dwelling units: 1 access point
 - b. 30 to 100 dwelling units: 2 access points
 - c. More than 100 dwelling units: no less than 3 access points
 2. The number of required access points may be reduced if it is demonstrated to the City Engineer and Council that the access that is provided:
 - a. Is adequate to ensure delivery of City services and emergency response; and
 - b. Provides for safe and efficient traffic circulation.
 - c. The City Engineer may require an increased number of access points if, due to unusual characteristics of a site or adjacent streets, such additional access is necessary to ensure safe and adequate vehicular circulation for the general public, delivery of sanitation services, public school transportation, and emergency response.

Sec. 12-5-3 Street Layout and Connectivity

- A. General. Street alignments within subdivisions shall provide for logical and orderly movement of persons and goods within the community, shall provide for the continuation and extension of existing streets, and shall provide a well-connected street system that facilitates navigation, use by all modes of transportation, and delivery of emergency and vehicle-based services.
- B. Street Alignments. All subdivisions shall include the continuation of existing adjacent streets through the proposed subdivision and their projection and continuation to adjacent subdivisions or undivided property. Arterial and collector street alignments shall generally conform to their alignments as shown in the City's adopted Comprehensive Plan and Multimodal Transportation Plan.
- C. Offset Intersections. In all cases where it is feasible, opposing streets shall align at street intersections to provide for safe and efficient use of the roadways. Where site conditions prohibit the proper alignment of street intersections the City Engineer shall determine the necessary street intersection offset distance to protect the safety of the public.
- D. Gated Streets Prohibited. Gated public or private street entryways into residential developments are prohibited.
- E. Street Connectivity.
 1. To provide adequate connectivity within a subdivision or planned development, the street network shall have a minimum connectivity index of 1.40, unless specific, unique site conditions prohibit the achievement of such minimum index rating as approved by the City. The connectivity index is defined as the number of street links divided by the number of nodes and link ends. A link is defined as a segment of road between two intersections or from an intersection to a cul-de-sac/stub-out. This includes road segments leading from the adjoining highway network or adjacent development. Nodes are defined as intersections and cul-de-sacs. They do not include the end of a stub-out at the property line or intersection with the adjoining roadway network.



- F. Maximum Block Length.** Blocks shall not be longer than six hundred and sixty feet (660'). Longer blocks may be approved by the City where specific, unique conditions such as topography, the street network in the subject area, or other such conditions dictate that a longer block length is necessary and will not adversely impact circulation and street network connectivity. Where block lengths exceed six hundred and sixty feet (660'), pedestrian and bicycle walkway connections shall be provided to mitigate the impact upon pedestrians and cyclists in accordance with this Code. Such pedestrian walkway connections shall be located along desirable pedestrian routes to nearby parks, schools, commercial services and other similar pedestrian destinations in accordance with the standards of this Code, unless specifically waived by the Council.
- G. Cul-de-sac Allowance.** Cul-de-sacs, or other dead-end street configurations, shall only be allowed in limited situations where the street cannot be continued or extended due to extreme topography, existing development, or a natural or manmade physical barrier that precludes such street extension.
- H. Maximum Cul-de-sac Length.** Streets terminating in a cul-de-sac shall not exceed six hundred and sixty feet (660') in length, measured from the center point of the nearest intersection to the center point of the cul-de-sac. Longer cul-de-sac street lengths may be approved by the City where specific, unique conditions such as topography, the street network in the subject area, or other such conditions dictate that a longer cul-de-sac length is necessary and will not adversely impact circulation and street network connectivity. All cul-de-sacs shall include pedestrian walkways that provide pedestrian connections to adjacent streets and neighborhoods, parks, or other pedestrian routes or destinations unless specifically waived by the Council.

Sec. 12-5-4 Pedestrian Walkways.

- A. General. Pedestrian walkways may be required within subdivisions where necessary to mitigate long block lengths and in other locations as necessary to provide convenient and direct access to adjacent schools, parks, shopping and employment centers where the existing or proposed street and sidewalk system does not provide such access. In consideration of where such walkways may be required, travel distances shall be compared between existing and proposed public street sidewalk routes and the travel distance of a potential pedestrian walkway. Pedestrian walkways shall generally be required where the pedestrian walkway would reduce the average travel distance of pedestrians by more than fifty percent (50%) or where otherwise required by the Council to mitigate potential safety hazards.
- B. Pedestrian Walkway Standards. Public pedestrian walkways shall be located within a dedicated public right-of-way of a minimum width of ten feet (10'). Such pedestrian walkways shall be constructed by the developer in accordance with adopted City standards. Where the pedestrian walkway is anticipated to have high bicycle use, such as walkways that provide access to bike routes or separated pathway facilities, the minimum constructed width shall be eight feet (8').

Sec. 12-5-5 Lots.

- A. Lot Arrangement. The arrangement of lots shall be logical and orderly and shall be considerate of designated floodplains or wetlands that may be present within the subdivision development. Alternative development options, such as clustered or Planned Use Developments, should be utilized when such natural features are present to provide design flexibility and reduce the development impact upon these areas.
- B. Lot Lines. Side lines of lots shall be at right angles or radial to the street lines, unless a variation from the rule will give a better street and lot layout.
- C. Through Lots. Through lots shall be avoided where practicable through the use of rear alley or private drive access, alternate street layout or other means.
- D. Corner Lots. Corner lots in residential zoning districts shall be at least 10 percent (10%) greater than the minimum lot size of the applicable zoning district to ensure adequate building opportunities upon the lot.
- E. Flag Lots. Flag lots may be allowed, subject to the requirements in MCC Section 4-4-5.

Sec. 12-5-6 Parkland Dedication

- A. Dedication of Parkland. With any subdivision, re-subdivision or lot division filed or applied for after December 15, 1985, lands shall be dedicated, or payment in lieu of dedication shall be paid, to the City in order that adequate sites for public parks may be properly located and preserved as the City develops, and in order that the cost of providing additional public parkland may be most equitably apportioned on the basis of the additional need created by individual development. This provision shall not apply to any subdivision or lot division that would result in the creation of no more than one additional single family residential lot; nor shall it apply to land for which parkland had previously been dedicated to satisfy the requirements of this Section. It is the intention of the City to develop each parcel of land dedicated to meet this requirement for park purposes when the area is occupied by residents.
- B. Amount of land to be dedicated.
 - 1. The amount of land to be dedicated shall be a portion of the net developable area. The net developable area will be determined by calculating, from the plat or site plan, the land area exclusive of proposed or existing streets and other public lands.

2. The amount of land to be dedicated shall be a percentage of the net developable area, as follows:

<u>AF and FR Zoning Districts</u>	<u>0%</u>
<u>SR Zoning District</u>	<u>1%</u>
<u>R-1 Zoning District</u>	<u>5%</u>
<u>R-2 Zoning District</u>	<u>6%</u>
<u>R-3 Zoning District</u>	<u>8%</u>
<u>R-4 Zoning District</u>	<u>12%</u>
<u>RO, NB, RTO, CB, GB, MB, I, UMC and U Zoning Districts</u>	<u>12%</u>

3. Parkland dedication within commercial zoning districts (RO, NB, RTO, CB, GB, MB, I, UMC, and U) is intended to meet the demand that results from the development of residential uses upon commercially zoned land and mitigate the effects of such subdivision development on the ability of the City to deliver services without compromising quality of service delivery or imposing substantial additional costs upon City residents to accommodate the proposed subdivision, as of the time of the application for subdivision development. No fee or dedication shall be required if the commercial zoned land is exclusively developed for non-residential use. All subdivisions that contain commercial zoned land shall enter into a development agreement with the City providing for the future dedication of parkland or payments in lieu of dedication should the commercial zoned land be developed for residential use. Any future required parkland dedication, or payments in lieu of parkland dedication, shall be required prior to issuance of building permits for residential structures upon the commercial zoned land. The amount of land to be dedicated shall be that which was required at the time of subdivision approval and may be prorated based upon the percentage of the commercial zoned land that is developed for residential use.

4. If the zoning district classification for a parcel of land is subsequently changed at the request of an owner to a zoning district requiring a higher proportion of land for parkland purposes, or from a zoning district not requiring dedication to one that does, then dedication of the parkland or additional parkland required for the subdivision by this Section, or payment in lieu of dedication, becomes due before the zoning district change becomes effective.

5. Land Suitability. Land is acceptable for dedication to meet the requirements of this Section if in the judgment of the Council the land is suitable for beneficial park and open space use considering its location, size, configuration, public access, topography, surroundings, compliance with standards for parks established in the Moscow Parks and Recreation Plan and the Moscow Comprehensive Plan, and the needs of the public in that area. Land acceptable for dedication is not necessarily required to be located within a proposed subdivision; however, the land must conveniently serve parkland needs of residents of the subdivision. The Council shall consider recommendations received from the Parks and Recreation Commission on the suitability of a particular parcel of land proposed for dedication.

6. Payment in Lieu of Dedication. In the event that the City determines in good faith that proposed dedication does not meet land suitability standards and that there are no alternative proposals which satisfy the conditions of land suitability, then payment in lieu of the land

dedication shall be required for all or any portion of land necessary to meet the requirements of this Section.

a. The amount of payment in lieu of dedication shall be the current fair market value of land suitable to meet the parkland dedication requirement of this Section. The payment in lieu of dedication shall be computed by averaging the value of the land exclusive of improvements, (both public and private), and multiplying by the percent required for park dedication. This value shall be determined prior to granting final approval of the subdivision, or lot division. If the value of such land cannot be determined satisfactorily by the City and the developer, the following procedure shall determine value:

i. The parties shall each submit an offer of value to the other, in writing. For ten (10) days thereafter either party may accept the other's offer of value.

ii. If neither offer is accepted, an appraiser, selected jointly by the City and the developer shall determine the value.

iii. If the parties cannot agree on selection of an appraiser, the names of two (2) Member Appraisal Institute appraisers, one designated by each party, shall be placed in a container, and one appraiser's name shall be picked at random by the Mayor. This appraiser shall then proceed to determine value.

iv. The party who has submitted the value closest to that ultimately determined to be fair market value by the appraiser shall be considered the prevailing party. The party not prevailing shall pay for the appraisal related expenses. Either party may appeal the decision of the appraiser to the district court. The court shall consider the matter as a review consistent with the administrative procedures act. The prevailing party shall be paid court costs and reasonable attorney fees by the party not prevailing.

b. Payment in lieu of dedication shall be held by the City in a secure account until it is spent. Payment in lieu of dedication shall be spent for the acquisition of those new parklands that in the judgment of the Council will most conveniently serve the people who will use the development for which payment in lieu of dedication was collected. If the Council finds that the development is served by an adequate amount of parkland, then the payment in lieu of dedication may be used to purchase landscaping materials or for other capital improvements to develop the parklands most conveniently serving the needs of those who will be users of the development.

c. The Council may make such arrangements with a subdivider through a contract to permit the payment in lieu of dedication over a period of time. Payment in lieu of dedication shall be expended as provided herein within ten (10) years of the last receipt of such payment in lieu of dedication in the development unless such expenditure is impractical or would result in waste.

d. Dedicated parkland may be sold or traded only if the proceeds are used to acquire other parklands which in the judgment of the Council will better serve those who would be users of the parkland sold.

e. Where Council determines it to be in the best interest of the City, the applicant or developer may execute and file an agreement specifying the period of time and the conditions pursuant to which a combination of parkland dedication and development of such parkland shall occur.

Sec. 12-5-7 Stormwater Management and Conveyance.

- A. General.** Stormwater management is intended to ensure that the peak rate of stormwater runoff does not increase with the addition of impervious surfaces that accompany subdivision development.
- B. Stormwater Standards.** Surface drainage from the subdivision shall be collected, conveyed, and discharged through an approved system of gutters, catch basins, storm sewers, detention ponds, culverts, and/or swales and shall conform to the stormwater runoff control requirements contained in this Code and any additional stormwater runoff control requirements and standards established from time to time by resolution duly passed and adopted by the Council.
- C. Preservation of Natural Drainage Courses.** To the greatest extent possible, existing natural drainage courses should be preserved and incorporated within the development to allow greater opportunities for natural stormwater conveyance and treatment.
- D. Stormwater Detention Facilities.** Residential subdivision stormwater detention and treatment facilities shall be constructed by the development and thereafter owned, operated, and maintained by the City in accordance with the Stormwater Runoff Control Standards of this Code. The site of such detention and treatment facilities shall be dedicated to the City in the form of a separate tract of land identified on the face of the plat. The size, dimensions, purpose of, and access route to said tract shall be clearly shown on the final plat document.

Sec. 12-5-8 Utilities and Easements.

- A. Utilities.** All public and private water, sanitary sewer, and storm sewer system improvements shall conform to the design and construction requirements set forth in the Standard Construction Specifications, Standard Drawings, other Chapters of this Code, Idaho Code, and as shown in an adopted Comprehensive Land Use or Utility Plans, and as deemed appropriate by the City Engineer.
 - 1.** Sanitary sewer and storm sewer facilities connecting to the existing City sewer system shall be installed to serve each lot and shall be installed with grade, location, design, material, and size approved by the City Engineer.
 - 2.** A potable water distribution system, including fire hydrants, shall be installed to serve each lot and shall be installed with grade, location, design, material, and size approved by the City Engineer.
 - 3.** Where it is anticipated that multiple structures may be placed upon a single lot, the City Engineer may require that multiple utility services, in a quantity that is deemed to be adequate to serve the anticipated number of structures upon such lot, be installed so as to reduce the likelihood of the necessity of future street cuts to serve such future development.
- B.** In certain instances, as determined by the City Engineer, sanitary sewer lift stations and/or potable water booster stations and water storage reservoirs may be necessary to adequately serve a proposed subdivision. In such cases, the developer shall design and construct such facilities to a size and standard deemed appropriate by the City Engineer. Oversizing costs for such facilities may be applicable and shall be determined based upon present and anticipated community needs and any relevant plans and policies adopted by the City.
- C. Utility Easements.**
 - 1.** Public utility easements shall be granted for all public water, sanitary sewer, and storm sewer mains and facilities, either as part of the final subdivision plat document or by separate conveyance. Easements granted by separate conveyance shall be recorded at the Latah County Recorder's office prior to approval of the final plat by the City Engineer. For utility mains, the

minimum width of the easement shall be twenty feet (20') with the main centered in the easement. Where two (2) public mains are proposed for the same easement, the minimum width shall be thirty feet (30') with the mains generally set five feet (5') off the centerline of the easement. Minimum width requirements may be expanded where topographic or other conditions warrant a wider easement to accommodate access or maintenance needs, as deemed appropriate by the City Engineer.

2. Utility easements shall include a minimum twelve feet (12') wide all weather driving surface (pavement, gravel, pavers, etc.) on an adequate base section to accommodate utility maintenance access as deemed necessary by the City Engineer. Where such easements provide access to water booster stations, sewer lift stations, and similar facilities, the minimum driving surface width shall be twenty feet (20'). Maximum slope of the driving surface shall not exceed fifteen percent (15%). Where topography and/or alignment of the utilities/easements warrant, a wider easement and/or driving surface may be required by the City Engineer.

3. Encroachment into public utility or access easements with the installation of sheds, fences, walls, buildings, trees, or other significant surface features is prohibited, unless approved by the City Engineer. Landscaping of public utility easements and public access easements outside the area of the all-weather driving surface is permitted as long as such landscaping does not interfere with the use of the easement or the maintenance and/or operations of the public facilities contained therein. A statement summarizing these conditions shall be included on the face of the final plat and shall be included in all separate conveyance documents.

Sec. 12-5-9 Flood Hazard Areas

A. General. Floodplain management is intended to set forth minimum development requirements in floodplains that are intended to promote the public health, safety, and welfare of the City.

B. Flood Hazard Areas. All subdivision and lot division proposals in areas of special flood hazard shall:

1. Be designed to be considerate of the need to minimize flooding, including layout of streets and lots and the related desire to avoid construction in the one hundred (100) year flood plain, whenever possible, and avoid unnecessary construction in the floodway;

2. Design, locate and construct all public utilities and facilities such as sewer, gas, electrical, and water systems to prevent infiltration and flood damage and the potential for discharges from such utility systems into flood waters;

3. Provide adequate drainage to reduce exposure to flood damage; and

C. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated by the subdivider for subdivision proposals and other proposed developments which contain at least fifty (50) lots or five (5) acres (whichever is less).

Sec. 12-6 Required Improvements

A. Design and installation of improvements.

1. All subdivision improvements required by this Code shall be designed and installed in accordance with the City's adopted Construction Specification Standard Drawings, Erosion and Sediment Control Standards, Stormwater Runoff Control Standards and other applicable improvement standards duly adopted by the City which are in force and affect at the time of the installation of such improvements. The City Engineer may allow exceptions to application to the current improvement standards in affect at the time of the installation of such

improvements where such standards have substantively changed since the approval of the subdivision plat and the width of the previously dedicated right-of-way prohibits the ability to fully comply with the current improvement standards. In Addition, the City Engineer may specify additional requirements is unusual conditions warrant such requirements to ensure the public health, safety and welfare.

2. All subdivision improvements shall be furnished, installed, and constructed by the developer at no cost to the City. The City may, at the City's sole discretion, accept a suitable form of financial security in lieu of the completion of required public improvements where the City Council determines that such is in the best interest of the City in consideration of the specific conditions of the site and surrounding area or planned future public improvements.

3. Plans and specifications for subdivision improvements herein set forth shall be prepared by a registered professional engineer licensed to practice within the State of Idaho.

B. Public Improvements Required

1. Except as provided within subsection C below, all required subdivision public improvements shall be completed prior to the Mayor's signature on the related final subdivision plat and prior to issuance of a building permit for development or redevelopment of a lot created by a lot division or of a lot having gained the necessary minimum lot area for the applicable zoning district by way of the lot line adjustment or lot consolidation. No building permit shall be issued for development or redevelopment prior to City acceptance of compliance with the public improvement requirements of this Chapter.

2. All public improvement construction documents shall be prepared by a professional engineer licensed by the State of Idaho. Plans shall include extensions necessary to connect with existing and proposed streets, alleys, and utilities. Plans shall show sufficient information to indicate that streets, alleys, and utilities can be logically extended into future adjoining subdivisions or parcels. The capacity and dimensions of water, sewerage, drainage, and street infrastructure shall be adequate to provide for future needs of other undeveloped properties in the general vicinity. Where undeveloped properties exist in the general vicinity of the subdivision, all relevant public utilities shall be extended to the boundary of the subdivision to allow for their logical and orderly extension. The City Engineer may specify additional requirements where conditions warrant such requirements.

3. Construction of public improvements shall not commence until engineered construction documents for such work have been approved by the City Engineer.

4. The applicant or developer shall dedicate the required public improvements and any related land required to the City free and clear of all liens and encumbrances. Following completion of the construction of the public improvements required by this Code, acceptance of said improvements by the City in writing, and approval and filing of the final plat; ownership of said improvements shall transfer from the developer to City.

5. Upon completion of the construction of public improvements required by this Code, the developer shall submit to the City a set of as-constructed plans prepared by an engineer licensed in the State of Idaho attesting that the drawings accurately depict the improvements as actually constructed in ink on mylar. Submittal of said plans shall be completed before the City accepts the public improvements as complete. The subdivision developer shall also include an electronic version of the as-constructed plans in a format acceptable to the City.

C. Development Agreements

1. In lieu of completion of required public improvements prior to the Mayor's signature on the final subdivision plat, the applicant or developer and the City may execute and file a

Development Agreement specifying the period of time within which the applicant or developer shall complete all required public improvements, granting of easements, and dedications required under this Chapter.

2. The Development Agreement shall provide that, if the applicant or developer shall fail to complete such public improvements, granting of easements, and/or dedications within the specified period, or shall fail to correct deficiencies therein as may be directed by the City Engineer during a period of two (2) years following completion and acceptance of such public improvements, granting of easements, and/or dedications, the City may, at its option, direct the completion of such public improvements, granting of easements, and/or dedications, and shall recover the full cost and expense thereof from the applicant or developer. The Development Agreement may also provide for any of the following:

- a. Construction of the improvements in phases;
- b. An extension of time under conditions therein specified;
- c. The termination of the Development Agreement upon the completion of proceedings under a Local Improvement District for the construction of public improvements deemed by the Council to be at least the equivalent of the improvements specified in said Development Agreement and required to be constructed by the applicant or developer;
- d. Proportional refund or release of security, which has been set in accordance with this Chapter and filed with the Development Agreement. Such refund or release shall only occur for the portion of the required public improvements which have been completed and accepted;
- e. Conditions of parkland dedication;
- f. Traffic mitigation participation;
- g. No protest of LID agreements;
- h. Any other provisions designed to ensure construction of required public improvements;
- i. And/or any contractual agreement allow by Idaho law.

D. Security

1. To assure such applicant or developer's full and faithful performance of the Development Agreement set forth in this Chapter, the applicant or developer shall also file with the Development Agreement at least one of the following forms of security:

- a. Certified check to be cashed;
- b. Cashier's check to be cashed;
- c. Cash;
- d. Irrevocable letter of credit from a certified bank or financial institution;
- e. Bond; or
- f. Any other form of security which is specifically approved by the City Finance Director.

2. Any form of security required by this Chapter shall be in an amount as determined by the City Engineer, sufficient to cover the cost of required public improvements including the construction, maintenance, correction, inspection, engineering, and administration thereof. The amount of the security shall be the City Engineer's estimated cost of the required public improvements to be completed plus ten percent (10%) contingency plus twelve percent (12%) engineering and administration costs.

3. In the event the applicant or developer fails to complete all public improvements in accordance with the provisions of the Subdivision Code, this Code, or a Development Agreement, the City may use the security to pay the costs of completing said public improvements, including construction, engineering inspection, and administration.

4. No releases of any form of security required herein shall be made except upon certification by the City Engineer that the required public improvements have been satisfactorily completed.

E. Payment in Lieu of Public Improvements Construction

1. If, in the opinion of the City Council, it is in the best interest of the City, the City may accept cash in lieu of construction of required public improvements. Such cash payment made to the City pursuant to this Subsection shall be used to pay the cost of completing said public improvements and, when used, shall relieve the applicant or developer from any further payment and/or expense regarding said public improvements. Neither the applicant nor the developer shall have claim against the cash payment, or any interest generated therefrom, regardless of the eventual use of said payment. The amount of the cash payment shall be equal to that specified for security in this Chapter.

F. Warranty Period for Public Improvements

1. Term. Following completion of the construction of the required public improvements and following acceptance of said improvements by the City, the applicant and developer shall provide a one (1) year warranty for said improvements. Such warranty shall ensure that the constructed improvements shall, at the end of one (1) year period, remain in an operational condition meeting the City design standards and shall be free of any defects or failures identified during such warranty period.

2. Warranty Repairs. In the event that the City identifies any defect or failure of the public improvements installed by the developer as a requirement of this Code within one (1) year of the acceptance of said improvements, the City shall notify the developer in writing of the noted defect or failure. Upon such notification, the developer shall repair said defect and/or failure to the satisfaction of the City Engineer within ninety (90) days of notice to developer of said defect or failure.

3. Security. To ensure that the repair of defect or failure in the required public improvements shall be remedied by the developer, security for the warranty period shall be required. The amount of the security shall be equal to at least twenty percent (20%) of the documented construction cost of said public improvements. The form of the security shall be at least one of the following:

- a. Certified check to be cashed;
- b. Cashier's check to be cashed;
- c. Cash;
- d. Irrevocable letter of credit from a certified bank or financial institution;
- e. Bond;
- f. Any other form of security which is approved by the City Finance Director.

4. In the event that that the developer fails to make the necessary repairs to remedy the defect or failure of the public improvements, the City may utilize the security to pay the costs of completing said repairs, including construction, engineering, inspection, and administration and may pursue placement of a lien on the subject property, if necessary to pay such costs.

Sec. 12-7 Monumentation

A. General. Monumentation shall be in accordance with this Code, the Idaho Code and shall comply with all requirements herein.

B. Street Monuments. City standard street monuments shall be set at all exterior corners of the subdivision; at all points where street lines intersect the exterior boundaries of the subdivision; at all points of curvature in each street or at point of intersection, in lieu of points of curvature,

when point of intersection are situated within street pavement; at all street intersections; and at centers of cul-de-sacs.

- C. Lot Corners. All lot corners shall be marked with five-eighths (5/8") inch steel bar, two (2') feet long and driven flush with the finished grade.
- D. Witness Corners. In the event an interior monument cannot be placed at the location shown on the plat, the professional land surveyor shall place a witness corner or reference monument and shall file a record of survey as provided in Chapter 19, Title 55, Idaho Code, to show the location of any witness corner or reference monument in relation to the platted location of the corner.
- E. Recording of Plat with Only Exterior Monumentation. Where interior monumentation security has been provided in accordance with this Code, the professional land surveyor may prepare the plat of the subdivision indicating that only the exterior monuments have been set at the time of recording. There shall be a certification on the plat by the Idaho professional land surveyor that the interior monuments for the subdivision will be set in accordance with Section 50-1303 Idaho Code on, or before, a specified date, and the said interior monuments will be referenced on the plat with a unique symbol. The time for setting of the interior monuments shall not exceed two (2) calendar years from the date the plat is recorded, unless otherwise approved by the City Engineer.

Sec. 12-7-1 Monumentation Security

- A. Interior Monumentation Security. Where the subdivider wishes to defer the setting of interior monuments for a subdivision, the subdivider shall furnish to the City, prior to recording the plat, security in the form of a bond or cash deposit in an amount equal to one hundred twenty percent (120%) of the estimated cost of performing the work for the interior monumentation. The estimated cost of performing such work shall be determined by the Idaho professional land surveyor signing the plat and verified and approved by the City Engineer.
- B. Upon receipt of notification of the setting of the interior monuments within the subject subdivision, the City shall inspect such monuments to ensure their proper placement and installation. Upon determination the monument placement has been satisfactorily completed, the City shall release the security to the subdivider.
- C. In the event that the person subdividing the land fails or refuses to authorize the payment for interior monumentation, the Idaho professional land surveyor may request payment from the City, and upon inspection by the City Engineer of the interior monumentation, the City shall pay the professional land surveyor from the interior monumentation security established in accordance with this Subsection.
- D. In the event that the Idaho professional land surveyor charged with the responsibility for setting interior monumentation for the subdivision does not set such monuments, the City may contract with an Idaho professional land surveyor in private practice to set such monuments for recording as required herein. Payment of the fees for these services shall be made from the security established in accordance with this Chapter.

SECTION 4: SEVERABILITY. Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of remaining provisions. The remaining sections of Title 4 and Title 5 shall be in full force and effect.

SECTION 5: EFFECT ON OTHER ORDINANCES. Where the definitions contained in this Ordinance are in conflict with relevant portions of the City of Moscow, Idaho, Municipal Code, the definitions contained within those portions of the Moscow Municipal Code will be unaffected until such time, if any, as they are amended to be consistent with this Ordinance.

SECTION 6: EFFECTIVE DATE. This Ordinance shall be effective upon its passage, approval, and publication according to law.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2020.

Bill Lambert, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk

ORDINANCE NO. 2020 -

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 4, CHAPTER 3; PROVIDING FOR THE ; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, : and

WHEREAS, : and

WHEREAS, : and

WHEREAS, : and

WHEREAS, : and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, IDAHO, AS FOLLOWS:

SECTION 1: That Moscow City Code Title 4, Chapter 3 be amended as follows:

...

H. Telecommunications Facilities.

1. **Applicability.** This Section shall apply to antenna towers, antenna support structures, antennas and their ancillary facilities (telecommunications facilities) any of which are used to provide commercial telecommunications services. This Section shall not apply to noncommercial antenna towers exclusively used as accessory to a residential use on the same lot.
2. **Purpose.** The provisions of this Section are intended to ensure that telecommunications facilities are located, installed, maintained and removed in a manner that:
 - a. Minimizes the number of antenna towers throughout the community;
 - b. Encourages the co-location of telecommunications facilities;
 - c. Encourages the use of existing buildings, light or utility poles, water towers or other structures for antenna mounting and discourages construction of new antenna towers;
 - d. Ensures that telecommunications facilities are located and designed to minimize visual impact on the surroundings.
 - e. Ensures that regulation of telecommunications facilities does not have the effect of prohibiting the provision of telecommunications services, does not unreasonably discriminate among functionally equivalent providers of such services, and allows the provision of adequate area coverage by such services.

3. Definitions.

- a. *Ancillary Facilities*. Buildings, cabinets, vaults, enclosures, equipment, and the like required for operation of telecommunications systems.
- b. *Antenna*. Any device that transmits and/or receives radio waves, microwaves, or other electro-magnetic radiation for voice, data or video communications purposes including, but not limited to, television, AM/FM radio, micro-wave, cellular telephone and similar forms of communications.
- c. *Antenna Support Structure*. Any structure or building not constructed primarily for the purpose of supporting an antenna but that supports an antenna as a secondary or accessory use.
- d. *Antenna Tower*. Any structure or pole erected primarily for the purpose of supporting one or more antennas that are used to provide commercial wireless communications or telecommunications services.
- e. *Antenna Tower Height*. The overall vertical length of the antenna tower above ground level.
- f. *Co-location*. Placement of one or more antenna(s) on an antenna support structure or the placement of an antenna on an antenna tower on which one or more antennas are already located.
- g. *Lattice Tower*. An antenna tower characterized by a framework of lateral or diagonal cross members that stabilize the tower.
- h. *Monopole*. An antenna tower that consists of a single upright pole, which is self-supporting and without supports or guys.
- i. *Small Wireless Facility*. Is a telecommunications facility that meets each of the following conditions:
 - i. The structure on which the antenna facilities are mounted is:
 - (a) Fifty (50) feet or less in height; or
 - (b) No more than ten percent (10%) taller than other adjacent structures; or
 - (c) Not extended to a height of more than ten percent (10%) above the height as a result of the collocation of new antenna facilities.
 - ii. Each antenna (excluding associated antenna equipment) is no more than three (3) cubic feet in volume; and
 - iii. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than twenty-eight (28) cubic feet; and
 - iv. The facility does not require antenna structure registration under Part 17 of FCC regulations; and
 - v. The facility does not result in human exposure to radiofrequency radiation in excess of the application safety standards specified in FCC Rule 1.1307(b).
- h.j. *Telecommunications facilities*. Antenna towers, antenna support structures, antennas and their ancillary facilities that are used to provide commercial wireless communications or telecommunications services.
- i.k. *Temporary Antenna Tower*. An antenna tower established for the purpose of providing tele-communications services on a temporary basis for a special event or to temporarily replace an antenna tower while it is being repaired.

4. General Use Regulations

- a. The installation of lattice towers is prohibited except lattice towers that qualify and are permitted as temporary antenna towers. Replacement, relocation or alteration of non-

- conforming lattice towers shall be subject to the Nonconformity Regulations in Section 4-1-6 of this Zoning Code.
- b. A Conditional Use Permit shall be required before the installation, relocation, replacement, and/or alteration of an antenna tower that exceeds thirty-five feet (35') in height in all Zoning Districts.
 - c. ~~Co-location shall be a permitted use if the property upon which such antenna is located is within one of the following Zoning Districts: U, RO, NB, RTO, CB, GB, MB, or I. An antenna may be co-located as a permitted use on existing antenna towers and antenna support structures in all zoning districts if the antenna extends no more than eighteen feet (18') above, and projects no more than eight feet (8') horizontally away from the existing tower or support structure. Colocation shall also be a permitted use on nonconforming antenna towers if the antenna extends no more than eighteen feet (18') above, and projects no more than eight feet (8') horizontally away from, the nonconforming antenna tower. Except for small wireless facilities which are subject to the standards contained in Section 6 herein, co-location shall be a permitted use within all zoning districts when located upon existing antenna towers and antenna support structures if the antenna extends no more than fifteen feet (15') above, and projects no more than eight feet (8') horizontally away from the existing tower or support structure. Any co-location of wireless facilities that exceed such limits shall require a Conditional Use Permit.~~
 - d. A temporary antenna tower as defined herein shall be a permitted use in all zoning districts, subject to site plan approval by the Zoning Administrator. The duration of the temporary antenna tower at the site shall not exceed the special event time or the time reasonably needed to repair the antenna tower in need of repair.
5. General Telecommunication Facility Development Standards
- a. Prohibited Towers. The installation of telecommunications facilities utilizing lattice towers or towers requiring supporting guy wires shall be prohibited.
 - b. Antenna Tower Setback from Highway Right-of-Way. No antenna tower that exceeds sixty feet (60') in height shall be permitted within five hundred feet (500') of US Highway 95 and/or State Highway 8 rights-of-way unless the proposed site is in the U, MB, or I Zoning District, in which case the antenna tower shall be set back a minimum of one hundred feet (100') from said right-of-way.
 - a.c. Antenna Tower Setback from Property Lines. Antenna towers shall be separated from the property line of any adjacent property zoned for residential uses at least a distance equal to the height of the antenna tower, and shall be separated from all other adjacent property lines at least a distance equal to one-half (1/2) the height of the antenna tower.
 - b.d. Security. Every telecommunications facility shall be protected from unauthorized access by appropriate security measures.
 - e.e. Lighting. Every antenna and antenna tower shall not be lighted unless required by the Federal Aviation Administration or other state or federal agency having such authority, and such lighting shall not be more than the minimum required by such agency.
 - d.f. Noise Reduction. In any SR, R-1, R-2, R-3, or R-4 Zoning District, and in all other Zoning Districts when the adjacent property is zoned SR, R-1, R-2, R-3, or R-4 or occupied by a dwelling, hospital, school, library, or nursing home or similar use, noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to forty five decibels

(45 dB). Noise generating equipment shall be sound-buffered by means of baffling, barriers, or other suitable means to reduce sound level measured at the property line to forty-five decibels (45 dB).

e.g. Signage. The placement of signage on antenna towers is prohibited, except for the placement of security signage, which shall not exceed six (6) square feet on each side of the antenna tower and shall not be located higher than six feet (6') above grade. Additionally, one security sign not to exceed one (1) square foot may be provided on each fifty feet (50') of wall or fence enclosing the facility.

f.h. ~~Antenna towers shall be separated from the property line of any adjacent property zoned SR, R-1, R-2, R-3, or R-4 at least a distance equal to the height of the antenna tower, and shall be separated from all other adjacent property lines at least a distance equal to one-half (1/2) the height of the antenna tower.~~

g.i. Aesthetic Considerations.

i. Antenna towers shall be painted a neutral color consistent with the natural or built environment of the subject site and the surrounding area unless otherwise required by the Federal Aviation Administration or any other State or Federal agency having such authority.

ii. Equipment shelters or cabinets shall have an exterior finish compatible with the natural or built environment of the subject site and the surrounding area and shall also comply with any design guidelines applicable to the particular zoning district in which the facility is located.

iii. Antennas and cables shall be of a color identical to or closely compatible with that of the structure to which they are attached unless otherwise required by the Federal Aviation Administration or any applicable state or federal agency. Telecommunications facilities located above ground in or directly adjacent to any SR, R-1, R-2, R-3, and R-4 Zoning Districts-residential zoning districts shall be surrounded by a minimum six-foot (6') high decorative wall constructed of brick, stone, or textured concrete block. Said wall shall be surrounded by a Type "A" Landscape Buffer Yard planted adjacent to said wall or fence or at an alternate location providing equal or better buffering. Telecommunications facilities in all other zoning districts shall be surrounded by a minimum six-foot (6') high wall or solid or slatted fence. Said fence or wall shall be surrounded by a Type "A" Landscape Buffer Yard planted adjacent to said wall or fence or at an alternate location providing equal or better buffering.

iv. Vehicle or outdoor storage on any antenna tower site is prohibited unless otherwise permitted by the Zoning District in which the tower is located.

v. At least one (1) on-site parking stall with a vehicle turnaround area shall be provided at each antenna tower site. The parking area and driveway to it shall consist of asphalt, concrete, or gravel.

vi. ~~Ancillary facilities located above ground for antennas in or directly adjacent to any SR, R-1, R-2, R-3, or R-4 Zoning District shall be set back a minimum of twenty-five feet (25') from any SR, R-1, R-2, R-3, or R-4 zoned property, unless the applicant can demonstrate that the specific proposal will present no greater adverse visual and audio impacts to surrounding properties. Above ground ancillary facilities in any other Zoning District shall be located a minimum of fifty feet (50') from any SR, R-1, R-2, R-3, or R-4 zoned property, unless the applicant can~~

~~demonstrate that the specific proposal will present no greater adverse visual and audio impacts to surrounding properties. Ancillary facilities located above ground for antennas shall be set back a minimum of fifty feet (50') from any adjacent property that is either located within a residential zoning district or utilized for residential purposes, unless the applicant can demonstrate that the specific proposal will present no greater adverse visual and audio impacts to surrounding properties.~~

h.j. Co-Location Consent for New or Existing Antenna Towers.

- i. Existing Antenna Towers. Prior to the issuance of any permit to relocate, alter or modify any antenna tower, the tower owner shall provide to the City a notarized written commitment to make said antenna tower available for use by others subject to technical and structural limitations and reasonable financial terms. The failure of an antenna tower owner to agree to shared use or to negotiate in good faith with potential users shall be unlawful and, among other remedies of the City, shall be just cause for the withholding of the issuance of future antenna tower permits to such an owner as well as revocation of antenna tower permits for any antenna tower on which co-location is refused or unreasonably hindered.
- ii. New Antenna Towers. Any new or relocated antenna tower eighty feet (80') or greater in height shall be designed and constructed to accommodate at least two (2) additional users unless a larger number of users needs to be accommodated as indicated by the response to the Notice provisions herein. As an alternative, a smaller tower may be approved if the tower owner commits in writing to "swap out" to a larger tower, or extend the tower, when needed to allow co-location space for additional service providers. A notarized written commitment to shared use as specified in Subsection 6.a. above shall be submitted to the Zoning Administrator by the antenna tower applicant. The failure of the owner of an antenna tower built with a capacity for shared use to negotiate in good faith with potential users shall be unlawful and shall be a violation of this Ordinance and, among other remedies of the City, shall be just cause for the withholding of the issuance of future antenna tower permits to such an owner as well as revocation of antenna tower permits for any antenna tower on which co-location is refused or unreasonably hindered.

i.k. Antenna Tower Inventories. Prior to the issuance of any permit to install, relocate, replace or alter any antenna tower, the tower owner shall furnish the Zoning Administrator an inventory of all of the owner's antennas and antenna towers in the City of Moscow and ~~the Area of City Impact~~ within one (1) mile of the City limit boundary. The inventory shall include the reference name or number, or other description of location including a site map(s), structure type, height, type of antenna tower(s) or antenna support structure(s) and height of all existing antennas and an assessment of available ground space for the placement of additional equipment shelters for potential future users.

j.l. Notice of Antenna Tower Permit Applications. The applicant for any new antenna tower permit shall have a copy of the application and a summary containing the height, design, location, type and frequency of antennas delivered by certified mail to all known and potential antenna tower users within the service area as identified by a list maintained by the Community Development Department. Proof of such delivery of the summary shall be submitted with the permit application to the City. Such notification shall be so mailed no less than sixty (60) days prior to ~~Zoning Administrator decision~~

~~or Board of Adjustment the public hearing where the application will be considered~~ and shall specifically solicit co-location discussion between the applicant and recipients of the notice. The Zoning Administrator may establish a form required to be used for such notifications. Upon request, the Zoning Administrator shall place on a list the name and address of any user or prospective user of antenna towers to receive notification of applications. The failure of the party receiving such Notice to use this process or respond to any such Notice may be considered cause for denying requests by such party for antenna tower permits. Such response shall be provided in writing to the Zoning Administrator within forty-five (45) days of mailing and shall contain a statement specifying desire to co-locate on the applicant's proposed tower and a statement regarding the responder's ability to accommodate the needs of the applicant on an existing tower or support structure owned or operated by the responder. ~~Additionally, the Zoning Administrator shall cause notice of any required public hearing for a proposed antenna tower to be mailed to owners of property within six hundred feet (600') of the permit application site not less than sixty (60) days prior to the public hearing.~~

6. Small Wireless Facility Standards.

a. Applicability. These standards shall apply to the installation of new small wireless facilities antennas or the co-location of small wireless facilities on existing antenna support structures. The City Council may adopt additional small wireless facility design and construction standards by Resolution and the most restrictive provisions of either shall apply.

b. Approvals. Small wireless facilities shall be subject to the administrative approval of the Zoning Administrator, or their designee, subject to the construction standards and permit and application process and contained herein and as established by Resolution of the City Council.

c. Co-location upon existing antenna support structures. Co-location of small wireless facilities upon existing antenna support structures shall be a permitted use subject to the following standards.

i. Height of co-location antennas. Small wireless facilities shall not extend more than five feet (5') above and two feet (2') horizontally from the existing antenna support structure.

ii. Shrouding of antennas and supporting equipment. All small wireless facility antennas, attendant equipment, and cabling shall be shielded from view by equipment and cable shrouds and/or equipment enclosures that shall be colored gray (RAL 7074) or other similar color as approved by the City.

iii. Maximum number of shrouds. Only one equipment shroud, containing all required small wireless facility equipment, shall be installed per antenna support structure. Except, one additional equipment shroud shall be allowed per pole if the antenna is located within the second equipment shroud.

iv. Shroud mounting method. Small wireless facility shrouds may be either top or side mounted to an existing antenna support structure, or suspended from strand-mounted to aerial cables as may be approved by the utility cable owner in accordance with the standards contained herein.

(a) Side mounted. Side mounted equipment shrouds shall be located in such a manner as to not obstruct pedestrian access on adjacent sidewalks. Where

side mounted equipment shrouds are placed above adjacent sidewalks a minimum clearance of eight feet (8') shall be maintained between the bottom of the shroud and mounting hardware and the walking surface. Where side mounted shrouds overhang the adjacent curb or roadway, a minimum clearance of fourteen feet (14') shall be maintained between the bottom of the equipment shroud or mounting hardware to the roadway surface. If the antenna is mounted to the side of the pole it shall be located inside a maximum shroud of 5.5 cubic feet in volume with a sixteen inch (16") maximum width.

(b) Top mounted. If the antenna shroud is located on top of the antenna support structure, the outer diameter shall be fourteen-inch (14") maximum and the antenna shroud shall be no more than five feet (5') tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.

v. Obstruction of lighting prohibited. Shroud installations upon antenna support structures containing street lights shall not obstruct, interfere with, or diminish the light distribution and lighting levels of the street light fixture.

d. Replacement combination light and antenna towers.

i. Existing antenna support structures (such as light poles) may be replaced new equivalent combination structures intended to accommodate the intended function of the existing antenna support structure and accommodate a small wireless facility subject to the following requirements:

(a) The replacement antenna support structure is of the same quality, color, design and style so be consistent with other existing support structures in the surrounding area subject to the approval of the Zoning Administrator;

(b) The replacement antenna support structure is of the same height of the existing support structure excluding the top mounted small wireless facility antenna which may exceed the height of the existing antenna support structure which shall comply with the top mounted shroud standards contained herein;

(c) The replacement antenna support structure shall be designed to internally accommodate all necessary small wireless supporting equipment in accordance with the standards required of new small wireless facilities contained herein;

(d) The replacement of decorative and/or historic light fixtures shall not be permitted unless the applicant can demonstrate that the proposed replacement antenna support structure will not disrupt or interfere with the visual theme and style of lighting within the surrounding area.

e. New small wireless facility antenna towers.

i. Maximum height. No new small wireless antenna tower may exceed forty feet (40') in height unless a Conditional Use Permit is received to exceed this height limitation.

ii. Antenna and equipment shrouding. New standalone or new and/or replacement combination light and small wireless antenna towers shall fully enclose and contain all the small wireless communications equipment, cabling, and antennas, and shall be of a style and color that is consistent with other similar light poles and fixture within the surrounding area as approved by the City.

iii. Maximum number of shrouds. Only one equipment shroud, containing all required small wireless facility equipment, shall be installed per antenna tower

iv. Minimum spacing between small wireless facility antenna towers. Small wireless facility antenna towers shall be located no closer than two hundred and fifty feet (250') from another small wireless facility antenna tower. This separation requirement shall not apply to co-locations upon existing antenna support structures or replacement combination light and small wireless antenna towers. Antenna tower design. New small wireless antenna towers shall consist of a ten inch (10") galvanized straight steel pole, powder coated black over zinc paint, with a foundation base of sixteen inches (16") in diameter designed to accommodate all necessary supporting equipment and a top antenna shroud of no more than fourteen inches (14") in diameter. All tower components and antenna shrouds shall be painted a matching black color.

6.7. Permits Required

- a. A building permit shall be required to construct, install, relocate, replace, or alter any antenna tower. An administrative zoning permit shall be required to locate or replace any antenna on an antenna tower or antenna support structure or for the installation of a small wireless facility. A Conditional Use Permit shall be required as specified in Section 4 herein.
- b. An application for any of the above-mentioned permits shall include or be accompanied by all of the information necessary to determine and document compliance with the regulations established herein. Where no application or permit form exists, the application shall be in the form of a letter signed and dated by the applicant, and the permit issuance shall be in the form of a letter of approval signed and dated by the Zoning Administrator or a dated signature by the Zoning Administrator on the applicable site plan.
- c. Specific permit application submittal requirements shall be determined by the Zoning Administrator and may include, but are not limited to, the following:
 - i. Permit application.
 - ii. Site plan.
 - iii. Elevation drawing(s) of the antenna tower or antenna support structure, antenna(s) and ancillary facilities.
 - iv. Photo simulations from three different perspectives of the installation site illustrating the anticipated visual appearance of the proposed wireless facility (not required for small wireless facilities).
 - v. Description of proposed and required lighting including light locations. Documentation of required lighting, as specified in Section 5.c. herein, may be deferred until prior to issuance of building permit if not available at time of application submittal.
 - vi. Any plans necessary to depict structural requirements.
 - vii. Description of the number and types of antennas being proposed, as well as the expected or known capacity of the antenna tower in terms of the number of antennas the antenna tower can accommodate.
 - viii. Antenna tower or antenna location study specifying the search process by which the proposed site was chosen.
 - ix. Antenna tower inventory as specified in Section 6.c. herein.
 - x. Notarized written commitment to allow co-location/shared use as specified in Section 6 herein (not required for small wireless facilities).

- xi. Documentation demonstrating compliance with non-ionizing electromagnetic radiation (NIEER) or radio frequency (RF) emissions standards as established by the Federal Communications Commission (FCC). Such documentation may be deferred until prior to issuance of building permit if not available at time of application submittal.
- xii. Current FCC license to operate.
- xiii. Documentation of a review by the Federal Aviation Administration (FAA) and/or the Aviation Division of the Idaho Transportation Department (ITD). Such documentation may be deferred until prior to issuance of building permit if not available at time of application submittal.
- xiv. Name and address of the property owner, telecommunications service provider, and owner of the telecommunications facility on the permit application, and a written statement of approval of the application by the property owner.
- xv. Description of proposed security measures as required in Section 5.b. herein.
- xvi. A tree protection plan prepared by a certified arborist if the installation of the wireless telecommunication facility will be located within the canopy of a street tree, or within a ten-foot radius of the base of such a tree.

7.8. Findings for Conditional Use Permit.

- a. Before a Conditional Use Permit for an antenna tower may be issued, the applicant must demonstrate, and the Zoning Board of Adjustment must find, compliance with all of the following:
 - i. No existing antenna towers or antenna support structures within the necessary geographic area for the applicant's antenna tower meet the applicant's requirements considering (a) height, (b) structural integrity, or (c) that there are other prohibitive conditions that render existing antenna towers or antenna support structures within the applicant's required geographic area unsuitable.
 - ii. That the design of the antenna tower, including the antennas and ancillary facilities, minimizes visual impact and otherwise complies with provisions and intent of this Section.
 - iii. That the proposed antenna tower location minimizes the number and/or size of antenna towers or antenna support structures that will be required in the area.
 - iv. That the applicant has not previously failed to take advantage of reasonably available shared use opportunities or procedures provided by this Ordinance or otherwise.
 - v. These findings shall be required in addition to those required for the Reasoned Statement of Relevant Criteria and Standards provided in Section 4-8-4 of the Zoning Code.

8.9. Abandonment and Removal.

- a. All telecommunications facilities shall be removed by the owner of the facility, by the operator of the facility, and/or by the property owner within six (6) months of the time that the facility has substantially ceased being used to provide telecommunications services to the public. Removal shall not be required when the owner or operator of the facility has, within the aforementioned six (6) months, filed with the City a written request to reuse the antenna tower and the City has approved such request. Such written request shall detail the circumstances that justify why the antenna tower should not be removed, why it will be unused for six (6) months or more, and shall commit to a date

certain, not to exceed twelve (12) months from the date of last use, by which time the antenna tower will again provide telecommunications services to the public. Before issuance of an antenna tower permit, the applicant for any antenna tower permit shall provide to the City financial security, such as but not limited to an open-ended bond, to ensure removal of the antenna tower and ancillary facilities after the facility is no longer being used to provide telecommunications services to the public.

9.10. Affirmative Duty to Keep City Informed.

- a. All telecommunications service providers having telecommunications facilities in the jurisdiction of the City shall be required to report in writing to the Zoning Administrator any change in the status of their operations. Change in status shall include, but is not limited to, the following:
 - i. Change in or loss of license from the FCC to operate.
 - ii. Receipt of notice of failure to comply with the regulations of any other authority having jurisdiction over the business or facility.
 - iii. Change in ownership of the company that owns the telecommunications facilities or that provides telecommunications services.
 - iv. Loss or termination of lease with the property owner or the owner of the telecommunications facilities.
 - v. Abandonment of a facility or non-use of a facility for a period of six (6) months or longer.
- b. All telecommunications service providers having facilities in the jurisdiction of the City shall file with the Zoning Administrator an annual written statement verifying continued use of each of their facilities in the City's jurisdiction as well as continued compliance with state and federal agency regulations.

...

SECTION 5: SEVERABILITY. Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of remaining provisions. The remaining sections of Title 4 shall be in full force and effect.

SECTION 6: EFFECT ON OTHER ORDINANCES. Where the definitions contained in this Ordinance are in conflict with relevant portions of the City of Moscow, Idaho, Municipal Code, the definitions contained within those portions of the Moscow Municipal Code will be unaffected until such time, if any, as they are amended to be consistent with this Ordinance.

SECTION 7: EFFECTIVE DATE. This Ordinance shall be effective upon its passage, approval, and publication according to law.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2020.

Bill Lambert, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk

DRAFT



ATTORNEY-CLIENT PRIVILEGED LEGAL MEMORANDUM

DATE: June 12, 2020

TO: Mike Ray, Planning Manager

FROM: Mia Bautista, City Attorney

RE: Municipality Limitations regarding Deployment of 5G Small Wireless Facilities

C: Gary J. Riedner, City Supervisor
Bill Belknap, Deputy City Supervisor

QUESTION PRESENTED

Whether there are limitations placed on municipalities regulation of 5G Small Wireless Facilities in the Cities Rights of Way? Specifically, whether the City is permitted to deny an application for a 5G Small Wireless Facility based on concern for adverse health effects due to RF emissions?

SHORT ANSWER

Yes, the City has limitations regarding the requirements and restrictions we place on the deployment of Small Wireless Facilities within our city limits and in our rights-of-way.

No, the City is not permitted to deny an application for a 5G Small Wireless Facility based on concern for adverse health effects as long as the applicant is complying with the FCC's existing regulations regarding RF emissions. The City is also not permitted to outright deny the deployment of Small Wireless Facilities within our city limits.

RELEVANT STATUTES AND REGULATIONS

47 U.S.C. 224, 253 and 332(c)(7)

Federal Communications Commission, Declaratory Ruling and Third Report and Order, In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure

Investment, WT Docket No. 17-79 and WC Docket No. 17-84, Adopted September 26, 2018, FCC 18-133 (116 pages).

Federal Communications Commission, Declaratory Ruling and Third Report and Order, In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 and WC Docket No. 17-84, Adopted August 2, 2018, FCC 18-111 (140 pages).

DEFINITION – SMALL WIRELESS FACILITY

The FCC relies upon the following definition of “Small Wireless Facilities,” consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions:

(1) The facilities—

- (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
- (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
- (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).

BACKGROUND

The history of the implementation and evolution of telecommunication regulations is extensive, which is evidenced by the lengthy Declaratory Rulings of the Federal Communications Commission (FCC). This legal memorandum is not intended to be an in-depth review and analysis of the FCC’s authority to issue authoritative interpretations of the relevant United States Code

(USC), or an in-depth analysis of the numerous issues discussed, but to focus on the limited questions presented.

The Federal Communications Commission (FCC), under the leadership of Chairman Pai, has made it clear that it “is pursuing a comprehensive strategy to Facilitate America’s Superiority in 5G Technology (the 5G FAST Plan). The Chairman’s strategy includes three key components: (1) pushing more spectrum into the marketplace; (2) updating infrastructure policy; and (3) modernizing outdated regulations.” -fcc.gov/5G

The FCC believes that we are on the brink of a technological revolution and failure to speed up the implementation and deployment of enhanced 4G and 5G networks could have negative effects on job and economic growth. The FCC found regulatory requirements were unnecessarily impeding deployment of wireless broadband networks and took steps to remove or reduce those impediments to serve a greater public interest with its Declaratory Rulings. The Declaratory ruling contained in FC 18-133, is intended to clear the different and conflicting views regarding the scope and nature of the limits imposed on state and local governments through USC Sections 253 and 332.

DISCUSSION

The Commission has observed that, “Each local government may believe it is simply protecting the interests of its constituents. The telecommunications interests of constituents, however, are not only local. They are statewide, national and international as well. We believe that Congress’ recognition of this fact was the genesis of its grant of preemption authority to this Commission.” (FCC 18-133, Pg. 22-23).

The Commission provided significant legal and legislative history to support its interpretation of the applicable United States Code regarding what particular requirements would be preempted and addressed various court rulings interpreting the same statutes. The Declaratory Rulings address fees and other state and local requirements that govern the deployment of small facilities.

The FCC’s Third Report and Order and Declaratory Ruling, FCC 18-111, explains that 47 USC 224, grants the FCC with broad authority “to regulate attachments to utility-owned and controlled poles, ducts, conduits, and rights-of-way.” The Act further authorizes the FCC to “prescribe rules to: ensure that the rates, terms, and conditions of pole attachments are just and reasonable; require utilities to provide nondiscriminatory access to their poles, ducts, conduits, and rights of way to telecommunications carriers...” (Pg. 4).

The FCC Declaratory order, FCC 18-111, specifically states “Section 253(a) of the Act specifies that ‘[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.’ Notwithstanding that clear admonition, some states and localities have adopted moratoria on the deployment of telecommunications services or telecommunications facilities, including explicit refusals to authorize deployment and dilatory tactics that amount to *de facto* refusals to allow deployment. To provide regulatory certainty and further deployment, we issue this Declaratory Ruling making clear that such state and local moratoria violate section

253(a) and strike at the heart of the ban on barriers to entry that Congress enacted in that provision.” (Pg. 84)

The FCC Declaratory Order also states “As the Eighth Circuit has explained, section 253(a) of the Act provides ‘a rule of preemption[]’ that articulates a reasonably broad limitation on state and local governments’ authority to regulate telecommunications providers.”¹ Section 253(b) provides an exception for state requirements that are competitively neutral, consistent with section 254 of the Act, and “necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”² Section 253(c) provides another set of exceptions to the limits on state and local authority by specifying that nothing in section 253 “affects the authority of a State or local government to manage their public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for the use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.” Section 253(d) requires the Commission, after notice and comment, to preempt the enforcement of specific state or local requirements that are contrary to section 253(a) or (b) “to the extent necessary to correct such violation or inconsistency.”³ Pursuant to section 253(d), the Commission has preempted both state and local actions that prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications services, such as a locality’s denial of franchise applications from a new competitor,⁴ provisions in state

¹ *Level 3 Commc’ns, LLC. v. City of St. Louis, Mo.*, 477 F.3d 528, 531–32 (8th Cir. 2007) (*Level 3*).

² 47 U.S.C. § 253(b); see also *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934*, File No. CWD 98-90, Memorandum Opinion and Order, 15 FCC Rcd 16227, 16231–32, para. 9 (2000).

³ 47 U.S.C. § 253(d). In the discussion below, we discuss the relation between subsections (d) and (a) and find that the former does not preclude us from issuing this *Declaratory Ruling* under subsection (a). See *infra* section IV.B.3.

⁴ See *Classic Telephone, Inc.; Petition for Preemption, Declaratory Ruling and Injunctive Relief*, CCBPol 96-10, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13101, para. 36 (1996) (*Classic Telephone*).

codes that protect rural incumbents,⁵ and a state grant of an exclusive license to provide telecommunications services.” (Pg. 84)

Declaratory Ruling FCC 18-111, makes it clear that USC Section 253(a) bars state and local moratoria on telecommunication services and facility deployment because they “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.”

47 U.S.C. 253 in its entirety states,

§253. REMOVAL OF BARRIERS TO ENTRY

(a) In general

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State regulatory authority

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) Preemption

If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall

⁵ See *Public Utility Commission of Texas et al., Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCBPol 96-14 et al., Memorandum Opinion and Order, 13 FCC Rcd 3460, 3466, para. 13 (1997) (*Public Utility Comm’n of Texas*); *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, CCB Pol 97-1, Memorandum Opinion and Order, 12 FCC Rcd 15639, 15658, para. 42 (1997), *aff’d sub nom. RT Commc’ns, Inc. v. FCC*, 201 F.3d 1264 (10th Cir. 2000) (*RT Commc’ns*).

⁶ See *Connect America Fund (Sandwich Isles Communications, Inc.) Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission’s Rules*, WC Docket No. 10-90, CC Docket No. 96-45, Memorandum Opinion and Order, 32 FCC Rcd 5878, 5888, para. 26 (2017).

preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) Commercial mobile service providers

Nothing in this section shall affect the application of section 332(c)(3) of this title to commercial mobile service providers.

(f) Rural markets

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) of this title for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) of this title that effectively prevents a competitor from meeting the requirements of section 214(e)(1) of this title; and

(2) to a provider of commercial mobile services.

(June 19, 1934, ch. 652, title II, §253, as added Pub. L. 104–104, title I, §101(a), Feb. 8, 1996, 110 Stat. 70.)

In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 and WC Docket No. 17-84, Declaratory Ruling and Third Report and Order, Adopted September 26, 2018, FCC 18-133, the Commission stated.

“9. In the Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. We thus address and reconcile this split in authorities by taking three main actions.

10. First, we express our agreement with the U.S. Courts of Appeals for the First, Second, and Tenth Circuits that the “materially inhibit” standard articulated in 1997 by the Clinton-era FCC’s California Payphone decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

11. Second, we note, as numerous courts and prior FCC cases have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress’s limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision.⁹ Namely, fees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality’s reasonable costs. In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that

presumptively comply with this standard. We do so to help avoid unnecessary litigation over fees.

12. Third, we focus on a subset of other, non-fee provisions of local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities, recognizing that certain reasonable aesthetic considerations do not run afoul of Sections 253 and 332. This responds in particular to many concerns we heard from state and local governments about deployments in historic districts.” (Pg. 3-4)

Excerpts that address the Commission’s ruling on Radio Frequency (RF) emissions, fees, aesthetics, underground infrastructure, and spacing requirements are included below.

RF Limitations:

The Declaratory Ruling made it clear that the Small Wireless Facilities are subject to the same RF emissions exposure limits that are already in place. This Ruling does not modify the RF exposure limits for Small Wireless Facilities. The City is not permitted to deny an application for a Small Wireless Facility if the RF exposure limits are within the approved range already established.

Fees:

The Declaratory Ruling’s decision regarding fees is as follows:

Based on our review of the Commission’s pole attachment rate formula, which would require fees below the levels described in this paragraph, as well as small cell legislation in twenty states, local legislation from certain municipalities in states that have not passed small cell legislation, and comments in the record, we presume that the following fees would not be prohibited by Section 253 or Section 332(c)(7): (a) \$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (i.e., not a collocation) intended to support one or more Small Wireless Facilities; and (b) \$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW. (FCC 18-133, Pg 45).

Aesthetics:

The Declaratory Ruling addressed aesthetic requirements and concluded that, “aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” (FCC 18-133, Pg. 45). The Declaratory Ruling further explains that “in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—i.e., they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance. ‘Secret’ rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers’ costs without providing any public benefit or addressing any public harm. Providers cannot design

or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site.” (FCC 18-133, Pg. 45).

Underground Infrastructure:

Imposing a regulation that all infrastructure be deployed underground would likely amount to an effective prohibition and not permitted, but there may be circumstances that would justify requiring such. (FCC 18-133, Pg. 46).

Minimum Spacing:

Imposing minimum spacing requirements are permitted so long as they are reasonable aesthetic requirements, safety requirements, or any other articulable reasonable basis that is made publicly available in advance. (FCC 18-133, Pg. 46). Consideration should be given to the current practice of spacing requirements, if we make the minimum spacing requirements more restrictive than our current practice we need to be able to articulate the reasonable basis for the difference.

CONCLUSION

The City is allowed to:

- 1) Develop application criteria and processes, so long as the criteria and processes are reasonable, clearly defined and ascertainable;
- 2) Develop reasonable and targeted construction standards;
- 3) Charge the presumptively reasonable fees set by the FCC or set fees that are nondiscriminatory and represent a reasonable approximation of the City’s reasonable cost;
- 4) Implement reasonable and not overly burdensome aesthetic restrictions/requirements that may include factors such as:
 - a. Technically feasible;
 - b. Compatibility with nearby land uses;
 - c. Traffic safety;
 - d. Coordinate various uses;
 - e. Protect integrity of historic, cultural, and scenic resources;
 - f. Minimum spacing; and
 - g. Underground infrastructure in specific circumstances.

The City is not allowed to:

- 1) Place a moratoria on the deployment of 5G Small Wireless Facilities in our community;
 - a. No express moratoria where we implement laws, regulations, or legal requirements that expressly by their terms, prevent or suspend the acceptance, processing or approval of applications or permits.
 - b. No de facto moratoria, where our local actions would effectively halt or suspend the application process.
- 2) Deny an application for installing 5G Small Wireless Facilities on the basis it will produce RF emissions;

- 3) Implement criteria or standards that will “materially inhibit” the deployment of Small Wireless Facilities.

Please note there are cases pending and additional actions pending with the FCC that may impact some of the conclusions reached in this memo. I will continue to follow the progress of those cases and watch for any additional guidance or orders the FCC may publish. I do not believe the fact that there is pending lawsuits or matters scheduled before the FCC should slow us down from moving forward with finalizing and implementing our ordinance, application and permitting process.