CITY COUNCIL WORK SESSION
CITY COUNCIL CONFERENCE ROOM
418 EAST SECOND STREET
MONDAY, JULY 17, 2023
5:30 PM

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: xxyCxxs
Password: 225 603 770 802

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

- United States Toll Free: 833-563-1751 Access code: 378 729 57#
- 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, July 17, 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.

1) 5:30 pm Presentation on Montana Department of Transportation projects – Bob Vosen

2) 6:30 pm Discussion regarding potential pedestrian bridge located at the 95 Karrow (WF Yards) project

3) Public Comment

4) Direction to City Manager

5) Adjourn
January 3, 2018

95 Karrow llc
Casey Malmquist
335 Spokane Ave
Whitefish, MT 59937

Re: 95 Karrow; (WPP 17-04/WPUD 17-02)

Dear Mr. Malmquist:

On December 4, 2017, the Whitefish City Council approved your request for a preliminary plat subject to 29 conditions of approval, enclosed herein. The preliminary plat approved was shown on a set of plans submitted with the application dated September 18, 2017. At the January 2, 2018 meeting, the Council approved Ordinance 18-01 on a second reading for the PUD overlay. This ordinance will take effect in 30-days.

The preliminary plat is valid for a period of three years from the date of approval or until December 4, 2020.

Sincerely,

Wendy Compton-Ring, AICP
Senior Planner

C: Public Works Department
   Fire Department
   Building Department
Bruce Boody, Bruce Boody Landscape Architects 301 E 2nd Street, suite 1B
Whitefish, MT 59937
Doug Peppmeier, TD&H Engineering 450 Corporate Drive, suite 101 Kalispell, MT 59901
The Whitefish City Council approved the project subject to the following conditions of approval:

**Zoning Deviations:**

- **Setbacks.** Building 10 on Lot 10 encroaches into the required front yard at its northeasterly corner and into the side and rear yards at its southwesterly corner. Building 9 on Lot 9 encroaches into the required side and rear yards at its westerly corner. Lot 7 residential garages encroach into the rear yard.

- **Parking.** Parking and Loading within the project will be shared among all users. Required parking is calculated for the uses listed within the application.

- **Building Footprints.** Buildings 4, 5, and 6 each have footprints in excess of 3,500 square feet. Building 10 has a footprint in excess of 15,000 square feet.

- **Conditional Uses.** Conditional Uses in the WT-3 permitted without a Conditional Use Permit and blend the land uses across the entire Planned Unit Development site.

**Conditions of Approval:**

1. The subdivision shall comply with Title 12 (Subdivision Regulations) and Title 11 (Zoning Regulations) and all other applicable requirements of the Whitefish City Code, except as amended by these conditions.

2. Except as amended by these conditions, the development of the subdivision and planned unit development shall be in substantial conformance with the approved preliminary plat, site plan and elevations that govern the general location of lots, roadways, parking, landscaping and improvements and labeled as "approved plans" by the City Council.

3. Prior to any pre-construction meeting, construction, excavation, grading or other terrain disturbance, plans for all on and off site infrastructure shall be submitted to and approved by the Whitefish Public Works Department. The improvements (water, sewer, roads, street lights, trails, sidewalks, driveways, etc.) within the development shall be designed and constructed by a licensed engineer and in accordance with the City of Whitefish's design and construction standards. The Public Works Director shall approve the design prior to construction. Plans for
grading, drainage, utilities, streets, sidewalks and other improvements shall be submitted as a package and reviewed concurrently. No individual improvement designs shall be accepted by Public Works. (City Engineering Standards, 2009)

4. Approval of the preliminary plat is subject to approval of detailed design of all on and off-site improvements, including drainage and a plan for snow removal and storage. Through review of detailed road and drainage plans, applicant is advised that the number, density and/or location of building lots, as well as the location and width of the road right-of-way, and widths of rights-of-way shown on the preliminary plat may change depending upon constructability of roads, pedestrian walkways, and necessary retaining walls within the right-of-way, on-site retention needs, drainage easements or other drainage facilities or appurtenances needed to serve the subject property and/or upstream properties as applicable. This plan shall include a strategy for long-term maintenance. Fill on-site shall be the minimum needed to achieve positive drainage, and the detailed drainage plan will be reviewed by the City using that criterion. (City Engineering Standards, 2009)

5. Prior to the start of Phase 1 of the project, an agreement with the Great Northern Veteran’s Peace Park must be recorded to allow for the usage of the off-site parking and secondary emergency access in perpetuity. Such plan shall address retention of the trees to the south of the parking lot. (Finding 8)

6. The off-site parking must meet city standards including stormwater, paving and landscaping. The plans must be reviewed and approved by the City. (Finding 8)

7. Prior to any ground disturbing activities, a plan shall be submitted for review and approval by the Public Works and Planning/Building Department. The plan shall include, but may not necessarily be limited to, the following:
   - Dust abatement and control of fugitive dust.
   - Hours of construction activity.
   - Noise abatement.
   - Control of erosion and siltation.
   - Routing for heavy equipment, hauling, and employees.
   - Construction office siting, staging areas for material and vehicles, and employee parking.
   - Measures to prevent soil and construction debris from being tracked onto public roadways, including procedures to remove soil and construction debris from roadways as necessary.
   - Detours of vehicular, pedestrian, and bicycle traffic as necessary.
   - Notation of any street closures or need to work in public right-of-way.
   (City Engineering Standards, 2009)

8. All areas disturbed because of road and utility construction shall be re-seeded as soon as practical to inhibit erosion and spread of noxious weeds. All noxious weeds, as described by Whitefish City Code, shall be removed throughout the life
of the development by the recorded property owner or homeowners’ association. (Subdivision Regulations §12-4-30)

9. Street lighting shall be required in accordance with the Whitefish Standards for Design and Construction. Street and other on-site lighting shall be dark sky compliant and meet the requirements of the City's Outdoor Lighting ordinance. (Zoning Regulations §11-3-25; City Engineering Standards, 2009)

10. The Fire Marshal shall approve the placement and design of all fire hydrants prior to their installation and fire access. (UFC; Subdivision Regulations §12-4-18; Engineering Standards, 2009)

11. The secondary emergency access onto Birch Point Drive must be installed along with Phase 1. Such emergency access must be maintained year-round and meet all emergency access standards. The design must be reviewed and approved by the Fire Marshal. (Finding 1)

12. The refuse and recycling location shall be reviewed and approved by the Public Works Department and North Valley Refuse. (§4-2, WCC)

13. A Certificate of Subdivision Approval be obtained from the Department of Environmental Quality and written approval by the Whitefish Public Works Department approving the storm drainage, water and sewage facilities for the subdivision. (Subdivision Regulations, Appendix C)

14. Install an intersection signal when warranted by Montana Department of Transportation and meet their requirements. Coordinate this installation with the Public Works Department. (Finding 1)

15. A report shall be submitted with the final Whitefish River buffer averaging details. This report shall indicate the overall area required, the amount being reduce and a 'to scale' drawing showing the minimum width of no less than 50-feet. (Staff Report, Finding 3; Zoning Regulations §11-3-29C)

16. The Whitefish River trail shall be installed the entire length of the river connecting to Karrow Avenue, as depicted on the site plan. The final details of the trail installation shall be submitted to the Parks, Public Works and Planning Departments for review and approval. An easement granting public access to the trail must be recorded with Phase I of the development. (Findings 3, 4 and 8, §11-3-29C(5)(c))

17. The trail within the unimproved W. 1st Street right-of-way must be designed in such a way so as to not foreclose the possibility of future use of the road by adjacent properties. This plan will be reviewed and approved by the Public Works and Planning Departments. (Finding 4)
18. A pedestrian-bicycle connection must be made from the subject property to W. 2nd Street. Improvements must be reviewed and approved by Montana Department of Transportation and the Public Works Department. (Finding 4)

19. All on-site signage must meet §11-5, Sign Regulations. (Zoning Regulations §11-5)

20. The following notes shall be placed on the face of the plat:
   • Building numbers shall be located in a clearly visible location.
   • The internal roads shown on the final plat are intended to be privately owned and maintained and open to the public. It is understood and agreed that these internal roadways do not conform to City requirements for public roadways. The owners (and successors in interest) of the lots described in this plat will provide for all-season maintenance of the private roadways by creation of a corporation or association to administer and fund the maintenance. This dedication is made with the express understanding that the private roadways will never be maintained by any government agency or public authority. It is understood and agreed that the value of each described lot in this plat is enhanced by the private nature of said roadways. Thus, the area encompassed by said private roadways will not be separately taxed or assessed by any government agency or public authority.
   (Subdivision Regulations §12-4-6; Staff Report Finding 5; City Engineering Standards, 2009)

21. A common off-street mail facility shall be provided by the developer and approved by the local post office. (Subdivision Regulations §12-4-24)

22. No short-term rental of any residential use is permitted with the exception of the hotel. (Zoning Regulations §11-2W)

23. The public dock must remain open to public use. No private slip leasing is permitted. (Finding 4, 8)

24. The live-work units must comply with §11-3-41, artisan manufacturing must comply with §11-3-39, the microbrewery must comply with §11-3-40 and professional artist studio and galleries must comply with §11-3-15. (Zoning Regulations §11-3)

25. Prior to approval of the final plat, the applicant shall produce a copy of the proposed Covenants, Conditions and Restrictions (CC&Rs) Owners' Association (OA) providing for:
   • Long-term maintenance of the open spaces;
   • Long-term weed management plan. The weed management plan shall be submitted to the Planning Department for review and approval prior to final plat; and
• Long-term maintenance plan for drainage and storm water management facilities.
  (Subdivision Regulations §12-4-30; Staff Report Finding 3; City Engineering Standards, 2009)

26. Other permits may be required by other governmental agencies and the owner is responsible for obtaining these permits which may include: a floodplain permit, a permit from the conservation district and a water quality protection permit.

27. The range of uses shall fall within the permitted and conditionally permitted uses for both the WT-3 and WI-T, as well as those listed in the application. (Zoning Regulations §11-2W, §11-2X)

28. The 95 Karrow preliminary plat and planned unit development is approved for three years from Council action. (Subdivision Regulations, §12-3-8)

29. Any formula business that will locates in the 95 Karrow project must be reviewed under a Conditional Use Permit.
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, July 17, 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: 225 603 770 802  Password: xyCxxs
For the Audio Conference Call option: call the number below and enter the access code.
- United States Toll Free: 833-563-1751  Access code: 378 729 57#
- 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, July 17, 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 23-11. Resolution numbers start with 23-12.

1) CALL TO ORDER

2) PLEDGE OF ALLEGIANCE

3) PRESENTATION
   a) Consideration of a request from Whitefish Legacy Partners (WLP) and Flathead Area Mountain Bikers (FAMB) to expand the trail and trailhead at Spencer Mountain (p.21)

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 July 3, 2023 Regular Meeting (p.26)
   b) Resolution No. 23--__: A Resolution of intention to annex and incorporate within the boundaries of the City of Whitefish by petition and consent of the property owner approximately 1.36 acres of land known as 236 Jennings Lakeside Road in Section 14, Township 22 North, Range 22 West, in Whitefish, Montana, and zone the property to WSR Suburban Residential, based on the Findings of Fact in the staff report, subject to the recommended conditions of annexation approval, and set a public hearing for August 7, 2023 (WAR 23-02) (p.28)
   c) Resolution No. 23--__:A Resolution correcting typographical errors in Resolution No. 23-09 (p.43)

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 rezoning 55 Hedman Lane in Section 1, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana, zoned WCR (Country Residential District) to WR-2 (Two-Family Residential District) and adopting findings with respect to such rezone (First Reading) (WZC 23-04) (p.45)
b) Resolution No. 23-__: A Resolution to annex and incorporate within the boundaries of the City of Whitefish by petition and consent of the property owner approximately .99 acres of land known as 580 Lund Lane in Section 1, Township 30 North, Range 22 West, in Whitefish, Montana, and zone the property to WR-1, One-Family Residential, based on the findings of fact in the staff report, subject to the recommended conditions of annexation approval (WAR 23-01) (p.72)

c) Ordinance No. 23-__: An Ordinance amending Title 11 – Zoning Regulations, Chapter 2 – Zoning Districts, Chapter 3 – Special Provisions, Section 34 – Marijuana Facilities, of the Whitefish City Code (First Reading) (WZTA 24-04) (p.99)

d) Consideration to review the proposed financial plan for the resort tax reallocation to include community housing and schedule a public hearing on August 7th to consider adopting the Community Housing: Resort Tax plan and ballot language for the November 2023 Municipal Election (p.119)

8) COMMUNICATIONS FROM CITY ATTORNEY
   a) Consideration of a request from the City Council to repeal Section 1-6-3-E-3, voting on ordinances, of the Whitefish City Code (p.129)

9) COMMUNICATIONS FROM CITY MANAGER
   a) Written report enclosed with the packet. Questions from Mayor and Council? (p.132)
   b) Other items arising between July 12th through July 17th

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)
July 12, 2023

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

Mayor Muhlfeld and City Councilors:

Monday, July 17, 2023 City Council Agenda Report

There will be a work session at 5:30pm Bob Vosen with Montana Department of Transportation (MDT) to provide an update on related projects that are occurring or upcoming for Whitefish. Information is not provided in the packet. Staff has asked Bob to be prepared to discuss the Downtown Highway Study Projects; Highway 93 South Medians & MDT Access Management Plan; and the Highway 93 West (Mountainside to Twin Bridges) project. At 6:30 Casey Malmquist will join to discuss a proposed pedestrian bridge located at the 95 Karrow (WF Yards) project. Food will be provided.

PRESENTATION
a) Consideration of a request from Whitefish Legacy Partners (WLP) and Flathead Area Mountain Bikers (FAMB) to expand the trail and trailhead at Spencer Mountain (p.21)

Heidi Van Everen with Whitefish Legacy Partners and Rob Brant with the Flathead Area Mountain Bikers will give a presentation to expand the trail and trailhead at Spencer Mountain as a step towards renewing the 2024 Special Recreational Use License (SRUL)/Land Use License (LUL).

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 July 3, 2023 Regular Meeting (p.26)
b) Resolution No. 23-__; A Resolution of intention to annex and incorporate within the boundaries of the City of Whitefish by petition and consent of the property owner approximately 1.36 acres of land known as 236 Jennings Lakeside Road in Section 14, Township 22 North, Range 22 West, in Whitefish, Montana, and zone the property to WSR Suburban Residential, based on the Findings of Fact in the staff report, subject to the recommended conditions of annexation approval, and set a public hearing for August 7, 2023 (WAR 23-02) (p.28)
c) Resolution No. 23-__;A Resolution correcting typographical errors in Resolution No. 23-09 (p.43)

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

Items “a & c” are administrative matters; Item “b” 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 rezoning 55 Hedman Lane in Section 1, Township 30 North, Range 22 West, P.M., Flathead County, Montana, zoned WCR (Country Residential District) to WR-2 (Two-Family Residential District) and adopting findings with respect to such rezone (First Reading) (WZC 23-04) (p.45)
From Senior Planner Wendy Compton-Ring’s transmittal report.

**Summary of Requested Action:** 1883 Silver LLC is requesting a zoning map amendment at 55 Hedman Lane from WCR (Country Residential District) to WR-2 (Two-Family Residential District). It is 2.5 acres and known as Lot 5, Whitefish 57 in Section 1, Township 30 N, Range 22 W., in Whitefish, Montana. The Whitefish Growth Policy designates the property as Urban.

**Planning & Building Department Recommendation:** Staff recommended approval of the above referenced zone change as set forth in the attached staff report.

**Public Hearing:** A public hearing was held on June 15, 2023. The applicant presented the rezone request and one member of the public spoke with concerns about the Baker Avenue extension as it crosses Park Knoll Lane. Draft Planning Board minutes are included.

**Planning Board Action:** The Whitefish Planning Board met on June 15, 2023, and considered the request. Following the hearing, the Planning Board made a motion to approve the above-mentioned zone change unanimously, adopting the staff report as findings of fact.

**RECOMMENDATION:** Staff respectfully recommends the City Council, after considering testimony at the Public Hearing and the recommendations from Planning Staff and the Planning Board, adopt Ordinance No. 23-__; An Ordinance rezoning 55 Hedman Lane in Section 1, Township 30 North, Range 22 West, P.M., Flathead County, Montana, zoned WCR (Country Residential District) to WR-2 (Two-Family Residential District) and adopting findings with respect to such rezone (First Reading).

**This item is a quasi-judicial matter.**

b) Resolution No. 23-__; A Resolution to annex and incorporate within the boundaries of the City of Whitefish by petition and consent of the property owner approximately .99 acres of land located at 580 Lund Lane and to zone the property WR-1, One Family Residential.

A summary of Planning and Building Director Dave Taylor’s staff report.

**Summary of Requested Action:** Rolando Gutierrez and Roberto Antonio Maximo Gutierrez III petitioned the City to annex .99 acres of land located at 580 Lund Lane and to zone the property WR-1, One Family Residential.

**Planning & Building Department Recommendation:** Staff recommends approval of the above referenced annexation and zone change with the condition the property owner dedicate 30’ wide public access and utility easement bordering Lund Lane along their property frontage, as the existing road easement is only 30’ wide and is on the property owner to the north’s property across Lund Lane.

**Public Hearing:** Under the new Zoning upon Annexation regulations, a public hearing is not required at the Planning Board.

**RECOMMENDATION:** Staff respectfully recommends the Council, after considering public testimony, and the recommendations from Planning Staff, adopt Resolution No. 23-__; A Resolution to annex and incorporate within the boundaries of the City of Whitefish by petition and consent of the property owner approximately .99 acres of land known as 580 Lund Lane in Section 1, Township 30 North, Range 22 West, in Whitefish, Montana, and zone the property to WR-1, One-Family Residential, based on the findings of fact in the staff report, subject to the recommended conditions of annexation approval (WAR 23-01).
**This item is a quasi-judicial matter.**

c) Ordinance No. 23--__; An Ordinance amending Title 11 – Zoning Regulations, Chapter 2 – Zoning Districts, Chapter 3 – Special Provisions, Section 34 – Marijuana Facilities, of the Whitefish City Code (First Reading) (p.99)

From Planning and Building Director Dave Taylor’s transmittal report.

**Summary of Requested Action:** This application is a request by the City of Whitefish to amend Section 11-3-34, Special Provisions, Marijuana Facilities, to increase buffer requirements between permitted marijuana facilities and between marijuana facilities and schools and churches.

**Planning & Building Department Recommendation:** Staff recommends the City Council adopt the attached code amendments.

**Public Hearings:** A public hearing on this item was held by the Whitefish Planning Board on June 15, 2023. After staff’s presentation of the staff report, there were no public comments.

**Planning Board Recommendation:** The Whitefish Planning Board held a public hearing on June 15, 2023, then a motion was made (Middleton/Scott) to approve the zoning text amendments as proposed by staff. The motion passed unanimously.

**RECOMMENDATION:** Staff respectfully recommends the City Council, after considering public testimony, and the recommendations from Planning Staff and the Planning Board, adopt Ordinance No. 23--__; An Ordinance amending Title 11 – Zoning Regulations, Chapter 2 – Zoning Districts, Chapter 3 – Special Provisions, Section 34 – Marijuana Facilities, of the Whitefish City Code (First Reading).

**This item is a legislative matter.**

d) Consideration to review the proposed financial plan for the resort tax reallocation to include community housing and schedule a public hearing on August 7th to consider adopting the Community Housing: Resort Tax plan and ballot language for the November 2023 Municipal Election (p.119)

From City Manager Dana Smith’s staff report.

**Introduction/History:** The 2022 Whitefish Housing Needs Assessment set forth a target of 1,310 new housing units, including rental and ownership units, which are needed by 2030 to support current residents and employees. Of the 1,310 units, 75% must be priced below current market to meet community needs, which totals roughly 980 units. On November 21, 2022, the Whitefish City Council adopted the Whitefish Community Housing Roadmap (Roadmap), a partnership plan for accelerating community housing opportunities and provides a recommended range of strategies to drive action. A top priority within the Roadmap is to secure local funding for community housing initiatives, specifically asking voters to approve a portion of the City’s 3% resort tax for community housing development and programs.

**Current Report:** The Whitefish Community Housing Committee, with assistance from staff, drafted the attached plan, Community Housing: Resort Tax. The plan details the history of resort tax as a funding mechanism, the proposed re-allocation of the 1% that will no longer be needed for the Haskill Basin Conservation Easement Bond starting February 2025, revenue projections for the 20-year term, and the recommended uses including immediate and possible future programs for community housing.
The key points of the plan include:

- The proposed re-allocation of the 3% resort tax is intended to help move community housing development projects and programs forward.
- It is proposed that 10% of the 3% resort tax be designated specifically for community housing development projects and programs starting February 1, 2025. Over 20 years, this is estimated to generate around $27 million.
- The Haskill Basin Conservation Easement bond will be paid off by January 31, 2025, opening up more funding to be utilized in other parts of the city. Streets, paths, parks, and the Whitefish Trail will all continue to see increased funding.
- All Resort Tax Fund expenditures will be approved on a project-by-project basis by the City Council.
- Securing resort tax as a funding mechanism for community housing will start the pursuit of other funding opportunities such as grants, philanthropic contributions, and business community buy-in which will further leverage funds provided by the resort tax.

On June 28th, the Community Housing: Resort Tax plan was presented to the Resort Tax Monitoring Committee. After an in-depth discussion about resort tax, including the initial intent of the resort tax (streets repairs/property tax relief) and the need to keep that allocation intact, the Resort Tax Monitoring Committee approved the report and recommended adoption by the City Council, including moving forward with a vote in 2023.

On July 6th, the Whitefish Community Housing Committee voted 4-1 approving the final version of the plan and recommending City Council approval, including presenting the ballot question to voters during the 2023 Municipal Election. The committee member voting in opposition proposed taking an additional 10% from property tax relief to increase the amount allocated to community housing to 20% after concerns that the property tax relief was not going to residents. While other committee members agreed in principal that the property tax relief should go to residents and not property taxpayers since that includes second homeowners and out of state corporations, the majority felt that change would put the ballot question at risk as there was history to the 25% and property tax increases can affect rental rates. The committee agreed that they will continue to explore ways to provide the property tax relief to residents only, though there are noted challenges with the language in State law related to resort tax.

Financial Requirement: There is no added cost to the City to move forward with the proposed plan and ballot question in November 2023 since the City is already covering the cost of the scheduled municipal election. Should the ballot question fail, the use of resort tax will remain in accordance with the language approved in November 2021, which starts February 1, 2025.

RECOMMENDATION: Staff respectfully recommends the City Council, after considering public testimony, and the recommendation of the Whitefish Community Housing Committee, direct staff to proceed with scheduling a public hearing on August 7th for the City Council to consider adopting the Community Housing: Resort Tax plan and ballot language for the November Municipal Election.

This item is a legislative matter.

COMMUNICATIONS FROM CITY ATTORNEY

a) Consideration of a request from the City Council to repeal Section 1-6-3-E-3, voting on ordinances, of the Whitefish City Code (p.129)

From City Attorney Angela Jacob’s staff report.

Introduction/History: Section 1-6-3-E-3 of the Whitefish City Code (WCC) requires a majority vote “of the members elected” of the Whitefish City Council for an ordinance to be passed or repealed.
The ordinance has been in effect since 1911. The history of and reasoning supporting the ordinance are unclear.

**Current Report:** In recent years, § 1-6-3-E-3, WCC, has presented some challenges for Council and staff. For example, if only four Councilors attend a meeting (a quorum), all four must vote in favor of a proposed ordinance for it to pass. The proposed ordinance may fail because one Councilor voted against it even though it may have passed had one more Councilor attended the meeting. Such a result appears rather artificial.

Further, the ordinance tends to create confusion with respect to the process to be followed when an ordinance fails for lack of a unanimous vote when only a quorum is present. A Councilor who voted with the majority may move to reconsider the matter at the next meeting, thereby giving the Councilors who were absent from the previous meeting an opportunity to consider it. However, it may be a waste of resources to achieve at two meetings what could be achieved at one. Further, the procedural path forward is unclear if the proposed ordinance fails in certain cases, particularly in reference to staff-initiated rezones of property recently annexed into the City.

Unlike the City Code, Montana law does not require that a majority vote of the entire Council is necessary to approve *every* proposed ordinance. However, there are specific instances in which a majority or a supermajority (2/3) vote of the entire Council is required, including:

- Filling of a vacancy in any elective city office § 7-4-4112, MCA (majority)
- Removal of an appointed officer § 7-4-4113, MCA (supermajority)
- Emergency ordinances § 7-5-104, MCA (supermajority)
- Emergency measures § 7-5-4204, MCA (supermajority)
- Effect of ordinance or resolution after mayoral veto § 7-5-4206, MCA (supermajority)
- Disposal or lease of municipal property § 7-8-4201 (supermajority)
- Discipline or expel a council member for improper conduct (majority)

**RECOMMENDATION:** Staff respectfully recommends the City Council consider repealing this section.

**This item is a legislative matter.**

**COMMUNICATIONS FROM CITY MANAGER**

a) Written report enclosed with the packet. Questions from Mayor and Council? (p.132)
b) Other items arising between July 12th through July 17th

**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>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</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>
</tr>
</tbody>
</table>

### SUBSIDIARY MOTIONS

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<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

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<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>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<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>
</tr>
</tbody>
</table>

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

### Renewal Motions

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<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>
2023 Spencer Mountain proposed trail and trailhead expansion for 2024 SRUL/LUL renewal

At Spencer Mountain, the City of Whitefish, Flathead Area Mountain Bikers (FAMB), and Whitefish Legacy Partners (WLP) work together to manage two trailheads and 18 miles of recreational trails designed to offer a variety of user groups access to the public lands through a managed trail experience. Approximately half of the trails are FAMB Free Ride trails and the rest are part of the Whitefish Trail. The Whitefish Trail (WT) is a regional, multi-partner project to create a natural surface, non-motorized recreational loop trail surrounding Whitefish and Whitefish Lake through state, federal and private lands. Spencer Mountain is a beloved mountain biking, hiking, and hunting destination for the Whitefish community, the greater Flathead Valley, and visitors. As recreational use at Spencer Mountain, and the greater Whitefish area, continues to increase, the demands placed on the licensed and unlicensed trail and road system at Spencer Mountain has also changed. This trail and trailhead expansion proposal adapts to the changes and charts a path toward a permanent solution at Spencer Mountain.

The plan for trail and trailhead expansion at Spencer Mountain is designed to meet the needs of two key focus areas: increasing downhill-oriented trail density at North Spencer and providing connectivity from East Spencer to the existing Spencer loops. Expanding the recreation system to meet these needs during the lifetime of the next license agreement will solidify community and organizational support for a permanent solution at Spencer Mountain. Below, the two Focus Areas are explained in more detail and visually represented on Exhibit A. Further, a more specific vision for the trail development that will meet the focus area needs is described below in section 2.

Focus Area #1 adds trail density to North Spencer. The plan is to build 4-5 miles of new trail that will engage and disperse users more evenly in the Free Ride trails area, add steep terrain trails that are conducive to rebuilding, and add trail-closure flexibility during future forest management.

Focus Area #2 adds East Spencer to the network and provides needed connectivity. The plan is to build a new trailhead and 4-5 miles of new trail that will alleviate pressure on the Twin Bridges TH, manage trail use in East Spencer, create multi-user WT connectivity to existing Spencer trails, and offer downhill bike trail options that will be welcoming to a wider array of capabilities and skillsets.
Section 2

This section outlines a vision and timeline for the proposed trail expansion in each focus area to meet the needs outlined above. The following shows our proposed progression of the project; particular trail segments may be moved from one phase to another depending on partner involvement, trail segment construction feasibility, and funding.

In North Spencer, the proposal includes both new and existing but unlicensed trail miles totaling roughly 4.5 miles. Of the proposed trails, one is existing, user-built, trail that is currently unlicensed, five are new downhill oriented free-ride trails segments, and two are trail segments that will complete and enhance existing trails.

In East Spencer, the new trail miles totaling roughly 4.5 miles and expansion also includes a new trailhead. Of these trails, one is a new multi-user WT that will run from the new East Spencer TH to the existing Spencer trails, two are different downhill routes that will offer users of differing skill levels routes back to the new TH, and one is a stacked loop trail option closer to the TH. The trail miles in this focus area will also be built wider than other trails in Spencer Mtn to be welcoming to adaptive bikes, as well as traditional two-wheel bikes.
Phase I (May 2024 to September 2024) - Incorporate historic Ridge Trail + add to North Spencer density

- North Spencer Work
  - #12 – 0.5 mile historic, user-built, singletrack trail segment to be improved with minor reroutes and retread to incorporate into licensed trail network. This trail would serve as a connector trail from East Spencer to the Spencer Mountain Summit.
  - #3, 10, and 11 -- 2.4 miles making up two downhill oriented free-ride trail segments and one multi-directional free-ride trail segment to add density to North Spencer free-ride area.

Phase II (May 2025 to September 2025) - North Spencer Free-Ride Density + start of work on East-side Trails

- North Spencer Work
  - #6, 7, 8, and 9 -- 1.9 miles making up four downhill oriented free-ride trail segments completed to add density to north spencer free ride area with eventual connection to the East Spencer Parking Lot.
- East Spencer Work – trails not tied into new TH until the following year
  - #1b & 1c -- 1.4-mile segment of WT to add multi-user connectivity from new TH (when completed) to existing Spencer Loop trails.
  - #4b & 5 -- 1 mile making up two downhill oriented free-ride segments.
  - East Spencer TH – begin work on trailhead in collaboration with DNRC (and MDT) to move gate, improve access road, and complete required preliminary work for parking lot and vault toilet installation.

Phase III (May 2026 to September 2026) - East Spencer TH and Connector trails to Spencer Loop

- East Spencer Work – TH and tie into TH
  - East Spencer Trailhead – Finish building 40 car parking lot, including adaptive bike friendly loading zone, and install vault toilet, bear-proof garbage cans, mutt mitt dispenser, TH Kiosk, and picnic tables.
  - #1a, 2, and 13 -- 1.5 miles segment of bi-directional WT to complete multi-user trail connectivity from new TH to existing Spencer Loop trails, including an ADA loop at the pond.
  - #4a -- .25-mile segment of mountain bike skills park-oriented trail.

Phase IV (2030-2035) - Permanent protection of northern and eastern area of Spencer Mountain unit (~400-500-acres, exact acreage to be determined)
(This page left blank intentionally to separate printed sections)
1) CALL TO ORDER

Deputy Mayor Sweeney called the meeting to order. Councilors present were Feury, Caltabiano, and Norton. Mayor Muhlfeld, Councilors Qunell, and Davis were absent. City Staff present were City Clerk Howke, City Manager Smith, City Attorney Jacobs, Finance Director Gospodarek, Senior Planner Compton-Ring, Public Works Director Workman, Parks and Recreation Director Butts, Police Chief Kelch and Interim Fire Chief/Fire Marshal Tveidt. One person was in the audience and zero attended virtually.

2) PLEDGE OF ALLEGIANCE

Deputy Mayor Sweeney asked the gentlemen in the audience 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)

None

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

None

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 4 votes for passage – Section 1-6-2 (E)(3) WCC)

a) Minutes from June 19, 2023 Special Session Meeting (p.46)

b) Minutes from June 19, 2023 Regular Meeting (p.47)

c) Ordinance No. 23-10; An Ordinance approving the Whitefish Community Corridor Residential Planned Unit Development to develop 146 units in seven buildings on 6.56 acres at 105 Colorado Avenue, 709 Waverly Place, and 60, 124, 136 & 152 Texas Avenue, Whitefish (Second Reading) (WPUD 22-04) (p.52)

d) Resolution No. 23-10; A Resolution declaring certain property to be unneeded and obsolete, and authorizing the disposal of such property (p.57)

e) Consideration of a request from Adnan Merchant and Jaffar Agha for extension of preliminary plat for Big Mountain River LLC Subdivision located at 244, 314, 322 West 2nd Street (WPP 20-01)(p.59)

Councilor Caltabiano made a motion, seconded by Councilor Norton to approve the Consent Agenda. The motion 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)

None
7) COMMUNICATIONS FROM CITY MANAGER  
   a) Written report enclosed with the packet. Questions from Mayor and Council? (p.69)

Manager Smith asked and Deputy Mayor Sweeney stated Mayor Muhlfeld is interested in serving on the interview board for the Fire Chief. If he is unable to attend, Deputy Mayor Sweeney will serve as his replacement.

   b) Other items arising between June 28th through July 3rd.

None

8) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS  
   a) Resolution No. 23-11; A Resolution establishing annual goals for the City (p.72)

Councilor Caltabiano made a motion, seconded by Councilor Norton to adopt Resolution No. 23-11; A Resolution establishing annual goals for the City. The motion carried.

   b) Letter from Citizens for a Better Flathead regarding comments pertaining to the Whitefish Growth Policy Public Engagement Plans (p.74)

Councilor Norton asked, and Attorney Jacobs responded to letter from Citizens for a Better Flathead on behalf of Long-Range Planner Tiefenbach. The City Council is only required to hold one hearing, but they can hold as many as they wish; he added Community Action Partnership of NW Montana; each phase will go before the Planning Board. Both City Attorney Jacobs and City Manager Smith stated Long-Range Planner Tiefenbach a professional planner with a degree in Planning and has over 20 years of experience working as a planner. The City has budgeted if there is a portion of the Growth Policy that Planner Tiefenbach feels is needed to hire a consultant. Manager Smith has confidence Planner Tiefenbach is capable of updating the Growth Policy.

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

Deputy Mayor Sweeney adjourned the meeting at 7:25 p.m.

______________________________________________________________
Deputy Mayor Sweeney

Attest:

_____________________________
Michelle Howke, Whitefish City Clerk
RESOLUTION NO. 23-___

A Resolution of intention to annex and incorporate within the boundaries of the City of Whitefish by petition and consent of the property owner approximately 1.36 acres of land known as 236 Jennings Lakeside Road in Section 14, Township 22 North, Range 22 West, in Whitefish, Montana, and zone the property to WSR Suburban Residential, based on the findings of fact in the staff report, and set a public hearing for August 7, 2023.

WHEREAS, Kaitlyn Johnson, principal of Log Off LLC, has filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owner of real property representing 50% or more of the total area to be annexed. Therefore, the City Council will consider this petition for annexation pursuant to the statutory Annexation by Petition method set forth in Title 7, Chapter 2, Part 46, Montana Code Annotated; and

WHEREAS, services to the annexed area will be provided according to the City of Whitefish Extension of Services Plan, amended by the City Council by Resolution No. 21-21, as required by and in conformity with §§ 7-2-4610 and 7-2-4732, MCA, available at the Office of the City Clerk; and

WHEREAS, the herein described property is within the City of Whitefish’s Urban Growth Boundary, and the City has current and future capacity to serve the property and development; and the owners/developers will pay all costs to extend the municipal sewer and water service to the property; and

WHEREAS, it is the Whitefish City Council’s decision to consider this petition for annexation pursuant to the statutory annexation by petition method set for in Title 7, Chapter 2, Part 46 of the Montana Code Annotated; and

WHEREAS, pursuant to § 7-2-4211(2), MCA, the City shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed; and

WHEREAS, the proposed City zoning district, WSR, Suburban Residential authorizes land uses comparable to the land uses authorized by Flathead County zoning; and

WHEREAS, pursuant to § 76-2-303, MCA, the City intends to conduct the hearing on the annexation in conjunction with the hearing on the zoning of the proposed annexation.

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

Section 1: It is hereby determined by the Whitefish City Council to be in the best interest of the City of Whitefish, and the inhabitants thereof, as well as the current and future inhabitants of the area to be annexed described herein, that the area be annexed into the City of Whitefish and it is hereby declared to be the intent of the City of Whitefish that the corporate
boundaries of the City of Whitefish be extended to include the boundaries of the area legally described below and to apply City zoning WSR, Suburban Residential to said property:

Lot 12 of First Addition to Whitefish Lake Summer Homes Amended, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana

Section 2: The City shall, pursuant to §§ 76-2-303 and 7-1-4127, MCA, publish in the newspaper of general circulation in the City of Whitefish, at least once a week for two successive weeks on July 19, 2023, and July 26, 2023, a notice that a resolution of annexation will appear on the City Council agenda for the regular meeting scheduled for August 7, 2023, at 7:10 p.m., and, at that meeting, the City will hold a public hearing and thereafter vote to either approve or deny the requested annexation and zone change; and

Section 3: The City Council of the City of Whitefish will hold a public hearing at its regularly scheduled meeting on August 7, 2023, at 7:10 p.m. at Whitefish City Hall, 418 E. 2nd Street, Whitefish, Montana, to consider whether to annex the area described in the Petition for Annexation and whether to apply City zoning, WSR, Suburban Residential to said area.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council and the signing of the Mayor thereof.

RESOLUTION OF INTENT 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
EXHIBIT A

236 Jennings Lakeside Road, Whitefish, MT
Assessor No. 0459150
Lot 12, Whitefish Lake Summer Homes 1st Addition
### ANNEXATION AND ZONING STAFF REPORT
#### WAR 23-02
#### 236 Jennings Lakeside Road
#### July 11, 2023

<table>
<thead>
<tr>
<th>Public Meetings &amp; Hearing Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicant &amp; Owner:</strong> Log Off LLC</td>
</tr>
<tr>
<td><strong>Representative:</strong> n/a</td>
</tr>
<tr>
<td><strong>Location of request:</strong> 236 Jennings Lakeside Road</td>
</tr>
<tr>
<td><strong>Legal description:</strong> Lot 12, Whitefish Lake Summer Homes, Amended, in Section 14, Township 31 North, Range 22 West, P.M.M.</td>
</tr>
<tr>
<td><strong>Legal ad:</strong> <em>Whitefish Pilot</em> July 12 and 19, 2023</td>
</tr>
<tr>
<td><strong>Property Owner Notice:</strong> Sent out to all property owners within 150' of property on June 30, 2023</td>
</tr>
<tr>
<td><strong>City’s Website:</strong> Posted on Planning &amp; Building’s Current Land Use Actions Page on June 30, 2023</td>
</tr>
<tr>
<td><strong>Growth policy:</strong> Suburban Residential</td>
</tr>
<tr>
<td><strong>Zoning:</strong> Flathead County, R-1 Suburban Residential</td>
</tr>
<tr>
<td><strong>Proposed City Zoning:</strong> WSR Suburban Family Residential District</td>
</tr>
<tr>
<td><strong>City Council, Consent Agenda:</strong> 7-17-2023</td>
</tr>
<tr>
<td><strong>City Council, Public Hearing:</strong> 8-7-2023</td>
</tr>
</tbody>
</table>

#### Surrounding Land Uses and Zoning

<table>
<thead>
<tr>
<th>Direction</th>
<th>Use</th>
<th>Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>Residential</td>
<td>R-1</td>
</tr>
<tr>
<td>South</td>
<td>Residential</td>
<td>R-1</td>
</tr>
<tr>
<td>East</td>
<td>Residential</td>
<td>R-1</td>
</tr>
<tr>
<td>West</td>
<td>Whitefish Lake</td>
<td></td>
</tr>
</tbody>
</table>

---

City Council Packet, July 17, 2023 Page 31 of 132
RECOMMENDED MOTIONS

**City Council Consent Agenda: 7-17-2023**

**Adopt** a resolution of intention to annex and incorporate within the boundaries of the City of Whitefish, the parcel of land as shown on Exhibit A and addressed as 236 Jennings Lakeside Road, identified as Lot 12, Whitefish Lake Summer Homes Amended in Section 14, Township 31 North, Range 22 West, P.M.M. and zone the property WSR, Suburban Residential District, upon annexation, based on the findings of fact in the staff report, and set the public hearing for August 7, 2023.

**City Council Public Hearing: 8-7-2023**

**Adopt** a resolution to annex and incorporate within the boundaries of the City of Whitefish, the parcel of land as shown on Exhibit A and addressed as 236 Jennings Lakeside Road, identified as Lot 12, Whitefish Lake Summer Homes Amended in Section 14, Township 31 North, Range 22 West, P.M.M. and zone the property WSR, Suburban Residential District, upon annexation, based on the findings of fact in the staff report.

I. RECOMMENDED CONDITIONS

None.

II. PROJECT SUMMARY

**Introduction:**
- The City Clerk’s Office received a petition to annex on behalf of property owner Log Off LLC, requesting annexation into the City of Whitefish and zoning upon annexation of WSR, Suburban Residential District, upon annexation for a parcel addressed as 236 Jennings Lakeside Road shown in Exhibit A in Section 14, in Township 31 North, Range 22 West, P.M.M.

**Property Information:**
- The property is surrounded by residential on three sides and fronts on Whitefish Lake.
- The subject property is developed with a single-family home and the lot is 1.319 acres.
- The subject property is along the Whitefish Lake which is in the city limits. Several lots along lake have annexed into the city as development and redevelopment occurred. Per the City Annexation Policy, the City should prioritize the annexation of properties that would fill in gaps left by previous annexations that created islands, and other types of non-contiguous boundaries. While this annexation is not filling a gap, it will help facilitate the annexation of more properties in the area.
- The subject property is within the Urban Growth Boundary.

**Road Improvements, Transit and Utility Infrastructure:**
- Jennings Lakeside Road is a private easement providing access to several lots within this neighborhood. The City does not have an interest in obtaining this road and recommends it remains a private road easement. East Lakeshore Drive is a county road from the Big Mountain Road around Whitefish Lake as the road transitions to Del Rey Road. This road will continue to be a county road.
- The subject property is connected to City sewer. Any new construction or redevelopment will be required to connect to sewer. No City water is available.
- No fire hydrant is located within 500 feet of the property.

**2023 Annexation Policy Evaluation Criteria:**
Annexations are prioritized based on the following areas:
- Contribute to the logical growth pattern of the City by creating orderly and contiguous municipal boundaries;
- Fill in gaps left by previous annexations that created islands and other non-continuous municipal boundaries;
- Located within the Urban Growth Boundary;
- Where the proliferation of on-site septic systems may pose a threat to water quality and environmentally sensitive areas;
- Advantageous to the residents of both the annexation area and the City as a whole;
- Provide additional community housing;
II. PROJECT SUMMARY

- Property owners are generally favorable toward the annexation; or
- Where there are existing annexation agreements, signed annexation petitions or signed waivers of protest of annexation.

Growth Policy & Zoning:
- The 2007 Whitefish City-County Growth Policy identifies a land use designation of “Suburban Residential”. The City Annexation Policy states annexation should be guided by the current City Growth Policy and zoning should be consistent with the Growth Policy land use designations or be the closest equivalent to the existing county zoning.
- Areas designated as Suburban Residential future land use are intended primarily for lower density residential areas at the periphery of the urban service area generally fall under this designation on the Future Land Use Map. The residential product type is predominantly single-family, but cluster homes and low-density town homes that preserve significant open space are also appropriate. Densities range from one unit per 2 ½ acres to 2.5 units per acre, but could be higher through the PUD. Zoning districts include WCR, WER, and WSR. Cluster residential that preserves considerable open space, allows for limited agriculture, maintains wildlife habitat is encouraged. The WSR Zoning is a Suburban Future Land Use and therefore, complies with the 2007 Growth Policy.
- The subject property is surrounded by residential development, the majority of which are 1 acre lots or greater and zoned County R-1 or R-2.5. Staff supports this request, as it substantially complies with the Growth Policy while considering the existing residential uses and zoning surrounding the property.
- The current zoning of the subject property is County R-1, Suburban Residential, one (1) acre minimum lot size. The WSR, Suburban Residential District, is the City of Whitefish’s equivalent.

Statutory Requirements:
- The City will meet the statutory requirements for a petition method annexation in regard to MCA 7-2-4601 – 4625 and the Whitefish Zoning Code Section 11-7-12E by considering the petition, adopting a resolution of intent, and scheduling a public hearing regarding the zoning upon annexation, and advertising public notice for at least 15 days prior to the public hearing with the appropriate recommended zoning. The final step for council will be a public hearing to adopt a resolution to adopt or deny the annexation request and apply zoning.

Zoning Upon Annexation:
- §76-2-303, MCA, and §11-8-12E, WCC, provides for a joint hearing on annexations along with the zone change and outlines three review criteria for zoning upon annexation; the zoning upon annexation need only comply with one of the criteria. The zoning district classification assigned at the time of annexation must:
  a. Authorize land uses comparable to the land uses authorized under the county zoning classification that applied to the property immediately before it was annexed in the city; or
    **Staff Assessment:** Yes, the proposed WSR is comparable to Flathead County R-1.
  b. Authorize land uses that are consistent with the land uses approved by the Board of County Commissioners or the County Board of Adjustment; or
    **Staff Assessment:** Yes, the proposed zoning and authorized land uses are consistent with Flathead County R-1.
  c. Be consistent with the land use and zoning recommendations for the subject areas, as set forth in the “2007 Growth Policy.”
    **Staff Assessment:** Yes, the proposed zoning is consistent with the Suburban land use designation in the 2007 City-County Growth Policy.
- Based on compliance with §11-7-12E(1)(a), (b) and (c), WCC, staff recommends annexation of the subject property, and zoning upon annexation of the subject property of WSR Suburban Residential District upon annexation.
- If the City Council does not approve the request to annex the subject property and apply the WSR Suburban Residential district, the Resolution of Intention to Annex and the zoning upon annexation of the property are null and void, and the property remains in its original status in Flathead County.
### III. ATTACHMENTS

- Resolution of Intent to Annex
- Annexation Petition Application
- Annexation Map, Exhibit A
INSTRUCTIONS:

☐ Submit this completed application with annexation petition form and appropriate attachments to the Whitefish City Clerk’s office.

☐ The Clerk will then submit this item to the City Council to be placed on an upcoming agenda where the City Council will vote on a Resolution of Intent to Annex and Assign a Zoning Classification.

☐ After placing two notices in the paper no less than 15 days prior to the meeting and sending notices to property owners within 150’, staff will set a hearing before City Council, where the Council will hold a public hearing and vote to either approve or deny the annexation and zone change. If it is approved, the zone change is effective immediately.

☐ The regularly scheduled meeting of the Whitefish City Council is the first and third Monday of each month at 7:20 PM at City Hall at 418 E 2nd Street.

☐ After adoption of the Annexation and Zoning Upon Annexation, the Flathead County Clerk will be notified of the changes to the boundaries of the Whitefish City Limits and the zoning change from Flathead County Zoning to comparable Whitefish Municipal Zoning.

☐ The City Municipal Zoning recommended by staff will be either the closest applicable City zoning to the existing County zoning, or the zoning district most appropriate based on the Growth Policy Future Land Use Map and adjacent existing City zoning.

A. PROPERTY OWNER CONTACT AND LOCATION:

Name: Log off LLC
Mailing Address: 7409 Bay Colony Dr, Naples FL 34108
City, State, Zip: Naples FL 34108
Email: Pfaganel@Snow-ghost.com
STREET ADDRESS: 236 Jennings Lakeside, Whitefish, MT 59937

County Assessor Tract No. (s): 0459150

Legal Description: Lot No. (s): 12 Block # Whitefish Lake Summer Homes
Section 14 Township 31 Range 22

C. ZONING

Existing County Zoning: R-1 Proposed City Zoning: WSZ - Suburban Residential
**May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included.

Owner's Signature**
Kaitlyn Johnson
Applicant's Signature

Print Name

Date
6/9/23
PETITION

BEFORE THE CITY COUNCIL

OF THE

CITY OF WHITEFISH

PETITION FOR ANNEXATION TO CITY

Dated this ______________ day of __________, 2023

The undersigned Property Owner hereby petitions the City Council of the City of Whitefish, pursuant to § 7-2-4601 through § 7-2-4625, MCA, requesting annexation of the following real property into the City of Whitefish and to remove the following real property from the Whitefish Fire Service Area.

Petitioner agrees that this annexation petition is irrevocable, and that the City may act on this petition, and accomplish the annexation of such real property, at any time in the future, without limitation. Petitioner has had an opportunity to review the City of Whitefish Plan for Extension of Services applicable to such real property, and Petitioner is satisfied with such Plan.

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

Lot 12 of First Addition to Whitefish Lake Summer Homes Amended, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana

PROPERTY ADDRESS:

236 Jennings Lakeside Rd, Whitefish, Montana

Requested City Zoning:

Log Off LLC:

By: Kaitlyn Johnson, Principal

STATE OF UT
County of Flathead:

On this 9th day of June, 2023, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Kaitlyn Johnson, known to me to be the principal of Log Off LLC, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of Log Off LLC for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of Log Off LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

[Signature]

CAITLIN M GREEN
NOTARY PUBLIC for the State of Montana
Residing at Whitefish, Montana
My Commission Expires May 1, 2027

Printed Name: Caitlin Green
CONTRACT AGREEMENT FOR ANNEXATION AND CITY WATER AND/OR SANITARY SEWER SERVICE

THIS AGREEMENT is entered into as of 9 day of June 2023, by and between the City of Whitefish, a municipal corporation ("CITY") as grantor of City water and/or sanitary sewer services, and Kaitlyn Johnson, as authorized representative of Log Off LLC, as grantee recipient(s) of City water and/or sanitary sewer services, whose mailing address is 2870 Trade Way Four Ste 107, Bonita Springs, FL 34135 with respect to the following facts:

A. CITY owns and operates a municipal water and sanitary sewer system.

B. OWNER is the sole owner of the real property located at 236 Jennings Road, and legally described below, or as fully disclosed and shown on Exhibit "A" attached and made a part of this Agreement ("OWNER'S REAL PROPERTY"):

LEGAL DESCRIPTION

Lot 12 of First Addition to Whitefish Lake Summer Homes Amended, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana

C. OWNER'S REAL PROPERTY is located outside of the current corporate limits of the CITY.

D. OWNER desires to obtain municipal water/sewer service from the CITY to serve OWNER'S REAL PROPERTY.

E. The parties desire to enter into an Agreement pursuant to MCA §§7-13-4312 and 7-13-4314, for the CITY to furnish municipal water and/or sanitary sewer service at rates adopted in accordance with Montana State Law in return for OWNER'S agreement that OWNER'S REAL PROPERTY may be annexed to the corporate limits of the CITY at any time.

In consideration of the performance of the terms and conditions of this Agreement on the part of each party, and pursuant to MCA §§7-13-4312 and 7-13-4314, it is hereby agreed as Agreement for Annexation and City Water and/or Sanitary Sewer Service
follows:

(1) **Furnishing of Sewer Services:** The CITY hereby agrees to furnish municipal water and/or sanitary sewer service to OWNER'S REAL PROPERTY. Unless otherwise agreed in writing between the parties, OWNER shall be solely responsible for all costs involved in extending municipal water and/or sanitary sewer service to OWNER'S REAL PROPERTY and connecting OWNER'S REAL PROPERTY to the municipal water and/or sewer system. Nothing in this Agreement shall obligate CITY to pay the costs of right-of-way acquisition, engineering, construction and other related costs involved in extending or connecting municipal water and/or sewer service to OWNER'S REAL PROPERTY.

(2) **Municipal Water and/or Sanitary Sewer Connections:** Upon approval by the CITY Public Works Department of the design and construction of all the municipal water and/or sanitary sewer lines and other facilities necessary to serve OWNER'S REAL PROPERTY, and acceptance of all of such water and/or sewer facilities by the CITY, OWNER will be given permission to connect no more than (1) one connection(s) to the CITY'S municipal water and/or sanitary sewer system. Any additional water and/or sewer connections shall require a new application for service and approval obtained from the CITY Public Works Department.

Upon approval by the CITY Public Works Department, OWNER will be given permission to extend (1) one water and sanitary sewer stubs from the municipal sanitary main to the property line of the property described herein. Any additional water and/or sanitary sewer stubs shall require a new application for CITY water and/or sanitary sewer service. Prior to connecting any residential or commercial building or any other structure to the water and/or sanitary sewer service stub-out(s), a request must be submitted to CITY for municipal water and/or sanitary sewer service describing the use of the building proposed to be connected. Any connections must comply with the Rules and Regulations for the City of Whitefish Water, Wastewater and Garbage Utility. The request is to be reviewed and approved by CITY prior to any connection of a residential or commercial building, or other structure. No residential or commercial building or any other structure shall be allowed to connect to the municipal water and/or sanitary sewer service extension unless approval has first been obtained from the CITY Public Works Department.

(3) **Transfer of Title:** OWNER hereby agrees to dedicate to the City the municipal water and/or sanitary sewer main extensions to be built by OWNER to provide service to the herein described property.

OWNER agrees that the municipal water and/or sanitary sewer line extension to the property shall be constructed in a public right-of-way or on land either owned by OWNER or subject to an appropriate easement approved by CITY, granting OWNER, CITY, and their successors and assigns the right to construct, repair, and maintain the sanitary sewer extension lines. The CITY shall not be required to accept any previously constructed water or sewer lines unless they are properly located in the right-of-way or a valid easement.

(4) **Maintenance:** Upon completion and acceptance of construction and the approval of access to the municipal water and/or sanitary sewer lines constructed in easements, maintenance, and repair of the mains servicing OWNER'S REAL PROPERTY shall become and

*Agreement for Annexation and City Water and/or Sanitary Sewer Service*
remain the responsibility of CITY. Maintenance and repair of the lateral service lines serving the OWNER’S REAL PROPERTY shall become and remain the responsibility of the OWNER.

(5) **Rates, Rules and Policies:** OWNER agrees to pay to the CITY such charges, rates, and fees, including but not limited to connection fees and impact fees, as are established by the CITY in accordance with Montana Law. In addition, OWNER agrees to comply with and be subject to all of the CITY’S rules, regulations and policies, as amended from time to time, with respect to the operation of the CITY’S municipal water and/or sanitary sewer system.

(6) **Consent to Annexation:** OWNER acknowledges and agrees that the CITY is willing to provide municipal water and/or sanitary sewer services only if OWNER provides all of the promises and representations contained in this Agreement. Pursuant to MCA §7-13-4314, the CITY requires that any person, firm, or corporation outside of the incorporated CITY limits is required, as a condition to initiate such service(s), to consent to and petition for annexation of the tract served by the CITY, and in consideration for the CITY’S agreement to provide municipal water and/or sanitary sewer service, OWNER agrees to petition for annexation.

(7) **Recording; Binding Effect:** OWNER agrees that this entire Agreement shall be recorded in the office of the Clerk and Recorder of Flathead County, and OWNER agrees that this Agreement shall run to, with, and be binding upon OWNER’S REAL PROPERTY and OWNER’S title to such real property, and shall be binding upon the OWNER’S heirs, assigns, successors, administrators, personal representatives and any and all subsequent holders or owners of OWNER’S REAL PROPERTY.

(8) **Future Deeds:** Subsequent to this Agreement all deeds to parcels of land within the property subject to this Agreement granted by OWNER shall contain the following consent to annexation and waiver:

The Owner hereby covenants and agrees that acceptance of this deed does constitute a waiver of the statutory right of protest against any annexation procedure initiated by the City of Whitefish with respect to the property described herein. Owner also agrees that acceptance of a deed constitutes an obligation on the part of Owner to initiate annexation procedures per the Petition to Annex on file at the City Clerk’s Office.

This consent to annexation and waiver shall run with the land and shall forever be binding upon the Owner, transferees, successors and assigns.

OWNER agrees that this Agreement shall be binding even if OWNER fails to include the language set forth above in future deeds. After annexation of OWNER’S REAL PROPERTY, future deeds need not contain the language set forth above.

(9) **Entire Agreement:** This Agreement contains the entire agreement between the parties and any additional agreement hereafter made shall be ineffective to alter, change, modify or discharge it in whole or in part, unless such additional agreement is in writing and signed by the
(10) **Partial Invalidity:** Each term, covenant, condition or provision of this Agreement shall be viewed as separate and distinct, and in the event that any such term, covenant, condition or provision shall be held by a court of competent jurisdiction to be invalid, the remaining provisions shall continue in full force and effect.

(11) **Necessary Acts:** Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

**LOG OFF LLC**

By:  
Kaitlyn Johnson, Principal

**CITY OF WHITEFISH**

**ATTEST:**

By:  
Dana Smith, City Manager  
Michelle Howke, City Clerk

STATE OF )  
) ss.  
County of )

On this _____ day of __________, 20__, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Kaitlyn Johnson, known to me to be the principal of Log Off LLC, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of Log Off LLC for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of Log Off LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

Printed Name: _____________________________
STATE OF MONTANA )
) ss.
County of Flathead )

On this _9__ day of _JUNE__, 2023, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared DANA SMITH, and MICHELLE HOWKE, to me known to be the City Manager and City Clerk respectively of the City of Whitefish, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the City of Whitefish for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the City of Whitefish.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

CAITLIN M GREEN
NOTARY PUBLIC for the State of Montana
Residing at Whitefish, Montana
My Commission Expires May 1, 2027
RESOLUTION NO. 23--

A Resolution of the City Council of the City of Whitefish, Montana, correcting typographical errors in Resolution No. 23-09.

WHEREAS, on June 19, 2021, the Whitefish City Council passed Resolution No. 21-09, adopting the Vision Whitefish 2045 Public Engagement Plan; and

WHEREAS, Resolution No. 23-09 contained two typographical errors; and

WHEREAS, the City desires to correct the typographical errors.

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

Section 1: Resolution No. 21-09 is hereby amended to reflect that on June 19, 2023, at a lawfully noticed public meeting, the Whitefish City Council considered the proposed Vision Whitefish 2045 Public Engagement Plan, received a report from staff, and thereafter voted to adopt the proposed Vision Whitefish 2045 Engagement Plan;

Section 2: 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
(This page left blank intentionally to separate printed sections)
ORDINANCE NO. 23-__

An Ordinance of the City Council of the City of Whitefish, Montana, rezoning 55 Hedman Lane in Section 1, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana, zoned WCR (Country Residential District) to WR-2 (Two-Family Residential District) and adopting findings with respect to such rezone.

WHEREAS, Will MacDonald (Applicant) on behalf of 1883 Silver, LLC (Property Owner) applied to the City of Whitefish to rezone the property located at 55 Hedman Lane, and legally described as Lot 5, Whitefish 57 Subdivision in Section 1, 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 23-04, dated June 8, 2023, which analyzed the proposed rezone and recommended in favor of its approval; and

WHEREAS, at a lawfully noticed public hearing on June 15, 2023, the Whitefish Planning Board reviewed Staff Report WZC 23-04, received an oral report from Planning staff, invited public comment, and thereafter voted to recommend in favor of the proposed zone change; and

WHEREAS, at a lawfully noticed public hearing on July 17, 2023, the Whitefish City Council reviewed Staff Report WZC 23-04, and letter of transmittal dated July 11, 2023, received an oral report from Planning staff, and invited public comment; and

WHEREAS, it will be in the best interests of the City of Whitefish, and its inhabitants, to approve the proposed rezone; 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: Staff Report WZC 23-04, dated June 8, 2023, together with the July 11, 2023 letter of transmittal from the Whitefish Planning & Building Department, are hereby adopted as Findings of Fact.

Section 3: The real property known as 55 Hedman Lane, and legally described as Lot 5, Whitefish 57 Subdivision in Section 1, Township 30 North, Range 22 West, P.M.,M., Flathead County, Montana, as shown on Exhibit A attached hereto, previously zoned WCR (Country Residential District) is hereby rezoned to WR-2 (Two-Family 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
WR-2 (Two-Family 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.

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.

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

RE:  1883 Silver LLC; Rezone at 55 Hedman Lane; (WZC 23-04)  

Honorable Mayor and Council:  

Summary of Requested Action:  1883 Silver LLC is requesting a zoning map amendment at 55 Hedman Lane from WCR (Country Residential District) to WR-2 (Two-Family Residential District).  It is 2.5 acres and known as Lot 5, Whitefish 57 in Section 1, Township 30 N, Range 22 W., in Whitefish, Montana. The Whitefish Growth Policy designates the property as Urban.  

Planning & Building Department Recommendation:  Staff recommended approval of the above referenced zone change as set forth in the attached staff report.  

Public Hearing:  A public hearing was held on June 15, 2023. The applicant presented the rezone request and one members of the public spoke with concerns about the Baker Avenue extension as it crosses Park Knoll Lane. Draft Planning Board minutes are included.  

Planning Board Action:  The Whitefish Planning Board met on June 15, 2023, and considered the request. Following the hearing, the Planning Board made a motion to approve the above-mentioned zone change unanimously, adopting the staff report as findings of fact.  

Proposed Motion:  

- I move to approve WZC 23-04 and adopt the Findings of Fact in the staff report, as recommended by the Whitefish Planning Board on June 15, 2023.  

This item has been placed on the agenda for your regularly scheduled meeting on July 17, 2023. Should Council have questions or need further information on this matter, please contact the Planning Board or the Planning & Building Department.
Respectfully,

/s/ Wendy Compton-Ring

Wendy Compton-Ring, AICP
Senior Planner

Att: Draft Minutes, Whitefish Planning Board, 6-15-23

Exhibits from 6-15-23 Staff Packet to Planning Board:
1. Staff Report – WZC 23-04, 6-8-23
2. Adjacent Landowner Notice, 5-26-23
3. Map of Adjacent Landowners, Flathead County GIS
4. Advisory Agency Notice, 5-26-23
5. Application for Rezone, 4-25-23
6. Public Comment, Park Knoll HOA, 6-14-23

c: w/att Michelle Howke, City Clerk

c: w/o att 1883 Silver LLC Casey Doerlich 774 Mays Blvd 10-735 Incline Village, NV 89451
Will MacDonald 1380 Wisconsin Avenue Whitefish, MT 59937
Eric Mulcahy, Sands Surveying 2 Village Loop Kalispell, MT 59901
| CALL TO ORDER AND ROLL CALL | Vice Chair John Middleton called the regular meeting of the Whitefish Planning Board to order at 6:00 pm. Board members present were Whitney Beckham, Scott Freudenberger Chris Gardner, Allison Linville, John Middleton, and Toby Scott. Steve Qunell was absent. Planning Director David Taylor and Senior Planner Wendy Compton-Ring represented the Whitefish Planning & Building Department.

There were three people attending in addition to the board members and staff. |
| AGENDA CHANGES 6:01 pm | None. |
| APPROVAL OF MINUTES 6:01 pm | Gardner made a motion, seconded by Freudenberger to approve the May 18, 2023, minutes without corrections. The motion passed unanimously. |
| COMMUNICATIONS FROM THE PUBLIC (ITEMS NOT ON THE AGENDA) 6:02 pm | None |
| UNFINISHED BUSINESS: 6:02 pm | None. |
| PUBLIC HEARING 1: 1883 Silver LLC Rezone from WCR to WR-2 6:03 pm | A request by 1883 Silver LLC for a zone change from WCR (Country Residential District) to WR-2 (Two-Family Residential District). The property is currently undeveloped. The property is located at 55 Hedman Lane and can be legally described as Lot 5, WF 57 in S1, T30N, R22W, P.M.M., Flathead County. |
| STAFF REPORT WZC 23-04 (Compton-Ring) | Senior Planner Compton-Ring reviewed her staff report and findings. As of the writing of WZC 23-04, there were no public comments, but since then one comment came in this week from the Park Knoll HOA concerned about where Baker Avenue will intersect Park Knoll Lane, and whether Hedman Lane would have access to Baker Avenue, asking to not approve the rezone until those issues were resolved. |
Staff recommended adoption of the findings of fact within staff report WZC 23-04 and for approval of the 1883 Silver LLC Rezone.

<table>
<thead>
<tr>
<th>BOARD QUESTIONS OF STAFF</th>
<th>Scott asked about HOA letter and Baker Avenue extension and Director Taylor answered that the road is not designed yet but the southern portion is being looked at for the Baker Avenue section between Park Knoll Lane and JP Road.</th>
</tr>
</thead>
<tbody>
<tr>
<td>PUBLIC HEARING</td>
<td>Vice Chair Middleton opened the public hearing.</td>
</tr>
<tr>
<td>APPLICANT / AGENCIES</td>
<td>Will MacDonald, representing the applicant, stated he’s been talking to property owner to the west and is trying to work through the Baker Avenue location. They are aware of the issue, and understand they need the connection to JP Road. The Board had no questions.</td>
</tr>
<tr>
<td>PUBLIC COMMENT</td>
<td>David Hunt, President of the Park Knoll HOA, 113 Park Knoll Lane, spoke about their comment letter. He noted no easement between Hedman Lane and Baker Avenue exists and believes those things should play out prior to rezone. He requested the rezone be tabled until then. Park Knoll has had concerns about Baker Avenue as far back as 1996. There are with the grade of Park Knoll and their concerns should be addressed prior to development so all options are still available. There being no further comments, Vice Chair Middleton closed the public hearing and turned the matter over to the Planning Board for consideration. Beckham asked and Planner Compton-Ring noted there is not a connection or easement between the future Baker Avenue from Hedman Lane. Because we don’t know how that western property is being developed or where road is actually going to be located. Middleton asked, and Planner Compton-Ring said the zone change conforms with Highway 93 Plan S Corridor Plan. This property and Park Knoll have an urban designation. Taylor answered that the intersection would need to be addressed prior to development.</td>
</tr>
<tr>
<td>MOTION / BOARD DISCUSSION</td>
<td>Scott made a motion, seconded by Beckham, to adopt the findings of fact within staff report WZC 23-04 as proposed by City Staff.</td>
</tr>
<tr>
<td>VOTE</td>
<td>The motion passed unanimously. The matter is scheduled to go before the Council on July 17, 2023.</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>PUBLIC HEARING 2: City of Whitefish Zoning Text Amendment 6:18 pm</td>
<td>A request by the City of Whitefish to amend Special Provisions chapter 11-3-34, Marijuana Facilities, to increase buffer requirements between permitted marijuana facilities and between marijuana facilities and schools and churches.</td>
</tr>
<tr>
<td>STAFF REPORT WZTA 23-04 (Taylor)</td>
<td>Director Taylor reviewed his staff report and findings. As of the writing of WZTA 23-04, 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 23-04 and for approval of the Marijuana Facilities text amendment.</td>
</tr>
<tr>
<td>BOARD QUESTIONS OF STAFF</td>
<td>Middleton asked and Director Taylor said there are no pending applications impacted by this text amendment.</td>
</tr>
<tr>
<td>PUBLIC HEARING</td>
<td>Vice Chair Middleton opened the public hearing.</td>
</tr>
<tr>
<td>APPLICANT / AGENCIES</td>
<td>None.</td>
</tr>
<tr>
<td>PUBLIC COMMENT</td>
<td>There being no comments, Vice Chair Middleton closed the public hearing and turned the matter over to the Planning Board for consideration.</td>
</tr>
<tr>
<td>MOTION / BOARD DISCUSSION</td>
<td>Middleton made a motion, seconded by Scott, to adopt the findings of fact within staff report WZTA 23-04, as proposed by City Staff.</td>
</tr>
<tr>
<td>VOTE</td>
<td>The motion passed unanimously. The matter is scheduled to go before the Council on July 17, 2023.</td>
</tr>
<tr>
<td>GOOD AND WELFARE 10:00 pm</td>
<td>1.  Matters from Board.</td>
</tr>
<tr>
<td></td>
<td>2.  Matters from Staff.</td>
</tr>
<tr>
<td></td>
<td>3.  Poll of Board members available for the next meeting on July 20, 2023. All members present except Freudenberger and Linville indicated they thought they would be available.</td>
</tr>
</tbody>
</table>
A report to the Whitefish Planning Board and the Whitefish City Council regarding a request by 1883 Silver LLC for a zoning map amendment. This request is scheduled before the Whitefish Planning Board for public hearing on **Thursday, June 15, 2023** at 6:00 PM. A recommendation will be forwarded to the City Council for a subsequent public hearing on **Monday, July 17, 2023** at 7:10 PM. Both hearings will be held in the Whitefish City Council Chambers.

**PROJECT SCOPE**
The applicant is requesting a zone change consistent with the recently adopted Highway 93 South Corridor Plan in order to facilitate future development. The parcel is undeveloped, is addressed as 55 Hedman Lane and is currently zoned WCR (Country Residential District). The Growth Policy depicts the lot as Urban and the applicant is requesting the WR-2 (Two-Family Residential District) as the appropriate zoning for Urban.

![Zoning Map](image)

**Purpose of WR-2:** The WR-2 District is intended for residential purposes to provide for one-family and two-family homes in an urban setting connected to all Municipal utilities and services.

<table>
<thead>
<tr>
<th></th>
<th><strong>WR-2 (proposed zoning)</strong></th>
<th><strong>WCR (existing zoning)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum lot area</td>
<td>6,000 sq ft (single), 7,200 sq ft (duplex)</td>
<td>2.5 acre/single family</td>
</tr>
<tr>
<td>Front yard setback</td>
<td>25-feet</td>
<td>50-feet</td>
</tr>
<tr>
<td>Side yard setback</td>
<td>10-feet</td>
<td>20-feet</td>
</tr>
</tbody>
</table>
C. **Existing Land Use, Zoning, and Growth Policy Designation:**
The property is partially undeveloped, is zoned WCR (Country Residential District) with a Future Land Use designation of Urban on the Whitefish City-County Growth Policy Future Land Use Map.
D. **Adjacent Land Uses, Zoning and Growth Policy Designations:**

<table>
<thead>
<tr>
<th>North:</th>
<th>South:</th>
<th>East:</th>
<th>West:</th>
</tr>
</thead>
<tbody>
<tr>
<td>church</td>
<td>church</td>
<td>undeveloped</td>
<td>undeveloped</td>
</tr>
<tr>
<td>WLR/WB-2</td>
<td>WA</td>
<td>WB-2</td>
<td>WR-2/SC</td>
</tr>
<tr>
<td>Urban</td>
<td>Urban</td>
<td>Urban/ General</td>
<td>Urban</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Commercial</td>
<td></td>
</tr>
</tbody>
</table>

E. **Utilities:**

- **Sewer:** City of Whitefish
- **Water:** City of Whitefish
- **Solid Waste:** Republic Services
- **Electric:** Flathead Electric Co-op
- **Natural Gas:** Northwest Energy
- **Phone:** Centurylink
- **Police:** City of Whitefish
- **Fire:** City of Whitefish
- **Roads:** private/State of Montana

F. **Public Notice:**

A notice was mailed to adjacent landowners within 150-feet of the subject parcels on May 26, 2023. Advisory agencies were noticed on May 26, 2023. A notice was published in the Whitefish Pilot on June 1, 2023. As of the writing of this report, no comments were received.
REVIEW AND FINDINGS OF FACT:
This request is reviewed in accordance with the Whitefish zoning regulations, §11-7-12 and based on statutory criteria on the purposes of zoning (§76-2-303 through -305 MCA).

The Whitefish zoning regulations set forth the process for rezoning properties and the considerations that both the Planning Board and the City Council must make in order to approve an amendment. While some of these considerations are not applicable as the existing and proposed zoning districts already address them, several considerations need to be reviewed in light of the proposed zoning districts. The following is a review and discussion of considerations applicable to the proposed zoning district.

A. Made in Accordance with a Growth Policy.
The Growth Policy Future Land Use Map designates the parcel as Urban. The proposed change to WR-2 (Two-family Residential) is consistent with Urban.

Urban: This is generally a residential designation that defines traditional neighborhoods near downtown Whitefish but has also been applied to a second tier of neighborhoods both east of the river and in the State Park Road area. Residential unit types are mostly one- and two-family, but town homes and lower density apartments and condos are also acceptable in appropriate locations using the PUD. Densities generally range from 2 to 12 units per acre. Limited neighborhood commercial located along arterial or collector streets are also included in this designation. Zoning includes WLR, WR-1, and WR-2.

Finding 1: The proposed zone change to WR-2 is in accordance with the Growth Policy because the proposed zoning district is consistent with the Future Land Use Map of the Growth Policy as amended by the Highway 93 South Corridor Plan.

B. Secure safety from fire, panic, and other dangers.
The property is served by the City of Whitefish Police and Fire Departments. Any future development will meet all City requirements for roadway widths and Fire Department standards.

Finding 2: The proposed zone change will secure safety from fire, panic and other dangers because the city standards and zoning standards will be reviewed at the time of development.

C. Promote the public health, public safety and general welfare.
Public services and utilities are available to the property in Hedman Lane. This area is included in the City’s Extension of Services Plan.

Finding 3: The proposed zone change promotes public interest, health, comfort and general welfare because public services are available to the subject property and the area is included in the City’s Extension of Services Plan.

D. Facilitate the Adequate Provision of Transportation, Water, Sewerage, Schools, Parks, and other Public Requirements.
City sewer and water are available to the property from Hedman Lane, a private road and utility easement which connects to Highway 93 S, a state-maintained highway. The
area is also included with the City’s Extension of Services Plan for future development and extension of City services.

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 be served by public services and facilities.

E. **Reasonable Provision of Adequate Light and Air.**
The proposed zoning designations include setbacks, maximum building height, and lot coverage. In addition, all future construction will require conformance with the Building Code.

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

F. **The Effect on Motorized and Non-motorized Transportation Systems.**
The property is in the city limits and is served by Highway 93 S, a state highway, and Hedman Lane, a private road open to the public. An easement crosses this lot to its western edge for future connection to Baker Avenue extension. While increased traffic could occur with the new zoning, it is located adjacent to a future arterial and is adjacent to a highway, and any impacts to transportation systems will be reviewed at the time of development.

Finding 6: The proposed zone change will not affect motorized and non-motorized transportation systems because the property is served by a paved privately maintained street and state highway, and the traffic impacts from any future proposed uses will be reviewed during the permitting process.

G. **Promotion of Compatible Urban Growth.**
The subject property is in an area identified as Urban by the Growth Policy’s Future Land Use Map. The Growth Policy designates Urban as including WLR, WR-1, and WR-2 zoning districts. Therefore, the proposed zone change will promote compatible growth for the surrounding area.

Finding 7: The proposed zone change will promote compatible urban growth because the property is served by public services, and the proposed zoning designation conforms to the Growth Policy Future Land Use Map zoning designations.
H. Consideration to the character of the district and its particular suitability for particular uses.
This particular lot is infill surrounded by residential and general commercial uses. The rezone will facilitate residential housing development. The recently adopted Highway 93 South Corridor Plan envisioned this property for urban density residential along the future Baker Avenue.

Finding 8: The proposed zone change considers the character of the district and its suitability for particular uses because it is consistent with the vision of the Highway 93 South Corridor Plan for urban density residential along the future Baker Avenue.

I. Conserving the Value of Buildings.

Finding 9: The proposed zone change will conserve the value of any surrounding buildings because there is no significant change to the land uses permitted.

J. Encouraging the Most Appropriate Use of Land Throughout the Jurisdictional Area.
The proposed zone change to WR-2 would encourage the most appropriate use of land as it is consistent with the recently adopted Highway 93 South Corridor Plan vision for the development of this area along the future Baker Avenue.

Finding 10: The proposed zone change encourages the most appropriate use of land throughout the jurisdictional area because it is consistent with the zoning and land use envisioned in the Highway 93 South Corridor Plan and compatible with adjacent zoning.

K. That Historical Use and Establish Use Patterns and Recent Change in Use Trends will be Weighed Equally and Consideration Not be Given One to the Exclusion of the Other.

Finding 11: The proposed zone change is consistent with the historical, established and trending use patterns of the area, which include plans for residential along a future major arterial.

RECOMMENDATION
It is recommended that the Whitefish Planning Board adopt the findings of fact within staff report WZC 23-04 and recommend to the Whitefish City Council the zoning map amendment be approved.
The City of Whitefish would like to inform you that 1883 Silver LLC is requesting a zone change from WCR (Country Residential District) to WR-2 (Two-Family Residential District). The property is currently undeveloped and is zoned WCR (Country Residential District). The property is located at 55 Hedman Lane and can be legally described as Lot 5, WF 57 in S1, T30N, R22W, P.M.M., Flathead County.

You are welcome to provide comments on the project. Comments can be in written or email format. The Whitefish Planning Board will hold a public hearing for the proposed project request on:

**Thursday, June 15, 2023**
6:00 p.m.
**Whitefish City Council Chambers, City Hall**
418 E 2nd Street, Whitefish MT 59937

The Whitefish Planning Board will make a recommendation to the City Council, who will then hold a public hearing and take final action on **Monday, July 17, 2023** at 7:10 p.m., also in the Whitefish City Council Chambers.

On the back of this flyer is the subdivision map showing Lot 5. Additional information on this proposal can be obtained at the Whitefish Planning Department and on the Planning Department webpage – Current Land Use Actions: www.cityofwhitefish.org. The public is encouraged to comment on the above proposal and attend the hearing. Please send comments to the Whitefish Planning Department (address below) or email at wcompton-ring@cityofwhitefish.org. Comments received by the close of business on Monday, June 5, 2023, will be included in the packets to Board members. Comments received after the deadline will be summarized to Board members at the public hearing.

Please share this notice with your neighbors
Date: May 26, 2023
To: Advisory Agencies & Interested Parties
From: Whitefish Planning & Building Department

The regular meeting of the Whitefish Planning Board will be held Thursday, June 15, 2023 at 6:00 pm at the Whitefish City Council Chambers in City Hall. Upon receipt of the recommendation from the Planning Board, the Whitefish City Council will hold a subsequent public hearing on Monday, July 17, 2023. City Council meetings start at 7:10 pm at City Hall.

1. A request by 1883 Silver LLC for a zone change from WCR (Country Residential District) to WR-2 (Two-Family Residential District). The property is currently undeveloped. The property is located at 55 Hedman Lane and can be legally described as Lot 5, WF 57 in S1, T30N, R22W, P.M.M., Flathead County. (WZC 23-04) Compton-Ring

2. A request by the City of Whitefish to amend Special Provisions chapter 11-3-34, Marijuana Facilities, to increase buffer requirements between permitted marijuana facilities and between marijuana facilities and schools and churches. (WZTA 23-04) Taylor

Documents pertaining to these agenda items are available for review at the Whitefish Planning & Building Department, 418 E Second Street, during regular business hours and the application and site plans are available HERE. The full application packet along with public comments and staff report will be available on the City’s webpage: www.cityofwhitefish.org under Planning Board one week prior to the Planning Board public hearing date noted above. Inquiries are welcomed. Interested parties are invited to attend the meeting and make known their views and concerns. Comments in writing may be forwarded to the Whitefish Planning & Building Department at the above address prior to the hearing or via email: dtaylor@cityofwhitefish.org. For questions or further information regarding these proposals, call 406-863-2410.
ZONING MAP AMENDMENT

INSTRUCTIONS:

☐ A pre-application meeting with planning staff is required. Date of pre-app meeting: 4/20/23

☐ Submit the application fee, completed application and appropriate attachments to the Whitefish Planning & Building Department a minimum of forty five (45) days prior to the Planning Board meeting at which this application will be heard.

☐ The regularly scheduled meeting of the Whitefish City Planning Board is the third Thursday of each month at 6:00 PM at City Hall at 418 E 2nd Street.

☐ After the Planning Board hearing, the application is forwarded with the Board’s recommendation to the next available City Council meeting for hearing and final action.

A. PROJECT INFORMATION

Project Name: 1883 Silver, LLC

Project Address: 55 Headman Lane.

Assessor's Tract No.(s) N/A Lot No(s) 5
Block # N/A Subdivision Name WF 57 Subdivision
Section 1 Township 30 Range 22

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish Staff to be present on the property for routine monitoring and inspection during the approval and development process.

Owner's Signature ** 4/25/23

Date

Print Name

Applicant's Signature

Date

Print Name

Representative's Signature

Date

Print Name

---

**May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included.

City Council Packet, July 17, 2023 Page 62 of 132
B. APPLICATION CONTENTS:

attached

ALL ITEMS MUST BE INCLUDED - INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

☐ One (1) printed copy and one (1) electronic copy of the application and supplemental materials.

☐ Written description how the project meets the criteria in Section E

☐ Map showing the location and boundaries of the property

☐ Reduced copy of the map not to exceed 11” x 17”

☐ Petition for zone change signed by the real property owners representing at least 65% of the land area for which the change in zoning classification is sought

When all application materials are submitted to the Planning & Building Department, the application will be scheduled for public hearing before the Planning Board and City Council.

C. OWNER/APPLICAN INFORMAITON

OWNER(S) OF RECORD:

Name: 1883 Silver, LLC  Attn: Casey Doerlich Phone: __

Mailing Address: 774 Mays Blvd 10-735

City, State, Zip: Incline Village, NV 89451

Email: ________________________________

APPLICANT (if different than above):

Name: Will MacDonald Phone: __(602) 317-1731__

Mailing Address: 1380 Wisconsin Ave

City, State, Zip: Whitefish, MT 59937

Email: will@purewestmt.com

OTHER TECHNICAL/PROFESSIONAL:

Name: Sands Surveying, Inc.  Attn Eric Mulcahy Phone: __(406) 758-5980__

Mailing Address: 2 Village Loop

City, State, Zip: Kalispell, MT 59901

Email: eric@sandssurveying.com

D. PROPOSAL:

CURRENT ZONING DISTRICT: WCR

PROPOSED ZONING DISTRICT: WR-2
State the changed or changing conditions that make the proposed amendment necessary:

The City of Whitefish recently adopted the Highway 93 South Corridor Plan which updated the Land Use Policy for the area starting at approximately E 6th Street and running south along Highway 93 to approximately a mile and a half south of Highway 40. The Corridor Plan designated the applicant’s property with Urban Land Use Designations supporting more dense zoning designations. The Corridor Plan states in part that these changes were made to, “support existing and new housing and employment.”

In addition to the Corridor Plan, the City Council and the Chamber of Commerce have indicated that they support new residential development in an attempt to meet supply demands for workforce housing. The support for housing is always contingent on said housing being in the proper location. Given that the Corridor Plan was adopted in December of 2021, it would appear that the property subject to this request is a suitable location for urban scale residential use.

Since the adoption of the Corridor Plan, the City Council approved several zone changes that implement these growth policy strategies. The subject request reflects the interest of the Corridor Plan.

E. FINDINGS: The following criteria form the basis for approval or denial of the Zone Change. The burden of satisfactorily addressing these criteria lies with the applicant. Review the criteria below and discuss how the proposal conforms to the criteria. If the proposal does not conform to the criteria, describe how it will be mitigated.

1. Made in accordance with a Growth Policy

In December of 2021, the City of Whitefish adopted the 2021 Whitefish Highway 93 South Corridor Plan. This planning process took almost three years to complete and consisted of many committee meetings and much public outreach. The Corridor Plan identified the subject property in Segment B and recommended changing the land use designations to Urban Residential where the previous Growth Policy designation was just Suburban Residential. The result of this long range planning exercise is that the proposed WR-2 zoning designation are supported by the recently adopted Corridor Plan.

Some of the reasoning for the increase in density along the western side of the corridor is the goal of establishing the Baker Avenue extension between 19th Street and JP Road. Although this property does not encompass any Baker Avenue alignment it does include the access and utility easement to extend Headman Lane to the west for a connection with the future Baker Avenue. This road extension is shown on the plat of the WF 57 Subdivision.
Whitefish Growth Policy Future Land Use Map

2. Secure safety from fire and other dangers:

The area proposed for the zone change is within the City limits of Whitefish and is supported by the City Police and Fire Departments. The property is not located in any designated 100-year floodplains or areas of known geologic hazards. The City Council approved the final plat of the WF 57 Subdivision in May of 2021 with the full complement of City Services.

3. Promote public health, safety and general welfare:

The current request is a zone change to land use designations supported by the recently approved Highway 93 South Corridor Plan. To develop the property to full potential, the applicants will need to follow up with a PUD and/or subdivision application(s). The PUD regulations along with the City’s Subdivision Regulations will ensure that future development promotes health, safety, and welfare standards.

4. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements:

The property is located within the City limits of Whitefish. The WF 57 Subdivision required the construction and extension of streets and services into the property and abutting lot 5. The WF 57 Plat included the extension of Hedman Lane to the western boundary of the property for eventual connection with Baker Avenue.

At present the land owner is only requesting the zoning. At some point in the future, the applicant will come back to the City with a development proposal which will address the full development of the site and the connection to the transportation network. If the zone change is approved and without the future development plan such as a CUP, PUD, or Subdivision, the WR-2 would only allow a single residential duplex on the property.

5. Provide reasonable provision of adequate light and air:

The proposed WR-2 zoning district has setback requirements, lot coverage maximums and building height limitations similar to other zoning districts in the area. The proposed zone change will provide light and air.
6. The effect motorized and nonmotorized transportation systems:

As stated previously the current request is only for the zone change to WR-2. Without a CUP, PUD, or Subdivision application, the WR-2 zone change will only allow a single residential duplex on the 2.5 acre property. Once the applicant has a better idea for future development of the site, the applicant will come back to the City with application for a PUD and/or subdivision and these applications will define the intensity of the use along with its connection to a future Baker Avenue and Hedman Lane extension.

7. Promote compatible urban growth:

The subject property has been designated for suburban growth in the Whitefish Highway 93 South Corridor Plan. Approval of the WF 57 Subdivision included the development of Headman Lane and the extension of City Services into the subdivision. The property has access to the City’s transportation system and is a logical extension of the urban land use pattern.

8. Consider the character of the district and its particular suitability for particular uses:

With the approval of the WF 57 Subdivision in 2021, urban growth urban growth was predicted for the subject property. The subject property is surrounded by commercial and urban land use and zoning designations and should be considered infill. The proposed zoning designations are in keeping with the neighboring character.

9. Conserving the value of buildings:

Future use of this property is subject to zoning, subdivision, building code, architectural requirements, and landscaping standards. These rules are intended to promote safe, attractive, and connected development. The proposed project will conserve the value of buildings.

10. Encourage the most appropriate use of land throughout the jurisdictional area:

As stated previously, the subject property is identified for suburban scale development through the Highway 93 South Corridor Plan. The Corridor Plan went through and extensive public involvement process and numerous committee meetings to produce a long range vision for the area. Based on the public planning process the proposed zoning is the most appropriate use of the land.

11. That historical uses and established use patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other:

The historical use of this property was grazing and hay production. The Headman family sold the property approximately years back and it has since been subdivided in anticipation of urban development.
DESCRIPTION: Zone change from WCR to WR-2

Lot 5 of the WF 57 Subdivision located in the SW1/4 SE1/4 of Section 1, T30N, R 22W, P.M.M., Flathead County.
(This page left blank intentionally to separate printed sections)
RESOLUTION NO. 23-___

A Resolution to annex and incorporate within the boundaries of the City of Whitefish by petition and consent of the property owner approximately .99 acres of land known as Tract 2 ABA adjacent to 580 Lund Lane in Section 1, Township 30 North, Range 22 West, in Whitefish, Montana, and zone the property to WR-1, One-Family Residential, based on the findings of fact in the staff report, subject to the recommended condition of annexation approval.

WHEREAS, Rolando Gutierrez, filed a Petition for Annexation with the City Clerk requesting annexation and waiving any right of protest to annexation as the sole owner of real property representing 50% or more of the total area to be annexed. Therefore, the City Council considers this petition for annexation pursuant to the statutory Annexation by Petition method set forth in Title 7, Chapter 2, Part 46, Montana Code Annotated; and

WHEREAS, services to the annexed area will be provided according to the City of Whitefish Extension of Services Plan, amended by the City Council by Resolution No. 21-21, as required by and in conformity with §§ 7-2-4610 and 7-2-4732, MCA, available at the Office of the City Clerk; and

WHEREAS, the herein described property is within the City of Whitefish’s Urban Growth Boundary, the City has current and future capacity to serve the property and development, and the owners/developers will pay all costs to extend the municipal sewer and water service to the property; and

WHEREAS, pursuant to § 7-2-4211(2), MCA, the City shall include the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed; and

WHEREAS, as a condition of annexation, the City shall require that a 30’ wide public access and utility easement along the northern property line of the property abutting Lund Lane be granted to the City; and

WHEREAS, the proposed City zoning district, WR-1, One Family Residential, authorizes land uses comparable to the land uses authorized by Flathead County zoning; and

WHEREAS, the City, pursuant to §§ 76-2-303 and 7-1-4127, MCA, published in the newspaper of general circulation in the City of Whitefish, at least once a week for two successive weeks on June 7, 2023, and June 14, 2023, a notice that a resolution of annexation will appear on the City Council agenda for the regular meeting scheduled for July 17, 2023, at 7:10 p.m., and, at that meeting, the City will hold a public hearing and thereafter vote to either approve or deny the requested annexation and zone change; and

WHEREAS, on June 19, 2023, the Whitefish City Council approved the resolution of intent to annex and rezone the property; and
WHEREAS, the City Council of the City of Whitefish held a public hearing at its regularly scheduled meeting on July 17, 2023, at 7:10 p.m. at Whitefish City Hall, 418 E. 2nd Street, Whitefish, Montana, and thereafter voted to annex the area described in the Petition for Annexation and to apply City zoning, WR-1, One Family Residential, to said area; and

WHEREAS, pursuant to § 76-2-303, MCA, the City conducted the hearing on the annexation in conjunction with the hearing on the zoning of the proposed annexation.

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

Section 1: The City of Whitefish adopts the recitals set forth above as findings of fact.

Section 2: It is hereby determined by the Whitefish City Council to be in the best interest of the City of Whitefish, and the inhabitants thereof, as well as the current and future inhabitants of the area to be annexed described herein, that the area be annexed into the City of Whitefish and it is hereby declared by the City of Whitefish that its corporate boundaries shall be extended to include the boundaries of the area legally described below and that City zoning WR-1, One Family Residential, shall be applied to said property:

Tract 1:
A tract of land situated, lying and being in the NW1/4 of Section 1, Township 30 North, Range 22 West, P.M., M., Flathead County, Montana and more particularly described as follows to wit: Commencing at the Northeast corner of the SW1/4NW1/4 of Section 1, Township 30 North, Range 22 West, P.M., M., Flathead County, Montana; thence North 88°39'30" West, and along the Northerly boundary line of the SW1/4NW1/4, a distance of 528.00 feet to the Place of Beginning of the tract of land being described; thence South 0°20'30" West, a distance of 327.75 feet to a Point; thence North 88°39'30" West and being parallel with the Northerly boundary line of the SW1/4NW1/4 a distance of 132.00 feet to a point; thence North 0°20'30" East a distance of 327.75 feet to a point on the Northerly boundary line of the SW1/4NW1/4; thence South 88°39'30" East, and along said boundary line a distance of 132.00 feet to the Place of Beginning.
Shown as 2ABA on Certificate of Survey No. 1112

Tract 2:
A perpetual non-exclusive easement for ingress and egress and utilities on, over, and along an existing roadway as granted in Road and Utility Easement recorded November 16, 1992 Instrument No. 92-321-1652-0, of Official Records.

Including the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed.
Section 3: The minutes of the City Council meeting of the City of Whitefish, Montana, shall incorporate this Resolution.

Section 4: This Resolution shall take effect immediately upon its adoption by the City Council and the signing of the Mayor thereof.

RESOLUTION 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
Lot 2ABA, 580 Lund Lane, Whitefish, MT
Accessor No. 0014107
CERTIFICATE AS TO RESOLUTION
AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Whitefish, Montana (the "City"), hereby certify that the attached resolution is a true copy of a resolution entitled: "A Resolution extending the corporate limits of the City of Whitefish, Montana, to annex within the boundaries of the City approximately .99 acres of land known as 580 Lund Lane, in Section 1, Township 30 North, Range 22 West, in Whitefish, Montana, for which the owners have petitioned for and consented to annexation (the "Resolution")," on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on July 17, 2023, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, Councilors voted unanimously in favor thereof.

WITNESS my hand and seal officially this 17th day of July 2023.

______________________________
Michelle Howke, City Clerk
### ANNEXATION AND ZONING STAFF REPORT
**WAR 23-01 580 Lund Lane**

**Agenda item:** Staff Report WAR 23-01: 580 Lund Lane Annexation and Rezone

**Report Date:** 6/19/2023

**Case Planner:** Dave Taylor, Planning Director

**Report Review & Approval:** Dave Taylor, Planning Director

**Public Meetings & Hearing Schedule**

- **City Council, Consent Agenda for Resolution of Intent:** 6/19/2023
- **City Council public hearing:** 7/17/2023
- **Applicant & Owner:** Rolando Gutierrez/Roberto Antonio Maximo Gutierrez III
- **Representative:** n/a
- **Location of request:** The subject property includes the property addressed at 580 Lund Lane

**Legal description:** Tract 2ABA of Certificate of Survey #1112 and adjacent Lund Lane egress and utility easement, located in the Northwest 1/4 of Section 1, Township 30 North, Range 22 West, P.M.M.

**Legal ad:** Published in the *Whitefish Pilot* June 7 and June 14, 2023

**Property Owner Notice:** Sent out to all property owners within 150’ of property on June 5, 2023

**Growth policy:** Rural Residential

**Zoning:**
- **Proposed City Zoning:** WR-1 One-Family Residential

### Surrounding Land Uses

<table>
<thead>
<tr>
<th>North</th>
<th>South</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential/Ag</td>
<td>Residential/Ag</td>
</tr>
</tbody>
</table>

### Surrounding Zoning

<table>
<thead>
<tr>
<th>North</th>
<th>South</th>
</tr>
</thead>
<tbody>
<tr>
<td>WR-1</td>
<td>R-3</td>
</tr>
</tbody>
</table>

### East:

<table>
<thead>
<tr>
<th>Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-3</td>
</tr>
</tbody>
</table>

### West:

<table>
<thead>
<tr>
<th>Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-3</td>
</tr>
</tbody>
</table>

### RECOMMENDED MOTIONS

**CC consent agenda: 6/19/2023**

**Adopt** a resolution of intention to annex and incorporate within the boundaries of the City of Whitefish, the parcel of land as shown on Exhibit A and addressed as 580 Lund Lane, identified as Tract 2ABA of Certificate of Survey #1112 and adjacent Lund Lane egress and utility easement, located in the Northwest 1/4 of Section 1, Township 30 North, Range 22 West, P.M.M. and **zone the property** WR-1, One Family Residential, upon annexation, based on the findings of fact in the staff report, and **set the public** hearing for July 17, 2023.

**CC public hearing: 7/17/2021**

**Adopt** a resolution to annex and incorporate within the boundaries of the City of Whitefish, the parcel of land as shown on Exhibit A and addressed as 580 Lund Lane, identified as Tract 2ABA of Certificate of Survey #1112 and adjacent Lund Lane egress and utility easement, located in the Northwest 1/4 of Section 1, Township 30 North, Range 22 West, P.M.M. and **zone the property** WR-1, One Family Residential, upon annexation, based on the findings of fact in the staff report.
I. RECOMMENDED CONDITIONS

1. Staff recommends as a condition of the annexation approval, the property owner dedicate a 30’ wide public access and utility easement bordering Lund Lane along their property frontage, as the existing road easement is only 30’ wide and is on the property owner to the north’s property across Lund Lane.

I. PROJECT SUMMARY

Introduction

1. The City Clerk’s Office received a petition to annex on behalf of property owner Gutierrez, requesting annexation into the City of Whitefish and zoning upon annexation of WR-1, One-Family Residential, upon annexation for a parcel addressed as 580 Lund Lane and associated road and utility easement shown in Exhibit A and described as Tract 2ABA, located in the Northwest 1/4 of Section 01, in Township 30 North, Range 22 West, P.M.M.

Property Information

2. The subject property is located approximately 600 feet east of the intersection of Karrow Avenue and Lund Lane on Lund Lane.

4. The property is surrounded by residential and agricultural uses.

5. The subject property is vacant and consists of one lot with a total area of 43,255 square feet or .993 acres.

6. The subject property is adjacent to property recently annexed into city limits across Lund Lane to the north. There are four properties outside city limits to the east between this property and the City Shop property. Per the City Annexation Policy, the City should prioritize the annexation of properties that would fill in gaps left by previous annexations that created islands, and other types of non-contiguous boundaries. While this annexation is not filling a gap, it will help facilitate the annexation of more properties in the area.

7. The subject property is not within a floodplain or environmentally sensitive area.

8. The subject property is within the Urban Growth Boundary.

Road Improvements, Transit and Utility Infrastructure

9. Ideally the City should be attempting to get public access and utility easements through these private roads to connect Lund Lane to 13th Street in order to implement the Transportation Plan. According to the plat maps, Lund Lane is only 30’ wide, therefore another 30’ is needed for a public right of way. Annexation provides an opportunity to obtain the needed easement for future right-of-way acquisition, therefore a condition has been placed on this annexation to that effect.

10. The subject property is not connected to City water or sewer. New construction will be required to connect to utilities.

11. No fire hydrant is located within 500 feet of the property.

Annexation Policy

12. Per the City Annexation Policy, the city should prioritize annexation of areas that fill in gaps left by previous annexations that created islands and other non-continuous municipal boundaries.

13. Per the City Annexation Policy, the City should prioritize the annexation of areas located within the Urban Growth Boundary, and areas that contribute to the logical growth pattern of the City by creating orderly and contiguous municipal boundaries.

14. Per the City Annexation Policy, the City should prioritize the annexation of areas where the proliferation of on-site septic systems may pose a threat to water quality and environmentally sensitive areas.

15. Per the City Annexation Policy, the City can add conditions to implement infrastructure goals.

Growth Policy & Zoning

16. The applicable regional plan is the 2007 Whitefish City-County Growth Policy, which recommends land use designations of “Rural Residential”. The City Annexation Policy states that any annexation by the City should be guided by the current City Growth Policy and zoning should be consistent with the Growth Policy land use designations or be the closest equivalent to the existing county zoning.
17. Areas designated as Rural Residential future land use are intended primarily for areas that are already divided into lots of 2 ½ to 10 acres in size. Its intent is to preserve rural character while allowing existing large-lot residential areas to continue without becoming non-conforming as to minimum lot size. Applicable zoning districts include WCR and WA-10. Rural residential is not seen as a desirable future development option, and the Growth Policy does not advocate designating additional areas for rural residential beyond what is already depicted on the Future Land Use Map. The WR-1 Zoning is an Urban Future Land Use, the neighboring 1 acre properties to the north, east, and west all carry the WR-1 equivalent zoning of County R-3. Properties to the south are zoned WCR.

18. The subject property is surrounded by residential developments and farmland, the majority of which are 1 acre lots zoned County R-4 or City WR-1. Staff supports this request, as it substantially complies with the Growth Policy while considering the existing residential uses and zoning surrounding the property.

19. The current County zoning district that applies to the subject property is R-3, One-Family Residential, 10,000 square foot minimum lot size. This district provides adequate lot size for urban residential development; should have good thoroughfare access, and be in proximity to community and neighborhood facilities, i.e., schools, parks, shopping areas. This district will normally require all public utilities. The WR-1, One-Family Residential zone is the City of Whitefish’s equivalent.

**Statutory Requirements**

20. Section 7-2-4211 MCA requires municipalities to include the full width of any public street or road right-of-way that is adjacent to the property being annexed.

21. The City will meet the statutory requirements for a petition method annexation in regards to MCA 7-2-4601 – 4625 and the Whitefish Zoning Code Section 11-7-12-E by considering the petition, adopting a resolution of intent, and scheduling a public hearing regarding the zoning upon annexation, and advertising public notice for at least 15 days prior to the public hearing with the appropriate recommended zoning. The final step for council will be a public hearing to adopt a resolution to adopt or deny the annexation request.

**Zoning Upon Annexation**

22. MCA 76-2-303 allows a municipality to conduct a hearing on the annexation in conjunction with a hearing on the zoning of the property proposed for annexation. Title 11 Zoning Ordinance, Section 11-8-12-E outlines the three review criteria taken from MCA 76-2-303 which may be considered for zoning upon annexation. The following are the three criteria from Title 11 and staff’s assessment as to whether the requested zoning upon annexation complies with the criteria. The zoning upon annexation need only comply with one of the criteria. The zoning district classification assigned at the time of annexation must:

- **a. Authorize land uses comparable to the land uses authorized under the county zoning classification that applied to the property immediately before it was annexed in the city; or**

  - **Staff Assessment:**
    
    i. **Yes.** The County R-3 One-Family Residential District is the closest equivalent of the City’s WR-1 One-Family Zoning District, therefore land uses are authorized that are the most closely compatible to the previously allowed county land uses.

- **b. Authorize land uses that are consistent with the land uses approved by the Board of County Commissioners or the County Board of Adjustment; or**

  - **Staff Assessment:**
    
    i. **While no conditional uses are present on the property, land uses authorized under WR-1 zoning will be similar to those authorized under County R-3 zoning.**

    - **c. Be consistent with the land use and zoning recommendations for the subject areas, as set forth in the “2007 Growth Policy.”**

   - **Staff Assessment:**

     i. **The City Growth Policy calls for Rural Residential, which corresponds to WCR zoning. The Future Land Use for that area will be re-evaluated during the Growth Policy update. With the properties in the area having access to urban services like water and sewer, it is likely that the Future Land Uses will be changed to reflect appropriate Suburban or Urban densities.**

     ii. **The Growth Policy includes a Housing Goal that recommends we ensure an adequate supply and variety of housing product types and densities, at affordable prices, to meet the needs of Whitefish’s existing and future workforce, and for senior citizens.**
23. Based on compliance with 11-7-12-E-1-a through c, staff recommends annexation of the subject property, and zoning upon annexation of the subject property of WR-1 One-Family Residential upon annexation, subject to the recommended condition of approval.

24. If the City Council does not approve the request to annex the subject property and apply the WR-1 One-Family Residential zoning, the Resolution of Intention to Annex and the zoning upon annexation of the property shall become null and void, and the property shall revert to its original status in Flathead County.

### III. ATTACHMENTS

- Resolution of Intent to Annex
- Annexation Petition Application
- Annexation Map- Exhibit A
EXHIBIT A – ANNEXATION FORMS

After Recording Return to:
Michelle Howke, City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

PETITION
BEFORE THE CITY COUNCIL
OF THE
CITY OF WHITEFISH

PETITION FOR ANNEXATION TO CITY

Dated this ______th day of ______, 2023.

The undersigned Property Owner hereby petitions the City Council of the City of Whitefish, pursuant to Section 7-2-4601(3)(a), MCA, requesting annexation of the following real property into the City of Whitefish and to remove the following real property from the Whitefish Fire Service Area.

Petitioner agrees that this annexation petition is irrevocable, and that the City may act on this petition, and actually accomplish the annexation of such real property, at any time in the future, without limitation. Petitioner has had an opportunity to review the City of Whitefish Plan for Extension of Services applicable to such real property, and Petitioner is satisfied with such Plan.

LEGAL DESCRIPTION OF PROPERTY TO BE ANNEXED:

PROPERTY ADDRESS: 580 LUND LN, WHITEFISH MT 59937

ZONED AS: R-3

[Signature]
ROLANDO X. GUTIERREZ

36
STATE OF Montana

County of Flathead

On this 14th day of May, 2023 before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Rosario Gutierrez, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

[Notary Seal with Printed Name: Michelle Hake]

After Recording Return to:
CONTRACT AGREEMENT FOR ANNEXATION AND
CITY WATER AND/OR SANITARY SEWER SERVICE

THIS AGREEMENT is entered into as of 9th day of May, 2023, by and between the City of Whitefish, a municipal corporation ("CITY") as grantor of City water and/or sanitary sewer services, and ROLANDO XAVIER GUTIERREZ ("OWNER"), as grantee recipient(s) of City water and/or sanitary sewer services, whose mailing address is 1262 KETTNER BLVD UNIT 602, SAN DIEGO CA 92101 with respect to the following facts:

A. CITY owns and operates a municipal water and sanitary sewer system.

B. OWNER is the sole owner of the real property located at 580 LUND LN, WHITEFISH MT 59937, and legally described below, or as fully disclosed and shown on Exhibit "A" attached and made a part of this Agreement ("OWNER'S REAL PROPERTY"):

LEGAL DESCRIPTION

Tract 1
A tract of land situated, lying and being in the NW1/4 of Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana and more particularly described as follows to wit:
Commencing at the Northeast corner of the SW1/4NW1/4 of Section 1, Township 30 North Range 22 West, P.M.M., Flathead County, Montana; thence North 89°39'30" West, and along the Northerly boundary line of the SW1/4NW1/4 a distance of 529.00 feet to the Place of Beginning of the tract of land being described; thence South 90°20'30" West, a distance of 327.76 feet to a Point; thence North 89°39'30" West and being parallel with the Northerly boundary line of the SW1/4NE1/4 a distance of 132.00 feet to a point; thence North 90°20'30" East a distance of 327.76 feet to the point on the Northerly boundary line of the SW1/4NW1/4; thence South 89°39'30" East along said boundary line a distance of 132.00 feet to the Place of Beginning.
Shown as ZABA of Certificate of Survey 1112
Tract 2
A perpetual non-exclusive easement for ingress and egress and utilities on, over and along an existing roadway as granted in Road and Utility Easement recorded November 16, 1992 instrument No. 92-521-1662-0, of Official Records.

C. OWNER'S REAL PROPERTY is located outside of the current corporate limits of the CITY.

D. OWNER desires to obtain municipal water/sewer service from the CITY to serve OWNER'S REAL PROPERTY.
E. The parties desire to enter into an Agreement pursuant to MCA §§7-13-4312 and 7-13-4314, for the CITY to furnish municipal water and/or sanitary sewer service at rates adopted in accordance with Montana State Law in return for OWNER'S agreement that OWNER'S REAL PROPERTY may be annexed to the corporate limits of the CITY at any time.

In consideration of the performance of the terms and conditions of this Agreement on the part of each party, and pursuant to MCA §§7-13-4312 and 7-13-4314, it is hereby agreed as follows:

(1) **Furnishing of Sewer Services:** The CITY hereby agrees to furnish municipal water and/or sanitary sewer service to OWNER'S REAL PROPERTY. Unless otherwise agreed in writing between the parties, OWNER shall be solely responsible for all costs involved in extending municipal water and/or sanitary sewer service to OWNER'S REAL PROPERTY and connecting OWNER'S REAL PROPERTY to the municipal water and/or sewer system. Nothing in this Agreement shall obligate CITY to pay the costs of right-of-way acquisition, engineering, construction and other related costs involved in extending or connecting municipal water and/or sewer service to OWNER'S REAL PROPERTY.

(2) **Municipal Water and/or Sanitary Sewer Connections:** Upon approval by the CITY Public Works Department of the design and construction of all the municipal water and/or sanitary sewer lines and other facilities necessary to serve OWNER'S REAL PROPERTY, and acceptance of all of such water and/or sewer facilities by the CITY, OWNER will be given permission to connect no more than one connection to the CITY'S municipal water and/or sanitary sewer system. Any additional water and/or sewer connections shall require a new application for service and approval obtained from the CITY Public Works Department.

Upon approval by the CITY Public Works Department, OWNER will be given permission to extend one water and sanitary sewer stubs from the municipal sanitary main to the property line of the property described herein. Any additional water and/or sanitary sewer stubs shall require a new application for CITY water and/or sanitary sewer service. Prior to connecting any residential or commercial building or any other structure to the water and/or sanitary sewer service stub-out(s), a request must be submitted to CITY for municipal water and/or sanitary sewer service describing the use of the building proposed to be connected. Any connections must comply with the Rules and Regulations for the City of Whitefish Water, Wastewater and Garbage Utility. The request is to be reviewed and approved by CITY prior to any connection of a residential or commercial building, or other structure. No residential or commercial building or any other structure shall be allowed to connect to the municipal water and/or sanitary sewer service extension unless approval has first been obtained from the CITY Public Works Department.

(3) **Transfer of Title:** Within thirty (30) days of the completion of the construction and CITY acceptance of the said water and/or sanitary sewer extension, OWNER hereby agrees to transfer, or cause to be transferred to CITY by appropriate documents any right, title and interest that OWNER may have in the municipal water and/or sanitary sewer lateral and main extensions to be built by OWNER to provide service to the herein described property.
OWNER agrees that the municipal water and/or sanitary sewer line extension to the property shall be constructed in a public right-of-way or on land either owned by OWNER or subject to an appropriate easement approved by CITY, granting OWNER, CITY, and their successors and assigns the right to construct, repair, and maintain the sanitary sewer extension lines. If any portion of the lateral extension is constructed on land owned by OWNER at the time OWNER transfers their interest in the sanitary sewer extension line to the CITY, they shall also grant the CITY an appropriate easement for construction, repair, and maintenance of the municipal water and/or sanitary sewer extension lines. The CITY shall not be required to accept any previously constructed water or sewer lines unless they are properly located in the right-of-way or a valid easement.

(4) **Maintenance:** Upon completion and acceptance of construction and the approval of access to the municipal water and/or sanitary sewer lines constructed in easements, maintenance, and repair of the mains servicing OWNER'S REAL PROPERTY shall become and remain the responsibility of CITY. Maintenance and repair of the lateral service lines serving the OWNER'S REAL PROPERTY shall become and remain the responsibility of the OWNER.

(5) **Rates, Rules and Policies:** OWNER agrees to pay to the CITY such charges, rates, and fees, including but not limited to connection fees and impact fees, as are established by the CITY in accordance with Montana Law. In addition, OWNER agrees to comply with and be subject to all of the CITY'S rules, regulations and policies, as amended from time to time, with respect to the operation of the CITY'S municipal water and/or sanitary sewer system.

(6) **Consent to Annexation:** OWNER acknowledges and agrees that the CITY is willing to provide municipal water and/or sanitary sewer services only if OWNER provides all of the promises and representations contained in this Agreement. Pursuant to MCA §7-13-4314, the CITY requires that any person, firm, or corporation outside of the incorporated CITY limits is required, as a condition to initiate such service(s), to consent to and petition for annexation of the tract served by the CITY, and in consideration for the CITY’S agreement to provide municipal water and/or sanitary sewer service, OWNER agrees to consent to annexation under the following conditions and in the following manner:

a) OWNER hereby irrevocably consents to the annexation of OWNER'S REAL PROPERTY, and OWNER irrevocably waives any right of protest to any annexation proceedings initiated by the CITY. OWNER agrees that the CITY may initiate annexation of OWNER'S REAL PROPERTY, relying upon this consent and waiver of protest, at any time in the future, without limitation. OWNER acknowledges that, but for this waiver, OWNER would have a right to protest the annexation of OWNER'S REAL PROPERTY.

b) OWNER hereby petitions to have OWNER'S REAL PROPERTY annexed to the CITY, pursuant to MCA §7-2-4601, *et seq.* OWNER agrees that the CITY may act on this petition at any time in the future, without limitation. OWNER furthermore expressly waives the provisions of MCA §7-2-4608, which provides, in effect, that no property used for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purposes or for any purpose incident thereto shall be
annexed pursuant to the provisions of MCA §7-2-4601, *et seq.*

c) OWNER hereby signs the petition requesting annexation attached to and made a part hereof under this Agreement for municipal water and/or sanitary sewer services at the time of signing this Agreement. Such Petition shall be filed with the City Clerk.

d) OWNER acknowledges and agrees that OWNER has had an opportunity to inspect the contents of the CITY'S Plan for Extension of Services, as adopted by the CITY, and which describes the manner in which CITY services may be extended to properties annexed by the CITY. OWNER acknowledges and agrees that OWNER is satisfied with the CITY'S Plan for Extension of Services, and that the CITY'S Plan for Extension of Services adequately provides for the extension of CITY services to OWNER'S REAL PROPERTY. OWNER hereby waives the right to object or otherwise challenge the CITY'S Plan for Extension of Services.

e) OWNER hereby irrevocably waives for all time the right to file an action in court to challenge, for any reason, the CITY'S annexation of OWNER'S REAL PROPERTY, whether such annexation occurs now or in the future.

f) OWNER acknowledges and agrees that all of OWNER'S REAL PROPERTY, as described above, will clearly and immediately, and not merely potentially, be serviced by the municipal water and/or sanitary sewer service to be provided by the CITY pursuant to this Agreement.

g) OWNER agrees that if ever OWNER, their heirs, assigns, successors, purchasers, administrators, personal representatives or subsequent holders of title to OWNER'S REAL PROPERTY, breach, challenge, disregard, or otherwise violate any of the terms of this Agreement, the CITY may, after providing twenty (20) days written notice, terminate water and/or sanitary sewer services to OWNER'S REAL PROPERTY, in addition to any other remedies that the CITY may have.

h) OWNER agrees that if OWNER, in violation of this Agreement, submits a protest to the annexation of OWNER'S REAL PROPERTY, the CITY may disregard such protest, in addition to any other remedies that the CITY may have.

i) The promises, covenants, representations, and waivers provided pursuant to this Agreement are voluntarily and knowingly given, with full knowledge of the OWNER'S legal rights. OWNER acknowledges and agrees that it is has had an opportunity to consult with legal counsel of its choice regarding the provisions of this Agreement.

(7) **Recording: Binding Effect:** OWNER agrees that this entire Agreement shall be recorded in the office of the Clerk and Recorder of Flathead County, and OWNER agrees that this Agreement shall run to, with, and be binding upon OWNER'S REAL PROPERTY and OWNER'S title to such real property, and shall be binding upon the OWNER'S
heirs, assigns, successors, administrators, personal representatives and any and all subsequent holders or owners of OWNER’S REAL PROPERTY.

(8) **Future Deeds:** Subsequent to this Agreement all deeds to parcels of land within the property subject to this Agreement granted by OWNER shall contain the following consent to annexation and waiver:

The Owner hereby covenants and agrees that acceptance of this deed does constitute a waiver of the statutory right of protest against any annexation procedure initiated by the City of Whitefish with respect to the property described herein. Owner also agrees that acceptance of a deed constitutes an obligation on the part of Owner to initiate annexation procedures per the Petition to Annex on file at the City Clerk's Office.

This consent to annexation and waiver shall run with the land and shall forever be binding upon the Owner, transferees, successors and assigns.

OWNER agrees that this Agreement shall be binding even if OWNER fails to include the language set forth above in future deeds. After annexation of OWNER’S REAL PROPERTY, future deeds need not contain the language set forth above.

(9) **Term:** This Agreement shall be in perpetuity.

(10) **Entire Agreement:** This Agreement contains the entire agreement between the parties and any additional agreement hereafter made shall be ineffective to alter, change, modify or discharge it in whole or in part, unless such additional agreement is in writing and signed by the parties hereto.

(11) **Partial Invalidity:** Each term, covenant, condition or provision of this Agreement shall be viewed as separate and distinct, and in the event that any such term, covenant, condition or provision shall be held by a court of competent jurisdiction to be invalid, the remaining provisions shall continue in full force and effect.

(12) **Necessary Acts:** Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.
OWNER(S)

ROLANDO XAVIER GUTIERREZ

[Printed Name]

CITY OF WHITEFISH

ATTEST:

By: Dana Smith, City Manager
    Michelle Howke, City Clerk

STATE OF Montana ss.

County of Flathead

On this 4th day of May, 2023, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Rolando Gutierrez, and only, known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

Printed Name: Michelle Howke
STATE OF MONTANA

County of Flathead

On this _____ day of ______________, 20__, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared DANA SMITH, and MICHELLE HOWKE, to me known to be the City Manager and City Clerk respectively of the City of Whitefish, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the City of Whitefish for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the City of Whitefish.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year last above written.

___________________________________________

Printed Name: _______________________________
ZONING MAP AMENDMENT - ANNEXATION

INSTRUCTIONS:

☐ Submit the completed application with annexation form and appropriate attachments to the Whitefish City Clerk’s Office.

☐ After annexation, the rezoning application will be scheduled at the next available meeting of the City Planning Board, which meets on the third Thursday of each month at 6:00 PM at City Hall at 418 E 2nd Street.

☐ After the Planning Board hearing, the application is forwarded with the Board’s recommendation to the next available City Council meeting for hearing and final action.

A. PROJECT INFORMATION:

Project Address: 580 LUND LN, WHITEFISH MT 59937
Assessor’s Tract No.(s) 0000014107 Lot No(s) 3022X01-XXX-2ABA
Block # Subdivision Name
Section 1 Township 30 North Range 22 West

I hereby certify that the information contained or accompanied in this application is true and correct to the best of my knowledge. The signing of this application signifies approval for the Whitefish Staff to be present on the property for routine monitoring and inspection during the approval and development process.

05/10/2023
Owner’s Signature**
ROLANDO XAVIER GUTIERREZ
Print Name

05/10/2023
Applicant’s Signature
ROLANDO XAVIER GUTIERREZ
Print Name

Date
Representative’s Signature

Date
Print Name

**May be signed by the applicant or representative, authorization letter from owner must be attached. If there are multiple owners, a letter authorizing one owner to be the authorized representative for all must be included.
B. APPLICATION CONTENTS:

Attached

All items must be included - Incomplete applications will not be accepted

☐ One (1) printed copy and one (1) electronic copy of the application and supplemental materials.

☐ Map showing the location and boundaries of the property

☐ Approved Resolution annexing property into City limits

☐ Certified adjacent owners list for properties within 150-feet of subject site

When all application materials are submitted to the Planning & Building Department, the application will be scheduled for public hearing before the Planning Board and City Council.

C. OWNER/APPLICANT INFORMATION

OWNER(S) OF RECORD:

Name: ROLANDO XAVIER GUTIERREZ Phone: (619) 750-5649

Mailing Address: 1262 Kettner Blvd. Unit 602

City, State, Zip: San Diego, CA 92101

Email: rolandoxgutierrez@gmail.com

APPLICANT:

Name: City of Whitefish Phone: (406) 863-2410

Mailing Address: P.O. Box 158

City, State, Zip: Whitefish, MT 59937

Email: 

D. State the changing conditions that make the proposed amendment necessary:

------------------------ For City Staff Use Only ------------------------

PROPOSED ZONING:

CURRENT ZONING DISTRICT: 

PROPOSED ZONING DISTRICT: 

Revised 06-31-20

Page 2 of 2
LIST OF ADJACENT OWNERS

WEST
2AD & 2ACA
556 Lund Ln
Jerry & Marie E Randolph
215 Elk Park Rd
Columbia Falls, MT 59912

NORTHWEST
2CC
1235 Karrow Ave
Virginia Leitner
823 W Villard St
Bozeman, MT 59715

NORTH
2C
625 Lund Ln
Lisa Szady
2288 Houston Point Dr
Whitefish, MT 59937

EAST
2AB
600 Lund Ln
Charles E & Linda L Pitcher
PO Box 4179
Whitefish, MT 59937

SOUTH
2AAB
Catherine Witmer
200 Parkhill Dr
Whitefish, MT 59937
RECORDING REQUESTED BY:

GRAVIS LAW, PLLC
Michelle R. Finch
1820 3rd Ave. E., Ste. 302
Kettlefall, MT 59901

Send tax notices to:
Rolando X. Gutierrez
1262 Kenner, Unit 602
San Diego, CA 91010

PERSONAL REPRESENTATIVE'S DEED

THIS DEED is made by Rolando X. Gutierrez, as Personal Representative of the Estate of Roberto Antonio Maximo Gutierrez III, Deceased, Grantor, conveying all right, title and interest in and to the real property located at 580 Lund Lane, Whitefish, Montana, more particularly described below to Rolando X. Gutierrez, 580 Lund Lane, Whitefish, Montana ("Grantee").

WHEREAS, Roberto Antonio Maximo Gutierrez III died testate while residing at 580 Lund Lane, Whitefish, Flathead County, Montana on October 14, 2021; and

WHEREAS, Grantor was duly appointed as the Personal Representative of said estate, filed as Case No. DP-2021-382D in the District Court of the Eleventh Judicial District of the State of Montana in and for the County of Flathead on November 7, 2022, and is now qualified and acting in that capacity; and

THEREFORE, for pursuant to the powers conferred upon Grantor by the Montana Uniform Probate Code, Grantor does hereby convey, assign, transfer and set over unto Grantee, a fee simple interest in and to the following described real property, situated in 580 Lund Lane, Whitefish, Flathead County, Montana.

Legal Description: See SCHEDULE "A"

DATED this 3 day of May, 2023.

By: Rolando X. Gutierrez, Personal Representative of the Estate of Roberto Antonio Maximo Gutierrez III

PERSONAL REPRESENTATIVE'S DEED - 1
STATE OF MONTANA

County of Flathead

On this 3rd day of May, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Rolando X. Gutierrez, Personal Representative of the Estate of Roberto Antonio Maximo Gutierrez III, known to me to be the person whose name is subscribed to the within instrument as the Personal Representative of the Estate of Roberto Antonio Maximo Gutierrez III, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

TIM SHAFFER
Notary Public for the State of Montana
Residing at Kalispell, MT
My Commission Expires: September 28, 2026

Notary Public in and for the State of Montana
Residing at Kalispell, MT
My Commission Expires: 09/28/2026

PERSONAL REPRESENTATIVE'S DEED - 2

City Council Packet, July 17, 2023 Page 95 of 132
SCHEDULE A

Tract 1:
A tract of land situated, lying and being in the NW1/4 of Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana and more particularly described as follows to wit:
Commencing at the Northeast corner of the SW1/4NW1/4 of Section 1, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana; thence
North 88°39’30” West, and along the Northerly boundary line of the SW1/4NW1/4, a distance of 528.00 feet to the Place of Beginning of the tract of land being described; thence
South 0°20’30” West, a distance of 327.75 feet to a Point; thence
North 88°39’30” West and being parallel with the Northerly boundary line of the SW1/4NW1/4 a distance of 132.00 feet to a point; thence
North 0°20’30” East a distance of 327.75 feet to a point on the Northerly boundary line of the SW1/4NW1/4; thence
South 88°39’30” East, and along said boundary line a distance of 132.00 feet to the Place of Beginning.
Shown as 2ABA on Certificate of Survey No. 1112
Tract 2:
A perpetual non-exclusive easement for ingress and egress and utilities on, over, and along an existing roadway as granted in Road and Utility Easement recorded November 16, 1992 Instrument No. 92-321-1652-0, of Official Records.
Annexation Map Lot 2ABA

580 Lund Lane

Zone Change from R-3 to WR-1
(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 Title 11 -- Zoning Regulations, Chapter 2 – Zoning Districts, Chapter 3 – Special Provisions, Section 34 – Marijuana Facilities, of the Whitefish City Code.

WHEREAS, in 2020, the citizens of Montana passed I-190 legalizing recreational marijuana for adult use, and the legislature subsequently passed HB 701, further refining the program; and

WHEREAS, in December of 2021, the City of Whitefish passed Ordinance No. 21-17 which allowed marijuana storefronts and other facilities in certain zoning districts within City limits and placed restrictions on distances from schools, places of worship, and other facilities; and

WHEREAS, on February 21, 2023, the City Council passed Ordinance No. 23-02, an Interim Zoning Ordinance which prohibits the approval of new applications for administrative conditional use permits for marijuana dispensaries for six months, in order to further study impacts associated with dispensaries’ proximity to churches, schools, and one another; and

WHEREAS, on April 3, 2023, the City Council held a public work session with staff and directed staff to further restrict marijuana facilities in City limits by requiring that they be at least 500’ from schools and churches and from other marijuana facilities in the WB-3 zoning district; and

WHEREAS, the City Council thereafter directed staff to initiate zoning text amendments; and

WHEREAS, at a lawfully noticed public hearing on June 15, 2023, the Whitefish City Planning Board received an oral report from Planning Staff, reviewed staff report WZTA 23-04, invited public comment at a public hearing on the proposed amendments, and unanimously recommended approval; and

WHEREAS, at a lawfully noticed public hearing on July 17, 2023, the Whitefish City Council received an oral report and a written report from Planning staff, reviewed Staff Report WZTA 23-04, and letter of transmittal, invited public input, and thereafter approved the text amendments, attached as Exhibit A; and

WHEREAS, all the criteria for a Zoning Text Amendment found in § 11-7-10-E of the Whitefish City Code are met; and

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

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 23-04 dated June 15, 2023, together with letter of transmittal from the Whitefish Planning & Building Department dated July 17, 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
11-3-34: **MARIJUANA FACILITIES:** Marijuana sales, manufacturing, testing, and cultivation facilities, as allowed and defined under Montana State law, must comply with the following standards:

A. All permitted or conditionally permitted marijuana facilities must be sited and operated in full compliance with Montana law as well as all zoning and building code requirements, parking standards, and any conditions of approval. Marijuana facilities may not be operated as a home occupation.

B. No marijuana facility is permitted from locales within 500' of and addressed on the same street as a building used exclusively as a church or public school pursuant to state law. This distance must be measured in a straight line from the center of the nearest public entrance of the place of worship or school to the nearest public entrance of the marijuana sales facility premises. A lawfully operating facility shall not be rendered in violation of these provisions by the subsequent location of a church or public school or by amendments to this ordinance. Additionally, no marijuana facility shall be located on Spokane Avenue between Railway Street and East Second Street.

C. No marijuana dispensary may be located within 150' of and addressed on the same street as another marijuana dispensary, with the exception that in the WB-1 and WB-2 zones no marijuana dispensary may be located within 500' of and addressed on the same street as another marijuana dispensary. This distance must be measured in a straight line from the center of the nearest public entrances.

D. Marijuana facilities must have a building façade that visually blends in with the design, style, and appearance of adjacent storefronts, including signage, security measures, and lighting, and must be reviewed and approved by the Architectural Review Committee when required.

E. Window signs on marijuana dispensaries are limited to a maximum window sign coverage of 20% of the window area, and otherwise no window shall be covered or made opaque in any way. No security bars, metal screens, grates, or other visible security devices other than door locks and recessed or otherwise discrete security cameras are permitted on the storefront exterior unless required by State law.

F. If the applicant is not the property owner, a notarized authorization executed by the property owner authorizing and consenting to the proposed use of the property as a marijuana facility is required.

G. With the exception of State licensed outdoor cultivation allowed where agricultural uses are permitted, marijuana cultivation must be located within one or more completely enclosed, secure buildings with rigid walls, a roof, and secure doors.
H. Marijuana facilities must at all times be operated in such a way as to ensure the health, safety, and welfare of the public and workers. Marijuana facilities must not create a public nuisance or adversely affect the health or safety of the nearby residents, businesses, or its employees by creating dust, glare, light pollution, heat, noise, noxious gasses, odor, vibration, unsafe conditions or other impacts, or be hazardous due to the use or storage of materials, processes, products, and runoff of water, pesticides or wastes.

I. Marijuana cultivation, manufacturing, and testing facilities must be sited and operated in a manner that prevents marijuana odors from being detected offsite. A sufficient odor absorbing ventilation and exhaust system utilizing negative pressure inside the building must be used so odor generated distinctive to its operation cannot be detected outside the facility or anywhere on adjacent property or public rights-way, nor in interior common area walkways, hallways, foyers, lobby areas or other areas available for use by common tenants or the visiting public. An odor control plan must be submitted as part of any permit application.

J. All marijuana facilities must have sufficient security systems, including surveillance cameras, alarm systems on doors and windows, deadbolt locked exterior doors, and safes to store cash and retail marijuana products when closed.

K. Marijuana remnants and byproducts must be secured and properly disposed of and not be placed within the facility's exterior refuse containers at any business operating pursuant to this section unless rendered unusable. Outdoor storage of marijuana merchandise, raw materials, or other marijuana materials associated with the production of marijuana is prohibited.

L. All signage must meet state licensing requirements as well as the Sign Regulations found in section 11-5 of this Ordinance.
July 17, 2023

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

Re: Zoning Text Amendment: WZTA 23-04 Marijuana Facilities

Honorable Mayor and Council:

Summary of Requested Action: This application is a request by the City of Whitefish to amend Section 11-3-34, Special Provisions, Marijuana Facilities, to increase buffer requirements between permitted marijuana facilities and between marijuana facilities and schools and churches.

Planning & Building Department Recommendation: Staff recommends the City Council adopt the attached code amendments.

Public Hearings: A public hearing on this item was held by the Whitefish Planning Board on June 15, 2023. After staff’s presentation of the staff report, there were no public comments.

Planning Board Recommendation: The Whitefish Planning Board held a public hearing on June 15, 2023, then a motion was made (Middleton/Scott) to approve the zoning text amendments as proposed by staff. The motion passed unanimously.

Proposed Motion:

I move to approve WZTA 23-04 adopting the attached amendments as recommended by the Whitefish City Planning Board along with the Findings of Fact in the staff report

This item has been placed on the agenda for your regularly scheduled meeting on July 17, 2023. Should Council have questions or need further information on this matter, please contact the Whitefish Planning Board or the Planning & Building Department.
Respectfully,

David Taylor, AICP
Director

Att: Exhibit A, Ordinance 23-__
Exhibit B, Portion of Minutes of 06/15/23 Planning Board Meeting
Exhibit C, Staff Report WZTA 23-04

c: w/att Michelle Howke, City Clerk
Scott made a motion, seconded by Beckham, to adopt the findings of fact within staff report WZC 23-04 as proposed by City Staff.

The motion passed unanimously. The matter is scheduled to go before the Council on July 17, 2023.

A request by the City of Whitefish to amend Special Provisions chapter 11-3-34, Marijuana Facilities, to increase buffer requirements between permitted marijuana facilities and between marijuana facilities and schools and churches.

Director Taylor reviewed his staff report and findings. As of the writing of WZTA 23-04, 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 23-04 and for approval of the Marijuana Facilities text amendment.

Middleton asked and Director Taylor said there are no pending applications impacted by this text amendment.

Vice Chair Middleton opened the public hearing.

None.

There being no comments, Vice Chair Middleton closed the public hearing and turned the matter over to the Planning Board for consideration.

Middleton made a motion, seconded by Scott, to adopt the findings of fact within staff report WZTA 23-04, as proposed by City Staff.

The motion passed unanimously. The matter is scheduled to go before the Council on July 17, 2023.

1. Matters from Board.
2. Matters from Staff.
3. Poll of Board members available for the next meeting on July 20, 2023. All members present except Freudenberger and Linville indicated they thought they would be available.
This is a report to the Whitefish Planning Board and City Council regarding a request by the City of Whitefish for zoning text amendments to Section 11-3-34, Special Provisions, Marijuana Facilities, to increase buffer requirements between permitted marijuana facilities and from marijuana facilities to schools and churches. A public hearing will be held before the Planning Board on June 15, 2023 and a public hearing is scheduled before City Council on July 17, 2023.

BACKGROUND INFORMATION

This is a proposed draft code amendment as directed by the City Council that would increase the buffers from schools and churches to new marijuana dispensaries and between permitted dispensaries to a flat 500’ distance in all cases, eliminating the existing exceptions for cases where they are located or addressed on different streets. Existing permitted dispensaries that do not meet these new requirements would be grandfathered in and can remain.

The City Council adopted an Interim Zoning Ordinance on February 21st that prohibited new marijuana facilities for six months in order to give the City Council and staff time to further study the issue and to potentially look at increasing distancing requirements and/or changing permitting procedures. These changes are a result of direction given to staff at a work session discussing their concerns and possible solutions.

One issue outlined by the Council is dispensaries potentially locating too close to schools and churches. As a solution, staff recommends increasing the separation by making city buffer requirements more robust than that used by the Montana Department of Revenue, which has exemptions for marijuana businesses addressed on different streets or having front doors on different streets from schools and churches. This draft eliminates those exceptions, so it is a straight 500’ separation from public entrance to public entrance.

The Council also directed staff to address the total number of dispensaries locating in downtown Whitefish. To address that, we recommend increasing the buffering requirement between dispensaries downtown to 500’ from public entrance to public entrance without respect to addresses or streets. The regulations currently have a 150’ buffer between dispensaries addressed on the same street. A 500’ buffer is what we currently require between dispensaries in the WB-1 and WB-2 commercial zones, so the change would make them all consistent. It should be noted that Missoula requires a
500' buffer between ground floor dispensaries downtown but does not regulate dispensaries on upper floors of buildings.

Attached are maps that show how that change would affect new and existing facilities in the downtown and the northern and southern commercial areas.

PROPOSED ZONING TEXT AMENDMENT LANGUAGE

Below are the recommended text amendments, with new additions underlined and in red, and things to be deleted shown struck out.

Proposed code changes to Special Provisions, 11-3-34, Marijuana Facilities:

11-3-34: MARIJUANA FACILITIES: Marijuana sales, manufacturing, testing, and cultivation facilities, as allowed and defined under Montana State law, must comply with the following standards:

A. All permitted or conditionally permitted marijuana facilities must be sited and operated in full compliance with Montana law as well as all zoning and building code requirements, parking standards, and any conditions of approval. Marijuana facilities may not be operated as a home occupation.

B. No marijuana facility is permitted from locales within 500' of and addressed on the same street as a building used exclusively as a church or public school pursuant to state law. This distance must be measured in a straight line from the center of the nearest public entrance of the place of worship or school to the nearest public entrance of the marijuana sales facility premises. A lawfully operating facility shall not be rendered in violation of these provisions by the subsequent location of a church or public school or by amendments to this ordinance. Additionally, no marijuana facility shall be located on Spokane Avenue between Railway Street and East Second Street.

C. No marijuana dispensary may be located within 150' of and addressed on the same street as another marijuana dispensary, with the exception that in the WB-1 and WB-2 zones no marijuana dispensary may be located within 500' of and addressed on the same street as another marijuana dispensary. This distance must be measured in a straight line from the center of the nearest public entrances.

D. Marijuana facilities must have a building façade that visually blends in with the design, style, and appearance of adjacent storefronts, including signage, security measures, and lighting, and must be reviewed and approved by the Architectural Review Committee when required.

E. Window signs on marijuana dispensaries are limited to a maximum window sign coverage of 20% of the window area, and otherwise no window shall be covered or made opaque in any way. No security bars, metal screens, grates, or other visible security
devices other than door locks and recessed or otherwise discrete security cameras are permitted on the storefront exterior unless required by State law.

F. If the applicant is not the property owner, a notarized authorization executed by the property owner authorizing and consenting to the proposed use of the property as a marijuana facility is required.

G. With the exception of State licensed outdoor cultivation allowed where agricultural uses are permitted, marijuana cultivation must be located within one or more completely enclosed, secure buildings with rigid walls, a roof, and secure doors.

H. Marijuana facilities must at all times be operated in such a way as to ensure the health, safety, and welfare of the public and workers. Marijuana facilities must not create a public nuisance or adversely affect the health or safety of the nearby residents, businesses, or its employees by creating dust, glare, light pollution, heat, noise, noxious gasses, odor, vibration, unsafe conditions or other impacts, or be hazardous due to the use or storage of materials, processes, products, and runoff of water, pesticides or wastes.

I. Marijuana cultivation, manufacturing, and testing facilities must be sited and operated in a manner that prevents marijuana odors from being detected offsite. A sufficient odor absorbing ventilation and exhaust system utilizing negative pressure inside the building must be used so odor generated distinctive to its operation cannot be detected outside the facility or anywhere on adjacent property or public rights-way, nor in interior common area walkways, hallways, foyers, lobby areas or other areas available for use by common tenants or the visiting public. An odor control plan must be submitted as part of any permit application.

J. All marijuana facilities must have sufficient security systems, including surveillance cameras, alarm systems on doors and windows, deadbolt locked exterior doors, and safes to store cash and retail marijuana products when closed.

K. Marijuana remnants and byproducts must be secured and properly disposed of and not be placed within the facility's exterior refuse containers at any business operating pursuant to this section unless rendered unusable. Outdoor storage of marijuana merchandise, raw materials, or other marijuana materials associated with the production of marijuana is prohibited.

L. All signage must meet state licensing requirements as well as the Sign Regulations found in section 11-5 of this Ordinance.
The following considerations from Section 11-7-12(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>There are several sections in the 2007 Whitefish City-County Growth Policy that support new businesses. Future Land Use Goal 1 states: Preserve and enhance the character, qualities, and small town feel and ambience of the Whitefish community through an innovative and comprehensive growth management system. Economic Development Goal 3 states: Seek ways to diversify the local base economy with compatible business and industries such that the character and qualities of Whitefish are protected. Economic Development Policy 3 states: It shall be the policy of the City of Whitefish to promote beneficial job growth in the base economy, and especially in those areas that tend to diversify the base economy beyond development related and visitation related business and industries. Economic Development Policy 4 states: Support organic and other localized farming as a means to broaden the community’s economic base and preserve and enhance the rural character. Economic Development Recommended Action 6 states: Investigate alternatives and possible partnerships to recruit clean, community compatible industry to Whitefish. Economic Development Recommended Action 12 states: Explore incentives for the growth and retention of localized agriculture.</td>
</tr>
<tr>
<td>Project Designed to Lessen Congestion in the Streets</td>
<td>This criterion is not applicable to this code amendment.</td>
</tr>
<tr>
<td>Historical and established use patterns and recent change in use trends weighed equally, not one to the exclusion of the other.</td>
<td>This code amendment addresses marijuana facilities and increases buffering requirements from schools and churches to preserve downtown character and public safety.</td>
</tr>
<tr>
<td>Security from Fire, Panic, and Disasters</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>Promote Health and General Welfare</td>
<td>The proposed zoning text amendments add additional buffers designed to protect and promote general public health and welfare.</td>
</tr>
<tr>
<td>Provide Adequate Light and Air</td>
<td>This criterion is not applicable to this code amendment.</td>
</tr>
<tr>
<td>Prevent Overcrowding of Land and Avoid Undue Concentration of People</td>
<td>This criteria is not applicable to this code amendment.</td>
</tr>
<tr>
<td>CONSIDERATIONS FROM SECTION 11-7-12E.</td>
<td>FINDINGS</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Facilitate Adequate Provisions for Transportation, Water, Sewerage, Schools, Parks and Other Public Requirement</td>
<td>This criteria is not applicable to this code amendment.</td>
</tr>
<tr>
<td>Reasonable Consideration to the Character of the District</td>
<td>This zoning text amendment takes careful consideration of the character of each district wherein marijuana facilities might be located, provides increased buffers between such facilities, and has development standards to maintain that character.</td>
</tr>
<tr>
<td>Reasonable Consideration to the Peculiar Suitability of the Property for Particular Uses</td>
<td>This text amendment is not specific to any one property.</td>
</tr>
<tr>
<td>Conserve the Value of Buildings</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>Encourage the Most Appropriate Use of the Land throughout the Municipality</td>
<td>This zoning text amendment encourages the most appropriate use of land throughout the municipality by modifying development criteria and conditional use criteria to evaluate marijuana facilities on a case by case basis in the various appropriate zoning districts.</td>
</tr>
</tbody>
</table>

**FINDINGS:**

1. Whereas, in 2020, the citizens of Montana passed I-190, legalizing marijuana for adult use, and the legislature subsequently passed HB 701, further refining the program.

2. Whereas, on December 12, 2022, the City of Whitefish passed Ordinance 22-17, which removed a ban on medical marijuana storefronts city wide and permitted marijuana facilities to be conditionally permitted in city limits.

3. Whereas, on February 21, 2023 the City Council passed Ordinance No. 23-02, an Interim Zoning Ordinance which prohibits the approval of new applications for administrative conditional use permits for marijuana dispensaries for six months, in order to further study impacts associated with dispensaries proximity to churches, schools, and one another.

4. Whereas, after a work session with the City Council, at their direction staff outlined more robust buffering requirements from schools and churches and between permitted marijuana facilities.

5. Whereas, the City Planning Board will be reviewing the proposed changes and is making a recommendation to the City Council.
6. Whereas, all the criteria for a Zoning Text Amendment found in 11-7-12-E are met; and

7. Whereas it has been determined that it is in the best interest of the City of Whitefish to amend the aforementioned section of the zoning code increase buffering requirements for marijuana facilities in city limits.

RECOMMENDATION

Staff recommends that the Whitefish Planning Board adopt the findings of fact and recommend that the City Council approve the proposed changes amending the zoning ordinance for marijuana facilities.
Existing Buffer Map

Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap, and the GIS user community.
Staff Report

To: Mayor Muhlfeld and City Council
From: Dana Smith, City Manager
Date: July 11, 2023
Re: Proposed financial plan in include community housing as a use for resort tax and direction to proceed with scheduling a public hearing on August 7th for the City Council to consider adopting ballot language for the November 2023 Municipal Election

Introduction/History

The 2022 Whitefish Housing Needs Assessment set forth a target of 1,310 new housing units, including rental and ownership units, which are needed by 2030 to support current residents and employees. Of the 1,310 units, 75% must be priced below current market to meet community needs, which totals roughly 980 units. On November 21, 2022, the Whitefish City Council adopted the Whitefish Community Housing Roadmap (Roadmap), a partnership plan for accelerating community housing opportunities and provides a recommended range of strategies to drive action. A top priority within the Roadmap is to secure local funding for community housing initiatives, specifically asking voters to approve a portion of the City’s 3% resort tax for community housing development and programs.

Current Report

The Whitefish Community Housing Committee, with assistance from staff, drafted the attached plan, Community Housing: Resort Tax. The plan details the history of resort tax as a funding mechanism, the proposed re-allocation of the 1% that will no longer be needed for the Haskill Basin Conservation Easement Bond starting February 2025, revenue projections for the 20-year term, and the recommended uses including immediate and possible future programs for community housing.

The key points of the plan include:

- The proposed re-allocation of the 3% resort tax is intended to help move community housing development projects and programs forward.
- It is proposed that 10% of the 3% resort tax be designated specifically for community housing development projects and programs starting February 1, 2025. Over 20 years, this is estimated to generate around $27 million.
- The Haskill Basin Conservation Easement bond will be paid off by January 31, 2025, opening up more funding to be utilized in other parts of the city. Streets, paths, parks, and the Whitefish Trail will all continue to see increased funding.
All Resort Tax Fund expenditures will be approved on a project-by-project basis by the City Council.

Securing resort tax as a funding mechanism for community housing will start the pursuit of other funding opportunities such as grants, philanthropic contributions, and business community buy-in which will further leverage funds provided by the resort tax.

On June 28th, the *Community Housing: Resort Tax* plan was presented to the Resort Tax Monitoring Committee. After an in-depth discussion about resort tax, including the initial intent of the resort tax (streets repairs/property tax relief) and the need to keep that allocation intact, the Resort Tax Monitoring Committee approved the report and recommended adoption by the City Council, including moving forward with a vote in 2023.

On July 6th, the Whitefish Community Housing Committee voted 4-1 approving the final version of the plan and recommending City Council approval, including presenting the ballot question to voters during the 2023 Municipal Election. The committee member voting in opposition proposed taking an additional 10% from property tax relief to increase the amount allocated to community housing to 20% after concerns that the property tax relief was not going to residents. While other committee members agreed in principal that the property tax relief should go to residents and not property taxpayers since that includes second homeowners and out of state corporations, the majority felt that change would put the ballot question at risk as there was history to the 25% and property tax increases can affect rental rates. The committee agreed that they will continue to explore ways to provide the property tax relief to residents only, though there are noted challenges with the language in State law related to resort tax.

**Financial Requirement**

There is no added cost to the City to move forward with the proposed plan and ballot question in November 2023 since the City is already covering the cost of the scheduled municipal election. Should the ballot question fail, the use of resort tax will remain in accordance with the language approved in November 2021, which starts February 1, 2025.

**Recommendation**

The Whitefish Community Housing Committee, Resort Tax Monitoring Committee, and staff respectfully recommend that the City Council review the proposed financial plan for the resort tax reallocation to include community housing and direct staff to proceed with scheduling a public hearing on August 7th for the City Council to consider adopting the *Community Housing: Resort Tax* plan and ballot language for the November 2023 Municipal Election.
COMMUNITY HOUSING: RESORT TAX

PURPOSE

The 2022 Whitefish Housing Needs Assessment set forth a target of 1,310 new housing units, including rentals and ownership units, which are needed by 2030 to support current residents and employees. Of the 1,310 units, 75% must be priced below current market to meet community needs, which totals roughly 980 units needing to be priced affordably.

On November 21, 2022, the Whitefish City Council adopted the Whitefish Community Housing Roadmap (Roadmap), a partnership plan for accelerating community housing opportunities and provides a recommended range of strategies to drive action. A top priority within the Roadmap is to secure local funding for community housing initiatives, specifically asking voters to approve a portion of the City’s 3% resort tax for community housing development and programs. This report details the history of resort tax as a funding mechanism, the proposed re-allocation and revenue projections for a 20-year term, and the recommended uses including immediate and possible future uses for community housing.

SUMMARY POINTS

- The proposed re-allocation of the 3% resort tax is intended to help move community housing development projects and programs forward.
- It is proposed that 10% of the 3% resort tax be designated specifically for community housing development projects and programs starting February 1, 2025. Over 20 years, this is estimated to generate around $27 million.
- The Haskill Basin Conservation Easement bond will be paid off by January 31, 2025, opening up more funding to be utilized in other parts of the city. Streets, paths, parks, and the Whitefish Trail will all continue to see increased funding.
- All Resort Tax Fund expenditures will be approved on a project-by-project basis by the City Council.
- Securing resort tax as a funding mechanism for community housing will start the pursuit of other funding opportunities such as grants, philanthropic contributions, and business community buy-in which will further leverage funds provided by the resort tax.

RESORT TAX HISTORY

Resort tax is authorized by Section 7-6-1501 of the Montana Code Annotated. The implementation of resort tax as a funding mechanism for City services requires voter approval, including the duration, rate, and use of funds collected.
The resort tax assessed in Whitefish was originally approved by voters on November 7, 1995, for a 20-year term beginning January 1, 1996. Whitefish voters allocated the use of resort tax as follows:

- Property tax reduction for taxpayers in the city in an amount equal to 25% of the resort tax revenues derived during the preceding fiscal year,
- Provision for the repair and improvement of existing streets, storm sewers, all underground utilities, sidewalks, curbs, and gutters, in an amount equal to 65% of resort tax revenues derived during the preceding fiscal year,
- Bicycle paths and other park capital improvements in an amount equal to 5% of the resort tax revenues derived during the preceding fiscal year, and
- Cost of administering the resort tax in an amount equal to 5% per year.

Since then, Whitefish voters have approved extensions and changes to the resort tax in three separate elections. At the November 2, 2004, municipal election, voters approved an extension of the resort tax through January 31, 2025, by a margin of 2012 to 632. A special election was held on April 28, 2015, with voters approving an increase in the resort tax rate from 2% to 3% for additional property tax relief and to fund the purchase of the Haskill Basin Conservation Easement to protect and preserve water quality and quantity. The vote passed by a margin of 1718 to 334 and the 1% increase was effective July 1, 2015. Most recently, in November 2021, voters overwhelmingly approved a 20-year extension of the resort tax to January 31, 2045, with an 89% approval rate. Voters also approved a new allocation for the 3% resort tax use of funds, effective February 1, 2025, as follows:

- Property tax reduction for taxpayers in the city in an amount equal to 25% of the resort tax revenues derived during the preceding fiscal year,
- Provision for the repair, maintenance, and improvement of streets, storm sewers, all underground utilities, sidewalks, curbs, and gutters, in an amount equal to 58% of resort tax revenues derived during the preceding fiscal year,
- Improvements and maintenance of bicycle and pedestrian paths and other park acquisitions, capital improvements, and equipment, in an amount equal to 10% of the resort tax revenues derived during the preceding fiscal year,
- Maintenance and replacement of existing improvements of the Whitefish Trail with any amounts not expended within five fiscal years available for the maintenance of City bicycle and pedestrian paths, in an amount equal to 2% of resort tax revenues derived during the preceding fiscal year, and
- Cost of administering the resort tax in an amount equal to 5% per year for merchants’ costs of administration.
PROPOSED RE-ALLOCATION CHANGE

Based on the housing needs of Whitefish, specifically the need for local subsidy to move community housing projects and programs forward, it is proposed that 10% of the 3% resort tax be designated specifically for community housing. Following is a comparison of the current allocation through January 31, 2025, the voter approved allocation starting February 1, 2025, and the proposed re-allocation starting February 1, 2025:

<table>
<thead>
<tr>
<th>Current Allocation Through 1/31/2025*</th>
<th>Voter Approved Allocation Starting 2/1/2025</th>
<th>Proposed Re-Allocation Starting 2/1/2025</th>
<th>Use of Resort Tax Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>25.00%</td>
<td>25.00%</td>
<td>25.00%</td>
<td>Property tax reduction for taxpayers in the city.</td>
</tr>
<tr>
<td>5.00%</td>
<td>5.00%</td>
<td>5.00%</td>
<td>Cost of administering the resort tax in an amount equal to 5% per year for merchants’ costs of administration.</td>
</tr>
<tr>
<td>43.34%</td>
<td>58.00%</td>
<td>48.00%</td>
<td>Provision for the repair, maintenance, and improvement of streets, storm sewers, all underground utilities, sidewalks, curbs, and gutters.</td>
</tr>
<tr>
<td>3.33%</td>
<td>10.00%</td>
<td>10.00%</td>
<td>Improvements and maintenance of bicycle and pedestrian paths and other park acquisitions, capital improvements, and equipment.</td>
</tr>
<tr>
<td>23.33%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>Repayment of a loan or a bond to finance a portion of the costs of, or to otherwise pay for, the acquisition of the conservation easement or other interests, in and around Haskill Basin to protect and preserve water quality and quantity, including the source drinking water supply for the municipal water system of the city of Whitefish. (Loan scheduled to be paid off January 1, 2025).</td>
</tr>
<tr>
<td>0.00%</td>
<td>2.00%</td>
<td>2.00%</td>
<td>Maintenance and replacement of existing improvements of the Whitefish Trail with any amounts not expended within five fiscal years available for the maintenance of City bicycle and pedestrian paths.</td>
</tr>
<tr>
<td>0.00%</td>
<td>0.00%</td>
<td>10.00%</td>
<td>Provisions for community housing including the development of deed restricted affordably priced housing and community housing programs.</td>
</tr>
</tbody>
</table>

*Current allocation through 1/31/2025 shown as percentage of the full 3% resort tax for comparison purposes. Additionally, the uses allowed for streets and park improvements are expanded starting February 1, 2025, which is described above. Current allocation through 1/31/2025 cannot be used toward maintenance of streets, improvement of new streets, or maintenance of parks.
When compared to the currently approved allocation starting February 1, 2025, 10% is reallocated from street improvements to community housing. However, because the Haskill Basin bonds will be paid off by January 31, 2025, this proposal still maintains funding levels for street improvements higher than it is today.

**REVENUE PROJECTIONS**

Since 1998, resort tax collections have increased on average 7.24% annually. However, if Fiscal Year 2020 through Fiscal Year 2022 are removed due to the pandemic and subsequent high inflation rates, the annual average increase drops to 6.22%. The projections below represent a conservative 5% annual growth rate for the 20-year term starting February 1, 2025, based on estimated Fiscal Year 2023 revenue collections and the proposed re-allocation.

**TABLE 1 – REVENUE ESTIMATES**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Resort Tax Collections Forecast</th>
<th>Property Tax Relief 25%</th>
<th>Parks &amp; Trails 10%</th>
<th>Whitefish Trail 2%</th>
<th>Streets 48%</th>
<th>Community Housing 10%</th>
<th>Vendor Retained 5%</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY25*</td>
<td>$3,304,983</td>
<td>$826,246</td>
<td>$330,498</td>
<td>$66,100</td>
<td>$1,586,392</td>
<td>$330,498</td>
<td>$165,249</td>
</tr>
<tr>
<td>FY26</td>
<td>$8,328,558</td>
<td>$2,082,140</td>
<td>$832,856</td>
<td>$166,571</td>
<td>$3,997,708</td>
<td>$832,856</td>
<td>$416,428</td>
</tr>
<tr>
<td>FY27</td>
<td>$8,744,986</td>
<td>$2,186,247</td>
<td>$874,499</td>
<td>$174,900</td>
<td>$4,197,593</td>
<td>$874,499</td>
<td>$437,249</td>
</tr>
<tr>
<td>FY28</td>
<td>$9,182,235</td>
<td>$2,295,559</td>
<td>$918,224</td>
<td>$183,645</td>
<td>$4,407,473</td>
<td>$918,224</td>
<td>$459,112</td>
</tr>
<tr>
<td>FY29</td>
<td>$9,641,347</td>
<td>$2,410,337</td>
<td>$964,135</td>
<td>$192,827</td>
<td>$4,627,847</td>
<td>$964,135</td>
<td>$482,067</td>
</tr>
<tr>
<td>FY30</td>
<td>$10,123,414</td>
<td>$2,530,854</td>
<td>$1,012,341</td>
<td>$202,468</td>
<td>$4,859,239</td>
<td>$1,012,341</td>
<td>$506,171</td>
</tr>
<tr>
<td>FY31</td>
<td>$10,629,585</td>
<td>$2,657,396</td>
<td>$1,062,959</td>
<td>$212,592</td>
<td>$5,102,201</td>
<td>$1,062,959</td>
<td>$531,479</td>
</tr>
<tr>
<td>FY32</td>
<td>$11,161,064</td>
<td>$2,790,266</td>
<td>$1,116,106</td>
<td>$223,221</td>
<td>$5,357,311</td>
<td>$1,116,106</td>
<td>$558,053</td>
</tr>
<tr>
<td>FY33</td>
<td>$11,719,118</td>
<td>$2,929,779</td>
<td>$1,171,912</td>
<td>$234,382</td>
<td>$5,625,176</td>
<td>$1,171,912</td>
<td>$585,956</td>
</tr>
<tr>
<td>FY34</td>
<td>$12,305,074</td>
<td>$3,076,268</td>
<td>$1,230,507</td>
<td>$246,101</td>
<td>$5,906,435</td>
<td>$1,230,507</td>
<td>$615,254</td>
</tr>
<tr>
<td>FY35</td>
<td>$12,920,327</td>
<td>$3,230,082</td>
<td>$1,292,033</td>
<td>$258,407</td>
<td>$6,201,757</td>
<td>$1,292,033</td>
<td>$646,016</td>
</tr>
<tr>
<td>FY36</td>
<td>$13,566,344</td>
<td>$3,391,586</td>
<td>$1,356,634</td>
<td>$271,327</td>
<td>$6,511,845</td>
<td>$1,356,634</td>
<td>$678,317</td>
</tr>
<tr>
<td>FY37</td>
<td>$14,244,661</td>
<td>$3,561,165</td>
<td>$1,424,466</td>
<td>$284,893</td>
<td>$6,837,437</td>
<td>$1,424,466</td>
<td>$712,233</td>
</tr>
<tr>
<td>FY38</td>
<td>$14,956,894</td>
<td>$3,739,223</td>
<td>$1,495,689</td>
<td>$299,138</td>
<td>$7,179,309</td>
<td>$1,495,689</td>
<td>$747,845</td>
</tr>
<tr>
<td>FY39</td>
<td>$15,704,738</td>
<td>$3,926,185</td>
<td>$1,570,474</td>
<td>$314,095</td>
<td>$7,538,274</td>
<td>$1,570,474</td>
<td>$785,237</td>
</tr>
<tr>
<td>FY40</td>
<td>$16,489,975</td>
<td>$4,122,494</td>
<td>$1,648,998</td>
<td>$329,800</td>
<td>$7,915,188</td>
<td>$1,648,998</td>
<td>$824,499</td>
</tr>
<tr>
<td>FY41</td>
<td>$17,314,474</td>
<td>$4,328,619</td>
<td>$1,731,447</td>
<td>$346,289</td>
<td>$8,310,948</td>
<td>$1,731,447</td>
<td>$865,724</td>
</tr>
<tr>
<td>FY42</td>
<td>$18,180,198</td>
<td>$4,545,049</td>
<td>$1,818,020</td>
<td>$363,604</td>
<td>$8,726,495</td>
<td>$1,818,020</td>
<td>$909,010</td>
</tr>
<tr>
<td>FY43</td>
<td>$19,089,208</td>
<td>$4,772,302</td>
<td>$1,908,921</td>
<td>$381,784</td>
<td>$9,162,820</td>
<td>$1,908,921</td>
<td>$954,460</td>
</tr>
<tr>
<td>FY44</td>
<td>$20,043,668</td>
<td>$5,010,917</td>
<td>$2,004,367</td>
<td>$400,873</td>
<td>$9,620,961</td>
<td>$2,004,367</td>
<td>$1,002,183</td>
</tr>
<tr>
<td>FY45*</td>
<td>$12,276,747</td>
<td>$3,069,187</td>
<td>$1,227,675</td>
<td>$245,535</td>
<td>$5,892,833</td>
<td>$1,227,675</td>
<td>$613,837</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$269,927,599</td>
<td>$67,481,900</td>
<td>$26,992,760</td>
<td>$5,398,552</td>
<td>$129,565,248</td>
<td>$26,992,760</td>
<td>$13,496,380</td>
</tr>
</tbody>
</table>

*FY25 represents 5 months of collections and FY45 represents 7 months of collections.
As depicted in Table 1 – Revenue Estimates, if voters approve the proposed re-allocation, the resort tax may generate roughly $832,856 in its first full year, or $27 million over 20 years, for community housing efforts. Additionally, the resort tax may generate about $3,997,708 in its first full year, or $129.5 million over 20 years, for street improvements and maintenance.

**PROPOSED USES OF RESORT TAX FUNDS**

While voters approve the general use of funds, the Whitefish City Council approves the specific projects for which resort tax funds are expended during the budget process for each fiscal year. To add a new component to the resort tax uses, the voters need a general understanding of the types of expenditures that may be incurred. Community housing strategies funded by resort tax can be simplified into two separate categories: (1) development of community housing and (2) community housing programs. It is anticipated that the majority of funds will initially be allocated to development activities, but that may change over time as housing programs develop further.

**DEVELOPMENT OF COMMUNITY HOUSING**

Community housing is housing that is created to serve income ranges which are unable to be produced by the private sector. If voter approved, a portion of the 10% allocated to community housing would be used to develop community housing in partnership with private and/or non-profit entities in exchange for a deed restriction that would outline future ownership and tenant eligibility requirements. Deed restrictions can be used as a tool to preserve affordability in perpetuity.

Current examples that may qualify include:

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Developer</th>
<th># of Units</th>
<th>Unit Type</th>
<th>Targeted AMI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depot Parks Townhomes</td>
<td>Whitefish Housing Authority</td>
<td>22</td>
<td>Ownership</td>
<td>Range of 80% to 120%</td>
</tr>
<tr>
<td>Alpenglow II</td>
<td>Housing Whitefish</td>
<td>16-20 (Estimate)</td>
<td>Rental</td>
<td>≤ 80%</td>
</tr>
<tr>
<td>Monegan Project</td>
<td>Housing Whitefish</td>
<td>Unknown</td>
<td>Rental and Ownership</td>
<td>≤ 80% for Rental; &lt;120% for Ownership</td>
</tr>
</tbody>
</table>

The amount contributed toward a development project is determined on a case-by-case basis by the City Council. The proposed funding will be used to fill the financial gap between market rate housing and needed community housing. It is currently estimated that to produce a community housing rental unit priced at 70% of AMI requires $169,000 of funding, and an ownership unit priced at 100% of AMI requires $350,000 of funding. However, these numbers have changed significantly and will continue to do so in the future based on market conditions, interest rates, grant funding, and other factors.
Following is an excerpt from the Housing Needs Assessment that describes the target AMI ranges, pricing, and number of units needed by 2030:

Table 30. Total Needs by Tenure and Price: 2021 - 2030

<table>
<thead>
<tr>
<th>AMI Range</th>
<th>Max Household Income (2.5-person household)</th>
<th>Max Affordable Home Price or Rent</th>
<th># of Units</th>
<th>% of Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>OWNERSHIP</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt;=60%</td>
<td>$40,530</td>
<td>$125,000</td>
<td>75</td>
<td>15%</td>
</tr>
<tr>
<td>60.1-80%</td>
<td>$53,975</td>
<td>$166,500</td>
<td>55</td>
<td>11%</td>
</tr>
<tr>
<td>80.1 - 120%</td>
<td>$81,060</td>
<td>$250,100</td>
<td>105</td>
<td>20%</td>
</tr>
<tr>
<td>120.1 - 150%</td>
<td>$101,325</td>
<td>$312,600</td>
<td>60</td>
<td>12%</td>
</tr>
<tr>
<td>150.1 - 200%</td>
<td>$135,100</td>
<td>$416,800</td>
<td>65</td>
<td>13%</td>
</tr>
<tr>
<td>200.1 - 250%</td>
<td>$168,875</td>
<td>$521,000</td>
<td>50</td>
<td>10%</td>
</tr>
<tr>
<td>&gt;250% (market rate)</td>
<td>&gt;$168,875</td>
<td>&gt;$521,000</td>
<td>105</td>
<td>20%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>-</td>
<td>-</td>
<td>515</td>
<td>100%</td>
</tr>
<tr>
<td>RENTALS</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt;=30%</td>
<td>$21,040</td>
<td>$525</td>
<td>80</td>
<td>10%</td>
</tr>
<tr>
<td>30.1-60%</td>
<td>$40,530</td>
<td>$1,015</td>
<td>175</td>
<td>22%</td>
</tr>
<tr>
<td>60.1-80%</td>
<td>$53,975</td>
<td>$1,350</td>
<td>90</td>
<td>11%</td>
</tr>
<tr>
<td>80.1-100%</td>
<td>$67,550</td>
<td>$1,690</td>
<td>95</td>
<td>12%</td>
</tr>
<tr>
<td>100.1 - 120%</td>
<td>$81,060</td>
<td>$2,025</td>
<td>80</td>
<td>10%</td>
</tr>
<tr>
<td>&gt;120% (market rate)</td>
<td>&gt;$81,060</td>
<td>&gt;$2,025</td>
<td>280</td>
<td>35%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>-</td>
<td>-</td>
<td>800</td>
<td>100%</td>
</tr>
</tbody>
</table>

NOTE 1: Shading indicates where there is a shortage of community housing supply. Special note for rentals provided in the lighter shaded price point:
- <30% - rentals at this price assist fixed income/special needs population; employees typically earn too much to qualify at this level.
- 100.1 – 120% should be 2- and 3-bedroom units.

NOTE 2: Differences are due to rounding

COMMUNITY HOUSING PROGRAMS

Housing strategies identified in the Roadmap expand beyond the development of housing units. Programs recommended include, but are not limited to, homebuyer assistance, acquisition of deed restrictions, and rental assistance. With a 20-year term for resort tax, it is reasonable to anticipate that program needs will change over time, but initial programs anticipated for funding include:

1. Whitefish Workforce Assistance Fund – The goal of this fund is to help full-time employees to successfully live and work in the Whitefish area by providing rental assistance. This fund is aimed at helping our workforce retain housing and get into new rental units.
2. Homebuyer Assistance Program – The goal of this program is to help residents get into deed restricted homes through down payment assistance.

Other possible programs identified in the Housing Roadmap include acquisition of deed restricted units, short-term rental conversion, and employer assisted housing. Initial and future programs must be approved by the City Council prior to the use of resort tax funds.

**SUMMARY**

Resort tax funding for community housing can create funding certainty for the development of housing units and continuation of programs without impacting property taxpayers. With 75% of 1,310 units needing to be developed and priced under current market rate by 2030, a 10% allocation of resort tax can help make a significant difference in addressing this critical community need. Securing resort tax as a funding mechanism can also start the pursuit of other funding opportunities such as grants, philanthropic contributions, and business community buy-in which will further leverage funds provided by the resort tax.
(This page left blank intentionally to separate printed sections)
Staff Report

To: Mayor John Muhlfeld and City Councilors
From: Angela Jacobs, City Attorney
Date: July 10, 2023
Re: Section 1-6-3-E-3, Whitefish City Code; Voting on Ordinances

Introduction/History

Section 1-6-3-E-3 of the Whitefish City Code (WCC) requires a majority vote “of the members elected” of the Whitefish City Council for an ordinance to be passed or repealed. The ordinance has been in effect since 1911. The history of and reasoning supporting the ordinance are unclear.

Current Report

In recent years, § 1-6-3-E-3, WCC, has presented some challenges for Council and staff. For example, if only four Councilors attend a meeting (a quorum), all four must vote in favor of a proposed ordinance for it to pass. The proposed ordinance may fail because one Councilor voted against it even though it may have passed had one more Councilor attended the meeting. Such a result appears rather artificial.

Further, the ordinance tends to create confusion with respect to the process to be followed when an ordinance fails for lack of a unanimous vote when only a quorum is present. A Councilor who voted with the majority may move to reconsider the matter at the next meeting, thereby giving the Councilors who were absent from the previous meeting an opportunity to consider it. However, it may be a waste of resources to achieve at two meetings what could be achieved at one. Further, the procedural path forward is unclear if the proposed ordinance fails in certain cases, particularly in reference to staff-initiated rezones of property recently annexed into the City.
Unlike the City Code, Montana law does not require that a majority vote of the entire Council is necessary to approve every proposed ordinance. However, there are specific instances in which a majority or a supermajority (2/3) vote of the entire Council is required, including:

- Filling of a vacancy in any elective city office § 7-4-4112, MCA (majority)
- Removal of an appointed officer § 7-4-4113, MCA (supermajority)
- Emergency ordinances § 7-5-104, MCA (supermajority)
- Emergency measures § 7-5-4204, MCA (supermajority)
- Effect of ordinance or resolution after mayoral veto § 7-5-4206, MCA (supermajority)
- Disposal or lease of municipal property § 7-8-4201 (supermajority)
- Discipline or expel a council member for improper conduct (majority)

**Recommendation**

Given the challenges Council and staff have faced with respect to § 1-6-3-E-3, WCC, staff respectfully recommends Council consider repealing this section.
MEETINGS & OTHER
On Thursday, July 6th, the Whitefish Community Housing Committee met and reviewed the final draft of the proposed financial plan for the resort tax re-allocation to include community housing projects and programs. The Committee approved and recommended the plan for City Council consideration on a 4-1 vote. The staff report and plan are included in this City Council packet with more information.

The Impact Fee Advisory Committee is scheduled to meet July 12th at 3 p.m. to review the final version of the updated Impact Fee Report. Staff anticipates a work session will be held in late August, prior to Council’s consideration of adoption of the final report at a regular meeting.

NEXT CITY COUNCIL MEETING
The next City Council meeting is scheduled for Monday, August 7th, in the City Council Chambers with remote participation available to the public.

Upcoming work sessions:
August 7th – Closed executive session for a litigation update by City Attorney Jacobs. A brief work session will follow to discuss the casino overlay.
August 21st – Impact fee report update from TischlerBise.

Respectfully submitted,

Dana M. Smith, CPA
City Manager