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**Project:** Plan Cheyenne Implementation

**Cc:**

**Project No.:**

**Subject:** Unified Development Code: Procedures / Final Review Draft

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During the review of the Initial Draft of the Cheyenne Unified Development Code, an “interim draft” of potential application procedures was developed and reviewed by the staff Technical Committee. The review resulted in some discussion questions on the development review process. A summary memo (dated 1/10/09) provided background statutory research from the consultant team, and outlined several options or planning recommendations to consider incorporating into the development review procedures. All recommendations and options were based on the overall project philosophy of “Clarify, Streamline, and Improve.” The outcomes from the review of the “interim draft” and procedure memo are reflected in the Final Review Draft of the UDC. This memo summarizes the issues, discussion and recommended direction in the UDC.

The questions raised in the Initial and interim draft review were:

- 1. What type of public hearing process is required by statute for a zoning change, and what type of process is desired by the City?**
- 2. What type of process is required by statute for platting, and what variations on this process are possible or desirable for the City?**
- 3. Generally, what type of notice is required by statute for different applications, and what variations on this process are possible or desirable for the City – specifically noting the difference between “public hearings” and “public meetings” which may appear in the finally adopted draft of the regulations.**
- 4. Why include “review criteria” with each application procedure, and what affect will they have on decisions?**

#### **Question 1: Public Hearings for Zoning Changes**

##### *Current Regulations:*

The current Zoning Ordinance only specifies a public hearing at the Planning Commission. (17.148.060 and 17.148.080). These sections refer to amendments to the text of the ordinance (text amendments) as well as to development applications that propose changes to zoning on specific property (rezoning). However, collectively they can be interpreted to require a public hearing only at the planning commission for both processes. Actual City practice is that upon recommendation of the Planning Commission, formal or “de-facto” public hearings occur at the various City Council meetings through its three-reading process for passing an ordinance.

##### *State Statute Requirements:*

The Zoning provisions for Cities and Towns provide that the governing body shall specify how its regulations and district boundaries may be changed, with the requirement that a public hearing occur. (W.S. 15-1-602.) This section of the statutes does not specify which body shall hold the public hearing and appears to delegate to the governing body the discretion to specify through its own local regulation whether the planning commission, governing, or both holds the hearing. However, another section of the statutes referring to the initial adoption of the zoning ordinance implies that the governing body should hold a public hearing – at least for the initial adoption of the ordinance. (W.S. 15-1-604, stating “[t]he

governing body shall not hold *its* public hearings or take action until it has received the commission's final report." *Emphasis added.*) This section does refer only to the planning commission's recommendation on "original districts and appropriate regulations," so it can be interpreted consistent with the broad discretion in W.S. 15-1-602 that allows the City Council to determine its own process (subject to at least one public hearing by either body) for updating and amending zoning districts once the original ordinance is adopted.

Another state statute – outside of the planning and zoning statutes in Chapter 15, Article 6 – could impact the specific zoning procedures adopted by City Council. All general ordinances of a City may need to have three readings before passage. (W.S. 15-1-115(c)). However, two considerations could limit the application of this requirement to zoning ordinances – and particularly zoning district boundary changes (rezoning). First, by its own terms, the three reading requirement for general city ordinances has an exception for ordinances "passed pursuant to rules and regulations of the governing body" or "as otherwise provided by law." (W.S. 15-1-114(a)). Second, the specific authority for the Council to determine its own procedures for zoning changes (discussed above) could be read as a more specific grant of authority applicable to planning and zoning, and over-ride this provision that addresses ordinances of a city generally.

#### *Options and Considerations:*

A strong policy of public involvement is reflected in the statutes requirements and the city ordinances, and this should be retained or "improved" in the new Unified Development Code. However, key person interviews and anecdotal comments have indicated that the current practice does not always work well and does not always provide the most constructive public participation in some applications. There are perhaps opportunities to "streamline" the procedures. Further, the current zoning ordinance only contains a general reference to zoning map changes and zoning text amendments, and does not give any indication to current applicants of actual procedures of the Council. At the very least this should be "clarified."

The following options are available to the City, subject to formal legal review:

- a. *Option 1.* Require a public hearing at the Planning Commission only, but maintain 3 readings at the City Council for both zoning map changes and text amendments. With this option, the regulations should clarify: (1) that the 3 –reading process exists (it currently is not mentioned in the zoning ordinance), and (2) that they are not "public hearings," therefore any public comments and testimony are not to accept new evidence or testimony, and evidence and testimony from the previous public hearing is already on the record.
- b. *Option 2.* Require a public hearing at the Planning Commission **and** one at the City Council, and maintain the 3 readings at City Council for both zoning map changes and text amendments. With this option, the regulations should clarify: (1) that the 3-reading process exists, and (2) specify which of the 3-readings would be a public hearing at Council, where new evidence and testimony could be accepted and new public notice would be mailed. This has the same benefits as option 1 but also gives the Council the opportunity to hear and accept new testimony.
- c. *Option 3.* Require a public hearing at the Planning Commission and alter the 3-reading requirement at City Council – either with or without a public hearing at the City Council (variations of Option 1 and 2 above). This option would streamline applications once they have cleared the Planning Commission hearing and allow the City Council to more quickly consider and decide on applications based on the Commission's recommendation.

#### *Recommendation:*

After discussion, the Final Review Draft proposes Option 2. This draft also makes a distinction between zoning map amendments (typically applicant and development driven) and text amendments. For text amendments, it should be the council's discretion to hold as many public hearings as it sees fit, since they will become generally applicable laws. Although this option is the most process intensive, it is most consistent with current practice. Also, the final draft does propose one "clarify/streamline" opportunity associated with it - the 3 reading process is specified and allows the second reading to occur at the public hearing (which may be at a council committee meeting in its discretion. Further it may "streamline" some

applications by limiting re-hearing of all of the Planning Commission issues at any of the 3 readings done by council, and focuses this exercise to one meeting.

## **Question 2: Platting Procedures**

### *Current Regulations:*

The current Subdivision Regulations require two separate procedures – a preliminary plat and a final plat. The preliminary plat must be reviewed by the Planning Commission at a public meeting (not a public hearing) (50.080.A.). Following a recommendation by the Planning Commission, the City Council must “acknowledge receipt” of the preliminary plat. The regulations do not state, but it is inferred that this must be through a formal public meeting, presentation, and substantive review of the merits of the application at a City Council meeting (as opposed to a consent or technical acknowledgement of the application.) Following acknowledgement of a preliminary plat, an applicant may then submit a final plat. The final plat also must be reviewed by the Planning Commission at a public meeting, with a limited exception that any final plat meeting all conditions of an acknowledge preliminary plat may go directly to City Council (60.060). The application is then required to be “heard” by the City Council. (60.070.B.1b). (note: it is not clear whether this reference is to a specific public hearing, or more generically heard at a public meeting.)

There are also two options in the current regulations to deviate from this procedure. First, a division of land that does not meet the definition of “subdivisions / development” (20.010(62), less than 3 lots, 35 acres or more, or other exemptions) do not require this platting procedure. Second, Article VII establishes procedures for “subdivision permits” whereby smaller developments can be eligible for an expedited process. This section is only applicable to the City in its 1-mile review jurisdiction of the unincorporated area.

A separate section of the City Code not associated with subdivision regulations (the section that establishes the creation of the Planning Commission) states that the planning commission must have public hearing on preliminary plats “in accordance with state law.” (2.56.110). However, a public hearing on plats does not appear to be required by statute (see State Statute Requirements below) and that same section of the City Code notes this.

### *State Statute Requirements:*

There are very few statutory requirements specifically applicable to how a city must process a plat application. The most direct authority states that the “commission shall prepare regulations governing the subdivision of land within the municipality. The governing body may adopt the regulations for the municipality after a public hearing thereon.” (W.S. 15-1-510(b)). This implies that broad discretion is granted to the Commission and Council to adopt any procedure they feel is appropriate and serves the broad public welfare. The only limitation in the city planning and zoning statutes is the requirement that a plat can’t be recorded until “approved” by the governing body (15-1-510(a), ( this section is triggered by the presence of a major street plan and is intended to have the governing body aware of the cumulative effect of plats on major street plans.)). The Wyoming planning statutes provide no specifics on how that approval otherwise shall occur.

Other state statutes – outside of the planning and zoning statutes in Chapter 15, Article 5 – may provide other guidance. First, Chapter 34 – Property, Conveyances and Security Transactions, Article 12 – Platting and Dedication, requires that all divisions of land into 3 or more parts be platted and approved by the City. However, this Chapter also provides no specific process for this approval to occur. The most specific statutory platting process applies only to counties. (Title 18, Chapter 3). This Chapter sets up the ability for counties to delegate review and recommendation authority for plats and established timeframes for review and decisions. (18-3-307). The statutes applicable to counties have some notable issues for consideration by the city as it establishes its own review process – it specifically mentions compliance with the Wyoming Administrative Procedures Act, and it specifically calls out certain applications for the potential for expedited or administrative approval under local county regulations.

### *Options and Considerations.*

The Wyoming statutes grant the City broad discretion to establish platting application and review procedures that meet the public interest. In general, it is most typical that cities create a preliminary and

final plat process, as Cheyenne currently does. This is done so that concepts and general development patterns can be agreed to in principle (in accordance with comprehensive and long-range plan policies), before detailed engineering occurs. In the new UDC, the City should consider what level of City Council involvement and what level of Planning Commission involvement should occur for plat review, and when and how that should occur. The options generally are as follows (variations or combinations of these options may also be possible.):

- a. *Option 1.* Have a full Planning Commission and City Council review on the merits of both preliminary and final plats. This review does not necessarily need to be a public hearing, but it may be if the City elects require this type of meeting in the UDC for all plats. If this option is chosen, the regulations should be clarified in two ways: (1) the current “acknowledgement” by the City Council of Planning Commission’s recommendation on the preliminary plat should be changed to reflect a full review of the preliminary plat on its merits at City Council; and (2) the notice requirements for each of the 4 review meetings should be tailored to the type of meeting (public meeting vs. public hearing – see questions 3 below).
- b. *Option 2.* Have different review steps for the preliminary plat and final plat. The preliminary plat would have a full review on the merits by the Planning Commission, but an abbreviated review or “acknowledgement” by the City Council. If this option is chosen the current regulations should be clarified to specify what “acknowledgement” means in terms of process and review. This option could streamline the platting process by getting the council review on the merits of a preliminary plat only if they see problems or issues (i.e. refuse to “acknowledge” the preliminary plat). The final plat would have a full review on the merits (conformity with preliminary plat and any conditions of the preliminary plat approval) by the Planning Commission and a full review and acceptance by the City Council.
- c. *Option 3.* The third option can work in combination with Options 1 or 2, and involves an expedited review process for final plat. This would clarify the current regulations (66.060) and allow final plats to skip the Planning Commission review if there were no conditions placed on the approval of the preliminary plat by Planning Commission or City Council (e.g. the preliminary plat as presented was determined to meet all standards and planning policies, and the staff has determined that the final plat is consistent with the approved preliminary plat.) This option is a slight change from how the current section 66.060 could be interpreted, as the current regulations may allow this option even if conditions were placed on the preliminary plat. However, the initial draft review discussions it was determined that the Planning Commission should have the authority to review plats that were conditionally approved to ensure that the manner in which conditions were addressed meet long-range physical planning policies.

Three other opportunities for a more expedited or administrative review (other than the required preliminary / final review discussed above) were revealed in the research and analysis phase of the UDC project and through key person interviews. These provide expedited or administrative approval, applicable to certain types of applications that are more routine (Similar to the current regulations applicable in the 1 mile jurisdiction and similar to the expedited process authorized for counties under Wyoming statutes in Title 18, Chapter 3):

- Simple subdivisions (similar to those currently allowed by the county) where the division of un platted land will occur within pre-existing development patterns and require no new public improvements.
- Lot Line adjustments where adjusting previously platted lines where no new lots or need for public improvements occur. Most often this occurs in the development process, where field conditions or minor deviations in the development program warrant moving a lot line.
- Revised final plats for minor adjustments to an approved final plat. Two examples of application include:
  - Situations where the actual legal description of the ownership units are not known until the unit is built and walls can be surveyed(i.e. townhomes with common walls); or
  - Adjustments to planned developments due to discovery of field conditions or changed development programs that adjust lot lines, but results in no material changes to the development.

*Recommendations:*

The Final Review Draft of the UDC proposes Option 2, in association with Option 3 allowing for an expedited review of the final plat where there were no conditions placed on the final plat. This option most closely reflects current practice, but also clarifies and potentially streamlines both the preliminary and final plat processes beyond current practices.

Although this option does not take the greatest advantage of opportunities to “streamline” the platting process to the extent that may be allowed under state statutes, there are three key streamlining opportunities in this option:

- All of the administrative platting procedures discussed above (simple subdivisions, lot line adjustments and revised final plats) are included. They would only involve a staff level approval, unless there would happen to be any public dedications of land or facilities, in which case a formal acceptance of these lands or facilities would need to be officially given by council. (Final Review Draft UDC Section 2.1.1.)
- An applicant may elect to jointly submit a preliminary and final plat when staff and the applicant agree that it is a more routine development proposals (i.e. applicant elect to commit to more detailed engineering to meet the final plat requirements prior to the Planning Commission approval of the preliminary plat). Upon approval of the preliminary plat by the planning commission, the final plat could be submitted to the city council. No conditional approvals could occur through this process so it would be an “all or nothing” application. (Final Review Draft UDC Section 2.1.2.c.3)

**Question 3: Notice**

The notice requirements for different applications present a subtle but important opportunity to “Clarify, Streamline, and Improve” the development review process. A strong policy towards public involvement is the priority with respect to notice requirements, and this should be retained and strengthened in the UDC. However tailoring the notice to the type of meeting can avoid technical or legal mistakes when administering development review processes. This issue deals with the subtle difference between a “public meeting” (where the public can listen and comment if invited by the chair of the meeting) and a “public hearing” (where the public is guaranteed an opportunity to be heard and present testimony which can be part of the record on which a decision is made.)

Generally, the latter meeting type (public hearing) is the only one where specific notice is required to be mailed to surrounding property owners. This is for two reasons: (1) the statutory requirement for mailed notice is typically only associated with a public hearing, where public comments are to be part of a record on the decision; and (2) the expectation of a citizen when they receive a direct mailed notice is that their input is specifically requested. (Note: in public meetings or “administrative reviews,” public comment is not required, and any public comment that is allowed can only be used to alert the decision making body to a specific standard or criteria not being met by the applications; in contrast, public hearings are typically required by statute for “legislative reviews” that can consider “public health, safety, and general welfare” issues. Here public comment is required and can in itself be a factor upon which the decision-making body may base its decision.)

*Current Regulations:*

The current regulations have the following notice requirements for various applications:

<b>CURRENT CITY REGULATIONS NOTICE REQUIREMENTS</b>				
<b>▼ Type of Application</b>	<b>Type of Notice ►</b>	<b>Posted</b>	<b>Published</b>	<b>Mailed</b>
<i>Preliminary Plat [1]</i>		1 sign for each road frontage, at least 30 days prior to review (55.050)	At least 30 days before review (55.050)	“As required by state law” [2] (55.050)
<i>Final Plat [1]</i>		1 sign for each road frontage, at least 30 days prior to review (60.050)	At least 30 days before review (60.050)	“As required by state law” [2] (60.050)
<i>Administrative Plat</i>		[not in current regulations]	[not in current regulations]	[not in current regulations]
<i>Site Plan</i>		None	None	None

CURRENT CITY REGULATIONS NOTICE REQUIREMENTS			
Type of Notice >	Posted	Published	Mailed
▼ Type of Application			
Zoning Map Amendment (Zone Change)	None specified, other than general reference to "state statute requirements." (17.148.070)		
Text Amendment	None specified, other than general reference to "state statute requirements." (17.148.070)		
Administrative Use Review	Option: Sign or mailed notice (but no specifics)	None	Option: Sign or mailed notice (but no specifics)
Board Use Review (conditional use)	Option: Sign or mailed notice (but no specifics)	None	Option: Sign or mailed notice (but no specifics)
Variance			

[1] The notice requirements for preliminary and final plats in the current regulations refer only to the Planning Commission review. There is no specified notice for the City Council review.

[2] State law does not require any notice to be mailed to adjacent property owners for platting (see below)

**State Statute Requirements:**

The state statutes have the following notice requirements for various applications. Where there is no specific requirement, the notice would be left to the City's general discretion. The Wyoming Administrative Procedures Act may also apply to some applications, but it's notice requirements are also general and do not require any specific notice with respect to timing or methods for a "contested case" other than "reasonable notice served personally or by mail" to "necessary parties." (W.S. 16-3-107(a)).

STATE STATUTE NOTICE REQUIREMENTS			
Type of Notice >	Posted	Published	Mailed
▼ Type of Application			
Preliminary Plat	None specified (15-1-510(b), but the County Statutes – not applicable to the City – do require a 30-day notice requirement for public hearings before the planning commission on amendments to the "comprehensive plans including zoning." (18-5-202). (This may be where the 30-day notice in the Cities current regulations comes from, but is not applicable to these applications. Further, section (c) of that same statute states that the planning commission shall give 14-day notice for hearings on recommendations for "plan implementation.")		
Final Plat			
Administrative Plat	None specified(15-1-510(b)	None specified(15-1-510(b)	None specified(15-1-510(b),
Site Plan	None specified	None specified	None specified
Zoning Map Amendment (Zone Change)	None specified	At least 15 days prior to hearing. (15-1-602 (b))	None specified, but W.S. 15-1-603 provides property owners within 140' of any boundary of a zone change the opportunity to protest, so 140' may be a reasonable "mailing distance."
Text Amendment	Not Applicable	At least 15 days prior to hearing. (15-1-602 (b))	Not applicable
Administrative Use Review	None specified	None specified	None specified
Board Use Review (conditional use)	None specified, but most similar to a zone change application, so the same notice may be advisable.	None specified, but most similar to a zone change application, so the same notice may be advisable.	None specified, but most similar to a zone change application, so the same notice may be advisable.
Variance	None specified, but most similar to a zone change application, so the same notice may be advisable.	None specified, but most similar to a zone change application, so the same notice may be advisable.	None specified, but most similar to a zone change application, so the same notice may be advisable.

**Options and Considerations:**

The Wyoming statutes grant the City broad discretion to determine what type of notice best meets the public purposes and needs with respect to planning and zoning regulations. Tailoring the notice to the meeting type can help avoid misconceptions of how public input is to be used in the decision process, and can limit the risk that decision-making bodies inappropriately weigh public comments as a factor in their decision. However, nothing precludes the City from electing to have any notice requirement it deems appropriate and within statutory requirements – particularly if the concerns raised above are not applicable in the City's development review process.

**Recommendations:**

Based on the “Clarify, Streamline, and Improve” directive of this project, the Final Review Draft contains the following notice recommendations:

<b>FINAL REVIEW DRAFT NOTICE REQUIREMENTS</b>				
<b>▼ Type of Application</b>	<b>Type of Notice &gt;</b>	<b>Posted</b>	<b>Published</b>	<b>Mailed</b>
<i>Preliminary Plat</i>		1 sign for each road frontage, at least <b>15 days</b> prior to review at Planning Commission.	At least 15 days prior to review at Planning Commission.	none
<i>Final Plat</i>		1 sign for each road frontage, at least <b>15 days</b> prior to review at Planning Commission.	At least 15 days prior to review at Planning Commission.	none
<i>Administrative Plat</i>		1 sign for each road frontage, at least <b>7 days</b> prior to staff decision.	none	none
<i>Site Plan</i>		1 sign for each road frontage, at least <b>7 days</b> prior to staff decision.	none	none
<i>Zoning Map Amendment (Zone Change)</i>		1 sign for each street frontage and at least 15 days prior to public hearing at Planning Commission, and same notice required for City Council hearing.	At least 15 days before public hearing at Planning Commission, and same notice required for City Council hearing.	All owners within 140' of subject property, and at least 15 but no more than 30 days prior to public hearing at Planning Commission.
<i>Text Amendment</i>		Not applicable	At least 15 days before public hearings (one at Planning Commission and at least one at City Council)	Not applicable
<i>Administrative Use Review</i>		1 sign for each road frontage, at least <b>7 days</b> prior to staff decision.	none	none
<i>Board Use Review (conditional use)</i>		1 sign for each street frontage and at least 15 days prior to public hearing at Board of Adjustments	At least 15 days before public hearings at Board of Adjustments	All owners within 140' of subject property, and at least 15 but no more than 30 days prior to public hearing at Board of Adjustments.
<i>Variance</i>		1 sign for each street frontage and at least 15 days prior to public hearing at Board of Adjustments	At least 15 days before public hearings at Board of Adjustments	All owners within 140' of subject property, and at least 15 but no more than 30 days prior to public hearing at Board of Adjustments.

**Question 4: Review Criteria – Purpose and Affect**

*Current Regulations:*

A number of concerns have been expressed regarding the Review Criteria subsections which are included in the Initial and Final Drafts of the UDC with each different application procedure. The current regulation include a few scattered criteria, but in general decision making criteria are either not organized or do not exist in the ordinance. Most of the concerns about adding these criteria seem to imply that they are adding things for which an application can be denied. However absence of criteria in the regulations should not be mistaken for lack of the ability to deny applications. In all applications any of the review criteria included in the draft UDCs, among others, could be brought up as reasons for the City to deny applications. The addition of review criteria responds to many key person interview comments. These criteria help to “clarify, streamline, and improve” the current regulations by:

1. Framing the discussion of any individual applications around specific issues;
2. Tying the review back to specific comprehensive planning policies and intent statements of regulations; and
3. Guiding any discretion of flexibility allowed in the regulations in a more consistent manner.

*State Statute Requirements:*

In general the state statutes do not have any specific provisions on review criteria, and local governments are given broad discretion to set up any criteria it sees appropriate. The exception is the variance process which the statutes require that the Board of Adjustment find 3 specific items – (1) special

circumstances or conditions that do not result from actions of the applicant; (2) strict application of the regulation would deny reasonable use of land; and (3) granting the variance does not harm the intent of the regulation. These requirements are reflected similarly in the City's current regulations, which are unchanged in the Final Draft UDC.

*Options and Considerations:*

The City may include any review criteria it sees fit. These do not necessarily mean that applications not meeting every criteria must be denied (except in the case of a variance mentioned above or some administrative approvals). Nor does it mean these would be the only criteria for denial (although it may establish a strong presumption that if you clearly meet all criteria you should be approved.) However, it does improve the current situation by giving more clarity of what is expected in the development review process, where attention in the review discussions should be focused, and guide more consistent decision-making.

*Recommendation:*

The Final Review Draft includes many review criteria for all applications, however these may be revised in any manner that better reflects the City's planning and development policies.