

Public Hearing

Amendments to the Billings County Zoning Resolution No. 1

Date: February 11, 2020*

The proposed amendments were recommended for approval by the Planning & Zoning Commission hearing held on Thursday, January 16, 2020:

2.3(107) Definition of Temporary

5.1.2 (t), (u), and (v) Conditional Use Permits for Agricultural Districts

5.4.4 (j) and (k) Conditional Use Permits for Commercial Districts

7.4(1)(d) and (e) Variances

6.17 Temporarily Permitted Uses

Section 6.17 Temporarily Permitted Uses is a new section of the zoning regulations pertaining to conditional use permits for short-term developments including, but not limited to, oil and gas support services, pipe yards, laydown yards for electric transmission or telecommunications, road construction projects, and other non-permanent needs. The other proposed amendments mentioned above are related to this new section.

*Note – Published Public Hearing date was February 4, 2020, but the Commission Meeting was unexpectedly rescheduled to February 11, 2020.

Amendment recommendation – To redefine Temporary:

- 107) **Temporary** – Means one year or less, but may be greater than one year if warranted by the Board of County Commissioners.

Amendment recommendation – To add the following as Conditionally Permitted Uses in Agricultural Districts:

- t) Temporary use permits for social events, including, but not limited to
 - 1) Bazaars, Carnivals, or Fairs;
 - 2) Musical Festivals or Events;
 - 3) Racing Events;
 - 4) Rodeos;
 - 5) Public gatherings for a single-purpose event.

- u) Temporary uses pursuant to Ordinance 6.17 for construction projects for roads, pipelines, electric transmission, telecommunications, or other public infrastructure including but not limited to
 - 1) Lay down yard for construction materials and/or equipment incidental and necessary for current construction in the immediate surrounding area;
 - 2) Temporary office(s) incidental and necessary for the construction, sale, or rental of the property in the immediate surrounding area;
 - 3) Temporary structures such as skid shacks or hoop buildings that do not require a permanent foundation or electrical, water, or sewer service;
 - 4) Temporary operations for road improvement projects, including temporary asphalt plant or crushing plant;

- v) Temporary uses pursuant to Ordinance 6.17 for oil and gas support services on privately owned tracts that are not permitted by the NDIC as oil and gas locations including but not limited to

- 1) Lay down yard for construction materials and/or equipment incidental and necessary for current oil and gas exploration, drilling, and production in the immediate surrounding area;
- 2) Temporary office incidental and necessary for oil and gas exploration, drilling, and production in the immediate surrounding area;
- 3) Temporary structures such as skid shacks or hoop buildings that do not require a permanent foundation or electrical, water, or sewer service;
- 4) Temporary storage of rig and oil field equipment;

Amendment recommendation – To add the following as Conditionally Permitted Uses in Commercial Districts:

- j) Temporary uses pursuant to Ordinance 6.17 for construction projects for roads, pipelines, electric transmission, telecommunications, or other public infrastructure including but not limited to
 - 1) Lay down yard for construction materials and/or equipment incidental and necessary for current construction in the immediate surrounding area;
 - 2) Temporary office(s) incidental and necessary for the construction, sale, or rental of the property in the immediate surrounding area;
 - 3) Temporary structures such as skid shacks or hoop buildings that do not require a permanent foundation or electrical, water, or sewer service;
 - 4) Temporary operations for road improvement projects, including temporary asphalt plant or crushing plant;
- k) Temporary uses pursuant to Ordinance 6.17 for oil and gas support services on privately owned tracts that are not permitted by the NDIC as oil and gas locations including but not limited to
 - 1) Lay down yard for construction materials and/or equipment incidental and necessary for current oil and gas exploration, drilling, and production in the immediate surrounding area;

- 2) Temporary office incidental and necessary for oil and gas exploration, drilling, and production in the immediate surrounding area;
- 3) Temporary structures such as skid shacks or hoop buildings that do not require a permanent foundation or electrical, water, or sewer service;
- 4) Temporary storage of rig and oil field equipment;

Amendment recommendation – To add clarity to the Ordinance that use variances are not allowed.

- d) The unique character of the property upon which the request for variance is made is not the result of actions of the applicant, landowner, or prior landowners; and
- e) Use variances are prohibited. No variance shall be approved that has the effect of allowing a use that is not permitted in the subject zoning district or has the practical effect of rezoning property to a higher intensity of use than the district in which the property is located.

Amendment recommendation – To add a new section to the Ordinance concerning temporary uses:

6.17 Temporarily Permitted Uses

6.17.1 Temporarily Permitted Uses – Purpose

There are certain uses which because of their unique impermanent characteristics cannot be classified as unrestricted permitted uses in any particular district or districts without consideration in each particular case of the impact of those temporary uses upon adjoining lands or public facilities. Such uses, nevertheless, may be necessary or desirable in a particular district provided that due consideration is given to location, development, operation, and closure of such temporary uses.

Permits shall be valid for such period of time as determined by the County Commission and may be renewable at the discretion of the County Commission.

Temporary use permits shall apply to the structures and uses identified as appropriate under each district, and any other activities or uses considered by the Planning and Zoning Commission to warrant limitations on the length of time the land can be occupied by said use or activity. Unless otherwise provided, all temporary use permits are reviewable on an annual basis.

6.17.2 Temporary Use Permit - Application Procedure

An application for a Temporary Use Permit shall be requested and signed by the operator, lessee, or authorized representative of the operator or lessee of the proposed Temporary Use. The application for a temporary use permit shall contain the information required for a Conditional Use Permit in Section 7.3 of this Ordinance in addition to the following information:

- a) The name and address of the applicant and contact information;
- b) A copy of the lease;
- c) A surveyed description or plot plan with dimensions drawn to scale showing features of the proposed use, including, but not limited to, structures, setbacks, distance to nearest residence, utilities, drainage, ingress and egress, parking plans, screens, buffers, fencing, and storage locations;
- d) A narrative describing the need for the temporary facility in the location proposed including the lack of suitably zoned land in the project area;

- e) Length of time requested by the applicant and a justification for the permit period requested by the applicant;
- f) Consultation with the Billings County Highway Superintendent for the adequacy of roads and access to the site, including the condition and construction of the roads. Obtain Right-of-Way Permits, Pipeline Permits, and Haul Road Agreements as necessary for the proposed use;
- g) A letter from licensed waste disposal facility(ies) stating that the facility(ies) is able and willing to receive sewage and/or refuse from the proposed use (if applicable);
- h) An emergency management plan (if applicable);
- i) A reclamation and re-vegetation plan. The reclamation and re-vegetation requirements may be modified if the operator or lessee has entered into an alternative agreement with the surface owner as stated in the lease;
- j) A temporary use permit fee shall be paid in an amount to be determined by the County Commission.

6.17.3 The following criteria apply to Temporary Use Permits:

- a) Dust shall be controlled on public roads as agreed upon with the Billings County Highway Superintendent;
- b) The use should be located so that existing topography, vegetation and/or distance minimize visibility from state and interstate highways and county roads;
- c) The facility must be located at least one-quarter mile (1,320) feet from an existing residence or Residential District unless a written waiver of this standard is obtained from the property owner;
- d) The facility must be located at least five hundred feet (500') from all road and highway rights-of-way, unless a written waiver of this standard is obtained from the Billings County Highway Superintendent;
- e) The grounds shall be kept free of weeds, junk and trash at all times;
- f) Wildlife-proof trash receptacles shall be used;
- g) Engines, compressors and motors shall be equipped with quiet design mufflers or equivalent. All mechanical equipment shall be placed and operated to contain vibration within the property boundary;

- h) Temporary structures such as skid shacks, office trailers, or hoop buildings that do not require a permanent foundation shall be closed-loop, self-contained structures for electrical, water, and sewer service;
- i) Temporary living quarters are not allowed unless permitted under Section 6.13 of this Ordinance for Temporary Crew Housing;
- j) A specific plan for containment and disposal of fuel and waste from heavy equipment maintenance shall be provided to meet state and federal regulations;
- k) The facility shall not be located in areas, which due to high water table, flooding, and soil conditions may affect the quality of surface or ground water;
- l) The site will be designed as a containment area and shall maintain a minimum distance from perennial or intermittent streams or drainages as recommended by the project engineer or geologist. The operator shall comply with all applicable state and federal regulations regarding protection of waters of the state; and
- m) Access roads shall be maintained at all times to allow emergency vehicles into the site as needed.

6.17.4 Prohibited Uses by Temporary Permit

- a) The storage of hazardous materials (HAZMAT);
- b) The storage of Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM); or
- c) The storage of any other material that may be detrimental to human health or requires specialized equipment or protections for removal from the site.

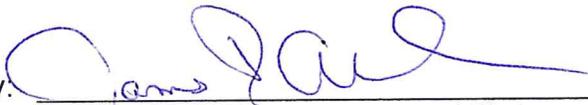
6.17.5 Time Limitations

Conditional Use Permit approvals for temporarily permitted uses are valid for a period of time as warranted by the Board of County Commissioners as stated on the application and within the minutes. The operator may submit a request for an extension of time before the end of the first period. The operator shall submit to the Director a written narrative describing the condition of the facility, its compliance with each of the County permit requirements, and demonstrate the continued need for the facility in accordance with this Section. Subsequent extensions may be applied for in the same manner.

6.17.6 Closure

When the need for the temporary use is finished, all equipment, materials, and structures must be removed within ninety (90) days of closure except as stipulated in the surface use agreement with the landowner. If the landowner desires that the structures remain on the property, the landowner must apply for the appropriate permit within thirty (30) days of closure of the facility. The County Zoning Administrator shall be notified at least ten (10) days prior to removal of improvements. Within ninety (90) days after the removal is completed, a reclamation report shall be submitted to the County indicating that the site was reclaimed as set forth in the approved reclamation plan.

The above Amendment was approved by the Billings County Board of County Commissioners on the 11th day of February, 2020.

By: 
James R. Arthaud, Board Chairman

Attest: 
Marcia Lamb, County Auditor/Treasurer