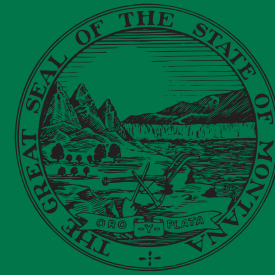


# Montana's 2021 Land Use and Planning Statutes



**MONTANA'S 2021 LAND USE AND PLANNING STATUTES**

Compiled by the  
Montana Department of Commerce/Community Technical Assistance Program  
Montana Association of Counties  
Montana League of Cities and Towns



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# TITLE 7

## LOCAL GOVERNMENT

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### CHAPTER 2

#### CREATION, ALTERATION, AND ABANDONMENT OF LOCAL GOVERNMENTS

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**Part 42**  
**Addition to Municipalities**

**7-2-4201. Additions to municipalities.** Whenever territory adjoining any incorporated city or town is surveyed and laid off into streets or blocks as an addition thereto, said territory may become a part of such city or town:

- (1) upon filing the map or plat thereof in the office of the county clerk; and
- (2) upon the approval of the mayor and a majority of the council endorsed thereon.

**History:** En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907; re-en. Sec. 4976, R.C.M. 1921; re-en. Sec. 4976, R.C.M. 1935; R.C.M. 1947, 11-401.

**7-2-4202. Control of additions.** The council has control of all such additions.

**History:** En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

**7-2-4203. Imposition of conditions for approval of addition.** (1) The council has power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys that correspond in width and direction and are continuations of the streets, avenues, and alleys in the city or town or in the addition contiguous to or near the proposed addition.

(2) The owner of any addition has no rights or privileges unless the owner complies with the terms and conditions of the ordinance and the plat has been submitted to, approved by, and endorsed by the mayor and council.

(3) The council may not compel the owner of an addition to:

(a) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(b) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices.

(4) A dedication of real property as prohibited in subsection (3)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

**History:** En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part); amd. Sec. 3, Ch. 249, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 249 inserted (3) prohibiting the council from compelling the owner of an addition to pay a fee or dedicate real property for providing housing; inserted (4) concerning the meaning of a dedication of real property; and made minor changes in style. Amendment effective April 19, 2021.

**7-2-4204. Applicability of part.** (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

**History:** En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 1, Ch. 130, L. 1981.

**7-2-4205. Provision of services.** In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

**History:** En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 1, Ch. 447, L. 1981; amd. Sec. 1, Ch. 66, L. 1995.

**7-2-4206 and 7-2-4207 reserved.**

**7-2-4208. Annexation across county boundaries.** (1) Except as provided in subsection (2), in all instances of annexation allowed under parts 42 through 47 of this chapter, a municipal governing body may not annex territory in a county that is different from the county in which the municipality is located.

(2) Annexation by a municipality of territory in a county that is different from the county in which the municipality is located may occur only if the municipality and the county execute



an interlocal agreement that provides for a joint city-county planning board and jurisdictional equality.

**History:** En. Sec. 1, Ch. 296, L. 2007.

**7-2-4209 reserved.**

**7-2-4210. When land conclusively presumed to be annexed.** A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

**History:** En. Sec. 1, Ch. 109, L. 1981.

**7-2-4211. Inclusion of roads, rights-of-way, and parks in annexation.** In all instances of annexation allowed under parts 42 through 47 of this chapter, the municipality shall include:

- (1) parks created pursuant to Title 76, chapter 3, except for county-owned parks, that are wholly surrounded by other property being or already annexed; and
- (2) the full width of any public streets or roads, including the rights-of-way, that are adjacent to the property being annexed.

**History:** En. Sec. 1, Ch. 334, L. 2003; amd. Sec. 1, Ch. 158, L. 2015.

### **Part 43 Annexation of Contiguous Land**

**7-2-4301. What constitutes contiguous lands.** Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

**History:** En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

**7-2-4302. Annexation of contiguous municipalities.** (1) When a city or town desires to be annexed to a contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities, respectively, the terms and conditions on which the annexation can be made.

(2) If the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated.

(3) When the copy of the proceedings and the ordinances is filed, the annexation is complete and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation.

(4) Such annexations do not affect or impair any rights, obligations, or liabilities then existing for or against either of such cities or towns.

**History:** En. Sec. 322, 5th Div. Comp. Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907; re-en. Sec. 4979, R.C.M. 1921; re-en. Sec. 4979, R.C.M. 1935; R.C.M. 1947, 11-405.

**7-2-4303. Restrictions on annexation power.** Except as provided in 7-2-4314(1)(d), land used for industrial, railroad, or manufacturing purposes may not be included in a city or town under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4325 without the written consent of the owners of the land.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 1, Ch. 485, L. 1997.

**7-2-4304. Applicability of part.** (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

**History:** En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 2, Ch. 130, L. 1981.

**7-2-4305. Provision of services.** In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

- (1) as provided in 7-2-4736; and
- (2) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

**History:** En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 2, Ch. 447, L. 1981; amd. Sec. 2, Ch. 66, L. 1995.

**7-2-4306 through 7-2-4310 reserved.**

**7-2-4311. Annexation of contiguous land by cities or towns.** Any tracts or parcels of land that have been or may be platted into lots or blocks, streets, and alleys or platted for parks, the map or plat of which is filed in the office of the county clerk and recorder of the county in which the tracts or parcels of land are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided by law, if the platted or unplatted land is contiguous to any incorporated city or town, may be embraced within the corporate limits of the city or town, and the boundaries of the city or town may be extended to include the platted or unplatted land in the manner provided in 7-2-4312 through 7-2-4314 and 7-2-4325.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 2, Ch. 485, L. 1997.

**7-2-4312. Resolution of intent by city or town — notice.** When, in the judgment of any city or town council, expressed by a resolution that is passed and adopted, it is in the best interest of the city or town and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of the city or town be extended to include the platted tracts or parcels of land or unplatted land within the corporate limits of the city or town, the city or town clerk shall:

- (1) immediately notify, in writing, all registered voters in the territory to be embraced; and
- (2) publish a notice as provided in 7-1-4127.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 2, Ch. 526, L. 1983; amd. Sec. 3, Ch. 485, L. 1997; amd. Sec. 8, Ch. 354, L. 2001.

**7-2-4313. Contents of notice — protest period.** The notice under 7-2-4312 must state that:

- (1) the resolution has been passed; and
- (2) for a period of 20 days after the first publication of the notice, the city or town clerk shall accept written comments approving or disapproving the proposed extensions of the boundaries of the city or town from registered voters residing in the area proposed to be annexed.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 3, Ch. 66, L. 1995; amd. Sec. 4, Ch. 485, L. 1997.

**7-2-4314. Hearing on question of annexation — election on annexation — resolution of annexation.** (1) (a) The city or town clerk shall, at the next regular meeting of the city or town council after the expiration of the 20-day period provided for in 7-2-4313, forward all written communication received by the clerk for the city or town council's consideration.

(b) Except as provided in subsection (1)(d), if the city or town council, after considering all written communication, adopts a resolution approving the annexation, the implementation of the resolution must be approved by the vote of the registered voters residing in the area proposed for annexation. The resolution must state the date on which the proposed annexation is intended to take effect.

(c) Except as provided in subsection (1)(d), no sooner than 85 days after adopting the resolution for annexation, the city or town council shall submit the question of approving the resolution to the registered voters residing in the area proposed for annexation. A notice of election must be mailed to all registered voters residing in the area proposed for annexation.

(d) If the area to be annexed contains fewer than 300 recorded parcels, the city or town council, after considering all written communication, may adopt a resolution approving the annexation without an election and the boundaries of the city or town must be extended to include the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed. An area annexed pursuant to this subsection may include land used for railroad purposes. However, a city or town council may not annex by resolution an area containing fewer than 300 recorded parcels if the resolution is disapproved in writing by a majority of real property owners of the area proposed to be annexed. If the resolution is disapproved by a majority of the landowners, the city or town council may not on its own initiative propose further resolutions relating to the annexation of the area or any portion of the area, without petition, for a period of 1 year.

(2) If a resolution subject to approval at an election pursuant to subsections (1)(b) and (1)(c) is not approved by voters, further resolutions relating to the annexation of the area or any portion of the area may not be considered or acted on by the council on its own initiative, without petition, for a period of 5 years from the date of the election.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 4, Ch. 66, L. 1995; amd. Sec. 5, Ch. 485, L. 1997; amd. Sec. 26, Ch. 49, L. 2015.

**7-2-4315 through 7-2-4320 reserved.**

**7-2-4321. Repealed.** Sec. 11, Ch. 485, L. 1997.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 1, Ch. 320, L. 1985.

**7-2-4322. Repealed.** Sec. 11, Ch. 485, L. 1997.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

**7-2-4323. Repealed.** Sec. 11, Ch. 485, L. 1997.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 5, Ch. 66, L. 1995.

**7-2-4324. Repealed.** Sec. 11, Ch. 485, L. 1997.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 6, Ch. 66, L. 1995.

**7-2-4325. Consolidation of proceedings for two or more tracts.** Whenever two or more adjacent tracts taken as a whole adjoin a city or town, the tracts may be included in one resolution under this part, although one or more of the tracts taken alone may not be adjacent to the corporate limits as then existing.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(3); amd. Sec. 2, Ch. 320, L. 1985; amd. Sec. 6, Ch. 485, L. 1997.

**7-2-4326 through 7-2-4330 reserved.**

**7-2-4331. When land conclusively presumed to be annexed.** A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

**History:** En. Sec. 1, Ch. 109, L. 1981.



**Part 44**  
**Annexation of Contiguous Government Land**

**7-2-4401. What constitutes contiguous land for purpose of part.** The land proposed to be annexed to a municipality under the provisions of this part shall be deemed contiguous to such municipality even though such land may be separated from such municipality by a street or other roadway, a sidewalk, a public way of any kind, an irrigation ditch or drainage ditch, or some other strip too small for the erection of houses.

**History:** En. Sec. 2, Ch. 189, L. 1957; R.C.M. 1947, 11-512.

**7-2-4402. Annexation of contiguous government land.** Whenever any land contiguous to a municipality is owned by the United States or by the state of Montana or by any agency, instrumentality, or political subdivision of either or whenever any of the foregoing have a beneficial interest in any land contiguous to a municipality, such land may be incorporated and included in the municipality to which it is contiguous and may be annexed thereto and made a part thereof in the manner provided in this part.

**History:** En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

**7-2-4403. Request for annexation by government official.** The administrative head of the owner of land referred to in 7-2-4402 or the administrative head of the holder of a beneficial interest in such land shall file with the clerk of the municipality a description of the land, a certification of ownership or of beneficial interest therein, and a statement that the owner or the holder of the beneficial interest in the land desires to have it annexed.

**History:** En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

**7-2-4404. Resolution of intent to annex.** Upon receiving the request provided for in 7-2-4403, the governing body of the municipality shall pass a resolution reciting its intention to annex the land and setting a time and place for a public hearing thereon.

**History:** En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

**7-2-4405. Notice of resolution — protest period.** The clerk of the municipality shall forthwith cause to be published in the newspaper nearest such land, at least once a week for 2 successive weeks, a notice that such resolution has been duly and regularly passed and that for a period of 20 days after the first publication of such notice, such clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality. Said notice shall also state the time and place set for the public hearing on the proposed annexation.

**History:** En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(2).

**7-2-4406. Hearing on question of annexation — resolution of annexation.** (1) At the time and place set for the aforesaid public hearing, the governing body of the municipality shall hear all persons and all things relative to the proposed annexation.

(2) If the governing body shall find that it is to the best interests of the municipality and its inhabitants to annex the land, it shall adopt a resolution of annexation of the land. Said resolution shall become effective 30 days after its passage and approval, and thereafter the boundary of said municipality shall be as set forth in said resolution.

**History:** En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

**7-2-4407. Filing of resolution and other papers.** Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of the municipality, together with a map showing the corporate limits of said municipality as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said municipality is located.

**History:** En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

**7-2-4408. Applicability of part.** (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is

appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

**History:** En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 3, Ch. 130, L. 1981.

**7-2-4409. Provision of services.** In all cases of annexation under current Montana law, services must be provided as specified in Title 7, chapter 2, part 47, except when mutually agreed upon by the municipality and the real property owners of the area to be annexed.

**History:** En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 7, Ch. 66, L. 1995.

**7-2-4410 through 7-2-4420 reserved.**

**7-2-4421. When land conclusively presumed to be annexed.** A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

**History:** En. Sec. 1, Ch. 109, L. 1981.

## Part 45 Annexation of Wholly Surrounded Land

**7-2-4501. Annexation of wholly surrounded land.** A city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 17, Ch. 250, L. 1979; amd. Sec. 1, Ch. 200, L. 1983.

**7-2-4502. Protest not available.** Wholly surrounded land is annexed, if so resolved by the city or town council, whether or not a majority of the real property owners of the area to be annexed object. The question of annexing the wholly surrounded land is not subject to being voted on by the registered voters of the area to be annexed.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 8, Ch. 66, L. 1995; amd. Sec. 7, Ch. 485, L. 1997.

**7-2-4503. Restrictions on annexation power.** Land shall not be annexed under this part whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto.

**History:** En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

**7-2-4504. What constitutes contiguous lands.** Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

**History:** En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

**7-2-4505. Applicability of part.** (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is

appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

**History:** En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 4, Ch. 130, L. 1981.

**7-2-4506. Provision of services.** In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

- (1) as provided in 7-2-4736; and
- (2) in first-class cities, when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

**History:** En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 3, Ch. 447, L. 1981; amd. Sec. 9, Ch. 66, L. 1995.

**7-2-4507 through 7-2-4510 reserved.**

**7-2-4511. When land conclusively presumed to be annexed.** A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

**History:** En. Sec. 1, Ch. 109, L. 1981.

## Part 46 Annexation by Petition

**7-2-4601. Annexation by petition — when election required.** (1) The boundaries of any incorporated city or town may be altered and new areas annexed as provided in this part.

(2) The council or other legislative body of a municipal corporation, upon receiving a written petition for annexation containing a description of the area to be annexed and signed by not less than 33 $\frac{1}{3}$ % of the registered electors of the area proposed to be annexed, shall, except as provided in subsection (3), submit to the electors of the municipal corporation and to the registered electors residing in the area proposed by the petition to be annexed the question of whether the area should be made a part of the municipal corporation.

(3) (a) The governing body of a municipality need not submit the question of annexation to the qualified electors as provided in subsection (2) if it has received a written petition containing a description of the area requested to be annexed and signed by:

- (i) more than 50% of the resident electors owning real property in the area to be annexed; or
- (ii) the owner or owners of real property representing 50% or more of the total area to be annexed.

(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) on its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.

**History:** En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(1); amd. Sec. 293, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 641, L. 1979; amd. Sec. 1, Ch. 279, L. 1985; amd. Sec. 10, Ch. 66, L. 1995; amd. Sec. 1, Ch. 186, L. 2011; amd. Sec. 27, Ch. 49, L. 2015.

**7-2-4602. Conduct of election on question of annexation.** An election on the question of annexation must be conducted in accordance with Title 13, chapter 1, part 4.

**History:** En. Secs. 1, 2, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part), 11-507(part); amd. Sec. 294, Ch. 571, L. 1979; amd. Sec. 28, Ch. 49, L. 2015.

**7-2-4603. Repealed.** Sec. 262, Ch. 49, L. 2015.

**History:** En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part); amd. Sec. 295, Ch. 571, L. 1979.

**7-2-4604. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

**7-2-4605. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

**7-2-4606. Resolution if annexation approved by voters.** (1) (a) If a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days of the election, pass and adopt a resolution providing for the annexation.



(b) The resolution must include a statement that a petition has been filed with the council or other legislative body containing the signatures of 33 ⅓% of the resident electors owning real property in the area proposed to be annexed; a description of the boundaries of the area to be annexed; a copy of the resolution ordering the election; a copy of the notice of the election; the time and result of the canvass of the votes received in favor of annexation and the number of votes cast against annexation; and a statement that the boundaries of the city or town are to be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident electors owning real property or the owners of real property representing 50% or more of the total area to be annexed; a description of the boundaries of the area to be annexed; and a statement that the boundaries of the municipality are to be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607.

**History:** (1)En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(3); (2)En. Sec. 1, Ch. 641, L. 1979; amd. Sec. 2, Ch. 279, L. 1985; amd. Sec. 11, Ch. 66, L. 1995; amd. Sec. 2, Ch. 186, L. 2011; amd. Sec. 29, Ch. 49, L. 2015.

**7-2-4607. Filing of resolution.** (1) The clerk or other officer performing the duties of clerk of such council or legislative body shall promptly make and certify under the seal of said municipal corporation a copy of said record so entered upon said minutes, which document shall be filed with the clerk of the county in which the city or town to which said territory or territories are sought to be annexed is situated.

(2) From and after the date of the filing of said document in the office of the county clerk, the annexation of such territory or territories so proposed to be annexed shall be deemed and shall be complete. Thenceforth such annexed territory or territories shall be, to all intents and purposes, a part of said municipal corporation, and the said city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

**History:** En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(4).

**7-2-4608. Restrictions on annexation power.** (1) Territory that is part of an incorporated city or town at the time a petition for proposed annexation is presented as provided in 7-2-4601 may not be annexed under the provisions of this part.

(2) Except as provided in subsection (3), a parcel of land that, at the time a petition for proposed annexation is presented to the governing body of a city or town, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or for any purpose incident to those uses may not be annexed under the provisions of this part.

(3) The provisions of subsection (2) do not apply if the petition submitted to the governing body of the city or town is signed by 100% of the owners of the land proposed to be annexed and the annexation is in accordance with the city's or town's adopted growth policy.

**History:** En. Secs. 3, 4, Ch. 168, L. 1945; R.C.M. 1947, 11-508, 11-509; amd. Sec. 3, Ch. 186, L. 2011.

**7-2-4609. Applicability of part.** (1) This part does not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but provides an alternative method that the municipal governing body may in its discretion choose to use for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this part, the provisions of this part and no other apply to such proceedings.

(3) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

**History:** En. Sec. 5, Ch. 168, L. 1945; R.C.M. 1947, 11-510; amd. Sec. 18, Ch. 250, L. 1979; amd. Sec. 2, Ch. 641, L. 1979; (3)En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 5, Ch. 130, L. 1981.

**7-2-4610. Provision of services.** In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

- (1) as provided in 7-2-4736; and
- (2) in first-class cities, when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

**History:** En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 4, Ch. 447, L. 1981; amd. Sec. 12, Ch. 66, L. 1995.

**7-2-4611 through 7-2-4620 reserved.**

**7-2-4621. When land conclusively presumed to be annexed.** A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

**History:** En. Sec. 1, Ch. 109, L. 1981.

**7-2-4622 through 7-2-4624 reserved.**

**7-2-4625. Annexation district.** An incorporated city or town may create an annexation district outside of the city or town. Territory may be included in an annexation district only upon an agreement between the city or town and the owner of the property included in a district. The agreement may specify the duration of the district, which may not exceed 10 years. A city or town may provide the services specified in the agreement between the city or town and the property owner to the property in the district. The city or town may impose a tax levy or a fee on the owner of the property within the annexation district based upon the difference between the municipal levy or fee and the nonmunicipal levy or fee. By the end of the period specified in the agreement, the levy or fee must be the full amount that a resident of the city or town would pay in the year that the property is annexed. Unless the agreement provides otherwise, the property in the district is annexed after the period specified in the agreement, and the district is dissolved. A delinquency in a payment by the owner of property in the annexation district is collectible in the same manner that other delinquent taxes or fees are collectible.

**History:** En. Sec. 1, Ch. 324, L. 2001.

## Part 47 Annexation With the Provision of Services

**7-2-4701. Short title.** This part shall be entitled "The Planned Community Development Act of 1973".

**History:** En. 11-514 by Sec. 1, Ch. 364, L. 1974; R.C.M. 1947, 11-514.

**7-2-4702. Findings.** (1) It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana system are in many cases discriminatory and are in many of the Montana cities causing indiscriminate growth patterns and in many cases forcing citizens of municipalities to be annexed without provision for adequate city services extended and provided for them.

(2) Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base.

(3) Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services.

**History:** En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).

**7-2-4703. Purpose.** It is the purpose of this part to develop a just and equitable system of adding to and increasing city boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state, and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used



for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development, and future annexations must consider these principles.

(3) Municipal boundaries should be extended in accordance with legislative standards applicable throughout the state to include such areas and to provide the high quality of governmental services needed for the public health, safety, and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

**History:** En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).

**7-2-4704. Definitions.** The following terms when used in this part have the following meanings except when the context clearly indicates a different meaning:

(1) “Contiguous” means any area that, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) “Municipality” means any incorporated city or town.

(3) “Real property owner” means a person who holds an estate of life or inheritance in real property or who is the purchaser of an estate of life or inheritance in real property under a contract for deed, some memorandum of which has been filed in the office of the county clerk.

**History:** En. 11-516 by Sec. 3, Ch. 364, L. 1974; R.C.M. 1947, 11-516; amd. Sec. 13, Ch. 66, L. 1995.

**7-2-4705. Annexation by municipalities providing services.** (1) The governing body of any municipality may extend the corporate limits of the municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the owners of real property situated outside the corporate boundaries of any municipality, but contiguous to the municipality, desire to have real estate annexed to the municipality, they shall file with the governing body of the municipality a petition bearing the signatures of 51% of the real property owners of the area sought to be annexed and requesting a resolution stating that the municipality intends to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(3).

**History:** En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part); amd. Sec. 19, Ch. 250, L. 1979; amd. Sec. 14, Ch. 66, L. 1995; amd. Sec. 4, Ch. 186, L. 2011.

**7-2-4706. Appeal if municipal governing body fails to act on petition.** If the municipal governing body fails to act within 60 days, the petitioners may appeal to the district court under the procedure set down in 7-2-4741 through 7-2-4746.

**History:** En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part).

**7-2-4707. Resolution of intention to annex.** The governing body of any municipality desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

**History:** En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(1).

**7-2-4708. Notice of hearing.** The notice of public hearing must:

- (1) be published as provided in 7-1-4127;
- (2) describe clearly the boundaries of the area under consideration; and
- (3) state that the report required in 7-2-4731 will be available in the office of the municipal official designated by the governing body at least 14 days prior to the date of the public hearing.

**History:** En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(2); amd. Sec. 9, Ch. 354, L. 2001.

**7-2-4709. Hearing on question of annexation.** (1) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in 7-2-4731.

(2) Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

**History:** En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(4).

**7-2-4710. Protest.** (1) For a period of 45 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall accept written comments approving or disapproving the proposed annexation from real property owners of the area proposed to be annexed.

(2) If a majority of the real property owners disapprove of the proposed annexation in writing, further proceedings under this part relating to the area or any part of the area proposed to be annexed may not be considered or acted upon by the governing body on its own initiative, without petition, for a period of 1 year from the date of disapproval.

**History:** En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(8); amd. Sec. 1, Ch. 586, L. 1985; amd. Sec. 15, Ch. 66, L. 1995.

**7-2-4711. Ordinance of annexation.** The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by 7-2-4731 and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of 7-2-4731 through 7-2-4733. At any regular or special meeting held no sooner than 7 days and no later than 60 days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all or such part of the area described in the notice of public hearing which meets the requirements of 7-2-4734 and 7-2-4735 and which the governing body has concluded should be annexed.

**History:** En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

**7-2-4712. Contents of ordinance of annexation.** (1) The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by 7-2-4731; and

(c) fix the effective date of annexation.

(2) The external boundaries of the area to be annexed shall be described by metes and bounds.

**History:** En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

**7-2-4713. Effective date of annexation.** The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

**History:** En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

**7-2-4714. Filing of annexation order.** (1) The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed is situated.

(2) From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete. Thenceforth such annexed territory or territories shall be a part of the municipal corporation and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

**History:** En. 11-521 by Sec. 8, Ch. 364, L. 1974; R.C.M. 1947, 11-521.

**7-2-4715. Simultaneous proceedings for several areas.** If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

**History:** En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(7).

**7-2-4716. Effect of annexation.** (1) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances,

and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(2) The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer, or other utilities or improvements paid for by the residents of said district shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation.

**History:** En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(6).

**7-2-4717. Certain expenditures authorized.** (1) Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality.

(2) In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines, and other capital facilities in the annexed area.

**History:** En. 11-524 by Sec. 11, Ch. 364, L. 1974; R.C.M. 1947, 11-524.

**7-2-4718. Construction.** (1) The method of annexation authorized in this part is independent from other methods of annexation authorized by state law.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

**History:** En. 11-525 by Sec. 12, Ch. 364, L. 1974; R.C.M. 1947, 11-525(part); amd. Sec. 1, Ch. 642, L. 1979; amd. Sec. 6, Ch. 130, L. 1981.

**7-2-4719 through 7-2-4730 reserved.**

**7-2-4731. Plans and report on extension of services required — consultation with county.** (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to the area proposed to be annexed. The report must include:

(a) a map or maps of the municipality and adjacent territory to show the following information:

(i) the present and proposed boundaries of the municipality;

(ii) the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of the streets and utility lines as required in subsection (1)(c); and

(iii) the general land use pattern in the areas to be annexed;

(b) a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(2) Prior to making plans for the extension of services pursuant to subsection (1), the municipality shall provide notice of its decision to exercise its authority under this part to the county. If requested by the county, the municipality shall consult with the county governing body or its representatives to coordinate the orderly transfer of services.

(3) At least 14 days before the date of the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall approve the report and make the report available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

**History:** (1)En. 11-518 by Sec. 5, Ch. 364, L. 1974; Sec. 11-518, R.C.M. 1947; (2)En. 11-520 by Sec. 7, Ch. 364, L. 1974; Sec. 11-520, R.C.M. 1947; R.C.M. 1947, 11-518(part), 11-520(3); amd. Sec. 5, Ch. 186, L. 2011.

**7-2-4732. Contents of plan for extension of services.** (1) The plans for the extension of services must provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5



years into the future, showing on a yearly basis how the municipality plans to extend services and develop and add sections to the city.

(2) The plans must:

(a) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as those services are provided within the rest of the municipality prior to annexation;

(b) provide for future extension of streets and major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when the streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure the services, according to the policies in effect in the municipality for extending the services to individual lots or subdivisions;

(c) if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of the streets and utility lines.

(3) A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and capital improvements are not needed to provide adequate services stipulated by this section and 7-2-4731, the municipality shall provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

(4) In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

(5) If a county, special district, or improvement district currently provides services to the area to be annexed, the plan must provide specific steps for the orderly transfer of those services, including police protection, fire protection, garbage collection, street and street maintenance services, and utility services. The plan for the transfer of services must be developed in consultation with the governing body of the county and with any other departments of the county, special districts, or improvement districts that have been providing services to the area proposed to be annexed.

**History:** En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part); amd. Sec. 6, Ch. 186, L. 2011.

**7-2-4733. Vote required on proposed capital improvements.** The plan required in 7-2-4732 must include a methodology whereby the residents within the area to be annexed may vote on any proposed capital improvements. If less than 50% of the residents in the section or sections to be annexed vote in favor of the annexation, the area may not be annexed. An election pursuant to this section must be conducted as provided in Title 13, chapter 1, part 4.

**History:** En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part); amd. Sec. 20, Ch. 250, L. 1979; amd. Sec. 30, Ch. 49, L. 2015.

**7-2-4734. Standards to be met before annexation can occur.** A municipal governing body may extend the municipal corporate limits to include any area that meets the following standards:

(1) The area must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) The area must be included within and the proposed annexation must conform to a growth policy adopted pursuant to Title 76, chapter 1.

(4) (a) If fire protection services in the area to be annexed have been provided by a fire district organized under Title 7, chapter 33, part 21, the plan must:

(i) include provisions for coordinating the transfer of fire protection services to the municipality and compensating the district, if necessary, for equipment and district expenses; or

(ii) describe the municipality's plans to annex to the rural fire district pursuant to 7-33-4115.

(b) Upon transfer of fire protection services to a municipality under subsection (4)(a)(i), the existing boundaries of a rural fire district may be altered or the fire district may be dissolved as provided in 7-33-2401.

**History:** En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(1), (2); amd. Sec. 1, Ch. 582, L. 1999; amd. Sec. 7, Ch. 186, L. 2011; amd. Sec. 2, Ch. 74, L. 2019.

**7-2-4735. Guidelines for new boundaries of municipality.** In fixing new municipal boundaries, a municipal governing body shall:

(1) wherever practical, use natural topographic features such as ridgelines, streams, and creeks as boundaries; and

(2) if a street is used as a boundary, include within the municipality land on both sides of the street, with such outside boundary not extending more than 200 feet beyond the right-of-way of the street.

**History:** En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(3).

**7-2-4736. Preservation of existing garbage or solid waste service in event of annexation.** A municipality that annexes or incorporates additional area within the service area of a motor carrier authorized by the public service commission to provide that service may not provide exclusive garbage and solid waste disposal service or impose charges or assessments for services not provided to any person or business located in the annexed or incorporated area except upon a proper showing to the public service commission that the existing carrier is unable to or refuses to provide adequate service to the annexed or incorporated area.

**History:** En. 11-526 by Sec. 1, Ch. 131, L. 1977; R.C.M. 1947, 11-526; amd. Sec. 1, Ch. 434, L. 1979; amd. Sec. 1, Ch. 381, L. 1987; amd. Sec. 1, Ch. 301, L. 2011.

**7-2-4737 through 7-2-4740 reserved.**

**7-2-4741. Right to court review when area annexed.** (1) Within 30 days following the passage of an annexation ordinance under authority of this part, a petition seeking review of the annexation procedures of the governing body of the municipality may be filed in the district court in which the municipality is located by:

(a) either a majority of the real property owners of the area to be annexed or the owners of more than 75% in assessed valuation of the real estate in the area who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as applied to their property; and

(b) the county from which the land is being annexed.

(2) If two or more petitions for review are submitted to the court, the court may consolidate the petitions for review at a single hearing.

**History:** En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(1), (2); amd. Sec. 16, Ch. 66, L. 1995; amd. Sec. 8, Ch. 186, L. 2011.

**7-2-4742. Court review and decision when area annexed.** (1) The review authorized under 7-2-4741 shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show that either:

(a) the statutory procedure was not followed; or

(b) the provisions of 7-2-4731 through 7-2-4735 were not met.

(2) The court may affirm the action of the governing body without change, or it may:

(a) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

(b) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of 7-2-4734 and 7-2-4735, but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

(c) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of 7-2-4731 through 7-2-4733 are satisfied.

(3) If any municipality fails to take action in accordance with the court's instructions upon remand within 3 months from receipt of such instructions, the court may in its discretion extend the time for compliance.

**History:** En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(3).

**7-2-4743. Presumption that municipal actions lawful.** All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful until and unless they are modified or set aside by the governing body or upon review.

**History:** En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(5).

**7-2-4744. Appeal from district court.** Any party to the review proceedings, authorized under 7-2-4741 including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court. The lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

**History:** En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).

**7-2-4745. Effect of appeal on effective date of annexation.** If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

**History:** En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).

**7-2-4746. Appeal provisions exclusive.** No decisions of the governing body shall be subject to collateral attack, and decisions may be reviewed or modified only in the manner provided in 7-2-4741 through 7-2-4744.

**History:** En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(6).

**7-2-4747 through 7-2-4750 reserved.**

**7-2-4751. Right to court review when area not annexed.** (1) If within 60 days of receiving a valid petition the governing body fails to pass a resolution of intent to annex, the petitioners may file a petition in the district court of the district in which the municipality is located.

(2) The municipality must be designated as the defendant in the cause and is required to appear and answer as in other cases.

**History:** En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part); amd. Sec. 17, Ch. 66, L. 1995.

**7-2-4752. Court review and decision when area not annexed.** (1) The court, without a jury, shall hear and determine the questions presented in the petition.

(2) The court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state, if the evidence establishes that:

(a) essential municipal services and facilities are not available to the inhabitants of such territory;

(b) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(c) at least one-eighth of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality.

(3) If, however, the evidence does not establish all three of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

**History:** En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part).

**7-2-4753 through 7-2-4760 reserved.**

**7-2-4761. When land conclusively presumed to be annexed.** A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

**History:** En. Sec. 1, Ch. 109, L. 1981.



## Part 48 Exclusion of Land

**7-2-4801. Use of terms contiguous and adjacent.** For the purposes of this part, the words “contiguous” and “adjacent” shall include property on the opposite side of a street or alley from the property sought to be withdrawn.

**History:** En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

**7-2-4802. Exclusion of land from municipalities.** The boundaries of any incorporated city or town of this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities and towns are hereby granted power to enact resolutions for that purpose after proceedings had as required in this part.

**History:** En. Sec. 1, Ch. 33, L. 1927; re-en. Sec. 4979.1, R.C.M. 1935; R.C.M. 1947, 11-501.

**7-2-4803. Petition to exclude land.** (1) A petition in writing, signed by a number of the qualified electors residing within the corporate limits of such city or town equal to a majority of the votes cast at the last city election held therein or by the owners of not less than three-fourths in value of the territory sought to be excluded, shall be filed with the clerk of such city or town.

(2) Such petition shall be presented to the council of such city or town at the next regular meeting after the filing thereof.

**History:** En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

**7-2-4804. Contents of petition.** (1) Such petition shall set out and describe the territory to be excluded from the corporate limits, which territory must be on the border of such city or town, and the alteration of the boundaries desired by the petitioners, together with the boundaries of the city or town as it will exist after such change is made. Said petition shall also describe the streets, avenues, alleys, and public places, if any, in the territory sought to be excluded and shall distinctly specify which of said streets, avenues, alleys, or public places are to be retained for the use of the public after the territory has been excluded from the corporate limits of such city or town.

(2) Such petition shall pray that the council of such city or town shall enact a resolution altering the boundaries of such city or town and excluding therefrom the territory therein described.

**History:** En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

**7-2-4805. Resolution of intent to exclude land — notice.** If the council by resolution finds that the petition is signed by the requisite number of qualified electors of the city or town or by the owners of not less than three-fourths in value of the territory to be excluded, that the territory petitioned to be excluded is within the corporate limits and on the border of the corporate limits, and that the granting of the petition is in the best interest of the city or town and the inhabitants and will not materially mar the symmetry of the city or town, the city or town clerk shall publish a notice as provided in 7-1-4127.

**History:** En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part); amd. Sec. 10, Ch. 354, L. 2001.

**7-2-4806. Contents of notice — protest period.** The notice shall be to the effect that:

(1) such resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of such notice, such city or town clerk will receive from the owners of the territory proposed to be excluded expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of such city or town by the exclusion of the territory petitioned to be excluded.

**History:** En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

**7-2-4807. Hearing on question of exclusion — resolution of exclusion.** (1) The clerk shall, at the next regular meeting of the city or town council after expiration of the 20 days, provide the council with all written communications received by the clerk for its consideration. If after considering the communications the council adopts a resolution to that effect, the boundaries of the city or town must be altered to exclude the territory described in the petition.

The resolution must also describe the streets, avenues, alleys, and public places in the excluded territory that are to be vacated and abandoned.

(2) The resolution becomes effective 30 days after its passage and approval, and the boundary of the city or town is as set forth in the resolution.

(3) The resolution may not be finally adopted by the council after written disapproval by a majority of the owners in value of the territory proposed to be excluded or after written disapproval or protest by a majority of the owners in value of property within the corporate limits of the city or town immediately adjacent and contiguous to the territory sought to be excluded.

**History:** (1), (3)En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; Sec. 11-502, R.C.M. 1947; (2)En. Sec. 3, Ch. 33, L. 1927; re-en. Sec. 4979.3, R.C.M. 1935; Sec. 11-503, R.C.M. 1947; R.C.M. 1947, 11-502(part), 11-503(part); amd. Sec. 289, Ch. 61, L. 2007.

**7-2-4808. Resolution and revised municipal map to be filed.** (1) Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of said city or town, together with a map showing the corporate limits of said city or town as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said city or town is located.

(2) Upon the filing of the certified copy of the resolution, all such streets, avenues, alleys, and public places to be abandoned or vacated, unless expressly excepted in said resolution, shall be deemed to be vacated and abandoned and the title thereto shall revert to the owners of the adjacent property.

**History:** (1) En. Sec. 3, Ch. 33, L. 1927; re-en. Sec. 4979.3, R.C.M. 1935; Sec. 11-503, R.C.M. 1947; (2)En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; Sec. 11-502, R.C.M. 1947; R.C.M. 1947, 11-502(part), 11-503(part).

**7-2-4809. Liability of excluded territory for existing indebtedness.** Such alteration shall not relieve any territory excluded from the limits of a city or town from its liability on account of any outstanding bonded indebtedness of such city or town or any indebtedness of any improvement district of which the excluded territory is a part, existing at the time of the passage of such resolution.

**History:** En. Sec. 4, Ch. 33, L. 1927; re-en. Sec. 4979.4, R.C.M. 1935; R.C.M. 1947, 11-504.

**7-2-4810. Jurisdiction of municipality to levy tax to pay existing indebtedness.** For the purpose of levying any tax or assessment necessary for the collection of any of the indebtedness specified in 7-2-4809, the territory so excluded shall be and remain under the jurisdiction of such city or town.

**History:** En. Sec. 5, Ch. 33, L. 1927; re-en. Sec. 4979.5, R.C.M. 1935; R.C.M. 1947, 11-505.

## CHAPTER 6 FINANCIAL ADMINISTRATION AND TAXATION

### Part 16 — Impact Fees to Fund Capital Improvements

- 7-6-1601. Definitions.
- 7-6-1602. Calculation of impact fees — documentation required — ordinance or resolution — requirements for impact fees.
- 7-6-1603. Collection and expenditure of impact fees — refunds or credits — mechanism for appeal required.
- 7-6-1604. Impact fee advisory committee.

### Part 16 Impact Fees to Fund Capital Improvements

**7-6-1601. Definitions.** As used in this part, the following definitions apply:

(1) (a) “Capital improvements” means improvements, land, and equipment with a useful life of 10 years or more that increase or improve the service capacity of a public facility.

(b) The term does not include consumable supplies.

(2) “Connection charge” means the actual cost of connecting a property to a public utility system and is limited to the labor, materials, and overhead involved in making connections and installing meters.



(3) “Development” means construction, renovation, or installation of a building or structure, a change in use of a building or structure, or a change in the use of land when the construction, installation, or other action creates additional demand for public facilities.

(4) “Governmental entity” means a county, city, town, or consolidated government.

(5) (a) “Impact fee” means any charge imposed upon development by a governmental entity as part of the development approval process to fund the additional service capacity required by the development from which it is collected. An impact fee may include a fee for the administration of the impact fee not to exceed 5% of the total impact fee collected.

(b) The term does not include:

(i) a charge or fee to pay for administration, plan review, or inspection costs associated with a permit required for development;

(ii) a connection charge;

(iii) any other fee authorized by law, including but not limited to user fees, special improvement district assessments, fees authorized under Title 7 for county, municipal, and consolidated government sewer and water districts and systems, and costs of ongoing maintenance; or

(iv) onsite or offsite improvements necessary for new development to meet the safety, level of service, and other minimum development standards that have been adopted by the governmental entity.

(6) “Proportionate share” means that portion of the cost of capital system improvements that reasonably relates to the service demands and needs of the project. A proportionate share must take into account the limitations provided in 7-6-1602.

(7) “Public facilities” means:

(a) a water supply production, treatment, storage, or distribution facility;

(b) a wastewater collection, treatment, or disposal facility;

(c) a transportation facility, including roads, streets, bridges, rights-of-way, traffic signals, and landscaping;

(d) a storm water collection, retention, detention, treatment, or disposal facility or a flood control facility;

(e) a police, emergency medical rescue, or fire protection facility; and

(f) other facilities for which documentation is prepared as provided in 7-6-1602 that have been approved as part of an impact fee ordinance or resolution by:

(i) a two-thirds majority of the governing body of an incorporated city, town, or consolidated local government; or

(ii) a unanimous vote of the board of county commissioners of a county government.

**History: En. Sec. 1, Ch. 299, L. 2005.**

**7-6-1602. Calculation of impact fees — documentation required — ordinance or resolution — requirements for impact fees.** (1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve a service area report.

(2) The service area report is a written analysis that must:

(a) describe existing conditions of the facility;

(b) establish level-of-service standards;

(c) forecast future additional needs for service for a defined period of time;

(d) identify capital improvements necessary to meet future needs for service;

(e) identify those capital improvements needed for continued operation and maintenance of the facility;

(f) make a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;

(g) make a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;

(h) establish the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;

(i) establish the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;

(j) establish the amount of the impact fee that will be imposed for each unit of increased service demand; and

- (k) have a component of the budget of the governmental entity that:
  - (i) schedules construction of public facility capital improvements to serve projected growth;
  - (ii) projects costs of the capital improvements;
  - (iii) allocates collected impact fees for construction of the capital improvements; and
  - (iv) covers at least a 5-year period and is reviewed and updated at least every 5 years.
- (3) The service area report is a written analysis that must contain documentation of sources and methodology used for purposes of subsection (2) and must document how each impact fee meets the requirements of subsection (7).
- (4) The service area report that supports adoption and calculation of an impact fee must be available to the public upon request.
- (5) The amount of each impact fee imposed must be based upon the actual cost of public facility expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a result of new development. The calculation of each impact fee must be in accordance with generally accepted accounting principles.
- (6) The ordinance or resolution adopting the impact fee must include a time schedule for periodically updating the documentation required under subsection (2).
- (7) An impact fee must meet the following requirements:
  - (a) The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development.
  - (b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development. The following factors must be considered in determining a proportionate share of public facilities capital improvements costs:
    - (i) the need for public facilities capital improvements required to serve new development; and
    - (ii) consideration of payments for system improvements reasonably anticipated to be made by or as a result of the development in the form of user fees, debt service payments, taxes, and other available sources of funding the system improvements.
  - (c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.
  - (d) New development may not be held to a higher level of service than existing users unless there is a mechanism in place for the existing users to make improvements to the existing system to match the higher level of service.
  - (e) Impact fees may not include expenses for operations and maintenance of the facility.

History: En. Sec. 2, Ch. 299, L. 2005; amd. Sec. 1, Ch. 358, L. 2009; amd. Sec. 1, Ch. 276, L. 2015.\

**7-6-1603. Collection and expenditure of impact fees — refunds or credits — mechanism for appeal required.** (1) The collection and expenditure of impact fees must comply with this part. The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the impact fees. The ordinance or resolution adopted by the governmental entity must include the following requirements:

- (a) Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested with all interest accruing to the fund.
  - (b) A governmental entity may impose impact fees on behalf of local districts.
  - (c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution or in accordance with 7-6-1602, any impact fees that were collected must be refunded to the person who owned the property at the time that the refund was due.
- (2) All impact fees imposed pursuant to the authority granted in this part must be paid no earlier than the date of issuance of a building permit if a building permit is required for the development or no earlier than the time of wastewater or water service connection or well or septic permitting.

(3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have been documented pursuant to 7-6-1602 in a manner that demonstrates the need for the excess capacity. This part does not prevent a governmental

entity from continuing to assess an impact fee that recoups costs for excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and must be no more than a proportionate share of the costs to provide the excess capacity.

(4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu of payment of impact fees if:

(a) the need for the dedication or construction is clearly documented pursuant to 7-6-1602;

(b) the land proposed for dedication for the public facilities to be constructed is determined to be appropriate for the proposed use by the governmental entity;

(c) formulas or procedures for determining the worth of proposed dedications or constructions are established as part of the impact fee ordinance or resolution; and

(d) a means to establish credits against future impact fee revenue has been created as part of the adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess of the impact fee due from an individual development.

(5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing structure or for rebuilding a damaged structure unless there is an increase in units that increase service demand as described in 7-6-1602(2)(j). If impact fees are imposed for remodeling, rehabilitation, or other improvements to an existing structure or use, only the net increase between the old and new demand may be imposed.

(6) This part does not prevent a governmental entity from granting refunds or credits:

(a) that it considers appropriate and that are consistent with the provisions of 7-6-1602 and this chapter; or

(b) in accordance with a voluntary agreement, consistent with the provisions of 7-6-1602 and this chapter, between the governmental entity and the individual or entity being assessed the impact fees.

(7) An impact fee represents a fee for service payable by all users creating additional demand on the facility.

(8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an impact fee may appeal the charge if the person believes an error has been made.

**History:** En. Sec. 3, Ch. 299, L. 2005; amd. Sec. 2, Ch. 358, L. 2009.

**7-6-1604. Impact fee advisory committee.** (1) A governmental entity that intends to propose an impact fee ordinance or resolution shall establish an impact fee advisory committee.

(2) An impact fee advisory committee must include at least one representative of the development community. The committee shall review and monitor the process of calculating, assessing, and spending impact fees.

(3) The impact fee advisory committee shall serve in an advisory capacity to the governing body of the governmental entity.

**History:** En. Sec. 4, Ch. 299, L. 2005; amd. Sec. 2, Ch. 276, L. 2015.

## CHAPTER 15 HOUSING AND CONSTRUCTION

### Part 42 — Urban Renewal

- 7-15-4201. Short title.
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- 7-15-4292. Termination of tax increment financing — exception.
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- 7-15-4294. Assessment agreements.
- 7-15-4295. Repealed.
- 7-15-4296. Repealed.
- 7-15-4297. Repealed.
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**Part 43 — Urban Renewal  
Continued**

- 7-15-4301. Authorization to issue urban renewal bonds, targeted economic development bonds, and refunding bonds.
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## Part 42 Urban Renewal

### Part Compiler's Comments

*Transition and Applicability:* Section 25, Ch. 214, L. 2013, provided: "Existing technology districts, aerospace transportation and technology districts, and industrial districts. (1) Technology districts, aerospace transportation and technology districts, and industrial districts established under Title 7, chapter 15, part 42, prior to [the effective date of this act] [July 1, 2013] may continue to operate and issue bonds under laws governing the districts and financial operations of the districts as those laws read on December 31, 2012, except that the local government or municipality may not amend the plan or boundaries of the district or expand in any manner the projects contained in the plan without providing notice of the changes to the director of the department of revenue or the director's designee and receiving approval of the department for the plan or boundary changes. A technology district, an aerospace transportation and technology district, or an industrial district may be terminated and a targeted economic development district may be simultaneously created if the created district complies with the provisions of [sections 1 through 4] [7-15-4277 through 7-15-4280]."

(2) Technology districts, aerospace transportation and technology districts, and industrial districts established under Title 7, chapter 15, part 42, that were initiated prior to [the effective date of this act] [July 1, 2013] may continue to operate and issue bonds under the laws governing the districts and financial operations of the districts as those laws read on December 31, 2012. A technology district, aerospace transportation and technology district, or industrial district is considered initiated if the local governing body has adopted an ordinance for a district and has held a public hearing for creation of the district."

**7-15-4201. Short title.** This part and part 43 shall be known and may be cited as the "Urban Renewal Law".

**History:** En. Sec. 20, Ch. 195, L. 1959; R.C.M. 1947, 11-3920.

**7-15-4202. Existence of blighted areas and resulting problems — statement of policy.** It is hereby found and declared:

(1) that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state, exist in municipalities of the state;

(2) that the existence of such areas:

(a) contributes substantially and increasingly to the spread of disease and crime and depreciation of property values;

(b) constitutes an economic and social liability;

(c) substantially impairs or arrests the sound growth of municipalities;

(d) retards the provision of housing accommodations;

(e) aggravates traffic problems; and

(f) substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and

(3) that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

**History:** En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).

**7-15-4203. Need for redevelopment and rehabilitation of blighted areas.** It is further found and declared:

(1) that certain of such blighted areas (or portions thereof) may require acquisition, clearance, and disposition subject to use restrictions as provided in this part, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation;

(2) that other areas or portions thereof may, through the means provided in this part, be susceptible of rehabilitation in such a manner that the conditions and evils enumerated in 7-15-4202 may be eliminated, remedied, or prevented; and

(3) that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

**History:** En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).

**7-15-4204. Interpretation.** (1) The powers conferred by part 43 and this part are for public uses for which public money may be expended and the power of eminent domain may be exercised as provided in Title 70, chapter 30. The legislature finds and declares that necessity in the public interest exists for the provisions enacted in part 43 and this part concerning urban renewal.

(2) A city or town may not serve as a pass-through entity by using its power of eminent domain, as provided in Title 70, chapter 30, to obtain property with the intent to sell, lease, or provide the property to a private entity.

**History:** En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part); amd. Sec. 20, Ch. 125, L. 2001; amd. Sec. 1, Ch. 441, L. 2007.

**7-15-4205. Scope.** Insofar as the provisions of this part and part 43 are inconsistent with the provisions of any other law, the provisions of this part and part 43 shall be controlling. The powers conferred by this part and part 43 shall be in addition and supplemental to the powers conferred by any other law.

**History:** En. Sec. 19, Ch. 195, L. 1959; R.C.M. 1947, 11-3919(part).

**7-15-4206. Definitions.** The following terms, wherever used or referred to in part 43 or this part, have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" means a public agency created by 7-15-4232.

(2) "Blighted area" means an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime, that substantially impairs or arrests the sound growth of the city or its environs, that retards the provision of housing accommodations, or that constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

(a) the substantial physical dilapidation, deterioration, age obsolescence, or defective construction, material, and arrangement of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

(k) tax or special assessment delinquency exceeding the fair value of the land;

(l) defective or unusual conditions of title;

(m) improper subdivision or obsolete platting;

(n) the existence of conditions that endanger life or property by fire or other causes; or

(o) any combination of the factors listed in this subsection (2).

(3) "Bonds" means any bonds, notes, or debentures, including refunding obligations, authorized to be issued pursuant to part 43 or this part.

(4) "Clerk" means the clerk or other official of the municipality who is the custodian of the official records of the municipality.

(5) "Elected" means chosen by vote or acclamation or appointed to a vacancy in an otherwise elected position.

(6) “Federal government” means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(7) “Local governing body” means the elected members of a council or other elected members of a legislative body charged with governing a municipality or consolidated city-county.

(8) “Mayor” means the chief executive of a city or town.

(9) “Municipality” means any incorporated city or town in the state.

(10) “Neighborhood development program” means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality elects to undertake activities on an annual increment basis.

(11) “Obligee” means any bondholder or agent or trustee for any bondholder or lessor conveying to the municipality property used in connection with an urban renewal project or any assignee or assignees of the lessor’s interest or any part of the interest and the federal government when it is a party to any contract with the municipality.

(12) “Person” means any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(13) “Public body” means the state or any municipality, township, board, commission, district, or other subdivision or public body of the state.

(14) “Public officer” means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or other activities concerning dwellings in the municipality.

(15) “Public use” means:

(a) a public use enumerated in 70-30-102; or

(b) a project financed by the method provided for in 7-15-4288.

(16) “Real property” means all lands, including improvements and fixtures on the land, all property of any nature appurtenant to the land or used in connection with the land, and every estate, interest, right, and use, legal or equitable, in the land, including terms for years and liens by way of judgment, mortgage, or otherwise.

(17) “Redevelopment” may include:

(a) acquisition of a blighted area or portion of the area;

(b) demolition and removal of buildings and improvements;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan. If the property is condemned pursuant to Title 70, chapter 30, the private enterprise or public agencies may not develop the condemned area in a way that is not for a public use.

(18) (a) “Rehabilitation” may include the restoration and renewal of a blighted area or portion of the area in accordance with an urban renewal plan by:

(i) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(ii) acquisition of real property and demolition or removal of buildings and improvements on the property when necessary to eliminate unhealthful, unsanitary, or unsafe conditions, to lessen density, to reduce traffic hazards, to eliminate obsolete or other uses detrimental to the public welfare, to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;

(iii) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

(iv) subject to 7-15-4259(4), the disposition of any property acquired in the urban renewal area, including sale, initial leasing, or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan.

(b) Rehabilitation may not include the development of the condemned area in a way that is not for a public use if the property is condemned pursuant to Title 70, chapter 30.



(19) “Urban renewal area” means a blighted area that the local governing body designates as appropriate for an urban renewal project or projects.

(20) “Urban renewal plan” means a plan for one or more urban renewal areas or for an urban renewal project. The plan:

(a) must conform to the growth policy if one has been adopted pursuant to Title 76, chapter 1; and

(b) must be sufficiently complete to indicate, on a yearly basis or otherwise:

(i) any land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation that is proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any, including changes to the growth policy if one has been adopted pursuant to Title 76, chapter 1;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan’s relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(21) (a) “Urban renewal project” may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part of redevelopment, rehabilitation, or conservation in accordance with an urban renewal plan.

(b) An urban renewal project may not include using property that was condemned pursuant to Title 70, chapter 30, for anything other than a public use.

**History:** En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969; R.C.M. 1947, 11-3901(part); amd. Secs. 2, 34, Ch. 582, L. 1999; amd. Sec. 2, Ch. 441, L. 2007; amd. Sec. 1, Ch. 367, L. 2021.

**Compiler’s Comments**

*2021 Amendment:* Chapter 367 inserted definition of elected; in definition of local governing body in two places inserted “elected members of a” and at end inserted “or consolidated city-county”; and made minor changes in style. Amendment effective October 1, 2021.

*Applicability:* Section 4, Ch. 367, L. 2021, provided: “[This act] applies to tax increment provisions adopted on or after [the effective date of this act].” Effective October 1, 2021.

**7-15-4207. Prohibition against discrimination.** For all of the purposes of this part and part 43, a person may not be subjected to discrimination because of sex, race, creed, religion, age, physical or mental disability, color, or national origin.

**History:** En. Sec. 17, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1977; R.C.M. 1947, 11-3917; amd. Sec. 16, Ch. 253, L. 1979; amd. Sec. 4, Ch. 472, L. 1997.

**7-15-4208. Encouragement of private enterprise.** A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this part and part 43, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this part and part 43, including the formulation of a workable program; the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality); the exercise of its zoning powers; the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements; the disposition of any property acquired; and the provision of necessary public improvements.

**History:** En. Sec. 3, Ch. 195, L. 1959; R.C.M. 1947, 11-3903.

**7-15-4209. Development of workable urban renewal program.** (1) A municipality, for the purposes of this part and part 43, may formulate a workable program for utilizing appropriate private and public resources:

(a) to eliminate and prevent the development or spread of blighted areas;

(b) to encourage needed urban rehabilitation;

(c) to provide for the redevelopment of such areas; or

(d) to undertake such of the aforesaid activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program.

(2) Such workable program may include, without limitation, provision for:

(a) the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards;



(b) the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds, and other public improvements; by encouraging voluntary rehabilitation; and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and

(c) the clearance and redevelopment of blighted areas or portions thereof.

**History:** En. Sec. 4, Ch. 195, L. 1959; R.C.M. 1947, 11-3904.

**7-15-4210. Resolution of necessity required to utilize provisions of part.** A municipality may not exercise any of the powers authorized by part 43 and this part until after its local governing body has adopted a resolution finding that:

(1) one or more blighted areas exist in the municipality by finding that at least three of the factors listed in 7-15-4206(2) apply to the area or a part of the area; and

(2) the rehabilitation, redevelopment, or both of an area or areas are necessary in the interest of the public health, safety, morals, or welfare of the residents of the municipality.

**History:** En. Sec. 5, Ch. 195, L. 1959; amd. Sec. 1, Ch. 38, L. 1965; R.C.M. 1947, 11-3905; amd. Sec. 1, Ch. 375, L. 2011.

**7-15-4211. Preparation of comprehensive development plan for municipality.** For the purpose of approving an urban renewal plan and other municipal purposes, a municipality may:

(1) prepare, adopt, and revise from time to time a comprehensive plan or parts of a plan for the physical development of the municipality as a whole, with consideration for the county and school districts that include municipal territory;

(2) establish and maintain a planning commission for that purpose and related municipal planning activities; and

(3) make available and appropriate necessary funds for municipal planning activities.

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 1, Ch. 376, L. 2011.

**7-15-4212. Preparation of urban renewal plan.** The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality.

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

**7-15-4213. Review of urban renewal plan by planning commission.** (1) Prior to its approval of an urban renewal project, the local governing body shall submit the urban renewal project plan to the planning commission of the municipality for review and recommendations as to its conformity with the growth policy or parts of the growth policy for the development of the municipality as a whole if a growth policy has been adopted pursuant to Title 76, chapter 1.

(2) The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within 60 days after receipt of the plan.

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Secs. 3, 34, Ch. 582, L. 1999.

**7-15-4214. Hearing on urban renewal plan required.** (1) The local governing body shall hold a public hearing on an urban renewal plan prior to adoption as provided in 7-1-4131. Notice of the hearing must be published as provided in 7-1-4127, and mail notice as provided in 7-1-4129 must be given to property owners of the district.

(2) Upon receipt of the recommendations of the planning commission or if no recommendations are received within 60 days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan.

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 1, Ch. 374, L. 2011.

**7-15-4215. Notice of hearing on urban renewal plan.** (1) The notice required by 7-15-4214(1) must be given by publication as provided in 7-1-4127 and by mailing a notice of the hearing, not less than 10 days prior to the date of the hearing, to the persons whose names appear on the county treasurer's tax records as the owners, reputed owners, or purchasers under contracts for deed of the property, at the address shown on the tax record.

- (2) The notice must:
  - (a) describe the time, date, place, and purpose of the hearing;
  - (b) specify the proposed boundary of the urban renewal area affected;
  - (c) outline the general scope of the urban renewal plan under consideration;
  - (d) specify the goals the municipality has in the rehabilitation and renewal of the area; and
  - (e) indicate the method of financing the urban renewal area and whether the municipality intends to use tax increment financing and bonds to be paid from tax increment financing.

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 8, Ch. 526, L. 1983; amd. Sec. 54, Ch. 354, L. 2001; amd. Sec. 2, Ch. 374, L. 2011.

**7-15-4216. Requirements for approval of urban renewal plans and projects.**

(1) The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared.

(2) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has by resolution determined such area to be a blighted area and designated such area as appropriate for an urban renewal project.

(3) An urban renewal plan adopted after July 1, 1979, must be approved by ordinance.

(4) All urban renewal plans approved by resolution prior to May 8, 1979, are hereby validated.

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 1, Ch. 667, L. 1979.

**7-15-4217. Criteria for approval of urban renewal project.** Following the hearing required by 7-15-4214, the local governing body may, by ordinance, approve an urban renewal project if it finds that:

(1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project;

(2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole;

(3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and

(4) a sound and adequate financial program exists for the financing of said project.

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 2, Ch. 667, L. 1979.

**7-15-4218. Voter approval of urban renewal plan required when general obligation bonds to be used.** If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in 7-15-4302(1) or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of part 44 of chapter 7 or of part 43 of chapter 13, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality, in accordance with the provisions governing municipal general obligation bonds under chapter 7, part 42, at the same election and shall be approved by a majority of those qualified electors voting on such question.

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 46, Ch. 575, L. 1981.

**7-15-4219. Effect of approval of urban renewal project.** Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(f).

**7-15-4220. Use of neighborhood development program to implement urban renewal activities.** (1) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. The undertaking of urban renewal activities on a yearly basis shall be

designated as a “neighborhood development program” and the financing of such activities shall be approved in accordance with 7-15-4218.

(2) In the event of such election, the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with 7-15-4211 through 7-15-4221. Such activity year shall relate to the budget year of the municipality.

(3) Such activities need not be limited to contiguous areas. However, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by the municipality in accordance with this part. The yearly activities shall constitute a part of the urban renewal plan, and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously.

(4) Every municipality shall have all the power necessary or convenient to plan and undertake neighborhood development projects consisting of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this part and part 43 for carrying out and planning urban renewal projects.

**History:** (1), (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; (2)En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969; Sec. 11-3901, R.C.M. 1947; (4)En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; Sec. 11-3907, R.C.M. 1947; R.C.M. 1947, 11-3901(part), 11-3906(h), 11-3907(j).

**7-15-4221. Modification of urban renewal project plan.** (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, the modification is subject to any rights at law or in equity that a lessee or purchaser or the lessee’s or purchaser’s successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) (a) Before modifying an urban renewal plan to provide tax increment financing for the district or to use bonds as provided in 7-15-4218, the municipality shall provide notice to the county and the school district in which the urban renewal district is located and provide the county and the school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the effect on the county or school district.

(b) The tax increment financing provision must be proposed with consideration for the county and school districts that include municipal territory.

(4) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are validated.

(5) A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;

(b) the procedure set forth in the plan, which must include a public hearing.

**History:** En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(e); amd. Sec. 3, Ch. 667, L. 1979; amd. Sec. 614, Ch. 61, L. 2007; amd. Sec. 2, Ch. 376, L. 2011; amd. Sec. 1, Ch. 157, L. 2017; amd. Sec. 2, Ch. 278, L. 2017.

**7-15-4222 through 7-15-4230 reserved.**

**7-15-4231. Exercise of powers related to urban renewal.** A municipality may itself exercise its urban renewal project powers as herein defined or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency created by 7-15-4232 or a department or other officers of the municipality as they are authorized to exercise under this part and part 43.

**History:** En. Sec. 15, Ch. 195, L. 1959; R.C.M. 1947, 11-3915(a).

**7-15-4232. Authorization to assign urban renewal powers to municipal departments or to create urban renewal agency.** When a municipality has made the finding prescribed in 7-15-4210 and has elected to have the urban renewal project powers exercised as specified in 7-15-4233:

(1) such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate; or

(2) the legislative body of a city may create an urban renewal agency in such municipality, to be known as a public body corporate, to which such powers may be assigned.



**History:** En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(a).

**7-15-4233. Powers which may be exercised by urban renewal agency or authorized department.** (1) In the event the local governing body makes the determination provided for in 7-15-4232, the local governing body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

- (a) to formulate and coordinate a workable program as specified in 7-15-4209;
- (b) to prepare urban renewal plans, except that the local governing body shall approve the inclusion of a tax increment provision;
- (c) to prepare recommended modifications to an urban renewal project plan;
- (d) to undertake and carry out urban renewal projects as required by the local governing body;
- (e) to make and execute contracts as specified in 7-15-4251, 7-15-4254, 7-15-4255, and 7-15-4281, with the exception of contracts for the purchase or sale of real or personal property;
- (f) to disseminate blight clearance and urban renewal information;
- (g) to exercise the powers prescribed by 7-15-4255, except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body;
- (h) to enter any building or property in any urban renewal area in order to make surveys and appraisals in the manner specified in 7-15-4257;
- (i) to improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area;
- (j) to insure real or personal property as provided in 7-15-4258;
- (k) to effectuate the plans provided for in 7-15-4254;
- (l) to prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation;
- (m) to prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;
- (n) to conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects;
- (o) to negotiate for the acquisition of land;
- (p) to study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto;
- (q) to organize, coordinate, and direct the administration of the provisions of this part and part 43;
- (r) to perform duties as directed by the local governing body to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

(2) Any powers granted in this part or part 43 that are not included in subsection (1) as powers of the urban renewal agency or a department or other officers of a municipality in lieu of the local governing body may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

**History:** En. Sec. 15, Ch. 195, L. 1959; R.C.M. 1947, 11-3915(b); amd. Sec. 2, Ch. 367, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 367 in (1) near middle substituted "the determination provided for in 7-15-4232, the local governing body" for "such determination, such body"; in (1)(b) at end inserted "except that the local governing body shall approve the inclusion of a tax increment provision"; in (1)(r) substituted "to perform duties as directed by the local governing body" for "to perform such duties as the local governing body may direct so as"; in (2) near middle substituted "of the local governing body" for "thereof"; and made minor changes in style. Amendment effective October 1, 2021.

*Applicability:* Section 4, Ch. 367, L. 2021, provided: "[This act] applies to tax increment provisions adopted on or after [the effective date of this act]." Effective October 1, 2021.

**7-15-4234. Urban renewal agency to be administered by appointed board of commissioners.** (1) If the urban renewal agency is authorized to transact business and exercise powers under this part, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency consisting of five commissioners.

(2) The initial membership shall consist of one commissioner appointed for 1 year, one for 2 years, one for 3 years, and two for 4 years. Each subsequent appointment must be for 4 years. A

certificate of the appointment or reappointment of a commissioner must be filed with the clerk of the municipality, and the certificate is conclusive evidence of the proper appointment of the commissioner.

(3) Each commissioner shall hold office until a successor has been appointed and has qualified.

(4) A commissioner may not receive compensation for services but is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties.

(5) Any persons may be appointed as commissioners if they reside within the municipality.

(6) A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office.

**History:** En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 615, Ch. 61, L. 2007.

**7-15-4235. Restrictions on agency commissioners holding other public office.** A majority of the commissioners of an urban renewal agency exercising powers pursuant to this part or part 43 shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or office.

**History:** En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).

**7-15-4236. Conduct of business.** The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners constitutes a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present unless in any case the bylaws shall require a larger number. Meetings of the board of commissioners must be open to the public as provided in 2-3-203 with the opportunity for public comment as provided in 2-3-103.

**History:** En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 3, Ch. 278, L. 2017.

**7-15-4237. Annual report.** (1) An agency authorized to transact business and exercise powers under part 43 and this part shall file with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year. A copy of the annual report must be made available upon request to the county and school districts that include municipal territory.

(2) The report must include a complete financial statement setting forth its assets, liabilities, income, and operating expenses and the amount of the tax increment as of the end of the fiscal year. The report must describe the expenditures of tax increment in the preceding fiscal year and how the expenditures comply with the approved urban renewal plan or comprehensive development plan for the district.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that the report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

**History:** En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 1, Ch. 441, L. 1991; amd. Sec. 3, Ch. 374, L. 2011; amd. Sec. 3, Ch. 376, L. 2011; amd. Sec. 4, Ch. 278, L. 2017.

**7-15-4238. Employment of necessary staff.** The urban renewal agency or department or officers exercising urban renewal project powers shall be supplied with the necessary technical experts and such other agents and employees, permanent and temporary, as are required.

**History:** En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 17, Ch. 253, L. 1979.

**7-15-4239. Control of conflict of interest.** (1) (a) A public official, employee of a municipality or urban renewal agency, or department or officers that have been vested by a municipality with urban renewal project powers and responsibilities under 7-15-4231 may not voluntarily acquire any interest, direct or indirect, in any urban renewal project, in any property included or planned to be included in any urban renewal project of the municipality, or in any contract or proposed contract in connection with an urban renewal project.

(b) When an acquisition is not voluntary, the interest acquired must be immediately disclosed in writing to the local governing body, and the disclosure must be entered upon the minutes of the governing body.

(2) If an official or department or division head owns or controls or owned or controlled within 2 years prior to the date of hearing on the urban renewal project any interest, direct or indirect, in any property that the person knows is included in an urban renewal project,

the person shall immediately disclose this fact in writing to the local governing body, and the disclosure must be entered upon the minutes of the governing body. An official or a department or division head may not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers that have been vested with urban renewal project powers by the municipality pursuant to the provisions of 7-15-4231.

**History:** En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part); amd. Sec. 616, Ch. 61, L. 2007.

**7-15-4240. Misconduct in office.** Any violation of the provisions of 7-15-4235 or 7-15-4239 shall constitute misconduct in office.

**History:** En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).

**7-15-4241 through 7-15-4250 reserved.**

**7-15-4251. General powers of municipalities in connection with urban renewal.** Every municipality shall have all the power necessary or convenient:

- (1) to carry out and effectuate the purposes and provisions of this part and part 43;
- (2) to undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this part and part 43, and to disseminate blight clearance and urban renewal information;
- (3) to organize, coordinate, and direct, within the municipality, the administration of the provisions of this part and part 43 as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively;
- (4) to exercise all or any part or combination of powers granted in this part or part 43.

**History:** En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

**7-15-4252. Prevention and elimination of urban blight.** The municipality is authorized to develop, test, and report methods and techniques and carry out demonstrations and other activities for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of funds from the federal government for such purposes.

**History:** En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

**7-15-4253. Relocation of displaced families.** Every municipality shall have power to prepare plans for the relocation of families displaced from an urban renewal area and to make relocation payments and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

**History:** En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(g).

**7-15-4254. Municipal power in the preparation of various plans.** (1) Every municipality shall have power, within the municipality:

- (a) to make or have made all plans necessary to the carrying out of the purposes of this part and to contract with any person, public or private, in making and carrying out such plans; and
- (b) to adopt or approve, modify, and amend such plans.
- (2) Such plans may include, without limitation:
  - (a) a comprehensive plan or parts thereof for the locality as a whole;
  - (b) urban renewal plans;
  - (c) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;
  - (d) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and
  - (e) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

**History:** En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

**7-15-4255. Authority to provide or contract for services related to urban renewal.** (1) Every municipality shall have power to:

- (a) provide or arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, or roads in connection with an urban renewal project;



(b) install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements.

(2) Every municipality shall have power to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards in the undertaking or carrying out of an urban renewal project and to include in any contract let in connection with such a project provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

**History:** En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(b).

**7-15-4256. Restriction on operation of certain utility services by municipality.** Nothing in this part or part 43 shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines, or other public utility facilities, excepting waterlines and sewerlines then operated by municipalities.

**History:** En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(l).

**7-15-4257. Authority to enter private property.** (1) Every municipality shall have power, within the municipality, to enter upon any building or property in any urban renewal area in order to make surveys and appraisals and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

(2) Such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

**History:** En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

**7-15-4258. Acquisition and administration of real and personal property.** (1) A municipality may:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain pursuant to Title 70, chapter 30, or otherwise any real property and personal property that may be necessary for the administration of the provisions contained in part 43 and this part, together with any improvements on the real property;

(b) hold, improve, clear, or prepare for redevelopment property acquired pursuant to subsection (1)(a);

(c) dispose of real or personal property;

(d) insure or provide for the insurance of real or personal property or the operations of the municipality against any risks or hazards, including the power to pay premiums on any insurance; and

(e) enter into a development agreement with the owner of real property within an urban renewal area and undertake activities, including the acquisition, removal, or demolition of structures, improvements, or personal property located on the real property, to prepare the property for redevelopment.

(2) A development agreement entered into in accordance with subsection (1)(e) must contain provisions obligating the owner to redevelop the real property for a specified use consistent with the urban renewal plan and offering recourse to the municipality if the redevelopment is not completed as determined by the local governing body. The development agreement may not constitute the acquisition of an interest in real property by the municipality within the meaning of 7-15-4262 or 7-15-4263.

(3) Except as provided in 7-15-4204(2), 7-15-4206, and 7-15-4259, statutory provisions with respect to the acquisition, clearance, or disposition of property by public bodies may not restrict a municipality in the exercise of functions with respect to an urban renewal project.

(4) A municipality may not acquire real property for an urban renewal project or enter into a development agreement, as provided in subsection (1)(e), unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217.

**History:** (1), (2)En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; Sec. 11-3907, R.C.M. 1947; (3) En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; R.C.M. 1947, 11-3906(part); amd. Sec. 2, Ch. 441, L. 1991; amd. Sec. 21, Ch. 125, L. 2001; amd. Sec. 3, Ch. 441, L. 2007.

**7-15-4259. Exercise of power of eminent domain.** (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described in the resolution is necessary for an urban renewal project under this part, a municipality may acquire by condemnation, as provided in Title 70, chapter 30, any interest in real property that it considers necessary for urban renewal.

(2) Condemnation for urban renewal of blighted areas, as defined in 7-15-4206(2)(a), (2)(h), (2)(k), or (2)(n), is a public use, and property already devoted to any other public use or acquired by the owner or the owner's predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for an urban renewal project may not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. An allowance may not be made for the improvements begun on real property after notice to the owner of the property of the institution of proceedings to condemn the property. Evidence is admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use of the premises.

(4) A city or town may not serve as a pass-through entity by using its power of eminent domain, as provided in Title 70, chapter 30, to obtain property with the intent to sell, lease, or provide the property to a private entity.

**History:** En. Sec. 8, Ch. 195, L. 1959; R.C.M. 1947, 11-3908; amd. Sec. 22, Ch. 125, L. 2001; amd. Sec. 4, Ch. 441, L. 2007; amd. Sec. 1, Ch. 512, L. 2007.

**7-15-4260. Exemption from levy and sale for certain property.** All property of a municipality, including funds, owned or held by it for the purposes of this part and part 43 shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this part or part 43 by a municipality on an urban renewal project or the rents, fees, grants, or revenues derived from these projects.

**History:** En. Sec. 12, Ch. 195, L. 1959; R.C.M. 1947, 11-3912(a); amd. Sec. 4, Ch. 667, L. 1979.

**7-15-4261. Exemption from taxation for certain property.** (1) The property of a municipality acquired or held for the purposes of this part is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof.

(2) Such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

**History:** En. Sec. 12, Ch. 195, L. 1959; R.C.M. 1947, 11-3912(b).

**7-15-4262. Disposal of municipal property in urban renewal areas.** (1) A municipality may:

(a) sell, lease, or otherwise transfer real property in an urban renewal area or any interest in real property acquired by it for an urban renewal project for residential, recreational, commercial, industrial, or other uses or for public use and enter into contracts with respect to the real property; or

(b) retain the property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan and subject to any covenants, conditions, and restrictions, including covenants running with the land, that it considers necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this part.

(2) The sale, lease, other transfer, or retention and any agreement relating the real property may be made only after the approval of the urban renewal plan by the local governing body.

(3) Except as provided in subsection (5), the real property or interest must be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the



urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the:

- (a) uses provided in the plan;
  - (b) restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and
  - (c) objectives of the plan for the prevention of the recurrence of blighted areas.
- (4) Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred must be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan.

(5) A transfer under this section may include a donation of the land or a sale of the land at a reduced price to a corporation for the purpose of constructing:

- (a) a multifamily housing development operated by the corporation for low-income housing;
- (b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.

**History:** En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part); amd. Sec. 8, Ch. 170, L. 2009.

**7-15-4263. Procedure to dispose of property to private persons.** (1) A municipality may dispose of real property in an urban renewal area to private persons only under reasonable procedures as it shall prescribe or as provided in this section.

(2) (a) A municipality shall by public notice invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area or any part of an urban renewal area.

(b) The notice must be published as provided in 7-1-4127 prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance under the provisions of 7-15-4262 through 7-15-4266.

(c) The notice must identify the area or portion of the area and must state that any further information that is available may be obtained at the office designated in the notice.

(3) The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability of the persons making the proposals to carry them out. The municipality may accept those proposals as it considers to be in the public interest and in furtherance of the purposes of this part and part 43. Thereafter, the municipality may execute, in accordance with the provisions of 7-15-4262 and 7-15-4264, and deliver contracts, deeds, leases, and other instruments of transfer.

**History:** En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(b); amd. Sec. 55, Ch. 354, L. 2001.

**7-15-4264. Obligations of transferees of municipal property in urban renewal area.** (1) The purchasers or lessees and their successors and assigns are obligated to devote real property transferred pursuant to 7-15-4262 only to the uses specified in the urban renewal plan and may be obligated to comply with other requirements that the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on real property required by the urban renewal plan.

(2) In any instrument of conveyance to a private purchaser or lessee, the municipality may provide that the purchaser or lessee may not sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until the purchaser or lessee has completed the construction of any and all improvements that the purchaser or lessee is obligated to construct.

(3) The inclusion in a contract or conveyance to a purchaser or lessee of any covenants, restrictions, or conditions, including the incorporation by reference of the provisions of an urban

renewal plan or any part of a plan, may not prevent the recording of the contract or conveyance in the land records of the clerk and recorder of the county in which the city or town is located, in a manner that provides actual or constructive notice of the covenants, restrictions, or conditions.

**History:** En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part); amd. Sec. 617, Ch. 61, L. 2007.

**7-15-4265. Presumption of regularity in transfer of title.** Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this part or part 43 shall be conclusively presumed to have been executed in compliance with the provisions of this part and part 43 insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

**History:** En. Sec. 14, Ch. 195, L. 1959; R.C.M. 1947, 11-3914.

**7-15-4266. Temporary use of municipal property in urban renewal area.** A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of 7-15-4262 and 7-15-4264, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. The municipality may, after a public hearing, extend the time for a period not to exceed 3 years.

**History:** En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(c).

**7-15-4267. Cooperation by public bodies.** (1) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this part or part 43, upon such terms, with or without consideration, as it may determine, may:

(a) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality;

(b) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(c) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan;

(d) lend, grant, or contribute funds to a municipality;

(e) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this part or part 43, including the furnishing of funds or other assistance in connection with an urban renewal project;

(f) cause to be furnished public buildings and public facilities, including parks; playgrounds; recreational, community, educational, water, sewer, or drainage facilities; or any other works which it is otherwise empowered to undertake;

(g) furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places;

(h) plan or replan or zone or rezone any part of the urban renewal area; and

(i) provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(2) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of 7-15-4263.

**History:** En. Sec. 13, Ch. 195, L. 1959; R.C.M. 1947, 11-3913(a), (b).

**7-15-4268 through 7-15-4276 reserved.**

**7-15-4277. Short title.** Sections 7-15-4277 through 7-15-4280 may be cited as the “Targeted Economic Development District Act”.

**History:** En. Sec. 1, Ch. 214, L. 2013.

**7-15-4278. Legislative findings — purpose.** The legislature finds and declares that:

(1) infrastructure-deficient areas exist in the local governments of the state and constitute a serious impediment to the development of infrastructure-intensive, value-adding economic development in Montana;

(2) local governments lack sufficient capital to rectify the infrastructure shortage in infrastructure-deficient areas, thus impeding their ability to achieve economic growth through the development of value-adding industries;

(3) the creation of infrastructure in support of value-adding economic development is a matter of state policy and state concern because the state and its local governments will continue to suffer economic dislocation due to the lack of value-adding industries; and

(4) the state's tax increment financing laws should be used to encourage the creation of areas in which needed infrastructure for value-adding industries could be developed.

**History:** En. Sec. 2, Ch. 214, L. 2013.

**7-15-4279. Targeted economic development districts.** (1) A local government may, by ordinance and following a public hearing, authorize the creation of a targeted economic development district in support of value-adding economic development projects. The purpose of the district is the development of infrastructure to encourage the location and retention of value-adding projects in the state.

(2) A targeted economic development district:

(a) must consist of a continuous area with an accurately described boundary that is large enough to host a diversified tenant base of multiple independent tenants;

(b) must be zoned to permit the supported value-adding economic development uses for which the district is intended or unzoned, provided development of the district is:

(i) for uses by a local government under Title 76, chapter 2, part 2 or 3, in accordance with the area growth policy, as defined in 76-1-103; or

(ii) if a county has not adopted a growth policy, then for uses in accordance with the development pattern and zoning regulations or the development district adopted under Title 76, chapter 2, part 1;

(c) may not comprise any property included within an existing tax increment financing district;

(d) must, prior to its creation, be found to be deficient in infrastructure improvements as stated in the resolution of necessity adopted under 7-15-4280;

(e) must, prior to its creation, have in place a comprehensive development plan adopted by the local governments that ensures that the district can host a diversified tenant base of multiple independent tenants; and

(f) may not be designed to serve the needs of a single district tenant or group of nonindependent tenants.

(3) The local government may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4294 for the targeted economic development district. If the local government uses tax increment financing, the use of and purpose for tax increment financing must be specified in the comprehensive development plan required in subsection (2)(e). The plan must also describe how the expenditure of tax increment will promote the development of infrastructure to encourage the location and retention of value-adding projects in the targeted economic development district.

**History:** En. Sec. 3, Ch. 214, L. 2013; amd. Sec. 1, Ch. 160, L. 2015; amd. Sec. 5, Ch. 278, L. 2017; amd. Sec. 1, Ch. 575, L. 2021.

**Compiler's Comments**

*2021 Amendment:* See 2021 Session Law for amendment made by sec. 1, Ch. 575, L. 2021. Amendment effective May 20, 2021.

**7-15-4280. Resolution of necessity required for targeted economic development district.** A local government may not exercise the powers provided in part 43 or this part unless it has adopted a resolution of necessity finding that:

(1) one or more infrastructure-deficient areas exist in the local government; and

(2) the infrastructure improvement of the area is necessary for the welfare of the residents of the local government.

**History:** En. Sec. 4, Ch. 214, L. 2013.



**7-15-4281. Financial authority in connection with urban renewal.** (1) A municipality shall have power to:

(a) borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance for the purposes of this part and enter into and carry out contracts in connection with the financial assistance from:

- (i) the federal government;
- (ii) the state, a county, or any other public body; or
- (iii) any sources, public or private;

(b) (i) appropriate funds and make expenditures as may be necessary to carry out the purposes of this part; and

(ii) subject to 15-10-420 and in accordance with state law, levy taxes and assessments for the purposes of this part;

(c) invest any urban renewal project funds held in reserves or sinking funds or any funds that are not required for immediate disbursement in property or securities in which mutual savings banks may legally invest funds subject to their control;

(d) adopt, in accordance with state law, annual budgets for the operation of an urban renewal agency, department, or office vested with urban renewal project powers under 7-15-4231;

(e) enter, in accordance with state law, into agreements, which may extend over any period, with agencies or departments vested with urban renewal project powers under 7-15-4231 respecting action to be taken by the municipality pursuant to any of the powers granted by part 43 or this part;

(f) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places and plan or replan, zone or rezone any part of the municipality in accordance with state law.

(2) A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project the conditions imposed pursuant to federal laws that the municipality may consider reasonable and appropriate and that are not inconsistent with the purposes of part 43 and this part.

**History:** En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part); amd. Sec. 46, Ch. 584, L. 1999.

**7-15-4282. Authorization for tax increment financing.** (1) An urban renewal plan as defined in 7-15-4206 or a targeted economic development district comprehensive development plan created as provided in 7-15-4279 may contain a provision or be amended to contain a tax increment provision as provided in 7-15-4282 through 7-15-4294. The local governing body shall approve the adoption of a tax increment provision included in an urban renewal plan. The legislative body of a local government shall approve the adoption of a tax increment provision included in a targeted economic development district comprehensive development plan.

(2) (a) Before adopting a tax increment financing provision as part of an urban renewal plan or a comprehensive development plan, a municipality shall provide notice to the county and the school district in which the urban renewal district or targeted economic development district is located and provide the county and school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the proposed tax increment financing provision and its effect on the county or school district.

(b) Before adopting a tax increment financing provision as part of a comprehensive development plan, a county shall provide notice to the school district in which the targeted economic development district is located and provide the school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the proposed tax increment financing provision and its effect on the school district.

(3) The tax increment financing provision must take into account the effect on the county and school districts that include local government territory.

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 4, Ch. 712, L. 1989; amd. Sec. 2, Ch. 566, L. 2005; amd. Sec. 1, Ch. 394, L. 2009; amd. Sec. 4, Ch. 376, L. 2011; amd. Sec. 5, Ch. 214, L. 2013; amd. Sec. 2, Ch. 157, L. 2017; amd. Sec. 2, Ch. 3, L. 2019; amd. Sec. 3, Ch. 367, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 367 in (1) near end of first sentence substituted "a tax increment provision" for "a provision for the segregation and application of tax increments" and inserted second and last sentences that read: "The local governing body shall approve the adoption of a tax increment provision included in an urban renewal



plan. The legislative body of a local government shall approve the adoption of a tax increment provision included in a targeted economic development district comprehensive development plan”. Amendment effective October 1, 2021.

*Applicability:* Section 4, Ch. 367, L. 2021, provided: “[This act] applies to tax increment provisions adopted on or after [the effective date of this act].” Effective October 1, 2021.

**7-15-4283. Definitions related to tax increment financing.** For purposes of 7-15-4277 through 7-15-4280 and 7-15-4282 through 7-15-4294, the following definitions apply unless otherwise provided or indicated by the context:

(1) “Actual taxable value” means the taxable value of all taxable property at any time, as calculated from the property tax record.

(2) “Base taxable value” means the actual taxable value of all taxable property within an urban renewal area or targeted economic development district as it appears on the property tax record prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(3) “Incremental taxable value” means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all taxable property within an urban renewal area or targeted economic development district.

(4) “Infrastructure” means tangible facilities and assets related to water, sewer, wastewater treatment, storm water, solid waste, and utilities systems including natural gas, hydrogen, electrical and telecommunications lines, fire protection, ambulance and law enforcement, workforce housing, streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, bridges, and other transportation needs, including but not limited to parking, park and ride facilities and services, and bus, air, and rail service.

(5) “Local government”, for the purposes of a targeted economic development district, means any incorporated city or town, a county, or a city-county consolidated local government.

(6) “Secondary value-added products or commodities” means products or commodities that are manufactured, processed, produced, or created by changing the form of raw materials or intermediate products into more valuable products or commodities that are capable of being sold or traded in interstate commerce.

(7) “Secondary value-adding industry” means a business that produces secondary value-added products or commodities or a business or organization that is engaged in technology-based operations within the state that, through the employment of knowledge or labor, adds value to a product, process, or export service resulting in the creation of new wealth.

(8) “Targeted economic development district” means a district created pursuant to 7-15-4277 through 7-15-4280.

(9) “Tax increment” means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area or targeted economic development district or a part of the area or district is located against the incremental taxable value.

(10) “Tax increment provision” means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4294.

(11) “Taxes” means all taxes levied by a taxing body against property on an ad valorem basis.

(12) “Taxing body” means any incorporated city or town, county, city-county consolidated local government, school district, or other political subdivision or governmental unit of the state, including the state, that levies taxes against property within the urban renewal area or targeted economic development district.

(13) “Value-adding” means a project or a business that creates or increases economic opportunity in an area through investment in facilities, land, improvements, or equipment, including but not limited to manufacturing, technology, recreation, and tourism.

*History:* En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(2); amd. Sec. 5, Ch. 667, L. 1979; amd. Sec. 5, Ch. 712, L. 1989; amd. Sec. 1, Ch. 269, L. 1999; amd. Sec. 15, Ch. 114, L. 2003; amd. Sec. 3, Ch. 566, L. 2005; amd. Sec. 2, Ch. 394, L. 2009; amd. Sec. 6, Ch. 214, L. 2013; amd. Sec. 2, Ch. 575, L. 2021.

**Compiler’s Comments**

*2021 Amendment:* See 2021 Session Law for amendment made by sec. 2, Ch. 575, L. 2021. Amendment effective May 20, 2021.

**7-15-4284. Filing of tax increment provisions plan or district ordinance.** (1) The clerk of the local government shall provide a certified copy of the ordinance creating each urban renewal plan or targeted economic development district comprehensive development plan and

an amendment to either of the plans containing a tax increment provision to the department of revenue.

(2) A certified copy of each plan, ordinance, or amendment must also be filed with the clerk or other appropriate officer of each of the affected taxing bodies.

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 6, Ch. 712, L. 1989; amd. Sec. 4, Ch. 566, L. 2005; amd. Sec. 3, Ch. 394, L. 2009; amd. Sec. 7, Ch. 214, L. 2013.

**7-15-4285. Determination and report of original, actual, and incremental taxable values.** The department of revenue shall, upon receipt of a qualified tax increment provision and each succeeding year, calculate and report to the local government and to any other affected taxing body in accordance with Title 15, chapter 10, part 2, the base, actual, and incremental taxable values of the property.

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 6, Ch. 667, L. 1979; amd. Sec. 7, Ch. 712, L. 1989; amd. Sec. 5, Ch. 566, L. 2005; amd. Sec. 1, Ch. 483, L. 2009; amd. Sec. 8, Ch. 214, L. 2013.

**7-15-4286. Procedure to determine and disburse tax increment — remittance of excess portion of tax increment for targeted economic development district.** (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area or targeted economic development district and the base taxable value of all taxable property located within the area or district. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the area or district.

(2) (a) Except as provided in subsections (2)(b), (2)(c), and (3), the tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district must be paid into a special fund held by the treasurer of the local government and used as provided in 7-15-4282 through 7-15-4294.

(b) For targeted economic development districts in existence prior to July 1, 2022, and urban renewal areas, the combined mill rates used to calculate the tax increment may not include mill rates for:

(i) the university system mills levied pursuant to 15-10-109 and 20-25-439; and

(ii) a new mill levy approved by voters as provided in 15-10-425 after the adoption of a tax increment provision.

(c) For targeted economic development districts created after June 30, 2022, the combined mill rates used to calculate the tax increment may not include mill rates for:

(i) the university system mills levied pursuant to 15-10-109 and 20-25-439;

(ii) one-half of the elementary, high school, and state equalization mills levied pursuant to 20-9-331, 20-9-333, and 20-9-360;

(iii) a new mill levy approved by voters as provided in 15-10-425 after the adoption of a tax increment provision; and

(iv) any portion of an existing mill levy designated by the local government as excluded from the tax increment.

(3) (a) Subject to 7-15-4287 and subsection (3)(b) of this section, a targeted economic development district with a tax increment provision adopted after October 1, 2019, may expend or accumulate tax increment for:

(i) the payment of the costs listed in 7-15-4288;

(ii) the cost of issuing bonds; or

(iii) any pledge to the payment of the principal of any premium, if any, and interest on the bonds issued pursuant to 7-15-4289 and sufficient to fund any reserve fund in respect of the bonds in an amount not to exceed 125% of the maximum principal and interest on the bonds in any year during the term of the bonds.

(b) Any excess tax increment remaining after the use or accumulation of funds as set forth in subsection (3)(a) must be:

(i) remitted to each taxing jurisdiction for which the mill rates are included in the calculation of the tax increment as provided in subsections (1) and (2); and

- (ii) proportional to the taxing jurisdiction's share of the total mills levied.
- (c) A targeted economic development district is not subject to the provisions of this subsection
- (3) if bonds have not been issued to finance the project.
- (4) Any portion of the excess tax increment remitted to a school district pursuant to subsection (3) is subject to the provisions of 7-15-4291(2) through (5).
- (5) The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law.

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(4); amd. Sec. 7, Ch. 667, L. 1979; amd. Sec. 8, Ch. 712, L. 1989; amd. Sec. 4, Ch. 441, L. 1991; amd. Sec. 2, Ch. 422, L. 1997; amd. Sec. 6, Ch. 566, L. 2005; amd. Sec. 4, Ch. 394, L. 2009; amd. Sec. 9, Ch. 214, L. 2013; amd. Sec. 1, Ch. 160, L. 2017; amd. Sec. 3, Ch. 3, L. 2019; amd. Sec. 1, Ch. 270, L. 2019; amd. Sec. 3, Ch. 575, L. 2021.

**Compiler's Comments**

*2021 Amendment:* See 2021 Session Law for amendment made by sec. 3, Ch. 575, L. 2021. Amendment effective May 20, 2021.

**7-15-4287. Provision for use of portion of tax increment.** (1) At the time of adoption of a tax increment provision or at any time subsequent thereto, the governing body of the local government may provide that a portion of the tax increment from the incremental taxable value be released from segregation by an adjustment of the base taxable value, provided that:

- (a) all principal and interest then due on bonds for which the tax increment has been pledged have been fully paid; and
- (b) the tax increment resulting from the smaller incremental value is determined by the governing body to be sufficient to pay all principal and interest due later on the bonds.

(2) The adjusted base value determined under subsection (1) must be reported by the clerk to the officers and taxing bodies to which the increment provision is reported.

(3) Thereafter, the adjusted base value is used in determining the mill rates of affected taxing bodies unless the tax increment resulting from the adjustment is determined to be insufficient for this purpose. In this case, the governing body shall reduce the base value to the amount originally determined or to a higher amount necessary to provide tax increments sufficient to pay all principal and interest due on the bonds.

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(6); amd. Sec. 8, Ch. 667, L. 1979; amd. Sec. 10, Ch. 214, L. 2013.

**7-15-4288. Costs that may be paid by tax increment financing.** The tax increments may be used by the local government to pay the following costs of or incurred in connection with an urban renewal area or targeted economic development district as identified in the urban renewal plan or targeted economic development district comprehensive development plan:

- (1) land acquisition;
- (2) demolition and removal of structures;
- (3) relocation of occupants;
- (4) the acquisition, construction, and improvement of public improvements or infrastructure, publicly owned buildings, and any public improvements authorized by Title 7, chapter 12, parts 41 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47, and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;
- (5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;
- (6) acquisition of infrastructure-deficient areas or portions of areas;
- (7) administrative costs associated with the management of the urban renewal area or targeted economic development district;
- (8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the local government itself at its fair value;
- (9) the compilation and analysis of pertinent information required to adequately determine the needs of the urban renewal area or targeted economic development district;
- (10) the connection of the urban renewal area or targeted economic development district to existing infrastructure outside the area or district;



(11) the provision of direct assistance to secondary value-adding industries to assist in meeting their infrastructure and land needs within the area or district; and

(12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution.

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 1, Ch. 147, L. 1981; amd. Sec. 9, Ch. 712, L. 1989; amd. Sec. 1, Ch. 737, L. 1991; amd. Sec. 1, Ch. 500, L. 1993; amd. Sec. 2, Ch. 269, L. 1999; amd. Sec. 16, Ch. 114, L. 2003; amd. Sec. 7, Ch. 566, L. 2005; amd. Sec. 5, Ch. 394, L. 2009; amd. Sec. 11, Ch. 214, L. 2013; amd. Sec. 4, Ch. 575, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 575 in (4) deleted list of examples of public improvements or infrastructure (see 2021 Session Law for former text); and made minor changes in style. Amendment effective May 20, 2021.

**7-15-4289. Use of tax increments for bond payments.** The tax increment may be pledged to the payment of the principal of premiums, if any, and interest on bonds that the local government may issue for the purpose of providing funds to pay those costs.

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 9, Ch. 667, L. 1979; amd. Sec. 12, Ch. 214, L. 2013.

**7-15-4290. Use of property taxes and other revenue for payment of bonds.** (1) (a) The tax increment derived from an urban renewal area may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4288 and 7-15-4289.

(b) The tax increment derived from a targeted economic development district may be pledged for the payment of revenue bonds issued for targeted economic development district projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay targeted economic development district costs described in 7-15-4288 and 7-15-4289.

(2) A local government issuing bonds pursuant to subsection (1) may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based and, after a public hearing, pledging or appropriating other revenue of the local government, except property taxes prohibited by subsection (3), to the payment of the bonds if collections of the tax increment are insufficient.

(3) Property taxes, except the tax increment derived from property within the area or district and tax collections used to pay for services provided to the local government by a project, may not be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged.

(4) If applicable, the local government shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 10, Ch. 667, L. 1979; amd. Sec. 1, Ch. 615, L. 1987; amd. Sec. 10, Ch. 712, L. 1989; amd. Sec. 8, Ch. 566, L. 2005; amd. Sec. 6, Ch. 394, L. 2009; amd. Sec. 8, Ch. 489, L. 2009; amd. Sec. 13, Ch. 214, L. 2013.

**7-15-4291. Voluntary agreement to remit unused portion of urban renewal district tax increments.** (1) Subject to subsections (2) through (5), a local government with an urban renewal district containing a tax increment provision may enter into an agreement to remit any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 or pledged to the payment of the principal of premiums, if any, and interest on the bonds referred to in 7-15-4289. The remittance agreement must:

(a) provide for remittance to each taxing jurisdiction for which the mill rates are included in the calculation of the tax increment as provided in 7-15-4286(1) and (2); and

(b) require that the remittance be proportional to the taxing jurisdiction's share of the total mills levied.

(2) Any portion of the increment remitted to a school district pursuant to 7-15-4286(3) or this section:



(a) must be used to reduce property taxes or designated as operating reserve pursuant to 20-9-104 for the fiscal year following the fiscal year in which the remittance was received;

(b) must be deposited in one or more of the following funds that has a mill levy for the current school year, subject to the provisions of Title 20 and this section:

- (i) general fund;
- (ii) bus depreciation reserve fund;
- (iii) debt service fund;
- (iv) building reserve fund;
- (v) technology acquisition and depreciation fund; and
- (c) may not be transferred to any fund.

(3) The remittance will not reduce the levy authority of the school district receiving the remittance in years subsequent to the time period established by subsection (2)(a).

(4) Any portion of the increment remitted to a school district and deposited into the general fund must be designated as operating reserve pursuant to 20-9-104 or used to reduce the BASE budget levy or the over-BASE budget levy in the following fiscal year.

(5) If a school district does not utilize the remitted portion to reduce property taxes or designate the remittance as operating reserve within the time period established by subsection (2)(a), the unused portion must be remitted as follows:

(a) if the area or district is in existence at the time of the remittance, the portion is distributed to the special fund in 7-15-4286(2)(a) and used as provided in 7-15-4282 through 7-15-4294; or

(b) if the area or district is not in existence at the time of the remittance, the portion is distributed pursuant to 7-15-4292(2)(a).

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 14, Ch. 214, L. 2013; amd. Sec. 1, Ch. 405, L. 2015; amd. Sec. 1, Ch. 22, L. 2017; amd. Sec. 2, Ch. 270, L. 2019.

**7-15-4292. Termination of tax increment financing — exception.** (1) The tax increment provision contained in an urban renewal plan or a targeted economic development district comprehensive development plan terminates upon the later of:

(a) the 15th year following its adoption; or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest on the bonds. For targeted economic development districts created after June 30, 2022, the combined term of the original bonds or any refunding bonds may not extend the life of the tax increment provision longer than the 30th year following the original adoption of the tax increment provision.

(2) (a) Except as provided in subsection (2)(b), any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision must be distributed among the various taxing bodies in proportion to their property tax revenue from the area or district.

(b) Upon termination of the tax increment provision, a local government may retain and use in accordance with the provisions of the urban renewal plan:

(i) funds remaining in the special fund or a reserve fund related to a binding loan commitment, construction contract, or development agreement for an approved urban renewal project or targeted economic development district project that a local government entered into before the termination of a tax increment provision;

(ii) loan repayments received after the date of termination of the tax increment provision from loans made pursuant to a binding loan commitment; or

(iii) funds from loans previously made pursuant to a loan program established under an urban renewal plan or targeted economic development district comprehensive development plan.

(3) After termination of the tax increment provision, all taxes must be levied upon the actual taxable value of the taxable property in the urban renewal area or targeted economic development district and must be paid to each of the taxing bodies as provided by law.

(4) Bonds secured in whole or in part by a tax increment provision may not be issued after the 15th anniversary of tax increment provisions. However, if bonds secured by a tax increment provision are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision.

**History:** En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(7); amd. Sec. 1, Ch. 251, L. 1985; amd. Sec. 11, Ch. 712, L. 1989; amd. Sec. 3, Ch. 441, L. 1991; amd. Sec. 3, Ch. 422, L. 1997; amd. Sec. 1, Ch. 545, L. 2005; amd. Sec. 9, Ch. 566, L. 2005; amd. Sec. 7, Ch. 394, L. 2009; amd. Sec. 15, Ch. 214, L. 2013; amd. Sec. 5, Ch. 575, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 575 in (1)(b) inserted last sentence concerning the term of bonds for targeted economic development districts created after June 30, 2022. Amendment effective May 20, 2021.

**7-15-4293. Adjustment of base taxable value following change of law or local disaster.** (1) If the base taxable value of an urban renewal area or targeted economic development district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the local government may request the department of revenue to estimate the base taxable value so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due.

(2) If a tax increment financing district created after January 1, 2002, has not issued bonds, the governing body of a local government may request the department of revenue to adjust the base taxable value to account for a loss of taxable revenue resulting from the state granting property in the area or district tax-exempt status within the first year of creation of the tax increment financing district. The local government shall give notice of and hold a public hearing on the proposed change.

(3) (a) If an urban renewal area or targeted economic development district suffers a loss of property value directly related to a disaster for which the principal executive officer of the local jurisdiction has made a disaster declaration pursuant to 10-3-402, the department of revenue shall decrease the base taxable value of the area or district by the amount of the base taxable value lost because of the disaster in the tax year in which the disaster is declared. The principal executive officer shall forward a copy of the disaster declaration to the department of revenue.

(b) The taxable value removed from the base taxable value of the area or district under subsection (3)(a) must be added to the base taxable value of the area or district upon reconstruction of the property in the tax year of reconstruction. If reconstruction of the property is only partially completed as of January 1 of the tax year, the department of revenue shall determine the base taxable value of the property for that tax year by multiplying the percentage of completion, expressed as a decimal equivalent, of reconstruction of the property by the original base taxable value of the property. The addition to the base taxable value under this subsection (3)(b) is limited to the amount of the original base taxable value of each parcel before the disaster occurred.

**History:** En. Sec. 12, Ch. 667, L. 1979; amd. Sec. 2, Ch. 147, L. 1981; amd. Sec. 12, Ch. 712, L. 1989; amd. Sec. 56, Ch. 574, L. 2001; amd. Sec. 1, Ch. 525, L. 2003; amd. Sec. 2, Ch. 545, L. 2005; amd. Sec. 10, Ch. 566, L. 2005; amd. Secs. 1, 2, Ch. 350, L. 2009; amd. Sec. 8, Ch. 394, L. 2009; amd. Sec. 16, Ch. 214, L. 2013.

**7-15-4294. Assessment agreements.** (1) A local government may enter into a written agreement with any private person:

(a) establishing a minimum market value of land, existing improvements, or improvements or equipment to be constructed or acquired; and

(b) requiring the individual to pay an annual tax deficiency fee whenever the property that is the subject of the agreement is valued by the department of revenue for property tax purposes at a market value that is less than the value established by the agreement. The amount of the deficiency fee may not exceed the difference between the property taxes that would have been imposed on the property based on the minimum value of the property expressed in the agreement and the property taxes that are imposed on the property based on the market value established by the department of revenue.

(2) The property that is the subject of the agreement must be located or installed in an urban renewal area or targeted economic development district that is subject to a tax increment financing provision.

(3) The minimum value established by the agreement may be fixed or may increase or decrease in later years from the initial minimum value as provided in the agreement.

(4) The agreement creates a lien on the property pursuant to 71-3-1506 and must be filed and recorded in the office of the county clerk and recorder in each county in which the property or any part of the property is located. Recording an agreement constitutes notice of the agreement to anyone who acquires any interest in the property that is the subject of the agreement, and the agreement is binding upon the person acquiring the interest.

(5) An agreement made pursuant to subsection (1) may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an agreement must be approved by the governing body of the local government. A document modifying or terminating an agreement must be filed in the office of the county clerk and recorder in each county in which the property or any part of the property is located.

(6) An agreement entered into pursuant to subsection (1) or modified pursuant to subsection (5) terminates on the earliest of:

- (a) the date on which conditions in the agreement for termination are satisfied;
- (b) the termination date specified in the agreement; or
- (c) the date when the tax increment is no longer paid to the local government under 7-15-4292.

(7) This section does not limit a local government's authority to enter into contracts other than tax deficiency agreements as described in this section.

**History:** En. Sec. 4, Ch. 545, L. 2005; amd. Sec. 9, Ch. 394, L. 2009; amd. Sec. 17, Ch. 214, L. 2013.

**7-15-4295. Repealed.** Sec. 26, Ch. 214, L. 2013.

**History:** En. Sec. 1, Ch. 566, L. 2005; amd. Sec. 10, Ch. 394, L. 2009.

**7-15-4296. Repealed.** Sec. 26, Ch. 214, L. 2013.

**History:** En. Sec. 4, Ch. 269, L. 1999; amd. Sec. 5, Ch. 44, L. 2007; amd. Sec. 11, Ch. 394, L. 2009.

**7-15-4297. Repealed.** Sec. 26, Ch. 214, L. 2013.

**History:** En. Sec. 1, Ch. 712, L. 1989.

**7-15-4298. Repealed.** Sec. 26, Ch. 214, L. 2013.

**History:** En. Sec. 2, Ch. 712, L. 1989.

**7-15-4299. Repealed.** Sec. 26, Ch. 214, L. 2013.

**History:** En. Sec. 3, Ch. 712, L. 1989; amd. Sec. 6, Ch. 44, L. 2007; amd. Sec. 12, Ch. 394, L. 2009.

### Part 43 Urban Renewal Continued

**7-15-4301. Authorization to issue urban renewal bonds, targeted economic development bonds, and refunding bonds.** (1) A local government or municipality may:

(a) issue bonds from time to time, in its discretion, to finance the undertaking of any urban renewal project or targeted economic development district project under Title 7, chapter 15, part 42, and this part, including, without limiting the generality of projects, the payment of principal and interest upon any advances for surveys and plans for the projects; and

(b) issue refunding bonds for the payment or retirement of bonds previously issued by it.

(2) Except as provided in 7-15-4302, bonds may not pledge the general credit of the local government or municipality and must be made payable, as to both principal and interest, solely from the income, proceeds, revenue, and funds of the local government or municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects or targeted economic development district projects under Title 7, chapter 15, part 42, and this part, including the tax increment received and pledged by the local government or municipality pursuant to 7-15-4282 through 7-15-4294, and, if the income, proceeds, revenue, and funds of the local government or municipality are insufficient for the payment, from other revenue of the local government or municipality pledged to the payment. Payment of the bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects or targeted economic development district projects of the local government or municipality under Title 7, chapter 15, part 42, and this part or by a mortgage on all or part of any projects.



(3) Bonds issued under this section must be authorized by resolution or ordinance of the local governing body.

(4) If applicable, the governing body of the local government or municipality shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

**History:** En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 11, Ch. 667, L. 1979; amd. Sec. 2, Ch. 615, L. 1987; amd. Sec. 13, Ch. 712, L. 1989; amd. Sec. 3, Ch. 269, L. 1999; amd. Sec. 11, Ch. 566, L. 2005; amd. Sec. 13, Ch. 394, L. 2009; amd. Sec. 9, Ch. 489, L. 2009; amd. Sec. 18, Ch. 214, L. 2013.

**7-15-4302. Authorization to issue general obligation bonds.** (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project or targeted economic development district project, the local government or municipality, in addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.

(2) Any bonds issued pursuant to this section must be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by the local government or municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project or targeted economic development district project is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for a project may be used to finance the exercise of the powers conferred upon the local government or municipality by Title 7, chapter 15, part 42, and this part that are necessary or proper to complete the project in accordance with the approved plan or ordinance and any modification to the ordinance that is duly adopted by the local governing body.

(4) If applicable, the local government or municipality shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

**History:** (1), (2)En. Sec. 13, Ch. 195, L. 1959; Sec. 11-3913, R.C.M. 1947; (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; R.C.M. 1947, 11-3906(part), 11-3913(c); amd. Sec. 18, Ch. 253, L. 1979; amd. Sec. 14, Ch. 712, L. 1989; amd. Sec. 14, Ch. 394, L. 2009; amd. Sec. 10, Ch. 489, L. 2009; amd. Sec. 19, Ch. 214, L. 2013.

**7-15-4303. Bonds to be fully negotiable.** Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this part and part 42 shall be fully negotiable.

**History:** En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

**7-15-4304. Presumption of regularity of bond issuance.** In a suit, action, or proceeding involving the validity or enforceability of or security for any bond issued under Title 7, chapter 15, part 42, and this part, a bond reciting in substance that it has been issued by the local government or municipality in connection with an urban renewal project or targeted economic development district project is conclusively considered to have been issued for that purpose and the project is conclusively considered to have been planned, located, and carried out in accordance with the provisions of Title 7, chapter 15, part 42, and this part.

**History:** En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(f); amd. Sec. 15, Ch. 712, L. 1989; amd. Sec. 12, Ch. 566, L. 2005; amd. Sec. 15, Ch. 394, L. 2009; amd. Sec. 20, Ch. 214, L. 2013.

**7-15-4305. Validity and sufficiency of signatures on bonds.** In case any of the public officials of the local government or municipality whose signatures appear on any bonds or coupons issued under part 42 and this part cease to be officials before the delivery of the bonds, their signatures remain valid and sufficient for all purposes the same as if the officials had remained in office until delivery of the bonds.

**History:** En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 21, Ch. 214, L. 2013.



**7-15-4306. Bonds as legal investments.** (1) All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a local government or municipality pursuant to part 42 and this part, provided that the bonds and other obligations must be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of bonds or other obligations, money in an amount that, together with any other money irrevocably committed to the payment of interest on the bonds or other obligations, will suffice to pay the principal of the bonds or other obligations with interest to maturity on the bonds. The money under the terms of the agreement is required to be used for the purpose of paying the principal of and the interest on the bonds or other obligations at their maturity.

(2) The bonds and other obligations must be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of the bonds or other obligations.

(3) Nothing contained in this section with regard to legal investments may be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

**History:** En. Sec. 11, Ch. 195, L. 1959; R.C.M. 1947, 11-3911; amd. Sec. 22, Ch. 214, L. 2013.

**7-15-4307. Tax exemption for bonds.** Bonds issued under the provisions of this part and part 42 are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

**History:** En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

**7-15-4308 through 7-15-4320 reserved.**

**7-15-4321. Nature of urban renewal bonds.** Bonds issued under 7-15-4301 shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall be subject only to the provisions of the Uniform Commercial Code and the limitations of this part and part 42.

**History:** En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

**7-15-4322. Details relating to urban renewal bonds.** (1) Bonds issued under 7-15-4301 may be issued in one or more series and must bear a date or dates, be payable upon demand or mature at a time or times, bear interest as provided in 17-5-102, be in denomination or denominations, be in either coupon or registered form, carry conversion or registration privileges, have rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, be subject to terms of redemption with or without premium, be secured in a manner, and have other characteristics as may be provided by the resolution, ordinance, or trust indenture or a mortgage authorized pursuant to the resolution, ordinance, or trust indenture.

(2) (a) The bonds may be sold at not less than 97% of par, at public or private sale or may be exchanged for other bonds on the basis of par.

(b) The bonds may be sold to the federal government at private sale at not less than par, and if less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold at public or private sale at not less than 97% of par at an interest cost to the local government or municipality of not to exceed the interest cost of the portion of the bonds sold to the federal government.

**History:** En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 19, Ch. 253, L. 1979; amd. Sec. 7, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 25, Ch. 370, L. 1987; amd. Sec. 39, Ch. 423, L. 1995; amd. Sec. 23, Ch. 214, L. 2013.

**7-15-4323. Redemption of urban renewal bonds.** Every municipality shall have power to redeem such bonds as have been issued pursuant to 7-15-4301 at the redemption price established therein or to purchase such bonds at less than redemption price. All such bonds so redeemed or purchased shall be canceled.

**History:** En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

**7-15-4324. Special bond provisions when tax increment financing is involved.**  
(1) Bonds issued under this part for which a tax increment is pledged pursuant to 7-15-4282 through 7-15-4294 must be designed to mature not later than 25 years from their date of issue and must mature in years and amounts so that the principal and interest due on the bonds in each year may not exceed the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in a district, and other estimated revenue, including proceeds of the bonds available for payment of interest on the bonds, pledged to their payment to be received in that year.

(2) The governing body, in the resolution or ordinance authorizing the bonds, shall determine the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in an area or district, and other revenue, if any, for each year the bonds are to be outstanding. In calculating the costs under 7-15-4288 for which the bonds are issued, the local government or municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increments pledged and sufficient for the payment of the bonds and to fund any reserve fund in respect of the bonds.

**History:** En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(g); amd. Sec. 47, Ch. 584, L. 1999; amd. Sec. 16, Ch. 394, L. 2009; amd. Sec. 24, Ch. 214, L. 2013.



# TITLE 10

## MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

Ch.

1. Militia.

### CHAPTER 1 MILITIA

#### Part 15 — Military Area Compatibility Act

- 10-1-1501. Short title.
- 10-1-1502. Legislative findings — purpose.
- 10-1-1503. Military affected areas — definitions.
- 10-1-1504. Designation of military affected areas — public hearing required — joint regulation board authorized.
- 10-1-1505. Military affected area regulations — contents.
- 10-1-1506. Regulations relative to zoning ordinances.
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- 10-1-1511. Prior nonconforming uses.
- 10-1-1512. Permit system.
- 10-1-1513. Enforcement.
- 10-1-1514. Appeals.
- 10-1-1515. Variance.
- 10-1-1516. Penalty.
- 10-1-1517. Injunction.

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#### Part 15 Military Area Compatibility Act

**10-1-1501. Short title.** This part may be cited as the “Military Area Compatibility Act”.  
**History:** En. Sec. 1, Ch. 354, L. 2011.

**10-1-1502. Legislative findings — purpose.** The legislature finds and declares that:

- (1) the ability of the United States military to train and operate effectively in Montana is crucial to the nation’s defense;
- (2) increasing development pressures in and around existing military facilities and training areas represent a potential threat to the continued viability of military missions in Montana;
- (3) local governments should be empowered to implement land use policies designed to protect existing military missions from encroachment and encourage expansion of military missions in Montana; and
- (4) it is the purpose of this part to promote public health, safety, and general welfare by the delineation of military affected areas and by granting local governments the ability to develop regulations to ensure that surrounding land uses are compatible with uses in military affected areas.

**History:** En. Sec. 2, Ch. 354, L. 2011.

**10-1-1503. Military affected areas — definitions.** For the purposes of this part, the following definitions apply:

- (1) “Airport” has the meaning provided in 67-1-101.
- (2) “Governing body” has the meaning provided in 67-7-103.
- (3) (a) “Military affected area” means land used for military purposes or in close proximity to military facilities that is directly affected or that will be directly affected by military uses.  
(b) The term does not mean an area over which military aircraft operate when no other components of military facilities or military uses exist.
- (4) “Military facilities” and “military uses” include but are not limited to military airports, military installations, intercontinental ballistic missile alert facilities or launch control centers, missile locations, access roads to missiles or missile-related facilities, and sites formerly used for military training that may be contaminated with hazardous wastes or explosive ordnance.
- (5) “YDNL” has the meaning provided in 67-1-101.

**History:** En. Sec. 3, Ch. 354, L. 2011.



**10-1-1504. Designation of military affected areas — public hearing required — joint regulation board authorized.** (1) A governing body of a political subdivision within which military operations occur may, in consultation with the appropriate military authority, designate a military affected area and may adopt, administer, and enforce military affected area regulations.

(2) The designation of a military affected area must be accompanied by maps and legal descriptions of the military affected area.

(3) (a) Before a governing body designates a military affected area and adopts or amends regulations governing the military affected area, the governing body shall hold at least one public hearing.

(b) The notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or the commissioners of a regional airport authority and as provided in 7-1-4127 if the governing body is a city commission, a town council, or the commissioners of a municipal airport authority.

(4) If a military affected area encompasses land within the boundaries of more than one political subdivision, the governing bodies of the political subdivisions may by ordinance or resolution create a joint military affected area regulation board. The joint board must have two members appointed by the governing body of each political subdivision participating in its creation, and a presiding officer must be elected by a majority of the members appointed. The joint board shall consider the zoning regulations and ordinances of each affected political subdivision in developing its recommendations, but the board's recommendations are not binding on the governing bodies of any of the affected political subdivisions.

(5) A governing body may not designate land that is more than 1,200 feet from a launch control center or missile location as part of a military affected area.

**History: En. Sec. 4, Ch. 354, L. 2011.**

**10-1-1505. Military affected area regulations — contents.** (1) Regulations adopted for the military affected area must be reasonable, be designed to promote the public health, safety, and general welfare, and protect and facilitate the military missions executed within the military affected area. At a minimum, these regulations must give consideration to:

(a) the safety of persons physically present in a military affected area and the persons and property in the vicinity of the area;

(b) the character of the military operations conducted or expected to be conducted within the area;

(c) the nature of the terrain;

(d) the future development of the military affected area;

(e) United States department of defense recommendations for the safety zones, noise contours, and flight path restrictions for the appropriate type of military operation and the compatibility of surrounding land uses with the recommendations; and

(f) existing and potential future uses of the land proposed to be included in a military affected area.

(2) Military affected area regulations must be limited to addressing current and known future military uses and may be adopted only to:

(a) limit electromagnetic emissions that may interfere with military operations;

(b) describe the military affected area by referencing maps other than those required under 10-1-1504(2) and describing existing hazards and natural terrain that intrude into the military affected area;

(c) designate and describe zones within the military affected area, along with the height limitations for structures and trees within each zone, considering local conditions and needs;

(d) show the contours for decibel levels of 65 YDNL or greater on the maps that designate a military affected area if a study has been conducted pursuant to United States department of defense regulations and require that information to be considered before any building may occur within the military affected area;

(e) specify the permitted and conditional land uses within each zone of the military affected area by addressing:

(i) residences, schools, hospitals, day-care centers, or other concentrations of people, indoors or outdoors, that are incompatible with activities within the military affected area;

(ii) land uses that are incompatible with the decibel levels described in subsection (2)(d); and  
 (iii) other land uses that are incompatible with United States department of defense recommendations regarding compatible use of land within a military affected area.

**History:** En. Sec. 5, Ch. 354, L. 2011.

**10-1-1506. Regulations relative to zoning ordinances.** (1) Subject to subsection (3), if a governing body has adopted a zoning ordinance or resolution, any regulations adopted under this part may be made a part of the zoning ordinance or resolution and may be administered and enforced in connection with it.

(2) If a political subdivision has a planning board, zoning commission, or joint military affected area board, a governing body may request the assistance of those boards or commissions in designating a military affected area or adopting, amending, or repealing military affected area regulations.

(3) When a conflict exists between the regulations adopted pursuant to this part and any zoning ordinances or resolutions applicable to the same area that the regulations are intended to govern, the more stringent limitation or requirement prevails.

**History:** En. Sec. 6, Ch. 354, L. 2011.

**10-1-1507 through 10-1-1510 reserved.**

**10-1-1511. Prior nonconforming uses.** (1) All regulations adopted under this part must be reasonable and may not require the removal or alteration of any structure or require cessation or alteration of a use that is lawfully in existence when the regulations become effective. Those structures or uses must be treated as prior nonconforming structures or uses that may remain or continue.

(2) A nonconforming structure or use that is destroyed or substantially damaged by fire, flood, or other natural disaster may not be restored as a nonconforming structure or use unless a variance is issued by the appeals board provided for in 10-1-1514 or unless the restoration occurs within 24 months of the damage having occurred and the resulting structure or use occupies the same physical footprint and is used for the same purpose as the original nonconforming structure or use. A nonconforming structure or use is considered to be substantially damaged when 80% or more of a structure is damaged or destroyed.

(3) The regulations may require the owner of structures to permit the political subdivision, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of a hazard in the vicinity of the military affected area.

**History:** En. Sec. 7, Ch. 354, L. 2011.

**10-1-1512. Permit system.** (1) The regulations adopted pursuant to this part must provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering or replacing existing structures within the military affected area.

(2) A permit may not be granted that would allow the establishment of an incompatible use or that would allow a nonconforming use or structure to become a greater hazard or cause greater incompatibility with the military affected area.

**History:** En. Sec. 8, Ch. 354, L. 2011.

**10-1-1513. Enforcement.** The governing body or its designated agent or agency is responsible for enforcing the regulations adopted pursuant to this part. The regulations must provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may be an existing employee of the local government.

**History:** En. Sec. 9, Ch. 354, L. 2011.

**10-1-1514. Appeals.** (1) The governing body that designated the military affected area shall act as a military affected area appeals board or appoint a military affected area appeals board that functions in the same manner as a board of adjustment provided for in Title 76, chapter 2. If the governing body appoints a military affected area appeals board, the board must have at least three members.

(2) The provisions of 76-2-223 and 76-2-225 through 76-2-228 apply to the governing body of a county or a military affected area appeals board appointed by that governing body and the provisions of 76-2-323 and 76-2-325 through 76-2-328 apply to the governing body of a municipality or a military affected area appeals board appointed by that governing body when considering grievances relating to regulations, variances, or permits.

(3) If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members of that board as the military affected area appeals board, in which case the terms of the members for the purposes of this part are concurrent with their terms as members of the board of adjustment.

**History:** En. Sec. 10, Ch. 354, L. 2011.

**10-1-1515. Variance.** (1) A person intending to erect or increase the height of a structure or use property in a manner that is not in accordance with the requirements of the regulations adopted pursuant to this part may apply to the governing body or an enforcement officer appointed for this purpose by the governing body for a variance from the regulations.

(2) If an enforcement officer has been appointed by the governing body, the decision of the officer is final unless it is appealed to either the governing body or the military affected area appeals board, if one exists.

(3) A variance must be granted when a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to military missions.

(4) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the military affected area and when the noise or vibrations from normal and anticipated normal military operations would not be likely to cause damage to structures.

(5) A variance granted under this section may require the owner of a structure to allow the political subdivision, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of a military affected area hazard.

(6) A person who builds a structure pursuant to a variance from the military affected area regulations or who takes or buys property in a military affected area for which a variance has been granted is considered to be aware that the military affected area existed before the variance was granted and that normal and anticipated normal military operations may result in noise, vibrations, and fumes being projected over the property. A person using a structure built pursuant to a variance may not seek damages from a governing body, a local government, or the federal government for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal military operations.

**History:** En. Sec. 11, Ch. 354, L. 2011.

**10-1-1516. Penalty.** A person who violates the provisions of this part or the regulations adopted under 10-1-1505 is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification of the violation and held a hearing on the violation. The criminal penalty is a fine of \$500 pursuant to 45-2-104.

**History:** En. Sec. 12, Ch. 354, L. 2011.

**10-1-1517. Injunction.** A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this part or the regulations adopted pursuant to this part.

**History:** En. Sec. 13, Ch. 354, L. 2011.

# TITLE 67

## AERONAUTICS

Ch.

7. Airport Affected Areas.

### CHAPTER 7

#### AIRPORT AFFECTED AREAS

##### Part 1 — General Provisions

- 67-7-101. Short title.  
 67-7-102. Legislative finding and purpose.  
 67-7-103. Definitions.

##### Part 2 — Designation and Regulation of Airport Affected Areas

- 67-7-201. Designation of airport affected area — regulations required — maps and descriptions required — public hearing required — effect of designation.  
 67-7-202. Joint airport affected area regulation board authorized — may adopt regulations.  
 67-7-203. Airport affected area regulations — contents.  
 67-7-204. State lands.  
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 67-7-208. Procedure for developing or amending regulations — assistance from existing boards or zoning commissions.  
 67-7-209. Prior nonconforming uses.  
 67-7-210. Acquisition of property rights when regulations not sufficient.  
 67-7-211. Regulations relative to zoning ordinances.  
 67-7-212. Permit system.

##### Part 3 — Enforcement and Variances

- 67-7-301. Enforcement.  
 67-7-302. Appeals.  
 67-7-303. Variance.  
 67-7-304. Penalty.  
 67-7-305. Injunction.

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#### Part 1 General Provisions

**67-7-101. Short title.** This chapter may be cited as the “Airport Compatibility Act”.

**History:** En. Sec. 3, Ch. 300, L. 2005.

**67-7-102. Legislative finding and purpose.** The legislature finds that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. The legislature also finds that the location of tall trees and structures and certain types of development near airports reduces the area available for landing, taking off, and maneuvering aircraft and increases the likelihood of legal action against a local government for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is the purpose of this chapter to promote the public health, safety, and general welfare by the delineation of an airport affected area and by the development of compatible noise, height, and land use regulations to control airport hazards. The prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and in which political subdivisions may acquire land or property interests.

**History:** En. Sec. 4, Ch. 300, L. 2005.

**67-7-103. Definitions.** (1) Except as provided in subsection (2)(b), the definitions in 67-1-101 apply to this chapter.

(2) In this chapter, the following definitions also apply:



(a) “Airport affected area” means the land and space above the ground surface of an airport in the proximity of the airport, the use of which may be affected by the airport’s existence, including the areas described in 14 CFR, part 77.

(b) “Governing body” means a city commission, town council, county commission, or the commissioners of a municipal or regional airport authority.

**History:** En. Sec. 5, Ch. 300, L. 2005.

## Part 2 Designation and Regulation of Airport Affected Areas

### **67-7-201. Designation of airport affected area — regulations required — maps and descriptions required — public hearing required — effect of designation.**

(1) Subject to the provisions of subsection (5), a governing body of a political subdivision that owns or controls an NPIAS airport or that has an airport affected area for an NPIAS airport within its territorial limits or a joint board established pursuant to 67-7-202 shall, by ordinance or resolution, exercising its police power:

(a) designate an airport affected area within 1 year of April 19, 2005;

(b) concurrently adopt regulations for the airport affected area that comply with 67-7-203; and

(c) administer and enforce the regulations that are adopted.

(2) A governing body of a political subdivision that owns or controls a non-NPIAS airport or that has an airport affected area for a non-NPIAS airport within its territorial limits or a joint board established pursuant to 67-7-202 may, by ordinance or resolution, exercising its police power, designate an airport affected area. If the governing body or joint board makes the designation, it shall concurrently adopt regulations for the airport affected area that may comply with 67-7-203 and shall administer and enforce the regulations.

(3) The airport affected area may not be less than 10,000 feet from the thresholds of each runway or less than 1 mile wide on each side of each runway unless evaluations for a specific runway show that the accident data justifies a lesser area. A greater area may be regulated as an airport affected area if:

(a) studies have been conducted in accordance with 14 CFR, part 150, maps of the area have been prepared, and a program has been approved by the federal aviation administration; or

(b) the governing body intends to protect imaginary surfaces as provided in 14 CFR, part 77.

(4) The designation must be accompanied by maps and legal descriptions of the airport affected area. The maps must be filed with the clerk and recorder of each affected county and with the clerk of each affected city or town.

(5) (a) Before a governing body designates an airport affected area and adopts or amends regulations governing the airport affected area, the governing body shall hold at least one public hearing.

(b) The notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or the commissioners of a regional airport authority and as provided in 7-1-4127 if the governing body is a city commission, a town council, or the commissioners of a municipal airport authority.

(6) After the designation of an airport affected area, a person may not recover from a local government, an airport authority, an airport operator, or an airport owner damages caused by noise, fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations.

**History:** En. Sec. 6, Ch. 300, L. 2005.

**67-7-202. Joint airport affected area regulation board authorized — may adopt regulations.** (1) If an airport affected area is located outside of the jurisdictional area of the governing body of the political subdivision that owns or controls the airport, the governing body of the political subdivision that owns or controls the airport and the governing body of

the political subdivision within which the airport affected area is located may by ordinance or resolution create a joint airport affected area regulation board.

(2) The joint board may adopt, administer, and enforce airport affected area regulations, as provided in 67-7-201, subject to the provisions of 67-7-203.

(3) The joint board must have two members appointed by the governing body of each political subdivision participating in its creation, and a presiding officer must be elected by a majority of the members appointed. The members of the joint board who are appointed shall select an additional at-large member who resides in the county in which the airport is located.

(4) If, in the judgment of the governing body of the political subdivision that owns or controls an airport, the governing body of the political subdivision that contains the airport affected area has failed to adopt or enforce reasonably adequate airport affected area regulations for the airport affected area and if the governing body of the political subdivision that contains the airport affected area has refused to join in creating a joint board under this section, the governing body of the political subdivision that owns or controls the airport may adopt, administer, and enforce airport affected area regulations for the airport affected area. The regulations adopted by the governing body of the political subdivision that owns or controls the airport prevail if a conflict arises between regulations adopted by that governing body and the governing body of the political subdivision that contains the airport affected area.

**History:** En. Sec. 7, Ch. 300, L. 2005.

**67-7-203. Airport affected area regulations — contents.** (1) Subject to the provisions of 67-7-209, regulations adopted for the airport affected area must be reasonable, be designed to promote the public health, safety, and general welfare, and, for an NPIAS airport, at a minimum, give consideration to:

- (a) the safety of airport users and persons and property in the vicinity of the airport;
- (b) the character of the flying operations conducted or expected to be conducted at the airport;
- (c) the nature of the terrain;
- (d) the future development of the airport; and
- (e) federal aviation administration recommendations for the aeronautical surfaces necessary for safe flying operations.

(2) Airport affected area regulations may:

- (a) designate the airport or airports that are subject to the regulations, with a description of existing and future runways and approaches;
- (b) define the terms used in the regulations based on the definitions provided in Title 67 and 14 CFR, part 77;
- (c) describe the airport affected area by referencing maps and describing existing airport hazards and natural terrain that intrude into the airport affected area;
- (d) designate and describe zones within the airport affected area, along with the height limitations for structures and trees within each zone, considering local conditions and needs, as well as the notice requirements and obstructions standards provided in 14 CFR, part 77;
- (e) show the contours for decibel levels of 65 YDNL or greater on the maps that designate an airport affected area, if a study has been conducted pursuant to 14 CFR, part 150, and require that information to be considered by anyone who builds within the airport affected area;
- (f) specify permitted and conditional uses within each zone of the airport affected area by addressing:
  - (i) incompatible land uses, such as uses for residences, schools, hospitals, day-care centers, or other concentrations of people indoors or outdoors;
  - (ii) the land uses that are considered incompatible with certain noise levels, as provided in 14 CFR, part 150;
  - (iii) bird attractants such as solid waste disposal sites and lagoons;
  - (iv) sources of electromagnetic radiation that may interfere with electronic navigational aids;
  - (v) lights other than navigational aids that glare upward or shine on or in the direction of the airport; and
  - (vi) the national transportation safety board's accident investigation data in the vicinity of airports and specific accident data for a particular airport, if that information is available;

(g) define nonconforming uses, measures to be taken to mitigate the nonconforming uses, and the expiration of the uses in accordance with this chapter;

(h) provide for an inventory of existing land uses, structures, and trees within the airport affected area;

(i) expand on the permit system provided pursuant to 67-7-212 for changes to existing land uses, including changes that affect structures or trees, and for new land uses, structures, or trees;

(j) subject to the provisions of 67-7-303, provide a variance procedure from the literal application of the regulations, including the conditions for granting a variance; and

(k) establish or designate local boards, commissions, or agents to administer and adjudicate interpretations of the regulations.

**History:** En. Sec. 8, Ch. 300, L. 2005.

**67-7-204. State lands.** When an airport affected area lies partially or entirely on state-owned lands, the department of natural resources and conservation shall administer the affected lands in conformance with the airport affected area regulations adopted by the local governing body.

**History:** En. Sec. 9, Ch. 300, L. 2005.

**67-7-205 through 67-7-207 reserved.**

**67-7-208. Procedure for developing or amending regulations — assistance from existing boards or zoning commissions.** (1) In adopting, amending, and repealing airport affected area regulations under this chapter, a governing body or a joint airport affected area regulation board may request the assistance of existing planning boards or zoning commissions.

(2) If a political subdivision does not have an existing planning board or zoning commission to assist with recommendations for airport affected area regulations, the governing body may:

(a) request that an existing airport board recommend the boundaries of the airport affected area and the various zones to be established and the regulations that will govern the airport affected area; or

(b) act without assistance of an airport board, planning board, or zoning commission.

(3) If a governing body or joint airport affected area regulation board uses a separate airport board, planning board, or zoning commission to assist the governing body or joint board in designating the airport affected area and establishing regulations to govern the airport affected area, the airport board, planning board, or zoning commission shall make a preliminary report and hold public hearings on the report before submitting its final report to the governing body or joint board. The governing body or joint board may not hold a public hearing or take action on the regulations until it has received the final report from the airport board, planning board, or zoning commission.

**History:** En. Sec. 10, Ch. 300, L. 2005.

**67-7-209. Prior nonconforming uses.** (1) All regulations adopted under this chapter must be reasonable and may not require the removal or alteration of any structure or tree or require cessation or alteration of a use that is lawfully in existence when the regulations become effective. Those structures, trees, or uses must be treated as prior nonconforming structures, trees, or uses that may remain or continue, but regulations may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage. For the purposes of this section, “substantial damage” has occurred when 80% or more of a structure or tree is deteriorated or decayed or has been torn down or destroyed.

(2) The regulations may require that trees in place at the time that the regulations take effect be maintained by the political subdivision, at its expense, at heights attained at that time.

(3) The regulations may require the owner of structures or trees to permit the political subdivision, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

(4) Land in existing residential subdivisions or platted for residential subdivision at the time that regulations are adopted may continue to be used for residential purposes, subject to notification provided to property owners that the lots are within an adopted airport affected area.

**History:** En. Sec. 11, Ch. 300, L. 2005.



**67-7-210. Acquisition of property rights when regulations not sufficient.** The political subdivision within which a property or nonconforming use is located or the political subdivision owning the airport or served by the airport may acquire, by purchase, grant, or condemnation pursuant to Title 70, chapter 30, an air right, aviation easement, or other estate or interest in the property or nonconforming structure or use that is necessary to effectuate the purposes of this chapter. The governing body of the political subdivision may acquire an interest when:

- (1) it is desirable to remove, lower, or otherwise terminate a nonconforming structure or use;
- (2) the necessary approach protection cannot, because of constitutional limitations, be provided by airport affected area regulations under this chapter; or
- (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport affected area regulations.

**History:** En. Sec. 12, Ch. 300, L. 2005.

**67-7-211. Regulations relative to zoning ordinances.** (1) Subject to the provisions of subsections (2) and (3), if a governing body has adopted a zoning ordinance or resolution, any regulations adopted under this chapter may be made a part of the zoning ordinance or resolution and may be administered and enforced in connection with it.

(2) The zoning ordinance or resolution may not limit the effectiveness or scope of the regulations adopted pursuant to this chapter.

(3) When a conflict exists between the regulations adopted pursuant to this chapter and any zoning ordinances or resolutions applicable to the same area that the regulations are intended to govern, the more stringent limitation or requirement prevails.

**History:** En. Sec. 13, Ch. 300, L. 2005.

**67-7-212. Permit system.** (1) The regulations adopted pursuant to this chapter must provide for a permit system for erecting new structures or trees, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures or replacing existing trees within the airport affected area.

(2) A permit may not be granted that would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the designation of the airport affected area and the regulations adopted to protect the airport affected area.

(3) A permit granted pursuant to this chapter may require the owner of a structure or tree to allow the governing body, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

**History:** En. Sec. 14, Ch. 300, L. 2005.

### Part 3 Enforcement and Variances

**67-7-301. Enforcement.** The governing body or its designated agent or agency is responsible for enforcing the regulations adopted pursuant to this chapter. The regulations must provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may be an existing employee of the local government.

**History:** En. Sec. 15, Ch. 300, L. 2005.

**67-7-302. Appeals.** (1) The governing body that designated the airport affected area shall act as an airport appeals board or appoint an airport appeals board that functions in the same manner as a board of adjustment provided for in Title 76, chapter 2. If the governing body appoints an airport appeals board, the board must have at least three members.

(2) The provisions of 76-2-223 and 76-2-225 through 76-2-228 apply to the governing body of a county or an airport appeals board appointed by that governing body and the provisions of 76-2-323 and 76-2-325 through 76-2-328 apply to the governing body of a municipality or an airport appeals board appointed by that governing body when considering grievances relating to regulations, variances, or permits.

(3) If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members



of that board as the airport appeals board, in which case the terms of the members for the purposes of this chapter are concurrent with their terms as members of the board of adjustment.

**History:** En. Sec. 16, Ch. 300, L. 2005.

**67-7-303. Variance.** (1) A person intending to erect or increase the height of a structure, permit the growth of a tree, or use property in a manner that is not in accordance with the requirements of the regulations adopted pursuant to this chapter may apply to the governing body or an enforcement officer appointed for this purpose by the governing body for a variance from the regulations.

(2) If an enforcement officer has been appointed by the governing body, the decision of the officer is final unless it is appealed to either the governing body or the airport appeals board, if one exists.

(3) A variance must be granted when a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to the public interest.

(4) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the airport and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to structures.

(5) A variance granted under this section may require the owner of a structure or tree to allow the political subdivision, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

(6) A person who builds a structure pursuant to a variance from the airport affected area regulations or who takes or buys property in an airport affected area for which a variance has been granted is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise, vibrations, and fumes being projected over the property. A person using a structure built pursuant to a variance may not collect damages from a governing body or local government or from an airport authority, airport operator, or airport owner for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal airport operations.

**History:** En. Sec. 17, Ch. 300, L. 2005.

**67-7-304. Penalty.** A person who violates the provisions of this chapter or the regulations adopted under 67-7-203 is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification of the violation and held a hearing on the violation. The criminal penalty is a fine of \$500, pursuant to 45-2-104.

**History:** En. Sec. 18, Ch. 300, L. 2005.

**67-7-305. Injunction.** A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or the regulations adopted pursuant to this chapter.

**History:** En. Sec. 19, Ch. 300, L. 2005.

# TITLE 75

## ENVIRONMENTAL PROTECTION

Ch.

7. Aquatic Ecosystem Protections.

### CHAPTER 7

#### AQUATIC ECOSYSTEM PROTECTIONS

##### Part 2 — Lakeshores

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- 75-7-202. Definitions.
- 75-7-203. Change in definition of lake by local government.
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- 75-7-207. Regulations for issuance of permits.
- 75-7-208. Factors favoring issuance of permit.
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- 75-7-210. Application for permit — fee.
- 75-7-211. Consultation with local planning board.
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- 75-7-215. Judicial enforcement and review.
- 75-7-216. Penalty.
- 75-7-217. Funding.

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#### Part 2 Lakeshores

**75-7-201. Policy.** The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state’s residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this part to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

**History:** En. 89-3701 by Sec. 1, Ch. 527, L. 1975; R.C.M. 1947, 89-3701.

**75-7-202. Definitions.** As used in this part, the following definitions apply:

(1) “Lake” means a body of standing water and the area within its lakeshore occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation as such averages are determined by the United States geological survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats.

(2) “Lakeshore” is the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation.

(3) “Local governing body” or “governing body” is that unit of local government authorized to administer the Montana Subdivision and Platting Act on the land adjoining a lake or part of a lake subject to this part.

(4) “Mean annual high-water elevation” is the mean average of the highest elevation of a lake in each of at least 5 consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high-water elevation.

**History:** En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

**75-7-203. Change in definition of lake by local government.** A local governing body may by resolution change the minimum size in the definition of a lake so that this part may apply to natural lakes in the county no smaller than 20 acres in water surface area.

**History:** En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

**75-7-204. Work for which permit required.** (1) A person who proposes to do any work that will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body.

(2) Without limitation, the following activities, when conducted below mean annual high-water elevation, are examples of work for which a permit is required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning, meaning the placement of a narrow strip of land across a portion of a lake to create a lagoon; filling; constructing breakwaters of pilings; constructing wharves and docks.

**History:** En. 89-3703 by Sec. 3, Ch. 527, L. 1975; R.C.M. 1947, 89-3703; amd. Sec. 8, Ch. 68, L. 1979.

**75-7-205. Unauthorized work.** A person who performs work in a lake without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before the person disturbed it.

**History:** En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(1); amd. Sec. 2498, Ch. 56, L. 2009.

**75-7-206. Nature of property rights under part.** Work or development authorized or approved under this part shall not create a vested property right in the permitted development other than in the physical structure, if any, so developed.

**History:** En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(2).

**75-7-207. Regulations for issuance of permits.** (1) Before January 1, 1976, every governing body having jurisdiction over an area containing a lake shall adopt regulations in the form of criteria for the issuance or denial of permits for work in lakes.

(2) Where a planning board has been created under 76-1-104 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this part.

(3) The local governing body may provide a summary procedure to permit work which it finds has a minimal or insignificant impact on a lakeshore.

(4) A governing body whose area contains more than one lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

(5) The requirements of 75-7-208 are minimum requirements and do not restrict a local governing body from adopting such stricter or additional regulations as may be authorized by other statutes.

**History:** En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(1), (3) thru (5).

**75-7-208. Factors favoring issuance of permit.** The regulations shall favor issuance if the proposed work will not during either its construction or its utilization:

- (1) materially diminish water quality;
- (2) materially diminish habitat for fish or wildlife;
- (3) interfere with navigation or other lawful recreation;
- (4) create a public nuisance; or
- (5) create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements.

**History:** En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(2).

**75-7-209. Regulations for particular lake.** Upon petition of five owners or 30% of the owners of land abutting a lake, whichever is smaller, the department of natural resources and conservation may adopt regulations under 75-7-207 and 75-7-208 for the particular lake. The department may then exercise the powers conferred upon a local governing body by this part until the governing body adopts the necessary regulations.

**History:** En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(6).

**75-7-210. Application for permit — fee.** (1) A person seeking a permit for work in a lake or on a lakeshore shall apply to the local governing body and shall pay a permit fee established by the governing body under subsection (2).

(2) The local governing body shall establish a permit fee as provided in subsection (1). The permit fee must be commensurate with the cost of administering the permit application. Factors the local governing body shall consider when establishing the fee include but are not limited to:

- (a) the annual estimated total number of permit requests;
- (b) the complexity of the specific project;
- (c) the need for and location and number of onsite investigations; and
- (d) the estimated cost of the specific project.

**History:** En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part); amd. Sec. 1, Ch. 648, L. 1991; amd. Sec. 1, Ch. 40, L. 2001.

**75-7-211. Consultation with local planning board.** (1) Where a planning board has been created under 76-1-104 for the area containing the lake in question, the governing body shall seek the recommendation of the planning board as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit and may require the applicant to submit additional information before the board reports its recommendations.

(2) In areas where a planning board is not established, the functions of a planning board under this section shall be exercised by the local governing body.

**History:** En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part).

**75-7-212. Issuance of permit.** (1) Unless the applicant agrees to an extension of time, the governing body shall grant or deny permission for the work within 90 days of receiving an application for a permit.

(2) If the governing body finds that the proposed work conforms to the criteria for issuing a permit, it shall issue a permit or conditional permit.

(3) If the governing body finds that the work does not conform to the criteria, it shall deny the application.

**History:** En. 89-3706 by Sec. 6, Ch. 527, L. 1975; R.C.M. 1947, 89-3706.

**75-7-213. Variance procedure.** A governing body which proposes to grant a variance from its regulations under this part shall first prepare an environmental impact statement, at the expense of the applicant, which conforms to the requirements of regulations adopted pursuant to this part, distribute this statement to interested residents, and conduct a public hearing on the proposed action.

**History:** En. 89-3707 by Sec. 7, Ch. 527, L. 1975; R.C.M. 1947, 89-3707.

**75-7-214. Cooperation between governing bodies.** If a lake, as defined by this part, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this part and establish compatible criteria for denial or issuance of permits.

**History:** En. 89-3709 by Sec. 9, Ch. 527, L. 1975; R.C.M. 1947, 89-3709.

**75-7-215. Judicial enforcement and review.** The district court may hear and decide the following cases arising under this part within the district:

(1) a complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake;

(2) a petition of an interested person for review of a final action of a governing body upon an application for a permit;

(3) a petition of an interested person for review of an action of a governing body in adopting or amending regulations.

**History:** En. 89-3710 by Sec. 10, Ch. 527, L. 1975; R.C.M. 1947, 89-3710.

**75-7-216. Penalty.** (1) A person who violates an order issued under this part or who knowingly violates a regulation made under this part commits a misdemeanor and on conviction may be sentenced to 30 days in the county jail or fined \$500, or both.

(2) Fines collected under this section, except those collected in a justice's court, shall be paid to the general fund of the county where the offense was committed for the purpose of administering this part.

**History:** En. 89-3711 by Sec. 11, Ch. 527, L. 1975; R.C.M. 1947, 89-3711; amd. Sec. 44, Ch. 557, L. 1987.



**75-7-217. Funding.** In compliance with 1-2-112, the administration of this part is declared a public purpose of a city or county which may be paid out of permit application fees collected under 75-7-210 and federal revenue sharing moneys.

**History:** En. 89-3712 by Sec. 12, Ch. 527, L. 1975; R.C.M. 1947, 89-3712.

# TITLE 76

## LAND RESOURCES AND USE

Ch.

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2. Planning and Zoning.
3. Local Regulation of Subdivisions.
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### CHAPTER 1 PLANNING BOARDS

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### Part 1 General Provisions

**76-1-101. Planning boards authorized.** The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county or any combination thereof may create a planning board in order to promote the orderly development of its governmental units and its environs.

**History:** En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

**76-1-102. Purpose.** (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

**History:** En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

**76-1-103. Definitions.** As used in this chapter, the following definitions apply:

- (1) “City” includes incorporated cities and towns.
- (2) “City council” means the chief legislative body of a city or incorporated town.
- (3) “Governing body” or “governing bodies” means the governing body of any governmental unit represented on a planning board.
- (4) “Growth policy” means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to this chapter on or after October 1, 1999.
- (5) “Land use management techniques and incentives” include but are not limited to zoning regulations, subdivision regulations, and market incentives.
- (6) “Market incentives” may include but are not limited to an expedited subdivision review process authorized by 76-3-609, reductions in parking requirements, and a sliding scale of development review fees.
- (7) “Mayor” means mayor of a city.
- (8) “Neighborhood plan” means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail.
- (9) “Person” means any individual, firm, or corporation.
- (10) “Planning board” means a city planning board, a county planning board, or a joint city-county planning board.
- (11) “Plat” means a subdivision of land into lots, streets, and areas, marked on a map or plan, and includes replats or amended plats.

(12) “Public place” means any tract owned by the state or its subdivisions.

(13) “Streets” includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(14) “Utility” means any facility used in rendering service that the public has a right to demand.

**History:** En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; R.C.M. 1947, 11-3803(part); amd. Sec. 1, Ch. 266, L. 1979; amd. Sec. 4, Ch. 582, L. 1999; amd. Sec. 1, Ch. 599, L. 2003; amd. Sec. 1, Ch. 455, L. 2007.

**76-1-104. Procedure to establish county planning board — protest.** (1) Before a county planning board may be created, the board of county commissioners shall by resolution give public notice of their intent to create such planning board and of a public hearing thereon by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than 15 or more than 30 days prior to the date of hearing.

(2) A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than 60 days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated limits of each city and town in the county.

**History:** En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

**76-1-105. Role of county in formation of city planning board.** (1) Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing the county commissioners of the county in which the city is located of their intention to form a city planning board.

(2) The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within 30 days from receipt of notice of the city’s intention to form a planning board. In the event the county commissioners so elect, the planning board to be so formed shall be a city-county planning board.

**History:** En. Sec. 5, Ch. 246, L. 1957; R.C.M. 1947, 11-3805.

**76-1-106. Role of planning board.** (1) To ensure the promotion of public health, safety, morals, convenience, or order or the general welfare and for the sake of efficiency and economy in the process of community development, if requested by the governing body, the planning board shall prepare a growth policy and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands; or

(d) the laying out and development of public ways and services to platted and unplatted lands.

**History:** En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(1), (2); amd. Sec. 5, Ch. 582, L. 1999; amd. Sec. 2, Ch. 599, L. 2003.

**76-1-107. Role of planning board in relation to subdivisions and plats.** (1) Except as provided in subsection (2), the governing body of any city, town, or county that has formed a planning board and adopted a growth policy pursuant to this chapter and subdivision regulations pursuant to chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

(2) The planning board may delegate to its staff its responsibility under subsection (1) to advise the governing body on any or all proposed minor subdivisions.

**History:** En. Sec. 2, Ch. 19, L. 1971; R.C.M. 1947, 11-3842.1; amd. Sec. 6, Ch. 582, L. 1999.

**76-1-108. City-county planning board as a zoning commission.** The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under 76-2-307.

**History:** En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(3).



**76-1-109. Interaction of local government and city-county planning board.** The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board, but the governing bodies shall not be bound by such recommendations.

**History:** En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(4).

**76-1-110. Cooperation with planning board by state and local governments.** Whenever the board undertakes the preparation of a growth policy, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, information, documents, and plans that have been prepared or, upon the request of the board, shall provide any information that relates to the board's activity.

**History:** En. Sec. 29, Ch. 246, L. 1957; R.C.M. 1947, 11-3829; amd. Sec. 7, Ch. 582, L. 1999.

**76-1-111. Representation of county or additional cities or towns on existing boards.** (1) Any city, county, or town or any combination of cities, counties, or towns wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented on the board, obtain representation on the board and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership, as well as the jurisdictional area of any board, may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town that becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of representation. Subject to 15-10-420, the governing bodies of any represented city, county, or town may levy on all property that is added to the jurisdictional area of an existing board by representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 40.

**History:** En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971; R.C.M. 1947, 11-3815; amd. Sec. 137, Ch. 584, L. 1999; amd. Sec. 189, Ch. 574, L. 2001.

**76-1-112. Joint or consolidated planning boards.** (1) Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board or with any combination of these boards.

(2) The manner of combination must be by interlocal agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.

(3) The interlocal agreement must:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties, and manner of sharing costs of the combined board which may, subject to subsection (6), be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing city, county, and city-county planning boards must be dissolved and the consolidated board has the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning boards may not be dissolved and the joint board has the rights, duties, powers, and obligations that are contained in the interlocal agreement.

(6) Membership of any city-county board formed pursuant to this section must have representation consistent with the requirements of part 2 of this chapter.

**History:** En. 11-3815.1 by Sec. 1, Ch. 101, L. 1975; R.C.M. 1947, 11-3815.1; amd. Sec. 1, Ch. 274, L. 1997.

**76-1-113. Effect of chapter on natural resources.** (1) Except as provided in subsection (2), nothing in this chapter may be considered to authorize an ordinance, resolution, or rule that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located

within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2.

**History:** En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959; R.C.M. 1947, 11-3853; amd. Sec. 1, Ch. 408, L. 1991.

## Part 2 Membership

**76-1-201. Membership of city-county planning board.** (1) Except as provided in subsection (2), a city-county planning board consists of no fewer than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member to be appointed by the board of supervisors of a conservation district provided for in 76-15-311 from the members or associate members of the board of supervisors, subject to approval of the members provided for in subsections (1)(a) through (1)(d).

(2) Subsection (1)(e) does not apply if there is no member or associate member of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In that case, the ninth member of the city-county planning board must be selected by the eight officers and citizen members pursuant to subsections (1)(a) through (1)(d), with the consent and approval of the board of county commissioners and the city council.

**History:** En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(part); amd. Sec. 1, Ch. 192, L. 1979; amd. Sec. 1, Ch. 509, L. 1985; amd. Sec. 1, Ch. 151, L. 2007.

**76-1-202. Qualifications of citizen members of city-county planning board.** (1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

**History:** (1)Ap. p. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; Ap. p. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; Sec. 11-3810, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3810(part), 11-3812(part), 11-3813.

**76-1-203. Term of members of county and city-county planning boards.** The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

**History:** En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(3).

**76-1-204. Vacancies on county and city-county planning boards.** (1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.

(2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.

(3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.

(4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

**History:** En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971; R.C.M. 1947, 11-3811.

**76-1-205 through 76-1-210 reserved.**

**76-1-211. Membership of county planning board.** (1) County planning boards consist of not less than five members appointed by the board of county commissioners. At least one member of a county planning board existing on or formed after July 1, 1973, must be a member of the governing board of a conservation district as provided for in chapter 15, an associate member of a conservation district designated by the governing board of a conservation district, or a member of a state cooperative grazing district if officers of either of the districts or the designated associate member of a conservation district reside in the county.

(2) If a city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing the cities or towns must be appointed by the respective city councils.

**History:** En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(2); amd. Sec. 2, Ch. 151, L. 2007.

**76-1-212. Citizen members of county planning board.** (1) The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

**History:** (1)En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3812(part), 11-3813.

**76-1-213 through 76-1-220 reserved.**

**76-1-221. Membership of city planning board.** (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

**History:** (1)En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959; Sec. 11-3804, R.C.M. 1947; (2)En. Sec. 7, Ch. 246, L. 1957; Sec. 11-3807, R.C.M. 1947; R.C.M. 1947, 11-3804(part), 11-3807.

**76-1-222. City council member of city planning board.** (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member must be coextensive with the term of office to which the member has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless the member's term is terminated as provided in this part.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board.



**History:** En. Sec. 6, Ch. 246, L. 1957; R.C.M. 1947, 11-3806; amd. Sec. 2511, Ch. 56, L. 2009.

**76-1-223. County representative for city planning board.** When a city council has enacted an ordinance creating a city planning board or when a vacancy occurs in the county's membership on the city planning board, the board of county commissioners of the county in which the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. The mayor may not reject or refuse to appoint to the city planning board a representative designated by a board of county commissioners as provided in this section, but if the county fails to designate a representative, then the mayor may appoint as a representative of the county a person of the mayor's own choosing and at the mayor's sole discretion.

**History:** En. Sec. 14, Ch. 246, L. 1957; R.C.M. 1947, 11-3814; amd. Sec. 2, Ch. 266, L. 1979; amd. Sec. 1, Ch. 269, L. 2003.

**76-1-224. Citizen members of city planning board.** (1) The citizen members shall:

(a) be qualified by knowledge and experience in matters pertaining to the development of the city; and

(b) hold no other office in the city government.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the city.

**History:** En. Secs. 8, 13, Ch. 246, L. 1957; amd. Secs. 3, 5, Ch. 247, L. 1963; R.C.M. 1947, 11-3808, 11-3813; amd. Sec. 3, Ch. 266, L. 1979.

### **Part 3 Organization and Administration**

**76-1-301. Planning board meetings.** (1) The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

(2) Special meetings of the planning board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all members, at least 2 days in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting or if all members are present at the special meeting.

**History:** En. Secs. 16, 17, Ch. 246, L. 1957; R.C.M. 1947, 11-3816, 11-3817.

**76-1-302. Planning board officers.** At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

**History:** En. Sec. 21, Ch. 246, L. 1957; R.C.M. 1947, 11-3821.

**76-1-303. Offices.** The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

**History:** En. Sec. 23, Ch. 246, L. 1957; R.C.M. 1947, 11-3823.

**76-1-304. Quorum — official action.** (1) A majority of members constitutes a quorum.

(2) An action of the planning board is not official unless a quorum is present and unless the action is authorized by a majority of the quorum at a regular or properly called special meeting.

**History:** En. Sec. 18, Ch. 246, L. 1957; amd. Sec. 6, Ch. 247, L. 1963; R.C.M. 1947, 11-3818; amd. Sec. 1, Ch. 172, L. 2007.

**76-1-305. Administration of board.** To effectuate the purpose of this chapter, the board shall have the power and duty to:

(1) exercise general supervision of and make regulations for the administration of the affairs of the board;

(2) prescribe uniform rules pertaining to investigations and hearings;

(3) keep an accurate and complete record of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the board;

(4) make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction;



(5) prepare, publish, and distribute reports, proposed ordinances and proposed resolutions, and other material relating to the activities authorized under this chapter.

**History:** En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; R.C.M. 1947, 11-3824(part).

**76-1-306. Staff — service contracts.** The governing body shall assign staff employed by the governing body to assist the planning board in conducting its duties. The planning board may delegate to assigned staff the authority to perform ministerial acts in all cases except when final action of the planning board is necessary. The governing body may make contracts for special or temporary services and any professional services.

**History:** (1), (3)En. Sec. 22, Ch. 246, L. 1957; Sec. 11-3822, R.C.M. 1947; (2)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; R.C.M. 1947, 11-3822, 11-3824(part); amd. Sec. 3, Ch. 599, L. 2003.

**76-1-307. Compensation and expenses of board members and employees.** (1) The members of planning boards shall receive no salary for serving on the planning board but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

(2) When the planning board determines that it is necessary for members or employees to attend a regional or national conference or interview in another city, county, or state dealing with planning or related problems, the planning board may pay the actual expenses of the attending members or employees provided the amount has been made available in the board's appropriation.

**History:** (1)En. Sec. 19, Ch. 246, L. 1957; amd. Sec. 1, Ch. 291, L. 1974; Sec. 11-3819, R.C.M. 1947; (2)En. Sec. 20, Ch. 246, L. 1957; amd. Sec. 7, Ch. 247, L. 1963; Sec. 11-3820, R.C.M. 1947; R.C.M. 1947, 11-3819, 11-3820.

## Part 4 Financial Administration

**76-1-401. Fiscal administration.** (1) To effectuate the purpose of this chapter, the board shall have the power and duty to:

(a) supervise the fiscal affairs and responsibilities of the board;

(b) prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

(2) The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this chapter.

**History:** (1)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; (2)En. Sec. 26, Ch. 246, L. 1957; Sec. 11-3826, R.C.M. 1947; R.C.M. 1947, 11-3824(part), 11-3826.

**76-1-402. Funding of board operation.** (1) After a city council has by ordinance, a board of county commissioners has by ordinance and resolution, or a city council and board of county commissioners have by ordinance and resolution created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

(2) When a planning board has been created by agreement of more than one governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

**History:** En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(1), (2).

**76-1-403. Tax levy by county for certain county planning districts authorized.** When a county planning board has been established, the board of county commissioners may create a planning district that must include the property that lies outside the limits of the jurisdictional area, as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established, as well as that property that lies outside the limits of any incorporated cities and

towns. Subject to 15-10-420, the board of county commissioners may levy a tax on the taxable value of all taxable property located within the planning district for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

**History:** En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(5); amd. Sec. 4, Ch. 266, L. 1979; amd. Sec. 138, Ch. 584, L. 1999; amd. Sec. 190, Ch. 574, L. 2001.

**76-1-404. Tax levy by county for city-county planning board authorized.** When a city-county planning board has been established, the board of county commissioners may create a planning district that must include the property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 that lies outside the limits of any incorporated cities and towns. Subject to 15-10-420, the board of county commissioners may levy on the taxable value of all taxable property located within the planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

**History:** En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(4); amd. Sec. 139, Ch. 584, L. 1999; amd. Sec. 191, Ch. 574, L. 2001.

**76-1-405. Repealed.** Sec. 253, Ch. 574, L. 2001.

**History:** En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part); amd. Sec. 140, Ch. 584, L. 1999.

**76-1-406. Tax levy by municipalities authorized.** Subject to 15-10-420, the governing body of any city or town represented on a planning board may levy a tax upon the taxable value of all taxable property located within the city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

**History:** En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(3); amd. Sec. 5, Ch. 266, L. 1979; amd. Sec. 141, Ch. 584, L. 1999; amd. Sec. 192, Ch. 574, L. 2001.

**76-1-407. Repealed.** Sec. 253, Ch. 574, L. 2001.

**History:** En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part); amd. Sec. 142, Ch. 584, L. 1999.

**76-1-408. Acceptance and administration of gifts and donations.** (1) A city, county, or city-county planning board organized pursuant to the provisions of this chapter is hereby empowered and given the right to:

(a) accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest or any property (real, personal, or mixed) or any improved or unimproved park or playground; and

(b) utilize, hold, or dispose of the same for planning purposes not inconsistent with the provisions of this chapter.

(2) Any money so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board.

**History:** En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part).

**76-1-409. Acceptance and administration of government funds and services.** Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, from state or local governments or their agencies and instrumentalities, or from civic sources; may contract with respect thereto; and may provide such information and reports as may be necessary to secure such financial aid.

**History:** En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part); amd. Sec. 6, Ch. 266, L. 1979.

**76-1-410. Planning fees — limit.** (1) Governing bodies that have committed in a resolution to adopting or that have adopted a growth policy that includes the provisions of 76-1-601(4)(c) may assess planning fees to pay for services that fulfill the purposes of Title 76, chapter 1. The planning fees are in addition to any other fees authorized by law and may be collected as part of either subdivision applications or zoning permits.

(2) Planning fees may not exceed \$50 for each residential lot or unit or \$250 for each commercial, industrial, or other type of lot or unit.

**History:** En. Sec. 3, Ch. 455, L. 2007.

## Part 5 Jurisdictional Area

**76-1-501. Jurisdictional area of county planning board.** The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507. Should any city or town become represented on the county planning board pursuant to 76-1-111, the jurisdictional area of the county planning board shall be extended to include that city or town.

**History:** En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(1).

**76-1-502. Filing of map of jurisdictional area of county planning board — revision of boundaries.** The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

**History:** En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(2).

**76-1-503. Resolution of conflicts involving jurisdictional area of county planning boards.** (1) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in 76-1-502 and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(2) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies, and a map showing the boundary lines so agreed upon shall be filed as provided in 76-1-502 and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

**History:** En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(3), (4).

**76-1-504. Jurisdictional area of city-county planning board.** The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

**History:** En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

**76-1-505. Extension of boundaries of city-county planning board jurisdictional area.** (1) The boundaries of the jurisdictional area can be extended further than 4½ miles from the limits of the cities only upon petition signed by 5% or more of the resident freeholders living in excess of 4½ miles and not more than 12 miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits and upon presentation of said petition to the board of county commissioners.

(2) Thereafter, the board of county commissioners must by resolution set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition by publication of notice of time and place of hearing on said petition and resolution. Said notice is to be published in a newspaper published in the county not less than 10 or more than 20 days prior to the date of said hearing. Thereafter, the boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall



not be adopted by the board of county commissioners if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than 12 miles beyond the limits of any city within the jurisdictional area.

**History:** En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

**76-1-506. Filing of map of jurisdictional area of city-county planning board — revision of boundaries.** The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

**History:** En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(2).

**76-1-507. Resolution of conflicts over jurisdictional areas of several city-county planning boards.** In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. A map showing the boundary lines so agreed upon and approved shall be filed as provided in 76-1-506 and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

**History:** En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(3).

**76-1-508. Planning projects outside city-county planning board jurisdictional area — broad construction.** (1) Any city-county planning board organized pursuant to the provisions of this chapter is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county and outside of the jurisdictional area of said city-county planning board as defined in 76-1-504 through 76-1-507.

(2) Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

**History:** En. Sec. 1, Ch. 190, L. 1965; R.C.M. 1947, 11-3830.1.

## Part 6 Growth Policy

**76-1-601. Growth policy — contents.** (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources;

(viii) sand and gravel resources; and

(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;



- (c) projected trends for the life of the growth policy for each of the following elements:
  - (i) land use;
  - (ii) population;
  - (iii) housing needs;
  - (iv) economic conditions;
  - (v) local services;
  - (vi) natural resources; and
  - (vii) other elements proposed by the planning board and adopted by the governing bodies;
- (d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);
- (e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;
  - (f) an implementation strategy that includes:
    - (i) a timetable for implementing the growth policy;
    - (ii) a list of conditions that will lead to a revision of the growth policy; and
    - (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;
  - (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:
    - (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;
    - (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;
  - (h) a statement explaining how the governing bodies will:
    - (i) define the criteria in 76-3-608(3)(a); and
    - (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);
  - (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
  - (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
    - (i) delineate the wildland-urban interface; and
    - (ii) adopt regulations requiring:
      - (A) defensible space around structures;
      - (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and
      - (C) adequate water supply for fire protection.
- (4) A growth policy may:
  - (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.
  - (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
  - (c) establish an infrastructure plan that, at a minimum, includes:
    - (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;
    - (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;
    - (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;
    - (iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(d) include any elements required by a federal land management agency in order for the governing body to establish coordination or cooperating agency status as provided in 76-1-607.

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter.

**History:** Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831; amd. Sec. 8, Ch. 582, L. 1999; amd. Sec. 4, Ch. 599, L. 2003; amd. Sec. 1, Ch. 443, L. 2007; amd. Sec. 2, Ch. 455, L. 2007; amd. Sec. 2, Ch. 446, L. 2009; amd. Sec. 2, Ch. 65, L. 2013.

**76-1-602. Public hearing on proposed growth policy.** (1) Prior to the submission of the proposed growth policy to the governing bodies, the board shall give notice and hold a public hearing on the growth policy.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

**History:** En. Sec. 33, Ch. 246, L. 1957; amd. Sec. 13, Ch. 247, L. 1963; R.C.M. 1947, 11-3833; amd. Sec. 9, Ch. 582, L. 1999.

**76-1-603. Adoption of growth policy by planning board.** After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution:

(1) recommend the proposed growth policy and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the planning board;

(2) recommend that a growth policy not be adopted; or

(3) recommend that the governing body take some other action related to preparation of a growth policy.

**History:** En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963; R.C.M. 1947, 11-3834; amd. Sec. 10, Ch. 582, L. 1999; amd. Sec. 5, Ch. 599, L. 2003.

**76-1-604. Adoption, revision, or rejection of growth policy.** (1) The governing body shall adopt a resolution of intention to adopt, adopt with revisions, or reject the proposed growth policy.

(2) If the governing body adopts a resolution of intention to adopt a growth policy, the governing body may submit to the qualified electors of the area covered by the growth policy proposed by the governing body at the next primary or general election or at a special election the referendum question of whether or not the growth policy should be adopted. A special election must be held in conjunction with a regular or primary election.

(3) A governing body may:

(a) revise an adopted growth policy following the procedures in this chapter for adoption of a proposed growth policy; or

(b) repeal a growth policy by resolution.

(4) The qualified electors of the area covered by the growth policy may by initiative or referendum adopt, revise, or repeal a growth policy under this section. A petition for initiative or referendum must contain the signatures of 15% of the qualified electors of the area covered by the growth policy.

(5) A master plan adopted pursuant to this chapter before October 1, 1999, may be repealed following the procedures in this section for repeal of a growth policy.

(6) Until October 1, 2006, a master plan that was adopted pursuant to this chapter before October 1, 1999, may be revised following the procedures in this chapter for revision of a growth policy.

(7) Except as otherwise provided in this section, the provisions of Title 7, chapter 5, part 1, apply to an initiative or referendum under this section.

**History:** En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 1, Ch. 541, L. 1981; amd. Sec. 68, Ch. 387, L. 1995; amd. Sec. 11, Ch. 582, L. 1999; amd. Sec. 1, Ch. 87, L. 2003; amd. Sec. 6, Ch. 599, L. 2003.

**76-1-605. Use of adopted growth policy.** (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to 76-1-601 must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

(c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

**History:** En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 12, Ch. 582, L. 1999; amd. Sec. 1, Ch. 527, L. 2001; amd. Sec. 7, Ch. 599, L. 2003.

**76-1-606. Effect of growth policy on subdivision regulations.** When a growth policy has been approved, the subdivision regulations adopted pursuant to chapter 3 of this title must be made in accordance with the growth policy.

**History:** En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971; R.C.M. 1947, 11-3842; amd. Sec. 13, Ch. 582, L. 1999; amd. Sec. 2, Ch. 527, L. 2001.

**76-1-607. Growth policy — use and amendment for coordination and cooperation with federal agencies.** (1) A local governing body may use a growth policy as a resource management plan for the purposes of establishing coordination or cooperating agency status with a federal land management agency.

(2) The governing body may amend the growth policy to include any elements required by a federal land management agency to establish coordination or cooperating agency status.

**History:** En. Sec. 1, Ch. 65, L. 2013.

## CHAPTER 2 PLANNING AND ZONING

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**Part 1  
County Planning and Zoning Commission**

**76-2-101. Planning and zoning commission and district.** (1) Subject to the provisions of subsections (5) and (6), whenever the public interest or convenience may require and upon petition of 60% of the affected real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and may appoint a planning and zoning commission consisting of up to seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word “district” means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within 6 months after the date of the order by the board of county commissioners creating the district.

(5) If real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 90 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year.

(6) (a) Before the board of county commissioners determines whether the number of affected real property owners necessary to meet the petition requirement of subsection (1) has been met, draft documents of the proposed materials that may potentially govern the proposed district must be made available to the board of county commissioners. Draft documents of the proposed materials required in this subsection (6) may include but are not limited to drafts of:

- (i) a development pattern as provided in 76-2-104;
- (ii) a resolution as provided in 76-2-107; and
- (iii) the land use and zoning regulations as provided in 76-2-107.

(b) The final adopted development pattern, resolutions, and other materials that govern the zoning district as required in 76-2-104 and 76-2-107 must be similar to the draft documents provided to the county commissioners as required in subsection (6)(a).

**History:** (1), (2)En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; Sec. 16-4101, R.C.M. 1947; (3) En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955; Sec. 16-4107, R.C.M. 1947; R.C.M. 1947, 16-4101(part), 16-4107; (4)En. Sec. 1, Ch. 441, L. 1989; amd. Sec. 1, Ch. 591, L. 1995; amd. Sec. 1, Ch. 288, L. 2001; amd. Sec. 3, Ch. 446, L. 2009; amd. Sec. 1, Ch. 533, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 533 in (1) near beginning inserted reference to subsection (6), after “planning and zoning district” inserted “may”, and near end after “planning and zoning commission consisting of” inserted “up to”; in (5) after “establishment of the district within” substituted “90 days” for “30 days”; inserted (6) concerning requirement to provide draft documents before the board of county commissioners determines whether the number of affected real property owners necessary to meet the petition requirement of subsection (1) has been met, the contents of the draft documents, and the requirement that the final adopted development plan be similar to the draft documents; and made minor changes in style. Amendment effective May 14, 2021.

**76-2-102. Organization and operation of commission.** (1) The planning and zoning commission consists of three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district.

**History:** En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; R.C.M. 1947, 16-4101(part); amd. Sec. 137, Ch. 27, Sp. L. November 1993; amd. Sec. 143, Ch. 584, L. 1999; amd. Sec. 2, Ch. 288, L. 2001; amd. Sec. 193, Ch. 574, L. 2001; amd. Sec. 4, Ch. 446, L. 2009.

**76-2-103. Powers of commission and employees.** (1) In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this part.

(2) The planning and zoning commission and any of its members, officers, and employees in the performance of their functions may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

**History:** En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

**76-2-104. Development pattern.** (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

**History:** En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

**76-2-105. Continuation of prior nonconforming uses.** Existing nonconforming uses may be continued although not in conformity with such zoning regulations.

**History:** En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

**76-2-106. Adoption of development district.** (1) Adoption by the planning and zoning commission of the development district or any change therein may be in whole or in part but must be by the affirmative vote of the majority of the whole commission, provided, however, that

prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected.

(2) The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district shall refer expressly to the maps, charts, and descriptive matters forming the pattern or part thereof. The board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

**History:** En. Sec. 3, Ch. 154, L. 1953; R.C.M. 1947, 16-4103.

**76-2-107. Preparation of resolutions and other materials.** (1) The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part of the development districts previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity of the development districts and the official maps and including procedure for appeals from decisions made under the authority of the regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is authorized to adopt these resolutions.

(2) Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101.

**History:** En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part); amd. Sec. 5, Ch. 446, L. 2009.

**76-2-108. Permits authorized.** The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration, or enlargement of any building or structure otherwise subject to the provisions of this part and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

**History:** En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

**76-2-109. Effect on natural resources.** (1) Regulations adopted under this part may not regulate lands used for grazing, horticulture, agriculture, the growing of timber, or the complete use, development, or recovery of any mineral.

(2) (a) A provision of this part may not be construed to alter Montana law regarding the primacy of the mineral estate, to limit access to the mineral estate, or to limit development of the mineral estate.

(b) A regulation, resolution, or rule adopted pursuant to the provisions of this part may not prevent the complete use, development, or recovery of any mineral that is under the jurisdiction of the board of oil and gas conservation pursuant to Title 82, chapter 11, part 1.

**History:** En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part); amd. Sec. 1, Ch. 526, L. 2021; amd. Sec. 2, Ch. 533, L. 2021.

#### **Compiler's Comments**

*2021 Amendments — Composite Section:* Chapter 526 in (1) at beginning substituted “Regulations adopted under this part may not regulate” for “No planning district or recommendations adopted under this part shall regulate” and at end inserted “or the complete use, development, or recovery of any mineral”; and inserted (2) concerning limitations on the construction of this part and regulations adopted under this part. Amendment effective May 14, 2021.

Chapter 533 in (1) substituted “Regulations adopted under this part may not regulate” for “No planning district or recommendations adopted under this part shall regulate” and at end inserted “or the complete use, development, or recovery of any mineral”; inserted (2) concerning the construction of this section and limitations on a resolution or rule adopted pursuant to the provisions of this part; and made minor changes in style. Amendment effective May 14, 2021.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

**76-2-110. Appeal procedure.** Any person aggrieved by any decision of the commission or the board of county commissioners may, within 30 days after such decision or order, appeal to the district court in the county in which the property involved is located.

**History:** En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).



**76-2-111. Cooperation by public agencies with commission.** All public officials, departments, and agencies having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

**History:** En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

**76-2-112. Effect on powers of incorporated communities to plan adjacent areas.** The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this part except and until the board of county commissioners having jurisdiction over such adjacent area establishes a planning commission and adopts initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

**History:** En. Sec. 6, Ch. 154, L. 1953; R.C.M. 1947, 16-4106.

**76-2-113. Enforcement of zoning provisions.** If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

- (1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
- (2) restrain, correct, or abate a violation;
- (3) prevent the occupancy of a building, structure, or land; or
- (4) prevent any illegal act, conduct, business, or use in or near the premises.

**History:** En. Sec. 3, Ch. 288, L. 2001.

**76-2-114. Housing fees and dedication of real property prohibited.** (1) A local governing body may not adopt a resolution under this part that includes a requirement to:

- (a) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or
  - (b) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices.
- (2) A dedication of real property as prohibited in subsection (1)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

**History:** En. Sec. 1, Ch. 249, L. 2021.

**Compiler's Comments**

*Effective Date:* Section 7, Ch. 249, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 19, 2021.

**76-2-115 and 76-2-116 reserved.**

**76-2-117. Addition of territory adjacent to existing planning and zoning district.** Territory that is directly adjacent to an existing planning and zoning district but that is not part of the district may be added to the district subject to the procedures provided in this part.

**History:** En. Sec. 1, Ch. 439, L. 2003.

## Part 2 County Zoning

**76-2-201. County zoning authorized.** (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.

(2) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may, until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan.



**History:** En. Sec. 1, Ch. 246, L. 1963; R.C.M. 1947, 16-4701; amd. Sec. 14, Ch. 582, L. 1999; amd. Sec. 2, Ch. 87, L. 2003; amd. Sec. 8, Ch. 599, L. 2003.

**76-2-202. Establishment of zoning districts — regulations.** (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507 and for the purposes provided in 76-2-201, the board of county commissioners may by resolution establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within 6 months after the date of the order by the board of county commissioners creating the district or adopting the regulations.

(2) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(3) The regulations in one district may differ from those in other districts.

(4) As used in this section, “manufactured housing” means a dwelling for a single household, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

**History:** En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971; R.C.M. 1947, 16-4703; (1)(b)En. Sec. 2, Ch. 441, L. 1989; amd. Sec. 1, Ch. 505, L. 1993; amd. Sec. 274, Ch. 42, L. 1997; amd. Sec. 236, Ch. 542, L. 2005; amd. Sec. 123, Ch. 596, L. 2005; amd. Sec. 6, Ch. 446, L. 2009.

**76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

(a) made in accordance with the growth policy; and

(b) designed to:

(i) secure safety from fire and other dangers;

(ii) promote public health, public safety, and general welfare; and

(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the board of county commissioners shall consider:

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;

(d) the character of the district and its peculiar suitability for particular uses; and

(e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities.

(4) Zoning regulations may not include a requirement to:

(a) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(b) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices.

(5) A dedication of real property as prohibited in subsection (4)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

**History:** En. Sec. 4, Ch. 246, L. 1963; R.C.M. 1947, 16-4704; amd. Sec. 15, Ch. 582, L. 1999; amd. Sec. 3, Ch. 87, L. 2003; amd. Sec. 7, Ch. 446, L. 2009; amd. Sec. 4, Ch. 249, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 249 inserted (4) concerning prohibition on zoning regulations requiring a fee or dedication of real property for the purpose of providing housing; and inserted (5) concerning the meaning of a dedication of real property. Amendment effective April 19, 2021.

**76-2-204. Role of planning boards.** (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.

(2) This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

**History:** En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971; R.C.M. 1947, 16-4702.

**76-2-205. Procedure for adoption of regulations and boundaries.** The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must:

(a) state:

(i) the boundaries of the proposed district;

(ii) the general character of the proposed zoning regulations;

(iii) the time and place of the public hearing;

(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(b) be posted not less than 45 days before the public hearing in at least five public places, including but not limited to public buildings and adjacent to public rights-of-way, within the proposed district; and

(c) be published once a week for 2 weeks in a newspaper of general circulation within the county.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written comments on the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the comment period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district.

**History:** En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971; R.C.M. 1947, 16-4705; amd. Sec. 2, Ch. 591, L. 1995; amd. Sec. 8, Ch. 446, L. 2009; amd. Sec. 2, Ch. 380, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 380 in (5)(d) near middle substituted "written comments on" for "written protests to"; in (6) in first sentence substituted "comment period" for "protest period" and deleted former last sentence (see 2021 Session Law for former text); and made minor changes in style. Amendment effective May 3, 2021.

*Applicability:* Section 6, Ch. 380, L. 2021, provided: “[Sections 1 and 2] apply to zoning districts created pursuant to Title 76, chapter 2, part 2, on or after January 1, 2021.”

**76-2-206. Interim zoning district or regulation.** (1) Except as provided in 76-2-240 and subject to subsection (3) of this section, the board of county commissioners may establish an interim zoning district or interim regulation to address an emergency that involves the public health, safety, morals, or general welfare if:

(a) the purpose of the interim zoning district or interim regulation is to classify those uses and related matters that must be regulated to mitigate the emergency; and

(b) within 30 working days, the county initiates a study or investigation to verify that an emergency exists and to identify the facts and circumstances that constitute the emergency, the potential options for mitigating the emergency, and the course of action that the governing body intends to take, if any, during the term of the interim zoning district or interim regulation to mitigate the emergency.

(2) A resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. Subject to subsections (4) and (5), the board of county commissioners may extend the resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published as provided in 7-1-2121. In addition to the requirements of 7-1-2121, the notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation, including how those uses and related matters that must be regulated to mitigate the emergency will be classified and regulated; and

(iv) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation.

(4) The board of county commissioners shall observe the following procedures in the extension of a resolution pursuant to subsection (2):

(a) A study or investigation as provided in subsection (1)(b) must be completed prior to the hearing on the proposed extension of the resolution.

(b) Notice of a public hearing on the proposed extension of the resolution must be published as provided in 7-1-2121. In addition to the requirements of 7-1-2121, the notice must state:

(i) the boundaries of the existing interim zoning district;

(ii) the specific emergency that compelled the establishment of the existing interim zoning district or interim regulation and the reason for the proposed extension of the resolution; and

(iii) that the proposed extension of the resolution is on file for public inspection at the office of the county clerk and recorder.

(c) At the public hearing, which must be held prior to the expiration of the existing interim zoning district or interim zoning regulation, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed extension of the resolution.

(5) After the hearing provided for in subsection (4), the board of county commissioners may in its discretion extend the resolution for the interim zoning district or interim regulation.

**History:** En. 16-4711 by Sec. 20, Ch. 273, L. 1971; R.C.M. 1947, 16-4711; amd. Sec. 16, Ch. 582, L. 1999; amd. Sec. 4, Ch. 87, L. 2003; amd. Sec. 9, Ch. 446, L. 2009; amd. Sec. 5, Ch. 56, L. 2013; amd. Sec. 1, Ch. 416, L. 2013.



**76-2-207. Permits authorized.** The board of county commissioners may provide for the issuance of location or conformance permits and may collect a fee for each such permit. The proceeds of such fees shall be deposited in the general fund of the county.

**History:** En. Sec. 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4708(part).

**76-2-208. Continuation of nonconforming uses.** Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution.

**History:** En. Sec. 9, Ch. 246, L. 1963; R.C.M. 1947, 16-4709.

**76-2-209. Effect on natural resources.** (1) Except as provided in 82-4-431, 82-4-432, and subsection (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest, or agricultural resource.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel or an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to 82-4-432.

(3) Zoning regulations adopted under this chapter and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to 82-4-432 may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel and may condition an operation that mixes concrete or batches asphalt in all zones other than residential.

**History:** En. Sec. 10, Ch. 246, L. 1963; R.C.M. 1947, 16-4710; amd. Sec. 2, Ch. 408, L. 1991; amd. Sec. 1, Ch. 340, L. 2005; amd. Sec. 1, Ch. 545, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 545 in (2) at end after "the board of county commissioners" and in (3) near beginning after "under this chapter" inserted "and in effect prior to the filing of a permit application or at the time a written request is received for a preapplication meeting pursuant to 82-4-432". Amendment effective May 14, 2021.

**76-2-210. Enforcement of zoning provisions.** (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(b) restrain, correct, or abate a violation;

(c) prevent the occupancy of the building, structure, or land; or

(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) For the purposes of enforcing subsections (1)(a) through (1)(c), the county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.

(3) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.

**History:** En. Secs. 7, 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part), 16-4708(part); amd. Sec. 10, Ch. 446, L. 2009.

**76-2-211. Violations and penalties.** A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding \$500 or imprisonment in the county jail not exceeding 6 months or both.

**History:** En. Sec. 7, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part); amd. Sec. 7, Ch. 266, L. 1979.

**76-2-212. Minimum lot size restrictions.** A board of county commissioners may not adopt zoning regulations under this part that require minimum lot sizes in an area zoned for residential use unless:

(1) the zoning regulation requiring minimum lot sizes is applied to land that is within 3 miles of the limits of an incorporated municipality; or

(2) the county has adopted a land use map in its growth policy pursuant to 76-1-601(5) that sets forth projected population densities and recommended minimum lot sizes.



**History:** En. Sec. 3, Ch. 380, L. 2021.

**Compiler's Comments**

*Effective Date:* Section 5, Ch. 380, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 3, 2021.

*Applicability:* Section 6, Ch. 380, L. 2021, provided: "[Sections 1 and 2] apply to zoning districts created pursuant to Title 76, chapter 2, part 2, on or after January 1, 2021."

**76-2-213 through 76-2-215 reserved.**

**76-2-216. Wholly surrounded county property — change of use — hearing.**

(1) If a county parcel for which zoning regulations have been adopted is wholly surrounded by municipal property and a change of an allowed use in the county zoning district occurs, the county governing body shall notify the municipality and all owners of municipal property within 300 feet of the county property of the change of use.

(2) Upon request of either the municipality or at least 10% of the property owners in the municipality who have received the notice, the county governing body shall hold a hearing on the change of use.

(3) If the county governing body determines, based on testimony provided at the hearing, that the regulations in the county district are no longer as compatible as possible with the municipal zoning ordinances as provided in 76-2-203(3), the county governing body may initiate a revision to the zoning district or amendments to the regulations as provided in this part.

**History:** En. Sec. 1, Ch. 274, L. 2013.

**76-2-217 through 76-2-219 reserved.**

**76-2-220. Zoning commission — appointment — duties.** (1) For the purpose of providing an optional method of amending any zoning regulations or zoning classification, the county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications. Such a zoning commission must be composed of at least five citizen members appointed at large from the zoning district. The county commissioners may adopt bylaws for the zoning commission pertaining to the qualifications of the members and such other matters as the commissioners consider necessary.

(2) If a commission is appointed, it shall hold a public hearing to receive relevant testimony. The hearing, which may be held jointly with the hearing by the county commissioners, must be upon at least 15 days' notice of the time and place of the hearing and must be published in the contracted newspaper provided for in 18-7-411 or a newspaper of general circulation in the county. Recommendations of the zoning commission must be submitted to the county commissioners.

**History:** En. Sec. 1, Ch. 462, L. 1981.

**76-2-221. Board of adjustment.** (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment must be held at the call of the presiding officer and at times that the board may determine. The presiding officer or in the presiding officer's absence the acting presiding officer may administer oaths and compel the attendance of witnesses.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part); amd. Sec. 2512, Ch. 56, L. 2009.

**76-2-222. Membership and term of board members — vacancies.** (1) The board of adjustment consists of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.

(2) Vacancies must be filled for the unexpired term of any member whose term becomes vacant.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(1); amd. Sec. 1, Ch. 47, L. 1987; amd. Sec. 275, Ch. 42, L. 1997.

**76-2-223. Powers of board of adjustment.** (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution;

(c) to authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(5), (6).

**76-2-224. Vote needed for board action.** The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution; or to effect any variation in such resolution.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(7).

**76-2-225. Public access to board activities.** (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part)..

**76-2-226. Appeals to board of adjustment.** (1) Appeals to the board of adjustment may be taken by any person or persons, jointly or severally, aggrieved by a decision of the administrative officer or by an officer, department, board, or bureau of the county affected by any decision of the administrative officer. The appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal.

(2) The officer from whom the appeal is taken shall transmit to the board in a timely manner all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In that case, proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice of the hearing as well as due notice to the parties in interest, and decide the appeal within a reasonable time.

(5) At the hearing, a party may appear in person or by the party's attorney.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(3), (4); amd. Sec. 2513, Ch. 56, L. 2009; amd. Sec. 1, Ch. 171, L. 2015.

**76-2-227. Appeals — board of county commissioners or board of adjustment to court of record — county commissioners may establish appeal process.** (1) (a) The board of county commissioners may establish in the zoning regulations a process for an appeal

of a decision by the board of adjustment to the board of county commissioners by any person or persons, jointly or severally, aggrieved by a decision of the board of adjustment or an officer, department, board, or bureau of the county.

(b) The process, if established, must provide that an appeal to the board of county commissioners be initiated by presenting to the board of county commissioners a petition, duly verified, specifying the grounds of the appeal.

(c) The petition must be presented to the board of county commissioners within 30 days after the filing of the decision of the board of adjustment, and a final decision must be made within 60 days of receipt of the petition.

(d) The board of county commissioners shall properly notice and hold a public hearing de novo.

(2) Any person or persons, jointly or severally, aggrieved by a decision of the board of county commissioners or the board of adjustment may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the office of the appropriate board.

(3) Upon presentation of a petition, the court may allow a writ of certiorari directed to the board of county commissioners or the board of adjustment to review the decision of the board and shall prescribe in the writ the time within which a return must be made and served upon the relator's attorney, which may not be less than 10 days and may be extended by the court. The allowance of the writ may not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board of county commissioners or the board of adjustment, and on due cause shown, grant a restraining order. The board of county commissioners or the board of adjustment may not be required to return the original papers acted upon by it, but it is sufficient to return certified or sworn copies of the original papers or of portions of the original papers that may be called for by the writ. The return must concisely set forth other facts that may be pertinent and material to show the grounds of the decision appealed from and must be verified.

(4) If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the proceedings upon which the determination of the court must be made.

(5) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(8) thru (11); amd. Sec. 2514, Ch. 56, L. 2009; amd. Sec. 2, Ch. 171, L. 2015; amd. Sec. 1, Ch. 263, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 263 in (1)(b) at end substituted "specifying the grounds of the appeal" for "setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality"; in (1)(d) at end substituted "shall properly notice and hold a public hearing de novo" for "may"; deleted former (1)(d)(i) through (1)(d)(iii) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2021.

**76-2-228. Awarding of costs upon appeal from board decision.** Costs may not be allowed against the board of county commissioners or the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(12); amd. Sec. 3, Ch. 171, L. 2015.

**76-2-229. Referendum to terminate zoning district.** (1) Real property owners in a zoning district may petition the board of county commissioners to submit a referendum to the registered electors residing in the zoning district to terminate the zoning district. The petition must be in writing and contain the signatures and addresses of 20% or more of the real property owners in the zoning district. The petition requesting a referendum for the termination of a zoning district must be delivered to the county clerk and recorder, who shall endorse on it the date when the petition was received and validate the signatures within 60 days of receipt of the petition. If the petition contains valid signatures of at least 20% of the real property owners within the zoning district, the county clerk and recorder shall notify the county commissioners.



(2) On receipt of a valid petition described in subsection (1), the county commissioners shall submit the referendum to the registered electors residing in the district in an election conducted pursuant to Title 13, chapter 1, part 5.

**History:** En. Sec. 1, Ch. 380, L. 2021.

**Compiler's Comments**

*Effective Date:* Section 5, Ch. 380, L. 2021, provided: “[This act] is effective on passage and approval.” Approved May 3, 2021.

*Applicability:* Section 6, Ch. 380, L. 2021, provided: “[Sections 1 and 2] apply to zoning districts created pursuant to Title 76, chapter 2, part 2, on or after January 1, 2021.”

**76-2-230 through 76-2-239 reserved.**

**76-2-240. Effect on amateur radio antenna.** A resolution or rule adopted pursuant to this part may not:

(1) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator’s license, “technician” or higher class, issued by the federal communications commission of the United States; or

(2) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground.

**History:** En. Sec. 3, Ch. 56, L. 2013.

### Part 3 Municipal Zoning

**76-2-301. Municipal zoning authorized.** For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

**History:** En. Sec. 1, Ch. 136, L. 1929; re-en. Sec. 5305.1, R.C.M. 1935; R.C.M. 1947, 11-2701.

**76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, “manufactured housing” means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

(6) Zoning regulations may not include a requirement to:

(a) pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(b) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices.



(7) A dedication of real property as prohibited in subsection (6)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

**History:** En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(1); amd. Sec. 2, Ch. 505, L. 1993; amd. Sec. 276, Ch. 42, L. 1997; amd. Sec. 237, Ch. 542, L. 2005; amd. Sec. 5, Ch. 249, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 249 inserted (6) concerning prohibition on zoning regulations requiring a fee or dedication of real property for the purpose of providing housing; and inserted (7) concerning the meaning of a dedication of real property. Amendment effective April 19, 2021.

**76-2-303. Procedure to administer certain annexations and zoning laws — hearing and notice.** (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation if the proposed municipal zoning regulations for the annexed property:

- (i) authorize land uses comparable to the land uses authorized by county zoning;
- (ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to Title 76, chapter 2, part 1 or 2; or
- (iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to Title 76, chapter 1, for the annexed property.

(b) A joint hearing authorized under this subsection (3) fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation.

**History:** En. Sec. 4, Ch. 136, L. 1929; re-en. Sec. 5305.4, R.C.M. 1935; R.C.M. 1947, 11-2704; amd. Sec. 1, Ch. 217, L. 1997; amd. Sec. 1, Ch. 355, L. 1999; Sec. 34, Ch. 582, L. 1999; amd. Sec. 5, Ch. 87, L. 2003; amd. Sec. 40, Ch. 19, L. 2011.

**76-2-304. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

- (a) made in accordance with a growth policy; and
- (b) designed to:
  - (i) secure safety from fire and other dangers;
  - (ii) promote public health, public safety, and the general welfare; and
  - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the municipal governing body shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) promotion of compatible urban growth;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

**History:** En. Sec. 3, Ch. 136, L. 1929; re-en. Sec. 5305.3, R.C.M. 1935; R.C.M. 1947, 11-2703; amd. Sec. 17, Ch. 582, L. 1999; amd. Sec. 6, Ch. 87, L. 2003; amd. Sec. 11, Ch. 446, L. 2009.

**76-2-305. Alteration of zoning regulations — protest.** (1) A regulation, restriction, and boundary may be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice apply equally to all changes or amendments.

(2) An amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the city or town council or legislative body of the municipality if a protest against a change pursuant to subsection (1) is signed by the owners of 25% or more of:

- (a) the area of the lots included in any proposed change; or

(b) those lots or units, as defined in 70-23-102, 150 feet from a lot included in a proposed change.

(3) (a) For purposes of subsection (2), each unit owner is entitled to have the percentage of the unit owner's undivided interest in the common elements of the condominium, as expressed in the declaration, included in the calculation of the protest. If the property, as defined in 70-23-102, spans more than one lot, the percentage of the unit owner's undivided interest in the common elements must be multiplied by the total number of lots upon which the property is located.

(b) The percentage of the unit owner's undivided interest must be certified as correct by the unit owner seeking to protest a change pursuant to subsection (2) or by the presiding officer of the association of unit owners.

**History:** En. Sec. 5, Ch. 136, L. 1929; re-en. Sec. 5305.5, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1969; R.C.M. 1947, 11-2705; amd. Sec. 1, Ch. 492, L. 1999; amd. Sec. 1, Ch. 88, L. 2011.

**76-2-306. Interim zoning ordinances.** (1) Except as provided in 76-2-340, the city or town council or other legislative body of the municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required prior to the adoption of a zoning ordinance, may adopt as an urgency measure an interim zoning ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time.

(2) An interim zoning ordinance may be applicable only within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and takes effect upon passage if a hearing is first held upon notice reasonably designed to inform all affected parties. A notice must be published in a newspaper of general circulation at least 7 days before the hearing.

(3) An interim zoning ordinance is no longer in effect 6 months from the date of its adoption. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend the interim zoning ordinance for 1 year. Any extension requires a two-thirds vote for passage and becomes effective upon passage. No more than two extensions may be adopted.

**History:** En. 11-2711 by Sec. 1, Ch. 488, L. 1975; R.C.M. 1947, 11-2711; amd. Sec. 6, Ch. 56, L. 2013.

**76-2-307. Zoning commission.** In order to avail itself of the powers conferred by this part, except 76-2-306, the city or town council or other legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

**History:** En. Sec. 6, Ch. 136, L. 1929; re-en. Sec. 5305.6, R.C.M. 1935; R.C.M. 1947, 11-2706.

**76-2-308. Enforcement of zoning regulations and ordinances.** (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of any regulation or ordinance made thereunder.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

**History:** En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 8, Ch. 266, L. 1979.

**76-2-309. Conflict with other laws.** (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part shall govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; require a lower height of building or a less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by the regulations made under authority of this part, the provisions of such statute or local ordinance or regulation shall govern.

**History:** En. Sec. 9, Ch. 136, L. 1929; re-en. Sec. 5305.9, R.C.M. 1935; R.C.M. 1947, 11-2709.

**76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries.** (1) Except as provided in 76-2-312 and except in locations where a county has adopted zoning or subdivision regulations, a city or town council or other legislative body that has adopted a growth policy pursuant to chapter 1 for the area to be affected by the regulations may extend the application of its zoning or subdivision regulations beyond its limits in any direction subject to the following limits:

- (a) up to 3 miles beyond the limits of a city of the first class as defined in 7-1-4111;
- (b) up to 2 miles beyond the limits of a city of the second class; and
- (c) up to 1 mile beyond the limits of a city or town of the third class.

(2) When two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by 76-2-302, 76-2-311, and this section, then the extension of zoning or subdivision regulations, or both, by these cities must terminate at a boundary line agreed upon by the cities.

**History:** En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part); amd. Sec. 18, Ch. 582, L. 1999; amd. Sec. 9, Ch. 599, L. 2003.

**76-2-311. Administration of regulations in extended area.** (1) A city or town council or other legislative body may enforce regulations adopted pursuant to 76-2-310, as if the property were situated within its corporate limits, until the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area that is to be affected. These representatives must be appointed by the board of county commissioners. Representation must cease when the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.

**History:** En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part); amd. Sec. 19, Ch. 582, L. 1999.

**76-2-312. Exclusion for commission-manager plan municipalities.** A city or town which has as its plan of government the commission-manager plan shall be excluded from the provisions of 76-2-310 and 76-2-311 which define extraterritorial authority to review proposed subdivisions.

**History:** En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

**76-2-313. Renumbered 76-2-411.** Code Commissioner, 1983.

**76-2-314. Renumbered 76-2-412.** Code Commissioner, 1983.

**76-2-315. Violations and penalties.** (1) A violation of this part or of such ordinance or regulation made pursuant to 76-2-308(1) is a misdemeanor, and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both.

(2) It is also empowered to provide civil penalties for such violation.

**History:** En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 9, Ch. 266, L. 1979.

**76-2-316 through 76-2-320 reserved.**

**76-2-321. Board of adjustment.** (1) A city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions



to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules contained in the ordinance.

(2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(3) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this part. Meetings of the board must be held at the call of the presiding officer and at other times that the board may determine. The presiding officer or in the presiding officer's absence the acting presiding officer may administer oaths and compel the attendance of witnesses.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part); amd. Sec. 2515, Ch. 56, L. 2009.

**76-2-322. Membership and term of board members — vacancies.** (1) The board of adjustment shall consist of not less than five or more than seven members to be appointed for a term to be specified by the city or town council or other legislative body or, if no term is specified, then for a term of 3 years. A member is removable for cause by the appointing authority upon written charges and after public hearing.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(1); amd. Sec. 1, Ch. 67, L. 1985; amd. Sec. 1, Ch. 110, L. 1987.

**76-2-323. Powers of board of adjustment.** (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any ordinance adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance;

(c) to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, such board may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(5), (6).

**76-2-324. Vote needed for board action.** The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(7).

**76-2-325. Public access to board activities.** (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

**76-2-326. Appeals to board of adjustment.** (1) Appeals to the board of adjustment may be taken by a person aggrieved or by an officer, department, board, or bureau of the municipality



affected by any decision of the administrative officer. An appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal.

(2) The officer from whom the appeal is taken shall, in a timely manner, transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In that case, proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice of the hearing as well as due notice to the parties in interest, and decide the appeal within a reasonable time.

(5) At the hearing, any party may appear in person or by the party's attorney.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(3), (4); amd. Sec. 2516, Ch. 56, L. 2009.

**76-2-327. Appeals from board to court of record.** (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of the petition, the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board of adjustment and shall prescribe in the writ the time within which a return must be made and served upon the relator's attorney, which may not be less than 10 days and may be extended by the court. The allowance of the writ does not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board, and on due cause shown, grant a restraining order. The board of adjustment may not be required to return the original papers acted upon by it, but it is sufficient to return certified or sworn copies of the original papers or of portions of the original papers that may be called for by the writ. The return must concisely set forth other facts that may be pertinent and material to show the grounds of the decision appealed from and must be verified.

(3) If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence that it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the proceedings upon which the determination of the court must be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(8) thru (11); amd. Sec. 2517, Ch. 56, L. 2009.

**76-2-328. Awarding of costs upon appeal from board decision.** Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(12).

**76-2-329 through 76-2-339 reserved.**

**76-2-340. Effect on amateur radio antenna.** A resolution or rule adopted pursuant to this part may not:

(1) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States; or

(2) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground.

**History:** En. Sec. 4, Ch. 56, L. 2013.

#### **Part 4**

### **Application to Governmental Agencies Group and Foster Homes**

**76-2-401. Definitions.** As used in 76-2-402, the following definitions apply:

(1) “Agency” means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) “Local zoning regulations” means zoning regulations adopted pursuant to Title 76, chapter 2.

**History:** En. Sec. 1, Ch. 397, L. 1981.

**76-2-402. Local zoning regulations — application to agencies.** (1) Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing must be held and the agency shall attend the public hearing.

(2) The local governing body shall hold a hearing within 30 days of the date the agency gives notice to the local governing body of its intent to develop land contrary to local zoning regulations.

**History:** En. Sec. 2, Ch. 397, L. 1981; amd. Sec. 1, Ch. 362, L. 2021.

#### **Compiler’s Comments**

*2021 Amendment:* Chapter 362 in (1) at end substituted “a public hearing must be held and the agency shall attend the public hearing” for “a public hearing, as defined below, shall be held”; in (2) at beginning substituted “The local governing body” for “The local board of adjustments, as provided in this chapter” and in middle substituted “the local governing body” for “the board”; deleted former (2) that read: “(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use”; and made minor changes in style. Amendment effective October 1, 2021.

**76-2-403 through 76-2-410 reserved.**

**76-2-411. Definition of community residential facility.** “Community residential facility” means:

(1) a community group home for developmentally, mentally, or severely disabled persons that does not provide skilled or intermediate nursing care;

(2) a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons;

(4) a licensed adult foster family care home; or

(5) an assisted living facility licensed under 50-5-227.

**History:** En. Sec. 1, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974; amd. Sec. 6, Ch. 364, L. 1975; R.C.M. 1947, 11-2702.1; MCA 1981, 76-2-313; redes. 76-2-411 by Code Commissioner, 1983; amd. Sec. 28, Ch. 465, L. 1983; amd. Sec. 1, Ch. 309, L. 1985; amd. Sec. 9, Ch. 514, L. 1987; amd. Sec. 236, Ch. 418, L. 1995; amd. Sec. 545, Ch. 546, L. 1995; amd. Secs. 1, 2, Ch. 400, L. 2003; amd. Sec. 31, Ch. 504, L. 2003.

**76-2-412. Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and day-care homes to zoning.** (1) A foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services.

**History:** En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974; R.C.M. 1947, 11-2702.2; MCA 1981, 76-2-314; redes. 76-2-412 by Code Commissioner, 1983; amd. Sec. 29, Ch. 465, L. 1983; amd. Sec. 1, Ch. 181, L. 1987; amd. Sec. 237, Ch. 418, L. 1995; amd. Sec. 546, Ch. 546, L. 1995; amd. Sec. 32, Ch. 504, L. 2003.

## Part 9 Agricultural Activities

**76-2-901. Agricultural activities — legislative finding and purpose.** (1) The legislature finds that agricultural lands and the ability and right of farmers and ranchers to produce a safe, abundant, and secure food and fiber supply have been the basis of economic growth and development of all sectors of Montana's economy. In order to sustain Montana's valuable farm economy and land bases associated with it, farmers and ranchers must be encouraged and have the right to stay in farming.

(2) It is therefore the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances.

**History:** En. Sec. 1, Ch. 309, L. 1995.

**76-2-902. Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural activity" means a condition or activity that provides an annual gross income of not less than \$1,500 or that occurs on land classified as agricultural or forest land for taxation purposes. The condition or activity must occur in connection with the commercial production of farm products and includes but is not limited to:

- (a) produce marketed at roadside stands or farm markets;
- (b) noise;
- (c) odors;
- (d) dust;
- (e) fumes;
- (f) operation of machinery and irrigation pumps;
- (g) movement of water for agricultural activities, including but not limited to use of existing county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities;
- (h) ground and aerial application of seed, fertilizers, conditioners, and plant protection products;
- (i) employment and use of labor;
- (j) roadway movement of equipment and livestock;
- (k) protection from damage from wildlife;
- (l) prevention of trespass;
- (m) construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses;
- (n) conversion from one agricultural activity to another, provided that the conversion does not adversely impact adjacent property owners;
- (o) timber harvesting, thinning, and timber regeneration;
- (p) burning and stubble and slash disposal; and
- (q) plant nursery and commercial greenhouse activities.

(2) "Commercial production of farm products" means the growing, raising, or marketing of plants or animals by the owner, owner's agent, or lessee of land that provides an annual gross income of not less than \$1,500 or that occurs on land that is classified as agricultural or forest land for taxation purposes. The term includes but is not limited to:

- (a) forages and sod crops;
- (b) dairy and dairy products;
- (c) poultry and poultry products;
- (d) livestock, including breeding, feeding, and grazing of livestock and recreational equine use;

- (e) fruits;
- (f) vegetables;
- (g) flowers;
- (h) seeds;
- (i) grasses;
- (j) trees, including commercial timber;
- (k) fresh water fish and fish products;
- (l) apiaries;
- (m) equine and other similar products; or
- (n) any other product that incorporates the use of food, feed, fiber, or fur.

**History:** En. Sec. 2, Ch. 309, L. 1995.

**76-2-903. Local ordinances.** A city, county, taxing district, or other political subdivision of this state may not adopt an ordinance or resolution that prohibits any existing agricultural activities or forces the termination of any existing agricultural activities outside the boundaries of an incorporated city or town. Zoning and nuisance ordinances may not prohibit agricultural activities that were established outside the corporate limits of a municipality and then incorporated into that municipality by annexation.

**History:** En. Sec. 3, Ch. 309, L. 1995.

## CHAPTER 3 LOCAL REGULATION OF SUBDIVISIONS

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### Part 1 General Provisions

**76-3-101. Short title.** This chapter may be cited as the “Montana Subdivision and Platting Act”.

**History:** En. Sec. 1, Ch. 500, L. 1973; R.C.M. 1947, 11-3859.

**76-3-102. Statement of purpose.** It is the purpose of this chapter to:

- (1) promote the public health, safety, and general welfare by regulating the subdivision of land;
- (2) prevent overcrowding of land;
- (3) lessen congestion in the streets and highways;
- (4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;
- (5) require development in harmony with the natural environment;
- (6) promote preservation of open space;
- (7) promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;
- (8) protect the rights of property owners;
- (9) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey; and
- (10) provide for phased developments.

**History:** En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860; amd. Sec. 1, Ch. 272, L. 1993; amd. Sec. 2, Ch. 468, L. 1995; amd. Sec. 2, Ch. 348, L. 2001; amd. Sec. 1, Ch. 363, L. 2017.

**76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) “Certificate of survey” means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) “Cluster development” means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) “Dedication” means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) “Division of land” means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) “Examining land surveyor” means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) “Final plat” means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) “Governing body” means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) “Immediate family” means a spouse, children by blood or adoption, and parents.

(9) “Minor subdivision” means a subdivision that creates five or fewer lots from a tract of record.

(10) “Phased development” means a subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are scheduled for review on a schedule proposed by the subdivider.

(11) “Planned unit development” means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(12) “Plat” means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(13) “Preliminary plat” means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(14) “Public utility” has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

(15) “Subdivider” means a person who causes land to be subdivided or who proposes a subdivision of land.

(16) “Subdivision” means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

(17) (a) “Tract of record” means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder’s office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner’s intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (17)(b)(i) unless the instrument states, “This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument” or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner’s intent to effect a merger of parcels.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 140, Ch. 370, L. 1987; amd. Sec. 2, Ch. 272, L. 1993; amd. Sec. 1, Ch. 503, L. 1997; amd. Sec. 3, Ch. 348, L. 2001; amd. Sec. 1, Ch. 298, L. 2005; amd. Sec. 10, Ch. 214, L. 2011; amd. Sec. 9, Ch. 379, L. 2013; amd. Sec. 2, Ch. 363, L. 2017.

**76-3-104. What constitutes subdivision.** A subdivision comprises only those parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 3, Ch. 272, L. 1993.

**76-3-105. Violations.** Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

**History:** En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977; R.C.M. 1947, 11-3876.

## Part 2 Miscellaneous Exemptions

**76-3-201. Exemption for certain divisions of land — fees for examination of division.** (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (4), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) An exempt division of land as provided in subsection (1)(a) is not considered a subdivision under this chapter if not more than four new lots or parcels are created from the original lot or parcel.



(3) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(4) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. Except as provided in subsection (5), a transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (4)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter, if applicable.

(5) If a parcel of land was divided pursuant to subsection (1)(b) and one of the parcels created by the division was conveyed by the landowner to another party without foreclosure before October 1, 2003, the conveyance of the remaining parcel is not subject to the requirements of this chapter.

(6) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(9); amd. Sec. 2, Ch. 503, L. 1997; amd. Sec. 1, Ch. 340, L. 2001; amd. Sec. 3, Ch. 549, L. 2003; amd. Sec. 1, Ch. 563, L. 2003; amd. Sec. 1, Ch. 169, L. 2017; amd. Sec. 1, Ch. 358, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 358 inserted (2) providing that an exempt division of land is not considered a subdivision if not more than four new lots or parcels are created from the original lot or parcel; and made minor changes in style. Amendment effective October 1, 2021.

**76-3-202. Repealed.** Sec. 14, Ch. 379, L. 2013.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 10, Ch. 266, L. 1979.

**76-3-203. Exemption for certain condominiums and townhouses.** Condominiums, townhomes, townhouses, or conversions, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are complied with; or

(2) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 1, Ch. 534, L. 2001; amd. Sec. 1, Ch. 229, L. 2007; amd. Sec. 4, Ch. 373, L. 2011; amd. Sec. 7, Ch. 323, L. 2019."

**76-3-204. Repealed.** Sec. 14, Ch. 379, L. 2013.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10); amd. Sec. 1, Ch. 500, L. 1985.

**76-3-205. Exemption for airport land and state-owned lands — exception.** (1) A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the requirements of this chapter if the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities.

(2) A division of state-owned land is not subject to the requirements of this chapter unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5); amd. Sec. 1, Ch. 548, L. 1999.



**76-3-206. Exemption for conveyances executed prior to July 1, 1974.** This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

**History:** En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(part).

**76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations — exceptions — fees for examination of division.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the landowner enters into a covenant for the purposes of this chapter with the governing body that runs with the land and provides that the divided land will be used exclusively for agricultural purposes, subject to the provisions of 76-3-211;

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1), within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6); amd. Sec. 1, Ch. 379, L. 1985; amd. Sec. 1, Ch. 569, L. 1989; amd. Sec. 4, Ch. 272, L. 1993; amd. Sec. 3, Ch. 366, L. 1993; amd. Sec. 3, Ch. 468, L. 1995; amd. Sec. 2, Ch. 436, L. 2003; amd. Sec. 2, Ch. 563, L. 2003; amd. Sec. 1, Ch. 252, L. 2005; amd. Sec. 12, Ch. 446, L. 2009; amd. Sec. 1, Ch. 351, L. 2013; amd. Sec. 2, Ch. 34, L. 2019.

**76-3-208. Repealed.** Sec. 14, Ch. 379, L. 2013.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).

**76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways.** Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).

**76-3-210. Repealed.** Sec. 23, Ch. 446, L. 2009.

**History:** (1)En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; Sec. 11-3862, R.C.M. 1947; (2)En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1); amd. Sec. 20, Ch. 582, L. 1999; amd. Sec. 10, Ch. 599, L. 2003.

**76-3-211. Agricultural covenant — change in use.** (1) A change in use for anything other than agricultural purposes subjects a division of land that received an exemption under 76-3-207(1)(c) to subdivision review under parts 5 and 6 of this chapter. However, the governing body, in its discretion, may revoke the covenant provided for in 76-3-207(1)(c) for the purposes of this chapter and the division may proceed without subdivision review if:

(a) the original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant; or

(b) a government or public entity seeks to use the land for public purposes as defined in the governing body's review criteria pursuant to 76-3-504(1)(p).

(2) If a governing body proposes to revoke a covenant pursuant to subsection (1)(b), the governing body shall hold a public hearing. Within 15 days of the hearing, the governing body shall issue written findings of fact and a decision based on the record. If the governing body approves the revoking of the covenant, the approval must be recorded with the clerk and recorder.

(3) The revocation of a covenant pursuant to this section does not affect sanitary restrictions imposed under Title 76, chapter 4.

**History:** En. Sec. 1, Ch. 34, L. 2019.

### Part 3 Land Transfers

**76-3-301. General restriction on transfer of title to subdivided lands.** (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form unless the plat is located in an area over which the state does not have jurisdiction.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of the action must be imposed against the party not prevailing.

**History:** En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 633, L. 1979; amd. Sec. 2, Ch. 340, L. 2001.

**76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements.** (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument that purports to transfer title to or possession of a parcel or tract of land that is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) Subsection (1) does not apply when the parcel or tract to be transferred:

(a) is in a location in which the state does not have jurisdiction; or

(b) was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by

documents that, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.

(3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(3); amd. Sec. 1, Ch. 268, L. 1987; amd. Sec. 3, Ch. 340, L. 2001.

**76-3-303. Contract for deed permitted if buyer protected.** Notwithstanding the provisions of 76-3-301, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) under the terms of the contracts, the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) under the terms of the contracts and the escrow agreement, the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract;

(4) the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) the contracts contain the following language conspicuously set out: "The real property that is the subject of this contract has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property may not be transferred in any manner."

**History:** En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(4); amd. Sec. 2, Ch. 379, L. 1985; amd. Sec. 2518, Ch. 56, L. 2009.

**76-3-304. Effect of recording complying plat.** The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

**History:** En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(3).

**76-3-305. Vacation of plats — utility easements.** (1) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

**History:** En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1); amd. Sec. 1, Ch. 100, L. 1995; amd. Sec. 277, Ch. 42, L. 1997.

**76-3-306. Covenants run with the land.** All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

**History:** En. Sec. 11, Ch. 500, L. 1973; R.C.M. 1947, 11-3869.



**76-3-307. Donations or grants to public considered a grant to donee.** Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.

## Part 4 Survey Requirements

**76-3-401. Survey requirements for lands other than subdivisions.** All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of 76-3-406.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(1); amd. Sec. 2, Ch. 136, L. 1993.

**76-3-402. Survey and platting requirements for subdivided lands.** (1) Every subdivision of land after June 30, 1973, must be surveyed and platted in conformance with this chapter, including the requirements of 76-3-406, by or under the supervision of a registered land surveyor.

(2) Subdivision plats must be prepared and filed in accordance with this chapter and regulations adopted pursuant to this chapter.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with this chapter and regulations adopted pursuant to this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(2); amd. Sec. 3, Ch. 136, L. 1993.

**76-3-403. Monumentation.** (1) The board of professional engineers and professional land surveyors shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(11), (12); amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 211, Ch. 483, L. 2001; amd. Sec. 6, Ch. 190, L. 2003.

**76-3-404. Certificate of survey.** (1) Except as provided in 70-22-105, within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in the map;

(c) discloses evidence to suggest alternate locations of lines or points; or

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations.

(2) A certificate of survey is not required for any survey that is made by the United States bureau of land management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey must be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and must conform to monumentation and surveying requirements promulgated under this chapter.

History: En. Sec. 14, Ch. 500, L. 1973; R.C.M. 1947, 11-3872; amd. Sec. 2, Ch. 633, L. 1979; amd. Sec. 4, Ch. 549, L. 2003.



**76-3-405. Administration of oaths by registered land surveyor.** (1) A registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to the surveyor's assistants for the faithful performance of their duty.

(2) A record of oaths must be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404.

**History:** En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979; amd. Sec. 2519, Ch. 56, L. 2009.

**76-3-406. Surveys affecting irrigation districts — additional survey requirements.**

(1) (a) A surveyor who completes a survey identified in subsection (2) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than 1 section shall note on the survey the acreage of the farm unit or created parcel in each section.

(b) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.

(2) The requirements of subsection (1) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

(a) traversed by a canal or ditch owned by an irrigation district; or

(b) included in an irrigation district.

(3) For purposes of this section, "irrigation district" means a district established pursuant to Title 85, chapter 7.

**History:** En. Sec. 1, Ch. 136, L. 1993.

**76-3-407 through 76-3-410 reserved.**

**76-3-411. Board to prescribe standards.** The board of professional engineers and professional land surveyors shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards governing certificates of survey and final subdivision plats.

**History:** En. Sec. 1, Ch. 258, L. 2009.

## Part 5 Local Regulations

**76-3-501. Local subdivision regulations.** (1) The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

(a) the orderly development of their jurisdictional areas;

(b) the coordination of roads within subdivided land with other roads, both existing and planned;

(c) the dedication of land for roadways and for public utility easements;

(d) the improvement of roads;

(e) the provision of adequate open spaces for travel, light, air, and recreation;

(f) the provision of adequate transportation, water, and drainage;

(g) subject to the provisions of 76-3-511, the regulation of sanitary facilities;

(h) the avoidance or minimization of congestion; and

(i) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

(2) Any action that is not specifically prohibited in the conditions of subdivision approval is specifically allowed or is otherwise subject to additional restrictions that may be provided in the governing documents of the subdivision and applicable zoning regulations.

(3) If a local government has historically interpreted and enforced or chosen not to enforce a condition of subdivision approval to the benefit of a parcel owner, the local government may not undertake a different interpretation or enforcement action against a similarly situated parcel owner in the same subdivision.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1985; amd. Sec. 17, Ch. 471, L. 1995; amd. Sec. 2, Ch. 298, L. 2005; amd. Sec. 2, Ch. 443, L. 2007; amd. Sec. 1, Ch. 319, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 319 inserted (2) concerning actions that are not specifically prohibited in the conditions of subdivision approval; inserted (3) concerning historical interpretation and enforcement of conditions of subdivision approval; and made minor changes in style. Amendment effective April 30, 2021.

**76-3-502. Repealed.** Sec. 4, Ch. 236, L. 1981.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 6, Ch. 274, L. 1981.

**76-3-503. Hearing on proposed regulations.** Before the governing body adopts subdivision regulations pursuant to 76-3-501 or 76-3-509, it shall hold a public hearing on the regulations and shall give public notice of its intent to adopt the regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 4, Ch. 348, L. 2001.

**76-3-504. Subdivision regulations — contents.** (1) The subdivision regulations adopted under this chapter must comply with the requirements provided for in 76-3-501 and, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-509, 76-3-609, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation

conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207



is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted;

(r) require that the written decision required by 76-3-620 must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision;

(s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple spaces for recreational camping vehicles or mobile homes.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981; amd. Sec. 238, Ch. 418, L. 1995; amd. Sec. 18, Ch. 471, L. 1995; amd. Sec. 1, Ch. 201, L. 1999; amd. Sec. 21, Ch. 582, L. 1999; amd. Sec. 5, Ch. 348, L. 2001; amd. Sec. 3, Ch. 527, L. 2001; amd. Sec. 1, Ch. 564, L. 2001; amd. Sec. 11, Ch. 599, L. 2003; amd. Sec. 3, Ch. 298, L. 2005; amd. Sec. 1, Ch. 302, L. 2005; amd. Sec. 1, Ch. 317, L. 2007; amd. Sec. 3, Ch. 443, L. 2007; amd. Sec. 13, Ch. 446, L. 2009; amd. Sec. 1, Ch. 109, L. 2013; amd. Sec. 10, Ch. 379, L. 2013; amd. Sec. 2, Ch. 319, L. 2021.

#### **Compiler's Comments**

*2021 Amendment:* Chapter 319 in (1) in middle of introductory clause after "must" inserted "comply with the requirements provided for in 76-3-501 and". Amendment effective April 30, 2021.

#### **76-3-505. Repealed.** Sec. 16, Ch. 298, L. 2005.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5); amd. Sec. 1, Ch. 579, L. 1985; amd. Sec. 1, Ch. 256, L. 1987; amd. Sec. 239, Ch. 418, L. 1995; amd. Sec. 22, Ch. 582, L. 1999; amd. Sec. 12, Ch. 599, L. 2003.

**76-3-506. Provision for granting variances.** (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6); amd. Sec. 14, Ch. 446, L. 2009.

**76-3-507. Provision for security requirements to ensure construction of public improvements.** (1) Except as provided in subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.



(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7); amd. Sec. 4, Ch. 468, L. 1995; amd. Sec. 3, Ch. 503, L. 1997; amd. Sec. 15, Ch. 446, L. 2009.

**76-3-508. Repealed.** Sec. 4, Ch. 236, L. 1981.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(8).

**76-3-509. Local option cluster development regulations and exemptions authorized.** (1) If the governing body has adopted a growth policy that meets the requirements of 76-1-601, the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:

(a) establish a maximum size for each parcel in a cluster development;

(b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and

(c) establish requirements, including a minimum size for the area to be preserved, for preservation of open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant to this section. Land protected as open space on a long-term basis must be identified on the final subdivision plat, and the plat must include a copy of or a recording reference to the irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels, as provided in Title 70, chapter 17, part 2.

(3) Regulations adopted under this section may:

(a) establish a shorter timeframe for review of proposed cluster developments;

(b) establish procedures and requirements that provide an incentive for cluster development subdivisions that are consistent with the provisions of this chapter;

(c) authorize the review of a division of land that involves more than one existing parcel as one subdivision proposal for the purposes of creating a cluster development;

(d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided in subsection (3)(c); and

(e) establish exemptions from the following:

(i) the requirements of an environmental assessment pursuant to 76-3-603;

(ii) review of the criteria in 76-3-608(3)(a); and

(iii) park dedication requirements pursuant to 76-3-621.

(4) Except as provided in this section, the provisions of this chapter apply to cluster development subdivisions.

**History:** En. Sec. 6, Ch. 348, L. 2001; amd. Sec. 2, Ch. 137, L. 2011.

**76-3-510. Payment for extension of capital facilities.** (1) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer

lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required.

**History:** En. Sec. 8, Ch. 468, L. 1995; amd. Sec. 1, Ch. 405, L. 2009; amd. Sec. 16, Ch. 446, L. 2009.

**76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a regulation under 76-3-501 or 76-3-504(1)(g)(iii) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement 76-3-501 or 76-3-504(1)(g)(iii) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation.

**History:** En. Sec. 5, Ch. 471, L. 1995; amd. Sec. 278, Ch. 42, L. 1997; amd. Sec. 2, Ch. 302, L. 2005; amd. Sec. 107, Ch. 2, L. 2009.

**76-3-512 and 76-3-513 reserved.**

**76-3-514. Housing fees and dedication of real property prohibited.** (1) A local governing body may not require, as a condition for approval of a subdivision under this part:

(a) the payment of a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(b) the dedication of real property for the purpose of providing housing for specified income levels or at specified sale prices.

(2) A dedication of real property as prohibited in subsection (1)(b) includes a payment or other contribution to a local housing authority or the reservation of real property for future development of housing for specified income levels or specified sale prices.

**History:** En. Sec. 2, Ch. 249, L. 2021.

**Compiler's Comments**

*Effective Date:* Section 7, Ch. 249, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 19, 2021.

## Part 6 Local Review Procedure

**76-3-601. Submission of application and preliminary plat for review — water and sanitation information required.** (1) The subdivider shall present to the governing body or to the agent or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements and must be accompanied by the preliminary water and sanitation information required under 76-3-622.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide a summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981; amd. Sec. 4, Ch. 506, L. 1995; amd. Sec. 23, Ch. 582, L. 1999; amd. Sec. 67, Ch. 7, L. 2001; amd. Sec. 4, Ch. 298, L. 2005; amd. Sec. 3, Ch. 302, L. 2005; amd. Sec. 2, Ch. 109, L. 2013.

**76-3-602. Fees.** The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision applications.

**History:** En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868; amd. Sec. 5, Ch. 298, L. 2005.

**76-3-603. Contents of environmental assessment.** (1) When required, the environmental assessment must accompany the subdivision application and must include:

(a) for a major subdivision:

(i) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(ii) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608;

(iii) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(iv) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

(b) except as provided in 76-3-609, for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.

(2) An environmental assessment conducted pursuant to this chapter is distinct from an environmental review conducted pursuant to Title 75, chapter 1. The standards of review applicable to an environmental review conducted pursuant to Title 75, chapter 1, do not apply to an environmental assessment conducted pursuant to this chapter.



**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4); amd. Sec. 2, Ch. 236, L. 1981; amd. Sec. 5, Ch. 468, L. 1995; amd. Sec. 6, Ch. 298, L. 2005; amd. Sec. 1, Ch. 362, L. 2017.

**76-3-604. Review of subdivision application — review for required elements and sufficiency of information.** (1) (a) A subdivision application is considered to be received on the date of delivery to the reviewing agent or agency and when accompanied by the review fee submitted as provided in 76-3-602.

(b) Within 5 working days of receipt of a subdivision application, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination. If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

(5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

(b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended pursuant to subsection (4).

(6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

(7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.



(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

(ii) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

(8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

(9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

(10) Unless otherwise provided by law, the governing body may review but does not have approval authority of the governing documents of the subdivision or amendments to the governing documents unless the governing documents directly and materially impact a condition of subdivision approval.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 236, L. 1999; amd. Sec. 24, Ch. 582, L. 1999; amd. Sec. 4, Ch. 527, L. 2001; amd. Sec. 7, Ch. 298, L. 2005; amd. Sec. 5, Ch. 302, L. 2005; amd. Sec. 2, Ch. 405, L. 2009; amd. Sec. 3, Ch. 109, L. 2013; amd. Sec. 3, Ch. 319, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 319 inserted (10) concerning governing body review of governing documents of a subdivision. Amendment effective April 30, 2021.

**76-3-605. Hearing on subdivision application.** (1) Except as provided in 76-3-609 and 76-3-616 and subject to the regulations adopted pursuant to 76-3-504(1)(o) and 76-3-615, at least one public hearing on the subdivision application must be held by the governing body, its authorized agent or agency, or both and the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the subdivision application should be approved, conditionally approved, or denied by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the subdivision application and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or denial of the proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 working days after the public hearing.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 2, Ch. 89, L. 1981; amd. Sec. 21, Ch. 526, L. 1983; amd. Sec. 25, Ch. 582, L. 1999; amd. Sec. 8, Ch. 298, L. 2005; amd. Sec. 5, Ch. 455, L. 2007.

**76-3-606. Repealed.** Sec. 11, Ch. 468, L. 1995.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(1), (2); amd. Sec. 1, Ch. 703, L. 1979.

**76-3-607. Repealed.** Sec. 11, Ch. 468, L. 1995.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(3) thru (7).

**76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety, excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3) but may not require a set-aside of land or monetary contribution for the loss of agricultural soils. Pursuant to 76-3-620, the governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the impacts of a proposed development may be deemed unmitigable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4) and consistent with 76-3-620, a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

(8) A governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under chapter 4 or this chapter or if the well isolation zone of

any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. For the purposes of this section, “well isolation zone” has the meaning provided in 76-4-102.

(9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body’s review, the comment or opinion may be included in the governing body’s written statement under 76-3-620 only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.

(10) Findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of this chapter must be based on the record as a whole. The governing body’s findings of fact must be sustained unless they are arbitrary, capricious, or unlawful.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4); amd. Sec. 5, Ch. 272, L. 1993; amd. Sec. 6, Ch. 468, L. 1995; amd. Sec. 26, Ch. 582, L. 1999; amd. Sec. 7, Ch. 348, L. 2001; amd. Sec. 10, Ch. 298, L. 2005; amd. Sec. 6, Ch. 302, L. 2005; amd. Sec. 6, Ch. 455, L. 2007; amd. Sec. 1, Ch. 406, L. 2009; amd. Sec. 17, Ch. 446, L. 2009; amd. Sec. 1, Ch. 409, L. 2011; amd. Sec. 1, Ch. 112, L. 2013; amd. Sec. 2, Ch. 195, L. 2013; amd. Sec. 2, Ch. 362, L. 2017; amd. Sec. 1, Ch. 275, L. 2021; amd. Sec. 4, Ch. 319, L. 2021.

#### Compiler’s Comments

*2021 Amendments — Composite Section:* Chapter 275 in (3)(a) at end inserted “excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils”; in (4) at end of first sentence inserted “but may not require a set-aside of land or monetary contribution for the loss of agricultural soils”; and made minor changes in style. Amendment effective April 22, 2021.

Chapter 319 in (3)(a) in middle substituted “the specific, documentable, and clearly defined impact” for “the impact”; in (4) at beginning of last sentence inserted “Pursuant to 76-3-620”; in (5)(a) near end substituted “impacts of a proposed development may be deemed unmitigable” for “unmitigated impacts of a proposed development may be unacceptable”; in (5)(b) near middle inserted “and consistent with 76-3-620”; and made minor changes in style. Amendment effective April 30, 2021.

*Applicability:* Section 4, Ch. 275, L. 2021, provided: “[This act] applies to subdivision applications submitted on or after July 1, 2021.”

**76-3-609. Review procedure for minor subdivisions — determination of sufficiency of application — governing body to adopt regulations.** (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment; and

(ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).



(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6); amd. Sec. 2, Ch. 579, L. 1985; amd. Sec. 2, Ch. 256, L. 1987; amd. Sec. 7, Ch. 468, L. 1995; amd. Sec. 2, Ch. 236, L. 1999; amd. Sec. 11, Ch. 298, L. 2005; amd. Sec. 7, Ch. 455, L. 2007; amd. Sec. 18, Ch. 446, L. 2009.

**76-3-610. Effect of approval of application and preliminary plat.** (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

(2) Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1).

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 223, L. 1981; amd. Sec. 1, Ch. 190, L. 1983; amd. Sec. 12, Ch. 298, L. 2005; amd. Sec. 19, Ch. 446, L. 2009; amd. Sec. 1, Ch. 252, L. 2011.

**76-3-611. Review of final plat.** (1) The governing body or the agent or agency designated by the governing body shall examine each final plat, and the governing body shall approve the plat only if:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant to this chapter; and

(b) the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

(2) (a) The governing body may require that final plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to this chapter, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the plat or certificate of survey. The certificate must be signed by the surveyor.

(b) A land surveyor may not act as an examining land surveyor in regard to a plat or certificate of survey in which the surveyor has a financial or personal interest.

(3) (a) A final plat is considered to be received on the date of delivery to the governing body or the agent or agency designated by the governing body when accompanied by the review fee submitted as provided in 76-3-602.

(b) Within 20 working days of receipt of a final plat, the governing body or the agent or agency designated by the governing body shall determine whether the final plat contains the information required under subsections (1) and (2) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of that determination in writing. If the governing body or its agent or agency determines that the final plat does not contain the information required under subsections (1) and (2), the governing body or its agent or agency shall identify the final plat's defects in the notification.

(c) The governing body or its agent or agency may review subsequent submissions of the final plat only for information found to be deficient during the original review of the final plat under subsection (3)(b).

(d) If the governing body determines that an examining land surveyor must review a final plat pursuant to subsection (2)(a), the governing body or its agent or agency shall identify the requirement in its notification.

(e) The time limits provided in subsection (3)(b) apply to each submission of the final plat until a written determination is made that the final plat contains the information required under subsections (1) and (2) and the subdivider or the subdivider's agent is notified.

(4) If a determination is made under subsection (3)(b) that the final plat contains the information required under subsections (1) and (2), the governing body shall review and approve or deny the final plat within 20 working days.

(5) The subdivider or the subdivider's agent and the governing body or its reviewing agent or agency may mutually agree to extend the review periods provided for in this section.

**History:** En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981; amd. Sec. 1, Ch. 293, L. 1995; amd. Sec. 1, Ch. 251, L. 2017.

**76-3-612. Subdivision guarantee required for review process.** (1) The subdivider shall submit with the final plat a subdivision guarantee issued by an authorized title insurer or its title insurance producer showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the subdivision guarantee for the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

(3) As used in this section, "subdivision guarantee" means a form of guarantee that is approved by the commissioner of insurance and is specifically designed to disclose the information required in subsection (1).

**History:** En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 575, L. 1981; amd. Sec. 1, Ch. 210, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 210 in (1) near beginning substituted "a subdivision guarantee issued by an authorized title insurer or its title insurance producer" for "a certificate of a title abstractor"; in (2) near beginning substituted "the subdivision guarantee for the land" for "the abstract or certificate of title of the land"; and inserted (3) providing a definition of subdivision guarantee. Amendment effective October 1, 2021.

**76-3-613. Index of plats to be kept by county clerk and recorder.** (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

**History:** En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.

**76-3-614. Correction of recorded plat.** When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible,

follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

**History:** En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.

**76-3-615. Subsequent hearings — consideration of new information — requirements for regulations.** (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this section.

(2) The governing body shall determine whether public comments or documents presented to the governing body at a hearing held pursuant to 76-3-605 constitute:

(a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a hearing during which the subdivision application was considered.

(3) If the governing body determines that the public comments or documents constitute the information described in subsection (2)(b), the governing body may:

(a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

**History:** En. Sec. 9, Ch. 298, L. 2005.

**76-3-616. Exemption for certain subdivisions.** (1) A subdivision that meets the criteria in subsection (2) is exempt from the following requirements:

(a) preparation of an environmental assessment as required by 76-3-603;

(b) a public hearing on the subdivision application pursuant to 76-3-605; and

(c) a review of the subdivision for the criteria listed in 76-3-608(3)(a).

(2) To qualify for the exemptions in subsection (1), a subdivision must meet the following criteria:

(a) the proposed subdivision is entirely within an area inside or adjacent to an incorporated city or town where the governing body has adopted a growth policy that includes the provisions of 76-1-601(4)(c);

(b) the proposed subdivision is entirely within an area subject to zoning adopted pursuant to 76-2-203 or 76-2-304 that avoids, significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of 76-1-601(4)(c); and

(c) the subdivision proposal includes a description of future public facilities and services, using maps and text, that are necessary to efficiently serve the projected development.

**History:** En. Sec. 4, Ch. 455, L. 2007.

**76-3-617. Phased development — application requirements — hearing required.**

(1) A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development application must contain the information required pursuant to parts 5 and 6 of this chapter for all phases of a development and a schedule for when the subdivider plans to submit for review each phase



of the development. The subdivider may change the schedule for review of each phase of the development upon approval of the governing body after a public hearing as provided in subsection (4) if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

(2) Except as otherwise provided by this section, the phased development application must be reviewed in conformity with parts 5 and 6 of this chapter. In addition, each phase of the phased development must be reviewed as provided in subsection (4).

(3) The governing body may approve phased developments that extend beyond the time limits set forth in 76-3-610 but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

(4) Prior to the commencement of each phase, the subdivider shall provide written notice to the governing body. The governing body shall hold a public hearing pursuant to 76-3-605(3) within 30 working days after receipt of the written notice from the subdivider. After the hearing, the governing body shall determine whether any changed primary criteria impacts or new information exists that creates new potentially significant adverse impacts for the phase or phases. Notwithstanding the provisions of 76-3-610(2), the governing body shall issue supplemental written findings of fact within 20 working days of the hearing and may impose necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary criteria impacts or new information. Any additional conditions must be met before final plat approval for each particular phase and the approval in accordance with 76-3-611 is in force for not more than 3 calendar years or less than 1 calendar year within the maximum timeframe provided in subsection (3).

(5) The governing body may impose a reasonable periodic fee for the review under subsection (4) of the phases in the phased development.

**History:** En. Sec. 3, Ch. 363, L. 2017.

**76-3-618 and 76-3-619 reserved.**

**76-3-620. Review requirements — written statement.** (1) In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written statement that:

- (a) must be provided to the applicant;
- (b) must be made available to the public;
- (c) includes information regarding the appeal process for the denial or imposition of conditions;
- (d) identifies the regulations and statutes that are used in reaching the decision and explains how they apply to the basis of the decision;
- (e) provides the facts and conclusions that the governing body relied upon in making the decision and references documents, testimony, or other materials that form the basis of the decision; and
- (f) identifies the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

(2) If the governing body conditionally approves the proposed subdivision, each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in 76-3-608(3) that forms the basis for the condition.

**History:** En. Sec. 2, Ch. 224, L. 1995; amd. Sec. 13, Ch. 298, L. 2005; amd. Sec. 20, Ch. 446, L. 2009; amd. Sec. 5, Ch. 319, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 319 in (1)(d) at end substituted “the decision and explains how they apply to the basis of the decision” for “the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions”; in (1)(e) in middle after “making” substituted “the decision” for “its decision to deny or impose conditions”; in (1)(f) at beginning substituted “identifies” for “provides”; inserted (2) requiring a governing body that conditionally approves a proposed subdivision to identify specific purposes or objectives for each condition required for subdivision approval; and made minor changes in style. Amendment effective April 30, 2021.

**76-3-621. Park dedication requirement.** (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) land proposed for subdivision into parcels larger than 5 acres;

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums;

(d) a subdivision in which only one additional parcel is created; or

(e) except as provided in subsection (8), a first minor subdivision from a tract of record as described in 76-3-609(2).

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) (a) A local governing body may, at its discretion, require a park dedication for:

(i) a subsequent minor subdivision as described in 76-3-609(3); or

(ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:

(A) the subdivision plat indicates development of condominiums or other multifamily housing;

(B) zoning regulations permit condominiums or other multifamily housing; or

(C) any of the lots are located within the boundaries of a municipality.

(b) A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision.

**History:** En. Sec. 9, Ch. 468, L. 1995; amd. Sec. 27, Ch. 582, L. 1999; amd. Sec. 8, Ch. 348, L. 2001; amd. Sec. 1, Ch. 469, L. 2003; amd. Sec. 2, Ch. 333, L. 2005; amd. Sec. 1, Ch. 264, L. 2007; amd. Sec. 21, Ch. 446, L. 2009.

**76-3-622. Water and sanitation information to accompany preliminary plat.**

(1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:

(A) flood plains;

(B) surface water features;

(C) springs;

(D) irrigation ditches;

(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;

(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and

(ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:



(i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and

(ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(1) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511.

**History:** En. Sec. 4, Ch. 302, L. 2005; amd. Sec. 1, Ch. 165, L. 2013; amd. Sec. 5, Ch. 344, L. 2017; amd. Sec. 2, Ch. 80, L. 2019; amd. Sec. 77, Ch. 324, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 324 in (1)(g) in middle of first sentence after "adopted" deleted "by the board of environmental review". Amendment effective July 1, 2021.

**76-3-623. Expedited review for certain subdivisions.** (1) Except as provided in subsection (9), a subdivision application, regardless of the number of lots, that meets the requirements provided in subsection (3) is entitled to the expedited review process provided in this section at the applicant's request.

(2) A subdivision application that meets the requirements provided in subsection (3) is exempt from:

(a) the preparation of an environmental assessment as required in 76-3-603; and

(b) the review criteria listed in 76-3-608(3)(a).

(3) A subdivision qualifies for the expedited review process provided in this section if the proposed subdivision:

(a) is within:

(i) an incorporated city or town or consolidated city-county government and is subject to an adopted growth policy pursuant to Title 76, chapter 1, and adopted zoning regulations pursuant to Title 76, chapter 2, part 3; or

(ii) a county water and/or sewer district created under 7-13-2203 that provides both water and sewer services and is subject to an adopted growth policy as provided in Title 76, chapter 1, and zoning regulations pursuant to Title 76, chapter 2, part 2, that, at a minimum, address development intensity through minimum lot sizes or densities, bulk and dimensional requirements, and use standards;

(b) complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304 and complies with the design standards and other subdivision regulations adopted pursuant to 76-3-504 without the need for variances or other deviations to adopted standards; and

(c) includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.

(4) On submission for expedited review under this section, the subdivision application must be reviewed for required elements and sufficiency of information as provided in 76-3-601(1) through (3) to determine whether the application complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304 and complies with the design standards and other subdivision regulations adopted pursuant to 76-3-504 without the need for variances or other deviations to adopted standards and includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.

(5) The governing body shall:

(a) hold a hearing on the subdivision application within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review as provided in subsection (3);

(b) provide notice for the hearing required in subsection (5)(a) by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing;

(c) approve the application unless public comment or other information demonstrates the application does not comply with:

(i) adopted zoning regulations, design standards, and other requirements of subdivision regulations adopted pursuant to 76-3-504 without the need for variances or other deviations to adopted standards; or

(ii) adopted ordinances or regulations for the onsite development of or extension to public infrastructure; and

(d) provide to the applicant and the public a written statement within 30 days of the decision to approve or deny a proposed subdivision for expedited review as allowed in this section that provides:

(i) the facts and conclusions that the governing body relied on in making its decision to approve or deny the application; and

(ii) the conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved.

(6) The governing body may:

(a) with the agreement of the applicant, grant one extension of the review period allowed in subsection (5)(a) not to exceed 180 calendar days;

(b) adopt conditions of approval only to ensure an approved subdivision application is completed in accordance with the approved application and any applicable requirements pursuant to Title 76, chapter 4; or

(c) delegate to its reviewing agent or agency the requirement to hold a public hearing on the subdivision application as required in this section.

(7) A local governing body may not adopt zoning regulations pursuant to 76-2-203 or 76-2-304, subdivision regulations pursuant to 76-3-504, or other ordinances or regulations that restrict the use of the expedited subdivision review process as provided in this section.

(8) (a) Except as modified in this section, subdivision applications meeting the requirements for an expedited review remain subject to the provisions of 76-3-608(3)(b) through (3)(d) and 76-3-608(6) through (10), 76-3-610 through 76-3-614, 76-3-621, and 76-3-625.

(b) The provisions of this section supersede any provision of this chapter that is in conflict with any provision of this section.

(9) A subdivision located outside of the boundaries of an incorporated city or town may not utilize the expedited review process provided in this section unless the board of county commissioners of the county where the subdivision is located has voted to allow the provisions of this section to apply to subdivisions located outside the boundaries of an incorporated city or town.

**History:** En. Sec. 1, Ch. 190, L. 2021.

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2021.

**76-3-624 reserved.**

**76-3-625. Violations — actions against governing body.** (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter within 180 days of the final action, decision, order, or adoption of a regulation. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(2) (a) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision may, within 30 days from the date of the written decision, appeal to the district court in the county in which the property involved is located to challenge the approval, imposition of conditions, or denial of the preliminary plat.

(b) A party identified in subsection (3) who is aggrieved by any other final decision of the governing body regarding a subdivision may, within 30 days from the date of the written decision, appeal to the district court in the county in which the property involved is located to challenge the decision.

(c) A petition allowed in subsections (2)(a) and (2)(b) must specify the grounds upon which the appeal is made. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

**History:** En. Sec. 10, Ch. 468, L. 1995; amd. Sec. 14, Ch. 298, L. 2005; amd. Sec. 22, Ch. 446, L. 2009; amd. Sec. 3, Ch. 362, L. 2017; amd. Sec. 2, Ch. 190, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 190 in (1) at end of first sentence inserted "within 180 days of the final action, decision, order, or adoption of a regulation"; in (2)(a) near middle after "plat for a proposed subdivision" deleted "or a final subdivision plat" and at end inserted "to challenge the approval, imposition of conditions, or denial of the preliminary plat"; inserted (2)(b) concerning the right of a party identified in (3) who is aggrieved by any other final decision of the governing body regarding a subdivision to appeal the decision; in (2)(c) at beginning substituted "A petition allowed in subsections (2)(a) and (2)(b)" for "The petition"; and made minor changes in style. Amendment effective October 1, 2021.



## CHAPTER 4 STATE REGULATION OF SUBDIVISIONS

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### Part 10 — Penalties, Fees, and Interest

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- 76-4-1002. Collection of penalties, fees, late fees, and interest.

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### Part 1 Sanitation in Subdivisions

**76-4-101. Public policy.** It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation, and wildlife.

**History:** En. Sec. 148, Ch. 197, L. 1967; amd. Sec. 1, Ch. 509, L. 1973; R.C.M. 1947, 69-5001.

**76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

- (1) “Adequate county water and/or sewer district facilities” means facilities provided by a county water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5 and 6.
- (2) “Adequate municipal facilities” means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.
- (3) “Board” means the board of environmental review.

(4) “Certifying authority” means a municipality or a county water and/or sewer district that meets the eligibility requirements established by the department under 76-4-104(6).

(5) “Department” means the department of environmental quality.

(6) “Extension of a public sewage system” means a sewerline that connects two or more sewer service lines to a sewer main.

(7) “Extension of a public water supply system” means a waterline that connects two or more water service lines to a water main.

(8) “Facilities” means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(9) “Individual water system” means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102.

(10) “Mixing zone” has the meaning provided in 75-5-103.

(11) (a) “Proposed drainfield mixing zone” means a mixing zone submitted for approval under this chapter after March 30, 2011.

(b) The term does not include drainfield mixing zones that existed or were approved under this chapter prior to March 30, 2011.

(12) (a) “Proposed well isolation zone” means a well isolation zone submitted for approval under this chapter after October 1, 2013.

(b) The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.

(13) “Public sewage system” or “public sewage disposal system” means a public sewage system as defined in 75-6-102.

(14) “Public water supply system” has the meaning provided in 75-6-102.

(15) “Regional authority” means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of Title 75, chapter 6, part 3.

(16) “Registered professional engineer” means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(17) “Registered sanitarian” means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(18) “Reviewing authority” means the department or a local department or board of health certified to conduct a review under 76-4-104.

(19) “Sanitary restriction” means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal, facilities until the department has approved plans for those facilities.

(20) “Sewage” has the meaning provided in 75-5-103.

(21) “Sewer service line” means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

(22) “Solid waste” has the meaning provided in 75-10-103.

(23) “Subdivision” means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for recreational camping vehicles or mobile homes.

(24) “Water service line” means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

(25) “Well isolation zone” means the area within a 100-foot radius of a water well.

**History:** En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 1, Ch. 490, L. 1985; amd. Sec. 1, Ch. 592, L. 1985; amd. Sec. 240, Ch. 418, L. 1995; amd. Sec. 4, Ch. 280, L. 2001; amd. Sec. 3, Ch. 195, L. 2013; amd. Sec. 1, Ch. 261, L. 2017; amd. Sec. 3, Ch. 80, L. 2019; amd. Sec. 1, Ch. 419, L. 2021.

**Compiler’s Comments**

*2021 Amendment:* Chapter 419 inserted definition of regional authority; in definition of subdivision near end after “townhouse, or any” substituted “parcel” for “area” and after “that provides” substituted “two or more permanent spaces” for “permanent multiple space”; and made minor changes in style. Amendment effective October 1, 2021.

**76-4-103. What constitutes subdivision.** The plat for a subdivision must show all parcels, whether contiguous or not. A parcel that is 20 acres or more in size, exclusive of public roadways, is not subject to review under this part unless the parcel provides two or more permanent spaces for recreational camping vehicles or mobile homes. The rental or lease of one or more parts of a single building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part.

**History:** En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 2, Ch. 592, L. 1985; amd. Sec. 4, Ch. 80, L. 2019; amd. Sec. 2, Ch. 419, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 419 in first sentence substituted "The plat for a subdivision must show all parcels" for "A subdivision consists of only those parcels of less than 20 acres that have been created by a division of land, and the plat must show all of the parcels", and inserted second sentence concerning a parcel that is 20 acres or more in size, exclusive of public roadways, not being subject to review. Amendment effective October 1, 2021.

**76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water and sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions consistent with 76-4-114 by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified by the department to review subdivisions proposed to connect to existing municipal or county water and/or sewer district water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed units and structures requiring facilities for water supply or sewage disposal;



(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways, except that the rules must provide a basis for not requiring storm water review under this part for parcels 5 acres and larger on which the total impervious area does not and will not exceed 5%. Nothing in this section relieves any person of the duty to comply with the requirements of Title 75, chapter 5, or rules adopted pursuant to Title 75, chapter 5.

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed subdivision where the proposed drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or proposed well isolation zone outside the boundaries of the proposed subdivision where the proposed drainfield or proposed well is located.

(i) A proposed drainfield mixing zone or a proposed well isolation zone for an individual water system well that is a minimum of 50 feet inside the subdivision boundary may extend outside the boundaries of the subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(ii) This subsection (6)(i) does not apply to the divisions provided for in 76-3-207 except those under 76-3-207(1)(b). Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the subdivision application under this chapter. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(m) eligibility requirements for municipalities and county water and/or sewer districts to qualify as a certifying authority under the provisions of 76-4-127.

(7) The requirements of subsection (6)(i) regarding proposed drainfield mixing zones and proposed well isolation zones apply to all subdivisions or divisions excluded from review under 76-4-125 created after October 1, 2021, except as provided in subsections (6)(i)(i) and (6)(i)(ii).

(8) The department shall:

(a) conduct a biennial review of experimental wastewater system components that have been granted a waiver or deviation as provided in subsection (6)(j);

(b) utilize relevant analysis of wastewater system components approved in other states and data from peer-reviewed third-party studies to conduct the review provided in subsection (8)(a);

(c) propose those experimental wastewater system components that meet the purposes and provisions of this part for adoption into the rules pursuant to this section; and

(d) report to the local government interim committee biennially, in accordance with 5-11-210, the number and type of experimental wastewater system components reviewed and the number and type of system components approved and provide written findings to explain why a system component was reviewed but not approved.

(9) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(10) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

- (a) the reason for the denial or condition imposition;
- (b) the evidence that justifies the denial or condition imposition; and
- (c) information regarding the appeal process for the denial or condition imposition.

(11) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under 76-3-622.

**History:** En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(part); amd. Sec. 2, Ch. 378, L. 1985; amd. Sec. 2, Ch. 490, L. 1985; amd. Sec. 1, Ch. 224, L. 1995; amd. Sec. 19, Ch. 471, L. 1995; amd. Sec. 5, Ch. 280, L. 2001; amd. Sec. 7, Ch. 302, L. 2005; amd. Sec. 1, Ch. 83, L. 2011; amd. Sec. 1, Ch. 217, L. 2011; amd. Sec. 4, Ch. 195, L. 2013; amd. Sec. 2, Ch. 261, L. 2017; amd. Sec. 6, Ch. 344, L. 2017; amd. Sec. 5, Ch. 80, L. 2019; amd. Sec. 1, Ch. 49, L. 2021; amd. Sec. 3, Ch. 419, L. 2021.

#### Compiler's Comments

*2021 Amendments — Composite Section:* Chapter 49 inserted (8) concerning review and approval of experimental wastewater system components; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 419 in (6)(a)(i) near beginning after “number of proposed” deleted “dwelling”; in (6)(e) near beginning of first sentence after “to ensure proper drainage ways” inserted clause concerning rules not requiring storm water review and inserted last sentence concerning no relief from duty to comply; in (6)(i)(i) at beginning after “A proposed” inserted “drainfield”, near middle after “50 feet inside the” deleted “proposed”, and after “outside the boundaries of the” deleted “proposed”; inserted (7) concerning proposed drainfield mixing zones and proposed well isolation zones; and made minor changes in style. Amendment effective October 1, 2021.

**76-4-105. Subdivision fees — subdivision program funding.** (1) The department shall adopt rules setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a schedule of fees to be paid by the applicant to the department. The fees must be used for review of plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

- (a) number of lots in the subdivision;
- (b) the type of water system to serve the development;
- (c) the type of sewage disposal to serve the development; and
- (d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees to the local reviewing authority for reviews conducted pursuant to 76-4-104, inspections conducted pursuant to 76-4-107, and enforcement activities conducted pursuant to 76-4-108.

(3) The local reviewing authority may establish a fee to review applications, conduct site visits, and review applicable exemptions under this chapter. The fee must be paid directly to the local reviewing authority and may not exceed the local reviewing authority's actual cost that is not otherwise reimbursed by the department from fees adopted pursuant to this section.

**History:** Ap. p. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; Sec. 69-5005, R.C.M. 1947; Ap. p. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(part), 69-5005(part); amd. Sec. 1, Ch. 553, L. 1981; amd. Sec. 33, Ch. 281, L. 1983; amd. Sec. 1, Ch. 696, L. 1983; amd. Sec. 3, Ch. 490, L. 1985; amd. Sec. 3, Ch. 592, L. 1985; amd. Sec. 1, Ch. 708, L. 1985; (5)En. Sec. 2, Ch. 708, L. 1985; amd. Sec. 9, Ch. 645, L. 1991; amd. Sec. 1, Ch. 514, L. 1993; amd. Sec. 6, Ch. 280, L. 2001; amd. Sec. 6, Ch. 80, L. 2019; amd. Sec. 4, Ch. 419, L. 2021.

#### Compiler's Comments

*2021 Amendment:* Chapter 419 inserted (3) concerning local reviewing authority fee. Amendment effective October 1, 2021.

**76-4-106. Cooperation with other governmental agencies.** (1) The reviewing authority may require the use of records of all state, county, and municipal agencies and may seek the assistance of those agencies.

(2) State, county, and municipal officers and employees, including local health officers and sanitarians, shall cooperate with the reviewing authority in furthering the purposes of this part so far as is practical and consistent with their own duties.

(3) A local reviewing authority without a registered sanitarian or a registered professional engineer to conduct a review under this part may contract with another local reviewing authority for the services of its registered sanitarian or registered professional engineer to conduct the review.

**History:** En. Sec. 8, Ch. 509, L. 1973; R.C.M. 1947, 69-5009; amd. Sec. 4, Ch. 490, L. 1985.

**76-4-107. Authority to inspect and monitor — certification.** (1) In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the reviewing authority, whenever any water supply or sewage disposal system is proposed or has been constructed, may:

(a) enter any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the reviewing authority, to inspect the system in order to ensure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;

(b) require as a condition of approval that records concerning the operation of a sewage disposal or water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality.

(2) The reviewing authority shall require certification from a registered professional engineer that a public water supply system or a public sewage disposal system required by rule to be designed by a registered professional engineer has been constructed according to approved plans and specifications.

**History:** En. 69-5010 by Sec. 1, Ch. 557, L. 1977; R.C.M. 1947, 69-5010; amd. Sec. 5, Ch. 490, L. 1985; amd. Sec. 1, Ch. 294, L. 1987; amd. Sec. 7, Ch. 80, L. 2019.

**76-4-108. Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. A notice and order issued by the department under this section may also assess an administrative penalty as provided in 76-4-109. The alleged violator may, no later than 30 days after service of a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board if the department issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must state the reason for the request. If a request is filed, a hearing must be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority is legally responsible for its actions under this part.

(5) If the department or a local reviewing authority determines that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, the department or the local reviewing authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written notice to the alleged violator. Upon revocation of a certificate, the person aggrieved by revocation may request a hearing. A hearing request must be filed in writing within 30 days after receipt of the notice of revocation and must state the



reason for the request. The hearing is before the board if the department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked the certificate.

(6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

**History:** En. Sec. 6, Ch. 509, L. 1973; R.C.M. 1947, 69-5007; amd. Sec. 6, Ch. 490, L. 1985; (5)En. Sec. 16, Ch. 490, L. 1985; amd. Sec. 4, Ch. 79, L. 2001; amd. Sec. 7, Ch. 443, L. 2005.

**76-4-109. Penalties.** (1) A person who violates a provision of this part, except 76-4-122(1), or a rule adopted or an order issued under this part is guilty of an offense and subject to a fine in an amount not to exceed \$1,000.

(2) (a) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule adopted or order issued under this part is subject to an administrative penalty in an amount not to exceed \$250 or a civil penalty in an amount not to exceed \$1,000. Each day of violation constitutes a separate violation.

(b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty factors in 76-4-1001. An action to recover penalties must be brought in the district court of the county in which the violation occurred.

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies.

**History:** En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part); amd. Sec. 7, Ch. 490, L. 1985; amd. Sec. 8, Ch. 443, L. 2005; amd. Sec. 23, Ch. 487, L. 2005; amd. Sec. 44, Ch. 535, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 535 in (2)(b) at end deleted "or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County". Amendment effective October 1, 2021.

**76-4-110. Additional remedies available.** This part does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this part or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of the person's rights in equity or under the common law or statutory law.

**History:** En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part); amd. Sec. 2520, Ch. 56, L. 2009.

**76-4-111. Exemption for certain condominiums, townhomes, and townhouses.**

(1) Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of the Montana Subdivision and Platting Act and this part are exempt from the provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units, duplexes, or commercial units, the construction or conversion of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel is not subject to the provisions of this part, provided that, if a new extension of a public water supply system or extension of a public sewage system is required to serve the development, the department reviews and approves plans for the extension.

**History:** En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 4, Ch. 592, L. 1985; (3)En. Sec. 9, Ch. 592, L. 1985; amd. Sec. 28, Ch. 582, L. 1999; amd. Sec. 7, Ch. 280, L. 2001; amd. Sec. 1, Ch. 62, L. 2017; amd. Sec. 8, Ch. 80, L. 2019; amd. Sec. 8, Ch. 323, L. 2019; amd. Sec. 5, Ch. 419, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 419 in (1) near middle after "constructed on land" substituted "subdivided in compliance with parts 5 and 6 of the Montana Subdivision and Platting Act" for "divided in compliance with the Montana Subdivision and Platting Act"; and in (2) near beginning after "a given number of living" inserted "units, duplexes, or commercial". Amendment effective October 1, 2021.

**76-4-112. Easements and restrictive covenants.** (1) The reviewing authority may require the owner of a proposed subdivision to grant an easement or enter into a restrictive covenant pursuant to rules adopted by the department for the purpose of:

(a) ensuring the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(b) protecting state waters; or

(c) prohibiting the placement of water wells within a ground water mixing zone.

(2) An easement or covenant required under this section must run with the land. The easement or covenant may be enforced by the reviewing authority. The easement or covenant may not be terminated without the consent of the reviewing authority.

**History:** En. Sec. 1, Ch. 280, L. 2001.

**76-4-113. Notification to purchasers.** The developer or owner of an approved subdivision shall provide each purchaser of property within the subdivision with a copy of the plat or certificate of survey and the certificate of subdivision approval specifying the approved type and locations of water supply, storm water drainage, and sewage disposal facilities and information regarding connection to municipal, county water and/or sewer district, or regional authority facilities provided for under 76-4-130. Each subsequent seller of property within the subdivision shall include within the instruments of transfer a reference to the conditions of the certificate of subdivision approval. The seller of any lot recorded with the exemption in 76-4-125(1)(c) shall include within the instruments of transfer a reference to that exclusion and a statement that the lot has not been reviewed or approved under this part. A written verification of notice that is signed by both the seller and the purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance with this section for that transaction.

**History:** En. Sec. 2, Ch. 280, L. 2001; amd. Sec. 9, Ch. 80, L. 2019; amd. Sec. 6, Ch. 419, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 419 in (1) near end of first sentence after "sewer district" inserted "or regional authority" and inserted third sentence concerning reference to exclusion and a statement that lot has not been reviewed or approved; and made minor changes in style. Amendment effective October 1, 2021.

**76-4-114. Review of application.** Except as provided in 76-4-125, the applicant shall submit an application for review of a subdivision pursuant to the following procedure:

(1) An applicant may request a preapplication meeting with the reviewing authority prior to submitting an application. The reviewing authority shall schedule the requested meeting between the applicant and the reviewing authority within 30 days of receiving the request from the applicant. The meeting may be conducted in person, via telephone, or via teleconference. For informational purposes only, the reviewing agent shall identify the state laws and rules that may apply to the subdivision review process.

(2) If the proposed development includes onsite sewage disposal facilities, the applicant shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(3) (a) After submitting an application if required under the Montana Subdivision and Platting Act, the applicant shall submit an application to the reviewing authority. A subdivision application is considered to be received on the date of delivery to the reviewing authority when accompanied by the review fee established pursuant to 76-4-105.

(b) Within 15 days of the receipt of an application, the reviewing authority shall determine whether the application contains the elements required by 76-4-115(1) to allow for review and shall notify the applicant of the reviewing authority's determination. If the reviewing authority determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification. The applicant shall address the missing elements identified by the reviewing authority. A determination that an application contains the required elements for review as provided in this subsection (3)(b) does not ensure that the proposed subdivision will be approved and does not limit the ability of the reviewing authority to request additional information during the review process.

(c) (i) After the reviewing authority notifies the applicant that the application contains all of the required elements as provided by subsection (3)(b), the reviewing authority shall make a final decision or a recommendation on the application. Except as provided by subsection (4), the reviewing authority shall:

(A) make a final decision within 40 days of finding that the application contains all of the required elements if the reviewing authority is the department; or

(B) make a recommendation for approval to the department or deny the application within 30 days of finding that the application contains all of the required elements if the reviewing authority is a local department or board of health. If the department receives a recommendation for approval of the subdivision from a local department or board of health, the department shall

make a final decision on the application within 10 days of receiving the recommendation of the reviewing authority.

(ii) If the department approves the application, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(iii) If the reviewing authority denies the application, the reviewing authority shall identify the deficiencies that result in the denial in a notification to the applicant.

(d) (i) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application.

(ii) If the reviewing authority denies an application and the applicant resubmits a corrected application after 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within:

(A) 55 days after receipt of the resubmitted application if the reviewing authority is the department; or

(B) 45 days after receipt of the resubmitted application if the reviewing authority is a local department or board of health.

(iii) If the review of the resubmitted application is conducted by a local department or board of health and the reviewing authority makes a recommendation to the department for approval of the application, the department shall make a final decision on the application within 10 days after the local reviewing authority completes its review under subsection (3)(d)(i) or (3)(d)(ii).

(4) Except as provided in subsections (6) and (7), if the reviewing authority needs an extension of a deadline in this section to complete its review or if an applicant requests an extension of a deadline, then the reviewing authority shall notify the applicant of the extension prior to the end of the review deadline. An extension under this subsection may not exceed 30 days; however, the reviewing authority may issue more than one extension.

(5) The reviewing authority may extend a deadline in this section until the items required in 76-4-115(2) are submitted. The reviewing authority shall notify the applicant of the extension before the end of the review deadline. The reviewing authority shall make a final decision within 30 days of receipt of the items required in 76-4-115(2).

(6) The department may extend a deadline under subsections (3)(c) and (3)(d) by 90 days if an environmental assessment is required.

(7) The department may extend a deadline under subsections (3)(c) and (3)(d) by 120 days if an environmental impact statement is required.

**History:** En. Sec. 1, Ch. 344, L. 2017; amd. Sec. 10, Ch. 80, L. 2019.

**76-4-115. Contents of application — supplemental information.** (1) The application submitted under 76-4-114 must include preliminary plans and specifications for the proposed development, information required under rules adopted pursuant to this chapter, and any additional information the applicant feels necessary.

(2) In addition to the information required for the submission of the application under subsection (1), before the reviewing authority makes a final decision on the application, the applicant shall provide:

(a) a copy of the certification from the local health department required by 76-4-104(6)(k);

(b) if required under Title 76, chapter 3, an approval from the local governing body under Title 76, chapter 3; and

(c) any public comments or summaries of public comments collected as provided in 76-3-604(7).

**History:** En. Sec. 2, Ch. 344, L. 2017.

**76-4-116. Annual report.** The department shall report annually to the environmental quality council in accordance with 5-11-210 summarizing the review procedures adopted under Title 76, chapter 4, and recommending whether statutory changes should be made to the process.

**History:** En. Sec. 3, Ch. 344, L. 2017; amd. Sec. 105, Ch. 261, L. 2021.

**Compiler's Comments**

*2021 Amendment:* See 2021 Session Law for amendment made by sec. 105, Ch. 261, L. 2021. Amendment effective April 20, 2021.



**76-4-117 through 76-4-120 reserved.**

**76-4-121. Restrictions on subdivision activities.** A person may not dispose of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision until:

(1) a certificate of subdivision approval has been issued pursuant to 76-4-114 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(2) the certifying authority has provided certification pursuant to 76-4-127 that the subdivision will be provided with adequate municipal or county water and/or sewer district facilities and adequate storm water drainage; or

(3) the subdivision is otherwise exempt from review under 76-4-125.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(4); amd. Sec. 8, Ch. 490, L. 1985; amd. Sec. 8, Ch. 280, L. 2001; amd. Sec. 1, Ch. 543, L. 2003; amd. Sec. 7, Ch. 344, L. 2017; amd. Sec. 11, Ch. 80, L. 2019.

**76-4-122. Certain filings prohibited.** (1) The county clerk and recorder may not file or record any plat, certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this part showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat, certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this part for filing until one of the following conditions has been met:

(a) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority and a certificate of subdivision approval has been issued pursuant to 76-4-114 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(b) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has obtained a certificate from the certifying authority pursuant to 76-4-127 that the subdivision will be provided with adequate municipal or county water and/or sewer district facilities and adequate storm water drainage; or

(c) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has placed on the plat, certificate of survey, or townhome, townhouse, or condominium declaration an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption.

**History:** (1)En. Sec. 151, Ch. 197, L. 1967; R.C.M. 1947, 69-5004; (2)En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(7), 69-5004; amd. Sec. 9, Ch. 490, L. 1985; amd. Sec. 5, Ch. 592, L. 1985; amd. Sec. 29, Ch. 582, L. 1999; amd. Sec. 9, Ch. 280, L. 2001; amd. Sec. 13, Ch. 599, L. 2003; amd. Sec. 8, Ch. 344, L. 2017; amd. Sec. 12, Ch. 80, L. 2019.

**76-4-123. Repealed.** Sec. 15, Ch. 280, L. 2001.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(1); amd. Sec. 10, Ch. 490, L. 1985; amd. Sec. 6, Ch. 592, L. 1985; amd. Sec. 30, Ch. 582, L. 1999.

**76-4-124. Repealed.** Sec. 15, Ch. 280, L. 2001.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(2), (3); amd. Sec. 11, Ch. 490, L. 1985; amd. Sec. 7, Ch. 592, L. 1985; amd. Sec. 31, Ch. 582, L. 1999.

**76-4-125. Land divisions excluded from review.** (1) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusion cited in 76-3-201;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage or solid waste disposal facilities as the department specifies by rule;

(d) as certified pursuant to 76-4-127:

(i) new divisions subject to review under the Montana Subdivision and Platting Act;

(ii) divisions or previously divided parcels recorded with sanitary restrictions; or

(iii) divisions or previously divided parcels of land that are exempt from the Montana Subdivision and Platting Act review under 76-3-203 or 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f);

(e) subject to the provisions of subsection (2), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter; and

(f) the sale of cabin or home sites as provided for and subject to the limitations in 77-2-318(2).

(2) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.

(3) A previously divided parcel that meets the eligibility criteria for an existing exemption from this part may use the exemption in lieu of obtaining a certificate of subdivision approval if the appropriate document, exemption certificate, certificate of survey, or subdivision plat filed with the county clerk and recorder cites the applicable exemption in its entirety.

(4) At the request of the owner, the original certificate of subdivision approval shall be reissued for a parcel previously approved under this part if:

(a) the parcel was subsequently divided without review and approval under this part; and

(b) the unapproved parcels are aggregated to return to the original divided parcel as originally approved.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(8), (10); amd. Sec. 12, Ch. 490, L. 1985; amd. Sec. 1, Ch. 289, L. 1997; amd. Sec. 10, Ch. 280, L. 2001; amd. Sec. 9, Ch. 299, L. 2001; amd. Sec. 8, Ch. 302, L. 2005; amd. Sec. 12, Ch. 337, L. 2005; amd. Sec. 1, Ch. 111, L. 2007; amd. Sec. 11, Ch. 150, L. 2007; amd. Sec. 3, Ch. 405, L. 2009; amd. Sec. 2, Ch. 217, L. 2011; amd. Sec. 25, Ch. 123, L. 2013; amd. Sec. 11, Ch. 379, L. 2013; amd. Sec. 1, Ch. 224, L. 2017; amd. Sec. 9, Ch. 344, L. 2017; amd. Sec. 35, Ch. 3, L. 2019; amd. Sec. 13, Ch. 80, L. 2019; amd. Sec. 7, Ch. 419, L. 2021; amd. Sec. 1, Ch. 518, L. 2021.

#### Compiler's Comments

*2021 Amendments — Composite Section:* Chapter 419 in (1)(c) after “of water supply or sewage” substituted “or” for “and”; in (1)(d)(iii) at beginning after “divisions or” inserted “previously divided”; and inserted (3) concerning previously divided parcel that meets the eligibility criteria for an existing exemption. Amendment effective October 1, 2021.

Chapter 518 inserted (4) concerning conditions for the reissuance of an original certificate of subdivision approval. Amendment effective May 14, 2021.

**76-4-126. Right to hearing.** (1) Upon a denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing before the board. A hearing request must be filed, in writing, within 30 days after receipt of the notice of denial and must state the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(2) If the grounds for a denial of approval under this part include noncompliance with local laws or regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and disposal of sewage, the board shall upon receipt of a hearing request refer the local compliance issues to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a determination regarding the local compliance issues, and the board shall incorporate the determination of the local authority in the board's final decision.

**History:** En. Sec. 5, Ch. 509, L. 1973; R.C.M. 1947, 69-5006; amd. Sec. 13, Ch. 490, L. 1985; amd. Sec. 5, Ch. 79, L. 2001.

**76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided.** (1) To qualify for the exemption from review set out in 76-4-125(1)(d), the certifying authority shall send notice of certification to the reviewing authority that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision. For a subdivision subject to Title 76, chapter 3, the certifying authority shall send notice of certification to the reviewing authority prior to final plat approval.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat included with the application for the proposed subdivision or a final plat when a preliminary plat is not necessary or, for a subdivision not subject to Title 76, chapter 3, a copy of the certificate of survey map or amended plat map or a declaration and floor plan, including the layout of each unit proposed to be recorded, under Title 70, chapter 23, part 3;

(c) the number of parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) the relative location of the subdivision to the city or the county water and/or sewer district;

(g) certification that adequate municipal or county water and/or sewer district facilities for the supply of water and disposal of sewage and solid waste will be provided. Facilities for subdivisions subject to 76-3-507 must be provided within the time that section provides.

(h) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities will be available; and

(i) certification that the certifying authority has or will review and approve plans to ensure adequate storm water drainage.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(part); amd. Sec. 14, Ch. 490, L. 1985; amd. Sec. 8, Ch. 592, L. 1985; amd. Sec. 32, Ch. 582, L. 1999; amd. Sec. 11, Ch. 280, L. 2001; amd. Sec. 14, Ch. 599, L. 2003; amd. Secs. 1, 2, Ch. 433, L. 2005; amd. Sec. 10, Ch. 344, L. 2017; amd. Sec. 1, Ch. 371, L. 2017; amd. Sec. 14, Ch. 80, L. 2019.

**76-4-128. Repealed.** Sec. 15, Ch. 280, L. 2001.

**History:** En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(5); amd. Sec. 2, Ch. 553, L. 1981.

**76-4-129. Joint application form and concurrent review.** The review required by this part and the provisions of chapter 3 may occur concurrently subject to the requirements of 76-4-115.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(11); amd. Sec. 3, Ch. 236, L. 1981; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 8, Ch. 419, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 419 deleted former (1) that read: "(1) Within 90 days after July 1, 1977, the department shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity"; near middle after "provisions of chapter 3" substituted "may" for "shall" and at end inserted "subject to the requirements of 76-4-115"; and made minor changes in style. Amendment effective October 1, 2021.

**76-4-130. Deviation from certificate of subdivision approval.** (1) Except as provided in subsection (2), a person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

(2) A person may deviate from the certificate of subdivision approval without approval by the reviewing authority if the deviation consists solely of connecting to municipal, county water and/or sewer district, or regional authority facilities in place of previously approved facilities. The department may require notification when a person connects to municipal, county water and/or sewer district, or regional authority facilities.



**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(9); amd. Sec. 15, Ch. 490, L. 1985; amd. Sec. 12, Ch. 280, L. 2001; amd. Sec. 15, Ch. 80, L. 2019; amd. Sec. 9, Ch. 419, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 419 in (2) near end of first sentence and near end of second sentence after “sewer district” inserted “, or regional authority”; and made minor changes in style. Amendment effective October 1, 2021.

**76-4-131. Applicability of public water supply laws.** An exclusion provided for in this part does not relieve any person of the duty to comply with the requirements of Title 75, chapter 6. An extension of a public water supply system or an extension of a public sewage system to serve a subdivision must be reviewed in accordance with the provisions of Title 75, chapter 6.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(6); amd. Sec. 13, Ch. 280, L. 2001; amd. Sec. 16, Ch. 80, L. 2019; amd. Sec. 10, Ch. 419, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 419 in beginning of first sentence substituted “An exclusion provide for in this part does not” for “The exclusions provided for in 76-4-121, 76-4-122, 76-4-125, and 76-4-130(2) do not”. Amendment effective October 1, 2021.

**76-4-132. Special revenue account — deposit and use of fees.** (1) All fees collected by the department under 76-4-105 must be deposited in an account in the state special revenue fund.

(2) Funds in the account established in subsection (1) may be used only as provided in 76-4-105.

**History:** En. Sec. 2, Ch. 514, L. 1993; amd. Sec. 14, Ch. 280, L. 2001.

**76-4-133. Installation inspection.** A person who owns or controls a parcel of land that has been approved under this chapter for the installation of an individual, shared, or multiple-user sewage system shall:

(1) have the system inspected during installation by the local health officer, as defined in 50-1-101, or by the installer or other person designated by the local health officer; and

(2) file with the local board of health a certification by the inspector that the system has been installed in compliance with the certificate of subdivision approval and any conditions of approval.

**History:** En. Sec. 3, Ch. 280, L. 2001; amd. Sec. 12, Ch. 150, L. 2007; amd. Sec. 17, Ch. 80, L. 2019.

**76-4-134. Owner request for review.** The department may review any parcel of land submitted for review by the owner of the parcel to determine whether the parcel may be developed with water and wastewater systems and to provide adequate solid waste disposal and storm water management. Upon making the determinations, the department may issue a certificate of subdivision approval for the parcel.

**History:** En. Sec. 1, Ch. 279, L. 2009.

**76-4-135. State regulations no more stringent than federal regulations or guidelines.** (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department’s conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal

regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the department shall comply with this section by either revising the rule to conform to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

**History:** En. Sec. 3, Ch. 471, L. 1995.

## **Part 10**

### **Penalties, Fees, and Interest**

**76-4-1001. Penalty factors.** (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
  - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
  - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being assessed; and
  - (iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;
- (d) the economic benefit or savings resulting from the violator's action;
- (e) the violator's good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
- (g) other matters that justice may require.

(2) After the amount of a penalty is determined under subsection (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) The department of environmental quality may adopt rules to implement this section.

**History:** En. Sec. 1, Ch. 487, L. 2005; amd. Sec. 78, Ch. 324, L. 2021.

#### **Compiler's Comments**

*2021 Amendment:* Chapter 324 in (5) substituted current text granting the department of environmental quality rulemaking authority for former text that read: "The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section." Amendment effective July 1, 2021.

**76-4-1002. Collection of penalties, fees, late fees, and interest.** (1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of Title 75 or Title 76, chapter 4, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

**History:** En. Sec. 2, Ch. 487, L. 2005.

## CHAPTER 5 FLOOD PLAIN AND FLOODWAY MANAGEMENT

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## Part 1 General Provisions

**76-5-101. Findings.** The people of the state of Montana find that:

(1) recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all



of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state; and

(2) the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

**History:** En. Sec. 1, Ch. 393, L. 1971; R.C.M. 1947, 89-3501.

**76-5-102. Policy and purposes.** (1) The policy and purposes of parts 1 through 4 of this chapter are to:

(a) guide development of the floodway areas of this state consistent with the enumerated findings;

(b) recognize the right and need of watercourses to periodically carry more than the normal flow of water;

(c) provide state coordination and technical assistance to local units in management of floodway areas;

(d) coordinate federal, state, and local management activities for floodway areas;

(e) encourage local governmental units to manage flood-prone lands, including the adoption, enforcement, and administration of land use regulations; and

(f) provide the department of natural resources and conservation with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of parts 1 through 4 to:

(a) restrict or prohibit uses that are dangerous to health or safety of property in times of flood or that cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities that serve the uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands that are unsuited for certain development purposes because of flood hazard;

(d) distinguish between the land use regulations applied to the designated floodway and those applied to that portion of the designated flood plain not contained within the designated floodway;

(e) apply more restrictive land use regulations within the designated floodway;

(f) ensure that regulations and minimum standards adopted under parts 1 through 4, insofar as possible, balance the greatest public good with the least private injury.

**History:** En. Sec. 2, Ch. 393, L. 1971; amd. Sec. 194, Ch. 253, L. 1974; amd. Sec. 1, Ch. 271, L. 1974; R.C.M. 1947, 89-3502; amd. Sec. 241, Ch. 418, L. 1995.

**76-5-103. Definitions.** As used in parts 1 through 4 of this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Artificial obstruction" means any obstruction that is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any flood plain or floodway that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

(2) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Designated flood plain" means a flood plain whose limits have been designated pursuant to part 2 of this chapter.

(5) "Designated floodway" means a floodway whose limits have been designated pursuant to part 2 of this chapter.

(6) "Drainway" means any depression 2 feet or more below the surrounding land serving to give direction to a current of water less than 9 months of the year and having a bed and well-defined banks.

(7) “Establish” means construct, place, insert, or excavate.

(8) “Flood” means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway.

(9) “Flood of 100-year frequency” means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.

(10) “Flood plain” means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered “zone B” or a “shaded X zone” by the federal emergency management agency.

(11) “Floodway” means the channel of a watercourse or drainway and those portions of the flood plain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

(12) “Natural obstruction” means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the flood plain or floodway by a nonhuman cause.

(13) “Owner” means any person who has dominion over, control of, or title to an obstruction.

(14) “Political subdivision” means any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations.

(15) “Responsible political subdivision” means a political subdivision that has enacted land use regulations in accordance with parts 1 through 4.

(16) (a) “Watercourse” means any depression 2 feet or more below the surrounding land serving to give direction to a current of water at least 9 months of the year and having a bed and well-defined banks.

(b) Upon order of the department, the term also includes any particular depression that would not otherwise be within the definition of watercourse.

**History:** En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part); amd. Sec. 1, Ch. 428, L. 1981; amd. Sec. 242, Ch. 418, L. 1995; amd. Sec. 1, Ch. 113, L. 2009; amd. Sec. 1, Ch. 124, L. 2009.

**76-5-104. Presumption that depression is watercourse.** In the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse.

**History:** En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973; amd. Sec. 195, Ch. 253, L. 1974; amd. Sec. 2, Ch. 271, L. 1974; R.C.M. 1947, 89-3503(part).

**76-5-105. Authority to enter and investigate lands or waters.** (1) The department or the responsible political subdivision may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by parts 1 through 4 of this chapter. Unless written consent is obtained, however, the department or the responsible political subdivision shall provide written notice of its entry by personal delivery to the owner, owner’s agent, lessee, or lessee’s agent whose lands will be entered. If none of these persons can be found, the department or the responsible political subdivision shall affix a copy of the notice to one or more conspicuous places on the property.

(2) An investigation of a natural or artificial obstruction or nonconforming use shall be made by the department or the responsible political subdivision either on its own initiative, on the written request of three titleholders of land abutting the watercourse or drainway involved, or on the written request of a political subdivision. Upon the request of an owner, owner’s agent, lessee, or lessee’s agent whose lands will be entered to undertake the investigation, the department or the responsible political subdivision shall release the names and addresses of the persons or political subdivision requesting the investigation.

**History:** En. Sec. 9, Ch. 393, L. 1971; amd. Sec. 201, Ch. 253, L. 1974; amd. Sec. 8, Ch. 271, L. 1974; R.C.M. 1947, 89-3509; amd. Sec. 1, Ch. 382, L. 1985.

**76-5-106. Exemption for small drainage area.** Parts 1 through 4 of this chapter do not extend to any obstruction in the flood plain or floodway of a watercourse or drainway where the drainage area above the watercourse or drainway, either within or outside the state, is less than 25 square miles in extent unless a particular watercourse or drainway is expressly declared to be within the coverage of parts 1 through 4 by order of the department.

**History:** En. Sec. 10, Ch. 393, L. 1971; amd. Sec. 9, Ch. 271, L. 1974; R.C.M. 1947, 89-3510; amd. Sec. 243, Ch. 418, L. 1995.

**76-5-107. Federal supremacy.** Parts 1 through 4 do not interfere with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

**History:** En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

**76-5-108. Permit construed as added requirement.** The granting of a permit under parts 1 through 4 of this chapter does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision, or of the United States but is an added requirement.

**History:** En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part).

**76-5-109. Other legal remedies preserved — immunity.** (1) The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity.

(2) When it is shown that there is a wrongful failure to comply with parts 1 through 4 of this chapter, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(3) The use of any one of the remedies or powers given to the department in parts 1 through 4 is not a bar to the exercise of any other remedy or power given by parts 1 through 4.

(4) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under parts 1 through 4 may not be brought against the state or the department.

**History:** (1), (2), (4)En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; Sec. 89-3514, R.C.M. 1947; (3)En. Sec. 15, Ch. 393, L. 1971; amd. Sec. 205, Ch. 253, L. 1974; Sec. 89-3515, R.C.M. 1947; R.C.M. 1947, 89-3514(part), 89-3515; amd. Sec. 244, Ch. 418, L. 1995.

**76-5-110. Penalties for violation.** Any person who violates 76-5-401 through 76-5-404 shall be guilty of a misdemeanor and shall upon conviction thereof be fined not more than \$100 or be imprisoned in the county jail for not more than 10 days or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

**History:** En. Sec. 13, Ch. 393, L. 1971; R.C.M. 1947, 89-3513.

## Part 2 Role of State Agencies

**76-5-201. Program for delineation of flood plains and floodways.** (1) The department shall initiate a comprehensive program for the delineation of designated flood plains and designated floodways for each watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for the acquisition of data.

(2) Before the department establishes by order a designated flood plain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation must include but is not limited to the following:

(a) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and other data that is considered appropriate;

(b) notifying local officials, including members of the county commission, city council, and planning board, of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching conclusions; and

(c) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.

(3) Nothing in this part precludes a political subdivision from designating by ordinance or resolution, without prior state designation, flood plains and floodways as designated by the United States federal emergency management agency and as necessary for compliance with the national flood insurance program if the department determines the designation is in compliance with parts 1 through 4 of this chapter.



**History:** En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(1); amd. Sec. 245, Ch. 418, L. 1995; amd. Sec. 2, Ch. 113, L. 2009.

**76-5-202. Designation of flood plains and floodways.** (1) When sufficient data has been acquired by the department, the department shall establish, by order after a public hearing, the designated flood plain within which a political subdivision may establish land use regulation.

(2) When sufficient data has been acquired, the department shall establish, by order after a public hearing, the designated floodway within which a political subdivision may establish land use regulation.

(3) These designations must be based upon reasonable hydrological certainty. Designations made according to a flood hazard boundary map prepared by the federal emergency management agency have a rebuttable presumption of reasonable hydrological certainty.

(4) The department shall record all designated flood plains or designated floodways in the office of the county clerk and recorder of each county in which those flood plains or floodways are found.

**History:** En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 1, Ch. 160, L. 1987; amd. Sec. 246, Ch. 418, L. 1995.

**76-5-203. Alteration of flood plains or floodways.** The department may alter the flood plains or floodways at any later time, by order after a public hearing, if a reevaluation of the then available flood data warrants it.

**History:** En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 247, Ch. 418, L. 1995.

**76-5-204. What constitutes notice.** Notice of a hearing or order of the department establishing or altering the flood plains or floodways must be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved. The last publication of the notice may not be less than 10 days prior to the date set for the hearing or the effective date of the order.

**History:** En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 248, Ch. 418, L. 1995.

**76-5-205. Furnishing of material to local governments.** (1) When the designated flood plain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas, together with a map outlining the areas involved, a copy of parts 1 through 4 of this chapter, adopted rules of the department, and suggested minimum standards adopted by the department.

(2) These standards and rules must reflect gradations in flood hazard based on criteria as outlined in 76-5-406. In adopting these standards and rules, the department shall consider local input from the affected political subdivisions.

**History:** En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(part); amd. Sec. 249, Ch. 418, L. 1995.

**76-5-206. Repealed.** Sec. 3, Ch. 23, L. 2011.

**History:** En. Sec. 8, Ch. 393, L. 1971; amd. Sec. 5, Ch. 294, L. 1973; amd. Sec. 200, Ch. 253, L. 974; amd. Sec. 7, Ch. 271, L. 1974; R.C.M. 1947, 89-3508; amd. Sec. 250, Ch. 418, L. 1995.

**76-5-207. Repealed.** Sec. 3, Ch. 23, L. 2011.

**History:** En. Sec. 12, Ch. 393, L. 1971; amd. Sec. 203, Ch. 253, L. 1974; R.C.M. 1947, 89-3512.

**76-5-208. Orders and rules.** (1) The department may adopt orders and rules to implement parts 1 through 4 of this chapter. All orders and rules must be on file at the offices of the department and in the office of the county clerk and recorder of each county affected by the order or rule.

(2) In addition to any requirement imposed by 76-5-202 through 76-5-205, the department shall provide notice by mail to the titleholder of land adjacent to a watercourse or drainway that would be specifically affected by a proposed order. The notice must be provided at least 10 days

prior to a hearing, if one is required, or at least 10 days prior to the effective date of the order if a hearing is not required.

**History:** En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part); amd. Sec. 251, Ch. 418, L. 1995; amd. Sec. 1, Ch. 23, L. 2011.

**76-5-209. Appeal from order.** (1) A person aggrieved by any order of the department issued under parts 1 through 4 of this chapter may appeal from the order to a court of competent jurisdiction within 30 days after the order's effective date. Service of notice of the appeal must be made upon the department.

(2) If an appeal is taken, enforcement of the order is stayed pending the outcome of the appeal.

**History:** En. Sec. 11, Ch. 393, L. 1971; amd. Sec. 202, Ch. 253, L. 1974; amd. Sec. 10, Ch. 271, L. 1974; R.C.M. 1947, 89-3511(part); amd. Sec. 252, Ch. 418, L. 1995.

### Part 3 Role of Local Government

**76-5-301. Land use regulations.** (1) Upon transmittal of the flood plain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations that meet or exceed the minimum standards of the department. The regulations may include, for the purposes of flood plain management only, flood plain management regulations within sheetflood areas as determined by the federal emergency management agency.

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated flood plain or the designated floodway as established by the department under 76-5-202 through 76-5-205, and an artificial obstruction or nonconforming use may not be established by any person within the designated flood plain or the designated floodway unless specifically authorized by the department.

(3) A political subdivision that has failed to adopt land use regulations that meet or exceed the minimum standards of the department within the 6-month period may subsequently adopt regulations, and if approved by the department, the regulations are effective within the designated flood plain or floodway and must be administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the department may shorten the 6-month period upon notification to the political subdivision and publication of a notice of the revised period in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks.

**History:** En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973; amd. Sec. 196, Ch. 253, L. 1974; amd. Sec. 3, Ch. 271, L. 1974; amd. Sec. 1, Ch. 262, L. 1977; R.C.M. 1947, 89-3504(3) thru (5); amd. Sec. 1, Ch. 74, L. 1983; amd. Sec. 253, Ch. 418, L. 1995.

**76-5-302. Substitution of local control for state permit system.** (1) If a political subdivision enacts, in harmony with the purposes of parts 1 through 4 of this chapter, permit issuance ordinances, regulations, or resolutions and land use ordinances, regulations, or resolutions that meet or exceed the minimum standards of the department and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the department, a permit from the department is not required.

(2) However, if the department determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of parts 1 through 4 and the minimum standards adopted under parts 1 through 4, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the department must be enforced by the department until the department determines that the political subdivision will comply.

**History:** En. Sec. 14, Ch. 393, L. 1971; amd. Sec. 204, Ch. 253, L. 1974; amd. Sec. 11, Ch. 271, L. 1974; amd. Sec. 4, Ch. 73, L. 1977; R.C.M. 1947, 89-3514(part); amd. Sec. 254, Ch. 418, L. 1995.

## Part 4

### Use of Flood Plains and Floodways

**76-5-401. Permissible open-space uses.** The following open-space uses are permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment:

- (1) agricultural uses;
- (2) industrial-commercial uses such as loading areas, parking areas, or emergency landing strips;
- (3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, alternative livestock ranches, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails;
- (4) forestry, including processing of forest products with portable equipment;
- (5) residential uses such as lawns, gardens, parking areas, and play areas;
- (6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406.

**History:** En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(2); amd. Sec. 68, Ch. 7, L. 2001.

**76-5-402. Permissible uses within flood plain but outside floodway.** Permits must be granted for the following uses within that portion of the flood plain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute:

- (1) any use permitted in the designated floodway;
- (2) structures, including but not limited to residential, commercial, and industrial structures, provided that:
  - (a) the structures meet the minimum standards adopted by the department;
  - (b) residential structures are constructed so that the lowest floor elevation, including basements, is 2 feet above the 100-year flood elevation;
  - (c) commercial and industrial structures are either constructed as specified in subsection (2)(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. The floodproofing must be in accordance with the minimum standards adopted by the department.

**History:** En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(3); amd. Sec. 255, Ch. 418, L. 1995; amd. Sec. 2, Ch. 124, L. 2009.

**76-5-403. Prohibited uses within floodway.** The following nonconforming uses shall be prohibited within the designated floodway:

- (1) a building for living purposes or place of assembly or permanent use by human beings;
- (2) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;
- (3) the construction or permanent storage of an object subject to flotation or movement during flood level periods.

**History:** En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973; amd. Sec. 198, Ch. 253, L. 1974; amd. Sec. 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3506(4).

**76-5-404. Artificial obstructions and nonconforming uses.** (1) An artificial obstruction or nonconforming use in a designated flood plain or designated floodway enforced under 76-5-301(1) and (2) and not exempt under 76-5-401 through 76-5-403 or subsection (2) or (3) of this section is a public nuisance unless a permit has been obtained for the artificial obstruction or nonconforming use from the department or the responsible political subdivision.

(2) It is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated flood plain or a designated floodway without a permit from the department or the responsible political subdivision.

(3) (a) Parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated flood plain or designated floodway before the



land use regulations adopted by the political subdivision are effective or before the department has enforced a designated flood plain or a designated floodway under 76-5-301(1) and (2).

(b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use within a designated flood plain or a designated floodway whether the obstruction proposed for alteration was located in the flood plain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

**History:** En. Secs. 5, 6, Ch. 393, L. 1971; amd. Secs. 3, 4, Ch. 294, L. 1973; amd. Secs. 197, 198, Ch. 253, L. 1974; amd. Secs. 4, 5, Ch. 271, L. 1974; R.C.M. 1947, 89-3505, 89-3506(1); amd. Sec. 256, Ch. 418, L. 1995.

**76-5-405. Variance for obstruction or nonconforming use.** (1) The department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses that would otherwise violate 76-5-401 through 76-5-404. The application for the permit must be submitted to the department or the responsible political subdivision and contain the information that the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway.

(2) Permits for obstructions or uses to be established in the designated flood plain or designated floodway of watercourses must be approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated flood plains or designated floodways are conclusively considered to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after a time that the department or the responsible political subdivision specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to 76-5-406 and this section.

(3) The department or the responsible political subdivision may issue the permit with reasonable conditions. The permitted obstruction or use must be maintained in compliance with the permit.

**History:** En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part); amd. Sec. 257, Ch. 418, L. 1995; amd. Sec. 2, Ch. 23, L. 2011.

**76-5-406. Criteria to be considered in connection with variance request.** In passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the department:

- (1) the danger to life and property by water that may be backed up or diverted by the obstruction or use;
- (2) the danger that the obstruction or use will be swept downstream to the injury of others;
- (3) the availability of alternate locations;
- (4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger;
- (5) the permanence of the obstruction or use;
- (6) the anticipated development in the foreseeable future of the area that may be affected by the obstruction or use; and
- (7) other factors in harmony with the purpose of parts 1 through 4 of this chapter.

**History:** En. Sec. 7, Ch. 393, L. 1971; amd. Sec. 199, Ch. 253, L. 1974; amd. Sec. 6, Ch. 271, L. 1974; R.C.M. 1947, 89-3507(part); amd. Sec. 258, Ch. 418, L. 1995.

## CHAPTER 6 OPEN SPACES

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### Part 1 General Provisions

**76-6-101. Short title.** This chapter may be cited as the “Open-Space Land and Voluntary Conservation Easement Act”.

**History:** En. Sec. 1, Ch. 337, L. 1969; amd. Sec. 1, Ch. 489, L. 1975; R.C.M. 1947, 62-601.

**76-6-102. Intent, findings, and policy.** (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Open-Space Land and Voluntary Conservation Easement Act. It is the legislature’s intent that the requirements of this chapter provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) The legislature finds that:

(a) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

(b) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

(c) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

(d) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

(e) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

(f) the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

(g) the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

(h) the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

**History:** En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part); amd. Sec. 25, Ch. 361, L. 2003.

**76-6-103. Purposes.** In accordance with the findings in 76-6-102, the legislature states that the purposes of this chapter are to:

(1) authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest;

(2) provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years; and

(3) encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this chapter.

**History:** En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

**76-6-104. Definitions.** The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Comprehensive planning" means planning for development and shall include:

(a) preparation of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development as a guide for long-range development;

(b) programming and financing plans for capital improvements;

(c) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and

(d) preparation of regulatory and administrative measures in support of the foregoing.

(2) "Conservation easement" means an easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction.

(3) "Open-space land" means any land which is provided or preserved for:

(a) park or recreational purposes;

(b) conservation of land or other natural resources;

(c) historic or scenic purposes; or

(d) assisting in the shaping of the character, direction, and timing of community development.

(4) "Public body" means the state, counties, cities, towns, and other municipalities.

(5) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) which qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and

(c) whose organizational purposes are designed to further the purposes of this chapter.

(6) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

**History:** En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

**76-6-105. Construction of chapter.** (1) To the extent that the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers conferred by this chapter are in addition and supplemental to the powers conferred by any other law.

(2) This chapter may not be construed to imply that any easement, covenant, condition, or restriction that does not have the benefit of this chapter is not enforceable based on any provisions of this chapter. This chapter does not diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain pursuant to Title 70, chapter 30, or otherwise and to use land for public purposes.

**History:** (1)En. Sec. 9, Ch. 337, L. 1969; Sec. 62-609, R.C.M. 1947; (2)En. 62-618 by Sec. 14, Ch. 489, L. 1975; Sec. 62-618, R.C.M. 1947; R.C.M. 1947, 62-609(part), 62-618; amd. Sec. 279, Ch. 42, L. 1997; amd. Sec. 94, Ch. 125, L. 2001.



**76-6-106. Acquisition and designation of real property by public body.** To carry out the purposes of this chapter, any public body may:

(1) acquire by purchase, gift, devise, bequest, or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both;

(2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interests, or both.

**History:** En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; R.C.M. 1947, 62-604(part).

**76-6-107. Conversion or diversion of open-space land.** (1) Open-space land, the title to or interest or right in which has been acquired under this chapter, may not be converted or diverted from open-space land use unless the conversion or diversion is:

(a) necessary to the public interest;

(b) not in conflict with the program of comprehensive planning for the area; and

(c) permitted by the conditions imposed at the time of the creation of the conservation easement, in the terms of the acquisition agreement, or by the governing body resolution.

(2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land must be substituted within a reasonable period not exceeding 3 years for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this chapter.

**History:** En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(1); amd. Sec. 1, Ch. 88, L. 2005.

**76-6-108. Conveyance or lease of open-space lands.** A grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant unless the property is to be converted or diverted from open-space land use in accordance with the provisions of 76-6-107.

**History:** En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(2).

**76-6-109. Powers of public bodies — county real property acquisition procedure maintained.** (1) A public body has the power to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and use grants and any other assistance from the federal government and any other public or private sources, to give security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government conditions imposed pursuant to federal laws as the public body may consider reasonable and appropriate and that are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities that may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state, a city, town, or other municipality, or a county may:

- (a) appropriate funds;
- (b) subject to 15-10-420, levy taxes and assessments according to existing codes and statutes;
- (c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state, subject to subsection (3); and
- (d) exercise its powers under this chapter through a board or commission or through the office or officers that its governing body by resolution determines or as the governor determines in the case of the state.

(3) Property taxes levied to pay the principal and interest on general obligation bonds issued by a city, town, other municipality, or county pursuant to this chapter may not be levied against the following property:

- (a) agricultural land eligible for valuation, assessment, and taxation as agricultural land under 15-7-202;
  - (b) forest land as defined in 15-44-102;
  - (c) all agricultural improvements on agricultural land referred to in subsection (3)(a);
  - (d) all noncommercial improvements on forest land referred to in subsection (3)(b); and
  - (e) agricultural implements and equipment described in 15-6-138(1)(a).
- (4) This chapter does not supersede the provisions of Title 7, chapter 8, parts 22 and 25.

**History:** En. Sec. 6, Ch. 337, L. 1969; R.C.M. 1947, 62-606; amd. Sec. 145, Ch. 584, L. 1999; amd. Sec. 1, Ch. 463, L. 2001; amd. Sec. 194, Ch. 574, L. 2001; amd. Sec. 123, Ch. 114, L. 2003; amd. Sec. 2, Ch. 430, L. 2003; amd. Sec. 16, Ch. 255, L. 2017.

**76-6-110. Authorization and funding for planning commission.** (1) The state, counties, cities, towns, or other municipalities in an urban area, acting jointly or in cooperation, are authorized to perform comprehensive planning for the urban area and to establish and maintain a planning commission for this purpose and related planning activities.

(2) Funds may be appropriated and made available for the comprehensive planning. Financial or other assistance from the federal government and any other public or private sources may be accepted and utilized for the planning.

**History:** En. Sec. 7, Ch. 337, L. 1969; R.C.M. 1947, 62-607.

## Part 2 Conservation Easements

**76-6-201. Conservation easements in general.** (1) Where a public body acquires under this chapter an interest in land less than fee, this acquisition shall be by conservation easement.

(2) A conservation easement may be applied to urban or nonurban land.

**History:** En. Secs. 3, 4, Ch. 337, L. 1969; amd. Secs. 3, 4, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part), 62-604(part).

**76-6-202. Duration of conservation easements.** Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than 15 years. An easement granted for a term of years may be renewed for a term of 15 or more years upon the execution of a new granting instrument by the parties.

**History:** En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

**76-6-203. Types of permissible easements.** Easements or restrictions under this chapter may prohibit or limit any or all of the following:

- (1) structures—construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- (2) landfill—dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- (3) vegetation—removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.—excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use—surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation—activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land—subdivision of land as defined in 76-3-103 and 76-3-104;

(8) other acts—other acts or uses detrimental to such retention of land or water areas in their existing conditions.

**History:** En. 62-610 by Sec. 7, Ch. 489, L. 1975; R.C.M. 1947, 62-610; amd. Sec. 16, Ch. 266, L. 1979; amd. Sec. 12, Ch. 379, L. 2013.

**76-6-204. Acquisition of conservation easements by qualified private organizations.** Any qualified private organization may acquire by a conservation easement, by purchase, or by gift, devise, bequest, or grant title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.

**History:** En. 62-611 by Sec. 8, Ch. 489, L. 1975; R.C.M. 1947, 62-611.

**76-6-205. Assignability of easements.** For the purposes of this chapter, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise. No conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership. The assignees must be qualified under the terms of this chapter to hold a conservation easement.

**History:** En. 62-613 by Sec. 10, Ch. 489, L. 1975; R.C.M. 1947, 62-613.

**76-6-206. Review by local planning authority.** In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have 90 days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority or the local planning authority has indicated in writing it will have no comments or 90 days have elapsed, whichever occurs first.

**History:** En. 62-614 by Sec. 11, Ch. 489, L. 1975; R.C.M. 1947, 62-614.

**76-6-207. Recording and description of easement.** (1) All conservation easements must be recorded in the county where the land lies so as to effect the land's title in the manner of other conveyances of interest in land and must describe the land subject to the conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.

(2) (a) The county clerk and recorder shall, upon recording, place a copy of the conservation easement in a separate file within the office of the county clerk and recorder.

(b) The county clerk and recorder shall provide a copy of the conservation easement to the department of revenue office in that county within 30 days of the receipt of the original conservation easement.

**History:** En. 62-615 by Sec. 12, Ch. 489, L. 1975; R.C.M. 1947, 62-615; amd. Sec. 3, Ch. 352, L. 2007.

**76-6-208. Taxation of property subject to conservation easement.** (1) Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed



valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

(2) Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

**History:** En. Sec. 8, Ch. 337, L. 1969; amd. Sec. 6, Ch. 489, L. 1975; R.C.M. 1947, 62-608.

**76-6-209. Easements to run with the land.** The provisions of 70-17-202 and 70-17-203(1) and (2) notwithstanding, for the purposes of this chapter, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership.

**History:** En. 62-612 by Sec. 9, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part).

**76-6-210. Enforcement.** (1) Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

(2) No conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement or because such easement is an easement in gross.

**History:** En. 62-612, 62-616 by Secs. 9, 13, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part), 62-616.

**76-6-211. Who may enforce easement.** (1) The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

(2) Public bodies holding conservation easements shall enforce the provisions of these easements.

**History:** (1)En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; Sec. 62-617, R.C.M. 1947; (2)En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; Sec. 62-604, R.C.M. 1947; R.C.M. 1947, 62-604(part), 62-617.

**76-6-212. Additional reporting procedures — coordination of information collection, transfer, and accessibility.** (1) A public body or qualified private organization holding a conservation easement before October 1, 2007, shall mail or electronically transfer a copy of that conservation easement to the department of revenue within 6 months of October 1, 2007.

(2) The department of revenue shall review conservation easement agreements collected pursuant to 76-6-207 and subsection (1) of this section and record the:

(a) legal description of the conservation easement as it relates to the established property boundaries identified in the conservation easement agreement;

(b) approximate acreage as identified in the conservation easement agreement;

(c) date of the conservation easement agreement;

(d) book and page or document number as provided for in 7-4-2617; and

(e) name of the conservation easement grantee.

(3) (a) The department of revenue shall transfer conservation easement information collected pursuant to 76-6-207 and subsections (1) and (2) of this section to the state library.

(b) The department of revenue shall coordinate with the state library to develop procedures regarding the collection and transfer of conservation easement information between the two agencies.

(c) The state library shall convert conservation easement information received from the department of revenue to a digital format for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through the state library's website.

(d) The state library shall incorporate the conservation easement data into appropriate databases developed or maintained by the Montana natural heritage program for the purposes of Title 90, chapter 15.

**History:** En. Sec. 5, Ch. 352, L. 2007; amd. Sec. 3, Ch. 175, L. 2013.

## CHAPTER 8 BUILDINGS FOR LEASE OR RENT

### Part 1 — Lease or Rent — General Provisions

- 76-8-101. Definitions.  
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### Part 1 Lease or Rent — General Provisions

**76-8-101. Definitions.** As used in this part, the following definitions apply:

(1) “Building” means a structure or a unit of a structure with a roof supported by columns or walls for the permanent or temporary housing or enclosure of persons or property or for the operation of a business. Except as provided in 76-3-103(16) the term includes a recreational camping vehicle, mobile home, or cell tower. The term does not include a condominium or townhome.

(2) “Department” means the department of environmental quality provided for in 2-15-3501.

(3) “Governing body” means the legislative authority for a city, town, county, or consolidated city-county government.

(4) “Landowner” means an owner of a legal or equitable interest in real property. The term includes an heir, successor, or assignee of the ownership interest.

(5) “Local reviewing authority” means a local department or board of health that is approved to conduct reviews under Title 76, chapter 4.

(6) “Supermajority” means:

(a) an affirmative vote of at least two-thirds of the present and voting members of a city or town council;

(b) a unanimous affirmative vote of the present and voting county commissioners in counties with three county commissioners;

(c) an affirmative vote of at least four-fifths of the present and voting county commissioners in counties with five commissioners;

(d) an affirmative vote of at least two-thirds of the present and voting county commissioners in counties with more than five commissioners; or

(e) an affirmative vote of at least two-thirds of the present and voting members of the governing body of a consolidated city-county government.

(7) “Tract” means an individual parcel of land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder’s office.

**History:** En. Sec. 1, Ch. 379, L. 2013; amd. Sec. 4, Ch. 363, L. 2017.

**76-8-102. Buildings for lease or rent — review procedure.** (1) Unless the buildings are exempt from review as provided in 76-8-103 or subject to review as provided in 76-8-106, an application for the creation of buildings for lease or rent on a single tract must be reviewed as provided in this section.

(2) An application pursuant to this section for the creation of buildings for lease or rent must be submitted for review to:

(a) the governing body or its agent or agency in which the buildings are proposed to be located; and

(b) the department or local reviewing authority if review by the department or local reviewing authority is required by Title 76, chapter 4 or to the local board or department of health if review is required by Title 50.

(3) (a) Upon receipt of an application and any applicable fees, the governing body or its agent or agency shall within 10 working days determine whether the application contains the required materials and sufficient information for review. The governing body or its agent or agency shall notify the applicant in writing as to whether the application is complete. If the application is incomplete, the governing body shall identify any missing materials or insufficient information.

(b) After the governing body or its agent or agency has notified the applicant that the application is complete, the governing body shall approve, conditionally approve, or deny the application for the creation of buildings for lease or rent pursuant to this section within 60 working days. The applicant and the governing body may agree to extend the time for review in writing.

(c) Review and approval, conditional approval, or denial of an application for the creation of buildings for lease or rent pursuant to this section must be based upon the regulations in effect at the time an application is determined to be complete. If regulations change during the period that the application is determined to be complete, the determination of whether the application is complete must be based on the new regulations.

(4) The governing body may establish a reasonable fee to be paid by the landowner commensurate with the cost of reviewing applications submitted pursuant to this section.

(5) If the governing body denies, approves, or conditionally approves the proposed creation of buildings for lease or rent pursuant to this section, the governing body shall provide written notification to the landowner within the 60 working-day period provided in this section.

**History:** En. Sec. 6, Ch. 379, L. 2013.

**76-8-103. Buildings for lease or rent — exemptions.** (1) A building created for lease or rent on a single tract is exempt from the provisions of this part if:

(a) the building is in conformance with applicable zoning regulations adopted pursuant to Title 76, chapter 2, parts 1 through 3, provided that the zoning contains the elements of 76-8-107; or

(b) when applicable zoning regulations are not in effect:

(i) the building was in existence or under construction before September 1, 2013;

(ii) the building provides accommodations as defined in 15-68-101 that are subject to the lodging facility use tax under Title 15, chapter 65, except for recreational camping vehicles or mobile home parks;

(iii) the building is created for lease or rent for farming or agricultural purposes;

(iv) the building is not served by water and wastewater and will not be leased or rented;

(v) the building is served by water and wastewater and the landowner records a notarized declaration with the clerk and recorder of the county in which the property is located stating that the proposed building will not be leased or rented. The declaration recorded pursuant to this subsection (1)(b)(v) runs with the land and is binding on the landowner and all subsequent landowners and successors in interest to the property. The declaration must include but is not limited to:

(A) the name and address of the landowner;

(B) a legal description of the tract upon which the proposed building will be located; and

(C) a specific description of the building on the tract of record.

(2) Any building that is exempt under subsection (1) from the provisions of this part and that is or will be served by water or wastewater must be in compliance with the provisions of 76-8-106.

(3) The exemption provided in subsection (1)(b)(i) is limited to the first three buildings created for lease or rent on a single tract.

**History:** En. Sec. 2, Ch. 379, L. 2013; amd. Sec. 10, Ch. 484, L. 2021.

**Compiler's Comments**

*2021 Amendment:* Chapter 484 in (1)(b)(ii) near beginning substituted "building provides accommodations as defined in 15-68-101 that are" for "building is a facility as defined in 15-65-101 that is". Amendment effective October 1, 2021.

*Applicability:* Section 14, Ch. 484, L. 2021, provided: "[This act] applies to sales made on or after October 1, 2021."

**76-8-104 and 76-8-105 reserved.**



**76-8-106. Buildings for lease or rent — three or fewer buildings — application — review procedures.** (1) A landowner shall submit an application for the creation of the first three or fewer buildings for lease or rent on a single tract to the department or local reviewing authority for sanitation review if review is required by Title 76, chapter 4, or to the local board or department of health if review is required by Title 50.

(2) If the department or local reviewing authority approves the application, the landowner shall record the certificate of approval and any conditions for the approval of the application with the county clerk and recorder.

(3) If a building for lease or rent is created on a single tract on or after September 1, 2013, and the tract is later subdivided or an exemption from subdivision review is used pursuant to Title 76, chapter 3, any building for lease or rent on the new tract is subject to the provisions of 76-8-102, 76-8-107, and 76-8-108.

**History: En. Sec. 3, Ch. 379, L. 2013.**

**76-8-107. Buildings for lease or rent — four or more buildings — regulations.** (1) A governing body shall adopt regulations for the administration and enforcement of the creation of four or more buildings for lease or rent on a single tract.

(2) The regulations adopted pursuant to this section must, at a minimum:

(a) list the materials that must be included in an application for the creation of four or more buildings for lease or rent;

(b) require a description of:

(i) property boundaries;

(ii) onsite and adjacent offsite streets, roads, and easements;

(iii) geographic features;

(iv) existing septic tanks and drainfields;

(v) existing wells; and

(vi) existing and proposed buildings;

(c) require adequate water supply and sewage and solid waste disposal facilities;

(d) require an assessment of potential significant impacts on the surrounding physical environment and human population in the area to be affected, including conditions, if any, that may be imposed on the proposal to avoid or minimize potential significant impacts identified;

(e) require adequate emergency medical, fire protection, and law enforcement services;

(f) require access to the site; and

(g) comply with applicable flood plain requirements.

(3) Prior to adopting regulations pursuant to this section, the governing body shall provide an opportunity for public hearing and comment on the proposed regulations. Notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or as provided in 7-1-4127 if the governing body is a city commission or a town council and must be posted not less than 30 days before the public hearing in at least five public places, including but not limited to public buildings. Public comment must be addressed before the regulations are adopted.

**History: En. Sec. 4, Ch. 379, L. 2013.**

**76-8-108. Additional review criteria — four or more buildings for lease or rent.** (1) (a) Upon a majority vote, a governing body may increase the minimum number of buildings created for lease or rent that are subject to review by the governing body pursuant to 76-8-107. The governing body may elect to increase the minimum number subject to review by the governing body for all buildings created for lease or rent or may limit the increase to specific types or uses of buildings created for lease or rent.

(b) For purposes of subsection (1)(a), the governing body shall adopt regulations pursuant to 76-8-107 identifying the number or types of buildings created for lease or rent that are subject to review by the governing body.

(2) Upon a supermajority vote, the governing body may adopt regulations pursuant to 76-8-107 for the purpose of reviewing four or more buildings for lease or rent that are in addition to the regulations provided in 76-8-107. For purposes of this subsection, a governing body may adopt any regulations it considers necessary to protect public health, safety, or the general welfare.

**History: En. Sec. 5, Ch. 379, L. 2013.**

**76-8-109 through 76-8-112 reserved.**

**76-8-113. Actions against governing body and department.** (1) An applicant who has filed an application for the creation of buildings for lease or rent and who is aggrieved by a decision of the department or the local reviewing authority may request a hearing as provided in 76-4-126(1). For purposes of this subsection, the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the proceeding.

(2) An applicant who has filed an application for the creation of buildings for lease or rent or a landowner with a property boundary contiguous to the tract on which the buildings are proposed to be located who is aggrieved by a decision of the governing body may, within 30 days of the date of the decision of the governing body, appeal to the district court in the county in which the property involved is located.

(3) For purposes of this section, “aggrieved” has the meaning provided in 76-3-625.

**History:** En. Sec. 7, Ch. 379, L. 2013.

**76-8-114. Violations — penalties.** (1) If any building is created in violation of this part, the governing body may, in addition to assessing a fine or penalty not to exceed a maximum of \$500, initiate an action to:

- (a) prevent the unlawful creation of the building;
- (b) restrain, correct, or abate a violation; or
- (c) prevent the occupancy of the building.

(2) For the purposes of enforcing the provisions of this part, the governing body shall attempt to obtain voluntary compliance from the landowner at least 30 days prior to initiating an action for a violation of this part.

**History:** En. Sec. 8, Ch. 379, L. 2013.





**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
ADMINISTRATIVE RULES FOR THE MONTANA  
SANITATION IN SUBDIVISIONS ACT  
(ARM TITLE 17, CHAPTER 36)**

**Subchapter 1  
Subdivision Application and Review**

**17.36.101 DEFINITIONS**

For purposes of subchapters 1, 3, 6, and 8, the following definitions apply:

(1) "Accessory building" means a subordinate building or structure on the same lot as the main building, which is under the same ownership as the main building, and which is devoted exclusively to an accessory use such as a garage, workshop, art studio, guest house, or church rectory.

(2) "Bedrock" means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater. The term does not include gravel and other rock fragments as defined in Department Circular DEQ-4, Appendix B.

(3) "Bedroom" means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.

(4) "Campground" is defined in 50-52-101, MCA.

(5) "Certificate of survey" is defined in 76-3-103, MCA.

(6) "Cesspool" means a seepage pit without a septic tank to pretreat the wastewater.

(7) "Commercial unit" means the area under one roof that is occupied by a business or other nonresidential use. A building housing two businesses is considered two commercial units.

(8) "Condominium" is defined in 70-23-101, MCA.

(9) "Connection" means a line that provides water or sewer service to a single building or main building with accessory buildings. The term is synonymous with "service connection." For purposes of ARM 17.36.328, "connection" means a water or sewer line that connects a subdivision to a public system.

(10) "Department" means the Montana Department of Environmental Quality.

(11) "Deviation" means a department-approved departure from a requirement contained in a department circular.

(12) "Drainageway" means a course or channel along which storm water moves in draining an area.

(13) "Dry well" means a storm water detention structure that collects surface runoff and discharges the water below the natural ground surface.

(14) "Escarpment" means any slope greater than 50% that extends vertically six feet or more as measured from toe to top.

(15) "Existing system" means a water supply or wastewater disposal system, in a proposed subdivision, that was installed prior to the submittal of a subdivision application under this subchapter.

(16) "Experimental system" means a wastewater treatment system for which specific design standards are not provided in Department Circular DEQ-4 or DEQ-2.

(17) "Facilities" means public or private facilities for the supply of water or disposal of sewage, storm water, or solid waste and any pipes, conduits, or other stationary method by which water, storm water, sewage, or solid wastes might be transported or distributed.

(18) "Fill" means artificially placed soil.

(19) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year. The floodplain consists of the floodway and the floodfringe, as defined in ARM 36.15.101.

(20) "Gray water" means wastewater that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(21) “Ground water monitoring” means measuring the depth from the natural ground surface to the seasonally high ground water for a long enough period of time to detect a peak and then a sustained decline in the ground water level.

(22) “Holding tank” means a watertight receptacle that receives wastewater for retention and does not as part of its normal operation dispose of or treat the wastewater. The term does not include surge tanks used in a gray water irrigation system if the system meets the requirements of ARM 17.36.319.

(23) “Impervious layer” means any layer of material in the soil profile that has a percolation rate slower than 240 minutes per inch.

(24) “Individual water system” means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102, MCA.

(25) “Individual wastewater system” means a wastewater system that serves one living unit or commercial unit and that is not a public sewage system as defined in 75-6-102, MCA.

(26) “Limiting layer” means bedrock, an impervious layer, or seasonally high ground water.

(27) “Living unit” means the area under one roof that can be used for one residential unit and that has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.

(28) “Local health officer” means health officer as defined in 50-2-101, MCA, or the health officer’s designee.

(29) “Lot” is synonymous with “tract” or “parcel” for purposes of this chapter.

(30) “Main” means any line providing water or sewer to two or more service connections, any line serving a water hydrant that is designed for firefighting purposes, or any line that is designed to water or sewer main specifications.

(31) “Mixing zone” is defined in 75-5-103, MCA.

(32) “Mobile home” means a trailer equipped with necessary service connections that is designed for use as a long-term residence.

(33) “Multiple-user wastewater system” means a wastewater system that serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public sewage system as defined in 75-6-102, MCA. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.

(34) “Multiple-user water supply system” means a water supply system that serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public water supply system as defined in 75-6-102, MCA. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.

(35) “Municipal” means pertaining to an incorporated city or town.

(36) “Natural soil” means soil that has developed through natural processes and to which no fill material has been added.

(37) “Parcel” means a part of land which is created by a division of land. The term is synonymous with “tract” and “lot” for purposes of this chapter.

(38) “Percolation test” means a standardized test used to assess the infiltration rate of soils, performed in accordance with Appendix A in Department Circular DEQ-4.

(39) “Plat” is defined in 76-3-103, MCA.

(40) “Preliminary plat” is defined in 76-3-103, MCA.

(41) “Professional engineer” means an engineer licensed or otherwise authorized to practice engineering in Montana pursuant to Title 37, chapter 67, MCA.

(42) “Public wastewater system” means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5, so that ten or more proposed residential connections will be considered a public system.

(43) “Public water supply system” means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply

the number of living units by 2.5, so that ten or more proposed residential connections will be considered a public system.

(44) "Recreational camping vehicle" means a vehicular unit designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use, and that either has its own power or is mounted on, or towed by, another vehicle. The basic types of RVs are camping trailer, fifth wheel trailer, motor home, park trailer, travel trailer, and truck camper.

(45) "Redoximorphic features" or "mottling" means soil properties associated with wetness that results from the reduction and oxidation of iron and manganese compounds in the soil after saturation and desaturation with water.

(46) "Registered sanitarian" means a person licensed to practice the profession of sanitarian in Montana pursuant to Title 37, chapter 40, MCA.

(47) "Reviewing authority" is defined in 76-4-102, MCA.

(48) "Sealed pit privy" means an enclosed receptacle designed to receive non-water-carried toilet wastes into a watertight vault.

(49) "Seasonally high ground water" means depth from the natural ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated monitoring well during the time of the year when the water table is the highest. The term includes the upper surface of a perched water table.

(50) "Seepage pit" means a covered underground receptacle that receives wastewater after primary treatment and allows the wastewater to seep into the surrounding soil.

(51) "Septic tank" means a wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

(52) "Sewage" is synonymous with "wastewater" for purposes of this chapter.

(53) "Shared wastewater system" means a wastewater system that serves, or is intended to serve, two living units or commercial units or a combination of both and that is not a public sewage system as defined in 75-6-102, MCA.

(54) "Shared water system" means a water system that serves, or is intended to serve, two living units or commercial units or a combination of both and that is not a public water supply system as defined in 75-6-102, MCA.

(55) "Site evaluation" means an evaluation to determine if a site is suitable for the installation of a subsurface wastewater treatment system.

(56) "Slope" means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.

(57) "Soil consistence" means the attributes of soil material as expressed in degree of cohesion and adhesion or in resistance to deformation or rupture. See Appendix B of Department Circular DEQ-4.

(58) "Soil profile" means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method, which can be found in Appendix B, Department Circular DEQ-4.

(59) "Soil structure" means the combination or arrangement of primary soil particles into secondary units or peds. See Appendix B of Department Circular DEQ-4.

(60) "Soil texture" means the amount of sand, silt or clay measured separately in a soil mixture. See appendix B of Department Circular DEQ-4.

(61) "Spring" means natural opening in the earth's surface from which water issues or seeps.

(62) "State waters" is defined in 75-5-103, MCA.

(63) "Subsurface wastewater treatment system" means the process of wastewater treatment in which the effluent is applied below the soil surface or into a mound by an approved distribution system.

(64) "Surface water" means any water on the earth's surface including, but not limited to, streams, lakes, ponds, reservoirs, and irrigation ditches, whether fresh or saline.

(65) "Tract" is synonymous with "lot" or "parcel" for the purposes of this chapter.

(66) "Unstable land forms" means areas showing evidence of mass down-slope movement such as hummock hill slopes, debris flows, landslides, and rock falls. Unstable land forms may be evidenced by slip surfaces roughly parallel to the hillside; landslide scars and carving debris



ridges; fences, trees, or telephone poles which appear tilted; or tree trunks which bend uniformly as they enter the ground.

(67) "Waiver" means a department-approved departure from a requirement contained in department rules. Granting of waivers must be in accordance with ARM 17.36.601.

(68) "Wastewater" means water-carried wastes. For purposes of these rules, wastewater does not include storm water. The term includes, but is not limited to, the following:

- (a) household, commercial, or industrial wastes;
- (b) chemicals;
- (c) human excreta; or
- (d) animal and vegetable matter in suspension or solution.

(69) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, all disposal methods described in Department Circulars DEQ-2 and DEQ-4.

(70) "Well" means an artificial excavation that derives water from the interstices of rocks or soil which it penetrates.

(71) "Well isolation zone" means the area within a 100-foot radius of a water well.

(72) "Zone of saturation" means the area beneath the ground in which all open spaces are filled with ground water.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1984 MAR p. 1568, Eff. 10/26/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 967, Eff. 4/14/00; AMD, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1981, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16.

#### 17.36.102 APPLICATION--GENERAL

(1) To initiate review of a subdivision under 76-4-125 or 76-4-134, MCA, a person must submit a complete application to the department. The application must be signed by all owners of record of the property proposed to be subdivided. In the application, the owners may designate an authorized representative responsible for subsequent correspondence with the reviewing authority. If the department has certified a local department or board of health to review subdivisions pursuant to 76-4-104, MCA, the application must be submitted to the local reviewing authority.

(2) A subdivision application must be on a form approved by the department. Copies of the application form may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, <http://www.deq.mt.gov>, or from the local reviewing authority.

(3) A copy of the complete application, including all supporting information supplied to the reviewing authority, and all resubmittals of the application, must be submitted concurrently to the local health officer having jurisdiction for purposes of reviewing compliance with local laws and regulations, as provided in ARM 17.36.108.

(4) To resume review of an application that has been inactive for more than one year after the issuance of a denial letter by the reviewing authority, the applicant shall reapply and submit fees as required by subchapter 8, unless the file is inactive due to ground water monitoring or other requirements imposed by the reviewing authority.

(5) In addition to meeting the requirements of this chapter, subdivisions designed for the placement of mobile homes or recreational camping vehicles may be subject to the requirements of ARM Title 37, chapter 111, subchapter 2.

(6) If a proposed subdivision includes facilities for wastewater treatment or disposal, including gray water irrigation, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The designated agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1981 MAR p. 254, Eff. 3/27/81; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 967, Eff. 4/14/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 2772, Eff. 9/19/14.

**17.36.103 APPLICATION--CONTENTS**

(1) In addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application:

- (a) payment of subdivision review fees as required in subchapter 8;
- (b) plans and specifications for water supply, wastewater treatment, and storm water systems;
- (c) if public or multiple-user water supply or wastewater systems are proposed, one copy of the design report and one set of plans and specifications may be submitted until the plans are approvable, after which three copies of final plans and specifications must be submitted;
- (d) lot layout documents as required by ARM 17.36.104;
- (e) a vicinity map or plan showing the locations of the following features if they are within 100 feet of proposed or approved subdivision mixing zones, within 100 feet of proposed subdivision water supply or wastewater treatment facilities, or within 100 feet of the perimeter of the proposed subdivision:
  - (i) lakes, streams, irrigation ditches, wetlands, and springs; and
  - (ii) existing, previously approved, and proposed wells, wastewater treatment systems, and mixing zones;
- (f) evidence that the water source for the proposed subdivision is sufficient in terms of quality, quantity, and dependability, as required by ARM 17.36.331 and 17.36.332;
- (g) if ground water is proposed as a water source, the applicant shall submit the following information:
  - (i) the location of the proposed ground water source, which must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet, any known mixing zone as defined in ARM 17.30.502 within 500 feet, and any sewage lagoon within 1,000 feet. If the reviewing authority identifies a potential problem, it may require that all potential sources of contamination be shown in accordance with Department Circular PWS-6; and
  - (ii) a description of the proposed ground water source, including approximate depth to water bearing zones and lithology of the aquifer;
  - (h) if water is to be supplied by means other than individual on-site wells, information about water use agreements;
  - (i) if subsurface wastewater treatment systems are proposed:
    - (i) soil profile descriptions, percolation tests if required, and other pertinent soil information for each proposed drainfield;
    - (ii) seasonal high ground water information;
    - (iii) direction and percentage of slope across the treatment area or a contour map with a contour interval of at least two feet; and
    - (iv) any other evidence to show whether the wastewater treatment systems are sufficient in terms of capacity and dependability;
  - (j) if gray water irrigation systems are proposed:
    - (i) descriptions of the soils within 25 feet of proposed gray water irrigation areas. Soils must be described in accordance with Department Circular DEQ-4. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report; and
    - (ii) the location and design of the proposed systems;
  - (k) a copy of the nondegradation analysis and calculations as required by ARM 17.30.715. If the proposed wastewater disposal facilities for a subdivision are subject to the discharge permit requirements of Title 75, chapter 5, MCA, and ARM Title 17, chapter 30, the applicant shall first obtain the discharge permit and provide the reviewing authority with a copy of the discharge permit nondegradation determination;
  - (l) a storm drainage map and plan as required by ARM 17.36.310;
  - (m) the name of the solid waste disposal site that will serve the subdivision;
  - (n) a copy of any environmental assessment required for the subdivision under Title 76, chapter 3, MCA;
  - (o) a copy of the plat, certificate of survey, deed, or other document that is consistent with the document that will be, or has been, filed with the county clerk and recorder for the proposed subdivision;
  - (p) a copy of applicable letters of approval or denial from local government officials;

(q) for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a certification from the local health officer having jurisdiction that the design for non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government;

(r) a copy of applicable supporting legal documents;

(s) except for connections to existing public systems addressed under ARM 17.36.328(2)(b)(iv), if the proposed water supply is from wells or springs, a letter from the Department of Natural Resources and Conservation stating that the water supply, either:

(i) is exempt from water rights permitting requirements; or

(ii) has a water right, as defined in 85-2-422, MCA.

(t) a copy or a summary of any public comments on preliminary sanitation information collected as provided in 76-3-604(7), MCA;

(u) if an application involves a change to the plans and specifications for a subdivision previously approved by the reviewing authority, a copy of the certificate of subdivision approval and a copy of the approved lot layout document;

(v) the information required in ARM 17.30.1702 regarding setbacks between sewage lagoons and wells; and

(w) all additional information that is required under this chapter or that the reviewing authority determines is reasonably necessary for the review of the proposed subdivision.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16; AMD, 2019 MAR p. 836, Eff. 6/22/19.

#### **17.36.104 APPLICATION--LOT LAYOUT DOCUMENT**

(1) The applicant shall provide four copies of lot layout documents for the proposed subdivision. The lot layout documents must be on sheets no larger than 11" x 17", at a scale no smaller than 1" = 200'. The reviewing authority may require a larger scale if needed to enhance readability. Multiple sheets may be used for large developments, provided that individual lots are not split across two sheets. If multiple sheets are used, a single sheet must also be provided, using an appropriate scale, that shows the entire development.

(2) The following information must be provided on the lot layout documents. Other information (e.g., percolation test results, soil profile descriptions) may be included on the lot layout documents only if the documents remain legible:

(a) the name of the subdivision, and the county, section, township and range (e.g., "Sec. 12 T27N R6E") in which the proposed subdivision is located;

(b) a north arrow and scale;

(c) the boundaries, dimensions, and total area of each lot;

(d) an identifier or number for each lot (e.g., "Lot 1, Lot 2," "Tract 1, Tract 2," or "Parcel 1, Parcel 2");

(e) locations of existing and proposed easements;

(f) locations of existing and proposed roads and utilities;

(g) locations, sizes, and design details of existing and proposed storm water structures (culverts, ponds, dry wells, etc.);

(h) locations of drainageways;

(i) name and affiliation of the person who prepared the lot layout;

(j) information as set out in Table 1 for the specific water supply and wastewater systems in the subdivision. All systems must be labeled as "existing" or "proposed."



TABLE 1  
REQUIREMENTS FOR LOT LAYOUTS

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water	Subdivisions served by municipal wastewater systems
Existing and proposed wells, setbacks in ARM 17.36.323 Table 2, and features listed in ARM 17.36.103(1)(e)	X	X	X	X
	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water	Subdivisions served by municipal wastewater systems
Water lines (suction and pressure)			X	X
Water lines (extension and connections)	X	X	X	X
Existing and proposed wastewater systems (drainfield, replacement area, and existing septic tanks)	X	X		
Existing and proposed gray water irrigation systems	X	X	X	X
Percent and direction of slope across the drainfield	X	X		
Sewer lines (extensions and connections)	X	X	X	X
Lakes, springs, irrigation ditches, wetlands and streams	X	X		

Percolation test locations, if provided, keyed to result form		X		
Soil pit locations keyed to soil profile descriptions		X		
Ground water monitoring wells keyed to monitoring results form	X	X	X	X

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water	Subdivisions served by municipal wastewater systems
Floodplain boundaries	X	X	X	X
Cisterns	X	X	X	X
Existing and proposed building locations	X	X	X	X
Driveways	X	X	X	X
Road cuts and escarpments or slopes > 25%		X		
Mixing zone boundaries and direction of ground water flow	X	X		
Locations, sizes, and design details of existing and proposed storm water facilities	X	X	X	X

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

#### **17.36.106 REVIEW PROCEDURES--APPLICABLE RULES**

(1) The procedures and timelines for review of subdivision applications by the reviewing authority are as provided in 76-4-114, MCA.

(2) Subdivision lots recorded with sanitary restrictions prior to July 1, 1973, shall be reviewed in accordance with requirements set forth in this chapter. In cases where any requirements of this chapter would preclude the use for which each lot was originally intended, then the applicable requirements (including the absence thereof) in effect at the time such lot was recorded shall govern except that sanitary restrictions in no case shall be lifted from any such lot which cannot satisfy any of the following requirements:

(a) if a subsurface wastewater treatment system is utilized, soil conditions must provide for safe treatment and disposal of wastewater effluent; and

(b) unless a waiver is granted pursuant to ARM 17.36.601 after consultation with the local health department:

(i) if a subsurface wastewater treatment system is utilized, there must be at least four feet from the natural ground surface to a limiting layer;

(ii) the site for any subsurface wastewater treatment system may not exceed 25 percent in slope;

(iii) no part of the lot utilized for the subsurface wastewater treatment system components addressed in Department Circular DEQ-4, Chapter 6 may be located in a 100-year floodplain; and

(iv) the proposed water supply must comply with the requirements of this chapter.

(3) Plans for proposed subdivision facilities that will be public water supply or public sewage disposal systems must be reviewed in accordance with the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16; AMD, 2018 MAR p. 1588, Eff. 8/11/18.

#### **17.36.108 COMPLIANCE WITH LOCAL REQUIREMENTS**

(1) The applicant shall provide the department with evidence as to whether non-public facilities for the supply of water and disposal of wastewater are in compliance with applicable laws and regulations of local government. The evidence must be in one of the following forms:

(a) for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a certification of compliance that is signed by the local health officer having jurisdiction. The applicant shall submit the certification to the department with the subdivision application; or

(b) for an application that is subject to review by a local reviewing authority under 76-4-104, MCA, a signed certificate of subdivision approval.

(2) As provided in ARM 17.36.110, the department may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of wastewater are proposed, unless the applicant has submitted evidence, in accordance with (1), that the design for the non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1981 MAR p. 254, Eff. 3/27/81; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 967, Eff. 4/14/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11.

#### **17.36.110 CERTIFICATE OF APPROVAL**

(1) Subject to the local certification requirements set out in (2), the reviewing authority shall issue a certificate of subdivision approval if:

(a) an applicant has submitted all of the information required by this chapter;

(b) the requirements of this chapter and of the Montana Environmental Policy Act have been met; and

(c) the reviewing authority determines that:

(i) wastewater will not pollute or degrade state waters or endanger public health;

(ii) all wastewater disposal facilities are sufficient in terms of capacity and dependability;

(iii) the water supply will be sufficient in terms of quality, quantity, and dependability;

(iv) solid waste disposal will be in accordance with applicable state laws and rules; and

(v) storm drainage will have proper drainageways and the drainage will not pollute state waters.

(2) The reviewing authority may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of wastewater are proposed, unless the applicant



has submitted evidence, in accordance with ARM 17.36.108(1), that the design for the non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 967, Eff. 4/14/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

### **17.36.112 RE-REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES**

(1) This rule applies to amendments (rewrites) of certificates of subdivision approval when no new subdivision is proposed. This rule identifies the procedures for re-reviewing facilities for water supply, storm water drainage, sewage, or solid waste disposal when the facilities have been previously approved under Title 76, chapter 4, MCA, and when:

(a) parcel boundaries are not changing, but changes are proposed to the facilities that would deviate from the conditions of the previous approval;

(b) parcel boundaries are not changing, but the previous approval has expired pursuant to ARM 17.36.314; or

(c) parcel boundaries are changed by an aggregation with other parcels.

(2) The owner of a parcel in (1) shall obtain approval from the reviewing authority as provided in this section.

(3) The owner shall submit an application to the reviewing authority on a form approved by the department. Copies of the form may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, <http://deq.mt.gov/wqinfo/Sub/SubReviewForms.mcp>, or from the local reviewing authority.

(4) The application must describe any proposed new facilities, any changes to previously approved facilities, and any new parcel boundaries. The reviewing authority may require the applicant to submit additional information that the reviewing authority determines is necessary for the review.

(5) The reviewing authority shall review the application pursuant to all applicable requirements, including fees, set out in ARM Title 17, chapter 36, subchapters 1, 3, 6, and 8. The application is subject to the rules in effect at the time the application is submitted, except that, if a requirement in the applicable rules would preclude a previously approved use of the parcel, the department may waive the requirement that would preclude the use. Waivers are subject to ARM 17.36.601.

(6) Facilities previously approved under Title 76, chapter 4, MCA, are not subject to re-review, if they are not proposed to be changed, are not affected by a proposed change to another facility, are operating properly, and meet the conditions of their approval. To determine whether previously approved water and sewer facilities are operating properly, the reviewing authority may require submittal of well logs, water sampling results, any septic permit issued, and evidence that the septic tank has been pumped in the previous three years.

(7) Except as provided in (8), if the proposed amendments are approved, the reviewing authority shall issue a revised certificate of subdivision approval.

(8) Amendments that consist solely of the relocation of previously approved facilities may be made through approval of a revised lot layout document. The approved revised lot layout document must be filed with the county clerk and recorder and a copy must be provided to the department.

**History:** 76-4-104, MCA; IMP, 76-4-125, MCA; NEW, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16; AMD, 2018 MAR p. 1588, Eff. 8/11/18.

### **17.36.116 CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH**

(1) A local department or board of health, if it requests certification, must be certified as the reviewing authority if the following requirements are met and the sanitarian or engineer is qualified as described in (2):

(a) the local department or board of health employs a registered sanitarian or a professional engineer responsible to perform the actual review. Those local governments employing more than one registered sanitarian or professional engineer shall designate one such person to be responsible for the review program;

(b) unless delegated under 75-6-121, MCA, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems, except that a local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the system is required; and

- (i) the provisions of Title 76, chapter 4, MCA;
- (ii) this chapter;
- (iii) applicable department circulars;
- (iv) Title 75, chapter 5, MCA;
- (v) ARM Title 17, chapter 30, subchapters 5 and 7; and
- (vi) other applicable laws and regulations.

(2) A registered sanitarian or registered professional engineer, prior to performing subdivision review, shall:

(a) pass, with a score of at least 90 percent, a written examination administered by the department that demonstrates knowledge of:

- (i) Title 76, chapter 4, MCA;
- (ii) this chapter;
- (iii) applicable department circulars;
- (iv) Title 75, chapter 5, MCA;
- (v) ARM Title 17, chapter 30, subchapters 5 and 7; and
- (vi) other applicable laws and regulations;

(b) have a minimum of one year's experience performing subdivision review under the direct supervision of the department or of a department-approved registered sanitarian or professional engineer; and

(c) for individuals previously qualified under this subsection, complete at least one subdivision review in the preceding two years. Previously qualified individuals who have not completed at least one subdivision review in the preceding two years shall, prior to performing subdivision review, satisfy the requirements in subsection (2)(a).

(3) The department's oversight of a certified local reviewing authority's review of subdivision applications shall be limited to the following:

(a) within the 55-day review period, the department shall determine, by reference to the local reviewing authority's review checklist or by other means, whether the local reviewer has conducted a completeness review of the application and whether the local reviewer has completed a compliance review of all systems designated by the contract between the department and the local reviewing authority. If the department determines that either of these tasks was not completed, the department may return the application to the local reviewing authority for further review or may itself complete the review;

(b) within the 55-day review period, the department may check the accuracy of the local reviewing authority's review of subdivision applications. The department's accuracy checks must be limited to ten percent of the applications submitted to the department by the local reviewing authority, except that the department may also review an application:

- (i) upon the request of the local reviewing authority; or
- (ii) when the department has reason to question the local reviewing authority's determination for a particular application;

(c) if the department identifies possible errors or discrepancies in the local reviewer's determination regarding an application, the department shall consult with the local reviewer. If, after consultation, the department does not agree with the local reviewer's determination regarding an application's compliance with applicable state laws, rules, and circulars, the department may, prior to the expiration of the review period for the application, modify the local determination regarding the state requirements;

(d) in addition to, or instead of, examining locally reviewed applications during the 55-day review period, the department may conduct an annual audit of a representative sample of locally reviewed applications.

(4) The department retains the right to suspend or revoke the certification of the local department or board of health if the department determines that the local reviewing authority is not complying with the sanitation in subdivisions act or other applicable statutes or rules.

History: 76-4-104, MCA; IMP, 76-4-104, 76-4-105, MCA; NEW, 1986 MAR p. 1509, Eff. 9/12/86; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2018 MAR p. 1588, Eff. 8/11/18.

### Subchapter 3 Subdivision Requirements

#### 17.36.309 SOLID WASTES

(1) Solid wastes stored within the subdivision must be placed in adequate containers and removed at a frequency to prevent a nuisance. When removed from the subdivision, the solid wastes must be disposed of at a department-licensed site in accordance with ARM 17.50.508 or an appropriate out-of-state waste disposal site.

History: 76-4-104, MCA; IMP, 76-4-104, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02.

#### 17.36.310 STORM DRAINAGE

(1) The applicant shall submit a storm drainage plan in accordance with department Circular DEQ-8 to the reviewing authority.

(2) Storm drainage plans must be prepared by a professional engineer and must comply with the requirements in ARM 17.36.314 if the subdivision application proposes either of the following:

(a) six or more lots; or

(b) a lot proposed for use other than a single living unit with greater than 25 percent impervious area.

(3) A storm drainage plan must include a maintenance plan for all drainage structures. The maintenance plan must describe the drainage structures, provide a maintenance schedule, and designate the entity responsible for performing maintenance. The reviewing authority may require the applicant to create a homeowner's association or other legal entity that will be responsible for maintenance of storm drainage structures and that will have authority to charge appropriate fees. The maintenance plan must include easements and agreements as necessary for operation and maintenance of all proposed storm drainage structures or facilities.

(4) The applicant shall obtain an easement if the reviewing authority determines the easement is needed to allow adequate operation and maintenance of the facilities. The easement must be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. The easement must be in one of the following forms:

(a) in writing signed by the grantor of the easement; or

(b) if the same person owns both parcels, shown on the plat or certificate of survey for the proposed subdivision.

(5) The reviewing authority may exempt the requirements of (1), (2), and (3) for subdivisions located entirely within a first-class or second-class municipality, as described in 7-1-4111, MCA, or within a Municipal Separate Storm Sewer System (MS4) general permit area, as defined in ARM 17.30.1102, if:

(a) the applicant submits to the reviewing authority a letter of consent from the municipal or MS4 entity on a form provided by the department; and

(b) the municipal or MS4 entity either accepts the stormwater into a municipal storm water system or requires the applicant to comply with municipal or MS4 storm water drainage design standards.

(6) If material will be displaced or added within a delineated floodplain, the applicant shall provide evidence that the floodplain permit coordinator has been notified and that appropriate approvals have been obtained.

(7) If applicable, the applicant shall obtain an MPDES permit for storm water discharges, pursuant to ARM Title 17, chapter 30.

(8) Storm water that reaches state surface waters must be treated prior to discharge if the reviewing authority determines that untreated storm water is likely to degrade the receiving waters.

(a) minimum treatment of storm water consists of removal of settleable solids and floatable material. The reviewing authority may require more extensive treatment if deemed necessary to protect state waters from degradation;



(b) plans for the treatment facility must be approved by the reviewing authority.

(9) The department may grant a waiver from any of the requirements in this rule pursuant to the provisions of ARM 17.36.601.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2018 MAR p. 1588, Eff. 8/11/18.

### **17.36.312 SUBDIVISIONS ADJACENT TO STATE WATERS**

(1) Where the department has determined that the disposal of sewage from a proposed subdivision may adversely affect the quality of a lake or other state waters, the department may require additional information and data concerning such possible effects. Upon review of such information, the department may impose specific requirements for sewage treatment and disposal as are necessary and appropriate to assure compliance with the Water Quality Act, Title 75, chapter 5, MCA, and water quality and non-degradation standards, ARM Title 17, chapter 30, subchapters 6, 7, 10, and 12.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; NEW, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

### **17.36.313 CONDOMINIUM CONVERSIONS**

(1) Except as provided in (2) and (3), condominiums, including those to be constructed on parcels of land that are exempted from review under the provisions of Title 76, chapter 3, MCA, and including conversion of existing structures into condominiums, are subject to review under the requirements of this chapter.

(2) Conversions of existing structures into condominiums are not subject to this chapter where the converted units are to be served by existing municipal water and sewer facilities in a Class I or II city as defined in 7-1-4111, MCA.

(3) Where the water or sewage disposal system in an existing building to be converted into condominiums has already been approved under either department requirements or has been approved by the local health department under local requirements, such water or sewage disposal system is not subject to review under this chapter.

**History:** 76-4-104, MCA; IMP, 76-4-111, 76-4-125, MCA; NEW, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499.

### **17.36.314 REQUIREMENTS FOR SYSTEMS DESIGNED BY PROFESSIONAL ENGINEERS**

(1) The requirements in this rule apply to systems for which plans and specifications must be submitted to the department by a professional engineer under ARM 17.36.310(2)(a), ARM 17.36.320(2), or ARM 17.36.333(1)(b)(i).

(2) The applicant shall submit documentation in the application indicating commitment to retain a professional engineer to provide certification that the system was built in conformance with the plans and specifications approved by the reviewing authority.

(3) A person may not commence or continue the operation of the system, or any portion of the system, until a professional engineer has certified by letter to the department that the system, or portion of the system constructed, altered, or extended to that date, was completed in substantial accordance with the plans and specifications approved by the department and that there are no deviations from the design standards of the applicable circulars, other than those previously approved by the department.

(4) Within 90 days after completion of construction of the system, a set of certified "as-built" drawings must be signed by a professional engineer and submitted to the department.

(5) If construction of the system is not completed within three years after the department has issued its written approval of the plans and specifications, the approval is void and plans and specifications must be resubmitted to the department with appropriate fees, for review and approval. If the original conditions of approval, applicable rules, and design standards have not changed since the department approved the system, the department shall reissue the approval to allow an additional three years to complete construction.

**History:** 76-4-104, MCA; IMP, 76-4-125, MCA; NEW, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2018 MAR p. 1588, Eff. 8/11/18.

**17.36.319 GRAY WATER REUSE**

(1) This rule applies to gray water reuse on subdivision parcels that are subject to review, or that have been approved, under Title 76, chapter 4, MCA.

(2) Except as provided in (3) and (4), treatment and disposal of gray water must be by means of a wastewater treatment system that meets all of the requirements of this chapter and applicable department circulars. Gray water reuse within a building or residence for uses such as toilet flushing is permitted without review, provided that the gray water is ultimately disposed of by means of a wastewater treatment system that is in compliance with this chapter and applicable department circulars.

(3) Gray water may be used for irrigation as provided in (4). If a gray water irrigation system meets all of the requirements in (4), the system is not subject to the requirements of subchapter 3.

(4) Gray water that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets may be used for irrigation, if the following requirements are met:

(a) prior to installation, a gray water irrigation system must have a permit from the local health department;

(b) gray water irrigation must be subsurface, with a collection and application system that is designed, installed, and used in accordance with Department Circular DEQ-4;

(c) as provided in 75-5-326, MCA, gray water may not be used to irrigate plants to be consumed by humans, and gray water systems may not be located within a floodplain, as defined in 76-5-103, MCA. For purposes of this rule, "plants to be consumed by humans" does not include nut and fruit trees;

(d) there must be a minimum of four feet of natural soil between the point of gray water application and a limiting layer, as defined in ARM 17.36.101;

(e) unless a waiver is granted by the department, the following horizontal setback distances must be maintained. Gray water irrigation may not occur within:

(i) 100 feet of wells;

(ii) 100 feet of surface water;

(iii) 100 feet of a floodplain; or

(iv) two feet of a property line;

(f) gray water from kitchens may be used for irrigation only where a waste segregation system is used. For purposes of this rule, a "waste segregation system" consists of dry disposal of toilet waste by a method such as composting, chemical, dehydrating, or incinerator treatment, with a separate disposal method for gray water;

(g) gray water irrigation systems in subdivisions may not be installed unless approved under Title 76, chapter 4, MCA. If a system complies with (4)(a) through (e), review under Title 76, chapter 4, MCA, is not required if the system serves:

(i) a parcel that has a previous certificate of subdivision approval issued pursuant to Title 76, chapter 4, MCA, if no other changes to the certificate are proposed, except that review under Title 75, chapter 6, MCA, is required before a public wastewater system is modified to include a gray water irrigation system; or

(ii) a parcel that, when created, was exempt from review under Title 76, chapter 4, MCA, because it was served solely by municipal facilities, as defined in 76-4-102, MCA.

(5) Subdivision applications must contain descriptions of the soils within 25 feet of proposed gray water irrigation areas. Soils must be described in accordance with Appendix B of Department Circular DEQ-4. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report.

(6) Gray water irrigation systems with a design flow greater than or equal to 2,500 gallons per day must be designed by a professional engineer.

(7) The department may require user agreements for systems that serve more than one user. The department may require easements for systems that cross property lines.

(8) If an existing gray water irrigation system is present in a proposed subdivision, the department shall review the adequacy of the system for the proposed use and the capability of the system to operate without risk to public health and without pollution of state waters.

Existing systems must comply with state and local laws and regulations, including permit requirements, applicable at the time of installation.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2009 MAR p. 1786, Eff. 10/16/09.

#### **17.36.320 SEWAGE SYSTEMS: DESIGN AND CONSTRUCTION**

(1) All components of sewage treatment systems must be designed and installed in accordance with Department Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular and are subject to the following restrictions:

(a) systems designed in accordance with Department Circular DEQ-2 may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4; and

(b) experimental systems are allowed only pursuant to a waiver granted in accordance with ARM 17.36.601.

(2) Multiple-user systems with design flows greater than or equal to 2500 gallons per day must be designed by a professional engineer and are subject to the requirements in ARM 17.36.314.

(3) For subsurface systems, a minimum separation of at least four feet of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer, except that at least six feet of natural soil must exist on a slope of greater than 15 percent.

(4) The proposed subsurface sewage treatment area must include an area for 100 percent replacement of the system, except that the replacement area for elevated sand mounds may be allowed as provided in Department Circular DEQ-4. If a size reduction is approved for a system, the replacement area must have area sufficient for the system without the size reduction. Unless a waiver is approved by the department pursuant to ARM 17.36.601, the replacement area must meet the same requirements as the primary area. If the replacement area is not immediately adjacent to the primary area, or if there is evidence that site conditions for the replacement area may vary from those for the primary area, the applicant shall submit adequate evidence of the suitability of the replacement area.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2014 MAR p. 1824, Eff. 8/8/14.

#### **17.36.321 SEWAGE SYSTEMS: ALLOWABLE NEW AND REPLACEMENT SYSTEMS**

(1) All systems must be designed and installed in accordance with Department Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular. Requirements applicable to review of existing sewage treatment systems are set out in ARM 17.36.327.

(2) Systems designed in accordance with Department Circular DEQ-2 may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4.

(3) The following sewage systems may not be used for new systems, but may be used as replacement systems subject to the limitations provided in Department Circular DEQ-4:

- (a) cut systems;
- (b) fill systems;
- (c) artificially drained systems;
- (d) absorption beds;
- (e) pit privies;
- (f) seepage pits; and
- (g) holding tanks, except that:

(i) the department may grant a waiver, pursuant to ARM 17.36.601, to allow holding tanks in facilities owned and operated by a local, state, or federal unit of government, or in facilities licensed by the Department of Public Health and Human Services and inspected by the local health department. Holding tanks must be designed and maintained in accordance with the requirements in Department Circular DEQ-4 and all other requirements imposed by the department and local health department; and

(ii) the department may grant a waiver, pursuant to ARM 17.36.601 and with concurrence by the local health department, to allow holding tanks to replace a failed system when no other alternative that meets these rules is reasonably available.

(4) Cesspools are prohibited as new or replacement systems.

(5) Sealed pit privies may be used only in facilities owned and operated by a local, state, or federal unit of government, or in facilities where use of a sealed pit privy is authorized by the Department of Public Health and Human Services.



**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2014 MAR p. 1824, Eff. 8/8/14.

### 17.36.322 SEWAGE SYSTEMS: SITING

(1) Gravity-fed subsurface sewage treatment systems may not be used if natural slopes are greater than 15 percent. A pressure-dosed sewage treatment system with a design flow of 5000 gallons per day or less may be used on slopes greater than 15 percent and up to 25 percent, if a professional engineer or a person qualified to evaluate and identify soil in accordance with Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

(2) The department may grant a waiver, pursuant to ARM 17.36.601 and after consultation with the local health department, to allow pressure-dosed subsurface sewage treatment systems on slopes greater than 25 percent and up to 35 percent if a professional engineer or a person qualified to evaluate and identify soil in accordance with Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

(3) Subsurface sewage treatment systems may not be installed on unstable landforms, as defined in ARM 17.36.101.

(4) No component of any sewage treatment system may be located under structures or driveways, parking areas or other areas subjected to vehicular traffic, or other areas subject to compaction, except for those components of the system designed to accommodate such conditions. Drainfields must not be located in swales or depressions where runoff may flow or accumulate.

(5) Pursuant to 76-4-104(6)(i), MCA, a proposed drainfield mixing zone must be located wholly within the proposed subdivision where the drainfield is to be located unless an easement or, for public land, other authorization is obtained from the landowner to place the proposed mixing zone outside the boundaries of the proposed subdivision. A mixing zone may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This section does not apply to the divisions provided for in 76-3-207, MCA, except those under 76-3-207(1)(b), MCA.

(6) For lots two acres in size or less, the applicant shall physically identify the drainfield location by staking or other acceptable means of identification. For lots greater than two acres in size, the department may require the applicant to physically identify the drainfield location.

(7) The department may require the applicant to show detailed lot layouts on a contour map if the department determines that there is a question about suitability of the drainfield location.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 1824, Eff. 8/8/14.

### 17.36.323 SETBACKS

(1) Minimum setback distances, in feet, shown in Table 2 of this rule must be maintained, except as provided in the table footnotes or as allowed through a deviation granted under ARM Title 17, chapter 38, subchapter 1. The setbacks in this rule are not applicable to gray water irrigation systems that meet the setbacks and other requirements of ARM 17.36.319.

TABLE 2  
SETBACK DISTANCES  
(in feet)

From	To Drinking Water Wells	To Sealed Components (1) and Other Components (2)	To Drainfields/Soil Absorption Systems (3)
Public or multiple-user drinking water wells/springs	-	100 (4)	100
Individual and shared drinking water wells	-	50 (4)	100
Other wells (5)	-	50 (4)	100 (4)
Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, escarpment	-	10 (6)	25
Slopes > 35 percent (7)	-	10 (6)	25
Property boundaries	10 (8)	10 (8)	10 (8)

Subsurface drains	-	10	10
Water mains	-	10 (9)	10
Drainfields/Soil absorption systems	100	10	-
Foundaton walls	-	10	10
Surface water (10), springs	100 (4) (11) (12)	50 (4) (11)	100 (11) (14)
Floodplains	10 (4) (11)	- Sealed components - no setbacks (1) Other components - 100 (2) (4) (11)	
Mixing zones	100 (4)	-	-
Storm water ponds and ditches (15)	25 (4) (16)	10 (4)	25 (4)

(1) Sealed components include holding tanks, sealed pit privies, raw wastewater pumping stations, dose tanks, and septic tanks. Sealed components must meet the requirements of ARM 17.36.322(4).

(2) Other components include the components addressed in Department Circular DEQ-4, Chapter 7.

(3) Absorption systems include the systems addressed in Department Circular DEQ-4, Chapters 6 and 8, subject to the limitations in ARM 17.36.321.

(4) A waiver of this requirement may be granted by the department pursuant to ARM 17.36.601.

(5) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.

(6) Sewer lines and sewer mains may be located in roadways and on steep slopes if the lines and mains are safeguarded against damage.

(7) Down-gradient of the sealed component, other component, or drainfield/soil absorption system.

(8) Easements may be used to satisfy the setback to property boundaries.

(9) Unless a waiver is granted by the department pursuant to ARM 17.36.601, sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(10) For purposes of this rule, "surface water" does not include intermittent storm water.

(11) The department may require more separation from the floodplain or from surface water or springs if it determines that site conditions or water quality requirements indicate a need for the greater distance.

(12) Pursuant to ARM 17.36.331, the reviewing authority may require greater than a 100-foot horizontal separation between a well and surface water if there is a potential that the well may be influenced by contaminants in the surface water.

(13) A waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or spring. The setback between drainfields or soil absorption systems to irrigation ditches does not apply if the ditch is lined with a full culvert.

(14) After consultation with the local health department, a waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the surface water or spring seasonally high water level is at least a 100-foot horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above the maximum 100-year flood elevation.

(15) Storm water ponds and ditches are those structures that temporarily hold or convey water as part of storm water management.

(16) The setback is 100 feet for public wells, unless a deviation is granted under ARM Title 17, chapter 38, subchapter 1.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 1824, Eff. 8/8/14; AMD, 2016 MAR p. 722, Eff. 4/23/16.

**17.36.324 SEWAGE SYSTEMS: FLOODPLAINS**

(1) The applicant shall identify the location of any floodplain on the lot layout document. The department may require the applicant to provide additional information, such as elevations at specific locations.

(2) The applicant shall submit evidence adequate to allow the department to establish the location of the floodplain if:

(a) the federal or state government has not designated the floodplain, or if the location of the floodplain is in question with respect to a proposed subdivision; and

(b) the stream is shown as an intermittent or perennial stream on the most current USGS 7 1/2 minute (1:24,000) topographic map (unless the applicant provides adequate information that the stream is not subject to flooding) .

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00.

**17.36.325 SEWAGE SYSTEMS: SITE EVALUATION**

(1) The reviewing authority may require that percolation tests, conducted in accordance with department Circular DEQ-4, be performed within the boundary of each proposed subsurface sewage treatment system. Percolation tests must be keyed by a number on the lot layout to the results in the report form.

(2) If the applicant or the department has reason to believe that ground water will be within seven feet of the surface at any time of the year within the boundaries of the treatment system, ground water monitoring must be conducted in accordance with Department Circular DEQ-4.

(3) The applicant shall provide descriptions of the soils within 25 feet of the boundaries of each proposed drainfield. Soil descriptions for the proposed subdivision must meet the following requirements:

(a) Soil descriptions must be done in accordance with Department Circular DEQ-4. The characteristics that must be addressed include, but are not limited to, soil texture, soil structure, soil consistence, and indicators of redoximorphic features.

(b) Soil descriptions must be based on data obtained from test holes. Test holes must be dug in accordance with Department Circular DEQ-4. The number of test holes must be as provided in (c), unless a waiver is granted by the department pursuant to ARM 17.36.601. Before a waiver is granted, the applicant shall complete test holes for 25 percent of the proposed drainfield locations in the proposed subdivision, shall demonstrate that the soils are consistent throughout the area requested for a waiver, and shall obtain the approval of the local reviewing authority. The department may require additional test holes than are required in (c) if the department determines that there is significant variability of the soils in the proposed drainfield areas. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the application.

(c) At least one test hole must be dug for each individual drainfield and for each shared (two-user) drainfield. At least three test holes must be dug for each multiple-user and public drainfield. At least one test hole must be dug for each zone of a pressure-dosed drainfield.

(d) If the applicant or the department has reason to believe that a limiting layer is within seven feet of the ground surface at the site of a proposed subsurface sewage treatment system, the department may require additional test holes and soil descriptions sufficient to describe the suitability of the soil.

(4) Sewage systems that are subject to the design requirements of Department Circular DEQ-2 must meet the siting requirements of that circular.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2014 MAR p. 1824, Eff. 8/8/14.

**17.36.326 SEWAGE SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS**

(1) The applicant shall demonstrate that all public and multiple-user sewage systems will be adequately operated and maintained and shall submit an operation and maintenance manual acceptable to the department. If required by Department Circulars DEQ-2 or DEQ-4, the operation and maintenance manual must meet the requirements of that circular.

(2) Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA.



(3) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county sewer district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

(4) Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the system or to comply with 76-4-104(6)(i), MCA. Easements must be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. Easements must be in one of the following forms:

(a) in writing signed by the grantor of the easement; or

(b) if the same person owns both parcels, shown on the plat or certificate of survey for the proposed subdivision.

(5) If an application includes a shared or multiple-user sewage system that serves more than one lot, the applicant shall submit to the reviewing authority a draft user agreement that identifies the rights and responsibilities of each user. User agreements must be in a form acceptable to the department.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2016 MAR p. 722, Eff. 4/23/16; AMD, 2018 MAR p. 1588, Eff. 8/11/18.

### **17.36.327 SEWAGE SYSTEMS: EXISTING SYSTEMS**

(1) The provisions of (2) through (5) apply only to existing non-public sewage systems in proposed subdivisions. Public sewage supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) If an existing sewage treatment system is present, the department shall review the adequacy of the existing system for the proposed use and the capability of the existing system to operate without risk to public health and without pollution of state waters. To assist the department in making this determination, the applicant shall submit the following information, together with fees as provided in ARM 17.36.802:

(a) evidence demonstrating the proper hydraulic functioning of each existing system;

(b) evidence as to whether each existing system complied with state and local laws and regulations, including permit requirements, applicable at the time of installation; and

(c) evidence that each existing septic tank was pumped within three years prior to the department's review unless the existing septic tank is less than five years old.

(3) The setbacks requirements in ARM 17.36.323 apply, but may be waived for existing sewage systems pursuant to ARM 17.36.601.

(4) The applicant shall provide for a replacement area for each existing system. Unless a waiver is approved by the department pursuant to ARM 17.36.601, replacement areas must comply with the requirements of this subchapter.

(5) Existing cesspools and pit privies must be replaced by a system approved under this subchapter. Holding tanks may be allowed by waiver pursuant to ARM 17.36.321(3)(g)(ii). Existing sealed pit privies must also be replaced, unless they are at a facility owned and operated by a local, state, or federal unit of government, or are at a facility where use of a sealed pit privy is authorized by the Department of Public Health and Human Services.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2016 MAR p. 722, Eff. 4/23/16.

### **17.36.328 CONNECTION TO PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS**

(1) New water supply and sewage disposal facilities in a proposed subdivision must be provided by a connection to a public water supply or wastewater system if any boundary of the subdivision is within 500 feet of any component of the public system and the public system meets the requirements of (2)(a) and (b). The department may grant a waiver, pursuant to ARM 17.36.601, of the requirement to connect to a public system if the applicant demonstrates that connection to the public system is physically or economically impractical, or that easements cannot be obtained. For purposes of this rule, a connection is economically practical if the cost of constructing the connection to the system is less than or equal to three times the cost of constructing approvable systems on the site.

(2) Unless a waiver is granted pursuant to ARM 17.36.601, the reviewing authority may not approve the connection of a proposed subdivision to an existing public system unless:

(a) the existing public system is approved by the department and is in compliance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38;

(b) the managing entity of the public system certifies to the reviewing authority, on a form acceptable to the department, that:

(i) the system has an adequate capacity to meet the needs of the subdivision;

(ii) the connections are authorized;

(iii) the system is in compliance with ARM Title 17, chapter 38, and all other applicable department regulations; and

(iv) the appropriate water rights exist for this connection; and

(c) the applicant submits to the reviewing authority the name and public water supply ID (PWSID) number of the public system.

(3) If the proposed additional connections will create a new public system, the applicant shall submit plans and specifications for the entire system (existing and proposed) for review and approval by the department in accordance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

### **17.36.330 WATER SUPPLY SYSTEMS--GENERAL**

(1) The applicant shall demonstrate that water supply systems provide an adequate supply by showing that the following criteria are met:

(a) the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2 may not be exceeded;

(b) the following flows must be provided:

(i) for individual and shared water supply systems, the flow indicated in ARM 17.36.332;

(ii) for multiple-user water supply systems, the requirements set out in Department Circular DEQ-3; and

(iii) for public water supply systems, the requirements set out in Department Circulars DEQ-1 and DEQ-3;

(c) the necessary quantity and quality of water must be available at all times unless depleted by emergencies.

(2) If ground water is proposed as a water source, the applicant shall submit the following information:

(a) the location of the proposed ground water source must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet and any known mixing zone as defined in ARM 17.30.502. If a potential problem is identified, the reviewing authority may require that all potential sources of contamination be shown in accordance with Department Circular PWS-6; and

(b) a description of the proposed ground water source, including approximate depth to water bearing zones and lithology of the aquifer.

(3) For lots two acres in size or less, the applicant shall physically identify the proposed well location by staking or other acceptable means of identification. For lots greater than two acres in size, the department may require the applicant to physically identify the well location.

(4) The reviewing authority may restrict the volume of water withdrawn from a proposed water source for a subdivision in order to ensure that an adequate water supply will be available at all times.

(5) Each existing and proposed drinking water well in a proposed subdivision must be centered within a 100-foot radius well isolation zone. Except as provided in 76-4-104(6)(i), MCA, each proposed well isolation zone must be located wholly within the boundaries of the proposed subdivision where the well is located unless an easement or, for public land, other authorization is obtained from the landowner to place the proposed well isolation outside the boundaries of the proposed subdivision. This section does not apply to the divisions provided for in 76-3-207, MCA, except those under 76-3-207(1)(b), MCA.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2018 MAR p. 1588, Eff. 8/11/18.

**17.36.331 WATER SUPPLY SYSTEMS: WATER QUALITY**

(1) For non-public water supply systems, the following water quality requirements must be met:

(a) the applicant shall demonstrate that water quality is sufficient for the proposed subdivision. The reviewing authority may not approve a proposed water supply system if there is evidence that, after appropriate treatment, the concentration of any water quality constituent exceeds the human health standards in Department Circular DEQ-7, or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2. The necessary quality of water must be available at all times unless depleted by emergencies.

(b) the applicant shall obtain samples from wells in the proposed subdivision and shall provide analyses of the samples to the reviewing authority. If no wells exist in the proposed subdivision, the reviewing authority may accept samples from nearby water wells that are completed in the same aquifer as that proposed for the subdivision water supply. The samples may not be older than one year prior to the date of application. Water quality data must show the concentration of nitrates and nitrites and specific conductance. The reviewing authority may require testing of wells located near the proposed subdivision for additional constituents for which human health standards are listed in Department Circular DEQ-7, or in ARM Title 17, chapter 38, subchapter 2, if the reviewing authority believes that those constituents may be present in harmful concentrations. Analyses must be conducted by a laboratory certified by the Department of Public Health and Human Services for analyses of water samples for public water systems.

(i) the applicant shall provide the well log for every well from which a ground water sample is collected. If a well log is not available, the applicant shall provide information about the well depth and depth to static water level. The reviewing authority may require additional information to demonstrate that ground water quality is sufficient for the proposed subdivision;

(ii) the applicant shall accurately identify, on a topographic map or lot layout document, the location of every well from which a ground water sample is taken; and

(iii) the requirement to sample for nitrates and nitrites and specific conductance does not apply if the reviewing authority determines that information from nearby water wells, which are completed in the same aquifer as that proposed for the subdivision water supply, or a hydrogeological report confirms that the proposed water supply will be of acceptable quality.

(c) the minimum setback distances set out in Table 2 of ARM 17.36.323 must be maintained for all new and existing water sources. A drinking water supply well may not be constructed within 100 feet of a ground water mixing zone granted pursuant to ARM Title 17, chapter 30, subchapter 5.

(d) the reviewing authority may require greater than a 100-foot horizontal separation between a well and surface water if there is a potential that the well may be influenced by contaminants in the surface water. In determining the appropriate separation between a well and surface water, the reviewing authority may consider factors such as well location, well construction, aquifer material, hydraulic connection between the aquifer and watercourse, and other evidence of the potential for surface water contamination. The reviewing authority may also require that the proposed water source be tested for surface water influence in accordance with Department Circular PWS-5.

(e) wells must have unperforated casing to a minimum depth of 25 feet below ground surface unless the reviewing authority finds that, based upon geological information provided by the applicant, a lesser depth will ensure that the other requirements of this rule are satisfied. The reviewing authority may require unperforated casing to a depth greater than 25 feet if water of better chemical or microbiological quality can be obtained from a deeper zone.

(f) a surface water or ground water source under the direct influence of surface water, as described in Department Circular PWS-5, may not be used as a water source for a non-public system.

(2) Public water supply systems are subject to the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

History: 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2014 MAR p. 2098, Eff. 9/19/14.



**17.36.332 WATER SUPPLY SYSTEMS: WATER QUANTITY AND DEPENDABILITY**

(1) The applicant shall demonstrate that ground water quantity is sufficient for the proposed subdivision. The necessary quantity of water must be available at all times unless depleted by emergencies. The applicant shall show that the following minimum flows are available:

(a) an individual water system must provide a sustained yield of at least ten gallons per minute over a one-hour period, six gallons per minute over a two-hour period, or four gallons per minute over a four-hour period. For purposes of the minimum flows identified in this rule, sustained yield must be based on water that is supplied from the aquifer, not from well bore storage;

(b) a shared water system must provide a sustained yield of at least 15 gallons per minute over a one-hour period or ten gallons per minute over a two-hour period;

(c) multiple-user water supply systems must meet the flow requirements in Department Circular DEQ-3; and

(d) public water supply systems must meet the flow requirements set out in Department Circulars DEQ-1 and DEQ-3.

(2) The minimum flows required in (1)(a) and (b) must be demonstrated through one or more of the following, as determined by the reviewing authority:

(a) test wells within the proposed subdivision;

(b) well logs and testing of nearby wells;

(c) hydrogeological reports; or

(d) ground water modeling.

(3) For individual and shared water supply systems, the reviewing authority may require pumping tests for one or more wells to demonstrate sufficient quantity and dependability of the ground water sources. The tests must be conducted pursuant to Department Circular DEQ-3.

(4) The reviewing authority may restrict the volume of water withdrawn from a proposed water source for a subdivision in order to ensure that an adequate water supply will be available at all times.

(5) When the proposed water supply is an unconfined aquifer and a significant recharge source is from irrigation ditches or irrigated fields, the reviewing authority may require the applicant to demonstrate that the source will produce a water supply that is sufficient in terms of water quality, quantity and dependability for the proposed subdivision if all irrigation-related recharge to the aquifer is eliminated. (6) The department may allow, pursuant to a waiver under ARM 17.36.601, a lesser flow than those set out in (1)(a) and (b) if the applicant demonstrates that the water supply system provides a sufficient quantity of water to meet demands and that adequate storage is provided to meet peak demand.

(7) The reviewing authority may require the applicant to submit information in addition to that required in (1) through (5) to demonstrate the dependability of the ground water supply if the reviewing authority believes that dependability is questionable. At a minimum, the applicant shall provide evidence that the aquifer can supply, by itself or through recharge from surrounding geologic units, water to wells in an amount equal to the proposed ground water withdrawals.

(8) If water is to be supplied by means other than individual on-site wells, the reviewing authority shall also review the applicant's information, required under ARM 17.36.103(1)(h), and water use agreements to determine the quantity and dependability of the water supply.

(9) If the proposed water supply is from wells or springs, the water right information in ARM 17.36.103(1)(s) is required.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

**17.36.333 WATER SUPPLY SYSTEMS: DESIGN AND CONSTRUCTION**

(1) The applicant shall meet the following requirements relating to the design and construction of water supply systems:

(a) individual and shared wells must be constructed in accordance with ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(b) multiple-user water supply systems must be designed and constructed in accordance with Department Circular DEQ-3, and ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(i) multiple-user water supply systems with six or more connections, including connections outside of a proposed subdivision, must be designed by a professional engineer. If an existing system is expanded to serve six or more connections, the expansion must be designed by a professional engineer. The reviewing authority may require smaller systems that it determines to be complex (e.g., a water supply system with substantial pressure difference through the distribution system) to be designed by a professional engineer. Systems required by this rule, which must be designed by a professional engineer, are subject to the requirements of ARM 17.36.314;

(ii) if more than one multiple user water system is proposed for a subdivision, the systems must be tied together to ensure greater system reliability. The department may grant a waiver, pursuant to ARM 17.36.601, of this provision if the applicant demonstrates that interconnection of the systems is physically or economically impractical or would create an environmental or public health concern;

(c) the reviewing authority may require additional well construction and/or testing requirements not required in ARM Title 36, chapter 21, subchapter 6 or in department Circular DEQ-3, to ensure that wells within a particular subdivision will provide an adequate water supply.

(2) Public water supply systems are required to meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

### **17.36.334 WATER SUPPLY SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS**

(1) If a proposed subdivision includes a public or multiple-user water supply system, the applicant shall submit to the reviewing authority an operation and maintenance plan for the system. The plan must ensure that the system will be adequately operated and maintained.

(2) Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA. The owner must be responsible for operation and maintenance and must have authority to charge appropriate fees.

(3) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county water district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

(4) Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the system or to comply with 76-4-104(6)(i), MCA. Easements must be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. Easements must be in one of the following forms:

(a) the easement must be in writing signed by the grantor of the easement; or

(b) if the same person owns both parcels, the easement must be shown on the plat or certificate of survey for the proposed subdivision.

(5) If an application includes a shared or multiple-user water supply system that serves more than one lot, the applicant shall submit to the reviewing authority a draft user agreement that identifies the rights and responsibilities of each user. User agreements must be in a form acceptable to the department.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16; AMD, 2018 MAR p. 1588, Eff. 8/11/18.

### **17.36.335 WATER SUPPLY SYSTEMS: EXISTING SYSTEMS**

(1) The provisions of (2) through (3)(b) apply only to existing non-public water supply systems in proposed subdivisions. Public water supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) Existing non-public water supply systems within a proposed subdivision must meet all requirements of this chapter or, if previously approved by the reviewing authority, the rules in effect at the time of approval. The department may grant a waiver, pursuant to ARM 17.36.601, from:

(a) the setback requirements in ARM 17.36.323; and

(b) the well construction requirements of ARM 17.36.333, if the applicant provides adequate evidence that compliance with such requirements is not necessary to ensure an adequate water supply.

(3) For existing non-public water supply systems within a proposed subdivision, the applicant shall submit information to allow the reviewing authority to review the quality, quantity, and dependability of the existing system.

(a) The applicant shall submit, for each existing water supply source, water quality analyses for nitrates, nitrites and specific conductance. If an existing well is currently being used as a potable water supply within a proposed subdivision, a total coliform analysis must also be conducted. The nitrates, nitrites and specific conductance sample may not be older than one year prior to the date of the application. The coliform sample may not be older than six months prior to the date of application. If an existing well is not currently used as a potable water supply but will be converted to a potable water supply, a total coliform analysis must be conducted when it is put into use. The analysis must be performed by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems. The reviewing authority may not approve the use of an existing system if there is evidence that, after appropriate treatment, the concentration of any ground water constituent exceeds the human health standards in Department Circular DEQ-7, or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2.

(b) To characterize the water supply, the applicant must show, through a well log or other means, the depth to static water in the well and the total well depth.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2018 MAR p. 1588, Eff. 8/11/18.

### **17.36.336 ALTERNATE WATER SUPPLY SYSTEMS**

(1) The provisions of this rule apply only to proposed non-public alternate water supply systems in subdivisions. Public water supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) A water source other than a well may be developed only if the applicant:

(a) shows that it is not economically feasible to develop a well or that ground water quality, quantity, or dependability is unacceptable; and

(b) complies with the other requirements set out in this rule.

(3) The applicant shall provide evidence to the reviewing authority that the alternate water source is sufficient in terms of quality, quantity, and dependability.

(4) Springs, when developed as an alternate water system, must be constructed in accordance with a plan approved by the reviewing authority and in accordance with Department Circular DEQ-11. Springs must also meet the requirements for wells regarding quality, quantity and dependability in ARM 17.36.331 and 17.36.332.

(5) The reviewing authority may require that the applicant collect information regarding quality, quantity, and dependability of the water supply at specified times of the year.

(a) The reviewing authority may require water quality sampling to test for direct influence by surface water. Such sampling may include:

(i) testing for pH, temperature, conductivity, and turbidity;

(ii) testing for parameters with human health standards listed in Department Circular DEQ-7;

(iii) testing for organisms that indicate direct influence by surface waters according to Department Circular PWS-5; and

(iv) seasonal bacteriological testing.

(b) The reviewing authority may determine the adequacy of water quantity and water dependability based upon flows during the seasonal low-flow period.

(6) Cisterns may be utilized only if:

(a) a potable water source is available for hauling within a reasonable distance from the cistern and:

(i) a licensed water hauler supplies water for the cistern and provides a letter verifying that the subdivision will be served by the hauler's business; or

(ii) the water supply is from a public water system and the owner of the public water system certifies that water is available from the public water system to serve the applicant's cistern;



(b) all water is hauled and disinfected in accordance with ARM Title 17, chapter 38, subchapter 5, or a reviewing authority-approved plan; and

(c) the cistern is constructed and installed in accordance with a plan approved by the reviewing authority and in accordance with department Circular DEQ-17.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

#### **17.36.340 LOT SIZES**

(1) This rule sets out, for purposes of the review of proposed subdivisions, the requirements for minimum lot or parcel size.

(2) Subject to (4), each proposed new subdivision lot, area proposed for condominiums, or area proposed for permanent multiple spaces for recreational camping vehicles or mobile homes, must be of sufficient size to satisfy all of the following criteria:

(a) facilities on each lot must comply with the setback requirements in ARM 17.36.323, except that setbacks for existing sewage systems may be waived pursuant to ARM 17.36.327(3);

(b) drainfield mixing zones must be located in compliance with ARM 17.36.322(5);

(c) well isolation zones must be located in compliance with ARM 17.36.330(4); and

(d) as shown on the lot layout document, each lot must have adequate space for the sewage treatment system, drainfield replacement area, water supply, and all permanent structures including, but not limited to, driveways, houses, garages, ditches, service lines, easements, and utilities. Easements may be used to satisfy this requirement.

(3) For lots created before July 1, 1973, and for which sanitary restrictions are proposed to be lifted, the requirements of (2)(a) and (d) apply, subject to the provisions of ARM 17.36.106(3).

(4) The reviewing authority may require lot sizes larger than those allowable under (2) if necessary to protect human health or water quality.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2003 MAR p. 1804, Eff. 8/15/03; AMD, 2013 MAR p. 265, Eff. 3/1/13; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

#### **17.36.345 ADOPTION BY REFERENCE**

(1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) Department Circular DEQ-1, "Standards for Water Works," 2018 edition;

(b) Department Circular DEQ-2, "Design Standards for Public Sewage Systems," 2018 edition;

(c) Department Circular DEQ-3, "Standards for Small Water Systems," 2018 edition;

(d) Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems," 2013 edition;

(e) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (June 2019 edition);

(f) Department Circular DEQ-8, "Montana Standards for Subdivision Storm Drainage," 2017 edition;

(g) Department Circular DEQ-10, "Standards for the Development of Springs for Public Water Systems," 2014 edition;

(h) Department Circular DEQ-11, "Montana Standards for Development of Springs for Individual and Shared Non-public Systems," 2002 edition;

(i) Department Circular DEQ-16, "Standards for Hauled Water Cisterns for Noncommunity Public Systems," 2014 edition;

(j) Department Circular DEQ-17, "Montana Standards for Cisterns (Water Storage Tanks) for Individual Non-public Systems," 2002 edition;

(k) Department Circular PWS-5, "Ground Water Under the Direct Influence of Surface Water," 2002 edition;

(l) Department Circular PWS-6, "Source Water Protection Delineation," 1999 edition;

(m) the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993), which contain a recognized set of methods for identifying the nature and characteristics of soils; and

(n) ARM 17.30.1702 regarding setbacks between sewage lagoons and wells.

(2) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2004 MAR p. 2589, Eff. 10/22/04; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2006 MAR p. 540, Eff. 2/24/06; AMD, 2008 MAR p. 946, Eff. 5/9/08; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2010 MAR p. 1796, Eff. 8/13/10; AMD, 2012 MAR p. 2060, Eff. 10/12/12; AMD, 2012 MAR p. 2067, Eff. 10/12/12; AMD, 2013 MAR p. 2081, Eff. 11/15/13; AMD, 2014 MAR p. 1802, Eff. 8/8/14; AMD, 2016 MAR p. 1008, Eff. 6/4/16; AMD, 2017 MAR p. 602, Eff. 5/13/17; AMD, 2018 MAR p. 1588, Eff. 8/11/18; AMD, 2019 MAR p. 826, Eff. 6/22/19; AMD, 2019 MAR p. 836, Eff. 6/22/19.

## **Subchapter 6 Subdivision Waivers and Exclusions**

### **17.36.601 WAIVERS--DEVIATIONS**

(1) The department may grant a waiver from a requirement of this subchapter only if a waiver is specifically authorized for that requirement and the applicant demonstrates that the conditions in the specific waiver authorization and in (3) are met.

(2) The department may grant a deviation from a requirement of department circulars only if the applicant demonstrates to the department that all specific waiver conditions in the applicable circular and the conditions in (3) are met.

(3) A request for a waiver or deviation must be in writing and must be accompanied by information substantiating the request and by the appropriate fee. The applicant shall also demonstrate that the waiver or deviation:

(a) would be unlikely to cause pollution of state water in violation of 75-5-605, MCA;

(b) would protect the quality and potability of water for drinking water supplies and domestic uses and would protect the quality of water for other beneficial uses, including those uses specified in 76-4-101, MCA; and

(c) would not adversely affect public health, safety, and welfare.

**History:** 76-4-104, MCA; IMP, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02.

### **17.36.605 EXCLUSIONS**

(1) The exclusions in this rule are in addition to the exclusions set out in 76-4-111 and 76-4-125(2), MCA. A subdivision excluded under 76-4-111 or 76-4-125(2), MCA, is subject to review under 76-4-130, MCA, if the subdivision causes facilities previously approved under Title 76, chapter 4, part 1, MCA, to deviate from the conditions of approval.

(2) The reviewing authority may exclude the following parcels created by divisions of land from review under Title 76, chapter 4, part 1, MCA, unless the exclusion is used to evade the provisions of that part:

(a) a parcel that has no facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal, if no facilities will be constructed on the parcel;

(b) a parcel that has a previous approval issued under Title 76, chapter 4, part 1, MCA, if:

(i) no facilities other than those previously approved exist or will be constructed on the parcel; and

(ii) the division of land will not cause approved facilities to deviate from the conditions of approval, in violation of 76-4-130, MCA;

(c) a parcel that will be affected by a proposed boundary line adjustment, if the parcel has existing facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal that were not subject to review, and have not been reviewed, under Title 76, chapter 4, part 1, MCA, and if:

(i) no facilities, other than those in existence prior to the boundary line adjustment, or those that were previously approved as replacements for the existing facilities, will be constructed on the parcel;

(ii) existing facilities on the parcel complied with state and local laws and regulations, including permit requirements, which were applicable at the time of installation; and

(iii) the local health officer determines that existing facilities are adequate for the existing use. As a condition of the exemption, the local health officer may require evidence that:

(A) existing septic tanks have been pumped within the previous three years;

- (B) the parcel includes acreage or features sufficient to accommodate a replacement drainfield;
- (C) existing wells are adequate for the proposed uses; and
- (D) adequate storm drainage and solid waste disposal are provided.

(3) Aggregations of parcels are not subdivisions subject to review, except that an aggregation is subject to review under 76-4-130, MCA, if any parcel included in the aggregation has a previous approval issued under Title 76, chapter 4, part 1, MCA.

**History:** 76-4-104, MCA; IMP, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2013 MAR p. 265, Eff. 3/1/13; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

## Subchapter 8 Subdivision Review Fees

### 17.36.801 PURPOSE

(1) The purpose of this subchapter is to establish a schedule of fees to be paid to the department for the local and state review of subdivision applications. The schedule consists of three sections relating to the collection of fees for the review of divisions of land, condominiums, and areas providing permanent multiple space for recreational camping vehicles and mobile homes. The fees are based on the complexity of the subdivision, including the number of lots, the type of water system to serve the development, the type of wastewater disposal to serve the development, and the degree of environmental research necessary to supplement the review procedure.

**History:** 76-4-105, MCA; IMP, 76-4-105, MCA; NEW, EMERG, Eff. 5/15/75; NEW, Eff. 9/5/75; AMD, Eff. 5/6/76; AMD, EMERG, 1977 MAR p. 536, Eff. 9/6/77; AMD, 1977 MAR p. 750, Eff. 10/25/77; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1998 MAR p. 646, Eff. 3/13/98; AMD, 2002 MAR p. 1465, Eff. 5/17/02.

### 17.36.802 FEE SCHEDULES

(1) An applicant for approval under this subchapter shall pay the following fees:

(a) type of lots:

(i) subdivision lot or parcel or townhouse \$ 160

(ii) condominium/trailer court/recreational camping vehicle campground unit or space \$ 60

(iii) resubmittal fee - previously approved lot, boundaries are not changed per lot or parcel \$

90

(b) type of water system:

(i) individual or shared water supply system (existing and proposed) per unit \$ 110

(ii) multiple-user system (non-public):

(A) - each new system \$ 400 (plus \$ 130/hour for review in excess of four hours)

(B) - new distribution system design per lineal foot \$ 0.30

(C) - connection to distribution system per lot or unit \$ 90

(iii) public water system:

(A) new system per component per ARM 17.38.106 fee schedule

(c) type of wastewater disposal:

(i) existing systems per unit \$ 90

(ii) new gravity fed system per drainfield \$ 120

(iii) new dosed system, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems:

(A) per design \$ 240 (plus \$ 130/hour for review in excess of two hours)

(B) per drainfield \$ 60

(iv) gray water reuse systems, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, experimental systems \$ 120 (plus \$ 130/hour in excess of two hours)

(v) multiple-user wastewater system (non-public):

(A) - new collection system design per lineal foot \$ 0.30

(B) - connection to collection system per lot or unit \$ 90

(vi) new public wastewater system per component per ARM 17.38.106 fee schedule

(d) other:



- (i) deviation from circular per request or design \$ 250 (plus \$ 130/hour for review in excess of two hours)
- (ii) waiver from rule per request \$ 250 (plus \$ 130/hour for review in excess of two hours)
- (iii) reissuance of original approval statement per request \$ 70
- (iv) review of revised lot layout document per request \$ 160
- (v) municipal facilities exemption checklist (former master plan exemption) per application \$ 120
- (vi) nonsignificance determinations/categorical exemption reviews:
  - (A) - individual/shared systems per drainfield \$ 70 (plus \$ 130/hour for review in excess of two hours)
  - (B) - multiple-user non-public systems per lot or structure \$ 40 (plus \$ 130/hour for review in excess of two hours)
  - (C) source specific mixing zone per drainfield \$ 250
  - (D) - public systems per drainfield per ARM 17.38.106 fee schedule
- (vii) storm drainage plan review:
  - (A) - Circular DEQ-8 simple plan review per project \$ 130
  - (B) - Circular DEQ-8 standard plan review:
    - (I) per project \$ 220
    - (II) plus per lot \$ 50 (plus \$ 130/hour for review in excess of 30 minutes per lot)
- (viii) preparation of environmental assessments/environmental impact statements: actual cost
- (ix) review for compliance with ARM 17.30.718 \$900.00 (plus \$130/hour for review in excess of 6 hours).

**History:** 76-4-105, MCA; IMP, 76-4-105, MCA; NEW, EMERG, Eff. 5/15/75; NEW, Eff. 9/5/75; AMD, Eff. 5/6/76; AMD, EMERG, 1977 MAR p. 536, Eff. 9/6/77; AMD, 1977 MAR p. 750, Eff. 10/25/77; AMD, 1980 MAR p. 2967, Eff. 11/29/80; AMD, 1981 MAR p. 1288, Eff. 10/30/81; AMD, 1983 MAR p. 851, Eff. 7/15/83; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; AMD, 1993 MAR p. 542, Eff. 4/16/93; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1998 MAR p. 646, Eff. 3/13/98; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2009 MAR p. 2477, Eff. 12/25/09; AMD, 2013 MAR p. 1827, Eff. 10/18/13; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16; AMD, 2020 MAR p. 319, Eff. 3/1/20.

### 17.36.804 DISPOSITION OF FEES

(1) The department shall use the fees collected pursuant to ARM 17.36.802 to fund the following functions:

- (a) review performed pursuant to subchapter 1 to determine whether:
  - (i) the application complies with subchapter 3;
  - (ii) to grant a waiver or deviation pursuant to ARM 17.36.601; or
  - (iii) the proposed subdivision is excluded from review pursuant to ARM 17.36.605;
- (b) review performed pursuant to ARM 17.30.706 to determine whether significant degradation will occur;
- (c) review performed pursuant to ARM 17.30.707, 17.30.708, 17.30.715, or 17.30.716, regarding nondegradation;
- (d) preparation of an environmental assessment pursuant to ARM 17.4.609 and 17.4.610, including costs of gathering data and information, analysis, printing, distribution, and hearing costs;
- (e) subject to 75-1-205, MCA, preparation of an environmental impact statement pursuant to ARM 17.4.615 through 17.4.629, including costs of analysis, printing, distribution, and hearing costs, and excluding the costs of information and data gathering which are subject to fee assessment pursuant to 75-1-202, MCA;
- (f) reimbursement of local government entities as provided in (2) and (3); and
- (g) conducting inspections and enforcement activities pursuant to 76-4-107 and 76-4-108, MCA.

(2) The department shall reimburse local governing bodies under department contract to review subdivisions as follows:

- (a) for subdivisions with individual wastewater treatment systems, the department shall reimburse \$35 per lot plus 80 percent of the review fee under ARM 17.36.802 for the following actions performed by the local governing body:
  - (i) each review of water, storm water, and wastewater systems;

- (ii) nonsignificance determinations and categorical exemptions; and
- (iii) review of revised lot layout documents.

(3) The department may reimburse counties that have not been delegated review authority but that perform review services including, but not limited to, inspection of proposed and approved facilities and assistance to persons in the application procedure as follows:

(a) \$35 per parcel for subdivisions with individual or shared wastewater treatment systems. A site evaluation must accompany the submittal.

(4) Funds must be reimbursed to the local governing bodies quarterly, based upon the fiscal year starting on July 1 and ending on June 30 of each year.

**History:** 76-4-105, MCA; IMP, 76-4-105, MCA; NEW, EMERG, Eff. 5/15/75; NEW, Eff. 9/5/75; AMD, Eff. 5/6/76; AMD, EMERG, 1977 MAR p. 536, Eff. 9/6/77; AMD, 1977 MAR p. 750, Eff. 10/25/77; AMD, 1980 MAR p. 2967, Eff. 11/29/80; AMD, 1981 MAR p. 1288, Eff. 10/30/81; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1998 MAR p. 646, Eff. 3/13/98; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16; AMD, 2018 MAR p. 1588, Eff. 8/11/18.

### **17.36.805 CHANGES IN SUBDIVISION**

(1) If, during the review process, or after approval, an applicant proposes to change the water supply system, wastewater treatment system, storm water drainage plan, or solid waste disposal plan of a subdivision or if such changes are necessitated by a department determination that proposed plans are inadequate, such changes must be submitted to the reviewing authority for review and are subject to the resubmittal review fee and fees for the components proposed for change as listed in ARM 17.36.802.

(2) Other changes for plan components not listed in ARM 17.36.802 are also subject to additional review fees. The department shall determine the exact amount of the additional fee based on how much review time the change(s) require. Review time must be charged at the rate of \$105 per hour with a minimum charge of \$105.

**History:** 76-4-105, MCA; IMP, 76-4-105, MCA; NEW, EMERG, Eff. 5/15/75; NEW, Eff. 9/5/75; AMD, Eff. 5/6/76; AMD, EMERG, 1977 MAR p. 536, Eff. 9/6/77; AMD, 1977 MAR p. 750, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 1998 MAR p. 646, Eff. 3/13/98; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2009 MAR p. 2477, Eff. 12/25/09; AMD, 2013 MAR p. 1827, Eff. 10/18/13.

## **Subchapter 9 On-Site Subsurface Wastewater Treatment Systems**

### **17.36.911 SCOPE**

(1) These rules are intended to protect the public health, safety, and welfare by setting forth minimum standards for the construction, alteration, repair, extension, and use of wastewater treatment systems within the state.

(2) Under 50-2-116, MCA, local boards of health must adopt regulations no less stringent than this subchapter 9 for wastewater treatment systems for private and public buildings and facilities.

**History:** 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2009 MAR p. 1786, Eff. 10/16/09.

### **17.36.912 DEFINITIONS**

For purposes of this subchapter, the following definitions apply:

(1) "Absorption bed" means an absorption system that consists of excavations greater than three feet in width where the distribution system is laid for the purpose of distributing pretreated waste effluent into the ground.

(2) "Absorption trench" means an absorption system that consists of excavations less than or equal to three feet in width where the distribution system is laid for the purpose of distributing pretreated waste effluent into the ground.

(3) "Bedrock" means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater. The term does not include gravel and other rock fragments as defined in Department Circular DEQ-4, Appendix B.

(4) "Cesspool" means a seepage pit without a septic tank to pretreat the wastewater.

(5) "Commercial unit" means the area under one roof that is occupied by a business or other nonresidential use. A building housing two businesses is considered two commercial units.

(6) "Department" means the Montana Department of Environmental Quality.

(7) "Drainage way" means a course or channel along which storm water moves in draining an area.

(8) "Experimental system" means a wastewater treatment system for which specific design standards are not provided in Department Circular DEQ-4, DEQ-2, or this subchapter.

(9) "Failed system" means a wastewater treatment and/or disposal system that no longer provides the treatment and/or disposal for which it was intended, or violates any of the requirements of ARM 17.36.914.

(10) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year. The floodplain consists of the floodway and the flood fringe, as defined in ARM Title 36, chapter 15.

(11) "Gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(12) "Ground water observation well" means a well installed for the purpose of measuring the depth from the natural ground surface to the seasonally high ground water.

(13) "Holding tank" means a watertight receptacle that receives wastewater for retention and does not, as part of its normal operation, dispose or treat the wastewater. The term does not include surge tanks used in a gray water irrigation system if the system meets the requirements of ARM 17.36.919.

(14) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than 240 minutes per inch.

(15) "Individual wastewater system" means a wastewater system that serves one living unit or commercial unit. The term does not include a public sewage system as defined in 75-6-102, MCA.

(16) "Limiting layer" means bedrock, an impervious layer, or seasonally high ground water.

(17) "Living unit" means the area under one roof that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. For example, a duplex is considered two living units.

(18) "Multiple-user wastewater system" means a wastewater system that serves or is intended to serve more than two living units or commercial units or a combination, but which is not a public sewage system as defined in 75-6-102, MCA. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.

(19) "Municipal" means pertaining to an incorporated city or town.

(20) "Percolation test" means a standardized test used to assess the infiltration rate of soils, performed in accordance with Appendix A in Department Circular DEQ-4.

(21) "Piped water supply" means a plumbing system that conveys water into a structure from any source including, but not limited to, wells, cisterns, springs, or surface water.

(22) "Pit privy" means a pit that receives undiluted, non-water-carried toilet wastes.

(23) "Replacement system" means a wastewater treatment system proposed to replace a failed, failing, or contaminating system.

(24) "Reviewing authority" means a local board of health or local health officer, as those terms are defined in 50-2-101, MCA, or their designees.

(25) "Sealed pit privy" means an enclosed receptacle designed to receive non-water-carried toilet wastes into a watertight vault.

(26) "Seasonally high ground water" means the depth from the natural ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated monitoring well during the time of the year when the water table is the highest. The term includes the upper surface of a perched water table.

(27) "Seepage pit" means a covered underground receptacle that receives wastewater after primary treatment and allows the wastewater to seep into the surrounding soil.

(28) "Septic tank" means a wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.



(29) “Shared wastewater system” means a wastewater system that serves or is intended to serve two living units or commercial units or a combination of both. The term does not include a public sewage system as defined in 75-6-102, MCA.

(30) “Site evaluation” means an evaluation to determine if a site is suitable for the installation of a subsurface wastewater treatment system.

(31) “Slope” means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.

(32) “Soil profile” means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method in Appendix B, Department Circular DEQ-4.

(33) “Subsurface wastewater treatment system” means the process of wastewater treatment in which the effluent is applied below the soil surface or into a mound by an approved distribution system.

(34) “Variance” means the grant, pursuant to ARM 17.36.922, by the reviewing authority of an exception to the minimum requirements set out in this subchapter or Department Circular DEQ-4.

(35) “Wastewater” means water-carried wastes. For purposes of these rules, wastewater does not include storm water. The term includes, but is not limited to, the following:

- (a) household, commercial, or industrial wastes;
- (b) chemicals;
- (c) human excreta; or
- (d) animal and vegetable matter in suspension or solution.

(36) “Wastewater treatment system” or “wastewater disposal system” means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, all disposal methods described in Department Circular DEQ-4.

**History:** 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2004 MAR p. 2579, Eff. 10/22/04; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 1824, Eff. 8/8/14.

### **17.36.913 GENERAL REQUIREMENTS**

(1) No person may construct, alter, extend, or utilize a wastewater treatment or disposal system that may:

- (a) contaminate any actual or potential drinking water supply;
- (b) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;
- (c) cause a public health hazard by being accessible to persons or animals;
- (d) violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in this subchapter;
- (e) pollute or contaminate state waters, in violation of 75-5-605, MCA;
- (f) degrade state waters unless authorized pursuant to 75-5-303, MCA; or
- (g) cause a nuisance due to odor, unsightly appearance or other aesthetic consideration.

**History:** 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03.

### **17.36.914 WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS**

(1) Except as provided in ARM 17.36.916, all wastewater treatment systems must be designed and constructed in accordance with the applicable requirements in ARM 17.36.913 and in Department Circular DEQ-4.

(2) Department Circular DEQ-4, 2013 edition, which sets forth standards for subsurface sewage treatment systems, and Department Circular DEQ-2, 2016 edition, which sets forth design standards for public sewage systems, are adopted and incorporated by reference for purposes of this subchapter. All references to these documents in this subchapter refer to the editions set out above. Copies are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(3) Wastewater treatment systems must be located to maximize the vertical separation distance from the bottom of the absorption trench to the seasonally high ground water level, bedrock, or other limiting layer, but under no circumstances may this vertical separation be less than four feet of natural soil.

(4) A replacement area or replacement plan must be provided for each new or expanded wastewater treatment system. Replacement areas and plans must comply with the requirements of this subchapter.

(5) A site evaluation must be performed for each wastewater treatment system. As determined by the reviewing authority, the site evaluation may include the following:

(a) soil descriptions for proposed wastewater treatment systems. Soil descriptions must be based on data obtained from test holes within 25 feet of each wastewater treatment location. Test holes must be at least eight feet in depth unless a limiting layer precludes digging to eight feet;

(b) percolation test results within the boundaries of the proposed wastewater treatment system; and

(c) if the applicant or the reviewing authority has reason to believe that ground water will be within seven feet of the surface at any time of the year within the boundaries of the system, the applicant must provide data to demonstrate that the minimum separation distance required by (3) between the absorption trench bottom and the seasonally high ground water level can be maintained. The reviewing authority may require the applicant to install ground water observation wells to a depth of at least eight feet to determine the seasonally high ground water level. The applicant shall monitor the observation wells through the seasonally high ground water period. Measurement must occur for a long enough period of time to detect a peak and a sustained decline in the ground water level.

(6) If a department-approved public collection and treatment system is readily available within a distance of 200 feet of the property line for connection to a new source of wastewater, or as a replacement for a failed system, and the owner or managing entity of the public collection and treatment system approves the connection, wastewater must be discharged to the public system. For purposes of this rule:

(a) a public system is not “readily available” if there is evidence demonstrating that connection to the system is physically or economically impractical, or that easements cannot be obtained; and

(b) a connection is “economically impractical” if the cost of connection to the public system equals or exceeds three times the cost of installation of an approvable system on the site.

(7) Wastewater treatment systems, except for sealed components that are designed, constructed, and tested as set out in ARM 17.36.918, may not be located in drainage ways.

**History:** 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2004 MAR p. 2579, Eff. 10/22/04; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2012 MAR p. 2067, Eff. 10/12/12; AMD, 2013 MAR p. 2081, Eff. 11/15/13; AMD, 2016 MAR p. 1008, Eff. 6/4/16.

### **17.36.916 ABSORPTION BEDS, HOLDING TANKS, SEEPAGE PITS, PIT PRIVIES, CESSPOOLS - TECHNICAL REQUIREMENTS AND PROHIBITIONS**

(1) The wastewater treatment systems described in (3) through (7) may be allowed only if the reviewing authority determines that:

(a) site constraints prevent the applicant from constructing any system described in Department Circular DEQ-4;

(b) all off-site treatment alternatives have been considered and are infeasible;

(c) the requirements of ARM 17.36.913 are met; and

(d) all other requirements in this subchapter applicable to the proposed system are met.

(2) Applications for permits for wastewater treatment systems described in (3) through (7) must include a demonstration that no other alternatives to wastewater disposal are feasible.

(3) Absorption beds may be used for replacement systems only and may not be constructed in unstabilized fill. Absorption beds must also meet the design and construction requirements in Department Circular DEQ-4.

(4) Seepage pits may be used for replacement systems only, and only when no other means of treatment and disposal is available.

(a) Seepage pits must have a minimum vertical separation of 25 feet between the bottom of the pit and ground water.

(b) Permit applications for seepage pits must include plans for the proposed pit. Seepage pits must meet the design and construction requirements in Department Circular DEQ-4.

(5) Holding tank systems may be approved only if the facility to be served is for seasonal use.

(a) For purposes of this rule “seasonal use” means use for not more than a total of four months (120 days) during any calendar year. Permit applications for holding tanks must show that the property use conforms to the “seasonal use” limitation or that a variance has been granted.

(b) Holding tanks must meet the design and construction requirements in Department Circular DEQ-4.

(c) Permit applications for holding tanks must include plans for the proposed holding tank system. The plans must include the following information:

(i) the method for monitoring tank levels;

(ii) the method for waterproofing the tank;

(iii) a maintenance plan, which must include annual water tightness testing and periodic pumping by a licensed septic tank pumper; and

(iv) the method for tank stabilization if seasonal high ground water is expected to be within 12 inches of tank’s base.

(6) Sealed pit privy systems may be approved only if the facility to be served does not have a piped water supply, and the facility is a seasonal-use recreational site.

(a) Permit applications for sealed pit privies must include plans for the proposed sealed pit. Sealed pit privy systems must meet the design and construction requirements in Department Circular DEQ-4.

(7) Unsealed pit privies may be approved only for seasonal use in remote locations that are not accessible to septic tank pumps.

(8) New construction or alteration of cesspools is prohibited.

**History:** 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2004 MAR p. 2579, Eff. 10/22/04; AMD, 2009 MAR p. 1786, Eff. 10/16/09.

### 17.36.918 HORIZONTAL SETBACKS, FLOODPLAINS

(1) Minimum horizontal setback distances (in feet) are as follows:

TABLE 1  
SETBACK DISTANCES  
(in feet)

From	To Sealed components (1) and other components (2)	To Absorption systems (3)
Public or multiple-user drinking water wells/springs	100	100
Individual and shared drinking water supply wells	50	100
Other wells (4)	50	100
Suction lines	50	100
Cisterns	25	50
Roadcuts, escarpments	10 (5)	25
Slopes > 35 percent (6)	10 (5)	25
Property boundaries (7)	10	10
Subsurface drains	10	10
Water mains (8)	10	10
Drainfields/sand mounds (3)	10	-
Foundation walls	10	10
Surface water, springs	50	100
Floodplains	--Sealed components - no setbacks (1) Other components - 100 (2)	100



(1) Sealed components include holding tanks, sealed pit privies, and the components addressed in Department Circular DEQ-4, Chapters 4 and 5. Holding tanks and sealed pit privies must be located at least ten feet outside the floodplain or any openings must be at least two feet above the floodplain elevation.

(2) Other components include the components addressed in Department Circular DEQ-4, Chapter 7.

(3) Absorption systems include the systems addressed in Department Circular DEQ-4, Chapters 6 and 8 subject to the limitations in ARM 17.36.916.

(4) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.

(5) Sewer lines and sewer mains may be located in roadways and on steep slopes if the lines and mains are safeguarded against damage.

(6) Down-gradient of the sealed component, other component, or drainfield/sand mound.

(7) Easements may be used to satisfy the setback to property boundaries.

(8) Sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(2) The reviewing authority may require greater horizontal separation distances than those specified in Table 1, if it determines that site conditions or water quality requirements indicate a need for the greater distance.

(3) If the floodplain has not been designated and its level relative to a wastewater system is in question, the applicant shall submit evidence adequate to allow the reviewing authority to establish the location of the floodplain.

(4) Sealed components of wastewater treatment systems, if located within a 100-year floodplain, must be designed and constructed to prevent surface water and ground water inundation, and pump lines must be pressure tested prior to use. Pipes must have a pressure rating of at least two times the operating pressure or pump shutoff pressure, whichever is greater. Pipes must be tested at 1 1/2 times the operating pressure or pump shutoff pressure, whichever is greater, or must be tested as specified by the manufacturer.

(5) The setbacks in this rule are not applicable to gray water irrigation systems that meet the requirements of ARM 17.36.919.

**History:** 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 1824, Eff. 8/8/14.

### **17.36.919 GRAY WATER REUSE**

(1) Except as provided in (2) and (3), treatment and disposal of gray water must be by means of a wastewater treatment system that meets all of the requirements of this subchapter and applicable department circulars. Gray water reuse within a building or residence for uses such as toilet flushing is permitted without a permit under this subchapter, provided that the gray water is ultimately disposed of by means of a wastewater treatment system that is in compliance with this subchapter and applicable department circulars.

(2) Gray water may be used for irrigation as provided in (3). If a gray water irrigation system meets all of the requirements in (3), the system is not subject to the requirements of ARM 17.36.914, 17.36.916, and 17.36.918.

(3) Gray water that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets may be used for irrigation, if the following requirements are met:

(a) prior to installation, a gray water irrigation system must obtain a permit under this subchapter;

(b) gray water irrigation must be subsurface, using a collection and application system that is designed, installed, and used in accordance with Department Circular DEQ-4;

(c) as provided in 75-5-326, MCA, gray water may not be used to irrigate plants to be consumed by humans, and gray water systems may not be located in a floodplain, as defined in 76-5-103, MCA. For purposes of this rule, "plants to be consumed by humans" does not include nut and fruit trees;

(d) there must be a minimum vertical separation of four feet of natural soil between the point of gray water application and a limiting layer, as defined in ARM 17.36.912;

(e) gray water irrigation may not occur within:

- (i) 100 feet of wells;
  - (ii) 100 feet of surface water;
  - (iii) 100 feet of a flood plain; or
  - (iv) two feet of a property line;
- (f) gray water from kitchens may be used for irrigation only where a waste segregation system is used. For purposes of this rule, a “waste segregation system” consists of dry disposal of toilet waste by a method such as composting, chemical, dehydrating, or incinerator treatment, with a separate disposal method for gray water;
- (g) if required under Title 76, chapter 4, MCA, and implementing rules, a gray water irrigation system must obtain subdivision approval from the department.
- (4) Soil descriptions must be provided for each proposed gray water irrigation system. Soils must be described in accordance with Appendix B of Department Circular DEQ-4.
- (5) Gray water irrigation systems with a design flow greater than or equal to 2,500 gallons per day must be designed by a professional engineer.
- (6) The reviewing authority may require user agreements for systems that serve more than one user. The reviewing authority may require easements for systems that cross property lines.
- History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2009 MAR p. 1786, Eff. 10/16/09.**

### 17.36.920 PERMITS

- (1) The reviewing authority shall administer a permit system for the construction, alteration, repair, and extension of wastewater treatment and disposal systems.
- (2) Permit applications must:
- (a) identify the owner of the system, location of the system, and type of system to be installed;
  - (b) provide a justification for the type of system proposed;
  - (c) include a drawing of the lot layout with legend and scale; and
  - (d) show separation distances for the features indicated in ARM 17.36.918.
- (3) The reviewing authority shall maintain records of all permits.
- (4) For permits for new or increased sources, the reviewing authority shall show on the permit the method used for the non-significance determination made pursuant to ARM Title 17, chapter 30, subchapter 7.
- (5) For permits issued for replacement of wastewater treatment systems that do not meet minimum standards for subdivisions as set out in ARM Title 17, chapter 36, subchapter 3, the reviewing authority shall notify the owner that the design may limit the ability of the owner to subdivide the property.
- History: 75-5-201, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03.**

### 17.36.922 LOCAL VARIANCES

- (1) As provided in this rule, a local board of health, as defined in 50-2-101, MCA, may grant variances from the requirements in this subchapter and in Department Circular DEQ-4, except for requirements established by statute.
- (2) The local board of health may grant a variance from a requirement only if it finds that all the following criteria are met:
- (a) granting the variance will not:
    - (i) contaminate any actual or potential drinking water supply;
    - (ii) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;
    - (iii) cause a public health hazard by being accessible to persons or animals;
    - (iv) violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in this subchapter except for the rule that the variance is requested from;
    - (v) pollute or contaminate state waters, in violation of 75-5-605, MCA;
    - (vi) degrade state waters unless authorized pursuant to 75-5-303, MCA; or
    - (vii) cause a nuisance due to odor, unsightly appearance, or other aesthetic consideration;
  - (b) compliance with the requirement from which the variance is requested would result in undue hardship to the applicant;
  - (c) the variance is necessary to address extraordinary conditions that the applicant could not reasonably have prevented;

(d) no alternatives that comply with the requirement are reasonably feasible; and  
(e) the variance requested is not more than the minimum needed to address the extraordinary conditions.

(3) The local board of health's decision regarding a variance of a requirement in this subchapter or in Department Circular DEQ-4 may be appealed to the department pursuant to ARM 17.36.924.

**History:** 75-5-201, 75-5-305, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2005 MAR p. 86, Eff. 10/22/04; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2011 MAR p. 1548, Eff. 8/12/11.

#### **17.36.924 VARIANCE APPEALS TO THE DEPARTMENT**

(1) Upon receiving an appeal of a local board of health's variance decision under 75-5-305, MCA, the department shall determine within 30 days whether the appeal meets the requirements of (2) and notify the appellant in writing of its determination.

(2) The appeal to the department must be in writing and must provide the following information:

- (a) the name of the appellant;
- (b) the local government entity or entities that made the decision on the application for variance at the local level;
- (c) a summary explanation of the project or development for which the variance is requested;
- (d) a summary explanation of the variance that is sought;
- (e) a statement of the law or ordinance at issue in the matter; and
- (f) copies of all applications and supporting materials submitted to the local board of health, and of any written decisions issued by the local board of health.

(3) If the appeal does not fulfill the requirements of (2), the department shall state in its notice to the appellant the deficiencies that must be addressed in a resubmittal. The department shall also notify the appellant in writing when its submittal meets the requirements of (2).

(4) If the appeal fulfills the requirements of (2), the department shall proceed to review the local variance decision under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(5) As provided in 2-4-612, MCA, the common law and statutory rules of evidence apply in department proceedings to review local board variance decisions. The parties may provide evidence and testimony to the department in addition to that presented to the local board.

(6) In evaluating the local board variance decision, the department shall apply the variance criteria in ARM 17.36.922(2), and may not consider local variance criteria. The department may substitute its judgment for that of the local board as to the interpretation and application of the variance criteria in ARM 17.36.922(2). However, the department shall be bound by the local board's interpretation of other local board rules in effect at the time of the local board's decision.

(7) Challenges to the applicability or validity of a rule of the local board are outside the scope of department review. Variance requests that do not seek to go below a state minimum standard are also outside the scope of department review. If a variance is requested from a local requirement that is more stringent than the requirements in this subchapter, the department may review the local board's decision only if the variance, if granted, would also require a variance from the requirements in this subchapter.

(8) The department shall issue a formal decision, including findings of fact and conclusions of law, within 30 days after the hearing process is completed.

**History:** 75-5-201, 75-5-305, MCA; IMP, 75-5-305, MCA; NEW, 2003 MAR p. 222, Eff. 2/14/03; AMD, 2011 MAR p. 1548, Eff. 8/12/11.



**MONTANA DEPARTMENT OF LABOR AND INDUSTRY  
ADMINISTRATIVE RULES FOR THE MONTANA  
SUBDIVISION AND PLATTING ACT****Uniform Standards for Survey Monumentation,  
Certificates of Survey, and Final Subdivision Plats  
(ARM 24.183.1101, 1104, and 1107)****24.183.1101 UNIFORM STANDARDS FOR MONUMENTATION**

(1) The following standards govern the monumentation of land surveys:

(a) The terms “monument” and “permanent monument” as used in these regulations mean any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

(b) All metal monuments must be at least one-half inch in diameter and 18 inches in length with a cap not less than one inch in diameter marked in a permanent manner with the license number of the surveyor in charge of the survey and either the name of the surveyor or the company employing the surveyor. Metal monuments marking a public land survey corner as described in 70-22-101, MCA, must be at least 24 inches long and 5/8 inch in diameter with an appropriately stamped metal cap at least two inches in diameter. A monument marking a public land survey corner may also consist of a cap as described in this rule set firmly in concrete.

(c) Before a subdivision plat or certificate of survey may be filed for record, the surveyor shall confirm the location of as many monuments as, in the surveyor’s professional judgment, are necessary to reasonably assure the perpetuation of any corner or boundary established by the survey and to enable other surveyors to reestablish those corners and boundaries and retrace the survey. The surveyor shall clearly identify on the face of the plat or certificate of survey all monuments pertinent to the survey, and the descriptions of these monuments must be sufficient to identify the monuments.

(d) The surveyor shall set all monuments prior to the filing of a plat or certificate of survey, except those monuments that will be disturbed by the installation of improvements, or because of severe weather conditions, may, in the surveyor’s judgment, be more appropriately and accurately set after the weather has improved. In these two circumstances the surveyor may set monuments after the survey document is filed if the surveyor certifies on the survey document that the monuments will be set by a specified date. The surveyor shall set monuments, the placement of which has been deferred because of severe weather conditions, within 240 days of the date on which the survey document was filed.

(i) If during the later monumentation of the corners of a plat or certificate of survey that were not monumented before the plat or certificate was filed, the surveyor finds that it is necessary to set a reference monument to a corner, the surveyor shall prepare and file an amended certificate of survey or subdivision plat.

(ii) The failure of the surveyor to set the monuments by the date certified on the record of survey will be deemed a violation of these rules.

(e) The surveyor shall set monuments at the following locations:

(i) at each corner and angle point of all lots, blocks and parcels of land created by the survey;

(ii) at every point of intersection of the outer boundary of a subdivision with an existing road right-of-way line of record or a road right-of-way line created by the survey;

(iii) at every point of curve, point of tangency, point of reversed curve, point of compounded curve and point of intersection on each road right-of-way line created by the survey; and

(iv) at the intersection of a boundary line and a meander line. Meander line angle points need not otherwise be monumented.

(f) If the placement of a required monument at its proper location is physically impractical, the surveyor may set a reference or witness monument. This monument has the same status as other monuments of record if its location is properly shown. If the surveyor relies upon any existing monument in conducting a survey, he or she shall confirm the location of the monument and show and describe it on the resulting certificate of survey or subdivision plat.

(g) If the land surveyor sets a monument that is on, is a part of, and controls a property line, then the surveyor shall file a certificate of survey which complies with the requirements of ARM 24.183.1104. Alternatively, the surveyor may file a corner record in lieu of a certificate of survey pursuant to 70-22-105(2), MCA.

(2) Remonumentation of public land survey corner monuments shall conform to ARM 24.183.1002.

**History:** 76-3-403, MCA; IMP, 76-3-403, MCA; NEW, Eff. 1/5/74; EMERG, AMD, Eff. 7/1/74; AMD, Eff. 10/5/74; AMD, 1980 MAR p. 2806, Eff. 10/17/80; TRANS, from Dept. of Comm. Affairs, Ch. 274, L. 1981, Eff. 7/1/81; AMD, 2000 MAR p. 462, Eff. 2/11/00; TRANS, from Commerce, 2005 MAR p. 966; AMD, 2014 MAR p. 2840, Eff. 11/21/14.

#### **24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY**

(1) A certificate of survey must comply with the following requirements:

(a) A certificate of survey must be legibly drawn with permanent black ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches. Margins must be a minimum 1/2-inch on all sides, or as required by the filing office.

(b) One original on three mil or heavier matte stable-base polyester film or equivalent and/or one original on 24# white bond paper or equivalent must be submitted, or on such medium as required by the filing office.

(c) If more than one sheet must be used to adequately depict the land surveyed, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed on sheet number one of the certificate of survey.

(d) A certificate of survey must show or contain the following information:

(i) a title or title block including the quarter-section, section, township, range, principal meridian, county, and if applicable, city or town in which the surveyed land is located. Except as provided in (1)(f)(v), a certificate of survey must not contain the title "plat," "subdivision," or any title other than "Certificate of Survey";

(ii) the name(s) of the person(s) who commissioned the survey, the name(s) of the owner(s) of the land surveyed, if other than the person(s) commissioning the survey, the names of any adjoining plats, and the numbers of any adjoining certificates of survey previously filed;

(iii) the date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line, or retrace an existing parcel of land;

(iv) a north arrow;

(v) a scale bar. The scale of the certificate of survey must be sufficient to legibly represent the required information and data on the certificate of survey;

(vi) the location of, and other information relating to all monuments found, set, reset, replaced, or removed as required by ARM 24.183.1101;

(A) If additional monuments are to be set after the certificate of survey is filed, the location of these monuments must be shown by a distinct symbol, and the certificate of survey must contain a certification by the land surveyor as to the reason the monuments have not been set and the date by which they will be set, as required by ARM 24.183.1101(1)(d).

(B) All monuments found during the survey that influenced the position of any corner or boundary indicated on the certificate of survey must be clearly shown as required by ARM 24.183.1101(1)(c).

(C) Witness and reference monuments must be clearly shown.

(vii) the location of any section corner or corners of divisions of sections the land surveyor deems to be pertinent to the survey or was used as a control in the survey;

(viii) basis of bearing. For purposes of this rule, the term "basis of bearing" means the land surveyor's statement as to the origin of the bearings shown on the certificate of survey. If the basis of bearing(s) refers to two previously monumented points in a previously filed survey document, then the two previously monumented points must be shown and described on the certificate of survey, the line marked by the two previously monumented points must be labeled "basis of bearing," and the previously filed survey document name or number must be cited in the land surveyor's statement as to the origin of the bearing(s). If the certificate of survey shows

true bearings, the basis of bearing must describe the method by which these true bearings were determined;

(ix) the bearings, distances, and curve data of all boundary lines and all control or pertinent lines used to determine the boundaries of the parcel(s) surveyed. If the parcel surveyed is bounded by an irregular shoreline or a body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given;

(A) The courses along a meander line are shown solely to provide a basis for calculating the area of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.

(B) For purposes of this rule, a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

(C) If a boundary, control, or pertinent line contains multiple segments of the whole, then the overall distance must be shown, and each segment must at least include distance.

(x) data on all curves sufficient to enable the reestablishment of the curves on the ground. For circular curves, the data must at least include radius and arc length, and either delta angle, radial bearings, or chord bearing and distance. All non-tangent points of intersection on the curve must show either the bearings of radial lines or chord length and bearing. Non-tangent curves must be so labeled;

(xi) lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically. If grid distances are shown, then ground distances must be shown parenthetically;

(xii) at least one record measurement reference for each line and curve, if available, must be shown;

(xiii) a narrative legal description of the parcel(s) surveyed.

(A) The land surveyor, at his or her discretion, may choose the form of the narrative legal description as follows:

(I) If the parcel surveyed is either an aliquot part of a U.S. government section or a U.S. government lot, the narrative legal description may be the aliquot part or the government lot description of the parcel;

(II) If the certificate of survey depicts the division of one or more parcels shown on a previously filed certificate of survey, the narrative legal description may be the number of the previously filed certificate of survey and the parcel number of the parcel(s) previously surveyed;

(III) If the certificate of survey depicts the retracement of one or more parcels shown on a previously filed certificate of survey, plat, or amended plat, the narrative legal description may be the number of the previously filed certificate of survey or the name of the previously filed plat or amended plat, and the parcel number of the parcel(s) previously surveyed;

(IV) If the survey creates or retraces one or more parcels, the narrative legal description may be either the metes-and-bounds description of each individual parcel created by the survey or the metes-and-bounds description of the perimeter boundary of the parcels surveyed; or

(V) If the narrative legal description does not fall within (1)(d)(xiii)(A)(I), (II), or (III), then the narrative legal description required by this subsection must conform with (1)(d)(xiii)(A)(IV).

(B) When the narrative legal description is metes-and-bounds, the point of beginning, which is also the point of closure of the legal description of the parcel surveyed, must be labeled "Point of Beginning." Alternatively, the point of beginning may be labeled "POB" if the abbreviation is defined on the certificate of survey.

(C) The requirement of this rule does not apply to certificates of survey that depict a partial retracement of the boundaries of an existing parcel or establish the location of lines or corners that control the location of an existing parcel.

(xiv) all parcels created or retraced by the certificate of survey designated by number or letter, and the bearings, distances, curve data, and area of each parcel, except as provided in (1)(f)(iii). If a parcel created by the certificate of survey is identifiable as a 1/32 or larger aliquot part of a U.S. government section or as a U.S. government lot, it may be designated by number or letter or by its aliquot part or government lot identification;

(xv) the location, bearings, distances, and curve data of any easement that will be created by reference to the certificate of survey;



(xvi) the dated signature and the seal of the land surveyor responsible for the survey. The land surveyor's signature certifies that the certificate of survey has been prepared in conformance with the applicable sections of the Montana Subdivision and Platting Act and the regulations adopted under the Act;

(xvii) a memorandum of any oaths administered under 76-3-405, MCA;

(xviii) if applicable, the certificate of the examining land surveyor; and

(xix) space for the clerk and recorder's filing information.

(e) Certificates of survey that do not represent a division or aggregation of land, such as those depicting the retracement of an existing parcel and those prepared for informational purposes, must contain a statement as to their purpose and must meet applicable requirements of this rule for form and content. If the purpose of a certificate of survey is stated as a retracement or partial retracement, and if multiple tracts of record contained within the parcel's perimeter boundary on the certificate of survey are not individually shown, then the certificate of survey does not expunge the tracts of record unless it conforms to (1)(f)(iv) and contains the acknowledged certificate of the property owner(s) citing the applicable exemption in its entirety.

(f) Procedures for divisions of land exempted from review as subdivisions. If one or more parcels on a certificate of survey is created by an exemption from subdivision review under 76-3-207, MCA, then, except as provided in (1)(f)(iii) and (iv), the certificate of survey must establish the boundaries of the exemption parcel(s). The certificate of survey is not required to establish, but may establish, the exterior boundaries of the remaining portion of the parent tract of land. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to identify the location and extent of the exemption parcel to be created. Unsurveyed portions of the parent tract of land must be labeled, "NOT A PART OF THIS CERTIFICATE OF SURVEY" or "NOT INCLUDED IN THIS CERTIFICATE OF SURVEY". The certificate of survey must contain the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and cite the applicable exemption in its entirety. The certificate of survey must meet the following requirements:

(i) If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it shows or contains a signed and acknowledged recitation of the covenant in its entirety.

(ii) If a certificate of survey invokes the exemption for gift(s) or sale(s) to members of the landowner's immediate family, the certificate of survey must indicate the name of the proposed grantee, the relationship of the grantee to the landowner, and the parcel to be conveyed to the grantee.

(iii) If a certificate of survey invokes the exemption for the relocation of common boundary line(s):

(A) The certificate of survey must contain the signatures of all landowners whose tracts of record will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of a boundary line or lines common to two or more tracts of record, and must clearly distinguish the prior boundary location or locations (shown, for example, by dashed or broken line(s) with a notation) from the new boundary location or locations (shown, for example, by solid line(s) with a notation);

(B) The certificate of survey must show the boundaries of the area that is being removed from one tract of record and joined with another tract of record. The certificate of survey is not required to establish, but may establish, the exterior boundaries of the resulting tracts of record. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation. Unsurveyed portions of the tracts of record must be labeled, "NOT A PART OF THIS CERTIFICATE OF SURVEY" or "NOT INCLUDED IN THIS CERTIFICATE OF SURVEY"; and

(C) The certificate of survey must contain the following notation: "The area that is being removed from one tract of record and joined with another tract of record is not itself a tract of record. Said area shall not be available as a reference legal description in any subsequent real property transfer after the initial transfer associated with the [certificate of survey or amended plat] on which said area is described, unless said area is included with or excluded from adjoining tracts of record."

(iv) If a certificate of survey invokes the exemption for aggregation of parcels or lots:

(A) The certificate of survey must contain the signatures of all landowners whose tracts of record will be altered by the proposed aggregation. The certificate of survey must show that the exemption was used only to eliminate a boundary line or lines common to two or more tracts of record, and must clearly distinguish the prior boundary location or locations (shown, for example, by dashed or broken line(s) with a notation) from the new perimeter boundary location or locations (shown, for example, by solid line(s) with a notation); and

(B) The certificate of survey must establish the perimeter boundary of the resulting tract(s) of record.

(v) A survey document that modifies lots on a filed plat and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d), (e), or (f), MCA, must be entitled “amended plat of [lot, block, and name of subdivision being amended],” but for all other purposes must comply with the requirements for form and descriptive content of certificates of survey contained in this rule.

(vi) If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey must contain or be accompanied by a certification by the county treasurer that all real property taxes and special assessments assessed and levied on the surveyed land have been paid.

(vii) For purposes of this rule, when the parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the land under the contract-for-deed.

(g) The land surveyor, at his or her discretion, may provide additional information on the certificate of survey regarding the survey.

(h) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Montana Subdivision and Platting Act. The divisions of land described in 76-3-201, 76-3-205, and 76-3-209, MCA, and divisions of federally owned land made by a U.S. government agency are not required to be surveyed, nor must a certificate of survey or plat showing these divisions be filed with the clerk and recorder. However, a certificate of survey of one of these divisions may be filed with the clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this rule, and contains a certificate of all the landowners citing the applicable exemption from the Act in its entirety, or when applicable, that the land surveyed is owned by the federal government. The certificate of survey must establish the boundaries of the exemption parcel(s). The certificate of survey is not required to establish, but may establish, the exterior boundaries of the remaining portion of the parent tract of land. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to identify the location and extent of the exemption parcel to be created. Unsurveyed portions of the parent tract of land must be labeled, “NOT A PART OF THIS CERTIFICATE OF SURVEY” or “NOT INCLUDED IN THIS CERTIFICATE OF SURVEY.”

**History:** 37-67-202, 76-3-403, 76-3-411, MCA; IMP, 37-67-314, 76-3-101, 76-3-102, 76-3-103, 76-3-104, 76-3-105, 76-3-201, 76-3-203, 76-3-205, 76-3-206, 76-3-207, 76-3-209, 76-3-301, 76-3-302, 76-3-303, 76-3-304, 76-3-305, 76-3-306, 76-3-307, 76-3-401, 76-3-402, 76-3-403, 76-3-404, 76-3-405, 76-3-406, 76-3-411, MCA; NEW, Eff. 1/5/74; EMERG, AMD, Eff. 7/1/74; AMD, Eff. 10/5/74; AMD, Eff. 4/5/76; AMD, 1977 MAR p. 955, Eff. 1/26/77; AMD, 1980 MAR p. 2806, Eff. 10/17/80; TRANS, from Dept. of Comm. Affairs, Ch. 274, L. 1981, Eff. 7/1/81; AMD, 2000 MAR p. 462, Eff. 2/11/00; TRANS, from Commerce, 2005 MAR p. 966; AMD, 2013 MAR p. 673, Eff. 4/26/13; AMD, 2016 MAR p. 2424, Eff. 12/24/16.

#### **24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS**

(1) A final subdivision plat must comply with the following requirements:

(a) the plat complies with the requirements contained in (2);

(b) the plat includes a Conditions of Approval sheet(s) that complies with the requirements contained in (4); and

(c) the plat is accompanied by documents listed in (5).

(2) A plat must comply with the following requirements:

(a) A plat must be legibly drawn with permanent black ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches. Margins must be a minimum 1/2-inch on all sides, or as required by the filing office.

(b) One original on three mil or heavier matte stable-base polyester film or equivalent and/or one original on 24# white bond paper or equivalent must be submitted, or on such medium as required by the filing office.

(c) If more than one sheet must be used to adequately depict the land surveyed, each sheet must show the number of that sheet and the total number of sheets included. Except as provided in (4)(b), all certifications must be placed on sheet number one of the plat.

(d) A survey document that results in an increase in the number of lots or modifies six or more lots on a filed plat must be entitled “amended plat of (lot, block, and name of subdivision being amended),” and unless it is exempt from subdivision review by 76-3-201 or 76-3-207(1)(d), (e), or (f), MCA, must meet the filing requirements for final subdivision plats specified in this rule.

(e) A plat must show or contain the following information:

(i) a title or title block including the quarter-section, section, township, range, principal meridian, county, and if applicable, city or town in which the subdivision is located. The title of the plat must contain the words “plat” and either “subdivision” or “addition”;

(ii) the name(s) of the person(s) who commissioned the survey, the name(s) of the owner(s) of the land to be subdivided, if other than the person(s) commissioning the survey, the names of any adjoining plats, and the numbers of any adjoining certificates of survey previously filed;

(iii) a north arrow;

(iv) a scale bar. The scale of the plat must be sufficient to legibly represent the required information and data on the plat;

(v) the location of, and other information relating to all monuments found, set, reset, replaced, or removed as required by ARM 24.183.1101;

(A) If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must contain a certification by the land surveyor as to the reason the monuments have not been set and the date by which they will be set, as required by ARM 24.183.1101(1)(d).

(B) All monuments found during the survey that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM 24.183.1101(1)(c).

(C) Witness and reference monuments must be clearly shown.

(vi) the location of any section corner or corners of divisions of sections the land surveyor deems to be pertinent to the survey or was used as control in the survey;

(vii) basis of bearing. For purposes of this rule, the term “basis of bearing” means the land surveyor’s statement as to the origin of the bearings shown on the plat. If the basis of bearing(s) refers to two previously monumented points in a previously filed survey document, then the two previously monumented points must be shown and described on the plat, the line marked by the two previously monumented points must be labeled “basis of bearing,” and the previously filed survey document name or number must be cited in the land surveyor’s statement as to the origin of the bearing(s). If the plat shows true bearings, the basis of bearing must describe the method by which these true bearings were determined;

(viii) the bearings, distances, and curve data of all boundary lines and all control or pertinent lines used to determine the boundaries of the subdivision. If the subdivision is bounded by an irregular shoreline or a body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given;

(A) The courses along a meander line are shown solely to provide a basis for calculating the area of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.

(B) For purposes of this rule, a line that indicates a fixed boundary of a parcel is not a “meander” or “meander line” and may not be designated as one.

(C) If a boundary, control, or pertinent line contains multiple segments of the whole, then the overall distance must be shown, and each segment must at least include distance.

(ix) data on all curves sufficient to enable the reestablishment of the curves on the ground. For circular curves, the data must at least include radius and arc length, and either delta angle, radial bearings, or chord bearing and distance. All non-tangent points of intersection on the curve must show either the bearings of radial lines or chord length and bearing. Non-tangent curves must be so labeled;



(x) lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically. If grid distances are shown, then ground distances must be shown parenthetically;

(xi) at least one record measurement reference for each line and curve, if available, must be shown;

(xii) all lots and blocks in the subdivision designated by number, the bearings, distances, and curve data of each lot and block, the area of each lot, and the total area of all lots. (Excepted lands must be labeled “NOT INCLUDED IN THIS SUBDIVISION” or “NOT INCLUDED IN THIS PLAT”);

(xiii) all existing rights-of-way for streets, alleys, avenues, roads, and highways that adjoin or are within the boundaries of the subdivision; their names and widths from public record (if ascertainable); the bearings, distances, and curve data of their adjoining boundaries. If the existing right(s)-of-way is contained within the boundaries of the subdivision, then the area of the portion of the right(s)-of-way within the subdivision shall be shown;

(xiv) all rights-of-way for streets, alleys, avenues, roads, and highways that will be created by the filing of the plat; their names, widths, bearings, distances, curve data, and area;

(xv) except as provided in (2)(e)(xiii) and (xiv), the location, bearings, distances, curve data, and areas of all parks, common areas, and other grounds dedicated for public use;

(xvi) the total area of the subdivision;

(xvii) a narrative legal description of the subdivision.

(A) The land surveyor, at his or her discretion, may choose the form of the narrative legal description as follows:

(I) If the land to be subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the narrative legal description may be the aliquot part or the government lot description of the land;

(II) If the plat depicts the division of one or more parcels shown on a previously filed certificate of survey or plat, the narrative legal description may be the number of the previously filed certificate of survey or name of the previously filed plat and the parcel number of the parcel(s) previously surveyed;

(III) The narrative legal description may be the metes-and-bounds description of the perimeter boundary of the subdivision; or

(IV) If the narrative legal description does not fall within (2)(e)(xvii)(A)(I) or (II), the narrative legal description required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.

(B) When the narrative legal description is metes-and-bounds, the point of beginning, which is also the point of closure of the legal description of the subdivision surveyed, must be labeled “Point of Beginning.” Alternatively, the point of beginning may be labeled “POB” if the abbreviation is defined on the plat.

(xviii) the dated signature and the seal of the land surveyor responsible for the survey. The land surveyor’s signature certifies that the plat has been prepared in conformance with the applicable sections of the Montana Subdivision and Platting Act and the regulations adopted under the Act. The land surveyor’s signature and certification do not include certification of the Conditions of Approval sheet(s);

(xix) a memorandum of any oaths administered under 76-3-405, MCA;

(xx) the dated, signed, and acknowledged consent to the subdivision of the owner of the land to be subdivided. For purposes of this rule, when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the land under the contract-for-deed;

(xxi) certification by the governing body that the final plat is approved;

(xxii) if applicable, the landowner’s certificate of dedication of streets, alleys, avenues, roads, highways, parks, playground easements, or other public improvements;

(xxiii) if applicable, or as required by subdivision regulations, the landowner(s)’ certification statement(s) as follows:

(A) A statement that federal, state, and local plans, policies, regulations, and/or conditions of subdivision approval that may limit the use of the property, including the location, size, and use are shown on the Conditions of Approval sheet or as otherwise stated.

(B) A statement that buyers of property should ensure that they have obtained and reviewed all sheets of the plat and all documents recorded and filed in conjunction with the plat and that buyers of property are strongly encouraged to contact the local planning department and become informed of any limitations on the use of the property prior to closing.

(C) A statement that all or part of the required public improvements have been installed and/or security requirements pursuant to 76-3-507, MCA, secure the future construction of any remaining public improvements to be installed.

(xxiv) if applicable, a certificate of the governing body accepting any dedicated land, easements, or improvements;

(xxv) if applicable, the certificate of the examining land surveyor;

(xxvi) space for the clerk and recorder's filing information; and

(xxvii) a minimum two-inch by four-inch blank space below the clerk and recorder's filing information for the recording numbers of the documents listed in (5).

(f) The land surveyor, at his or her discretion, may provide additional information on the plat regarding the survey.

(3) The following certifications of final plat approval must appear on the plat or on the Conditions of Approval sheet as contained in (4), or recorded or filed as contained in (5) of these rules:

(a) A certification by the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid and, if applicable, certification of the local health officer having jurisdiction.

(4) If applicable, a sheet(s) of the plat prepared by the landowner(s) or their representative(s) depicting conformance with subdivision application approval shall be entitled "Conditions of Approval of [insert name of subdivision]" with a title block including the quarter-section, section, township, range, principal meridian, county, and, if applicable, city or town in which the subdivision is located, and shall contain:

(a) any text and/or graphic representations of requirements by the governing body for final plat approval including, but not limited to, setbacks from streams or riparian areas, floodplain boundaries, no-build areas, building envelopes, or the use of particular parcels;

(b) a certification statement by the landowner that the text and/or graphics shown on the Conditions of Approval sheet(s) represent(s) requirements by the governing body for final plat approval and that all conditions of subdivision application have been satisfied; and

(c) a notation stating that the information shown is current as of the date of the certification required in (4)(b), and that changes to any land-use restrictions or encumbrances may be made by amendments to covenants, zoning regulations, easements, or other documents as allowed by law or by local regulations.

(5) If applicable, the following documents as specified by local government shall accompany the approved final plat and shall be recorded or filed with the plat as specified by the clerk and recorder, and the recording or filing number(s) for each document may be written on the plat by the clerk and recorder:

(a) a title report or certificate of a title abstractor showing the names of the owners of record of the land to be subdivided, and the names of any lien holders or claimants of record against the land, and the written consent to the subdivision by the owners of the land if other than the subdivider, and any lien holders or claimants of record against the land;

(b) any covenants or deed restrictions relating to the subdivision;

(c) for lots less than 20 acres in size, exclusive of public roadways, a certification from the Montana Department of Environmental Quality stating that it has approved the plans and specifications for water supply and sanitary facilities pursuant to 76-4-104(2), MCA;

(d) if required by the governing body, for lots of 20 acres or greater in size, written documentation that the subdivider has demonstrated that there is an adequate water source and at least one area for a septic system and replacement drainfield for each lot in accordance with 76-3-604(8)(b), MCA;

(e) a copy of any security requirements, pursuant to 76-3-507, MCA, securing the future construction of any remaining public improvements to be installed;

(f) unless otherwise provided in local subdivision regulations, copies of final plans, profiles, grades, and specifications for improvements, including a complete grading and drainage plan, with the certification of a professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed, or file them with a government official other than the clerk and recorder, or both. If the approved plans and specifications are or will be filed with a government official other than the clerk and recorder, then a document or a statement on the Conditions of Approval sheet that states where the plans can be obtained must be filed or recorded;

(g) if a street, alley, avenue, road, or highway created by the plat will intersect with a state or federal right-of-way, a copy of the access or encroachment permit; and

(h) any other documents satisfying subdivision application approval required by the governing body to be filed or recorded.

**History:** 37-67-202, 76-3-403, 76-3-411, MCA; IMP, 37-67-314, 76-3-101, 76-3-102, 76-3-103, 76-3-104, 76-3-105, 76-3-201, 76-3-203, 76-3-205, 76-3-206, 76-3-207, 76-3-209, 76-3-301, 76-3-302, 76-3-303, 76-3-304, 76-3-305, 76-3-306, 76-3-307, 76-3-401, 76-3-402, 76-3-403, 76-3-404, 76-3-405, 76-3-406, 76-3-411, MCA; NEW, Eff. 1/5/74; EMERG, AMD, Eff. 7/1/74; AMD, Eff. 10/5/74; AMD, Eff. 4/5/76; AMD, 1977 MAR p. 959, Eff. 11/26/77; AMD, 1980 MAR p. 2806, Eff. 10/17/80; TRANS, from Dept. of Comm. Affairs, Ch. 274, L. 1981, Eff. 7/1/81; AMD, 2000 MAR p. 1041, Eff. 2/11/00; TRANS, from Commerce, 2005 MAR p. 966; AMD, 2013 MAR p. 673, Eff. 4/26/13; AMD, 2014 MAR p. 2840, Eff. 11/21/14; AMD, 2016 MAR p. 2424, Eff. 12/24/16.



