1) Call to Order

2) Interviews
   a) 5:45 p.m. – Leslie Lowe – Architectural Review – Incumbent
   b) Tracy Rossi – Architectural Review – Incumbent – out of the country – letter included

3) Public Comment

4) Appointment
   a) Architectural Review Committee – Two (2) positions, received two (2) letters, both incumbents, three-year term, Council appointment.

**If time runs out before appointments are made, there will be time at the end of the regular session**

To attend the meeting via Microsoft Teams, and provide live comment on your computer, tablet or smartphone, attendees should go to the web link below.

**Meeting Link:** Microsoft Teams Link
**Meeting Number:** 265 960 123 982
**Password:** 5WL9uG

**For the Audio Conference Call option:** call the number below and enter the access code.

- United States Toll Free: 833-563-1751
  Access code: 661 467 156#
- We encourage individuals to provide written public comment; to the City Clerk, Michelle Howke at mhowke@cityofwhitefish.org or deliver by 4:00 p.m. Monday, May 15, 2023, to City Hall. Written comments should include name, address, should be short and concise, courteous, and polite. All written comments received by 4:00 p.m. will be provided to the City Council and appended to the packet following the meeting.
- Public comment by those attending the meeting "live" via Microsoft Teams or in-person will be limited to three minutes per individual.
PUBLIC NOTICE
VACANCIES ON CITY BOARDS/COMMITTEES

WHITEFISH LAKE AND LAKESHORE PROTECTION COMMITTEE – Two (2) positions. One (1) 2-year term, applicant must be a lakefront property owner and reside within the corporate limits of the city of Whitefish. One (1), complete term ending 12/31/2023, shall reside within the corporate limits of the city of Whitefish. Committee meets once a month.

BOARD OF PARK COMMISSIONER – Three (3) positions, 2-year term. Applicants must have resided within the City limits for 2 years and within the State for 3 years and must be at least 21 years old. The Committee meets once a month in the evenings.

RESORT TAX MONITORING COMMITTEE – Two (2) positions, 3-year term. Applicants shall be an owner, operator or representative of any restaurant/bar business, retail business, lodging business, business owner at large within the corporate limits of the city of Whitefish. The Committee meets once a month in the mornings.

POLICE COMMISSION – One (1) position, 3-year term. Open to City residents who have maintained residency within the city limits of Whitefish for one year prior to appointment to the Commission. The Commission meets as needed.

WHITEFISH CONVENTION AND VISITORS BUREAU – Three (3) positions, 3-year term. Applicants shall reside in the city of Whitefish postal district (59937), or reside in Flathead County, but outside the city of Whitefish postal district (59937), as long as the applicant has an ownership interest or managerial position at a business located and operating within the city of Whitefish postal district (59937). Openings include preference for representatives of finance, large lodging properties, small lodging, restaurant/bar business, transportation business or the Whitefish Lake Golf Course. The Committee meets once a month.

ARCHITECTURAL REVIEW COMMITTEE – Two (2) positions, 3-year term. Applicants shall reside within the corporate limits of the city of Whitefish, are employed or own a business in the city of Whitefish, or own property in the city of Whitefish; or be a Montana licensed architect, or licensed design professional (i.e. architect, engineer, or landscape architect). The Committee meets twice a month April – October, once a month November – March in the mornings.

BOARD OF ADJUSTMENT – One (1) position, complete the term ending 12/31/2023. Applicant shall reside within the city limits of Whitefish. The Committee meets in the evening once a month as needed.

FLATHEAD CONSERVATION DISTRICT BOARD – Two (2) position, 3-year term to serve as an urban supervisor. Pursuant §76-15-311 M.C.A (1) applicants may reside within the city limits of Whitefish; and (1) applicant may live outside the municipality the supervisor represents, but the supervisor must reside within the boundaries of the district. For more details on this board please see their website https://flatheadcd.org/

IMPACT FEE ADVISORY COMMITTEE – One (1) position to complete term ending 12/31/2025. Applicant shall be a member-at-large and shall reside or work within the City limits.

BOARD OF APPEALS – One (1) position, term not designated. The Board of Appeals determines suitability of alternate materials and methods of construction and to provide for reasonable interpretations of the International Building Code. Applicant must be qualified by experience or training to pass on matters pertaining to building construction. The Committee meets as needed.

Interested citizens – Please submit a letter of interest to serve on the above committees to the Whitefish City Clerk’s Office at 418 E. 2nd St.; mail to P.O. Box 158, Whitefish, MT 59937, or email mhowke@cityofwhitefish.org, by April 21, 2023. Please include your name, mailing address, physical address, and phone number. Interviews will be May 1st and May 15th, or as needed. Letters of interest will be accepted until the positions are filled. If you have any questions, please call Michelle Howke, City Clerk at 863-2402 or visit the City’s website: www.cityofwhitefish.org *THANK YOU FOR YOUR INTEREST*

Publish 3/29/2023 and 4/12/2023
Hi Michelle

I am interested in remaining on the committee for another term. Please note in the ad that we meet twice monthly through the summer.

Cheers Leslie

On 3/21/2023 1:51 PM, Michelle Howke wrote:

Dear: Leslie


As a matter of course, the City will also be advertising this position along with others board positions expiring at this time. The deadline to receive letters of application, and to receive your letter of interest if you want to reapply to serve another term, is April 21, 2023. Interviews with the Council will be scheduled for May 1st and May 15th. I will call or email you to set up your specific interview time if you are re-applying.

Please respond to this email in place of a new letter of interest.

I have attached a copy of the ad we will be running.

If you are not planning to ‘re-up’ for your position again, please let me know that as well.

Thank you and thank you for your service to the community of Whitefish!

Michelle Howke
Administrative Services Director/City Clerk
PO Box 158/418 E. 2nd Street
Whitefish, MT 59937
mhowke@cityofwhitefish.org
406-863-2402

STAY CLEAN, CAREFUL AND CONNECTED
4/7/2023

Michelle Howke  
Administrative Services Director/City Clerk  
City of Whitefish  
418 E 2nd Street  
Whitefish, MT 59937

Dear Ms. Howke and Council Members:

I have sat on the City of Whitefish ARC since 2020. I have been involved in many committees and boards over the years, the ARC has been the most fulfilling and impactful committee I have been a part of. We have great members and we work together to uphold the standards of the city and our community.

I would like to continue to serve on the board for another term. I have been informed interviews are being held between May 1st-15th in the evening from 5:15P-7P. However, I am currently out of the country until June 22nd with an 8 hour time difference, I understand the importance of an interview but I would ask that I would be considered either through this letter or an interview when I return.

Thank you for your time and consideration, I look forward to hearing back from you.

Regards,

Tracy Rossi
CHAPTER 10

ARCHITECTURAL REVIEW COMMITTEE

SECTION:

2-10-1: Committee Established

2-10-2: Purpose, Powers And Duties

2-10-3: Membership

2-10-4: Organization

2-10-5: Meetings, Rules And Regulations

2-10-6: Staff Supervision

2-10-7: Expenditures

2-10-1: COMMITTEE ESTABLISHED:

There is hereby established an architectural review committee, hereinafter "committee". (Ord. 03-26, 9-15-2003)

2-10-2: PURPOSE, POWERS AND DUTIES:

A. Primary Purpose: The primary purpose of the committee shall be to review and act on applications submitted to the committee by individuals or entities proposing to construct commercial, industrial, public or municipal buildings, or fiveplex or greater residential structures within the city of Whitefish zoning jurisdiction, as provided more fully in the city of Whitefish architectural review standards. Upon receipt of a formal application that has been determined by the committee or its staff, as appropriate, to be complete, the committee shall conduct a meeting regarding the proposed application, and its compliance with the city of Whitefish architectural review standards. The committee shall make one of the following decisions at the time of the meeting: to approve, to approve with conditions, to table the application pending submission of revisions or additional materials, or to deny the applicant's proposal. The committee's decision shall be announced at the meeting, and its decision, together with findings supporting its decision, shall be provided to the applicant, in writing, within five (5) working days of such meeting. The applicant may appeal a decision of the architectural review committee to the city council by delivering a written letter of appeal to the city manager within ten (10) days of the committee's issuance of its written decision. More information regarding the necessary content of an appeal, and the process before the city council, may be found in the Whitefish zoning jurisdiction regulations.

B. Secondary Purpose: The secondary purpose of the committee shall be to make recommendations to the city's planning staff with respect to proposed amendments to the city of Whitefish architectural review standards, or the procedures utilized by the committee. (Ord. 03-26, 9-15-2003; amd. Ord. 15-09, 6-1-2015; Ord. 20-02, 2-3-2020)

Notes
2-10-3: MEMBERSHIP:

A. Appointment; Compensation: The committee shall have seven (7) members who either reside within the corporate limits of the city of Whitefish, are employed or own a business in the city of Whitefish, or own property in the city of Whitefish. Members shall be appointed by the city council. Two (2) of the committee members shall be Montana licensed architects and one of the members shall be a licensed design professional (i.e., either architect, engineer or landscape architect). If, within the discretion of the city council, less than two (2) licensed architects or one licensed design professional, as described above, is identified after publication of a notice of position vacancy, the city council may make an appointment of an individual that is not a licensed architect or licensed design professional, or is a licensed architect or design professional who resides, is employed, or owns a business or property in the 59937 zip code. No member of the committee shall concurrently serve on the Whitefish city council, the Whitefish planning board or the Whitefish board of adjustment. No member of the committee with any interest in a project may sit in review of that project, or attempt to influence other members of the committee other than through the normal application and public meeting process. Committee members shall receive no compensation.

B. Terms; Positions: Committee terms shall be three (3) years. There are hereby created positions numbered 1 through 7 inclusive. The initial term of members in each position shall begin on June 1, 2003, and terminate on the date specified below for each position:

<table>
<thead>
<tr>
<th>Position Number</th>
<th>Position Specification</th>
<th>Initial Expiration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Member</td>
<td>May 31, 2004</td>
</tr>
<tr>
<td>2</td>
<td>Member</td>
<td>May 31, 2004</td>
</tr>
<tr>
<td>3</td>
<td>Member</td>
<td>May 31, 2004</td>
</tr>
<tr>
<td>4</td>
<td>Member</td>
<td>May 31, 2005</td>
</tr>
<tr>
<td>5</td>
<td>Member</td>
<td>May 31, 2005</td>
</tr>
<tr>
<td>6</td>
<td>Member</td>
<td>May 31, 2006</td>
</tr>
<tr>
<td>7</td>
<td>Member</td>
<td>May 31, 2006</td>
</tr>
</tbody>
</table>

In making the initial appointments, the city council shall determine which appointees shall serve one, two (2) or three (3) year terms. Thereafter members appointed to each position shall serve for three (3) year terms. At the discretion of the city council, members may be appointed for more than one term.

C. Removal Of Member: A member of the committee serves at the pleasure of the council and may be removed by a majority vote of the same. Absences from three (3) consecutive meetings, including regular and special work sessions, or absences from more than fifty percent (50%) of such meetings held during the calendar year shall constitute grounds for removal. Circumstances of the absences shall be considered by the city council prior to removal. Any person who knows in advance of his or her inability to attend a specific meeting shall notify the chairperson or secretary of the committee at least twenty four (24) hours prior to any scheduled meeting.

D. Vacancy: Pursuant to subsections A and B of this section, any vacancy on the committee shall be filled by the city council acting in a regular or special session for the unexpired term of the position wherein the vacancy exists. (Ord. 03-26, 9-15-2003; amd. Ord. 15-09, 6-1-2015; Ord. 20-02, 2-3-2020)
2-10-4: ORGANIZATION:

The committee, at its first meeting after June 1 of each year, shall elect a chairperson, vice chairperson and secretary for the next twelve (12) month period. Upon the absence of the chairperson, the vice chairperson shall serve as chairperson pro tem. If both the chairperson and the vice chairperson are absent from a specific meeting, the attending members shall elect a chairperson pro tem for the meeting. If the secretary is absent from a specific meeting, the attending members shall elect a secretary pro tem for the meeting. If a vacancy occurs in the chairperson, vice chairperson or secretary positions, the committee shall elect a member to fill the vacancy at the next meeting. The secretary need not be a member of the committee and shall keep an accurate record of all committee proceedings. (Ord. 03-26, 9-15-2003)

2-10-5: MEETINGS, RULES AND REGULATIONS:

Four (4) members of the committee shall constitute a quorum. Not less than a quorum of the committee may transact any business or conduct any proceedings before the committee. The committee shall adopt rules of procedure for the conduct of meetings consistent with statutes, the city charter, ordinances and resolutions. The committee shall meet as frequently as is necessary in order to provide a timely decision with respect to all applications that it considers. The committee shall decide the time, place and date of meetings. All meetings shall be open to the public. (Ord. 17-02, 2-21-2017)

2-10-6: STAFF SUPERVISION:

The committee shall have no supervisory control and shall not direct city staff in the performance of their official duties. (Ord. 03-26, 9-15-2003)

2-10-7: EXPENDITURES:

The committee shall not have authority to make any expenditures on behalf of the city or disburse any funds provided by the city or to obligate the city for any funds except as has been included in the city budget and after the city council shall have authorized the expenditure by resolution, which resolution shall provide the administrative method by which funds shall be drawn and expended. (Ord. 03-26, 9-15-2003)
<table>
<thead>
<tr>
<th>Committee</th>
<th>Name</th>
<th>Address</th>
<th>Phone Number</th>
<th>Term Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Ryan Kiefer</td>
<td>Chair</td>
<td>620 Baker Avenue</td>
<td>406-282-4601</td>
<td>5/31/2025</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:rkiefer@ae.design">rkiefer@ae.design</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Christine Bleyhl</td>
<td></td>
<td>610 5th St. W.</td>
<td>612-961-1371</td>
<td>5/31/2025</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:bleyhlsmile@gmail.com">bleyhlsmile@gmail.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Grant Hughes</td>
<td></td>
<td>210 Granite Drive</td>
<td>406-885-0475</td>
<td>5/31/2025</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:dydxhughes@gmail.com">dydxhughes@gmail.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Tracy Rossi</td>
<td>Vice Chair</td>
<td>PO Box 1982, Whitefish</td>
<td>323-877-7911</td>
<td>5/31/2023</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:tracyerossi@gmail.com">tracyerossi@gmail.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:trossi@glaciersir.com">trossi@glaciersir.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:leslie@lowe.ca">leslie@lowe.ca</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Paul McElroy</td>
<td></td>
<td>P.O. Box 5316, Whitefish</td>
<td>406-261-9014 (c)</td>
<td>5/31/2024</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:paul@montanabuild.com">paul@montanabuild.com</a></td>
<td>406-862-4975 (o)</td>
<td></td>
</tr>
<tr>
<td>7. Diane Kane</td>
<td>Chair</td>
<td>3026 River Lakes Drive, Whitefish</td>
<td>206-954-3165</td>
<td>5/31/2024</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:dmkane@outlook.com">dmkane@outlook.com</a></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Ordinance 03-26 includes provision to appoint others at the discretion of the Council (if not 2 Licensed Architects, 1 Design Professional)
Impact Fee Ground Rules

• One-time payment for growth-related infrastructure, usually collected at the time buildings permits are issued
• Not a tax, similar to a contractual arrangement to build infrastructure with fee revenue, with three requirements
  • Need (system improvements, not project-level improvements)
  • Benefit
  • Short range expenditures
  • Geographic service areas and/or benefit districts
  • Proportionate
Impact Fee Ground Rules

- Facilities/improvements required to serve new development - Yes
- Excess capacity in existing facilities – Yes
- Improvements required to correct existing deficiencies – No
  - Unless there is a funding plan
- Maintenance and repairs – No
- Operating costs - No
Impact Fees in Montana

- Capital Improvement Plan is necessary
- Study is completed at least every 5 years
- Improvements must have a useful life of 10 or more years
- Eligible infrastructure:
  - Water, wastewater, stormwater
  - Transportation
  - Public safety (police, fire, EMS)
  - Other facilities with two-thirds majority of City Council
- Community is required to have a development impact fee advisory committee
  - The committee shall review and monitor the process of calculating, assessing, and spending impact fees
General Process

1. Interview key staff/collect data ✓
2. Determine existing development base and project future growth ✓
3. Determine existing levels of service and capital needs due to new growth ✓
4. Determine appropriate generators of demand ✓
5. Evaluate methodological alternatives ✓
6. Evaluate need for credits ✓
7. Finalize CIPs and cash flow analysis ✓
8. Calculate impact fees ✓
9. Present to Impact Fee Advisory Committee, review & input
10. City Council, review, input, adoption
Evaluate Need for Credits

- Debt service
  - Avoid double payment due to existing or future bonds
- Dedicated revenues
  - e.g., property tax, local option sales tax, gas tax
- Site specific
  - Developer constructs a capital facility included in fee calculations
Methodologies

• Cost Recovery (past)
  • Oversized and unique facilities

• Incremental Expansion (present)
  • Formula-based approach documents level-of-service with both quantitative and qualitative measures

• Plan-Based (future)
  • Common for utilities but can also be used for other public facilities with non-impact fee funding
Methodologies

- Previous study used cost recovery and/or plan-based methods
- For flexibility, TB recommends incremental expansion for several categories
- Study is exploring the addition of park imp. & rec centers
- Separating police and fire to allow flexibility and fire apparatus

<table>
<thead>
<tr>
<th>Fee Category</th>
<th>Service Area</th>
<th>Cost Recovery</th>
<th>Incremental Expansion</th>
<th>Plan-Based</th>
<th>Cost Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parks &amp; Recreation</td>
<td>Citywide</td>
<td></td>
<td>Park Improvements, Indoor Rec Center, Admin Facilities</td>
<td></td>
<td>Population</td>
</tr>
<tr>
<td>Paved Trails</td>
<td>Citywide</td>
<td></td>
<td>Paved Trails</td>
<td></td>
<td>Population</td>
</tr>
<tr>
<td>General Government</td>
<td>Citywide</td>
<td></td>
<td>General Government Facilities</td>
<td></td>
<td>Population &amp; Jobs</td>
</tr>
<tr>
<td>Police</td>
<td>Citywide</td>
<td></td>
<td>Police Station</td>
<td></td>
<td>Population &amp; Vehicle Trips</td>
</tr>
<tr>
<td>Fire</td>
<td>Citywide</td>
<td></td>
<td>Fire Station &amp; Fire Apparatus</td>
<td></td>
<td>Population &amp; Vehicle Trips</td>
</tr>
<tr>
<td>Water</td>
<td>Citywide</td>
<td></td>
<td>Distribution &amp; Plant Facility</td>
<td>Capacity by Meter Size</td>
<td></td>
</tr>
<tr>
<td>Wastewater</td>
<td>Citywide</td>
<td></td>
<td>Collection &amp; Plant Facility</td>
<td>Capacity by Meter Size</td>
<td></td>
</tr>
</tbody>
</table>
Montana SB 142

- Montana SB 142 (amended)
  - Added language on:
    - Procedure of accounting revenue in special revenue fund
    - Reimbursement of unused funds to original payor
    - Credit for land dedication or facility construction, method needs to be included in ordinance

- TischlerBise: SB 142 (amended) includes impact fee best practices and Whitefish impact fee update will not be limited
Whitefish Impact Fee Study

- Residential Projection
- 5,000 new peak population, 2,000 new homes, 36% increase

<table>
<thead>
<tr>
<th>City of Whitefish, MT</th>
<th>Base Year</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
<th>2029</th>
<th>2030</th>
<th>2031</th>
<th>2032</th>
<th>2033</th>
<th>Total Increase</th>
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<tbody>
<tr>
<td>Permanent Hsg Pop [1]</td>
<td>7,562</td>
<td>7,835</td>
<td>8,108</td>
<td>8,380</td>
<td>8,653</td>
<td>8,926</td>
<td>9,199</td>
<td>9,471</td>
<td>9,744</td>
<td>10,017</td>
<td>10,290</td>
<td>2,727</td>
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<tr>
<td>Seasonal Hsg Pop [1]</td>
<td>4,756</td>
<td>4,928</td>
<td>5,099</td>
<td>5,271</td>
<td>5,442</td>
<td>5,614</td>
<td>5,785</td>
<td>5,957</td>
<td>6,128</td>
<td>6,300</td>
<td>6,471</td>
<td>1,715</td>
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<tr>
<td>Overnight-Visitors [2]</td>
<td>1,467</td>
<td>1,526</td>
<td>1,585</td>
<td>1,644</td>
<td>1,703</td>
<td>1,762</td>
<td>1,820</td>
<td>1,879</td>
<td>1,938</td>
<td>1,997</td>
<td>2,056</td>
<td>589</td>
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<tr>
<td>Total Peak Population</td>
<td>13,785</td>
<td>14,289</td>
<td>14,792</td>
<td>15,295</td>
<td>15,798</td>
<td>16,301</td>
<td>16,804</td>
<td>17,308</td>
<td>17,811</td>
<td>18,314</td>
<td>18,817</td>
<td>5,032</td>
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</tr>
<tr>
<td>Percent Increase</td>
<td>3.6%</td>
<td>3.5%</td>
<td>3.4%</td>
<td>3.3%</td>
<td>3.2%</td>
<td>3.1%</td>
<td>3.0%</td>
<td>2.9%</td>
<td>2.8%</td>
<td>2.7%</td>
<td>36.5%</td>
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<tr>
<td>Population Post-Annexation</td>
<td>- - - - - - -</td>
<td>19,595</td>
<td>20,098</td>
<td>20,601</td>
<td>21,104</td>
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<table>
<thead>
<tr>
<th>Housing Units [3]</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
<th>2029</th>
<th>2030</th>
<th>2031</th>
<th>2032</th>
<th>2033</th>
<th>Total Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family</td>
<td>4,021</td>
<td>4,159</td>
<td>4,297</td>
<td>4,435</td>
<td>4,573</td>
<td>4,711</td>
<td>4,849</td>
<td>4,987</td>
<td>5,125</td>
<td>5,263</td>
<td>5,401</td>
<td>1,380</td>
</tr>
<tr>
<td>Multifamily</td>
<td>1,691</td>
<td>1,759</td>
<td>1,827</td>
<td>1,895</td>
<td>1,963</td>
<td>2,031</td>
<td>2,099</td>
<td>2,167</td>
<td>2,235</td>
<td>2,303</td>
<td>2,371</td>
<td>680</td>
</tr>
<tr>
<td>Total Housing Units</td>
<td>5,712</td>
<td>5,918</td>
<td>6,124</td>
<td>6,330</td>
<td>6,536</td>
<td>6,742</td>
<td>6,948</td>
<td>7,154</td>
<td>7,360</td>
<td>7,566</td>
<td>7,772</td>
<td>2,060</td>
</tr>
<tr>
<td>Big Mountain Annexation</td>
<td>- - - - - - -</td>
<td>1,035</td>
<td>1,035</td>
<td>1,035</td>
<td>1,035</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing Units Post-Annexation</td>
<td>- - - - - - -</td>
<td>8,189</td>
<td>8,395</td>
<td>8,601</td>
<td>8,807</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[1] Permanent and seasonal population growth is assumed to grow at the same rate as housing development.
[3] Single family and multifamily projections are based on the five-year annual average of building permit data.
[4] The Big Mountain Annexation is anticipated to occur within the next ten years. Conservatively, the annexation is included in Year 7. The number of housing units is estimated based on available utility data. Population projections are based on the housing estimate and the average PPHH factor.
Whitefish Impact Fee Study

- **Nonresidential Projection**
- **1,100 new jobs, 445,000 new square feet, 20% increase**

<table>
<thead>
<tr>
<th>Industry</th>
<th>Base Year</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
<th>2026</th>
<th>2027</th>
<th>2028</th>
<th>2029</th>
<th>2030</th>
<th>2031</th>
<th>2032</th>
<th>2033</th>
<th>Total Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Jobs [1]</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retail</td>
<td>2,366</td>
<td>2,409</td>
<td>2,452</td>
<td>2,496</td>
<td>2,541</td>
<td>2,586</td>
<td>2,633</td>
<td>2,680</td>
<td>2,728</td>
<td>2,777</td>
<td>2,827</td>
<td></td>
<td>461</td>
</tr>
<tr>
<td>Office</td>
<td>1,448</td>
<td>1,474</td>
<td>1,501</td>
<td>1,527</td>
<td>1,555</td>
<td>1,583</td>
<td>1,611</td>
<td>1,640</td>
<td>1,670</td>
<td>1,700</td>
<td>1,730</td>
<td></td>
<td>282</td>
</tr>
<tr>
<td>Industrial</td>
<td>386</td>
<td>393</td>
<td>400</td>
<td>407</td>
<td>415</td>
<td>422</td>
<td>430</td>
<td>437</td>
<td>445</td>
<td>453</td>
<td>461</td>
<td></td>
<td>75</td>
</tr>
<tr>
<td>Institutional</td>
<td>1,361</td>
<td>1,385</td>
<td>1,410</td>
<td>1,436</td>
<td>1,462</td>
<td>1,488</td>
<td>1,515</td>
<td>1,542</td>
<td>1,569</td>
<td>1,598</td>
<td>1,626</td>
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<td>265</td>
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<tr>
<td><strong>Total</strong></td>
<td>5,561</td>
<td>5,661</td>
<td>5,763</td>
<td>5,866</td>
<td>5,972</td>
<td>6,079</td>
<td>6,188</td>
<td>6,300</td>
<td>6,413</td>
<td>6,528</td>
<td>6,645</td>
<td></td>
<td>1,084</td>
</tr>
<tr>
<td><strong>Percent Increase [2]</strong></td>
<td>1.8%</td>
<td>1.8%</td>
<td>1.8%</td>
<td>1.8%</td>
<td>1.8%</td>
<td>1.8%</td>
<td>1.8%</td>
<td>1.8%</td>
<td>1.8%</td>
<td>1.8%</td>
<td>1.8%</td>
<td></td>
<td>19.5%</td>
</tr>
<tr>
<td><strong>Nonresidential Floor Area (1,000 sq. ft.) [2]</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retail</td>
<td>1,114</td>
<td>1,134</td>
<td>1,155</td>
<td>1,176</td>
<td>1,197</td>
<td>1,218</td>
<td>1,240</td>
<td>1,262</td>
<td>1,285</td>
<td>1,308</td>
<td>1,332</td>
<td></td>
<td>217</td>
</tr>
<tr>
<td>Office</td>
<td>445</td>
<td>453</td>
<td>461</td>
<td>469</td>
<td>477</td>
<td>486</td>
<td>495</td>
<td>504</td>
<td>513</td>
<td>522</td>
<td>531</td>
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<td>87</td>
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<tr>
<td>Industrial</td>
<td>246</td>
<td>250</td>
<td>255</td>
<td>259</td>
<td>264</td>
<td>269</td>
<td>274</td>
<td>279</td>
<td>284</td>
<td>289</td>
<td>294</td>
<td></td>
<td>48</td>
</tr>
<tr>
<td>Institutional</td>
<td>476</td>
<td>485</td>
<td>494</td>
<td>503</td>
<td>512</td>
<td>521</td>
<td>530</td>
<td>540</td>
<td>549</td>
<td>559</td>
<td>569</td>
<td></td>
<td>93</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2,281</td>
<td>2,322</td>
<td>2,364</td>
<td>2,406</td>
<td>2,450</td>
<td>2,494</td>
<td>2,539</td>
<td>2,584</td>
<td>2,631</td>
<td>2,678</td>
<td>2,726</td>
<td></td>
<td>445</td>
</tr>
</tbody>
</table>

Whitefish Impact Fee Study

- Fee Schedule Land Use Adjustments
  - Current: Single family, multifamily (by floor area), nonresidential (by floor area), lodging (per room)
  - Recommended: Residential (by floor area), retail, office, industrial, institutional, lodging
  - Address proportionately and affordability

<table>
<thead>
<tr>
<th>Housing Type</th>
<th>Persons per Household</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family</td>
<td>2.50</td>
</tr>
<tr>
<td>Multifamily</td>
<td>1.34</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dwelling Size (square feet) [1]</th>
<th>Persons per Household</th>
</tr>
</thead>
<tbody>
<tr>
<td>600 or Less</td>
<td>1.00</td>
</tr>
<tr>
<td>601 to 999 - Ave MF</td>
<td>1.57</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2.03</td>
</tr>
<tr>
<td>1,500 to 1,999</td>
<td>2.36</td>
</tr>
<tr>
<td>2,000 to 2,499 - Ave SFD</td>
<td>2.61</td>
</tr>
<tr>
<td>2,500 to 2,999</td>
<td>2.81</td>
</tr>
<tr>
<td>3,000 to 3,499</td>
<td>2.99</td>
</tr>
<tr>
<td>3,500 to 3,999</td>
<td>3.14</td>
</tr>
<tr>
<td>4,000 to 4,499</td>
<td>3.27</td>
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<tr>
<td>4,500 to 4,999</td>
<td>3.39</td>
</tr>
<tr>
<td>5,000 to 5,499</td>
<td>3.50</td>
</tr>
<tr>
<td>5,500 to 5,999</td>
<td>3.60</td>
</tr>
<tr>
<td>6,000 or More</td>
<td>3.69</td>
</tr>
</tbody>
</table>

[1] Source: U.S. Census Public Use Microdata (PUM) for the Whitefish area
Whitefish Impact Fee Study

- TischlerBise exploring:
  - Adding park improvements and recreation centers to Parks & Rec category
  - Emergency Service Building -> Police and Fire
  - Adding fire apparatus element
  - Recommending base fee only for water/wastewater (removing additional fixture fee)
  - Fee still based on size of meter
  - Recommending removing stormwater impact fee
### Maximum Supportable Impact Fee Results

<table>
<thead>
<tr>
<th>Development Type</th>
<th>Parks &amp; Recreation</th>
<th>Paved Trails</th>
<th>General Government</th>
<th>Police</th>
<th>Fire</th>
<th>Maximum Supportable Fee</th>
<th>Current Fee (SFD)</th>
<th>Increase/(Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential (per housing unit by square feet) [1]</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>600 or Less</td>
<td>$206</td>
<td>$317</td>
<td>$436</td>
<td>$211</td>
<td>$281</td>
<td>$1,451</td>
<td>$1,376</td>
<td>$75</td>
</tr>
<tr>
<td>601 to 999 - (Ave MF)</td>
<td>$323</td>
<td>$497</td>
<td>$685</td>
<td>$331</td>
<td>$441</td>
<td>$2,277</td>
<td>$1,376</td>
<td>$901</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>$418</td>
<td>$643</td>
<td>$885</td>
<td>$428</td>
<td>$570</td>
<td>$2,944</td>
<td>$1,376</td>
<td>$1,568</td>
</tr>
<tr>
<td>1,500 to 1,999</td>
<td>$486</td>
<td>$747</td>
<td>$1,029</td>
<td>$498</td>
<td>$663</td>
<td>$3,423</td>
<td>$1,376</td>
<td>$2,047</td>
</tr>
<tr>
<td>2,000 to 2,499 - (ave SFD)</td>
<td>$537</td>
<td>$826</td>
<td>$1,138</td>
<td>$551</td>
<td>$733</td>
<td>$3,785</td>
<td>$1,376</td>
<td>$2,409</td>
</tr>
<tr>
<td>2,500 to 2,999</td>
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<td>$890</td>
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<td>$593</td>
<td>$790</td>
<td>$4,076</td>
<td>$1,376</td>
<td>$2,700</td>
</tr>
<tr>
<td>3,000 to 3,499</td>
<td>$615</td>
<td>$947</td>
<td>$1,304</td>
<td>$631</td>
<td>$840</td>
<td>$4,337</td>
<td>$1,376</td>
<td>$2,961</td>
</tr>
<tr>
<td>3,500 to 3,999</td>
<td>$646</td>
<td>$994</td>
<td>$1,369</td>
<td>$663</td>
<td>$882</td>
<td>$4,554</td>
<td>$1,376</td>
<td>$3,178</td>
</tr>
<tr>
<td>4,000 to 4,499</td>
<td>$673</td>
<td>$1,035</td>
<td>$1,426</td>
<td>$690</td>
<td>$919</td>
<td>$4,743</td>
<td>$1,376</td>
<td>$3,367</td>
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<tr>
<td>4,500 to 4,999</td>
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<td>$1,073</td>
<td>$1,478</td>
<td>$715</td>
<td>$953</td>
<td>$4,917</td>
<td>$1,376</td>
<td>$3,541</td>
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<tr>
<td>5,000 to 5,499</td>
<td>$720</td>
<td>$1,108</td>
<td>$1,526</td>
<td>$739</td>
<td>$984</td>
<td>$5,077</td>
<td>$1,376</td>
<td>$3,701</td>
</tr>
<tr>
<td>5,500 to 5,999</td>
<td>$741</td>
<td>$1,140</td>
<td>$1,570</td>
<td>$760</td>
<td>$1,012</td>
<td>$5,223</td>
<td>$1,376</td>
<td>$3,847</td>
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<tr>
<td>6,000 or More</td>
<td>$760</td>
<td>$1,168</td>
<td>$1,609</td>
<td>$779</td>
<td>$1,037</td>
<td>$5,353</td>
<td>$1,376</td>
<td>$3,977</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nonresidential (per 1,000 square feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail</td>
</tr>
<tr>
<td>Office</td>
</tr>
<tr>
<td>Industrial</td>
</tr>
<tr>
<td>Institutional</td>
</tr>
<tr>
<td>Lodging (per room)</td>
</tr>
</tbody>
</table>

Note: TischlerBise recommends removing the Stormwater Impact Fee.

[1] Source: U.S. Census Public Use Microdata (PUM) for the Whitefish area.
DRAFT Maximum Supportable Impact Fee Results

<table>
<thead>
<tr>
<th>Meter Size (inches)</th>
<th>Water</th>
<th>WW</th>
<th>Maximum Supportable Fee</th>
<th>Current Fee</th>
<th>Increase/Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/4</td>
<td>$4,176</td>
<td>$4,296</td>
<td>$8,472</td>
<td>$6,097</td>
<td>$2,375</td>
</tr>
<tr>
<td>1</td>
<td>$6,974</td>
<td>$7,174</td>
<td>$14,148</td>
<td>$9,145</td>
<td>$5,003</td>
</tr>
<tr>
<td>1 1/2</td>
<td>$13,906</td>
<td>$14,306</td>
<td>$28,212</td>
<td>$15,243</td>
<td>$12,969</td>
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<tr>
<td>2</td>
<td>$22,258</td>
<td>$22,898</td>
<td>$45,156</td>
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<td>$41,760</td>
<td>$42,960</td>
<td>$84,720</td>
<td>$48,776</td>
<td>$35,944</td>
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<tr>
<td>4</td>
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<td>$71,614</td>
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<tr>
<td>6</td>
<td>$139,186</td>
<td>$143,186</td>
<td>$282,372</td>
<td>$152,425</td>
<td>$129,947</td>
</tr>
</tbody>
</table>
Whitefish Impact Fee Study

- Considerations:
  1. The fee can be adopted at lower level than 100% max or phased, but must be for all development types
  2. Grace period available
  3. Policy can be formed to exempt affordable housing
     - Impact fee program has to be made whole
  4. Annual adjustment for inflation
Whitefish Impact Fee Study

• Next steps:
  1. Council input from work session
  2. Final review and input from Advisory Committee
  3. Report and study presented to Council
Discussion
CITY COUNCIL REGULAR MEETING AGENDA

The Following is a summary of the items to come before the City Council at its regular session to be held on Monday, May 15, 2023 at 7:10 p.m.
at City Hall 418 East Second Street, 2nd Floor
Hybrid (In-person and/or Remotely via Teams)

To attend the meeting via Microsoft Teams, and provide live comment on your computer, tablet or smartphone, attendees should go to the web link below.

Meeting Link: Microsoft Teams Link  Meeting Number: 265 960 123 982  Password: 5WL9uG

For the Audio Conference Call option: call the number below and enter the access code.

• United States Toll Free: 833-563-1751  Access code: 661 467 156#
• View live streaming (not to provide comment) on the City of Whitefish YouTube Channel
• We encourage individuals to provide written public comment: to the City Clerk, Michelle Howke at mhowke@cityofwhitefish.org or deliver by 4:00 p.m. Monday, May 15, 2023, to City Hall. Written comments should include name, address, should be short and concise, courteous, and polite. All written comments received by 4:00 p.m. will be provided to the City Council and appended to the packet following the meeting.
• Public comment by those attending the meeting "live" via Microsoft Teams or in-person will be limited to three minutes per individual.

Ordinance numbers start with 23-08. Resolution numbers start with 23-06.

1) CALL TO ORDER

2) PLEDGE OF ALLEGIANCE

3) PRESENTATION
   a) Whitefish Winter Carnival Royal Court regarding matters related to the Realm

4) COMMUNICATIONS FROM THE PUBLIC– (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments but may respond or follow-up later on the agenda or at another time. The mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

5) COMMUNICATIONS FROM VOLUNTEER BOARDS

6) CONSENT AGENDA (The consent agenda is a means of expediting routine matters that require the Council’s action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
   a) Minutes from May 1, 2023 Special Session (p.37)
   b) Minutes from May 1, 2023 Regular Meeting (p.38)
   c) Ordinance No. 23-07; An Ordinance rezoning 11.18 acres of land located at 111 Iverson Lane, 119 Iverson Lane, 140 Iverson Lane, and 6010 US Highway 93 South in Section 12, Township 30 North, Range 22 West, P.M., Flathead County, Montana, zoned Flathead County B-4/HO (Secondary Business/Highway Overlay) and SAG 5/HO (Suburban Agricultural/Highway Overlay) to WB-T (Business Transitional District) and WCR (Country Residential District), and adopting finding with respect to such rezone (Second Reading) (WZC 23-02) (p.44)

7) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC))
   a) Ordinance No.23-__; An Ordinance amending the Whitefish City Code to completely rewrite Title 11, Chapter 4, Landscaping Requirements; and amend Chapter 2, Zoning Districts, Section 11-2K-4 Property Development Standards; Section 11-2N-2 Permitted Uses; Section 11-2N-4 Property Development Standards; Section 11-2O-2 Permitted uses; Section 11-2O-4 Property Development Standards; Section 11-2P-2 Permitted Uses; Section 11-2P-4 Property Development Standards;
Section 11-2Q-2 Permitted Uses; Section 11-2Q-4 Property Development Standards; Chapter 3, Special Provisions, Section 11-3-42 Multi-Family Development Standards, 11-3-43 Mixed-Use and Non-Residential Building Development Standards; Chapter 6, Off Street Parking and Loading, Section 11-6-2 Parking Space Requirements; Section 11-6-3 Special Conditions; Section 11-6-5 Landscaping and Screening; Section 11-6-8 Street and Roadway Access Standards. (First Reading) (WZTA 23-08) (p.52)

8) COMMUNICATIONS FROM CITY ATTORNEY
   a) Resolution No. 23-__; A Resolution Granting a Utility Easement to Flathead Electric Cooperative over land located at Lot 6 of Bakers Common – Phase II Subdivision, Section 1, Township 31 North, Range 22 West P.M., M., Flathead County Montana (p.102)

9) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor and Council? (p.108)
   b) Other items arising between May 10th through May 15th

10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

11) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)
The following Principles for Civil Dialogue are adopted on 2/20/2007 for use by the City Council and by all boards, committees and personnel of the City of Whitefish:

- We provide a safe environment where individual perspectives are respected, heard, and acknowledged.

- We are responsible for respectful and courteous dialogue and participation.

- We respect diverse opinions as a means to find solutions based on common ground.

- We encourage and value broad community participation.

- We encourage creative approaches to engage public participation.

- We value informed decision-making and take personal responsibility to educate and be educated.

- We believe that respectful public dialogue fosters healthy community relationships, understanding, and problem-solving.

- We acknowledge, consider and respect the natural tensions created by collaboration, change and transition.

- We follow the rules and guidelines established for each meeting.
(This page left blank intentionally to separate printed sections)
May 10, 2023

The Honorable Mayor Muhlfeld and City Councilors
City of Whitefish
Whitefish, Montana

Mayor Muhlfeld and City Councilors:

Monday, May 15, 2023 City Council Agenda Report

There will be a Special Session starting at 5:45pm to continue interviews for vacant boards and committee. At 6:00 pm Colin McAweeney, with TischlerBise will be attending virtually to present a PowerPoint presentation pertaining to the Impact Fee Study Review. Food will be provided.

The regular Council meeting will begin at 7:10 p.m.

CONSENT AGENDA (The consent agenda is a means of expediting routine matters that require the Council’s action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

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RECOMMENDATION: Staff respectfully recommends the City Council approve the Consent Agenda.

Items “a & b” are administrative matters; Item “c” is a quasi-judicial matter.

PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

a) Ordinance No.23-__; An Ordinance amending the Whitefish City Code to completely rewrite Title 11, Chapter 4, Landscaping Requirements; and amend Chapter 2, Zoning Districts, Section 11-2K-4 Property Development Standards; Section 11-2N-2 Permitted Uses; Section 11-2N-4 Property Development Standards; Section 11-2O-2 Permitted uses; Section 11-2O-4 Property Development Standards; Section 11-2P-2 Permitted Uses; Section 11-2P-4 Property Development Standards; Section 11-2Q-2 Permitted Uses; Section 11-2Q-4 Property Development Standards; Chapter 3, Special Provisions, Section 11-3-42 Multi-Family Development Standards, 11-3-43 Mixed-Use and Non-Residential Building Development Standards; Chapter 6, Off Street Parking and Loading, Section 11-6-2 Parking Space Requirements; Section 11-6-3 Special Conditions; Section 11-6-5 Landscaping and Screening; Section 11-6-8 Street and Roadway Access Standards. (First Reading) (WZTA 23-08) (p.52)
Summary of Requested Action: This application is a request by the City of Whitefish to amend Chapter 4, Landscape Requirements, and amend sections of code that contain landscaping requirements which are now contained in the new landscaping requirements. This includes Chapter 3 Sections 11-3-42, Multi-family Development Standards; 11-3-43, Mixed Use and Non-Residential Building Development Standards; Chapter 2 Section 11-2 Article K, WB-2 Secondary Business District, Article N, WRR-1 Low Density Resort Residential District; Article O, WRR-2 Medium Density Resort Residential District, Article P, WRB-1 Limited Resort Business District; Article Q, WRB-2 General Resort Business District, and Chapter 6, Off-Street Parking and Loading.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on April 20, 2023. Following this hearing, the Planning Board unanimously recommended approval of the amendments (Scott/Middleton) and adopted the supporting findings of fact in the staff report (Gardner, Linville absent).

City Staff Recommendation: Staff recommended approval of the text amendment attached to the staff report.

Public Hearing: There were no public comments at the public hearing. The draft minutes of the Planning Board hearing are included.

RECOMMENDATION: Staff respectfully recommends that the City Council, after considering testimony at the Public Hearing and the recommendation from Planning Staff and the Planning Board, adopt Ordinance No.23--__; An Ordinance amending the Whitefish City Code to completely rewrite Title 11, Chapter 4, Landscaping Requirements; and amend Chapter 2, Zoning Districts, Section 11-2K-4 Property Development Standards; Section 11-2N-2 Permitted Uses; Section 11-2N-4 Property Development Standards; Section 11-2O-2 Permitted uses; Section 11-2O-4 Property Development Standards; Section 11-2P-2 Permitted Uses; Section 11-2P-4 Property Development Standards; Section 11-2Q-2 Permitted Uses; Section 11-2Q-4 Property Development Standards; Chapter 3, Special Provisions, Section 11-3-42 Multi-Family Development Standards, 11-3-43 Mixed-Use and Non-Residential Building Development Standards; Chapter 6, Off Street Parking and Loading, Section 11-6-2 Parking Space Requirements; Section 11-6-3 Special Conditions; Section 11-6-5 Landscaping and Screening; Section 11-6-8 Street and Roadway Access Standards. (First Reading) (WZTA 23-08).

This item is a legislative matter.

COMMUNICATIONS FROM CITY ATTORNEY
a) Resolution No. 23--__; A Resolution Granting a Utility Easement to Flathead Electric Cooperative over land located at Lot 6 of Bakers Common – Phase II Subdivision, Section 1, Township 31 North, Range 22 West P.M., M., Flathead County Montana (p.102)

From City Attorney Jacob’s staff report.

Current Report: Flathead Electric Company has requested that the City allow it to extend a three-phase electrical service phase to the rear of the Hurrah! Balm. It is possible that FEC will encroach on the City's property to avoid Hurrah's drain field. Pursuant to § 7-8-4201, MCA, any lease or transfer of City property must be approved by an ordinance or resolution passed by two-thirds of all members of the Council.
Financial Requirements/Impacts: There are no financial requirements or impact of approving the easement.

RECOMMENDATION: Staff respectfully request the City Council approve Resolution No. 23__; A Resolution Granting a Utility Easement to Flathead Electric Cooperative over land located at Lot 6 of Bakers Common – Phase II Subdivision, Section 1, Township 31 North, Range 22 West P.M., M., Flathead County Montana.

This matter is an administrative matter.

COMMUNICATIONS FROM CITY MANAGER
a) Written report enclosed with the packet. Questions from Mayor and Council? (p.108)
b) Other items arising between May 10th through May 15th

COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

ADJOURNMENT

Sincerely,

Dana Smith, C.P.A
City Manager
The motions below are listed in order of precedence. Any motion can be introduced if it is higher on the chart than the pending motion.

### PRIVILEGED MOTIONS

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Adjourn</td>
<td>I move to adjourn</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Take a break</td>
<td>I move to recess for</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Register complaint</td>
<td>I rise to a question of priviledge</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Orders of the day</td>
<td>I call for the orders of the day</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No</td>
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### SUBSIDIARY MOTIONS

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<tbody>
<tr>
<td>Lay aside temporarily</td>
<td>I move to lay the question on the table</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
<td>Negative vote only</td>
</tr>
<tr>
<td>Close debate</td>
<td>I move the previous question</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>2/3</td>
<td>Yes</td>
</tr>
<tr>
<td>Limit / extend debate</td>
<td>I move that debate be limited to...</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>2/3</td>
<td>Yes</td>
</tr>
<tr>
<td>Postpone to a certain time</td>
<td>I move to postpone the motion to...</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Refer to a committee</td>
<td>I move to refer the motion to...</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Amend a motion</td>
<td>I move to amend the motion by...</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Kill main motion</td>
<td>I move that the motion be postponed indefinitely</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Majority</td>
<td>Affirmative vote only</td>
</tr>
</tbody>
</table>
### MAIN MOTIONS

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<tr>
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<tbody>
<tr>
<td>Bring business to motion</td>
<td>I move that (or “to”)...</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Majority</td>
<td>Yes</td>
</tr>
</tbody>
</table>

No order of precedence. Arise incidentally and decided immediately.

### INCIDENTAL MOTIONS

<table>
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<tbody>
<tr>
<td>Enforce rules</td>
<td>Point of order</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Submit matter to assembly</td>
<td>I appeal from the decision of the chair</td>
<td>Yes</td>
<td>Yes</td>
<td>Varies</td>
<td>No</td>
<td>Majority</td>
<td>Yes</td>
</tr>
<tr>
<td>Suspend rules</td>
<td>I move to suspend the rules which...</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>2/3</td>
<td>No</td>
</tr>
<tr>
<td>Avoid main motion altogether</td>
<td>I object to the consideration of the question</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>2/3</td>
<td>Negative vote only</td>
</tr>
<tr>
<td>Divide motion / question</td>
<td>I move to divide the question</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Demand rising vote</td>
<td>I call for a division</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Parliamentary law question</td>
<td>Parliamentary inquiry</td>
<td>Yes (if urgent)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Request information</td>
<td>A point of information, please.</td>
<td>Yes (if urgent)</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>None</td>
<td>No</td>
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</table>

No order of precedence. Introduce only when nothing else pending.

### RENEWAL MOTIONS

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<tbody>
<tr>
<td>Take matter from table</td>
<td>I move to take from the table...</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Majority</td>
<td>No</td>
</tr>
<tr>
<td>Cancel or change previous action</td>
<td>I move to rescind / amend the motion...</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>2/3 or majority w/notice</td>
<td>Negative vote only</td>
</tr>
<tr>
<td>Reconsider motion</td>
<td>I move to reconsider the vote on...</td>
<td>No</td>
<td>Yes</td>
<td>Varies</td>
<td>No</td>
<td>Majority</td>
<td>No</td>
</tr>
</tbody>
</table>
1) Call to Order

The meeting was held in-person in the Council Conference Room. Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Norton, and Caltabiano. Councilor Sweeney attended at 5:40. Councilor Davis was absent. Staff present were City Manager Smith, City Clerk Howke and Parks and Recreation Director Butts.

2) Interviews

The City Council interviewed Jim DeHerrera, Terry Dunn and Antonia Malchik for the Board of Park Commissioners; Jim Trout for the Police Commission; Julia Olivares and Ken Stein for the Resort Tax Monitoring Committee; Mariah Joos, Lauren Oscilowski and Kimberly Wortman for the Whitefish Convention and Visitors Bureau. All interviews were incumbent positions.

3) Public Comment

None

4) Appointment

a) Board of Park Commissioners – Three (3) positions, received three (3) letters, all incumbents, 2-year term – Mayoral appointment.

Mayor Muhlfeld made a motion, ratified by the Council to re-appoint Jim DeHerrera, Terry Dunn, and Antonia Malchik to the Board of Park Commissioners.

b) Police Commission – One (1) position, received one (1) letter, incumbent, 3-year term – Mayoral appointment.

Mayor Muhlfeld made a motion, ratified by the Council to re-appoint Jim Trout to the Police Commission.

c) Resort Tax Monitoring Committee – Two (2) positions, received two (2) letters, all incumbents, 3-year term – Council appointment.

Councilor Feury made a motion, seconded by Councilor Caltabiano to re-appoint Julia Olivares and Ken Stein to the Resort Tax Monitoring Committee. The motion carried.

d) Whitefish Convention and Visitors Bureau – Three (3) positions, received three (3) letters, all incumbents, 3-year term – Council appointment.

Councilor Caltabiano made a motion, seconded by Councilor Sweeney to re-appoint Mariah Joos, Lauren Oscilowski and Kimberly Wortman to the Whitefish Convention and Visitors Bureau. The motion Carried.

5) Adjourn

Mayor Muhlfeld adjourned the Special Session at 6:53 p.m. and opened the Regular meeting.

Attest:

Mayor Muhlfeld

Michelle Howke, Whitefish City Clerk
1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Caltabiano, Sweeney, and Norton. Councilor Davis was absent. City Staff present were, City Clerk Howke, City Manager Smith, City Attorney Jacobs, Finance Director Gospodarek, Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, Police Chief Kelch, Senior Planner Compton-Ring and Planner Loring. Approximately 8 people were in the audience and 1 attended virtually.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Eric Payne to lead the audience in the Pledge of Allegiance.

3) COMMUNICATIONS FROM THE PUBLIC— (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments but may respond or follow-up later on the agenda or at another time. The mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

Mayre Flowers, Citizens for a Better Flathead, provided a handout to the Council that is appended to the packet on the website. She spoke towards agenda item 8c). Citizens for a Better Flathead is asking the County to consider anaerobic digestion as an energy process to take biosolids and septic waste to generate electricity. She hopes the Council will encourage the county and public works department to look at this as well. She also spoke towards the handouts she provided to the Council pertaining to agenda item 5d), the zoning text amendment adding zoning upon annexation. She reached out to other communities that stated they have been doing this forever. All cities she spoke with have strong language in their zoning codes, which she provided in her handout. The language links their intent of their annexation to comply with their growth policy, and the vision of the community. It is missing from the zoning text amendment that is before the Council and limits the Council by saying the City needs to consider county zoning. She encourages the Council to pull item 5d) from the agenda to bring back with broader, more comprehensive response to annexation moving forward.

Ed Docter, spoke towards the letter that is provided in the packet asking for an extension to the casino overlay to include his property to allow a few casino machines. After submitting his letter, he thought a better way is to change the definition from casino to anything with five or more machines. It is harder to stay in business. He has never wanted keno machines in his bar, but it can bring him $50 to $60 thousand a year if he has a couple machines. He is just asking for 3 to 4 machines.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Ben Johnson, Whitefish Housing Authority Board member introduced Dwarne Hawkins, Interim Executive Director for Whitefish Housing.

Dwarne Hawkins, Interim Director for Whitefish Housing Authority, reported since his time as Interim Director they have done a lot of internal infrastructure and system upgrades along with compliance and reporting. The Housing Authority is here to help and put their resources together with the City to make a better Whitefish. He reported that they have submitted their utility drawings to the City for the Depot Park Townhome project. The approval will then be passed onto DEQ.
Julie Mullins, Executive Director for Explore Whitefish introduced herself. She is available at any time to meet with questions about Explore Whitefish. She reported the CSF program has been in the news lately. While this is a private fund from Explore Whitefish, she knows the Council has been receiving some heat from that as well. Explore Whitefish is doing a complete and total evaluation of this program. They are meeting with each one of their CSF members to understand if this program is working. They will report back on their findings. They take the grievances and the controversy very seriously and they are looking at how to make the program better, not only for their members but for the community of Whitefish.

Councilor Caltabiano announced that the Montana West Economic Development is holding a Community Day in Whitefish on May 8, 2023, 9:00 am to 10:00 am at National Park Realty. He also announced on May 24, 2023, the Bike/Ped Committee is sponsoring a Bike and Walk to Work Day. There will be events held downtown between 4:00 pm and 6:00 pm. The Impact Fee Advisory Committee met and are make good progress with the Impact Fee Study. It will be coming to the Council for a work session in the near future.

Councilor Sweeney reported that Project Whitefish Kids and Carol Anderson has done some fundraising to build pickleball courts at the Smith Fields.

Councilor Norton reported that she attended Arbor Day on Friday, April 28th. The celebration was in Depot Park with the city Arborist and the 8th Graders planting four trees.

5) CONSENT AGENDA (The consent agenda is a means of expediting routine matters that require the Council’s action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require four votes for passage – Section 1-6-2 (E)(3) WCC)

   a) Minutes from April 17, 2023 Special Session (p.39)
   b) Minutes from April 17, 2023 Regular Meeting (p.40)
   c) Ordinance No. 23-05; An Ordinance rezoning approximately 11.12 acres of land in a portion of a 31.17 acre unaddressed, undeveloped parcel located west of Highway 93 South and south of the Park Knoll subdivision and known as Tract 7A in the Southeast Quarter of the Southwest Quarter in Section 1, Township 30 North, Range 22 West, P.M.M, Flathead County, Montana, that is zoned WCR-SC (Country Residential with Special Conditions) to WER-SC (Estate Residential District with Special Conditions), and adopting findings with respect to such rezone (Second Reading) (WZC 23-03) (p.45)
   d) Ordinance No. 23-06; An Ordinance amending Zoning Regulations Title 11, Chapter 7, Administration and Enforcement, to add a new section, Zoning Upon Annexation, of the Whitefish City Code (Second Reading) (WZTA 23-01) (p.48)

Councilor Sweeney made a motion, seconded by Councilor Qunell to approve the Consent Agenda.

Councilor Caltabiano made a correction to the April 17, 2023 Regular meeting minutes; page one, under Communications from the Public; CSF revenues are around $900,000 per year.

Councilor Norton pulled agenda item 5d) Ordinance No. 23-06 from the Consent Agenda for discussion. She is confused about what Mayre Flowers is recommending and asked if staff could review her comments. Councilor Norton made a motion, seconded by Councilor Sweeney to postpone Ordinance No. 23-06 to the May 15th meeting. Councilor Norton would like input from the staff about how the other cities are handling annexation and zoning and if we can make is simpler for the future. Councilor Qunell asked, and staff stated the Whitefish City Code has specific criteria for zone changes. The motion failed on a 4 to 1 vote, Councilor Norton voting in favor.

The motion to approve the Consent Agenda carried.
6) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

a) Ordinance No. 23-07; An Ordinance rezoning 11.18 acres of land located at 111 Iverson Lane, 119 Iverson Lane, 140 Iverson Lane, and 6010 US Highway 93 South in Section 12, Township 30 North, Range 22 West, P.M., Flathead County, Montana, zoned Flathead County B-4/HO (Secondary Business/Highway Overlay) and SAG 5/HO (Suburban Agricultural/Highway Overlay) to WB-2 (Secondary Business District) and WCR (Country Residential District), and adopting findings with respect to such rezone (First Reading) (WZC 23-02) (p.58)

Senior Planner Wendy Compton-Ring presented her staff report that is provided in the packet on the website. The Planning Board postponed action in March in order to consider the newly adopted WB-T zoning district that went into effect on March 21st. She provided a history of the zoning for this property that is provided in the packet. Staff noticed neighbors for the March Planning Board meeting as well as the April Planning Board meeting, and received comments that are included in the packet. There were comments on an easement from the neighbors, which is a private easement and does not involve any of the city streets or utilities. There was also comment in support of the WB-T zoning.

Staff included alternate findings of fact that are included in the packet because the Planning Board was interested in considering the WB-T zoning and approved the amended findings of fact. Councilor Norton asked, and Planner Compton-Ring stated that Iverson Lane is an actual easement, but it is not a street.

Mayor Muhlfeld opened the Public Hearing.

Erik Payne, 100 Central Avenue, applicant, accompanied by Dean Grommet his partner in this project. They are requesting the WB-2 zoning as they were formerly zoned and that the City fought hard to retain. They are asking for the zoning that was applied in the prior years and that is applied to the neighboring property across Highway 93. Ninety percent of this property sits inside the Growth Policy to be designated as WB-2. He believes the WB-T zoning is far too restrictive and believes it should not be applied to their zoning request. It will defeat the purpose for why they tried to start with this application. He stated that WB-2 allows for 30 permitted uses, the WB-T allows for 6 permitted uses plus government buildings; WB-2 allows for 24 conditional uses, WB-T allows for 16 conditional uses. Their goal is to create a landmark design. They want to create a legacy style vision that sets a standard for this entryway into Whitefish. He explained that Iverson Lane continues to exist. Property owners that utilize it are free to use their properties and access to the highway. Everything points to this property being the property that ideally fits WB-2 zoning.

Councilor Norton asked, and the applicant stated that they want a highly vegetative green space focused master plan that buffers it from the highway. Councilor Sweeney asked, and the applicant stated there are multiple ways they can get utilities to the property, none of which are inexpensive and are extremely costly. A backage road would impact the future for Whitefish and the ability to access the light. The cost for them to incur to develop these parcels with a backage road is substantial in cost. Now they are looking at parcels that have far less use, far less valuable use to their potential tenants that will not justify them bringing city utilities or creating a spectacular backage road to allow other property owners or uses to access that light. That would impact this particular parcel negatively.

Mayre Flowers, Citizens for a Better Flathead, provided comments that are provided in the packet on the website. She asked Council to look at Finding 8 and Finding 11. She is not sure that those are accurately consistent with the recommended WB-2 zoning. She supports the Planning Board recommendation that this property be zoned WB-T.
There being no further public comment, Mayor Muhlfeld closed the Public Hearing and turned the matters over to the Council for consideration.

Councilor Caltabiano discussed with staff, that the applicant applied, council approved extending the city limits, and the applicants expectation according to M.C.A and the Growth Policy they were going to have a WB-2 zoning. When Council approved WB-T it was clearly stating that the zoning overlay was south of Highway 40. He asked and staff stated when the transitional zoning was designed as part of the Highway 93 Corridor Plan, they put together the bones of what a transitional zone would be. It was designed to be something that would apply to commercial properties that would not have the same types of intense traffic and uses as would be further north of Highway 40. They were trying to put a zone together that would control the access points, consolidate accesses, have backage roads, and limit the uses to ones that would not be high traffic uses.

Councilor Sweeney stated, and Director Taylor stated in general the Highway 93 South Steering Committee talked about the County B-4 properties and were more focused on the southeast lot of the intersection, and the southwest lot of the intersection. This particular property may not have been talked about.

Councilor Caltabiano made a motion, to approve WZC 23-02, the findings of fact originally presented by the City Planning staff, which points to WB-2 zoning. The motion failed for a lack of a second.

Councilor Sweeney made a motion, seconded by Councilor Norton to approve Ordinance No. 23-07; an Ordinance rezoning 11.9 acres of land, as WB-T and WCR pursuant to the findings of fact issued by and approved by the Planning Board to include the correction to Finding 8. The proposed zone change considers the character of the district and its suitability for particular uses because it is single family residential on large lots and commercial uses, and the proposed zoning will be the most equivalent to the County B-4 zoning district. Councilor Sweeney stated WB-T has been in discussion for years, and the Highway 93 Corridor Plan is a good indication for the vision of Whitefish. The motion carried on a 4-1 vote, Councilor Caltabiano voting in opposition.

b) Consideration of a request from Goosebay Capital LLC for a Conditional Use Permit for a bar/tavern at 6185 Highway 93 South, zoned WB-2 (Secondary Business District) (WCUP 23-03) (p.191)

Planner Nelson Loring presented his staff report that is provided in the packet on the website. This Conditional Use Permit is a reapplication of a Conditional Use Permit that was approved in 2020. There has been development on the lot since and the permit has expired. Notices were mailed to adjacent property owners and advisory agencies; a notice was published in the Whitefish Pilot. One comment was received in support of the permit.

Mayor Muhlfeld opened the Public Hearing.

Mayre Flowers, Citizens for a Better Flathead, stated she would like to hear some discussion on what type of precedent this would set elsewhere in the district if other properties wanted to have a conditional use as well to add a few additional machines and if there is a limit to the number of machines that would be allowed.

There being there no further public comment, Mayor Muhlfeld closed the Public Hearing and turned the matters over to the Council for consideration.

Councilor Caltabiano made a motion, seconded by Councilor Sweeney to approve WCUP 23-03, the findings of fact in the staff report and the four conditions of approval as recommended by the Whitefish Planning Board on April 20, 2023. The motion carried.
7) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor and Council? (p.216)

   None

   b) Other items arising between April 26th through May 1st.

Manager Smith reported Friday, May 5, 2023 marks the 90th day of the legislative session and provided an update; SB 262, related to business licensing, passed without amendments, this will impact revenues in the general fund; SB 382, Montana Land Use Planning Act, passed through its readings in the Senate and is likely headed to the governor; HB 465, related to the building code fees was signed by the governor; SB 245 and SB 407 were amended in the conference committee and will likely be passing; HB 226, related to Public Employee Retirement System, is going to conference committee, this could impact the budget for FY25. She also reported that there will be a work session with the Impact Fee Study Consultant who is working on the update at the next meeting.

Pertaining to agenda item 5d) Ordinance No. 23-06 adopting Zoning Upon Annexation, was pulled from the Consent Agenda, it was discussed, Councilor Norton made a motion to postpone, the motion failed; and Council voted to approve the Consent Agenda, but Ordinance No. 23-06 was not voted on. **COUNCILOR QUINELL made a motion, seconded by COUNCILOR CALTABIANO to adopt Ordinance 23-06. The motion carried on a 4-1 vote, COUNCILOR NORTON voting in opposition.**

Councilor Norton asked, and Manager Smith stated that SB 528 was scheduled for a third reading this afternoon and passed through. Accessory Dwelling Units (ADU) will be by right. There is language in the bill that allows municipalities to regulate short-term rentals in ADUs, but are not able to collect impact fees, or parking requirements.

8) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
   a) Consideration of appointment to volunteer boards and committees not made during the Special Session preceding tonight’s meeting.
   b) Letter from Cora Arnold with concerns of individuals who repeatedly abuse city ordinance regarding animal resistant containers (p.222)
   c) Letter from Mayre Flowers on Energy Production from Septic Waste and Biosolids (p.225)
   d) Letter from Ed Docter regarding the casino overlay in the zoning regulations (p.239)

Councilor Comments

Councilor Caltabiano stated that the Planning Board and the Planning staff kicked off the public engagement plan for the Growth Policy update (Vision Whitefish 2045), he invites the public to participate or write an email to Long Range Planner, Alan Tiefenbach to enroll for updates. He reported that the Whitefish Rotary Club is looking for freshman students who are interested in a four-day life-changing experience at the Rotary Youth Leadership Awards. Thursday, May 4th will be the 79th birthday of Miss Montana Plane, famous for thirteen jumpers who died fighting a fire on the Mann Gulch. A celebration will be at the Museum of Mountain Flying on Thursday, May 4, 2023 in Missoula.

Councilor Qunell asked and Chief Kelch reported that Fish, Wildlife and Parks biologist out of Eureka has been working with staff on developing a further plan for deer management. They have conducted a deer assessment north of the viaduct. Chief Kelch has not heard back from the biologist of the results of the assessment. Councilor Qunell also announced that today is the beginning of Hit the Trail month for Whitefish...
Legacy Partners. Every mile that you log on the trail with STRAVA, brings money to Whitefish Legacy Partners.

Councilor Sweeney thanked the Whitefish Convention and Visitors Bureau/Explore Whitefish for their letter to the editor in the Whitefish Pilot explaining the details of what the CFS fund is and what it does.

Councilor Norton asked, and Manager Smith stated we have advertised online for the position for the Flathead City-County Health Board, but we have not received any applications. Councilor Norton also reported that you have to be registered to vote before filing to run for an elected position. She asked and Attorney Jacobs stated as a self-governing unit, Whitefish can exercise any power that is not forbid by the Montana Constitution or the legislature itself. Whitefish has a Non-Discrimination Ordinance, and we can provide more protection for individuals than the state unless they amend and prohibit us from doing so. Attorney Jacobs will have to look into it more.

Councilor Feury reminded everybody that the lake is really cold and just because it is 85 degrees out, being on your paddleboard or in your canoe without a life jacket, you stand a 50/50 chance of making a 50-yard swim in 50-degree water. He addressed the letter in the packet from Ed Docter. Councilor Feury remembers when the Casino overlay was created. At the time it was created it was becoming apparent that Whitefish was being overrun with casinos. There was a great fear that suddenly we were going to have a lot of neon lights on Central Avenue. It is a very marginal business and for a lot of businesses, particularly if they have beer and wine and the ability to have machines can make a huge difference in their sustainability. He would be willing to revisit that issue and take a look at it as a conditional use. The council showed support with a showing of hands for staff to look into allowing casino machine in establishments outside the casino overlay.

Mayor Muhlfeld announced Legal Assistance, Keni Hopkins is retiring and there will be a celebration at the Great Northern Bar on May 11th. Councilor Feury stated he will be absent from the May 15th meeting.

9) ADJOURNMENT  (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)

Mayor Muhlfeld adjourned the meeting at 9:03 p.m.

________________________________________
Mayor Muhlfeld

Attest:

Michelle Howke, Whitefish City Clerk
ORDINANCE NO. 23-07

An Ordinance of the City Council of the City of Whitefish, Montana, rezoning approximately 11.18 acres of land located at 111 Iverson Lane, 119 Iverson Lane, 140 Iverson Lane, and 6010 US Highway 93 South in Section 12, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana, zoned Flathead County B-4/HO (Secondary Business/Highway Overlay) and SAG-5/HO (Suburban Agricultural/Highway Overlay) to WB-T (Business Transitional District) and WCR (Country Residential District) and adopting findings with respect to such rezone.

WHEREAS, upon annexation request, the City of Whitefish initiated a rezone to the WCR zoning district (Country Residential District) and the WB-2 zoning district (Secondary Business District) of the property located at 111 Iverson Lane, 119 Iverson Lane, 140 Iverson Lane, and 6010 US Highway 93 South, and legally described as Tracts 7CB, 7CD, 7CLAB, 7DA, in Section 12, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana, and more particularly described as follows to wit:

TRACT 1 and TRACT 2 of Retracement Certificate of Survey No. 11855, located in the Southwest Quarter Northeast Quarter (SW1/4NE1/4) Section 12, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana

AND

TRACT 2 of Certificate of Survey No. 19774, a tract of land located in the Northeast Quarter of Section 12, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana

AND

TRACT 1 of Certificate of Survey No. 15003, located and being in the South one-half of the Southwest one-quarter of the Northeast one-quarter (S1/2SW1/4NE1/4) and in the Northwest one-quarter of the Southeast one-quarter (NW1/4SE1/4) of Section 12, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana

as shown on Exhibit A attached hereto; and

WHEREAS, in response to the application to rezone, the Whitefish Planning & Building staff prepared Staff Report WZC 23-02, dated March 9, 2023, which analyzed the proposed rezone and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on March 16, 2023, the Whitefish Planning Board reviewed Staff Report WZC 23-02, received an oral report from Planning staff, invited public comment, and thereafter voted to postpone action on the request until the April 20, 2023 meeting date in order to consider the WB-T zoning district (Business Transitional District) that would go into effect on March 21, 2023; and

- 1 -

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WHEREAS, at a lawfully noticed public hearing on April 20, 2023, the Whitefish Planning Board reviewed the updated Staff Report WZC 23-02, dated April 13, 2023, received an oral report from Planning staff, invited public comment, and thereafter voted to recommend approval of the WB-T zoning district (Business Transitional District) and the WCR (Country Residential District) along with Findings of Fact supporting the recommended approval of the WB-T zoning district; and

WHEREAS, at a lawfully noticed public hearing on May 1, 2023, the Whitefish City Council reviewed the updated Staff Report WZC 23-02, and letter of transmittal dated April 25, 2023, received an oral report from Planning staff, invited public comment, and thereafter voted to approve the WB-T zoning district (Business Transitional District) and the WCR zoning district (Country Residential District); and

WHEREAS, the proposed rezone meets zoning procedures and the criteria and guidelines for the proposed rezone required by MCA §§ 76-2-303 through 76-2-305 and WCC § 11-7-12; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed rezone.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: The Findings of Fact attached hereto as Exhibit B are hereby adopted.

Section 3: The real property located at 111 Iverson Lane, 119 Iverson Lane, 140 Iverson Lane, and 6010 US Highway 93 South, and legally described Tracts 7CB, 7CD, 7CLAB, 7DA, in Section 12, Township 30 North, Range 22 West, P.M., M., Flathead County, Montana, as shown on Exhibit A attached hereto, previously zoned Flathead County B-4/HO (Secondary Business/Highway Overlay) and SAG-5/HO (Suburban Agricultural/Highway Overlay) is hereby rezoned to WB-T (Business Transitional District) and WCR (Country Residential District).

Section 4: The official Zoning Map of the City of Whitefish, Montana, shall be amended, altered and changed to provide that the rezone and zoning map amendment of the real property identified on Exhibit A attached hereto, and incorporated herein by reference, shall be designated WB-T (Business Transitional District) and WCR (Country Residential District). The Zoning Administrator is instructed to change the City's official Zoning Map to conform to the terms of this Ordinance.

Section 5: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

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Section 6: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.


__________________________________
John M. Muhlfeld, Mayor

ATTEST:

__________________________________
Michelle Howke, City Clerk
Re-Zone Petition
Exhibit B
City of Whitefish/Whitefish Junction LLC/Grommet
Annexation Zone Change WZC 23-02
Findings of Fact

Finding 1: The proposed zone change from SAG-5/HO (Suburban Agricultural/Highway Overlay) and B-4/HO (Secondary Business/Highway Overlay) to WCR and WB-T is in accordance with the Highway 93 S Corridor Plan, an amendment to the 2007 Growth Policy because:

a. The Highway 93 S Corridor Plan designates the western portion of the north two lots as Suburban Residential which is consistent with WCR.

b. The Highway 93 S Corridor Plan identifies area to be rezoned as part of Segment C and applying WB-T zoning to the remaining portion of the property to be rezoned promotes the Vision of Segment C:

Segment C of the corridor will provide a gradual transition from the County rural areas to the highway commercial district in the City. Alternative modes of transportation will be available, usable, and prominent. Traversing the corridor will be safe and pleasant for pedestrians, bicyclists, and vehicles. Where there are commercial uses, any parking or storage areas will be well-screened from the highway with existing trees and shrub canopy, added landscaping, and topographic features such as earthen berms. Access to the commercial properties will be from cross or backage roads in additional to the highway. Uses generating frequent daily vehicle trips will be discouraged. Commercial structures will blend well with the natural surroundings as a result of exterior materials, scale, and building articulation, with land reserved for open or green space. The area will continue to support a rural residential lifestyle and the use of agriculturally designated lands.

c. The Future Land Use map of the Highway 93 S Corridor Plan identifies the remainder of the area to be rezoned as Highway Transitional.

d. WB-T promotes Goal C.5 of the Highway 93 S Corridor Plan:

Goal C.5: Ensure any properties annexed into the City in the future are developed in a manner consistent with the community's vision for the gateway segment of the corridor.

Objective 1: Create a new highway commercial transition zone to be applied to annexations in areas currently zoned Secondary Business with traffic intensive uses moved from permitted to conditional uses to be consistent with the community's vision for Segment C and to better buffer adjacent residential property from negative impacts.

e. WB-T is consistent with the Future land Use Designation section of the Highway 93 S Corridor plan which states: "Where already zoned for Secondary Business, the land use designation changes from Rural Residential to a new Highway Transitional designation." The Potential Future Transitional Business District is described as:
"A potential transitional business zoning district could be applied to properties currently zoned B-4 County Secondary Business, if and when those properties are annexed into the City. The district would move high traffic uses currently permitted in the B-4 to conditional uses, while encouraging commercial uses generating lower vehicle trips and destination centered to minimize congestion and maximize traffic safety."

f. WB-T is consistent with City Implementation Activity 3 of the Highway 93 S Corridor Plan: "Discourage any proposed projects in Section C that are inconsistent with the City's vision for this segment of the corridor; support those that are consistent."

g. WB-T is consistent with City Implementation Activity of the Highway 93 S Corridor Plan: "Create a highway transition zone with development standards for future annexations…"

h. WB-T is consistent with City Action item in the Highway 93 S Corridor Plan:

"Create a highway transition zoning district. To ensure properties at the entrance to Whitefish that annex into the City in the future are developed in a manner consistent with the community's vision for Segment C, and to better buffer adjacent residential properties from negative impacts, a new transitional zoning district should be created to apply to annexations in areas currently zoned by the County as Secondary Business. Traffic intensive uses should be moved from permitted to conditional uses…"

Finding 2: The proposed zone change will secure safety from fire, panic and other dangers because the City Engineering Standards and Zoning Standards will be reviewed at the time of development.

Finding 3: The proposed zone change promotes public interest, health, comfort and general welfare because public services are available in Highway 93 S near the northly most tract of this annexation request, the area is included in the City's Extension of Services Plan, and services will be extended as future development occurs.

Finding 4: The proposed zone change facilitates the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because the property is located inside city limits, the area is included in the Extension of Services Plan, and the property can and will be served in the future by public services and facilities.

Finding 5: The proposed zone change provides reasonable provision of adequate light and air because the zoning and other City standards will prevent the overcrowding of the land through lot coverage, setbacks, and conformance with the Building Code.

Finding 6: The effect of the zone change on motorized and nonmotorized transportation systems will be reviewed at the time of development. The property has access to a signalized intersection, so has the opportunity to mitigate traffic impacts.
**Finding 7:** The proposed zone change will promote compatible growth because the property is served by public services, and the proposed zoning designations best implement the Highway 93 S Corridor Plan, an amendment to the 2007 Growth Policy.

**Finding 8:** The proposed zone change considers the character of the district and its suitability for particular uses because it is single family residential on large lots and commercial uses.

**Finding 9:** The proposed zone change will conserve the value of buildings because Architectural Review and a building permit will be required for future development of the site.

**Finding 10:** The proposed zone change encourages the most appropriate use of land throughout the jurisdictional area because it will best implement the Highway 93 S Corridor Plan, an amendment to the 2007 Growth Policy.

**Finding 11:** The proposed zone change is consistent with the historical, established and trending use patterns because the Planning Board and the City Council should consider these patterns when making a decision on the project.
(This page left blank intentionally to separate printed sections)
ORDINANCE NO. 23-

An Ordinance of the City Council of the City of Whitefish, Montana, amending the Whitefish City Code to completely rewrite Title 11, Chapter 4, Landscaping Requirements; and amend Chapter 2, Zoning Districts, Section 11-2K-4 Property Development Standards; Section 11-2N-2 Permitted Uses; Section 11-2N-4 Property Development Standards; Section 11-2O-2 Permitted uses; Section 11-2O-4 Property Development Standards; Section 11-2P-2 Permitted Uses; Section 11-2Q-2 Property Development Standards; Section 11-2Q-4 Property Development Standards; Chapter 3, Special Provisions, Section 11-3-42 Multi-Family Development Standards, 11-3-43 Mixed-Use and Non-Residential Building Development Standards; Chapter 6, Off Street Parking and Loading, Section 11-6-2 Parking Space Requirements; Section 11-6-3 Special Conditions; Section 11-6-5 Landscaping and Screening; Section 11-6-8 Street and Roadway Access Standards.

WHEREAS, the ordinance governing landscaping requirements on private property has not been updated since 2008; and

WHEREAS, in 2022, the Whitefish City Council set a goal to direct staff to revise the landscaping ordinance; and

WHEREAS, the existing landscaping ordinance has minimum tree density requirements and is not easily understood; and

WHEREAS, the Whitefish City Council has expressed the desire for more robust tree retention requirements; and

WHEREAS, in response to the direction provided by the Whitefish City Council, Staff revised the landscaping ordinance to: maintain and improve community livability, mitigate adverse impacts of higher intensity land uses located adjacent to lower intensity land uses, reduce the impacts of climate change, reduce the heat-island effect, foster quality of life, enhance the City’s natural environment, improve air quality, protect water quality, promote sustainable landscape practices, provide wildlife habitat, enhance the aesthetic quality and economic viability of the City and protect the health, safety and general welfare; and

WHEREAS, Staff distributed the proposed landscaping ordinance for review and comment to twelve (12) Landscape Architects and Botanists; and

WHEREAS, Staff presented a preliminary draft of the landscaping ordinance at the February 16, 2023 Planning Board and March 7, 2023 City Council Work Sessions, public input was received, and the Board and Council directed Staff to make revisions; and,

WHEREAS, the Whitefish Planning and Building Department prepared Staff Report WZTA 23-03, dated April 20, 2023, which analyzed the proposed rewrite of the landscaping ordinance and other housekeeping amendments, and recommended in favor of their approval; and
WHEREAS, at a lawfully noticed public hearing on April 20, 2023, the Whitefish Planning Board received an oral report from Planning Staff, reviewed Staff Report WZTA 23-02, invited public comment, and thereafter voted unanimously to approve the proposed text amendments; and

WHEREAS, at a lawfully noticed public hearing on May 15, 2023, the Whitefish City Council received an oral report and a written report from Planning Staff, reviewed Staff Report WZTA 23-03, and letter of transmittal, invited public input, and thereafter voted to approve the proposed text amendments; and

WHEREAS, it will be in the best interests of the City of Whitefish and its inhabitants to adopt the proposed amendments to the landscaping ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: Staff Report WZTA 23-03 dated April 20, 2023, together with letter of transmittal from the Whitefish Planning & Building Department dated May 15, 2023, are hereby adopted as Findings of Fact.

Section 3: The amendments to Title 11, Zoning Regulations, as provided in Exhibit A are hereby adopted.

Section 4: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 5: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.


John M. Muhlfeld Mayor

ATTEST:

Michelle Howke, City Clerk
EXHIBIT A

WHITEFISH CITY CODE
TITLE 11 – ZONING REGULATIONS

CHAPTER 4
LANDSCAPING REQUIREMENTS

11-4-1: PURPOSE AND INTENT: The purpose of this chapter is to enhance, conserve and stabilize property values and the city's natural environment. This is accomplished through the preservation, protection and planting of trees and other landscape material, particularly those trees recognized herein as canopy and understory trees, and the provision of natural and/or planted buffers between dissimilar uses as part of the land development process. This chapter is intended to further the city's policy that all development sites where trees are most commonly removed will achieve, upon project completion, a uniform standard related to tree coverage, landscaping and buffers. In addition, trees are recognized for their importance in shading and cooling, noise and wind reduction, prevention of soil erosion, production of oxygen, dust filtration, fostering air quality through carbon dioxide absorption, providing wildlife habitat, and contributing to the aesthetic and economic value of real property. Unless otherwise noted, the provisions of this chapter shall apply to all districts and to all uses except single-family, duplex and threeplex dwellings.

11-4-2: NONCONFORMING STATUS:

A. Any property or use of property that did not comply with the landscaping regulations in effect prior to December 21, 2000, may not be continued, and shall be considered noncompliant with the amendments that took effect on December 21, 2000. Any property or use of property that complied with the landscaping regulations in effect prior to December 21, 2000, may be continued in the same manner as if the landscaping was conforming with the amendments that took effect on December 21, 2000; provided, however, if there is a change in occupancy, use or division, landscaping shall be provided in accordance with the requirements of this chapter.

B. If the developed lot area of any use, or the gross floor area of any building, is increased by fifty percent (50%) or more from the effective date of this chapter, landscaping shall be provided in accordance with the requirements of this chapter.

11-4-3: REDUCTION OF EXISTING LANDSCAPING: Landscaping which exists on any property or for any use, subject to the provisions of this chapter, shall not be altered or reduced below the minimum requirements of this chapter, unless suitable substitutions are made which meet the requirements of this chapter, and a site plan is first approved by the zoning administrator. Preserving existing trees or groves of trees will provide a one hundred percent (100%) bonus in calculating the required landscaping in section 11-4-4 of this chapter. The bonus will not exceed twenty-five percent (25%) of the total landscaping requirement. (Example: The regulations require 1,000 square feet of landscaping. An existing grove of trees covers 300 square feet of area. The existing grove, if preserved, will account for 300 square feet plus 100 percent bonus for a total
of 600 feet of the required landscaping. However, because the bonus cannot exceed 25 percent of the required 1,000 square feet or 250 square feet, the total will be 550 square feet (300 + 250).

11-4-4: PROPERTY LANDSCAPING STANDARDS: Landscaping shall be provided for that portion of the developed area according to the following schedule:

<table>
<thead>
<tr>
<th>Developed Area</th>
<th>Minimum Landscaping Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 22,000 square feet</td>
<td>10 percent of landscaping area</td>
</tr>
<tr>
<td>22,000 square feet to 5 acres</td>
<td>8 percent of landscaping area</td>
</tr>
<tr>
<td>5 acres to 10 acres</td>
<td>6 percent of landscaping area</td>
</tr>
<tr>
<td>10 acres or more</td>
<td>4 percent of landscaping area</td>
</tr>
</tbody>
</table>

For the purpose of determining the required amount of landscaping, "developed area" is defined as: The area encumbered by building footprints, parking lots, driveways and retail sales areas (both interior and exterior).

Landscaping standards for parking lots and buffers are in addition to the required minimum specified above. At least fifty percent (50%) of the required landscaping shall occur between the building setback line and the public right of way.

11-4-5: DESIGN STANDARDS:

A. General Standards:

1. The minimum inside width of any required landscaped area, or of any form or fixed planter box used to satisfy required landscaping, shall be three feet (3').

2. Additional information regarding suitable species for planting and location of landscaping shall be available at the office of the city manager.

3. Landscaping material, as defined in section 11-9-2 of this title, to meet the minimum requirements listed above shall be complemented with lawn cover on the balance of the landscaping area.

4. When a commercial use or parking lot abuts residentially zoned property, the landscaped buffer (greenbelt) shall consist of a mixture of trees, shrubs and ground cover. The buffer shall achieve a fifty percent (50%) visual screen within three (3) years after planting. The buffer shall be a minimum width equal to the required setback and five feet (5') high. If fences are used in the buffer, the fence shall be made of material commonly used in construction such as wood or vinyl.

B. W-2 Standards:

1. At least forty percent (40%) of the landscaped area shall consist of shrubs or living ground cover that is a minimum of six inches (6") in height.
2. Along the street frontage, a five foot (5') wide landscaped buffer shall be installed with one large canopy tree per fifty feet (50') of frontage or two (2) small ornamental trees per fifty feet (50') of frontage. (See materials list for species.)

3. When a parking lot fronts a street, a five foot (5') wide landscape buffer (7 feet wide if curb stops are not used and the car bumper hangs over the landscaped area) shall be installed that achieves a fifty percent (50%) visual screen within three (3) years of planting.

4. When a use is adjacent to WA or any residential zoning, the adjacent property boundaries must incorporate a buffer of twenty feet (20').

C. WB-3 Standards:

1. Buildings in the WB-3 classification are exempt from the landscaping requirements when construction is developed to the zero lot line.

2. Landscaping, per section 11-4-4 of this chapter, is required for developments in the WB-3 when the use incorporates on site parking and/or yard areas.

D. WRB-1 And WRB-2 Standards: When a use is adjacent to WA or any residential zoning, the adjacent property boundaries must incorporate a buffer of twenty feet (20').

E. WI Standards: When a use is adjacent to any other zoning, the adjacent property boundaries must incorporate a buffer of twenty feet (20').

F. WBSD Standards: When a use is adjacent to WA or any residential zoning, the adjacent property boundaries must incorporate a buffer of twenty feet (20').

11-4-6: MAINTENANCE: Required landscaped areas shall be maintained in a neat, clean, orderly and healthful condition. Maintenance shall include proper pruning of trees and shrubs, mowing of lawns, weeding, removal of litter, fertilizing, replacement of plants when necessary, and the regular watering of all plantings. Required landscaped areas shall be provided with a permanent watering or sprinkling system that shall consist of piped water lines terminating in an appropriate number of sprinklers or hose bibs to ensure a sufficient amount of water for plants within the landscaped area. Where the water system consists of hose bibs alone, these bibs shall be located not more than one hundred fifty feet (150') apart.

11-4-7: LANDSCAPING BETWEEN WALL AND PROPERTY LINE: Any open area between a fence or wall and the adjacent property line shall be maintained by the property owner in a neat and orderly manner.

11-4-8: PERFORMANCE ASSURANCE

\(^1\) See subsection 11-6-5B of this code.
A. Required trees and landscaping must be installed prior to issuance of a certificate of occupancy or issuance of other necessary permitting prior to construction or development of the site. In the event it is not possible for landscaping to be completed at that time due to legitimate weather, supply issues, etc., the Zoning Administrator may accept a bond or letter of credit to ensure the installation of all required landscaping within six (6) months of project approval. Any such device for project assurance must be one hundred fifty percent (150%) of the cost of all required materials and labor, as shown in an itemized cost estimate, and in no situation will the total be less than two thousand dollars ($2,000).

11-4.9: ADMINISTRATION:

A. Authority: The Zoning Administrator has the authority and jurisdiction of regulating the planting and/or removal of landscape and trees required by this chapter.

B. Deviation from Landscaping Standards. The Zoning Administrator may approve exceptions to the regulations when all of the following are met:

1. The applicant can document that meeting the requirements would cause undue hardship due to pre-existing conditions on site, such as existing location of structures or vegetation.

2. The deviation from the standards meets the landscape requirements to the highest degree possible and is the minimum variation needed.

3. The applicant proposes an equal or better result than that which could be achieved by strictly following the requirements of this chapter.

C. Other measures to meet the purpose and intent of this Landscape Code may be proposed to substitute for the required landscaping, such as decorative fencing, walls, arbors, or trellises, with appropriate vegetation.

D. Enforcement: Unlawful removal of a qualifying tree designated in the tree preservation plan for retention will result in either a municipal infraction or a fine equal to one hundred fifty percent (150%) of the value, as determined by a certified arborist based on the Council of Tree and Landscapers Appraisal Guide or replacement trees as required per Section 11-4-6C.

E. Appeal: Any person may make a written appeal from any ruling or order made by the Zoning Administrator to the Board of Adjustment, who shall make a final decision.

11-4.10: NONCONFORMING STATUS:

A. Any existing property or use of property that does not comply with the landscaping regulations of this chapter may be continued in the same manner except as provided in Section 11-4.2.
B. Landscaping which exists on any property or for any use, subject to the provisions of this chapter, must not be altered or reduced below the minimum requirements of this chapter, unless suitable substitutions are made which meet the requirements of this chapter, and a site plan is first approved by the Zoning Administrator.

11-4-1: PURPOSE AND INTENT:

A. The purpose of this chapter is to promote landscaping on private property to:

1. Maintain and improve community livability;

2. Mitigate possible adverse impacts of higher intensity land uses located adjacent to lower intensity land uses;

3. Mitigation or reduce the impacts of climate change;

4. Reduce the heat-island effect and provide adequate shade;

5. Foster quality of life;

6. Enhance the City's natural environment;

7. Improve air quality;

8. Protect water quality by providing vegetated areas that minimize and filter stormwater runoff;

9. Promote sustainable landscape practices including the usage of water-conserving and non-invasive native plants;

10. Provide wildlife habitat;

11. Enhance the aesthetic quality, and economic viability of the City; and

12. Preserve, protect, and provide planting of trees and other landscape material, particularly those trees recognized as canopy and understory trees which are integral to the City of Whitefish's community character and protect public health, safety, and general welfare.

11-4-2: APPLICABILITY:

A. Unless otherwise noted, the provisions of this chapter apply to all districts and to all uses except single-family dwellings.
1. While exempt from the enforcement of these landscaping requirement, single-family uses are encouraged to apply general landscaping standards as written in this chapter.

2. Multifamily developments are additionally required to conform to the open space and common and private open space requirements of Section 11-3-42 "Multifamily Development Standards" of this title.

B. Landscaping requirements outlined in this section apply when any of the following occurs:

   1. When new development occurs; or

   2. When the footprint of any existing building or total area of parking lot is cumulatively expanded by twenty-five percent (25%) or more; or

   3. When a change of use is requested by the property owner that requires additional parking to be developed.

C. Required Landscape Areas. Landscaping must occur in buffer areas, along building frontages facing streets, residential areas and public spaces, interior parking areas, along the perimeter of parking lots, along street frontages, and to screen specific elements as indicated in this chapter. Buildings frontages where the buildings are developed at less than a five-foot setback are exempt from this requirement but are encouraged to incorporate the methods of landscaping for properties with reduced or no street frontage setbacks in the general landscaping requirements of Section 11-4-4-D.

   1. All areas of a site not covered by structures, courtyards, patios, driveways, parking areas, or other impervious surfaces must be landscaped or retain existing vegetation.

11-4-3: LANDSCAPING PLAN SUBMITTAL REQUIREMENTS:

A. As applicable, a scaled landscape plan showing required landscaping must be submitted to the Zoning Administrator in electronic and paper format for review and approval as a part of the application for a building permit.

B. When a stormwater plan is required, it must match the approved landscape plan. Landscape plans must be submitted to Public Works with the engineering plans if above-ground stormwater facilities are included.

C. A landscape plan must be prepared by a licensed landscape architect or professional landscape company or installer. A landscape plan must at a minimum include the following:

   1. Name and address and location of the project;
2. Scale (scale shall be at least 1:20 or larger for sites of 2 acres or less and at least 1:50 for sites greater than 2 acres in size);

3. Dimensioned locations, size, and species of existing and proposed trees and vegetation within required landscape areas, including public right-of-way, and indication of which trees will be protected, and which trees will be removed pursuant to the tree retention requirements per Section 11-4-6;

4. Property boundaries, significant existing physical features, playgrounds and equipment, easements, rights-of-way, vision clearance triangles, streets, sidewalks, paths, driveways, parking lots, areas to be paved or graveled, retaining walls, fences, detention ponds, drainageways or swales, areas affected by the 100-year floodplain, existing and proposed structures, building entrances, freestanding lights and signs, service or loading areas, open spaces, and recreational or resident amenities;

5. Existing and proposed contours and elevations;

6. The location, size and species of all qualifying trees or groups of trees. Qualifying trees will be identified by botanical/common names and applicable size (refer to Section 11-4-6 regarding "qualifying trees");

7. Trees to be removed or altered in any way must be marked in the field and matched on the tree plan. Number of trees, species and caliper as measured four feet (4') dbh must be identified on the plan;

8. Identify the size, location, number of replacement plantings, the total caliper inches being removed of qualifying trees, and the total caliper inches being replaced;

9. If tree mitigation or replacement is not feasible, the plan or accompanying materials should demonstrate why mitigation or planting of some or all of the required replacement trees is impracticable;

10. The location and type of any irrigation systems (with water source noted) to maintain plantings unless exclusively drought tolerant species are used, and an acceptable watering plan is approved by the Planning Department;

11. Plant legend listing botanical and common names with size and quantity information;

12. The location of all existing and proposed underground utilities and any electric/communication facilities;

13. Description of the long-term proposed maintenance plan;

14. Description of how the proposed plan meets the requirement for water conserving design;
15. Plans for the removal and continued maintenance for removal of existing prohibited invasive species from the site;

16. Metal caging or breathable trunk protectors around trees for the first three (3) years after planting for protection from wildlife.

17. Estimated date of completion of the installation of plantings and finish materials;

18. The approved landscape and maintenance plans must not be changed or altered without review and approval by the zoning administrator. All landscaping shown on the approved plan must be installed and maintained;

19. Limits of disturbance must be reflected on the landscape plan and any engineering plans and must be delineated and permanently maintained throughout the project;

20. Photos of any existing trees/landscaping to be retained must be submitted with the landscaping plan;

21. Cost estimate of any elements of the landscaping plan that cannot be installed prior to certificate of occupancy due to season or weather that will need to be bonded for; and

22. A cost estimate for all labor and materials for any project requiring a maintenance bond.

11-4-4: MINIMUM LANDSCAPING STANDARDS:

A. The following landscape standards reflected in Table 11-4-3A-1 establish minimum landscape requirements that apply to any applicable development.

<table>
<thead>
<tr>
<th></th>
<th>Minimum planting sizes at installation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deciduous Trees</td>
<td>Two-inch (2&quot;) minimum caliper</td>
</tr>
<tr>
<td>Evergreen Trees</td>
<td>Six feet (6') in height</td>
</tr>
<tr>
<td>Shrubs</td>
<td>Two-gallon minimum size</td>
</tr>
<tr>
<td>Ground Cover / Perennials</td>
<td>One-gallon pot minimum size or equivalent</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>General Planting Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Planting Density</td>
<td>One (1) tree and five (5) shrubs for every five hundred (500) square feet of landscape area. Plantings may be installed in a linear, cluster, or other appropriate pattern.</td>
</tr>
<tr>
<td>Minimum Width of Landscape Area</td>
<td>The minimum inside width of any required landscaped area, or of any form or fixed planter</td>
</tr>
<tr>
<td><strong>Ground Coverage Requirements</strong></td>
<td>Remaining ground cover will consist of low shrubs, native seed, or other vegetative cover with no more than fifty percent (50%) of the remaining coverage being only turf, mulch or rock.</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Species Requirement</strong></td>
<td>At least fifty percent (50%) of required plant species must be native to Montana or a cultivar of a native species. No more than fifty percent (50%) of the required landscaping may be the same species.</td>
</tr>
<tr>
<td><strong>Drought Tolerant Species Required Percentage</strong></td>
<td>Fifty percent (50%) or greater of the proposed trees and shrubs must be drought tolerant species as defined in the latest edition of the Montana Nursery and Landscape Association's Drought Tolerant Plants for the Montana Landscape or on a list adopted by the city of drought tolerant species for purposes of this section.</td>
</tr>
</tbody>
</table>

C. **Street Frontage Landscape Standards**

<p>| <strong>Applicability</strong> | All private areas along street frontages not used for street pavement, curbs, gutters, parking, sidewalks or drive aisles must be landscaped as indicated in the general planting standards. Alleys are exempt from this requirement. This landscaping area may include amenities such as patios, courtyards, outdoor furniture and planter boxes. Landscaping in public rights-of-way is regulated per the City of Whitefish's Engineering Standards (Refer to the Tree Protection and Planting Requirements of Chapter 1). When this requirement conflicts with other requirements of this chapter or other portion of the code, the more restrictive standard shall apply. |</p>
<table>
<thead>
<tr>
<th><strong>Minimum Width of Landscape Area</strong></th>
<th>Ten feet (10’).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All properties within the WB-2 zoning district with street frontage along Highway 93 South from E. 13th Street to Highway 40 must provide a landscaped thirty-foot (30’) wide street frontage.</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>D. Parking Lot Landscape Standards</strong>&lt;sup&gt;1&lt;/sup&gt;</th>
<th><strong>Applicability</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applies to all uncovered parking lots of over five (5) parking spaces, including vehicle sales or service areas.</strong></td>
<td></td>
</tr>
</tbody>
</table>

| **Minimum Required Landscaping Percentage** | Ten Percent (10%) of the total area of parking lot and drive aisles must be landscaped as measured around the perimeter of all parking spaces and maneuvering areas. Interior parking islands, parking lot perimeters and parking lot-side building perimeter landscaping may be calculated in this percentage. |

| **Parking Lot Perimeter** | A minimum five-foot (5’) wide landscape strip must be provided along the perimeter of parking, loading, or other paved vehicular use areas, including drive aisles, vehicle sales areas, and vehicle storage areas. Two feet (2’) must be added to the width of any required landscape area when curb stops are not used, and a car bumper hangs over the landscaped area. |

| **Parking Lots Adjacent to Right-of-Way** | A ten foot (10’) wide landscape screen must be installed along any parking lot perimeter adjacent to right-of-way. The screen shall consist of planting materials and manmade features to create at minimum a three foot (3’) high visual relief screen in the form of hedges, planter boxes, berms, dividers, shrubbery, or trees, or a combination of the above. |

| **Parking Lots Abutting Residential Use** | See residential buffer requirements in Section 11-4-3A-1-E. |

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<sup>1</sup> Parking lots also need to meet the parking lot design standards found in Appendix A of this title.
## Internal Landscape Island Standards:

<table>
<thead>
<tr>
<th><strong>Minimum Landscaping Required:</strong></th>
<th>One landscape island must be installed per every ten (10) parking spaces and at the end of each parking row.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum Planting Density:</strong></td>
<td>All landscape islands shall include at least one (1) shade tree with remaining ground being covered with low shrubs, native seed, or other vegetative cover with no more than fifty percent (50%) of the remaining coverage being only turf, mulch or rock.</td>
</tr>
<tr>
<td><strong>Minimum Dimensions:</strong></td>
<td>Each island must be a minimum of one-hundred eighty (180) square feet and not less than nine feet (9') in width. All tree plantings must contain a root barrier around the perimeter of the planting area a minimum of thirty-six inches (36&quot;) in depth and which extends above the surface of the soil enough to prevent roots from growing over the top. Acceptable root barriers include any impermeable durable material that can withstand burial in soil for the life of the tree.</td>
</tr>
</tbody>
</table>

## E. Residential Buffer Standards

| **Applicability** | Required along the entire property line of non-residential properties that abut a parcel used or zoned for entirely residential purposes, excluding mixed use². Buffers should be designed to avoid the appearance of a straight line or "wall" of uniform plant material and must be wide enough to accommodate the planted species at maturation. Residential buffers are not required along property lines abutting a street or alley. Exemption: Buildings in the WB-3 classification are exempt from the residential buffer requirements but are encouraged to incorporate the landscaping for properties with reduced or no street frontage setbacks. |

² Unless otherwise required by the Zoning Administrator in order to observe the sight distance requirements contained in the development regulations.
indicated in the general landscaping requirements in Section 11-4-4-D when possible.

In situations where the required residential buffer width is partially or completely contained within an existing easement (e.g., power or natural gas transmission, etc.), the screening requirements of this section must be met outside the easement area.

**Residential Buffer Planting Standards:**

<table>
<thead>
<tr>
<th>Minimum Width:</th>
<th>Ten feet (10’).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum Planting Density:</td>
<td>One (1) tree and five (5) shrubs for every thirty feet (30’) of linear frontage.</td>
</tr>
<tr>
<td>Minimum Height:</td>
<td>Must be planted to grow to at least five feet (5’) in height, planted in a manner that best screens the proposed use.</td>
</tr>
<tr>
<td>Composition:</td>
<td>The remaining ground must be covered with low shrubs, native seed, or other vegetative cover with no more than fifty percent (50%) of the remaining coverage being only turf, mulch, or rock. No less than seventy five percent (75%) of the total required plant materials must be evergreen. The residential buffer must achieve a fifty percent (50%) visual screen of at least 5 feet (5’) in height at maturity. An up to six foot (6’) high closed masonry or wood wall, fence, or berm may be substituted for the shrub vegetation, but trees and ground cover are still required.</td>
</tr>
</tbody>
</table>

**F. Screening Standards**

**Applicability**

1. Ground level mechanical equipment.
2. Utility cabinets thirty (30) or more inches in height and located within twenty-five feet (25’) of a street.
3. Materials, supplies, merchandise, vehicles, equipment, storage or shipping containers,
trash receptacles or other similar matter not on display for direct sale, rental, or lease to the ultimate consumer or use.

| Screening Method | Must be screened from view of streets and abutting residential uses and zoning districts by a dense hedge, berms, solid wall, solid fence or combination of such features. The hedge, fence, or wall must be tall enough to fully screen the equipment from neighboring parcels. |

**11-4-5: GENERAL LANDSCAPING REQUIREMENTS:**

**A. Water Conserving Design.** Water conserving landscape designs and low water use plant materials are required and intended to discourage landscaping necessitating high water use for maintenance. Water conserving landscaping principles do not include or allow artificial turf or plants, landscape designs predominately consisting of mulch or gravel beds (including crushed rock, etc.), or areas without landscape plant material such as bare dirt or weed infested surfaces, or any landscaping that does not comply with the standards of this section. Water conserving landscaping principles include all of the following:

1. Grouping plants and trees with similar water and sunlight requirements together.

2. Limiting the application of turf to appropriate high-use areas with high visibility and functional needs.

3. Use of low water demanding plants and turf where suitable.

4. Use of automatic irrigation systems designed and operated to conserve water.

5. Incorporation of soil amendments, where appropriate.

6. Use of mulches.

7. Planting appropriate materials suited to the soil and climate.

**B. Prohibited Species.** The installation and maintenance of prohibited species, as indicated in the City of Whitefish Prohibited Species List on file in the Office of the City Clerk, are prohibited.

**C. Landscape Design Techniques.** Whenever possible, the following landscaping design techniques must be integrated into a project:

1. Existing trees, topography and other existing natural features should be retained and incorporated into a project;
2. Open areas created by building modulation should be landscaped;

3. Natural vegetation, existing grades and undisturbed open space must be preserved where possible;

4. Trees should be located on commercial frontages at appropriate spacing so at maturity building signage and entrance are clearly visible from the street and sidewalk;

5. On-site natural objects such as rocks, boulders and tree stumps should be incorporated into landscape design;

6. All landscaped areas must be graded to prevent erosion and facilitate healthy landscaping;

7. Trees and large shrubs must be located with consideration to utilities and other public improvements.

8. Firewise fuel management techniques and fire-resistant plants should be utilized.

D. Landscaping for properties with reduced or no street frontage setbacks: When possible, the additional design techniques for the WB-3 Zone and areas with limited undeveloped space should include, but not be limited to, the following:

1. Providing frameworks attached to buildings such as trellises or arbors for plants;

2. Incorporating planter guards, retaining walls, or low planter walls as part of the architecture;

3. Incorporating upper story planter boxes, "green roofs", roof gardens or hanging plants;

4. Incorporating outdoor furniture into the site.

E. Trees, fencing and any other landscape materials in accordance with landscape plans must not cause sight distance problems with vehicles entering the adjoining street from driveways or nearby intersections (see clear vision triangle in Section 11-3-8).

F. Any open area between a fence or wall and the adjacent property line must be maintained by the property owner in a neat and orderly manner.

G. Where streams, wetlands, steep slopes, or other environmentally sensitive areas exist on a proposed development site, the landscape plan must be coordinated with measures for their protection and enhancement as required by the Water Quality Protection and Erosion and Sediment Control Provisions in Sections 11-3-29 and 11-3-33.
H. Vehicle sales lots are exempt from planting trees in the required internal landscape islands.

11-4-6: TREE RETENTION:

A. Applicability: The preferred method of landscaping is to first incorporate and preserve existing trees and shrubs, topography, and other natural features into the project design. Tree preservation and/or tree replacement is required to be addressed with landscape plans for all developments which are applicable pursuant to this chapter. Priority for tree preservation will be given to qualifying trees which provide beneficial shade, property or use buffering, visual prominence, or significant habitat. The applicant and/or developer shall make every effort to protect or retain any qualifying trees throughout a project.

B. Qualifying Trees: For the purpose of this section, a "qualifying tree" is an existing evergreen tree which is at least twelve inches (12") in caliper, deciduous tree which is at least six inches (6") in diameter, or any mature tree determined as significant by the Zoning Administrator. Diameter will be measured at four feet (4’) from grade, also called diameter at breast height (dbh).

C. The City recognizes that tree removal is sometimes necessary to reasonably develop a site. Preservation of trees may be considered impractical when removal is required for defensible space for wildfire prevention, when tree retention or replacement would prevent development of streets, utilities, construction of civil facilities, needed community housing, to meet minimum standards as required by the City, or when it would prevent reasonable use of the property as permitted by the applicable zoning district. The term "prevent" in this standard means that the development cannot be designed to avoid removal or replacement of qualifying tree(s). An inability to achieve maximum permitted density or building envelopes by complying with this subsection is not in itself considered to prevent development.

1. When tree retention or replacement is considered impractical, the qualifying trees which cannot be retained or replaced should be indicated on the landscape plan with demonstration of why removal of qualifying trees is necessary and/or planting of some or all of the required replacement trees is impractical.

D. Tree Replacement Requirements: In the case a qualifying tree designated for retention on the landscape plan must be removed or dies, it must be replaced with trees totaling at least two times the caliper inches as was lost. Tree replacement requirements exist whether or not the lot is already meeting overall planting requirements.

E. Tree Credit. Each existing preserved qualifying tree will be credited as two trees toward satisfying landscape requirements (ex: if 10 trees are required along a street frontage and a qualifying tree is preserved only eight (8) trees are required to be planted). The total trees on a site cannot be reduced by more than fifty percent (50%) of any requirement. This reduction does not apply to internal parking island trees.
1. Only those trees determined to be viable and savable will receive tree credits. A tree(s) determined to be hazardous, diseased or severely injured by a certified arborist will not receive tree credits. Likewise, if it is determined that a large portion of the root system of a tree(s) will be disturbed or destroyed by grading, trenching etc. then no tree credits will be granted.

2. Should any tree designated on the landscape plan die or be removed at any time after approval of the plan or issuance of a certificate of occupancy, the owner must replace sufficient trees equal to the tree preservation credit within six (6) months.

F. Tree Protection Requirements: The following guidelines and standards apply to trees proposed to be preserved:

1. Tree Protection Zones:
   a. The root system within the drip line is generally considered to be the critical root zone and must be protected. To protect these critical root zones, a tree protection zone must be established around each tree or group of trees to be retained.
   b. The tree protection zones must include no less than the total area beneath the tree canopy as defined by the drip line of the tree or group of trees.
   c. Natural grading around trees must be preserved within drip line to protect roots. Grade should not be increased or diminished around root collar.
   d. Layout of the project site utility and grading plans and construction plans must avoid disturbance of the tree protection zone.
   e. Construction site activities such as parking, materials storage, grading and excavation, concrete washout, etc., must be arranged so as to prevent disturbances within tree protection areas.

2. Protective Barriers:
   a. Protective tree fencing must be installed between buffers and tree protection areas and areas proposed to be cleared, graded, or otherwise disturbed on the site, prior to any land disturbance.
   b. All tree protection zones are recommended to be designated as such with "tree save area signs" posted in addition to the required protective fencing. Signs requesting subcontractor cooperation and compliance with tree protection standards are recommended for site entrances.
   c. All tree protection zones must be protected from soil sedimentation intrusion through the use of silt screens or other acceptable measures placed up slope from the tree protection area.
d. All protective tree fencing and all erosion control barriers must be installed prior to and maintained throughout the land disturbing and construction process, and should not be removed until final landscaping is installed.

e. Encroachment: If encroachment into a tree protection zone occurs which causes irreparable damage to the trees, the tree preservation and/or replacement plan will be revised to compensate for the loss. Under no circumstances is the developer relieved of responsibility for compliance with the provisions of this section, nor will plan revision activities stop the department from instituting action for violation of this section.

G. Replacement Trees: Replacement trees shall comply with the following:

1. The spacing of replacement trees must be compatible with spatial site limitations and with responsible consideration towards species size when mature.

2. Trees selected for planting must be free from injury, pests, disease, nutritional disorders or root defects, and must be of good vigor, so as to assure a reasonable expectation of survivability.

11-4-7: MAINTENANCE:

A. General maintenance. The property owner is responsible for maintaining all plant materials and irrigation facilities within the approved landscaping plan in a neat and orderly condition for the life of the project. Any unhealthy or dead plants must be replaced in conformance with the landscaping plan and landscaped areas must remain free of invasive species. Maintenance includes, but is not limited to, proper pruning of trees and shrubs, mowing of lawns, noxious weed mitigation measures/weeding, removal of litter, fertilizing, replacement of plants when necessary, and the regular watering of all plantings. When required, landscaped areas will be provided with a permanent watering or sprinkling system consisting of piped water lines terminating in an appropriate number of sprinklers or hose bibs to ensure a sufficient amount of water for plants within the landscaped area. Where the water system consists of hose bibs alone, these bibs must be located not more than one hundred fifty feet (150’) apart.

B. Maintenance Assurance. For multifamily, commercial, and industrial development, the Zoning Administrator will require a maintenance bond or letter of credit valid for a period of eighteen (18) months from time of approval of the landscaping plan to ensure compliance with this section. The value of the maintenance bond or letter of credit must be twenty percent (20%) of the total cost of materials and labor. The fee-in-lieu will be ten percent (10%) of the cost of materials and labor, as outlined in an approved landscaping plan. Duplexes are exempt from maintenance assurance requirements.

11-4-8: PERFORMANCE ASSURANCE
A. Required trees and landscaping must be installed prior to issuance of a certificate of occupancy or issuance of other necessary permitting prior to construction or development of the site. In the event it is not possible for landscaping to be completed at that time due to legitimate weather, supply issues, etc., the Zoning Administrator may accept a bond or letter of credit to ensure the installation of all required landscaping within six (6) months of project approval. Any such device for project assurance must be one hundred fifty percent (150%) of the cost of all required materials and labor, as shown in an itemized cost estimate, and in no situation will the total be less than two thousand dollars ($2,000).

11-4-9: ADMINISTRATION:

A. Authority: The Zoning Administrator has the authority and jurisdiction of regulating the planting and/or removal of landscape and trees required by this chapter.

B. Deviation from Landscaping Standards. The Zoning Administrator may approve exceptions to the regulations when all of the following are met:

1. The applicant can document that meeting the requirements would cause undue hardship due to pre-existing conditions on site, such as existing location of structures or vegetation.

2. The deviation from the standards meets the landscape requirements to the highest degree possible and is the minimum variation needed.

3. The applicant proposes an equal or better result than that which could be achieved by strictly following the requirements of this chapter.

C. Other measures to meet the purpose and intent of this Landscape Code may be proposed to substitute for the required landscaping, such as decorative fencing, walls, arbors, or trellises, with appropriate vegetation.

D. Enforcement: Unlawful removal of a qualifying tree designated in the tree preservation plan for retention will result in either a municipal infraction or a fine equal to one hundred fifty percent (150%) of the value, as determined by a certified arborist based on the Council of Tree and Landscapers Appraisal Guide or replacement trees as required per Section 11-4-6C.

E. Appeal: Any person may make a written appeal from any ruling or order made by the Zoning Administrator to the Board of Adjustment, who shall make a final decision.

11-4-10: NONCONFORMING STATUS:

A. Any existing property or use of property that does not comply with the landscaping regulations of this chapter may be continued in the same manner except as provided in Section 11-4-2.
B. Landscaping which exists on any property or for any use, subject to the provisions of this chapter, must not be altered or reduced below the minimum requirements of this chapter, unless suitable substitutions are made which meet the requirements of this chapter, and a site plan is first approved by the Zoning Administrator.

CHAPTER 2
ZONING DISTRICTS

ARTICLE K. WB-2 SECONDARY BUSINESS DISTRICT

11-2K-4: PROPERTY DEVELOPMENT STANDARDS:

The following property development standards shall apply to land and buildings within this district:

- **Bulk and scale**: All new structures with a building footprint of 10,000 square feet or greater, existing structures where an addition causes the total footprint to be 10,000 square feet or greater, and additions to structures where the footprint already is 10,000 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title.

- **Minimum lot area**: n/a

- **Minimum lot width**: n/a

- **Minimum yard spaces**:
  - **Front**: 20 feet
  - **Side**: 20-foot greenbelt when abutting a Residential District, otherwise, None
  - **Rear**: 20-foot greenbelt when abutting a Residential District, otherwise, None

- **Maximum height**: 35 feet

- **Permitted lot coverage**: n/a

- **Off street parking**: See chapter 6 of this title

- **Accessory uses**: Accessory uses shall maintain the same yard requirements as the primary use
Highway 93 frontage: 30 feet, landscaped as required per the general planting standards of Table 11-4-3A-1 of Chapter 4 of this title. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the landscaped area.

Landscaping  See chapter 4 of this title (single-family uses exempted)

ARTICLE N. WRR-1 LOW DENSITY RESORT RESIDENTIAL DISTRICT

11-2N-2: PERMITTED USES:

- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.

11-2N-4: PROPERTY DEVELOPMENT STANDARDS:

Minimum yard spaces:

- Front 15 feet, except when fronting on a public right-of-way where there shall be a front yard setback of not less than 25 feet, of landscaped greenbelt area as required per the minimum landscape standards of Chapter 4. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt-landscaped area.

ARTICLE O. WRR-2 MEDIUM DENSITY RESORT RESIDENTIAL DISTRICT

11-2O-2: PERMITTED USES:

- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.

11-2O-4: PROPERTY DEVELOPMENT STANDARDS:

Minimum yard spaces:

- Front 15 feet, except when fronting on a public right-of-way where there shall be a front yard setback of not less than 25 feet, of landscaped greenbelt area as required per the minimum landscape standards of Chapter 4. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt-landscaped area.
setback of not less than 25 feet, of landscaped greenbelt area as required per the minimum landscape standards of Chapter 4. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt landscaped area.

ARTICLE P. WRB-1 LIMITED RESORT BUSINESS DISTRICT

11-2P-2: PERMITTED USES:

- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.

11-2P-4: PROPERTY DEVELOPMENT STANDARDS:

Minimum yard spaces:

Front 15 feet, except when fronting on a public right-of-way where there shall be a front yard setback of not less than 25 feet, of landscaped greenbelt area as required per the minimum landscape standards of Chapter 4. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt landscaped area.

ARTICLE Q. WRB-2 GENERAL RESORT BUSINESS DISTRICT

11-2Q-2: PERMITTED USES:

- Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5') of landscaped area shall surround such a building or structure.

11-2Q-4: PROPERTY DEVELOPMENT STANDARDS:

Minimum yard spaces:

Front 15 feet, except when fronting on a public right-of-way where there shall be a front yard setback of not less than 25 feet, of landscaped
greenbelt area as required per the minimum landscape standards of Chapter 4. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt-landscaped area.

CHAPTER 3
SPECIAL PROVISIONS

11-3-42: MULTI-FAMILY DEVELOPMENT STANDARDS:

B. Orientation And Multiple Buildings Standards:

2. Techniques: Techniques for complying with the requirement in subsection B1-B2 of this section include, but are not limited to:

   a. Using a modified street grid system where most buildings in a project front on a street. Where no public streets exist, creating a grid street system within the project.

   b. Locating parking areas behind or under buildings and accessing such parking from alley-type driveways. If driveway access from streets is necessary, minimum width driveways meeting the Fire Code standards should be used. Shared driveways between adjacent uses are preferred.

   c. Providing each building with direct and distinct pedestrian access from the main street fronting the building and from the back where the parking is located.

   d. Design alternate and/or separate routes into the development that clearly define the bicycle and pedestrian areas versus areas for vehicles.

C. Parking Location And Design:

1. Requirement: The impact of driveways and parking lots on the public and neighboring properties must be minimized by designing, locating, and screening parking lots, carports, and garages in a way that creates few interruptions on the street, sidewalk, or building facade. Bicycle parking and storage must be provided.

2. Techniques: Techniques for complying with the requirement in subsection C1 of this section include, but are not limited to:

   a. Locating surface parking at the rear or side of lot;

   b. Breaking large parking lots into small ones in a way that provides easy access for pedestrians;
c. Minimizing the number and width of driveways and curb cuts;

d. Sharing driveways with adjacent property owners;

e. Locating parking in areas that are less visible from the street but preferably with southern exposure for snow melt;

f. Locating driveways so they are visually less dominant and berming and landscaping them when they are visible from the street while maintaining required clear vision triangles (see section 11-3-8 of this chapter);

g. Screening parking lots abutting single-family residences with landscaping, berming, and/or natural material fencing (see section 11-6-5, "Landscape And Screening", of this title);

h. Limiting parking lots on street frontages to thirty percent (30%) of the street frontage;

i. Parking lot lighting must be the minimum needed to create adequate visibility at night, must be energy efficient and dark sky compliant meeting outdoor lighting standards found in section 11-3-25 of this chapter, and must utilize energy efficient "warm-white" or filtered (CCT <3,000 K; S/P ratio <1.2) fully shielded LED lights as much as possible. Sufficient ground-level lighting must be provided where stairs, curbs, ramps, abrupt changes in walk direction, and crossing vehicle lanes occur; and

j. Secure short-term bicycle parking must be provided in a convenient location at one space for every four (4) dwelling units, with a minimum of two (2) spaces provided.

F. Grading/Tree Retention:

Requirement: Multi-family projects must be designed to minimize impacts to existing topography and vegetation and require a tree preservation plan with an application submittal.

Techniques: Techniques for complying with the requirement in subsection F1 of this section include, but are not limited to:

a. Incorporating the natural grades in the overall design of the project;

b. Incorporating existing groups of trees/vegetation that will be protected and retained;

c. Minimizing disturbance of open space areas to better facilitate stormwater infiltration; and
d. Avoiding the placement of buildings adjacent to ridgetops, so the rooftops do not extend above the crest of the ridgetops of the hillside, especially where views of natural amenities are concerned.

11-3-43: MIXED-USE AND NON-RESIDENTIAL BUILDING DEVELOPMENT STANDARDS:

B. Building Orientation And Multi-Building Sites:

1. Orientation: Buildings must be oriented towards the primary street frontage and public paths and/or sidewalks. Buildings on corner lots should be oriented towards the primary intersection.

   a. Buildings may be located further away from the primary street when separated from the street by existing healthy and mature trees being retained in perpetuity. In those cases, buildings should be placed as close to the trees as practical and a plan must be submitted to maintain the health of the trees along with a replacement plan for dead, dying, or hazardous trees (see section 11-4-3 and section 11-4-6 of this chapter).

C. Topography: Existing trees, topography and other existing natural features must be incorporated into the project design.

   1. To the extent reasonable and practicable incorporate natural grades into the overall site plan.

   2. Incorporate natural features such as trees, large rocks or boulders into landscaping design.

   3. To the extent reasonable, existing healthy, mature trees must be protected and incorporated into the overall site landscaping features.

D. Landscaping: Landscaping must be incorporated into new development design to soften the manmade environment, provide vegetative buffers, provide open space, and mitigate any unavoidable loss of existing native vegetation. The preferred method of landscaping is to first incorporate and preserve existing trees and shrubs, topography and other existing natural features into the project design. Any unavoidable loss of existing native vegetation must be mitigated.

   1. Landscaping in parking lots must conform to the requirements of section 11-6-5, "Landscaping And Screening", of this title.

   2. Landscaping techniques including living plant material and supporting elements must include, but are not limited to, the following:

       a. Landscape open areas created by building modulation.
b. Retain natural vegetation and undisturbed open space.

e. Use plants that require low amounts of water, including native drought-resistant species.

d. Locate trees on storefront street frontages at appropriate spacing so that at maturity building signage and entrance are clearly visible from the street and sidewalk.

e. Incorporate on-site natural objects such as rocks, boulders and tree stumps into landscape design where possible.

f. Shrubs, grasses and other nontree vegetation must be included in the plan as appropriate to the site on a case-by-case basis.

g. Landscaping techniques for the WB-3 Zone and areas with limited undeveloped space may include:

1. Providing frameworks such as trellises or arbors for plants;

2. Incorporating planter guards, retaining walls, or low planter walls as part of the architecture;

3. Incorporating upper story planter boxes, "green roofs", roof gardens or plants;

4. Incorporating outdoor furniture into the landscaping plan.

H. F. Mixed-Use Or Non-Residential Development Adjacent To Residential Zones: Buildings must be designed to ensure that building massing, height, and scale provide sensitive transition to adjoining residential neighborhoods. When abutting a Residential Zoning District, the project's landscaping plan must include provisions for vegetative screening between the project and the residential property.

d. Creative use and ongoing maintenance of landscaping, such as buffers, berms, mounds, rockeries, living fences, and swales. Buffers should be designed to avoid the appearance of a straight line or "wall" of uniform plant material and must be wide enough to accommodate the planted species at maturation.

CHAPTER 6
OFF STREET PARKING AND LOADING

11-6-2: PARKING SPACE REQUIREMENTS:

EXHIBIT A – Page 25

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E. Recreational areas:

- **Bowling alleys**: 6 spaces per alley
- **Golf courses**: 3 spaces per hole of main course
- **Private clubs and lodges, special centers, athletic club and similar recreational facilities**: 1 space per 8 seats; plus 1 space for every 100 square feet of assembly space without 1 space per 8 seats
- **Stadiums, special arenas and similar open assemblies**: 1 space per 8 seats; plus 1 space for every 100 square feet of assembly space without seats

Outdoor courts without seating / viewing areas: 1.5 spaces per court

11-6-3: SPECIAL CONDITIONS:

11-6-3-1: WCR, WSR, WER, WLR, WR-1, WR-2, WR-3, WR-4, **WT-3**, WRR-1 AND WRR-2 DISTRICTS:

A. One-half (1/2) of all required parking shall be capable of being covered by a garage.

B. The parking or storage of any truck or truck trailer in excess of one ton for more than twenty four (24) hours in any three (3) day period shall not be allowed in the front or side yard setbacks.

C. Residential parking spaces shall be on the same lot with the main building. Parking for nonresidential uses may be located up to three hundred feet (300') from the property.

D. All parking areas and access driveways shall have at a minimum:

1. For all nonresidential uses and residential uses consisting of three (3) or more units per building, paved hard surfaces shall be provided. Acceptable surface treatments shall include, but are not necessarily limited to, concrete, asphalt, paving bricks, and paving stone. Turf block and "grass-crete" type products may be used subject to the approval of the Zoning Administrator.

2. For all newly constructed one- and two-family residential uses, the first eighty feet (80') of any driveway must be a paved hard surface. The required eighty feet (80') shall be measured from the nearest paved surface, even if the required paving is off site. Acceptable surface treatments shall include, but are not necessarily limited to, concrete, asphalt, paving bricks, paving stones, and milled asphalt/aggregate mix provided that it is dust free. Permeable asphalt, concrete, turf block or other permeable surface products may be used subject to the approval of the Zoning Administrator. Any driveway length beyond the first eighty feet (80') from a paved surface must be (at a minimum) a smooth stabilized dust free
surface. Surface treatment of driveway access which also serves as fire access shall meet the requirements and specifications of the local Fire Marshal, which shall supersede the general requirements contained herein. Any one- or two-family residential use which is a nonconforming use under subsection 11-7-11A of this title with respect to the condition of driveway paving shall be required to conform to the driveway paving requirements herein only when such nonconforming use expands its floor area by fifty percent (50%) or greater.

3. Maintenance of all parking and drive areas and surfaces to the standards prescribed herein shall be the responsibility of the property owner. Paved hard surfaces shall not be allowed to accumulate dust, dirt, mud, or other debris.

4. Adequate drainage so that injuries will not be caused to adjacent properties nor will water drain across a public walk.

5. Appropriate bumper guards or curbs where needed to define parking spaces, limits of paved areas or to prevent vehicles from projecting into any setback or other portion of a lot where parking may be prohibited by another section of this title.

6. All commercial uses, including nonconforming commercial uses existing prior to April 15, 1982, which do not have paved parking lots and access driveways shall have until September 30, 1996, to pave and maintain them in a dust free condition. Failure to do so will constitute a violation of these regulations.

E.D. Except for single-family and duplex housing, parking (whether required or not) and parking lot driving aisles must not be located in the front yard setback.

E.F. Uncovered open air parking is not allowed in required buffers or the side yard setbacks and rear yard setbacks to serve fourplex or larger residential uses and all nonresidential uses allowed when that use abuts a single-family use or zone. When the abutting use or zone is not single-family, open air parking may be allowed in required buffers or setbacks, provided a five foot (5’) landscaping and solid screening area is provided adjacent to the adjoining property boundary or a public right of way.

G.F. The parking of recreational vehicles in the side yard setbacks whether for storage or use shall be prohibited.

H.G. Boat and recreational vehicle storage areas designed to serve the residents of a development with a homeowners' association or some other formalized unit owners' organization shall comply with the following standards:

1. The storage area is designed to only serve the residents of the development and is not open to the general public. The area for storage is located wholly within the development or immediately adjacent to the development.

2. Open or enclosed storage areas shall meet primary setback of the underlying zone and are exempt from the paving requirements of subsection D of this section.
3. Screening of open or enclosed storage areas shall have either site obscuring landscaping or fencing, subject to the requirements in subsection 11-3-11A of this title. Additional landscaping in the front setback of the storage area may be necessary in order to fulfill the screening requirements.

4. All enclosed storage facilities shall receive architectural review approval prior to submitting an application for a building permit. All enclosed facilities shall meet the building height limits in subsection 11-3-2B of this title for an accessory structure.

11-6-3-2 WB-1, WB-2, WB-4, WRB-1, WRB-2, WI-T, WB-T, WBSD AND WI DISTRICTS:

11-6-5: LANDSCAPING AND SCREENING: See chapter 4 of this title.—All parking areas for over five (5) vehicles, vehicle sales areas and service drives shall meet the following conditions as well as parking lot design standards found in appendix A of this title:

A. Parking and driveway areas shall be landscaped, including a minimum five foot (5') wide landscaped buffer (7 feet wide if curb stops are not used and the car bumper hangs over the landscaped area) abutting a public street. The percentage of parking lot landscaping is called out below:

<table>
<thead>
<tr>
<th>Number Of Parking Spaces</th>
<th>Gross Area To Be Landscaped</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 to 50</td>
<td>8 percent</td>
</tr>
<tr>
<td>51 to 99</td>
<td>10 percent</td>
</tr>
<tr>
<td>100 and above</td>
<td>12 percent</td>
</tr>
</tbody>
</table>

B. The perimeter landscape buffer along a street shall consist of planting materials or planting materials and manmade features to create at minimum a three foot (3') high visual relief screen in the form of a hedge, fence, planter box, berm, dividers, shrubbery or trees, or a combination of the above. All landscaping to form such visual relief shall create a two foot (2') tall minimum screen at planting.

B. There shall be a landscaped buffer (at least 50 percent sight obscuring) when a parking lot borders, or is adjacent to a residential zone. The landscaped buffer shall be a minimum five feet (5') wide (7 feet wide if curb stops are not used and the car bumper hangs over the landscaped area) and five feet (5') high or five feet (5') wide with a five foot (5') fence.

C. Clear vision triangles shall be observed regarding all landscaping or screens.

D. A performance bond may be required to ensure compliance with this section and to cover maintenance for a period not to exceed one year after time of planting.

E. Vehicle sales lots are exempt from the parking lot landscaping requirements but are still subject to the overall landscape requirements in chapter 4 of this title.
11-6-8: STREET AND ROADWAY ACCESS STANDARDS:

A. Access to businesses, service stations, roadside stands, public parking lots and all other businesses requiring motor vehicle access shall meet the requirements as hereinafter provided or as prescribed by the approach standards for Montana highways, whichever requirements are greater.

B. Access shall be controlled as follows:

7. The driveway access width shall be ten feet to twenty four feet (10' - 24') for one-way traffic and twenty feet to thirty six feet (20' - 36') for two-way traffic, excluding the minimum necessary curb return radius located in the public right of way.

8. Access shall be by not more than two (2) roadways for each one hundred feet (100'), or fraction thereof, frontage on any street.

9. No two (2) roadways shall be closer to each other than twelve feet (12') on the same parcel, and no roadway shall be closer to a side property line than two feet (2').

10. On a corner lot, no roadway shall be closer than twenty feet (20') to the point of intersection of two (2) property lines at any corner as measured along the property line, and no roadway shall extend across such extended property line.

1 Please see the City of Whitefish Engineering Standards.
May 15, 2023

Mayor and City Council
City of Whitefish
PO Box 158
Whitefish, MT 59937

Re: Zoning Text Amendments – Landscaping Chapter: #WZTA 223-03

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the City of Whitefish to amend Chapter 4, Landscape Requirements, and amend sections of code that contain landscaping requirements which are now contained in the new landscaping requirements. This includes Chapter 3 Sections 11-3-42, Multifamily Development Standards; 11-3-43, Mixed Use and Non-Residential Building Development Standards; Chapter 2 Section 11-2 Article K, WB-2 Secondary Business District, Article N, WRR-1 Low Density Resort Residential District; Article O, WRR-2 Medium Density Resort Residential District; Article P, WRB-1 Limited Resort Business District; Article Q, WRB-2 General Resort Business District; and Chapter 6, Off-Street Parking and Loading.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on April 20, 2023. Following this hearing, the Planning Board unanimously recommended approval of the amendments (Scott/Middleton) and adopted the supporting findings of fact in the staff report (Gardner, Linville absent).

City Staff Recommendation: Staff recommended approval of the text amendment attached to the staff report.

Public Hearing: There were no public comments at the public hearing. The draft minutes of the Planning Board hearing are included.

This item has been placed on the agenda for your regularly scheduled meeting on May 15, 2023. Should Council have questions or need further information on this matter, please contact the City Planning Board or the Planning & Building Department.
Respectfully,

Alan Tiefenbach
Long Range Planner

Att:

Exhibit A
1. Staff Report 4-20-2023
2. Draft Minutes from 4-20-2023 City Planning Board Meeting

c: w/att Michelle Howke, City Clerk
| **CONDITIONAL USE PERMIT REQUEST** | The property is located at 6185 Highway 93 S and can be legally described as Tract 5HAB in S12 T30N, R22W, P.M.,M., Flathead County. |
| **STAFF REPORT WZC 23-03 (Loring)** | Planner Loring reviewed his staff report and findings. As of the writing of WZC 23-03, one public comment had been received in support for approval and no other comments have been received since then. Staff recommended adoption of the findings of fact within staff report WCUP 23-03 and for approval of the conditional use permit to the Whitefish City Council. |
| **BOARD QUESTIONS OF STAFF** | Chair Qunell asked and Loring said that this was approved in 2020 and we are essentially just reapproving it. Director Taylor said the only difference is the building is now built; none of the conditions have changed. |
| **PUBLIC HEARING** | Chair Qunell opened the public hearing. |
| **APPLICANT / AGENCIES** | None. |
| **PUBLIC COMMENT** | There being no comments, Chair Qunell closed the public hearing and turned the matter over to the Planning Board for consideration. |
| **MOTION / BOARD DISCUSSION** | Scott made a motion, seconded by Beckham, to adopt the findings of fact within staff report WCUP 23-03, with the four (4) conditions of approval, as proposed by City Staff. The motion passed unanimously. The matter is scheduled to go before the Council on May 1, 2023. |
| **PUBLIC HEARING 3: CITY OF WHITEFISH ZONING TEXT AMENDMENT REQUEST** | A request by the City of Whitefish to amend Chapter 4, Landscaping Requirements; Chapter 3 Sections 11-3-42, Multifamily Development Standards; 11-3-43, Mixed Use and Non-Residential Building Standards; Section 11-2 Article K, WB-2 Secondary Business District; Article N, WRR-1 Low Density Resort Residential District; Article O, WRR-2 Medium Density Resort Residential District; Article P, WRB-1 Limited Resort Business District, Article Q, WRB-2 General Resort Business District; and Sections 11-6-5 Landscape and Screening and 11-6-3-1, Chapter 6, Off-Street Parking and Loading of the Whitefish Municipal Code, in order to introduce a revised landscaping regulations chapter, delete the |
existing landscape requirements of other zoning regulations which have been incorporated into the revised landscape chapter, add a new requirement into Section 11-2 Article K, WB-2 Secondary Business District for a 30-foot wide landscaped buffer along US Highway 93 South.

### STAFF REPORT

**WZTA 23-03 (Tiefenbach)**

Planner Tiefenbach reviewed his staff report and findings. As of the writing of WZTA 23-03, no public comments had been received, and none have been received since then.

Staff recommended adoption of the findings of fact within staff report WZTA 23-03 and for **approval** of the proposed changes to Title 11, Chapter 7, of the Zoning Regulations to the Whitefish City Council.

### BOARD QUESTIONS OF STAFF

Beckham asked regarding the fire hazard and being able to say the reason trees were removed is for fire prevention, whether that is something that will flag the Fire Marshal to determine whether it makes sense trees were removed for that reason or if it is just something you might come up with to say why you removed more trees. Tiefenbach said they would have to submit a landscape plan which would go to engineering, and he thinks the Fire Marshal would look at it to determine whether the trees needed to come out. They have to be accountable and demonstrate why you cannot do it.

Chair Qunell said one question that came up before is regarding having to replace non-native trees. If you have non-native or pest trees, like two apple trees on your property and you take them out, is there an exemption so that you don't have to replace pest trees. Tiefenbach said the chapter does not specifically talk about pest trees, but that is why some reasonable flexibility was added so an argument like that could be made.

### PUBLIC HEARING

Chair Qunell opened the public hearing.

### APPLICANT / AGENCIES

N/A

### PUBLIC COMMENT

There being no further comments, Chair Qunell closed the public hearing and turned the matter over to the Planning Board for consideration.
**MOTION / BOARD DISCUSSION**

Scott made a motion, seconded by Middleton, to adopt the findings of fact within staff report WZTA 23-03 as proposed by City Staff.

**VOTE**

The motion passed unanimously. The matter is scheduled to go before the Council on May 15, 2023.

**GOOD AND WELFARE**

<table>
<thead>
<tr>
<th>Time</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>7:21 pm</td>
<td><strong>Matters from Board.</strong> Chair Qunell said Recording Secretary Keni Hopkins is retiring so this is her last meeting. He thanked her for all the hard work she has done over her many years of service. He also said he filed today for re-election to City Council so he will be running again in the November election.</td>
</tr>
<tr>
<td>7:21 pm</td>
<td><strong>Matters from Staff.</strong> Director Taylor said the next work session probably will not be in May. In May staff will be responding to what the legislature does and what the Governor signs into law. Staff will have to evaluate how it affects the Growth Policy Update and if we are going to have to drop some of that to make some zone changes and things like that to accommodate some of the new legislation. June is a possibility.</td>
</tr>
<tr>
<td>7:21 pm</td>
<td><strong>Poll of Board members available for the next meeting on May 18, 2023.</strong> Director Taylor said there will be a couple of items on the May 18 agenda - the Corridor multi-family housing project and a PUD amendment for 95 Karrow. Freudenberger and Scott will not be here; staff will reach out to Gardner and Linville to find out if they are available. All other members present indicated they thought they would be available.</td>
</tr>
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</table>

**ADJOURNMENT**

The meeting was adjourned on a motion by Scott, seconded by Freudenberger, at approximately 7:24 pm. The next regular meeting of the Whitefish Planning Board is scheduled to be held on May 18, 2023, at 6:00 pm, at 418 East 2nd Street.

____________________________  ______________________________
Steve Qunell, Chair of the Board  Keni Hopkins, Recording Secretary

**APPROVED AS SUBMITTED / CORRECTED:** ______________________________
CHAPTER 4, LANDSCAPING REQUIREMENTS; CHAPTER 3 SECTIONS 11-3-42, MULTIFAMILY DEVELOPMENT STANDARDS; 11-3-43, MIXED USE AND NON-RESIDENTIAL BUILDING DEVELOPMENT STANDARDS; SECTION 11-2 ARTICLE K, WB-2 SECONDARY BUSINESS DISTRICT; ARTICLE N, WRR-1 LOW DENSITY RESORT RESIDENTIAL DISTRICT; ARTICLE O, WRR-2 MEDIUM DENSITY RESORT RESIDENTIAL DISTRICT; ARTICLE P, WRB-1 LIMITED RESORT BUSINESS DISTRICT, ARTICLE Q, WRB-2 GENERAL RESORT BUSINESS DISTRICT; AND 11-6 OFF-STREET PARKING AND LOADING

This is a report to the Whitefish Planning Board and City Council regarding a request by the City of Whitefish to amend Chapter 4, Landscaping Requirements, delete the existing landscape requirements of other zoning regulations which are now incorporated into the revised landscape chapter, add a new requirement into Section 11-2 Article K, WB-2 Secondary Business District for a 30-foot wide landscaped buffer along US Highway 93 South, and revise Chapter 6, Parking and Loading to remove parking lot landscaping and add minor housekeeping changes. A public hearing will be held before the Planning Board on April 20, 2023 and City Council on May 15, 2023.

BACKGROUND INFORMATION

Updates to the landscape code have been discussed by Council since at least 2017. The last time any revisions occurred to the landscaping chapter of the municipal code was in 2008. In 2022, City Council set a goal to direct the Planning Department to update these regulations.

During the revision process, staff reviewed the landscaping regulations for seven Montana municipalities (Billings, Missoula, Bozeman, Kalispell, Great Falls, Livingston and Helena), six cities in the northwest, five city and county governments in Colorado, and several other cities with robust landscape regulations such as Savannah, GA and Hilton Head Island, SC. Staff reviewed the existing regulations, reconstructed and rewrote them, and had 5 internal meetings with various departments (including Parks and Recreation and Public Works). Staff then sent the proposed draft to 12 landscape firms and landscape architects familiar with the City of Whitefish and Montana flora for review and comment. Staff held work sessions with the Planning Board on February 16, 2023, and the City Council on March 6, 2023 to introduce the revisions and receive feedback.

What is being proposed is a significant change from the existing code. Due to the amount of reorganization and new text, staff did not believe it would be helpful to provide a track-changes version of the new chapter. Instead, staff is proposing the entire chapter as new and proposing deletion of the entire existing chapter (attached with this staff report).

PROPOSED CHANGES TO LANDSCAPE REGULATIONS

A summary of changes is as follows (please see Exhibit A, attached):

- The Code was rearranged to make it flow and read more logically.
- Staff reorganized the basic landscaping requirements into tables toward the beginning of the document, so applicants can see requirements quickly and know which sections to go to for details.
• The new landscape requirements apply to everything except single family detached, whereas the current code exempts single family detached, duplexes and triplexes.
• The present code has a table that requires landscaping from 4% to 10% depending on the size of the developed area (such as 22,000 sq. ft.). Staff is unsure why this square footage was used. The new code requires landscaping based on performance standards rather than area size (such as street frontage widths, number of parking spaces, etc.).
• There are details regarding what is required for a landscape plan (currently called a Site Plan).
• There is a description and requirements for drought tolerant landscaping.
• There is a prohibition on more than 50% of ground cover being only mulch or rock.
• There are requirements that 50% of the landscaping be native to Montana, and no more than 50% being the same species. Cultivars of native species are allowed.
• Differing requirements that previously only applied to WB-2, WB-3, WRB-1 and WRB-2 zoning have been added as general requirements. These include exceptions for buildings at reduced setbacks, landscaping along street frontages, parking lot frontages and residential buffer widths.
• There are new requirements for street frontage landscaping and internal parking islands (none of which are presently required). Amenities such as patios, courtyards, outdoor furniture and planter boxes can be included into the street frontage landscape requirements.
• A recommendation of the Highway 93 South Corridor Plan is to add a Highway 93 South landscaping setback of up to 30 feet to the WB-2 zoning district between East 13th Street and the Highway 40 intersection. This required setback width is referenced in the new landscaping section has been added to the WB-2 zoning district.
• Parking lot landscaping requirements from Chapter 6, Off Street Parking and Loading have been moved into the new landscape code.
• General landscaping requirements of Section 11-3-42: “Multi-Family” have been moved into the new landscape code.
• General landscaping and landscaping design technique requirements of Section 11-3-43 “Mixed Use and Non-Residential Building Development Standards” have been moved into the new landscape code.
• There is presently an exemption for landscaping of auto sales lots. The Highway 93 South Corridor Plan recommends removing this exemption. The new landscape code does this, except auto sales lots are not required to provide the interior parking islands.

New Tree Retention Requirements

The existing Code has minimum tree density requirements with difficult tables, numbers and calculations. Staff preferred a simpler approach and reviewed tree preservation requirements from more than 20 municipalities, most in the Pacific Northwest and Rocky Mountain West, as well as several southern tree-dense cities. The new Code proposes the following:

• There are detailed requirements on what is required for a tree preservation plan.
• The preservation / mitigation requirements apply to evergreen trees which are at least twelve inches (12”) in caliper, deciduous trees which are at least six inches (6”), or any tree determined as significant by the Zoning Administrator. Any of these trees are defined as “qualifying trees”.

Staff: AT

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• Each qualifying tree designated for preservation that has been removed must be replaced with trees totaling at least two times the caliper inches as was lost.
• Each existing preserved qualifying tree shall be credited as two trees toward satisfying landscape requirements. The total trees on a site cannot be reduced by more than fifty percent (50%) of any requirement.
• There is language that recognizes tree removal is sometimes impractical and allows relief from the replacement / mitigation requirements when it is indicated on the landscape plan which trees cannot be retained or replaced, why removal of qualifying trees is necessary and / or why planting of some or all of the required replacement trees is not feasible.

PLANNING BOARD AND CITY COUNCIL WORK SESSIONS

Staff brought the draft landscape regulation to the Planning Board at a February 16, 2023 work session and City Council at a March 7, 2023 work session. Both were supportive of the new regulations with the following comments:
• The Board requested to see an example of the Council of Tree and Landscapers Appraisal Guide that was being used to determine plant cost.
• The Board was supportive of tree preservation standards but believed there should be some exemptions for trees removed for the purpose of Firewise defensible space. Likewise, the Board also wanted staff to ensure that the rationale of “defensible space” could not be used as a reason to remove trees unnecessarily.
• A citizen remarked at the City Council work session that the requirement for at least 50% of required plant species being native to Montana could be difficult to meet due to availability.
• A citizen remarked at the City Council that perhaps there should be a footnote indicating how much a tree replacement would cost.
• A Councilperson suggested there should be additional clarification regarding what is an acceptable root barrier.
• A Councilperson directed staff to make a revision to the residential buffer standards to require a residential buffer to have a 50% visual screen of at least 5 feet at height.

In regard to the availability of native species, Staff revised the species requirement of the minimum landscaping standards to allow cultivars of native species to be allowed when native species are unavailable. This had already been done in response to a comment from a landscape architect that native species were not always readily available.

Staff did not add a footnote regarding the potential cost of replacement trees because replacement prices can vary so much based on supply and demand, and adding costs to a municipal code is not recommended because regulatory updates would then need to occur for changes to this indicated cost. Staff did add clarification regarding what are acceptable root barriers in the internal landscape island section of the parking lot landscape standards, and the residential buffer standards have been revised to require a 5-foot-high visual screen at maturity.

In regard to the Council of Tree and Landscapers Appraisal Guide, after the Planning Board Work Session, staff did discuss the guide with the City Arborist and determined providing this at a work session would probably not prove helpful as it is a technical manual that lists specific formulas to calculate value of trees based on age, size, and health. The City Arborist was available at the City Council work session for this reason but there was no additional discussion about this topic.

Staff has revised the Tree Retention Section to provide additional flexibility to recognize tree removal is sometimes necessary (such as to provide Firewise Defensible Space). The previous
version of these regulations required relief from the requirements through the Zoning Administrator by meeting specific findings. The regulations have been revised to require it be indicated on the landscape plan which trees must be removed and cannot be replaced and why it is impractical.

OTHER CODE REVISIONS

Because the new landscape code includes merging existing requirements from other sections of the municipal code if the new landscape section is implemented, other code sections which include landscaping requirements should be updated accordingly. The following are additional red-marked code revisions Staff recommends with comments if the new landscape chapter is approved:

11-3-42: MULTI-FAMILY DEVELOPMENT STANDARDS

C. Parking Location and Design:

2. Techniques: Techniques for complying with the requirement in subsection C1 of this section include, but are not limited to:

   f. Locating driveways so they are visually less dominant and berming and landscaping them when they are visible from the street while maintaining required clear vision triangles (see section 11-3-8 of this chapter)

   g. Screening parking lots abutting single-family residences with landscaping, berming, and/or natural material fencing (see section 11-6-5, "Landscape And Screening", of this title);

   • Staff Comment: The deleted requirements have been incorporated into 11-4-3A-1D, Parking Lot Landscape Standards and 11-4-3A-1E, Residential Buffer Standards of Table 11-4-3A-1, Minimum Landscaping Standards.

F. Grading/Tree Retention:

1. Requirement: Multi-family projects must be designed to minimize impacts to existing topography and vegetation and require a tree preservation plan with an application submittal.

2. Techniques: Techniques for complying with the requirement in subsection F1 of this section include, but are not limited to:

   a. Incorporating the natural grades in the overall design of the project;
   b. Incorporating existing groups of trees/vegetation that will be protected and retained;
   c. Minimizing disturbance of open space areas to better facilitate stormwater infiltration; and
   d. Avoiding the placement of buildings adjacent to ridgetops, so the rooftops do not extend above the crest of the ridgetops of the hillside, especially where views of natural amenities are concerned.
11-3-43: MIXED-USE AND NON-RESIDENTIAL BUILDING DEVELOPMENT STANDARDS:

B. Building Orientation and Multi-Building Sites:

1 Orientation: Buildings must be oriented towards the primary street frontage and public paths and/or sidewalks. Buildings on corner lots should be oriented towards the primary intersection.

   a. Buildings may be located further away from the primary street when separated from the street by existing healthy and mature trees being retained in perpetuity. In those cases, buildings should be placed as close to the trees as practical and a plan must be submitted to maintain the health of the trees along with a replacement plan for dead, dying, or hazardous trees (see Section 11-4-6: “Tree Retention” and Section 11-4-3: “Landscaping Plan Submittal Requirements.”)

C. Topography: Existing trees, topography and other existing natural features must be incorporated into the project design.

   1. To the extent reasonable and practicable incorporate natural grades into the overall site plan.

   2. Incorporate natural features such as trees, large rocks or boulders into landscaping design.

   3. To the extent reasonable, existing healthy, mature trees must be protected and incorporated into the overall site landscaping features.

D. Landscaping: Landscaping must be incorporated into new development design to soften the manmade environment, provide vegetative buffers, provide open space, and mitigate any unavoidable loss of existing native vegetation. The preferred method of landscaping is to first incorporate and preserve existing trees and shrubs, topography and other existing natural features into the project design. Any unavoidable loss of existing native vegetation must be mitigated.

   1. Landscaping in parking lots must conform to the requirements of section 11-6-5, "Landscaping And Screening", of this title.

   2. Landscaping techniques including living plant material and supporting elements must include, but are not limited to, the following:

      a. Landscape open areas created by building modulation.

      b. Retain natural vegetation and undisturbed open space.
c. Use plants that require low amounts of water, including native drought-resistant species.

d. Locate trees on storefront street frontages at appropriate spacing so that at maturity building signage and entrance are clearly visible from the street and sidewalk.

e. Incorporate on-site natural objects such as rocks, boulders and tree stumps into landscape design where possible.

f. Shrubs, grasses and other nontree vegetation must be included in the plan as appropriate to the site on a case-by-case basis.

g. Landscaping techniques for the WB-3 Zone and areas with limited undeveloped space may include:

   a. Providing frameworks such as trellises or arbors for plants;
   
   b. Incorporating planter guards, retaining walls, or low planter walls as part of the architecture;
   
   c. Incorporating upper story planter boxes, "green roofs", roof gardens or plants;
   
   d. Incorporating outdoor furniture into the landscaping plan.

3. The Zoning Administrator may consider a waiver of certain landscaping requirements if significant existing (especially native) vegetation and topography are preserved.

H.F. Mixed-Use Or Non-Residential Development Adjacent To Residential Zones: Buildings must be designed to ensure that building massing, height, and scale provide sensitive transition to adjoining residential neighborhoods. When abutting a Residential Zoning District, the project’s landscaping plan must include provisions for vegetative screening between the project and the residential property.

d. Creative use and ongoing maintenance of landscaping, such as buffers, berms, mounds, rockeries, living fences, and swales. Buffers should be designed to avoid the appearance of a straight line or "wall" of uniform plant material and must be wide enough to accommodate the planted species at maturation.

• **Staff Comment: These requirements have been incorporated into Section 11-4-5C, Landscape Design Techniques, 11-4-5D, Landscaping for Properties with Reduced or No Street Frontage Setbacks, and Table 11-4-3A-1E, Residential Buffer Standards of the General Landscaping Requirements.**
CHAPTER 6: OFF-STREET PARKING AND LOADING

11-6-2: PARKING SPACE REQUIREMENTS:

<table>
<thead>
<tr>
<th>E.</th>
<th>Recreational areas:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Bowling alleys</td>
<td>6 spaces per alley</td>
</tr>
<tr>
<td>Golf courses</td>
<td>3 spaces per hole of main course</td>
</tr>
<tr>
<td>Private clubs and lodges, special centers, athletic club and similar recreational facilities</td>
<td>1 space per 8 seats; plus 1 space for every 100 square feet of assembly space without 1 space per 8 seats</td>
</tr>
<tr>
<td>Stadiums, special arenas and similar open assemblies</td>
<td>1 space per 8 seats; plus 1 space for every 100 square feet of assembly space without seats</td>
</tr>
<tr>
<td>Outdoor courts without seating / viewing areas</td>
<td>1.5 spaces per court</td>
</tr>
</tbody>
</table>

11-6-3: SPECIAL CONDITIONS:

11-6-3-1: WCR, WSR, WER, WLR, WR-1, WR-2, WR-3, WR-4, WT-3, WRR-1 AND WRR-2 DISTRICTS:

A. One-half (1/2) of all required parking shall be capable of being covered by a garage.

- Staff Comment: This regulation is not associated with landscaping, but staff recommends removing this requirement because “shall be capable” has been difficult to interpret the intent. We could also require ½ of all parking to be covered in those zones rather than removing the requirement as an option.

11-6-5: LANDSCAPING AND SCREENING:

See Chapter 4: Landscaping Requirements of this title.

A. Parking and driveway areas shall be landscaped, including a minimum five foot (5’) wide landscaped buffer (7 feet wide if curb stops are not used and the car bumper hangs over the landscaped area) abutting a public street. The percentage of parking lot landscaping is called out below:

<table>
<thead>
<tr>
<th>Number Of Parking Spaces</th>
<th>Gross Area To Be Landscaped</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 to 50</td>
<td>8 percent</td>
</tr>
<tr>
<td>51 to 99</td>
<td>10 percent</td>
</tr>
<tr>
<td>100 and above</td>
<td>12 percent</td>
</tr>
</tbody>
</table>

B. The perimeter landscape buffer along a street shall consist of planting materials or planting materials and manmade features to create at minimum a three foot (3’) high visual relief
screen in the form of a hedge, fence, planter box, berm, dividers, shrubbery or trees, or a combination of the above. All landscaping to form such visual relief shall create a two foot (2') tall minimum screen at planting.

C. There shall be a landscaped buffer (at least 50 percent sight obscuring) when a parking lot borders, or is adjacent to a residential zone. The landscaped buffer shall be a minimum five feet (5') wide (7 feet wide if curb stops are not used and the car bumper hangs over the landscaped area) and five feet (5') high or five feet (5') wide with a five foot (5') fence.

D. Clear vision triangles shall be observed regarding all landscaping or screens.

E. A performance bond may be required to ensure compliance with this section and to cover maintenance for a period not to exceed one year after time of planting.

F. Vehicle sales lots are exempt from the parking lot landscaping requirements but are still subject to the overall landscape requirements in chapter 4 of this title. (Ord. A-407, 3-15-1982; amd. Ord. 00-13, 11-20-2000)

11-6-8: STREET AND ROADWAY ACCESS STANDARDS:

A. Access to businesses, service stations, roadside stands, public parking lots and all other businesses requiring motor vehicle access shall meet the requirements as hereinafter provided or as prescribed by the approach standards for Montana highways, whichever requirements are greater.

B. Access shall be controlled as follows:

1. The driveway access width shall be ten feet to twenty four feet (10’ - 24’) for one-way traffic and twenty feet to thirty six feet (20’ - 36’) for two-way traffic, excluding the minimum necessary curb return radius located in the public right of way.

• Staff Comment: All this is now contained in the parking lot landscape standards, residential buffer standards and screening standards of the Minimum Landscape Standards (Table 11-4-3A-1: Minimum Landscaping Requirements).

The vehicle sales lot exemption is proposed for deletion as recommended by the US 93 South Corridor Plan, although the general landscape standards (11-4-5) of the new landscape code does give the exemption from vehicle sales lots having to provide trees in internal landscape islands.

Staff recommends the section regarding access above be deleted as this conflicts with a requirement in the City of Whitefish Engineering Standards.

1 Please see the City of Whitefish Engineering Standards.
11-2K-4: Property Development Standards:

The following property development standards shall apply to land and buildings within this district:

<table>
<thead>
<tr>
<th>Bulk and scale</th>
<th>All new structures with a building footprint of 10,000 square feet or greater, existing structures where an addition causes the total footprint to be 10,000 square feet or greater, and additions to structures where the footprint already is 10,000 square feet or greater, are subject to a conditional use permit pursuant to section 11-7-8 of this title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum lot area</td>
<td>n/a</td>
</tr>
<tr>
<td>Minimum lot width</td>
<td>n/a</td>
</tr>
<tr>
<td>Minimum yard spaces:</td>
<td></td>
</tr>
<tr>
<td>Front</td>
<td>20 feet</td>
</tr>
<tr>
<td>Side</td>
<td>20-foot greenbelt when abutting a Residential District, otherwise: None</td>
</tr>
<tr>
<td>Rear</td>
<td>20-foot greenbelt when abutting a Residential District, otherwise: None</td>
</tr>
<tr>
<td>Maximum height</td>
<td>35 feet</td>
</tr>
<tr>
<td>Permitted lot coverage</td>
<td>n/a</td>
</tr>
<tr>
<td>Off street parking</td>
<td>See chapter 6 of this title</td>
</tr>
<tr>
<td>Accessory uses</td>
<td>Accessory uses shall maintain the same yard requirements as the primary use</td>
</tr>
<tr>
<td><strong>Highway 93 frontage:</strong></td>
<td>Please refer to the street frontage landscape standards of Chapter 4, Table-11-4-3A-1, Minimum Landscaping Standards of this title.</td>
</tr>
<tr>
<td>Landscaping</td>
<td>See chapter 4 of this title (single-family uses exempted)</td>
</tr>
</tbody>
</table>
Staff Comment: “20-foot greenbelt” is now addressed as a “residential buffer” in Table 11-4-3A-1 Minimum Landscaping Standards.

There is a new Highway 93 frontage reference added per a recommendation of the US 93 South Corridor Plan. The requirements of this frontage are in the Street Frontage Landscaping Standards of Chapter 4 Table 11-4-3A-1 Minimum Landscaping Standards. It requires a landscaped 30 ft. wide street frontage for all properties within the WB-2 zoning district with street frontage along Highway 93 South from E. 13th St to Highway 40.

11-2 ZONING DISTRICTS

Article N, WRR-1 Low Density Resort Residential District;

Article O, WRR-2 Medium Density Resort Residential District;

Article P, WRB-1 Limited Resort Business District;

Article Q, WRB-2, General Resort Business District

11-2N-2, 11-2O-2, 11-2P-2, 11-2Q-2: Permitted Uses:

Public utility buildings and facilities when necessary for serving the surrounding territory, excluding business offices and repair or storage facilities. A minimum of five feet (5’) of landscaped area shall surround such a building or structure.

11-2N-4, 11-2O-4, 11-2P-4, 11-2Q-4: Property Development Standards:

Minimum Yard Spaces:

Front: 15 feet, except when fronting on a public right-of-way where there shall be a front yard of not less than 25 feet of landscaped greenbelt area. Vehicle and pedestrian ingress and egress may be allowed in this area up to a maximum of 40 percent of the greenbelt area.

Staff Comment: The above requirements are addressed in several sections of the amended Landscaping Regulations including landscaping along buffer areas, along building frontages, and along street frontages. Staff is recommending retention of the required 25-foot street frontage as this presently exists specific to the above four zoning districts and may not necessarily only be related to landscaping.

An earlier version of the amended landscaping requirements initially required building perimeter landscaping (such as what exists above for public utility buildings), and this has been removed by staff due to fire wise concerns from the Fire Department.
REVIEW OF ZONING TEXT AMENDMENT REQUIREMENTS AND FINDINGS

The following considerations from Section 11-7-10(E) are required to be addressed in order to guide both the Planning Board and the City Council when considering an amendment to the zoning regulations or the official map:

<table>
<thead>
<tr>
<th>CONSIDERATIONS FROM SECTION 11-7-12E.</th>
<th>FINDINGS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conformity to the Growth Policy</td>
<td>Landscaping and revisions to the landscape regulations are mentioned in several places of the existing Growth Policy and US 93 South Corridor Plan:</td>
</tr>
<tr>
<td></td>
<td><strong>Growth Policy</strong></td>
</tr>
<tr>
<td></td>
<td>Implementation Element (Page 145)</td>
</tr>
<tr>
<td></td>
<td>“It is recommended that implementation priorities include a rewrite of the zoning code to adopt “character based” regulations and to address other issues set forth in this Growth Policy.”</td>
</tr>
<tr>
<td></td>
<td><strong>Growth Policy definition of Community Character:</strong></td>
</tr>
<tr>
<td></td>
<td>“This term is used in planning and urban design to describe the relationship among predominant structure size, spacing of structures, spacing from the street, open spaces, landscape, and streetscape within a specific area or neighborhood.”</td>
</tr>
<tr>
<td></td>
<td><strong>Future Land use Recommended Actions (Page 71)</strong></td>
</tr>
<tr>
<td></td>
<td>“The City shall formulate, or shall facilitate the development of, corridor plans for all major transportation corridors to address land use, transportation function and modes, noise, screening, landscaping, and all aspects of urban design.”</td>
</tr>
<tr>
<td></td>
<td><strong>Growth Issues (page 57)</strong></td>
</tr>
<tr>
<td></td>
<td>“The corridor plans must include standards for replacement of existing forest stands, on-site landscaping, and screening of parking and service areas.”</td>
</tr>
<tr>
<td></td>
<td><strong>US 93 South Corridor Plan (page 100)</strong></td>
</tr>
<tr>
<td></td>
<td>“Revise the WB-2 Zoning District to add a landscaping setback of up to 30 feet from Hwy 93 South between East 13th Street and the Highway 40 intersection.”</td>
</tr>
<tr>
<td>Secure safety from fire and other dangers;</td>
<td>The proposed regulations encourage the utilization of Firewise fuel management techniques and fire-resistant plants and protect existing trees while allowing removal for Firewise defensible space.</td>
</tr>
<tr>
<td>CONSIDERATIONS FROM SECTION 11-7-12E.</td>
<td>FINDINGS</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Promote public health, public safety, and general welfare;</td>
<td>The amended regulations are intended to maintain and improve livability, mitigate the impacts of climate change, reduce the heat island effect, improve quality of life, protect water quality, and enhance the aesthetic quality of the City.</td>
</tr>
<tr>
<td>Provide security from fire, panic, and disasters;</td>
<td>Recognizing and allowing flexibility from the tree retention requirements for Firewise Defensible Space will increase security from fire risk.</td>
</tr>
<tr>
<td>Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>Provide adequate light and air;</td>
<td>Requiring a minimum standard for landscaping and encouraging the retention of qualifying trees is consistent with the consideration to provide adequate air quality.</td>
</tr>
<tr>
<td>The effect on motorized and nonmotorized transportation systems;</td>
<td>The amended landscaping regulations would have a positive effect on motorized and non-motorized transportation systems through the increase in aesthetics resulting from adequately-landscaped street frontages, buffering of parking facilities, improved air quality and vehicle sound dampening associated with vegetation.</td>
</tr>
<tr>
<td>Prevent overcrowding of land and avoid undue concentration of people;</td>
<td>Requiring a minimum amount of landscaping, including buffering, street frontage landscaping, parking lot landscaping and retention of existing trees helps reduce the overcrowding of land.</td>
</tr>
<tr>
<td>Promotion of compatible urban growth;</td>
<td>The amended landscaping requirements are intended to facilitate more compatible urban growth.</td>
</tr>
<tr>
<td>Reasonable consideration to the character of the district and its particular suitability for particular uses.</td>
<td>Adequate landscaping is an essential element of community character. The amended landscaping requirements would encourage landscaping appropriate to the development and zoning district and would reduce impacts on adjacent properties.</td>
</tr>
<tr>
<td>Conserve the value of buildings</td>
<td>Generous landscaping conserves the value of the properties as well as neighboring properties.</td>
</tr>
<tr>
<td>Encourage the most appropriate use of the land throughout the municipality</td>
<td>Not directly applicable, although requiring properties to have a minimum of landscaping, buffering and screening increases compatibility of land uses throughout the City of Whitefish.</td>
</tr>
</tbody>
</table>

**RECOMMENDATION**

Staff recommends that the Whitefish Planning Board recommend that the City Council approve the proposed changes amending Section 11-4, Landscaping Requirements, Chapter 3 Section 11-3-42 Multifamily Development Standards, Section 11-3-43 Mixed Use and Non-Residential Building Standards, Section 11-2 Article K, WB-2 Secondary Business District, Article N, WRR-1 Low Density, Article O, WRR-2 Medium Density Resort Residential, Article P, WRB-1 Limited City Council Packet, May 15, 2023 Page 99 of 116
Resort Business District, Article Q, WRB-2 General Resort Business District, and Chapter 6, Off-Street Parking and Loading.
RESOLUTION NO. 23-___

A Resolution of the City Council of the City of Whitefish, Montana, Granting a Utility Easement to Flathead Electric Cooperative over land located at Lot 6 of Bakers Common—Phase II Subdivision, Section 1, Township 31 North, Range 22 West P.M., M., Flathead County Montana.

WHEREAS, the City of Whitefish owns property located at 275 Flathead Avenue, Whitefish, Montana; and

WHEREAS, Flathead Electric Cooperative, a non-profit company, desires to extend a service to one of its members, Hurrah! Balm, which is adjacent to City property; and

WHEREAS, to avoid the drain field of Hurrah! Balm, Flathead Electric Cooperative may be required to place a portion of the service on the City's property, as shown on Exhibit A, attached hereto; and

WHEREAS, pursuant to § 7-8-4201, MCA, any lease or transfer of City property must be approved by an ordinance or resolution passed by two-thirds of all members of the Council; and

WHEREAS, on May 15, 2023, at a lawfully noticed public meeting, the Whitefish City Council considered Flathead Electric Cooperative's request that the City grant it an easement to install an electrical service, received an oral report, and thereafter voted to recommend approval of the request; and

WHEREAS, it is in the best interests of the City of Whitefish and its inhabitants for the City to grant the easement as set forth in Exhibit B.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City Council of the City of Whitefish, Montana, hereby grants Flathead Electric Cooperative a utility easement as set forth in Exhibit B, attached hereto.

Section 2: The City Manager is authorized and directed to execute the "Right of Way Easement to Flathead Electric Cooperative" attached hereto as Exhibit B.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council and signing by the Mayor thereof.
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS _______ DAY OF _______________ 2023.

__________________________________________

John M. Muhlfeld, Mayor

ATTEST:

__________________________________________

Michelle Howke, City Clerk
RIGHT OF WAY EASEMENT TO FLATHEAD ELECTRIC COOPERATIVE, INC.

KNOW ALL PERSONS BY THESE PRESENTS

That The City of Whitefish, hereafter referred to as “Grantor”, for valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant Flathead Electric Cooperative, Inc., a Corporation of Kalispell, Montana, hereinafter referred to as the “Cooperative”, an easement for 10’ on each side of the power line as installed, and the right to enter upon that land in the County of Flathead, State of Montana, more particularly described as follows:

WO# 20230038 MH & SP
Lot 6 of Baker Commons – Phase II Subdivision, Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana, containing 4.410 acres of land.

and together with the right to extend power to adjacent properties and to place, construct, operate, maintain and relocate thereon an electric transmission and distribution line and all necessary or normal facilities and appurtenances below or above the ground and under and upon the above described real property and streets, alleys and roads abutting said lands, together with the right to cut and trim trees and shrubbery to the extent necessary to keep them clear of said electrical system and to cut down dead, leaning or dangerous trees that are a hazard to the electric facilities and remove surface shrubs and other objects that interfere with the establishment of said facilities and to trench such property and bury such facilities beneath the surface using such machinery and equipment on such property that may be reasonably necessary.

The Grantor agrees not to discharge any explosives likely to do damage to the electric facilities, within a distance of 300 feet of said facilities, without first giving notice in writing to the Grantee of intention so to do.

The specific consideration for this grant is the action of the Cooperative in building electric transmission and distribution lines and facilities in the rural areas to provide electric energy on a non-profit basis for its members. It is agreed that easements must be granted to the Cooperative to make it possible to build such lines and facilities.

In granting this easement, it is understood that the location of all electric facilities will be such as to form the least possible interference to member operations, so long as it does not materially increase the cost of construction or create a hazardous condition.

This grant shall be binding upon the heirs, personal representatives, and assigns of the respective parties to the same extent as it shall bind said parties.

IN WITNESS WHEREOF, the grantor has affixed his signature this _____ day of _______________, 2023.

______________________________
Representing The City of Whitefish

STATE OF_________________
COUNTY OF _______________

On this _____ day of _______________, 2023 before me, the undersigned a Notary Public, personally appeared __________________ Representing The City of Whitefish known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he has executed the same.

IN WITNESS WHEREOF, I have hereunto affixed my signature and official seal the date first above written.

____________________________________
Notary Public for the State of MONTANA

EXHIBIT B
City Council Packet, May 15, 2023 Page 105 of 116
Staff Report

To: Mayor John Muhlfeld and City Councilors

From: Angela Jacobs, City Attorney

Date: May 9, 2023

Re: Flathead Electric Company Easement

Current Report

Flathead Electric Company has requested that the City allow it to extend a three phase electrical service phase to the rear of the Hurrah! Balm. It is possible that FEC will encroach on the City's property to avoid Hurrah's drain field. Pursuant to § 7-8-4201, MCA, any lease or transfer of City property must be approved by an ordinance or resolution passed by two-thirds of all members of the Council.

Financial Requirements/Impacts

There are no financial requirements or impact of approving the easement.

Recommendation

Staff recommend the Council approve the proposed easement.
(This page left blank intentionally to separate printed sections)
CITY MANAGER’S REPORT
May 9, 2023

CITY COUNCIL GOALS
Attached to this report is a summary of the progress staff has made on the FY23 City Council Goals through the third quarter. A goal setting work session for FY24 goals is scheduled for June 5th.

MEETINGS
I will be attending a post legislative update with the Montana League of Cities and Towns and other city managers from across the state in Billings on May 11th and May 12th. We will discuss the 2023 Montana Legislative Session, as well as plans for future sessions. An update about this meeting will be provided during the City Council meeting on May 15th.

CITY HALL CLOSED
City Hall will be closed on Monday, May 29th, for Memorial Day.

2023 MONTANA LEGISLATIVE SESSION
The 2023 Montana Legislative Session officially wrapped up on May 3rd, the 87th day of the session. With many bills still pending signature by the Governor, a more thorough final session update will be provided for the June 5th City Council meeting.

SB 105 – Prohibit Rent Control of Private Property. This bill prohibits a local government from enacting, maintaining, or enforcing an ordinance or resolution that would have the effect of controlling the amount of rent charged for private residential or commercial property. Even though rent control is already preempted by the State, the City opposes this bill based on principle. The bill was amended and passed through the Senate and House. The bill has been signed by the Governor.

SB 142 – Provide Oversight of Local Impact Fee Laws. Sponsored by Senator Regier, this bill was the product of the City’s ongoing class action lawsuit with many of the items directly related to the specific complaints. Senator Mandeville provided amendments to SB 142, which were approved in the Senate Local Government Committee and subsequently by a majority of the Senate. The amendment eliminated most of the proposed changes, especially those changes that would make impact fees simply ineffective as a funding source for projects driven solely by new development. The Governor signed this bill into law.

SB 159 – Restrict use of Eminent Domain. This bill would prohibit the use of eminent domain for trails and paths for walking, hiking, bicycling or equestrian use. The City provided testimony in opposition to SB 159. The bill has been signed by the Governor.
SB 215 – Revise DEQ rule ARM 17.36.328 to Require Connection from Proposed Subdivision. SB 215 would change the connection requirement of a subdivision from 500 feet to 1000 feet of a public water or wastewater system and require that the system accepts the connection. The City has been monitoring this bill, which was approved by the Senate and House. **SB 215 bill has been signed by the Governor.**

SB 245 – Revise Municipal Zoning to Allow Multifamily and Mixed-Use Development. SB 245 would require as a permitted use multifamily (defined as 5+ units) and mixed-use developments in commercial zones. Amendments were made to allow a city to require one parking space per unit and removed the maximum height of 40 feet. The City provided written testimony opposing this bill. **The website for this bill is not operating correctly, but it is assumed this bill has passed and is or will be signed by the Governor.**

SB 262 – Generally Revise Licensing Requirements. This bill would essentially eliminate the City’s business licensing program. As proposed, this bill would prohibit any additional licensing requirements at the City level for which a license is issued by the State. There are many types of businesses and professions licensed by the State including public accommodations, bars, restaurants, CPAs, etc. The City provided written testimony opposing this bill for the February 8th hearing, but the bill passed through the committee on February 14th. It also passed the Senate and was transmitted to the House prior to the transmittal deadline. A hearing was held by the House Business and Labor Committee. An amendment that would minimize the impacts of the bill was provided for consideration, but not passed by the Committee. **SB 262 was signed by the Governor. Staff is in the process of determining the impacts of this bill on General Fund revenues, which could be as high as a $140,000 revenue short fall.**

SB 301 – Revise Property Laws Related to Lakeshore Regulations. SB 301 would grandfather structures within the lakeshore protection zone that were in place on or before January 1, 2023, unless active enforcement was taking place by a local government. Furthermore, it allows ongoing maintenance, remodeling or minor modification that costs less than $10,000 and does not involve significant excavation or in-fill of material. The City submitted written testimony for the Senate Local Government Committee hearing on January 20th. Amendments were made and passed by the Committee. The amendments clarify that these new regulations do not apply to illegally constructed items that cause material harm to lakeshore stability, water quality, or aquatic life. This bill was passed by the Senate and the House Local Government Committee. **The House passed this bill, and it is in the final preparation process. SB 301 is expected to be signed into law by the Governor.**

SB 323 – Allow for Duplex, Triplex, and Fourplex Housing in City Zoning. This bill originally was much more impactful for communities with a population of 50,000 or more as it would have required zoning regulations for all duplexes, triplexes, and fourplexes to be no more restrictive than that of a single-family residence. For cities with a population of at least 5,000, which applies to Whitefish, zoning regulations cannot be more restrictive for duplex housing than those applicable to single-family homes and they must be a permitted use. This bill was passed by the Senate and the House Local Government Committee. The House passed SB 323 with amendments (cities of 5,000 or greater population must allow for duplex housing as a permitted use where single-family residences are allowed), and the amendments were concurred by the Senate. **SB 323 was signed into law by the Governor.**
SB 382 – Create the Montana Land Use Planning Act. The City is monitoring this bill, which was developed by planners, the MLCT, and others. This bill passed the Senate and was transmitted to the House. **The House approve the bill with amendments, which were approved by the Senate. SB 382 is pending signature by the Governor.**

SB 407 – Revise municipal zoning laws. This bill would eliminate the Architectural Review Committee and require any review be done by City employees. The City opposes this bill, but the bill has made it through the Senate and House with minor amendments. **The bill is moving through the final process and will be heading to the Governor final approval.**

SB 528 – Revise Zoning Laws Related to ADUs. The City opposes SB 528 that is sponsored by Senator Hertz. SB 528 would require cities to allow at least one ADU where a single-family residence is located with no parking requirements, no architectural standards, setting size to the lesser of 1,000 square feet or the square footage of the primary residence, as well as other requirements. If SB 268 is passed these unit are free to become short-term rentals if the property owner is a primary resident (defined as living in a unit at least 7-months per year). The City submitted written testimony opposing the bill for the hearing held March 27th in the Senate Local Government Committee, but the Committee approved the SB 528. It was then passed by the Senate. A hearing was held on April 13th in the House Local Government Committee. The City submitted written testimony and Mayor Muhlfeld testified in opposition on behalf of the City. SB 528 was tabled, but it was brought off the table and passed with additional amendments (cities can regulate STRs) on April 21st. The House and Senate approved the bill as amended. **The Governor is expected to sign SB 528 into law soon.**

HB 76 – Generally Revise Transportation Laws. This bill reduces the administrative burden of the State’s fuel tax and the local government allocations, including the Bridge and Road Safety and Accountability Act that was established in 2017. The City supports this bill which passed by the legislature. **The Governor has signed the bill.**

HB 226 – Generally Revise Pension Laws. The City opposes HB 226. This bill would increase the employer (city) contributions to the Public Employees Retirement System (PERS) to ensure it is fully funded. While we are not opposed to an actuarially determined sound retirement plan, this bill does not allow for the necessary financial planning for cities as rates could significantly be adjusted in any given year. **HB 226 was amended to be an interim study.**

HB 244 – Revise Laws Governing the Housing Montana Fund. This bill, sponsored by Representative Fern, removes restrictions and income requirements for loans from the Housing Montana Fund. The City supports this bill, which passed out of the House and was transmitted to the Senate. After a hearing, the Senate Local Government Committee passed the bill. The Senate referred the bill to the Senate Finance and Claims Committee and a hearing was held on April 11th. The Committee approved the bill, as well as the Senate. **HB 244 has been transmitted to the Governor.**

HB 465 – Revise Local Government Acceptable Use of Building Permit Fees. The City supports HB 465 that would increase the maximum fund balance limit from 12 months to 36 months, as well as eliminate the need for separate agreed upon procedures. A hearing was held in front of the
House Local Government Committee on February 21st. The Committee passed HB 465 with minor amendments, and it has also passed the House. The Senate Local Government Committee held a hearing on March 24th and concurred. The Senate approved HB 465 and the bill has been transmitted to the Governor. The Governor signed HB 465 into law on April 25th.

NEXT CITY COUNCIL MEETING
The next City Council meeting is scheduled for Monday, June 5th, in the City Council Chambers with remote participation available to the public.

Upcoming work sessions:
May 30th – Budget Work Session #1
June 5th – City Council Goal Setting Session
June 12th – Budget Work Session #2

Respectfully submitted,

Dana M. Smith, CPA
City Manager
# FY23 Whitefish City Council Goals
## 3rd Quarter Update

<table>
<thead>
<tr>
<th>Department/Goal</th>
<th>Update</th>
<th>Estimated Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Administration</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Information Technology Master Plan</td>
<td>In progress: Working to incorporate IT for onboarding and exiting employees. Working toward making the IT staff part of the initial discussions when implementing new programs and software in other departments. Developed a spreadsheet for other departments to use in planning for departmental IT needs. Reviewed Library needs to assess if IT can add the Library as another department to support.</td>
<td>June 2023</td>
</tr>
<tr>
<td>3. Short-term Rental (STR) Program Enhancements</td>
<td>In progress: The legislature posed challenging bills we are still assessing the need to accommodate going forward which has placed hiring additional staff and purchasing new software on hold. Will need to establish new plan for tracking resort tax in general, but specifically for STRs. We will continue to track STR revenue separately for use in future analysis.</td>
<td>June 2023</td>
</tr>
<tr>
<td>3. Resort Tax Reallocation Education and Election to Add Affordable Housing as a Use</td>
<td>In progress: Staff presented three proposed allocation options for the Resort Tax Monitoring Committee and City Council at their retreat. More information regarding financial need was requested before any action was taken by the Committee and Council. The Community Housing Committee is looking to prepare the needed documents to support a reallocation.</td>
<td>November 2023</td>
</tr>
<tr>
<td>4. Additional Cemetery Location and Plan</td>
<td>In progress: Staff is working on the addition of a second columbarium at the current cemetery site to expand services. The FY24 Budget includes the full amount of funds to complete the project. The City continues to monitor the availability of land for a second cemetery site.</td>
<td>Long-term</td>
</tr>
</tbody>
</table>

| **Fire Department** | | |
| 1. Provide City Council Emergency Management Training | In progress: Due to unexpected staffing challenges, goal moved to FY24. With City Council elections in November, ideal timing would be after January 1, 2024. | June 2024* |
2. Strategic Plan for Fire Department Based on Adopted Master Plan

In progress: The Fire Department Strategic Planning Committee has been meeting monthly during 2022 to prioritize the recommendations within the Master Plan. The draft strategic plan was completed and then the City received notification that it was not awarded the SAFER Grant. The City Council extended the committee to amend the draft. A work session with the City Council is expected in June 2023 and consideration of adoption at a subsequent meeting.

**Parks & Recreation**

1. Armory Park Redevelopment Phase III

In progress: Staff will be meeting with RPA and the contractor to establish next steps for this spring. There is still work to be completed on the water and storm drainage, asphalt, landscaping, and well. A grant reimbursement request for LWCF was prepared and submitted.

2. Parks Sign Master Plan Implementation: Phase III

In progress: The prototype has been made. We will be printing our first signs with installations beginning in May. We will start with monument signs. We have begun to receive sponsorships for the pollinator gardens that will go around the monument signs.

**Planning Department**

1. Update Landscaping Chapter and Tree Retention Standards

In progress: City Council reviewed draft. Final draft going to Planning Board on April 20th. Scheduled for City Council consideration in May 2023.

2. Annexation Policy

In progress: Staff prepared a draft annexation policy and updated the FAQ sheet for the City Council’s review at the January 17th meeting. City Council considered and adopted code amendments to allow for zoning upon annexation. In fourth quarter, City Council expected to consider adoption of annexation policy.

3. Update City’s Growth Policy

In progress: Staff held work sessions with the Planning Board and City Council to discuss the kick off strategy. Compiled a Public Engagement Plan for review by the Planning Board on April 20th. Project is pending action by the Governor on SB 382 that would change law related to growth policies.

4. Update Lakeshore Erosion Standards

In progress: Draft changes were reviewed by Mark Lorang and Mike Koopal of Whitefish Lake Institute. Currently going through changes and hope to have draft to Lakeshore Committee in May.
<table>
<thead>
<tr>
<th>5. Downtown Master Plan Implementation – Update Zoning Ordinance</th>
<th>In progress: On hold, will look deeper at community character and potential overlays in the downtown during Growth Policy update.</th>
<th>December 2024*</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Streamline Permitting Process and Bonding Codes</td>
<td>Not started: Due to other priority projects and staff workload, this goal has not been started. This project will be delayed further to implement changes from the State Legislative Session.</td>
<td>September 2023*</td>
</tr>
<tr>
<td>7. Implement Highway 93 S Corridor Plan</td>
<td>In progress: WB-T zone adopted by City Council and in effect March 22nd. Updated landscaping and WB-2 changes going to Planning Board on April 20th.</td>
<td>Ongoing</td>
</tr>
<tr>
<td>6. Affordable Housing Plan Implementation</td>
<td>In progress: Whitefish Community Housing Committee appointed and meeting once a month. Committee will be responsible for the development of a Community Development and Financing Plan as no responses were received from the request for qualifications. New Housing Coordinator Luke Sponable starts in July 2023.</td>
<td>Ongoing</td>
</tr>
<tr>
<td>7. Implement Parking Plan for Downtown</td>
<td>In progress: Committee recommended the City Council direct staff to survey permit holders annually to improve the program, as well as to create an additional committee to further implement the Plan.</td>
<td>Ongoing</td>
</tr>
<tr>
<td>8. Historic Preservation Plan</td>
<td>In progress: Existing conditions analysis is adding a layer to the GIS of the ages of all buildings in Whitefish to help identify historic areas. It includes all buildings over 100 years old.</td>
<td>Long-term</td>
</tr>
</tbody>
</table>

**Police Department**

<table>
<thead>
<tr>
<th>1. Explore Creation of a Deer Management Plan</th>
<th>In progress: 1. Completed a deer evaluation for the residential area North of the viaduct which is pending analysis with FWP Biologist.</th>
<th>December 2023*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Plan for Proactive Policing and Adequate Staffing Levels</td>
<td>In progress: Currently at 17 full-time employees with one scheduled to start training on March 27th and one scheduled to complete training April 4th. We are currently advertising to hire for our vacancy. Hiring is difficult due to cost of living in the Flathead and we need to be competitive with neighboring departments. An additional School Resource Officer has been requested for the FY24 budget.</td>
<td>Ongoing</td>
</tr>
</tbody>
</table>

**Public Works Department**

<table>
<thead>
<tr>
<th>1. City Transportation Plan Update</th>
<th>Completed: The City Council adopted the updated Transportation Plan in the second quarter on October 17th.</th>
<th>Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Edgewood and Texas Resort Tax Street Reconstruction Project</td>
<td>In progress: No work completed during winter shutdown. Work is expected to resume in late April and final project completion anticipated in May.</td>
<td>May 2023*</td>
</tr>
<tr>
<td>Project Description</td>
<td>Status</td>
<td>Completion Date</td>
</tr>
<tr>
<td>---------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>3. Spokane Avenue Water Main Replacement</td>
<td>In progress: Work resumed on March 20th and will continue through to completion. During the first two weeks of Phase 2 construction Sandry was able to complete the water service connections in the 500 block of Spokane Avenue and extend the main north to the E. 4th Street. Anticipate project completion in late May after which MDT will resurface the roadway from E. 2nd St. to E. 13th St. during evening hours.</td>
<td>June 2023</td>
</tr>
<tr>
<td>4. Birch Point Quiet Zone</td>
<td>In progress: Comments were received from MDT and BNSF on preliminary plan set. Awaiting preliminary cost estimate from RailPros, who is the construction consultant for BNSF. Once we receive the cost estimate we will be able to determine the City-share of construction costs to accurately budget for construction in FY24. A placeholder of $300,000 is currently included in the FY24 budget.</td>
<td>November 2023</td>
</tr>
<tr>
<td>5. Resort Tax Street Reconstruction Project</td>
<td>In progress: Completed RFP to select an engineer for the Karrow Avenue Reconstruction Project and awarded the work to Robert, Peccia, and Associates. Finalizing scope of their contract with the anticipation of proceeding with survey and preliminary design next quarter.</td>
<td>November 2023</td>
</tr>
</tbody>
</table>
| 6. Increase Water Capacity                              | In progress: Continued work on Spokane Avenue Watermain. Anticipate project completion in late May.  
Began meeting with AE2S on the design of the South Whitefish Water Tank. Project costs have nearly doubled since 2018 when the initial estimate was included in the CIP. We are currently using a value of $13M in the CIP and Impact Fee study. | Ongoing         |
| 7. Improve Recycling Efforts and Opportunities           | In progress: Bear cart delivery is mostly complete. Continuing to work through compliance issues such as overflowing containers, carts left in the right of way, alley service, etc. Working on a joint press release with FWP and Republic Services to better educate the public on the new requirements. | Ongoing         |
| 8. Climate Action Plan Implementation                    | In progress: Finalized agreement between City and FEC for Community Solar Project. Project RFP was issued by Flathead Electric. Uncertain of construction schedule at this time. | Ongoing         |
| 9. Viaduct Improvements | In progress: At the work session on 3/6/2023 staff and the City Council heard from WGM that there could be a possibility of simply moving the existing barriers. This was based on an email from an MDT staff member just a few hours before the work session. Unfortunately, that opportunity has since been squashed and MDT is back to requiring the barriers be upgraded if they are moved. We are currently looking at a variety of different aesthetic improvements built into the forms for the jersey barriers and anticipate bringing this back to the City Council in June or July. | Ongoing |

*Completion date extended from original estimate*
The following pages were handed out at the City Council meeting the night of the meeting. They are included here as an addendum to the packet.
City of Whitefish Planning and Building

Landscape Code Update
Background

- The last time any revisions occurred to this chapter was in 2008.
- Updates to the landscape code have been discussed by Council since at least 2017 and were subsequently listed as a 2022 City Council Goal.
- What is being proposed is a significant change from the existing code.
Process

- Staff reviewed the landscaping regulations for seven Montana municipalities, six cities in the northwest, five city and county governments in Colorado, and several other cities with robust landscape regulations.

- Staff reviewed the existing regulations, reconstructed and rewrote them, and had 5 internal meetings with various departments (including Parks and Recreation and Public Works).

- Staff then sent the draft to 12 landscape firms familiar with the City of Whitefish and Montana flora for review and comment.

- Staff brought this to the Planning Board and City Council during Work Sessions in February of this year.
Summary of Changes

- The Code was completely rearranged to make it flow and read more logically.
- Basic landscaping requirements were reorganized into tables at the front so they could be accessed more easily.

<table>
<thead>
<tr>
<th>Parking Lot Landscape Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicability</strong></td>
</tr>
<tr>
<td>Applies to all uncovered parking lots of over five (5) parking spaces, including vehicle sales or service areas.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Minimum required landscaping percentage</th>
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<tbody>
<tr>
<td>Ten Percent (10%) of the total area of parking lot and drive aisles must be landscaped as measured around the perimeter of all parking spaces and maneuvering areas. Interior parking islands, parking lot perimeters and parking lot-side building perimeter landscaping may be calculated in this percentage.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Parking Lot Perimeter</th>
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</thead>
<tbody>
<tr>
<td>A minimum five-foot (5') wide landscape strip must be provided along the perimeter of parking, loading, or other paved vehicular use areas, including drive aisles, vehicle sales areas, and vehicle storage areas. Two feet (2') must be added to the width of any required landscape area when curb stops are not used and a car bumper hangs over the landscaped area.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Parking lots adjacent to right-of-way:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A ten foot (10') wide landscape screen must be installed along any parking lot perimeter adjacent to right-of-way. The screen shall consist of planting materials and manmade features to create at minimum a three foot (3') high visual relief screen in the form of hedges, planter boxes, berms, dividers, shrubbery or trees, or a combination of the above.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Parking lots abutting residential use.</th>
</tr>
</thead>
<tbody>
<tr>
<td>See residential buffer requirements in Section 11-4-3A-1-F.</td>
</tr>
</tbody>
</table>
Summary of Changes

- New landscape requirements apply to everything except single family detached, whereas the current code exempts single family detached, duplexes and triplexes.
- New requirements for residential buffers, street frontages and internal parking lot islands.
- Added 30 buffer along US 93 S, south of 13th as recommended per corridor plan.
- Details regarding what is required for a landscape plan.
- Descriptions and requirements for a percentage of landscaping to be drought tolerant and native to Montana.
- Landscape requirements based on new standards (lengths of frontages, sizes of parking lots, etc)
- Moving existing landscape requirements in other areas of the Code into this new chapter. Some of the existing sections where these requirements are located include:
  - 11-6: Off Street Parking and Loading
  - 11-3-42: Multifamily Standards
  - 11-3-43: Mixed-Use And Non-Residential Building Development Standards
  - Incorporating standards presently specific to zoning districts such as WB-2, WB-3, WRB-1, and WRB-2.
Tree Preservation

- Existing Code has minimum tree density requirements with difficult tables, numbers and calculations.
- Staff preferred a simpler approach and reviewed tree preservation requirements from more than 20 municipalities.
- New requirements identify evergreen trees with calipers >12", deciduous trees > 6" and other trees determined as significant by Zoning Administrator as “qualifying trees”
- Each qualifying tree removed must be replaced with trees totaling at least two times the caliper inches as was lost.
- Each existing preserved qualifying tree shall be credited as two trees toward satisfying landscape requirements.
- There is an allowance for "relief" from this requirement (particularly for heavily forested lots).
Required Code Revisions

- As mentioned, because the new landscape code includes merging existing requirements from other sections, if some or all the new code is implemented, other sections should be updated accordingly.
- The majority of this includes deleting landscape requirements from other code sections because they are being moved into this new chapter.
- Some code sections will just have references to this new section.
- Subsequently, this landscape code update is accompanied by all associated sections as well.
Planning Board and City Council

- Staff brought this proposed regulatory update to the Planning Board and City Council during Work Sessions in February. Overall, both were supportive of the new regulation, and had the following comments:
  - Questions about how tree valuation would be determined.
  - Were supportive of the tree preservation but believed there should be some exemptions for fire mitigation.
  - A Councilperson suggested there should be additional clarification regarding what is an acceptable root barrier.
  - A Councilperson directed staff to make a revision to the residential buffer standards to require a residential buffer to have a 50% visual screen of at least 5 feet at height.
  - A citizen remarked at the City Council work session that the requirement for at least 50% of required plant species being native to Montana could be difficult to meet due to availability.
  - A citizen remarked at the City Council that perhaps there should be a footnote indicating how much a tree replacement would cost.
Staff Responses

- Staff added additional clarification regarding acceptable root barriers.
- Species requirement were revised to allow cultivars of a native species.
- Staff did not add footnote regarding costs because replacement costs can vary so much depending on supply and demand.
- Staff also revised the building perimeter requirement to require landscaping along building frontages.
- Staff made revisions to the tree retention requirements.
  - Previous version required Zoning Administrator approval similar to a variance when tree retention was not feasible. This could have been a very cumbersome requirement.
  - New requirement recognizes tree removal is sometimes necessary.
  - Requires indication on the landscape plan of which trees must be removed or cannot be replaced and why it is impractical.
Planning Board

- Staff brought this proposed landscaping code back to the Planning Board at an April 20, 2023 public hearing.

- The Planning Board only had a few general questions regarding the process, how relief could occur from the tree retention standards and what safeguards there were to keep applicants from using fire mitigation as an excuse to not retain or replace trees.

- The Planning Board unanimously recommended approval of this landscaping code to the City Council.
Recommendation

- Staff recommends that the City Council approve the proposed changes amending Section 11-4, Landscaping Requirements, Chapter 3 Section 11-3-42 Multifamily Development Standards, Section 11-3-43 Mixed Use and Non-Residential Building Standards, Section 11-2 Article K, WB-2 Secondary Business District, Article N, WRR-1 Low Density, Article O, WRR-2 Medium Density Resort Residential, Article P, WRB-1 Limited Resort Business District, Article Q, WRB-2 General Resort Business District, and Chapter 6, Off-Street Parking and Loading.
Comments / Questions?
Mayor Muhlfeld and Council,

The current landscaping ordinance is about 1,700 words, the proposed ordinance is about 4,300, and has the feel of subdivision covenants, not a municipal policy. In a subdivision the owner of property designs its features. In an ordinance, a government unit mandates what owners must do with their property as a condition to development. As a political matter, it feels like more government control (what types of trees, what size of trees, what percentages and sizes of plant species, what kind of lawn furniture) than I think is desirable, and will likely result in driving up the cost of workforce housing. An additional concern is that according to the FP Development case attached, the US Court of Appeals for the Sixth Circuit recently held that a local government’s tree-retention or tree management policy may well be a fifth amendment “taking” entitling a property owner to compensation.

I think the proposal is very unclear as to the scope of a zoning administrator’s discretion under 11-4-9(B). How does the administrator apply the highlighted standards?

B. Deviation from Landscaping Standards. The Zoning Administrator may approve exceptions to the regulations when all of the following are met: 1. The applicant can document that meeting the requirements would cause undue hardship due to pre-existing conditions on site, such as existing location of structures or vegetation. 2. The deviation from the standards meets the landscape requirements to the highest degree possible and is the minimum variation needed. 3. The applicant proposes an equal or better result than that which could be achieved by strictly following the requirements of this chapter.

Can a zoning administrator consider the economic impact on a proposed development as an “undue hardship”? The impact on affordable workforce housing?

What do the phrases “highest degree possible” and “minimum variation needed” mean in real terms? What “result” is “equal or better” than the landscaping requirements? Is a result that creates more workforce housing at affordable rates an “equal or better” result?

There is a lot of room for subjectivity in an administrator’s exercise of discretion on essentially aesthetic concerns expressed in public health and safety terms.

A constructive suggestion is to re-think landscaping requirements by creating a system of regulation that is truly necessary and easier to live with (the proposed regulation involves too much micro-management), explicitly takes into account (to a greater degree than this ordinance) other values such as housing affordability, and has minimum possible economic impacts while achieving some clearly identified social goals (not throwing in the “kitchen sink” like 11-4-1), and not allowing deviations. **The goal should be to design an ordinance that doesn’t create “undue hardships” in the first place.**

I realize that there has been significant work on this proposed ordinance. Some of it, for example elimination of some of the setback requirements contained in 11-2K-4, is positive. But the Council needs to distinguish between planning appropriate for publicly owned property and requirements imposed on the development of private property, especially
because the impact of these requirements will be borne by developers of multi-unit dwellings on which the future of affordable housing in Whitefish increasingly rests. The unfortunate consequence will be to push development outside the boundaries of the Whitefish zoning and planning jurisdiction and predictably increasing vehicle traffic into and out of the city.

Please make these comments a part of tonight’s record. Thank you.

Jim Ramlow
Whitefish, MT  59937
Fax

Synopsis

Background: Landowner brought § 1983 action against township, seeking declaratory relief and alleging township ordinance, requiring permits and payment of fees for removal of certain trees, was an unlawful taking in violation of Fifth Amendment, an unconstitutional seizure in violation of Fourth Amendment, and an excessive fine in violation of Eighth Amendment. The United States District Court for the Eastern District of Michigan, George Caram Steeh, Senior District Judge, 456 F.Supp.3d 879, granted summary judgment in favor of landowner on the takings claim, and granted summary judgment in favor of township on remaining claims. Parties cross-appealed.

Holdings: The Court of Appeals, Bush, Circuit Judge, held that:

[1] action was not barred by prudential ripeness doctrine;

[2] tree removal ordinance violated landowner's right to just compensation under Takings Clause;

[3] ordinance did not violate landowner's Fourth Amendment rights; and


Affirmed.

West Headnotes (19)

[1] Federal Courts ➔ Summary judgment


1 Case that cites this headnote
Summary Judgment Favoring nonmovant; disfavoring movant
A court deciding a motion for summary judgment construes the evidence and draws all reasonable inferences in favor of the nonmoving party. Fed. R. Civ. P. 56(a).

Federal Courts Ripeness; Prematurity
Doctrine of ripeness prevents courts from deciding cases or controversies prematurely. U.S. Const. art. 3, § 2, cl. 1.

Federal Courts Ripeness; Prematurity
Federal Courts Prudential concerns
Doctrine of ripeness is drawn both from Article III limitations on judicial power and from prudential concerns. U.S. Const. art. 3, § 2, cl. 1.

Federal Courts Ripeness; Prematurity
Federal Courts Prudential concerns
Issues of ripeness rooted in Article III are jurisdictional; those based on prudence are not. U.S. Const. art. 3, § 2, cl. 1.

Federal Courts Waiver of Error in Appellate Court
Amici's argument on appeal that landowners' as-applied constitutional challenge to township ordinance, prohibiting removal of certain trees, was not prudentially ripe for adjudication, was forfeited on appeal, where township itself did not raise such arguments on appeal.

Federal Courts Governments and political subdivisions
Court of Appeals would not apply the doctrine of prudential ripeness sua sponte to bar adjudication of landowner's constitutional challenge to township ordinance, prohibiting removal of certain trees, where landowner had Article III standing, and the status of the prudential ripeness doctrine was uncertain. U.S. Const. art. 3, § 2, cl. 1.

Eminent Domain What Constitutes a Taking; Police and Other Powers Distinguished
The rights guaranteed by the Takings Clause of the Fifth Amendment, as applied to the states through the Fourteenth Amendment, limit all regulations of private property that go too far. U.S. Const. Amends. 5, 14.

Constitutional Law Denial of benefits as constitutional violation
Under the “unconstitutional-conditions doctrine,” government may not deny benefit to person because he exercises constitutional right; the doctrine vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up.
[10] Eminent Domain ⇐ Exactions and conditions

Township's tree ordinance, requiring permit and imposing replacement and replanting costs on landowners for removal of certain trees, placed unconstitutional condition on landowner's exercise of Fifth Amendment right to just compensation for taking; economic impact on landowner was substantial, as ordinance conditioned granting of permit for tree removal on landowner's payment of thousands of dollars, and there was no showing that payment was roughly proportional to account for environmental degradation in the area or that township made necessary individualized determination of costs. U.S. Const. Amend. 5.

2 Cases that cite this headnote


In determining whether degree of exactions demanded by local government's permit conditions bears required relationship to projected impact of proposed land use or development, required relationship does not have to be exacting, but it cannot be generalized, in order to survive a Fifth Amendment Takings Clause challenge; it must be roughly proportional. U.S. Const. Amend. 5.

1 Case that cites this headnote

[12] Eminent Domain ⇐ Exactions and conditions

In determining whether the degree of exactions demanded by a local government's permit conditions bears the required relationship to the projected impact of proposed development or land use, for purpose of a Fifth Amendment Takings Clause claim, no precise mathematical calculation is required, but the local government must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development or land use. U.S. Const. Amend. 5.

2 Cases that cite this headnote

[1] Searches and Seizures ⇐ What Constitutes Search or Seizure

A “seizure” of property, under the Fourth Amendment, occurs when there is some meaningful interference with an individual's possessory interests in that property. U.S. Const. Amend. 4.

[14] Searches and Seizures ⇐ What Constitutes Search or Seizure

Township's tree removal ordinance, requiring permit and imposing replacement and replanting costs on landowners for removal of certain trees, did not cause unreasonable “seizure” in violation of Fourth Amendment; ordinance did not enable township to take possession of landowner's trees, and did not meaningfully interfere with landowner's possession of or control over its trees. U.S. Const. Amend. 4.

1 Case that cites this headnote

[15] Fines ⇐ Excessive fines

The Excessive Fines Clause of the Eighth Amendment limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense. U.S. Const. Amend. 8.

2 Cases that cite this headnote

[[ Fines ⇆ Excessive fines

The Eighth Amendment's Excessive Fines Clause guards only against abuses of the government's punitive or criminal-law-enforcement authority. U.S. Const. Amend. 8.

1 Case that cites this headnote

[17] Fines ⇆ Excessive fines

A monetary demand that is retributive or deterrent and thus intended to punish, even in part, is subject to limitations of the Eighth Amendment's Excessive Fines Clause. U.S. Const. Amend. 8.

3 Cases that cite this headnote

[18] Fines ⇆ Excessive fines

A monetary demand that is related only to damages sustained by society or to the cost of enforcing the law, and thus wholly remedial, is not subject to limitations of the Eighth Amendment's Excessive Fines Clause. U.S. Const. Amend. 8.

1 Case that cites this headnote

[19] Fines ⇆ Excessive fines

Municipal Corporations ⇆ Fines and Penalties and Civil Actions or Proceedings Therefor

Township's tree ordinance, requiring permit and imposing replacement and replanting costs on landowners for removal of certain trees, did not implicate Excessive Fines Clause of the Eighth Amendment; ordinance was designed to remedy harm of tree removal and purported to estimate monetary demands based on costs township expected to incur in replacing trees, so that it was remedial, not punitive. U.S. Const. Amend. 8.

3 Cases that cite this headnote


Attorneys and Law Firms

Before: COLE, BUSH, and NALBANDIAN, Circuit Judges.

OPINION

JOHN K. BUSH, Circuit Judge.

American history teems with stories and myths of trees. Johnny Appleseed's apple trees and George Washington's cherry tree are but a few of those timber tales that inspire and teach. Whether to plant or cut down a tree can be, for better or worse, an individual choice. But sometimes the government gets involved. For example, it can reward those who plant, see, e.g., Timber Culture Act of 1873, ch. 277, 17 Stat. 605 (granting additional land to homesteaders who planted seedlings), or compensate for land taken to conserve, see, e.g., Migratory Bird Conservation Act of 1929, 16 U.S.C. § 715 et seq. Those "carrot" measures serve to further the public interest in tree cultivation and management while compensating private parties for their property and efforts.

Here, however, the government used what F.P. Development portrays as the "stick" approach. Intending to help preserve its greenery, the Charter Township of Canton, Michigan, passed an ordinance that prohibits F.P. from removing certain trees on its land without a permit and requires F.P. to mitigate the removal. F.P. challenges the regulation, claiming that it constitutes a taking of its property without just compensation, an unreasonable seizure, and an excessive fine. The district court granted summary judgment to F.P. on the takings claim and to Canton on the others. We affirm.

I.

Around July 2006, Canton passed an ordinance, which the parties refer to as the Tree Ordinance, addressing forest preservation and tree clearing. The township's aim was to improve its community and protect its natural resources. Accordingly, the Tree Ordinance requires tree owners in Canton to get a permit before removing certain trees or undergrowth from their properties. Specifically, the ordinance deals with four categories of tree-related clearing. It prohibits the unpermitted removal, damage, or destruction of (1) any tree with a diameter at breast height of six inches or greater, (2) any landmark or historic tree, (3) any tree located within a forest and with a diameter at breast height of three inches or more, and (4) any under-canopy vegetation within the dripline of a forest. There are, however, numerous exceptions. For example, agricultural and farming operations, commercial nurseries, tree farms, and occupied lots of fewer than two acres are not subject to the permitting requirement.

The unlucky tree owner who does not fall into one of those exceptions has to submit a tree-removal-permit application to Canton before commissioning an arborist. Among other requirements, the application must describe the area affected by the tree removal, each tree to be removed and its location, and what the affected area will look like after the proposed removal. The ordinance also lists review procedures and standards that Canton must follow when reviewing applications. Those procedures require the township to evaluate the effect of the proposed development on the quality of the surrounding area.

If Canton issues a permit, a tree owner must agree to mitigate the tree removal. The Tree Ordinance lists three standardized mitigation options: a tree owner can replace removed trees on its own property, replace them on someone else's property, or pay a designated amount into Canton's tree fund so the township can replace them elsewhere. For every landmark tree cut down, a tree owner must replant three trees or pay about $450 into the tree fund. For every non-landmark tree cut down as part of a larger-scale tree removal, a tree owner must replant one tree or pay about $300 into the tree fund. If a tree owner fails to comply with those requirements, Canton sends a notice of violation and requires that the tree owner submit a permit application or face an enforcement lawsuit.
F.P. Development, a real-estate holding company owned by Martin F. Powelson, is one of those non-complying tree owners. In 2007, F.P. purchased a 62-acre parcel of undeveloped land from Canton for $550,000. The plan was to use the land to expand Powelson's traffic-control sign business, POCO, which occupied the lot adjacent to the 62-acre parcel. F.P. left the land undeveloped until 2016, when it filed a property split application with Canton, requesting permission to split 44 acres of the property roughly in two: a 28-acre plot for F.P. to keep and a 16-acre plot to sell. Canton tentatively approved the separation and noted that any development involving tree removal would require the proper permitting. By 2017, F.P. completed the split.

But, unfortunately for F.P., the two parcels were bisected by a county drainage ditch that had become clogged with fallen trees and other debris. After the county refused to clear the ditch, F.P. contracted with a timber company to remove the trees and debris and to clear several other trees from the property. As to that removal, F.P. did not apply for or receive a permit. Nor did it receive permission from Canton to proceed without a permit.

Soon after, someone tipped off Canton's Landscape Architect and Planner to F.P.'s unpermitted tree removal. The township investigated and confirmed the tip. It then posted a “Stop Work” order on F.P.'s property and issued a “Notice of Violation.” The notice made clear that a survey of the property was required to determine the number and species of trees removed so that Canton could enforce the Tree Ordinance.

From that survey, Canton determined that F.P. had removed 159 trees—14 landmark trees and 145 non-landmark trees. To comply with the ordinance, F.P. had to either replant 187 trees (three for every landmark tree removed and one for every non-landmark tree) on its or another's property or deposit $47,898 into Canton's tree fund.

F.P. chose neither option. Instead, it filed a lawsuit, seeking declaratory and injunctive relief under 42 U.S.C. § 1983. It claimed that Canton's Tree Ordinance constituted (1) a facial and as-applied unconstitutional taking, in violation of the Fifth and Fourteenth Amendments; (2) an unreasonable seizure, in violation of the Fourth and Fourteenth Amendments; and (3) an excessive fine, in violation of the Eighth and Fourteenth Amendments. The Township filed a counterclaim seeking $47,898 in damages.

After several months of discovery, F.P. moved for summary judgment. Canton moved to dismiss the case on ripeness grounds, for judgment on the pleadings, or for summary judgment in its favor. The district court denied Canton's motion to dismiss on ripeness grounds. The court then granted F.P.'s summary judgment on its as-applied Fifth Amendment claim. It reasoned that although the ordinance, as applied to F.P., was not unconstitutional as a per se physical taking, it was unconstitutional as a regulatory taking and as an unconstitutional condition. The court did not decide F.P.'s facial challenge. Finally, the court granted Canton summary judgment on F.P.'s Fourth and Eighth Amendment claims. Both parties appeal.

II.

[1] [2] We review a district court's decision on summary judgment de novo. Jackson v. City of Cleveland, 925 F.3d 793, 806 (6th Cir. 2019). Summary judgment is appropriate when there is “no genuine dispute as to any material fact” and the moving party “is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). We construe the evidence and draw all reasonable inferences in favor of the nonmoving party. Jackson, 925 F.3d at 806.

III.

A. Ripeness

[3] [4] [5] We begin with the questions about our jurisdiction. The doctrine of ripeness prevents courts from deciding cases or controversies prematurely. See Nat'l Park Hosp. Ass'n v. Dep't of Interior, 538 U.S. 803, 807–08, 123 S.Ct. 2026, 155 L.Ed.2d 1017 (2003). It is “drawn both from Article III limitations on judicial power and from prudential” concerns. Id. at 808, 123

Amici Michigan Township Association and Michigan Municipal League argue on appeal that F.P. ’s as-applied challenge to the Canton Tree Ordinance is not ripe for review, citing prudential ripeness concerns. But Canton did not raise those concerns in its briefing before us. So the argument is forfeited. See Self-Ins. Inst. of Am., Inc. v. Snyder, 761 F.3d 631, 641 (6th Cir. 2014) (“[W]hile an amicus may offer assistance in resolving issues properly before a court, it may not raise additional issues or arguments not raised by the parties.” (quoting Cellnet Commc'ns Inc. v. FCC, 149 F.3d 429, 443 (6th Cir. 1998))); see also Stolt-Nielsen, 559 U.S. at 670 n.2, 130 S.Ct. 1758 (holding that a prudential ripeness argument was waived).

What's more, “we do not think it prudent to apply” the doctrine of prudential ripeness sua sponte here. F.P. has standing under Article III, and the status of the prudential ripeness doctrine is uncertain. See Lucas, 505 U.S. at 1013, 112 S.Ct. 2886; see also, e.g., Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 125–27, 134 S.Ct. 1377, 188 L.Ed.2d 392 (2014) (questioning the vitality of the doctrine of prudential ripeness); Miller v. City of Wickliffe, 852 F.3d 497, 503 & n.2 (6th Cir. 2017) (declining to address prudential ripeness because plaintiff lacked standing under Article III and because of the questioned vitality of the doctrine). We thus proceed to the merits.

B. Taking Without Just Compensation

F.P. ’s first claim is that Canton's Tree Ordinance constitutes a taking of its trees in violation of the Takings Clause of the Fifth Amendment, as incorporated by the Fourteenth Amendment. The Takings Clause states that “private property” shall not “be taken for public use, without just compensation.” U.S. Const. amend. V. In F.P. ’s view, Canton's Ordinance violates that prohibition in three ways: the ordinance imposes (1) a per se taking under Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) and Horne v. Department of Agriculture, 576 U.S. 350, 135 S.Ct. 2419, 192 L.Ed.2d 388 (2015); (2) a regulatory taking under Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978); and (3) an unconstitutional condition under Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), and Koontz v. St. Johns River Water Management District, 570 U.S. 595, 604, 133 S.Ct. 2586, 186 L.Ed.2d 697 (2013). For reasons discussed below, we agree with F.P. that the ordinance violates the Fifth Amendment, through the Fourteenth Amendment, based on the unconstitutional-conditions doctrine, so we need not consider the other two theories for relief. See Brown v. Stored Value Cards, Inc., 953 F.3d 567, 575 n.6 (9th Cir. 2020); Philip Morris, Inc. v. Harshbarger, 159 F.3d 670, 674 n.4 (1st Cir. 1998). Before addressing pertinent legal issues below, however, we provide some background on what began as a highly contentious subject in American history.

I. Historical Background

On April 13, 1772, almost two years before the Boston Tea Party, and three years before an American Patriot fired the shot heard 'round the world, a group of colonists revolted against the Crown's longstanding Pine Tree Act. The act prohibited colonists from cutting down white pine trees on their own land without first obtaining a royal license and subjected violators to fines that grew with the size of the tree felled. See An Act Giving Further Encouragement for the Importation of Naval Stores, and for the Purposes Therein Mentioned, 1721, 5 Geo I., c. 12 (Eng.). The colonists ignored the act, and a large group of disgruntled tree owners captured the British representatives, beat them with switches (one lashing for every tree the Crown claimed), maimed and shaved their horses, and ran them out of town. See William Little, History of Weare, New Hampshire 1735–1888, 189 (S.W. Huse & Co., 1888).
F.P. suggests that the Founders adopted and ratified the Takings Clause of the Fifth Amendment, in part, to prevent the type of tree restrictions imposed by both the British Crown and the Township of Canton. It is true that “[t]he Founders recognized that the protection of private property [would be] indispensable to the promotion of individual freedom.” Cedar Point Nursery v. Hassid, — U.S. ——, 141 S. Ct. 2063, 2071, 210 L.Ed.2d 369 (2021). So, as part of the Bill of Rights, they included the Takings Clause in the Fifth Amendment. But that constitutional guarantee does not, as a matter of original meaning, obviously invalidate Canton’s property regulation.

Indeed, history presents a more complicated picture of land-use regulation in the Founding Era than F.P. suggests. The Takings Clause may not have even extended to regulations of private property like the one at issue in this case. See id. at 2071 (noting that the Takings Clause was originally “limited to physical appropriations of property”). In fact, despite the early colonists’ frustration with the Crown's Pine Tree Act, general land regulation was commonplace in colonial America. See Act of May 12, 1724, 7 The Public Records of the Colony of Connecticut 10 (Charles J. Hoadly ed., Hartford, Conn. Cass, Lockwood & Brainard Co. 1876) (requiring removal of barberry bushes to prevent wheat blight). Indeed, the author of the Takings Clause, James Madison, seemed to view the constitutional text as limiting only the government's power to take property physically for public use. See James Madison, Property, Nat'l Gazette, Mar. 27, 1792, in 14 The Papers of James Madison, 266–68 (Robert A. Rutland et al. eds., 1983) (invoking the Takings Clause and distinguishing between “direct” and “indirect[ ]” violations of property). Madison's interpretation finds support in common law and statutes that allowed certain government land-use regulations without requiring compensation to other land owners. See 1 Blackstone's Commentaries editor's app., 305–06 (St. George Tucker ed., Philadelphia, Birch & Small 1803).

Of course, questions abound regarding whether the ratification of the Fourteenth Amendment placed greater limits on state-government regulation of private property than did the Fifth Amendment. See, e.g., Murr v. Wisconsin, — U.S. ——, 137 S. Ct. 1933, 1957, 198 L.Ed.2d 497 (2017) (Thomas, J. dissenting). But, as a court of middle management, we have no occasion or authority to answer those questions here. Regardless, the Supreme Court made clear in 1922 that the rights guaranteed by the Takings Clause of the Fifth Amendment, as applied to the states through the Fourteenth Amendment, limit all regulations of private property that go “too far.” See Penn. Coal Co. v. Mahon, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922). And later, the Court held that certain permitting schemes should be subject to analysis under the unconstitutional-conditions doctrine. See Nollan, 483 U.S. at 835–37, 107 S.Ct. 3141; Dolan, 512 U.S. at 386–88, 114 S.Ct. 2309; Koontz, 570 U.S. at 604, 133 S.Ct. 2586. Our analysis begins and ends there.

2. Unconstitutional Conditions

Under the unconstitutional-conditions doctrine, “the government may not deny a benefit to a person because he exercises a constitutional right.” Koontz, 570 U.S. at 604, 133 S.Ct. 2586 (quoting Regan v. Taxation with Representation of Wash., 461 U.S. 540, 545, 103 S.Ct. 1997, 76 L.Ed.2d 129 (1983)). In practice, the doctrine “vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up.” Id.

F.P. argues that Canton’s Tree Ordinance places an unconstitutional condition on its Fifth Amendment rights by coercing it into giving up its right to just compensation for the township’s taking of trees in exchange for a permit. As noted, F.P. points to Nollan, Dolan, and Koontz for support.

Those cases “‘involve a special application’ of” the unconstitutional-conditions doctrine “that protects the Fifth Amendment right to just compensation” when the government demands property in exchange for land-use permits. Koontz, 570 U.S. at 604, 133 S.Ct. 2586 (quoting Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 547, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005)). In particular, they hold that “the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.” Id. at 606, 133 S.Ct. 2586.
There is an interesting question whether Canton's application of the Tree Ordinance to F.P. falls into the category of government action covered by Nollan, Dolan, and Koontz. But the parties do not raise it. And we decline to do so on our own accord. So we proceed, as the parties request, and apply the essential nexus and rough proportionality test provided in those cases.

3. Essential Nexus and Rough Proportionality

The parties agree that there is an “essential nexus” between Canton's “legitimate” interest in forest and natural resource preservation and the permit conditions. See Dolan, 512 U.S. at 386, 114 S.Ct. 2309. Therefore, we need only address the “rough proportionality” prong of Nollan and Dolan.

That prong “requires us to determine whether the degree of the exactions demanded by the [township's] permit conditions bears the required relationship to the projected impact of [F.P.'s] proposed development.” Dolan, 512 U.S. at 388, 114 S.Ct. 2309. The “required relationship” does not have to be “exacting,” but it cannot be “generalized.” Id. at 389–90, 114 S.Ct. 2309. It must be “rough[ly] proportional[ ].” Id. at 391, 114 S.Ct. 2309. Of course, “[n]o precise mathematical calculation is required, but the [township] must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.”

Canton fails to carry its burden to show that it made the required individualized determination. Under the Tree Ordinance, F.P. must replant one tree for every non-landmark tree removed and three trees for every felled landmark tree. The township also requires F.P. to bear the associated costs, whether F.P. does the replanting and relocation itself or outsources the task to the township. Of course, Canton's mitigation options could offset F.P.'s tree removal, and they arguably involve some individualized assessment given that Canton must determine the number and type of trees cut. But Dolan requires more.

In Dolan, the government argued that its exaction of an easement for a bicycle pathway was necessary to reduce traffic congestion that the property owner's proposed development might cause. 512 U.S. at 395, 114 S.Ct. 2309. The Court held that the government's assertion that the conditioned path “could offset some of the traffic demand” is a far cry from a finding that the bicycle pathway system will, or is likely to, offset some of the traffic demand.” Id. (quoting Dolan v. City of Tigard, 317 Or. 110, 854 P.2d 437, 447 (1993) (en banc) (Peterson, J., dissenting)). Here, the township provides us with little information about its replacement or relocation requirements. Like the government in Dolan, it seems to assume that its mitigation requirements are appropriate. And the information it presents concerning the amount of money F.P. must spend to satisfy those requirements is based on tree replacement costs calculated fifteen years ago, in 2006. That limited and arguably stale information does not suffice.

*207 Canton has pointed to nothing indicating, for example, that F.P.'s tree removal affects a certain level of environmental degradation on the surrounding area. Nor does it demonstrate whether it considered that F.P.'s clearing of the clogged ditch on its property or its removal of dead trees may have improved the surrounding environment. The only evidence on that point suggests that even if F.P. offset its tree removal in a manner not contemplated by the township, Canton would still demand its pre-set mitigation. At bottom, Canton's support fails to get it over the bar set by Nollan and Dolan. See id. at 395–96, 114 S.Ct. 2309 (noting that “the city must make some effort to quantify its findings in support” of its exactions); see also Goss v. City of Little Rock, 151 F.3d 861, 863 (8th Cir. 1998) (holding that local traffic mitigation requirements did not satisfy Dolan’s rough-proportionality test because they were based on pre-set assumptions, rather than an individualized impact assessment).

That a representative from Canton went to F.P.’s property to count and categorize the trees F.P. cut down does not alter our conclusion. And the “individualized assessment” that Canton points to in the ordinance relates to the initial review of a permit application, not to the proportionality of the mitigation requirements. See Canton Code of Ordinances Art. § 5A.05(F). According to Canton's own representative, F.P.'s removal of regulated trees triggers the mitigation requirements, regardless of the specific impact caused by their removal. Canton has not made the necessary individualized determination here.
Finally, our conclusion accords with analogous decisions handed down by state courts. See *Dolan*, 512 U.S. at 389, 114 S.Ct. 2309 (recognizing the importance of state court decisions in this context given that they have dealt with the question “a good deal longer than we have”).

For example, in *Mira Mar Development Corp. v. City of Coppell*, a state court in Texas similarly concluded that the government's lack of evidence sank its ability to demonstrate rough proportionality. 421 S.W.3d 74, 95–96 (Tex. Ct. App. 2013). There, a property owner applied to the City of Coppell for a development permit. *Id.* at 95. Like *Canton*, the city in part conditioned its granting of the permit on the owner's agreeing to pay thousands of dollars in “tree mitigation fees” for trees it planned to remove from its property. *Id.* The Texas court first determined that the fees were exactions subject to the nexus and rough proportionality requirements of *Nollan* and *Dolan*. *Id.* Then, it noted the government's lack of evidence to support a finding of rough proportionality: the city did “not show that the removal of trees in the development would harm the air quality, increase noise and glare, remove ecosystems, bring down property values, or reduce the other benefits of trees described in the ordinance.” *Id.* at 96. As we do here, the Texas court held that, based on the record before it, the ordinance could not meet the evidentiary bar set for rough proportionality in *Dolan*. *Id.*; see also, e.g., *Town of Flower Mound v. Stafford Estates Ltd. P'ship, 135 S.W.3d 620, 644–45 (Tex. 2004)* (holding that the Town's monetary exaction was not roughly proportional because the rationale for it was too abstract and because the town provided no real evidence of impact).

In other state court cases, like those the Supreme Court cited positively in *Koontz*, the government generally satisfies the nexus and rough proportionality test with ease by introducing some evidence relating to the “methodology and functioning” of its exactions. See, e.g., *Home Builders Ass'n of Dayton & the Miami Valley v. Beavercreek, 89 Ohio St.3d 121, 729 N.E.2d 349, 357–59 (2000)*; see also, e.g., *Sparks v. Douglas Cnty., 127 Wash.2d 901, 904 P.2d 738, 745 (1995)* (“In this case, the findings made by the County were more than mere conclusory statements of general impact.”); *Hallmark Inns & Resorts, Inc. v. City of Lake Oswego, 193 Or.App. 24, 88 P.3d 284, 291 (2004)* (same). That is not the case here. On the record before us, *Canton*'s Tree Ordinance, as applied to *F.P.*, fails rough proportionality and is thus an unconstitutional condition under *Nollan*, *Dolan*, and *Koontz*.

C. Unreasonable Seizure

*F.P.*’s next claim involves the same trees, but a different right. The Fourth Amendment, as incorporated through the Fourteenth, preserves the right of the people “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. “[F]rom the time of the founding to the present,” when speaking of property, “the word ‘seizure’ has meant a ‘taking possession.’ “ *Torres v. Madrid*, —— U.S. ———, 141 S. Ct. 989, 995, 209 L.Ed.2d 190 (2021) (quoting *California v. Hodari D.*, 499 U.S. 621, 624, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991)). So, “a ‘seizure’ of property ... occurs when ‘there is some meaningful interference with an individual’s possessory interests in that property.’ ” *Fox v. Van Oostern*, 176 F.3d 342, 350 (6th Cir. 1999) (quoting *Soldal v. Cook County*, 506 U.S. 56, 61, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992)).

*F.P.* argues that the Tree Ordinance meaningfully interferes with its possessory interest in its trees and is therefore an unreasonable seizure. But the ordinance here does not enable *Canton* to take actual possession of *F.P.*’s trees. Nor does it meaningly interfere with *F.P.*’s possession of its trees. *F.P.* was able to sell its trees to the timber company that removed them. In short, *F.P.* has full control over the trees it removes from its property. *Canton* therefore has not seized.

The most that can be said of the ordinance in this context is that it might interfere with *F.P.*’s control over some of its standing trees by limiting its ability to cut them down. But that does not mean that the ordinance should be subject to Fourth Amendment scrutiny.

The ordinance requires a permit for *F.P.*’s removal of its standing trees—real property, not located on or anywhere near a house or its curtilage. See *Kerschensteiner v. N. Mich. Land Co.*, 244 Mich. 403, 221 N.W. 322, 327 (1928) (“Standing timber is real estate. It is a part of the reality the same as the soil from which it grows.”). And the trees themselves are obviously not houses,
persons, or papers. So the trees, if they are covered by the Fourth Amendment, must be effects. But the Supreme Court has told us that real property is not an “effect” within the meaning of the Fourth Amendment. Oliver v. United States, 466 U.S. 170, 177 n.7, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984) (“The Framers would have understood the term ‘effects’ to be limited to personal, rather than real, property.”); see also Soldal, 506 U.S. at 62 n.7, 113 S.Ct. 538 (“[T]he Fourth Amendment does not protect possessory interests in all kinds of property.”). Therefore, as applied to F.P., Canton’s Tree Ordinance is not subject to the limitations of the Fourth Amendment.

D. Excessive Fine

In its final claim, F.P. looks to the Eighth Amendment. The Excessive Fines Clause of that Amendment, as applied to localities through the Fourteenth, dictates that “excessive fines” shall not be *imposed.* U.S. Const. amend. VIII. As is clear from its language, the clause “limits the government’s power to extract payments, whether in cash or in kind, ‘as punishment for some offense.’ ” Austin v. United States, 509 U.S. 602, 609–10, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993) (quoting Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 265, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989)). It guards only “against abuses of [the] government’s punitive or criminal-law-enforcement authority.” Timbs v. Indiana, — U.S. —, 139 S. Ct. 682, 686, 203 L.Ed.2d 11 (2019). So a monetary demand that is retributive or deterrent and thus intended to punish, even in part, is subject to the limitations of the Excessive Fines Clause. Austin, 509 U.S. at 621, 113 S.Ct. 2801 (quoting United States v. Ward, 448 U.S. 242, 254, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980)). But a demand that is related only to “damages sustained by society or to the cost of enforcing the law,” and thus wholly remedial, is not. Ward, 448 U.S. at 254, 100 S.Ct. 2636.

F.P. argues that the ordinance violates the Excessive Fines Clause because Canton’s demand for payment in accordance with the Tree Ordinance is punishment that is grossly disproportionate to its tree removal. But that law is designed to remedy the harm that removing trees causes, and it purports to estimate the monetary demands it makes based on the cost it expects to incur replacing them. That purpose is remedial, not punitive, so it does not implicate the Eighth Amendment.6

IV.

Canton’s Tree Ordinance, as applied to F.P., is not an unreasonable seizure or an excessive fine. But it does represent an unconstitutional taking. Accordingly, we affirm.

All Citations

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Footnotes

1 A “landmark” or “historic” tree means “any tree which stands apart from neighboring trees by size, form or species, as specified in the [township’s] landmark tree list ... or any tree, except box elder, catalpa, poplar, silver maple, tree of heaven, elm or willow, which has a [diameter at breast height] of 24 inches or more.”

2 **Canton** also has the authority to impose criminal penalties on violators in the form of a $500 fine and up to 90 days’ imprisonment.

3 **See also, e.g.,** Ordinance of Feb. 23, 1656, Laws and Ordinances of New Netherland, 1638–1674, 361, 361 (E.B. O’Callaghan, trans., Albany, N.Y.; Weed, Parsons and Co. 1868) (requiring installation of fences to support the “cultivation of the soil”); Act of Nov. 27, 1700, ch. LIII, sec. III, 2 The Statutes at Large of Pennsylvania 65, 66–67 (James T. Mitchell & Harry Flanders eds., Pa., Clarence M. Busch 1896) (requiring planting and maintenance of certain trees).

The briefing on appeal concluded before the Supreme Court issued its opinion in *Cedar Point Nursery*—the Court's most recent case involving the Takings Clause. 141 S. Ct. at 2063. But nothing in that case demands that we review F.P.'s challenge to Canton's ordinance under a per se or regulatory takings approach.

There is a form of punishment under Michigan law for F.P.'s violation of the ordinance: a $500 fine and up to 90 days' imprisonment. But Canton has not levied that fine, nor has it attempted to arrest any representative of F.P. And F.P. does not challenge either of those penalties.