

TRAIL CREEK ZONING ORDINANCE



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SECTION 1 TITLE, CREATION AND ADOPTION

- 1.1 This ordinance shall be known as the Trail Creek Zoning Ordinance and is adopted specifically for the Trail Creek Zoning District. The district has been created by resolution of the Board of County Commissioners, Gallatin County, Montana.
- 1.2 Pursuant to Section 76-2-101, M.C.A. there has been created a Planning and Zoning Commission for the Trail Creek Zoning District which consists of the three County Commissioners, the County Surveyor and the County Assessor.
- 1.3 Pursuant to Section 76-2-101, M.C.A., there is hereby adopted a development pattern consisting of the Trail Creek Zoning Ordinance, Zoning Map, and Trail Creek Zoning District General Plan.

1.3.1 The Planning and Zoning Commission shall have all the powers given to it by the state statutes of the State of Montana and by this ordinance.

SECTION 2 PURPOSES

- 2.1 The purpose of this ordinance is to:
 1. Promote the health, safety, and general welfare of County residents;
 2. Lessen congestion in the streets;
 3. Secure safety from fire, panic, and other dangers;
 4. Provide adequate air and light;
 5. Prevent overcrowding of land;
 6. Avoid undue concentration of population;
 7. Facilitate the adequate provision of transportation, water, sewage, parks, and other public requirements;
 8. Promote the preservation of wildlife and fish habitat;
 9. Protect scenic qualities, fresh air, groundwater, and open space;
 10. Preserve the rural atmosphere;
 11. Provide for orderly growth of agricultural pursuits;

12. Encourage good design and orderly growth.
- 2.2 This ordinance is adopted under provision of Section 76-2-101 through Section 76-2-112, M.C.A., and is intended to be in effect only when adopted under said law in conjunction with a zoning map.

SECTION 3 DEFINITIONS

For the purpose of this ordinance certain terms and words are defined as follows: Words used in the present tense shall also include the future; words or phrases used in the singular shall also include the plural, and words used in the plural shall also include the singular; the word "building" includes structure and "structure" includes building; the words "used" or "occupied" shall include within their meaning "intended, arranged, or designed to be used or occupied". The word "person" shall include corporation, partnership, or other legal entity. Where other definitions are necessary and are not defined herein, the Trail Creek Planning and Zoning Commission may define such terms.

- 3.1 Accessory Building or Use - A building or use which: (1) is subordinate in area, extent or purpose to the principal building or principal use served; (2) contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use.
 - A. Accessory dwelling unit - A second dwelling unit either in or detached from the main dwelling unit. The accessory dwelling is on the same lot as the primary dwelling unit, and is a complete independent living facility.
- 3.2 Agriculture - The tilling of soil, the raising of crops, horticulture and gardening, dairying or animal husbandry including all uses customarily incidental thereto, but not including any agriculture industry or business such as fruit packing plants, fur farms, animal hospitals, commercial dog kennels, commercial feed lots or similar uses.
- 3.3 Building - A structure, having a roof, and built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind.
- 3.4 Building Height - The vertical distance from the average elevation of the proposed finished grade at the front of a building to the highest point of a flat roof, the deck line of a mansard roof, and the mean height between eaves and ridge for gable, hip and gambrel roofs.

- 3.5 Building Perimeter - The foundation walls of a building and/or supports for appendages thereto.
- 3.6 Conditional Use - Uses, other than permitted uses, that may be allowed in a specific zoning category, but which require a public hearing by the governing body to consider additional safeguards to maintain and assure the health, safety, and general welfare of the community and to maintain the character of the Trail Creek Zoning District.
- 3.7 Density - The total number of dwelling units allowed per gross acre.
- 3.8 Dwelling, Single Family - A building designed with complete, permanent, and independent living facilities for one family.
- 3.9 Dwelling Unit - A building or portion thereof providing permanent cooking, eating, sleeping and living facilities for one family and its resident domestic employees.
- 3.10 Family - Any individual or two or more persons related by blood or marriage, or a group of not more than four persons (excluding servants) who need not be related by blood or marriage, living together as a single non-profit housekeeping unit.
- 3.11 General Plan - General plan shall include any document or portion of any document duly adopted by the Zoning Commission which is intended to guide the growth and development of the area.
- 3.12 Home Business - The use of a portion of a dwelling or accessory building for business conducted on the premises. The home business may require the use of additional vehicles, have a greater impact on the neighborhood than a home occupation, and have a sign.
- 3.13 Home Occupation - The use of a portion of a dwelling or accessory structure as an office, studio, or work room for occupations at home. The activity must be clearly incidental to the use of the dwelling for a residence and shall not change the character or appearance thereof. In addition, the activity shall have no impact on the surrounding neighborhood, and shall not result in any smells, noise, or create additional traffic greater than that caused by normal residential use.
- 3.14 Landscaping - The placement of ornamental fixtures such as fountains, ornamental walls, fences, benches, along with vegetative plantings of trees, shrubs, grass, flowers, etc. This definition shall also include the designing of the placement of such materials.
- 3.15 Lot - A parcel or plot of land shown as an individual unit of ownership on the most recent plat or other record of subdivision.

- 3.16 Lot, corner - A lot situated at the junction of and abutting on two or more streets.
- 3.17 Lot, coverage - The total area of a lot covered by the principal and accessory buildings.
- 3.18 Lot lines - The lines bounding a lot as defined herein.
- 3.19 Lot width - The width of a lot along a line parallel to the frontage thereof and lying a distance equal to the required front yard setback on such lot.
- 3.20 Manufactured Housing - Residential dwellings constructed entirely or substantially off-site.
- 3.21 Mobile Home - Forms of housing known as "trailers", "housetrailers", or "trailercoaches", built to be transportable on its own chassis, comprised of frame and wheels, and designed to be used as a dwelling when connected to appropriate utilities.
- 3.22 Mobile Home Subdivision - A parcel of land that has been reviewed and approved for the placement of mobile homes for residential use.
- 3.23 Motor Home - See Travel Trailer, Section 3.31.
- 3.24 Natural Wood Siding - Wood in a natural state or milled, but not to include any reformed product or type of plywood.
- 3.25 Parking Lots - A structure or an area, other than a public street or alley designed or used for the temporary parking of motor vehicles and available for public use whether free, for compensation, or an accommodation for customers or clients.
- 3.26 Parking space, off-street - A space located off any public right-of-way which is at least nine feet by twenty feet in size for parking of any motor vehicle, with room to get out of either side of the vehicle, with adequate maneuvering space, and with access to public streets or alleys.
- 3.27 Planned Unit Development - An area of land in single ownership or control to be developed as a single integrated unit, the plan for which may not correspond in lot size, bulk or type of building, density, lot coverage, use, and required open space to the regulations established in the district.

- 3.28 Sign - Any face of any lettered or pictorial device and/or structure designed to inform or attract attention.
- 3.29 Structural alteration - Any change in the shape or size of any portion of a building or of the supporting members of the building or structure such as walls, columns, beams, arches, girders, floor joist, or roof joist.
- 3.30 Structure - That which is built or constructed, an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.
- 3.31 Travel Trailer - A vehicular portable structure designed as a temporary dwelling for travel, recreation, and vacation uses which is not more than eight feet in body width.
- 3.32 Use - Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied or any activity, occupation, business, or operation carried on or intended to be carried on in a building or other structure or on a tract of land.
- 3.33 Variance - A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape, or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from an inconvenience.
- 3.34 Yard, front - An open space extending across the full width of the lot between the front building line and the front lot line.
- 3.35 Yard, rear - An open space extending across the full width of the lot between the rear building line and the rear lot line.
- 3.36 Yard, side - An open space extending from the side building line to a side lot line running from the front to the rear lot lines.
- 3.37 Zoning Enforcement Agent - The duly authorized agent appointed by the Planning and Zoning Commission for the purpose of administering and enforcing this ordinance.

SECTION 4 ESTABLISHMENT OF DISTRICTS

- 4.1 The jurisdiction of the Trail Creek Zoning District is hereby divided into one zone or "district", as shown on the official zoning map, which together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this ordinance.

4.2 Certificate

The Official Map shall be available in the County Clerk and Recorder's Office and shall bear a certificate with the signature of the Chairman of the Board of County Commissioners attested by the County Clerk and the date of adoption of this ordinance. The Certificate should read as follows:

This is to certify that this is the Official Zoning Map referred to in Section 4 of the Trail Creek Zoning District Ordinance.

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS

Attested _____

Date of Adoption _____

If any changes to the map are made by amendment of this ordinance in accordance with Section 16 hereof, such changes shall be made to the Official Zoning Map and signed, dated, and certified upon the map or upon the material attached thereto.

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map kept in the office of the County Clerk and Recorder shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the zoning district.

4.3 Replacement of Official Zoning Map

In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes or additions thereto, the Trail Creek Planning and Zoning Commission may adopt and certify a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or admissions in the prior map, but no such corrections shall have the effect of amending the original zoning map or any subsequent amendment thereof.

"This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted _____ as part of the zoning ordinance for Trail Creek Zoning District, Gallatin County, Montana.

CHAIRMAN, BOARD OF COUNTY
COMMISSIONERS

Attested _____

Date _____ "

4.4 Interpretation of Boundaries - Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the boundaries shall be interpreted as following the nearest logical line to that shown where:

1. Boundaries indicated as approximately following the center line of streets, highways, or alleys, shall be construed to follow such center lines;
2. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
3. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
4. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks(s);
5. Boundaries indicated as following the center line of streams, rivers, canals, or ditches shall be construed to follow such center lines;
6. Boundaries indicated as parallel to or extensions of features indicated on the Official Zoning Map shall be determined by the scale of the map;
7. Boundaries indicated as following Section lines of quarter section lines of quarter-quarter section lines shall be construed as following such lines;
8. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or where other circumstances or controversy arise over district boundaries, the Board of County Commissioners shall interpret the district boundary

4.5 Interpretation of Uses - If questions arise concerning the appropriate classification of a particular use, or if the specific use is not listed, the Zoning Commission shall determine the appropriate classification for that use.

In interpreting use classification, the Zoning Commission shall determine:

1. That the use and its operation are compatible with the uses permitted in the district wherein the use is proposed to be located.
2. That the use is similar to one or more uses permitted in the district wherein it is proposed to be located.
3. That the use will not cause substantial injury to values of property in the neighborhood or district wherein it is proposed to be located.
4. That neither the intent of the ordinance nor the intent of the district will be abrogated by such classification.

SECTION 5 APPLICATION OF DISTRICT REGULATIONS

Except as herein provided in Sections 8, 9, 10, 11, 12, and 13, with respect to supplementary regulations, home businesses, signs, conditional uses, non-conforming uses and non-conforming buildings, and variances, the regulations set by this ordinance shall be minimum regulations and all regulations as categorized shall apply uniformly to each class or kind of structure or land and particularly:

- 5.1 No building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered unless it is in conformity with all of the regulations herein specified for the district in which it is located.
- 5.2 No building or other structure shall hereafter be erected or altered: a) to exceed the height or bulk; b) to accommodate or house a greater number of families; c) to occupy a greater percentage of lot area; d) to have narrower or smaller rear yards, front yards, side yards, or other open spaces.
- 5.3 No part of any yard, or other open space, or off-street parking required about or in connection with any building for the purpose of complying with this ordinance, shall be included as part of a yard, open space, or off-street parking similarly required for any other building.
- 5.4 No yard or lot existing at the time of adoption of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet the minimum requirements established by this ordinance.

SECTION 6 R-20 AGRICULTURAL RESIDENTIAL SINGLE FAMILY, ONE DWELLING PER TWENTY ACRES

6.1 Intent - The intent of this district is to provide for single family and agricultural development in areas of severe physical limitation and preserve the rural and agricultural atmosphere of the area.

6.2 Permitted Uses

1. Single family dwelling units
2. Home occupations
3. Accessory uses and accessory buildings under 1,200 square feet
4. Signs, as permitted by Section 10 of this Ordinance
5. Agricultural uses
6. Accessory dwelling unit for agricultural employees
7. Accessory dwelling unit under 1,000 square feet.
8. Temporary buildings for and during construction for up to eighteen (18) months.

6.3 Conditional Uses -

1. Metal buildings that are not in conformance with Section 8.9
2. Family day care homes as defined in Section 53-4-501, M.C.A.
3. Community residential facilities as defined in Section 76-2-411, M.C.A.
4. Accessory dwelling units not related to agricultural employees over 1,000 sq. ft.
5. The development of natural resources, including gravel pits, mines, oil and gas wells
6. Planned unit developments.
7. Home businesses

- 8. Temporary work camps
 - 9. Guest ranches
 - 10. Bed and Breakfasts
 - 11. Schools, parks
 - 12. Youth camps
 - 13. Other related uses consistent with this code.
 - 14. Accessory buildings over 1,200 square feet
 - 15. Exteriors, other than natural wood siding
- 6.4 Lot Area and Width - Lot area for any use in this district shall be not less than twenty (20) acres in size and no lot width shall be less than 660 feet.
- 6.5 Lot Length - No lot length shall be three times greater than the average width of the lot.
- 6.6 Setbacks - Every lot shall have the following minimum setbacks:
- | | |
|------------------|----------|
| Front setback | 50 feet |
| Rear setback | 50 feet |
| Side setback | 50 feet |
| Trail Creek Road | 100 feet |
- 6.7 Building Height - Maximum building height in this district shall be 32 feet.

SECTION 7 P.U.D. PLANNED UNIT DEVELOPMENT

- 7.1 Intent - The intent of this zoning map overlay is to provide, as an option, for the clustering of residential development in order to:
- 1. Achieve the preservation of open space and unique natural areas;
 - 2. Properly plan and utilize land with some areas unsuitable for development;
 - 3. Encourage flexibility of design;
 - 4. Promote attractive site planning;

5. Provide economies in the provision of public services;
6. Preserve agricultural lands; and
7. Preserve the rural atmosphere.

To achieve these purposes:

1. A greater variety of building types is permitted within this overlay.
2. Procedures are established to assure adequate maintenance and restricted use of open space areas for the benefit of the inhabitants of the subdivisions or for dedication to public use.
3. Procedures are established to assure adequate protection of existing and potential developments adjoining the proposed PUD.

7.2 Special Definitions

1. Certificate of Development Rights - A certificate entitling the owner to build (1) one single family dwelling unit per twenty acres. Interpolation is permitted by rounding off to the nearest dwelling unit.
2. Common Open Space - A parcel or parcels of land, or an area of water, or a combination of land and water within a planned unit development designated and intended for the use or enjoyment of residents of the development. Common open spaces may contain complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of occupants of the development.
3. Development Rights - One of a series of rights inherent in fee simple ownership of land (others include air rights or mineral rights). which may be separated from the land. The rights to build dwelling units on one's land, the potential for the improvement of a parcel of real property, measured in dwelling units, existing because of the zoning classification of the parcel.
4. Landowner - The legal or beneficial owner or owners of all the land proposed to be included in the PUD. The holder of an option or contract to purchase, a lessee having remaining term of not less that (20) twenty years or other persons having an enforceable propriety interest in such land, shall be deemed to be Landowner for the purposes of these provisions.

5. Property Owners Association - An incorporated, non-profit organization operating under recorded land agreements through which (a) each property owner in the planned unit development is automatically a member and (b) each owner is automatically subject to a charge for a proportionate share of the expenses for the organization's activities and (c) common open space and facilities are maintained.
 6. Transfer of Development Rights - The conveyance of development rights by certificate authorized by the Trail Creek Zoning Ordinance, to another parcel of land and the recordation of that conveyance at the Office of the Gallatin County Clerk and Recorder.
 7. Site - The entire area within the perimeter boundary of a proposed planned unit development.
- 7.3 Where Permitted - Subject to the issuance of a conditional use permit, in accordance with the provisions of Section 11, a planned unit development may be permitted in the PUD designated areas.
 - 7.4 Maximum Number of Units - A planned unit development may contain a maximum of six (6) dwelling units per one hundred acres. However, a planned unit development may contain up to 12 dwelling units per one hundred acres if development rights are transferred in from another part of the district.
 - 7.5 Standards for Planned Unit Developments - Planned unit developments may be authorized by the Zoning Commission when the following conditions are met:
 1. The site shall be a minimum of one hundred (100) acres.
 2. Townhouse units shall have a central water and sewer system.
 - 7.6 Density Bonus - A density bonus of up to twice the number of allowable units may be authorized by the Zoning Commission when development rights are transferred into the PUD area from other areas in the zoning district.
 - 7.7 Permitted Uses -
 - Townhouses
 - Condominiums
 - Single family residences
 - One accessory storage unit
 - Garages
 - One rental living unit or guest unit not to exceed one thousand (1,000) square feet.
 - Home Occupations
 - 7.8 Standards for Development -

1. General Design - The P.U.D. is intended to be used for clustered residential development and shall be designed and developed in a manner compatible with and complementary to existing and potential development in the immediate vicinity of the project site. Site planning on the perimeter shall give consideration to protection of the property from adverse surrounding influences, as well as protection of the surrounding area from potentially adverse influences within the development. In addition, the P.U.D. shall relate harmoniously to the topography of the site, make suitable provision for conservation of water courses, wooded areas, rough terrain and similar natural features and areas, and shall otherwise be so designed as to use such natural features and amenities to best advantage. Other developments within the area and existing agricultural lands shall be given proper attention in the design.

2. Setbacks - Every lot shall have the following minimum setbacks

Front setback	50 feet
Rear setback	50 feet
Side setback	50 feet
Stream setback	35 feet
Trail Creek Road	100 feet

3. Off-Street Parking - All residential parking shall be off street. A minimum of two off-street parking spaces shall be provided for each dwelling unit. Parking for townhouses and condominiums shall be located out of view of Trail Creek Road.

4. Open Space -
 - A. Not less than 70 percent of the planned unit development site shall be designated and maintained as common open space for the use of the occupants of the development, unless the area is designated for agricultural use. If the area is designated for agricultural use, then the use is reserved to the person who has the agricultural lease.

5. Landscaping - Landscaping may be required to provide a buffer between proposed uses or between different adjacent district classifications.

6. Height - All buildings and structures shall be a maximum of thirty-two (32) feet in height.

7. Signs - Interior street, building and other signs shall be uniform in design and in conformance with Section 10 of this Ordinance.

8. Townhouse and condominium Standards - Townhouses and condominiums shall be designed so there are not more than four individual dwelling units in each attached structure.

7.9 Legal Requirements - In a planned unit development containing areas or facilities of common or restricted ownership, the subdivision plat, dedication, covenants, and other recorded legal agreements shall:

1. Legally create automatic membership in a non-profit property owners association or similar instrument.
2. Place title to any common property or facility in the property owners association.
3. Appropriately and permanently limit the uses of common property and open space.
4. Give each lot or unit owner the right to use and enjoyment of any common property or facility.
5. Place responsibility for operation and maintenance of the common property in the property owners association.
6. Place an association charge on each lot or unit in a manner which will:
 - A. Assume sufficient funds for maintenance and operation; such charge to be a lien on the property; and
 - B. Provide adequate safeguards for owners against undesirable high charges.
7. Set forth the articles of incorporation for the property owners association.
8. In a planned unit development located in an AR District where agricultural use of the land is to be retained. Legal documentation designating the agricultural land shall be submitted.

7.10 Procedures for Approval

1. The method for considering a Planned Unit Development shall be the Conditional Use Permit procedure.
2. If the Planned Unit Development is considered a subdivision according to the definitions contained in 76-3-101 et seq., M.C.A., the development shall also be subject to review as set forth in the Gallatin County Subdivision Regulations.

SECTION 8 SUPPLEMENTARY REGULATIONS

- 8.1 Structures to have Access - Every residence hereafter erected or moved shall be on a lot with access to a public street, or private street.
- 8.2 Outdoor Lighting - Outdoor lighting of trees, bushes, fountains, swimming pools, grounds or residences shall not illuminate or be reflected upon any adjacent property.
- 8.3 Corner Lots - When a lot faces more than one street, and front yard setbacks have been established, corner lot setbacks shall be at least as great as established for each street.
- 8.4 Protection of Street Right of Way - No land use permit shall be issued or use proposed in any street right-of-way or any proposed street right-of-way proposed on any official Master Plan adopted by the Board of County Commissioners which is still in effect.
- 8.5 Protection of Irrigation Ditch Easements - No land use permit shall be issued or use proposed within fifteen (15) feet of either side of an active irrigation ditch.
- 8.6 Fences, Walls and Hedges - Fences, walls and hedges in any district may be located on lot lines provided such fences, walls and hedges are constructed of materials consistent with the character of the area. Fences used in an agricultural pursuits to retain stock animals shall be excepted. However, no fences, walls, and hedges shall obstruct the visibility of traffic from the road.
- 8.7 Stop Order - Whenever any building work is being done contrary to the provisions of this ordinance, the Zoning Enforcement Agent shall order the work stopped by notice in writing served on any person engaged in doing or causing such work to be done, and any such person shall forthwith stop such work until authorized by the Zoning Enforcement Agent to proceed with the work.
- 8.8 Outside Storage - All accumulation of storage or salvage materials, including fuel tanks, shall be stored in an accessory building or screened from view.
- 8.9 Metal and Other Accessory Buildings - All accessory buildings in the R-20 and P.U.D. Districts shall meet the following requirements:
1. No unfinished reflective siding shall be allowed. All storage buildings over 1,200 square feet in size shall require a conditional use permit.
 2. Agricultural buildings are excepted from this section.

3. All accessory structures appearance will be in keeping with the main structure.

8.10 Exterior Appearance - All single family homes in this district shall meet the following standards:

1. All residential buildings shall have natural wood siding. Colors in keeping with the character of the area shall be used.
2. The pitch of the main structure shall be more than one (1) foot of rise for every four (4) feet of horizontal run. Unpainted galvanized metal roofs are not allowed in the district. Galvanized metal roofs shall be painted colors that are consistent with the character of the area.
3. All dwelling units manufactured substantially or entirely off-site shall meet current Department of Housing and Urban Development (HUD) codes.
4. All dwellings units shall be constructed to be consistent with the character of the area.
5. All exterior construction shall be completed within eighteen (18) months.
6. All dwellings shall have a width of more than one-half (1/2) their length.
7. All residences shall have a minimum of twelve (12) inch overhang on gables and eaves.
8. All exteriors shall have a finished appearance.

8.11 Utilities

1. Utilities, other than lines used for the distribution of electricity in new service areas as defined in Section 69-4-102 MCA, shall be installed underground unless a variance is granted pursuant to Section 13 of this ordinance.
2. Lines used for the distribution of electricity in a new service area shall be installed underground, provided however, the Zoning Commission may grant a variance to allow overhead lines for the distribution of electricity when the applicant shows that the installation of underground distribution lines would be technically or economically infeasible as defined in Section 69-4-102, MCA, and Rule 38.5.1002, ARM, of the Montana Public Service Commission.

- a. The procedures of Sections 13.3 and 13.4 of this ordinance shall apply to a variance request under this subsection.
 - b. The criteria of Sections 13.2 and 13.5 of this ordinance shall not apply to a variance request under this subsection.
3. If the Zoning Commission determines that the applicant requesting a variance to install overhead distribution lines for electricity fails to make the requisite showing to support the variance, the applicant may request that the Public Service Commission review the matter and issue an order concerning the installation of overhead distribution lines for electricity. The order of the Public Service Commission shall be conclusive. Upon presentation of an order issued by the Public Service Commission confirming the installation of overhead distribution lines for electricity, the Zoning Commission will grant the variance.

SECTION 9 HOME BUSINESSES

Home businesses are permitted in the R-20 District upon obtaining a conditional use permit. The applicant shall prepare an application as required by Section 11 of this ordinance.

- 9.1 The occupation or profession shall be carried on wholly within the principal building, other accessory structure, or screened from view.
- 9.2 Not more than four (4) people who are not a member of the applicant's immediate family and who are not a resident of the applicants home may be employed on-site.
- 9.3 The use of electrical or mechanical equipment that would change the fire rating of the structure or create visible or audible interference in radio or television receivers or cause fluctuations in line voltage outside the dwelling unit is prohibited.
- 9.4 There shall be no offensive noise, vibration, smoke, odors, heat or glare produced as a result of the home business.
- 9.5 The primary unit shall remain a residential structure, there shall be no exterior display or alteration that changes the residential character of the premises.
- 9.6 If the business is an auto related business all vehicles shall be stored and worked on within an enclosed building, or screened from view.

9.7 The home business may involve the use of up to two (2) commercial vehicles limited in size to two (2) tons, for delivery of products and materials to and from the premises. Vehicles will be stored in a garage, or screened from view.

9.8 All outside storage of business related materials shall be stored in an accessory building or screened from view.

SECTION 10 SIGNS

Signs within the districts shall be subject to the following requirements. No blinking, neon, or portable signs shall be permitted in the Trail Creek Zoning District.

10.1 Planned Unit Development (PUD) - Signs within the PUD District shall be limited to resident identification signs, real estate sale signs, and street signs, no larger than six (6) square feet.

10.2 Residential Single Family (R-20) - One sign no larger than six (6) square feet shall be allowed. Signs shall be for products produced on premises. Signs shall only be illuminated indirectly. Resident identification, home business, political, real estate for sale, no trespassing, no hunting, etc., and street signs shall be allowed.

10.3 Park (P) - Two (2) signs no larger than fifteen (15) square feet, for identification purposes only.

SECTION 11 CONDITIONAL USES

11.1 Intent - The intent of conditional use permits is to provide for specific uses, other than those specifically permitted in each district, which may be appropriate under certain safeguards or conditions.

11.2 Conditional Use Requirements - No structure or land may be used for any purpose in any district where such use is not a permitted use, unless such use is listed as a conditional use in this ordinance and approval for that use is listed as a conditional use.

Conditional use permits shall be granted only by the Zoning Commission, when their findings are that:

1. The use conforms to the objectives of The Trail Creek Zoning District and the intent of this ordinance, and
2. Such use will not adversely affect nearby properties or their occupants, and

3. Such use meets density, coverage, yard, height, and all other regulations of the district in which it is to be located, unless otherwise provided for in this ordinance, and
4. Public hearings have been held, after the required legal notices have been given and the public has been given a chance to be heard upon the matter.

11.3 Conditional Use Procedure

1. All applications for conditional use permits shall be filed with the Gallatin County Planning Office, accompanied with the appropriate filing fee.
2. The Zoning Commission shall then designate the Zoning Enforcement Agent to review the facts of the application and determine if the application is consistent with the intent and purpose of this ordinance.
3. The Zoning Commission shall hold a public hearing to gather needed facts from all interested parties. The Zoning Commission may continue such hearing, if need be, to take additional information. Thereafter, the Zoning Commission shall either approve, conditionally approve or deny the application. A letter shall be sent to the applicant stating either conditions of approval or reasons for denial.
4. Notice of public hearing for conditional use permits shall be published at least twice 15 days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be notified by certified mail.

11.4 Conditional Approval - The Zoning Commission may make the granting of a conditional use permit subject to reasonable limitations or conditions as it may deem necessary to conform with the zoning code and preserve the character of the area. Said conditions may include but not be limited to the following:

1. Special setbacks, yards, open spaces and buffers;
2. Fences and walls;
3. Lighting;
4. Regulation of signs;
5. Regulation of vehicular ingress and egress;
6. Regulation of time of certain activities;

7. Landscaping and maintenance thereof;
 8. Time schedule of proposed development;
 9. Regulation of odors, smoke, dust, airborne particles, vibration, glare, heat and noise;
 10. Requiring dedication of rights-of-way;
 11. Requiring improvements of rights-of-way;
 12. Regulation of placement of uses on the property;
 13. Regulation of height;
 14. Regulation of the nature and extent of the use;
 15. Regulation of the length of time such use may be permitted.
- 11.5 Security - The Planning and Zoning Commission may require guarantees in the form of bonds, cash deposits and/or other evidences of compliance in order to secure compliance with conditions imposed.
- 11.6 Expiration - All conditional use permits issued for a definite term shall automatically expire at the end of the term.
- 11.7 Authorized Use - For purposes of this ordinance, a conditional use permittee shall not be considered as engaging in the authorized use on the site until the following conditions are satisfied:
1. Buildings proposed for construction in connection with the proposed use are in the process of actual construction on the site, or
 2. If remodeling proposed for existing buildings in connection with the proposed use has actually been commenced on the site, or
 3. If no construction or remodeling is contemplated then the permittee is regularly engaged on the site in performing the services or in selling the goods, materials, or stocks in trade of the use, and has secured all necessary federal, state and local permits and licenses.
- 11.8 Revocation or Modification of Permit - Upon notice of public hearing, conditional use permits may be revoked or modified by the Planning and Zoning Commission.

1. If there has been a substantial change of conditions from those at the time the permit or variance was granted,
2. Revocation or modification is necessary to protect the health, safety, and welfare of the area in which the subject property is situated or the residents of the county, to preserve the integrity of existing use patterns in the area in which the subject property is situated, and
3. The person holding this permit or variance has not engaged in the authorized use; or
4. If the person holding the permit or variance has not complied with the conditions; upon which it was issued. Modification or revocation may only be had after following the same formal procedure for notice and hearing required for the granting of a permit or variance in the first instance. Appeals from modification or revocation shall be as set forth in Section 13.7.

11.9 Building Permits: No building permit shall be issued other than in accordance with the conditions and terms of the conditional use permit. No building permit shall be issued until time for appeal on a conditional use permit has elapsed and all appeals finally decided.

11.10 Permits: Extensions:

1. No later than thirty (30) days prior to the expiration of the conditional use permit, the holder thereof may file written application with the Planning and Zoning Commission requesting an extension of time thereon and setting forth the reasons for such request. Each application shall be accompanied by the appropriate fee.
2. Within five (5) days from receipt of such application for extension, the Planning and Zoning Commission shall send a notice of such application by mail to persons, or their successors in interest of record in the County Assessor's office, who received mailed notice of the original application. Attached to such application shall be a notice that any person objecting to such extension shall, within fifteen (15) calendar days from the date or posting, notify the granting authority of such objection.
3. If any objection is received from those notified, the same formal procedure shall be followed as if the application for a conditional use permit upon which no permit had been granted.

4. If no objection is received, the Planning and Zoning Commission may extend the permit for a period equivalent to the original period for which it was granted, or for one (1) year, whichever is shorter.
5. An extension may only be granted upon finding of fact by the Planning and Zoning Commission that there has been no change of condition or circumstances that would have been grounds for denying the original application.
6. The Planning and Zoning Commission shall consider requests for extension only once at the end of the period. The decision of the Planning and Zoning Commission shall be final. No further requests for an extension on a project having already requested an extension shall be allowed.

SECTION 12 NON-CONFORMING LOTS, USES AND STRUCTURES

- 12.1 Intent - Within the districts established by this ordinance or amendments thereto, there exists lots, structures, uses of land and structures, and characteristics of use which were lawful before this ordinance was adopted or amended, but which would be prohibited, regulated or restricted under terms of this ordinance or future amendments. It is the intent of this ordinance that non-conformities shall not be enlarged upon, expanded or extended, nor used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Non-conforming uses are declared by this ordinance to be incompatible with permitted uses in the district involved. However, to avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment to this ordinance and which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

- 12.2 Non-Conforming Lots of Record - In any district, notwithstanding other limitations imposed by this ordinance, structures permitted in one district may be erected on any single lot of record on the effective date of this ordinance. A lot of record that does not meet lot area or lot width requirements must still meet other requirements of the district.

Where lots are larger than required by this ordinance, said lots may be subdivided into smaller lots except no parcel may be divided so as to create a lot smaller in lot width or lot area than required by this ordinance.

12.3 Non-Conforming Uses of Land - Where at the time of passage of this ordinance lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, the use may be continued so long as it remains otherwise lawful, provided:

1. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.
2. No such non-conforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this ordinance.
3. If any such non-conforming use of land ceases for any reason for a period of more than ninety (90) days, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.
4. No additional non-conforming structure in connection with the requirements of this ordinance shall be erected in connection with such non-conforming uses of land.

12.4 Non-Conforming Structures - Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restriction on lot area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming structure may be altered or enlarged in any way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.
2. Should such non-conforming structure or non-conforming portion of a structure be destroyed by any means to the extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.

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

12.5 Non-Conforming Uses of Structures - If lawful use of a structure or of structures and premises exists at effective date of adoption or amendment of this ordinance that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful providing that:

1. No existing structure devoted to a non-conforming use shall be enlarged, extended, constructed, or structurally altered, unless the use is changed to a permitted use.
2. Any non-conforming use may be extended to any other part of a building designed for such use, but no such use may be extended in any way to occupy land outside the building.
3. Non-conforming use of building, structures, or premises may be changed to another non-conforming use, provided that a conditional use permit is obtained from the Zoning Commission determining whether or not to grant the conditional use permit the Zoning Commission shall determine that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use.
4. Any structure, or structure and land, in or on which non-conforming use is superseded by a permitted use shall thereafter conform to the regulations of the district in which it is located and the non-conforming use may not thereafter be resumed.
5. Whenever non-conforming use of a structure or a premises ceases for ninety (90) days, the structure or premises shall not thereafter be used except in conformance with the regulations of the district in which it is located. The term "ceases" as used in this subsection shall mean that the activity in question has not been in operation for a period of ninety (90) days.
6. Where non-conforming use status applies to both structure and land, the removal or destruction of the structure shall eliminate the non-conforming status of the land.

12.6 Repairs and Maintenance - On any non-conforming structure or portion of the structure containing a non-conforming use, work may be done on ordinary repairs and fixtures, wiring, plumbing, or repair or replacement of non-bearing walls, to an extent not exceeding 10 percent of the replacement value of the building in any one year, provided that such work does not increase the cubic content of the building.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

- 12.7 Conditional Uses - Conditional uses provided for under Section 11 of this ordinance shall not be deemed a non-conforming use in the district in which it is permitted.

SECTION 13 VARIANCES

- 13.1 Authorization to Grant or Deny Variances - The Zoning Commission may authorize a variance from the requirements of this ordinance when it can be shown that because of special and unusual circumstances related to a specific piece of property, strict application of the ordinance would cause an undue or unnecessary hardship. No variance shall be granted to allow the use or development of property for a purpose not authorized within the zone in which the proposed development would be located. In granting a variance, the Zoning Commission may attach conditions it finds necessary to achieve compliance with the criteria of Section 13.2.

- 13.2 Criteria For Granting a Variance - A variance may be granted only upon finding compliance with all of the following criteria.

1. Exceptional or extraordinary circumstances apply to the property that do not apply generally to other properties in the same zone or vicinity and that result from lot size or shape, topography, or other circumstances over which the owners of property have had no control since enactment of this ordinance.
2. The variance is necessary for the preservation of a property right of the applicant that is substantially the same as that possessed by owners of other property in the same zone.
3. The variance would not be materially detrimental to property in the same zone or vicinity in which the property is located.
4. The variance requested is the minimum variance that would alleviate the hardship.

- 13.3 Procedure - Written applications for variance shall be filed with the Gallatin County Planning Department. The appropriate fee shall accompany each application.

The Zoning Commission shall designate the Zoning Enforcement Agent to review the application and determine if the application meets the requirements of the zoning ordinance.

- 13.4 Hearing and Notice - There shall be a hearing for each variance application. The hearing shall be held at a time and place set by the Zoning Commission. Testimony shall be taken by the Zoning Commission from persons interested in said application and from the Zoning Enforcement Agent.

Notice of hearing shall be published twice in a newspaper of general circulation within the county at least fifteen (15) days prior to the hearing date. In addition, the county shall send a certified letter to record owners of property adjoining a proposed variance.

- 13.5 Approval - In approving an application for a variance, the Zoning Commission may designate such lawful conditions as will secure substantial protection for the public health, safety, and general welfare and shall find the request to meet the criteria set forth in Section 13.2. Any approval under this section shall be subject to the terms of the conditions designated in connection therein.

SECTION 14 ADMINISTRATION

- 14.1 Employees and Officers - In accordance with Section 76-2-102, M.C.A., the Trail Creek Planning and Zoning Commission is hereby authorized to appoint and hire such employees and officers as shall be deemed necessary to carry out the provisions of this regulation, including a Zoning Enforcement Agent.

The Zoning Enforcement Agent may be an employee of the County of Gallatin and if so, shall perform duties hereunder without remuneration in excess of their regular salary.

If the Zoning Enforcement Agent shall find that provisions of this ordinance are being violated with respect to zoning requirements, the Agent shall notify in writing the person responsible for such violations, indicating the nature of the violation and requesting that action be taken to correct it. The Zoning Enforcement Agent shall request discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes, discontinuance of an illegal work being done; or shall take any other action authorized by this ordinance to ensure compliance with or prevent violation of its provisions.

- 14.2 Permits - No building or other structure shall be erected, moved, added to or structurally altered and no land use shall be changed without valid land use permits as prescribed herein.

The application shall include such information as lawfully may be required by the Zoning Enforcement Agent including existing or proposed buildings and land; the number of families, housing units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for enforcement of this ordinance.

- 14.3 Conformance - No permit of any type shall be issued unless in conformance with the regulations contained within this ordinance. Permits issued on the basis of plans and applications approved by the Zoning Enforcement Agent authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement or construction. Use, arrangement, or construction at variance with that authorized shall be deemed a violation of this ordinance.

Conditional use permits and variances by the Planning and Zoning Commission shall be deemed in conformance with the terms of this ordinance. However, land use permits shall be issued only in accordance with the terms set forth in the conditional use permit and variance sections of this ordinance.

- 14.4 Expiration of Permits - Every land use permit issued by the Zoning Enforcement Agent under the provisions of this ordinance shall expire by limitation and become null and void, if the building or work authorized by such permit has not commenced within 18 months from the date of such permits, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before any such work can be recommenced, a new permit shall first be obtained to do so, and the fee therefore, shall be one-half (1/2) the amount required for the new permit for such work, provided no changes have been made or will be made in the original plans and specifications for the work; and provided further that such suspension or abandonment has not exceeded one year. All exterior construction shall be completed within 18 months of the date of issuance of the land use permit. A land use permit is not required for agricultural structures.

- 14.6 Permits Issued Contrary to this Ordinance - Any land use permit, or any authorization issued, granted, or approved in violation of the provisions of this ordinance, shall be null and void and of no effect without the necessity of any proceedings or a revocation or nullification thereof, and any work undertaken or use established pursuant to any such land use permit or other authorization shall be unlawful.

14.6 Duties of the Zoning Enforcement Agent - It shall be the duty of the Zoning Enforcement Agent to issue all land use permits and review all applications submitted to the Planning and Zoning Commission for conditional use permits, variances, rezoning requests and amendments to the ordinance. The Zoning Enforcement Agent and staff shall work for the Planning and Zoning Commission and be in an advisory capacity making recommendations on all requests. The Zoning Enforcement Agent and staff shall also investigate any possible violations to the zoning ordinance.

14.7 Appeals - Appeals from the decision of the Zoning Enforcement Agent concerning interpretation of this ordinance may be taken in writing to the Zoning Commission. Such an appeal from the decision of the Zoning Enforcement Agent must be taken within ten (10) working days in writing to the Zoning Commission.

A public hearing shall be held on any appeal only if the matter appealed was required by the terms of this ordinance to be decided after holding a public hearing. Such hearing shall be held in accordance with Section 13.4 of this ordinance.

14.8 Fees - All applications for permits, zone changes, conditional uses, or variances shall be accompanied by the applicable fees, which shall be established by the Planning and Zoning Commission by resolution after public notice and hearing.

No permit, zone change, conditional use, or variance shall be issued unless or until such costs, charges, fees or expenses listed below have been paid in full, nor shall any action be taken on proceedings before the Planning and Zoning Commission, unless, or until, preliminary charges and fees have been paid in full.

SECTION 15 MINIMUM REQUIREMENTS

In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements adopted for the promotion of the health, safety, and general welfare of the zoning district. Wherever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules or regulations, the most restrictive, or that imposing the higher standards, shall govern.

SECTION 16 AMENDMENTS AND CHANGES

- 16.1 Zoning Ordinance Amendments - This ordinance may be amended whenever the public necessity and convenience and general welfare requires such amendment and according to the procedure prescribed by law, and this ordinance.

An amendment may be initiated by:

1. The petition of one or more land owners of property affected by the proposed amendment, which petition shall be signed by petitioning land owners and shall be filed with the Gallatin County Planning Office, and shall be accompanied by the appropriate fee payable to the County of Gallatin, no part which shall be returnable to the petitioner; or by
2. Resolution of intention of the Board of County Commissioners; or
3. Resolution of intention by the Planning and Zoning Commission. Such amendment shall not become effective until after a public hearing has been held before the Zoning Commission, legal notice of which shall have been given in a newspaper of general circulation in the County not less than fifteen (15) days prior to the date of hearing.

SECTION 17 VIOLATION OF ORDINANCE

- 17.1 Compliance: Any person may file a written complaint with the Gallatin County Planning Department whenever a violation of this regulation occurs or is alleged to have occurred. The complaint shall state fully the facts supporting the complaint.

Upon receipt of a complaint, or upon its own initiative, Gallatin County Planning Department and/or Compliance Department staff shall immediately investigate and take action as provided by the regulation. The investigator shall notify the person of the alleged violation and request access for an inspection. If access is denied, the investigator may seek an administrative warrant. With reasonable cause, the Planning and/or Compliance departments may revoke any land use permit, issue cease and desist orders requiring cessation of any building, moving, alteration or use which is in violation of the regulation and require corrective action, including dismantling or removal of non-complying structures, to remedy the violation.

- 17.2 Injunction: After the exhaustion of administrative remedies and pursuant to MCA § 76-2-113, the County Attorney, in conjunction with the Code Compliance

Specialist, may bring an action in the name of the County of Gallatin in the District Court to enjoin any violations of this ordinance.

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent or other person/entity who commits, participates in, assists or maintains such violation may each be held accountable for a separate violation.

The prevailing party may be awarded all costs, including attorney's fees.

17.3 Fines: The Planning and Zoning Commission may assess violators' fines of up to \$500 per day of violation for noncompliance until the violation is remedied. When determining the amount and duration of a fine, the Planning and Zoning Commission shall consider the nature, circumstances, extent and gravity of the violation, any prior history of such violations, the degree of culpability, and such other matters as justice may require. In addition, the violator may be required to pay administrative costs. If the fine is not paid, it shall become a lien upon the property. An alleged violator may appeal the assessment of a fine to the County Commission as set forth below.

17.4 Appeal Process (Violations): An alleged violator may appeal a Gallatin County Planning or Compliance Department's decision regarding a violation in writing via certified mail to the Planning and Zoning Commission within ten (10) business days.

The Planning and Zoning Commission shall hold a hearing within 45 business days from the date that the appeal was received. The Planning and Zoning Commission shall, in writing, affirm, modify or withdraw the Department's decision within 20 business days after the hearing. Once an appeal for a hearing has been made, the Department's decision shall be stayed until the Planning and Zoning Commission has held the hearing and affirmed, modified or withdrawn the determination of the Department. Any final decision made by the Planning and Zoning Commission will be binding upon the Department.

Any person may appeal a final decision of the Planning and Zoning Commission within 30 days to the Eighteenth Judicial District Court.

17.5 Appeal Process (Fines): An alleged violator may appeal a Planning and Zoning Commission's assessment of a fine for noncompliance to the County Commission with 10 business days in writing via certified mail. The County Commission shall hear the appeal at a regularly scheduled meeting within 45 business days from the date the appeal was received, and shall, in writing, affirm, modify or withdraw the Planning and Zoning Commission's decision within 20 business days after the hearing. Once an appeal for a hearing has been made, the Planning and Zoning Commission's decision shall be stayed until the County Commission has held the

hearing and affirmed, modified or withdrawn the determination of the Planning and Zoning Commission.

Any person may appeal a final decision of the Board of County Commissioners within 30 days to the Eighteenth Judicial District Court.

(Amended: County Commission Resolution No. 2004-67)

(Amended: County Commission Resolution No. 2004-144)

SECTION 18 INVALIDATION

If any Section, subsection, subdivision, sentence, clause, paragraph or phrase of this regulation or any attachments hereto is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of these regulations to render the same operative and reasonably effective for carrying out the main purpose intention of the regulations.

SECTION 19 ADOPTION

This entire regulation was adopted on July 24, 1991, by the Trail Creek Planning and Zoning Commission. It was amended on April 8, 1993, June 10, 1993, August 12, 1993 and April 14, 1994.

_____/s/_____
SHELLEY CHENEY, CHAIRMAN

_____/s/_____
JANE JELINSKI, MEMBER

_____/s/_____
DEB BERGLUND, MEMBER

_____/s/_____
A.D. PRUITT MEMBER

_____/s/_____
ARLETTA DERLETH, MEMBER

Amended by Resolution No. 2004-05 of the Planning and Zoning Commission on April 8, 2004, and by Resolution No. 2004-67 of the Gallatin County Commission on May 4, 2004.

Amended by Resolution No. 2004-21 of the Planning and Zoning Commission on October 14, 2004, and by Resolution No. 2004-144 of the Gallatin County Commission on October 20, 2004.