

SENATE BILL NO. 121

INTRODUCED BY F. MANDEVILLE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA LAND USE PLANNING ACT; CLARIFYING THAT A LOCAL GOVERNMENT MAY MAKE DECISIONS ON DEVELOPMENT APPLICATIONS; CLARIFYING PUBLIC NOTICE REQUIREMENTS; ALLOWING A CITY TO RETAIN EXTRATERRITORIAL ZONING AUTHORITY; AMENDING LAND DIVISIONS EXCLUDED FROM SUBDIVISION REVIEW; CLARIFYING THE NOTICE OF ADEQUATE STORMWATER DRAINAGE AND MUNICIPAL FACILITIES FOR CERTAIN CITIES; ALLOWING A CITY TO REMAIN A MEMBER ON CERTAIN PLANNING BOARDS; ALLOWING FOR A PUBLIC HEARING BEFORE A PLANNING COMMISSION HEARS AN APPEAL; REVISING DEFINITIONS; AMENDING SECTIONS 2-3-102, 2-3-104, 76-2-310, 76-4-125, 76-4-127, 76-25-104, 76-25-301, AND 76-25-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-3-102, MCA, is amended to read:

"2-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, make a decision on development applications, or enter into contracts except:

- (a) the legislature and any branch, committee, or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
- (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, the approval of a development application, or the equivalent or denial

1 thereof of any of these.

2 (3) "Development application" means a formal request submitted to a local government entity to
3 obtain approval for a development proposal pursuant to Title 76, chapter 25, part 3 or 4.

4 (3)(4) "Rule" means any agency regulation, standard, or statement of general applicability that
5 implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice
6 requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

7 (a) statements concerning only the internal management of an agency and not affecting private
8 rights or procedures available to the public; or

9 (b) declaratory rulings as to the applicability of any statutory provision or of any rule."

10

11 **Section 2.** Section 2-3-104, MCA, is amended to read:

12 **"2-3-104. Requirements for compliance with notice provisions.** An agency ~~shall be~~ is considered
13 to have complied with the notice provisions of 2-3-103 if:

14 (1) an environmental impact statement is prepared and distributed as required by the Montana
15 Environmental Policy Act, Title 75, chapter 1;

16 (2) a proceeding is held as required by the Montana Administrative Procedure Act;

17 (3) an agency adopts and implements the public participation plan required in 76-25-106 for the
18 purposes of agency actions taken in accordance with Title 76, chapter 25;

19 (3)(4) a public hearing, after appropriate notice is given, is held pursuant to any other provision of
20 state law or a local ordinance or resolution; or

21 (4)(5) a newspaper of general circulation within the area to be affected by a decision of significant
22 interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a
23 final decision to permit public comment on the matter."

24

25 **Section 3.** Section 76-2-310, MCA, is amended to read:

26 **"76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal**
27 **boundaries -- termination of authority for extension.** (1) ~~Except as provided in 76-2-312 and except in~~
28 ~~locations where a county has adopted zoning or subdivision regulations, a~~ A city or town council or other

1 legislative body that has adopted a growth policy pursuant to chapter 1 or a land use plan pursuant to chapter
2 25 for the area to be affected by the regulations may extend the application of its zoning or subdivision
3 regulations beyond its limits in any direction subject to the following limits:

4 (a) up to 3 miles beyond the limits of a city of the first class as defined in 7-1-4111;

5 (b) up to 2 miles beyond the limits of a city of the second class; and

6 (c) up to 1 mile beyond the limits of a city or town of the third class.

7 (2) (a) The authority granted to a city or town to apply zoning beyond its limits pursuant to
8 subsection (1) is terminated when the county in which the city or town is located adopts zoning regulations for
9 the area pursuant to Title 76, chapter 2.

10 (b) The authority granted to a city or town to apply its subdivision regulations beyond its limits
11 pursuant to subsection (1) is terminated when the county in which the city or town is located adopts subdivision
12 regulations for the area pursuant to Title 76, chapter 3.

13 (2)(3) When two or more noncontiguous cities have boundaries so near to one another as to create
14 an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by
15 76-2-302, 76-2-311, and this section, then the extension of zoning or subdivision regulations, or both, by these
16 cities must terminate at a boundary line agreed upon by the cities."

17
18 **Section 4.** Section 76-4-125, MCA, is amended to read:

19 **"76-4-125. Land divisions excluded from review.** (1) A subdivision excluded from the provisions of
20 chapter 3 or chapter 25 must be submitted for review according to the provisions of this part, except that the
21 following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not
22 subject to review:

23 (a) the exclusions cited in 76-3-201, ~~and 76-3-207(1)(f), and 76-25-402(1)(a) through (h);~~

24 (b) divisions made for the purpose of acquiring additional land to become part of an approved
25 parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired
26 parcel and that the division does not fall within a previously platted or approved subdivision;

27 (c) divisions made for purposes other than the construction of water supply or sewage or solid
28 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~~ chapter 3 or chapter 25;

(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), or 76-25-402(1)(i), (1)(m), or (1)(n);~~

(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."

1

2 **Section 5.** Section 76-4-127, MCA, is amended to read:

3 **"76-4-127. Notice of certification that adequate storm water drainage and adequate municipal**
4 **facilities will be provided.** (1) To qualify for the exemption from review set out in 76-4-125(1)(d), the certifying
5 authority shall send notice of certification to the reviewing authority that adequate storm water drainage and
6 adequate municipal facilities will be provided for the subdivision. For a subdivision subject to Title 76, chapter 3
7 or 25, the certifying authority shall send notice of certification to the reviewing authority prior to final plat
8 approval.

9 (2) The notice of certification must include the following:

10 (a) the name and address of the applicant;

11 (b) a copy of the preliminary plat included with the application for the proposed subdivision or a
12 final plat when a preliminary plat is not necessary or, for a subdivision not subject to Title 76, chapter 3 or 25, a
13 copy of the certificate of survey map or amended plat map or a declaration and floor plan, including the layout
14 of each unit proposed to be recorded under Title 70, chapter 23, part 3;

15 (c) the number of parcels in the subdivision;

16 (d) a copy of any applicable zoning ordinances in effect;

17 (e) how construction of the sewage disposal and water supply systems or extensions will be
18 financed;

19 (f) the relative location of the subdivision to the city or the county water and/or sewer district
20 boundaries of the certifying authority;

21 (g) certification that adequate municipal or county water and/or sewer district facilities for the
22 supply of water and disposal of sewage and solid waste will be provided. Facilities for subdivisions subject to
23 76-3-507 or 76-25-413 must be provided within the time ~~that section provides~~ required by the governing body
24 under 76-3-507 or 76-25-413, as applicable.

25 (h) if water supply, sewage disposal, solid waste, or storm water drainage facilities are not
26 municipally owned, certification from the facility owners that adequate facilities will be available; and

27 (i) certification that the certifying authority has or will review and approve plans to ensure
28 adequate storm water drainage.

(3) A municipality may be authorized to act as a reviewing authority under this section and may self-approve the municipality's own exemption."

Section 6. Section 76-25-104, MCA, is amended to read:

"76-25-104. Planning commission. (1) (a) Each local government shall establish, by ordinance or resolution, a planning commission.

(b) Any combination of local governments may create a ~~multi-jurisdiction~~multijurisdictional planning commission or join an existing commission pursuant to an interlocal agreement.

(c) (i) Any combination of legally authorized planning boards, zoning commissions, planning and zoning commissions, or boards of adjustment existing prior to May 17, 2023, may be considered duly constituted under this chapter as a planning commission by agreement of the governing bodies of each jurisdiction represented on the planning commission.

(ii) If more than one legally authorized planning board, zoning commission, or planning and zoning commission exists within a jurisdiction, the governing bodies of each jurisdiction may agree to:

(A) designate, combine, consolidate, or modify one or more of the authorized boards or commissions as the planning commission; or

(B) create a new planning commission pursuant to this section and disband the existing boards and commissions.

(d) (i) A local government subject to this chapter may continue to be represented on an existing city-county planning board, joint city-county planning board, or consolidated city-county planning board as authorized under Title 76, chapter 1, with other local governments and share in the membership duties and costs of the board.

(ii) A local government's continued participation in a planning board as set forth in subsection (1)(d)(i) is solely for the purposes set forth in Title 76, chapter 1.

(2) (a) (i) Each planning commission must consist of an odd number of no fewer than three voting members who are confirmed by majority vote of each local governing body.

(ii) Each jurisdiction must be equally represented in the membership of a ~~multi-jurisdiction~~multijurisdictional planning commission.

1 (b) The planning commission shall meet at least once every 6 months.

2 (c) Minutes must be kept of all meetings of the planning commission, and all meetings and records
3 must be open to the public.

4 (d) A majority of currently appointed voting members of the planning commission constitutes a
5 quorum. A quorum must be present for the planning commission to take official action. A favorable vote of at
6 least a majority of the quorum is required to authorize an action at a regular or properly called special meeting.

7 (e) The ordinance, resolution, or interlocal agreement creating the planning commission must set
8 forth the requirements for appointments, terms, qualifications, removal, vacancies, meetings, notice of
9 meetings, officers, reimbursement of costs, bylaws, or any other requirement determined necessary by the local
10 governing body.

11 (3) (a) Except as set forth in subsection (3)(b), the planning commission shall review and make
12 recommendations to the local governing body regarding the development, adoption, amendment, review, and
13 approval or denial of the following documents:

14 (i) the land use plan and future land use map as provided in 76-25-201;

15 (ii) zoning regulations and map as provided in Title 76, chapter 25, part 3;

16 (iii) subdivision regulations as provided in Title 76, chapter 25, part 4; and

17 (iv) any other legislative land use planning document the local governing body designates.

18 (b) In accordance with 76-25-503, the planning commission shall hear and decide appeals from
19 any site-specific land use decisions made by the planning administrator pursuant to the adopted regulations
20 described in subsection (3)(a). Decisions of the planning commission may be appealed to the local governing
21 body as provided in 76-25-503.

22 (4) The planning commission may be funded pursuant to 76-1-403, ~~and 76-1-404, and 76-1-406.~~"

23

24 **Section 7.** Section 76-25-301, MCA, is amended to read:

25 **"76-25-301. Authority to adopt local zoning regulations.** (1) (a) A local government subject to this
26 chapter, within its respective jurisdiction, has the authority to and shall regulate the use of land in substantial
27 compliance with its adopted land use plan by adopting zoning regulations.

28 (b) The governing body of a county or city has the authority to adopt zoning regulations in

1 accordance with this part by an ordinance that substantially complies with 7-5-103 through 7-5-107.

2 (c) (i) A municipality shall adopt zoning regulations for the portions of the jurisdictional area outside
3 of the boundaries of the municipality that the governing body anticipates may be annexed into the municipality
4 over the next 20 years.

5 (ii) Unless otherwise agreed to by the applicable jurisdictions, zoning regulations on property
6 outside the municipal boundaries may not apply or be enforced until those areas are annexed or are being
7 annexed into the municipality.

8 (iii) A municipality subject to this chapter may continue to apply, administer, and enforce
9 extraterritorial zoning regulations pursuant to the provisions of 76-2-310 and 76-2-311.

10 (2) Local zoning regulations authorized in subsection (1) include but are not limited to ordinances
11 prescribing the:

- 12 (a) uses of land;
13 (b) density of uses;
14 (c) types of uses;
15 (d) size, character, number, form, and mass of structures; and
16 (e) development standards mitigating the impacts of development, as identified and analyzed
17 during the land use planning process and review and adoption of zoning regulations pursuant to this chapter.

18 (3) The local government shall incorporate any existing zoning regulations adopted pursuant to
19 Title 76, chapter 2, into the zoning regulations meeting the requirements of this chapter.

20 (4) The local government shall adopt a zoning map for the jurisdiction in substantial compliance
21 with the land use plan and future land use map and the zoning regulations adopted pursuant to this section,
22 graphically illustrating the zone or zones that a property within the jurisdiction is subject to.

23 (5) The local government may provide for the issuance of permits as may be necessary for the
24 implementation of this chapter.

25 (6) (a) The zoning regulations and map must identify areas that may necessitate the denial of a
26 development or a specific type of development, such as unmitigable natural hazards, insufficient water supply,
27 inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds
28 for the supply of the services.

(b) The regulations must prohibit development in the areas identified in subsection (6)(a) unless the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the zoning regulations.

(c) Approved construction techniques or other mitigation measures described in subsection (6)(b) 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.

(7) The zoning regulations and map must mitigate the hazards created by development 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. If the hazards cannot be mitigated, the zoning regulations and map must identify those areas where future development is limited or prohibited.

(8) The zoning regulations must allow for the continued use of land or buildings legal at the time that any zoning regulation, map, or amendment thereto is adopted, but the local government may provide grounds for discontinuing nonconforming uses based on changes to or abandonment of the use of the land or buildings after the adoption of a zoning regulation, map, or amendment."

Section 8. Section 76-25-503, MCA, is amended to read:

"76-25-503. Appeals -- public hearing and notice. (1) Appeals of any final decisions made pursuant to this chapter must be made in accordance with this section.

(2) For a challenge to the adoption of or amendment to a land use plan, zoning regulation, zoning map, or subdivision regulation, a petition setting forth the basis for the challenge must be presented to the district court within 30 days of the date of the resolution or ordinance adopted by the governing body.

(3) (a) Any final administrative land use decision, including but not limited to approval or denial of a zoning permit, preliminary plat or final plat, imposition of a condition on a zoning permit or plat, approval or denial of a variance from a zoning or subdivision regulation, or interpretation of land use regulations or map may be appealed by the applicant or any aggrieved person to the planning commission.

(b) An appeal under subsection (3)(a) must be submitted in writing within 15 business days of the challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

(c) (i) The planning commission shall hold a public hearing to hear the appeal de novo. The

1 planning commission is not bound by the decision that has been appealed, but the appeal must be limited to
2 the issues raised on appeal. The appellant has the burden of proving that the appealed decision was made in
3 error.

4 (ii) Notice of the appeal must be published as provided in 7-1-2121 or 7-1-4127, as applicable.

5 (d) A decision of the planning commission on appeal takes effect on the date when the planning
6 commission issues a written decision.

7 (4) (a) Any final land use decision by the planning commission may be appealed by the applicant,
8 planning administrator, or any aggrieved person to the governing body.

9 (b) An appeal under subsection (4)(a) must be submitted in writing within 15 business days of the
10 challenged decision, stating the facts and raising all grounds for appeal that the party may raise in district court.

11 (c) (i) The governing body shall hold a public hearing to hear the appeal de novo. The governing
12 body is not bound by the decision that has been appealed, but the appeal must be limited to the issues raised
13 on appeal. The appellant has the burden of proving that the appealed decision was made in error.

14 (ii) Notice of the appeal must be published as provided in 7-1-2121 or 7-1-4127, as applicable.

15 (d) A decision of the governing body on appeal takes effect on the date when the governing body
16 issues a written decision.

17 (5) (a) No person may challenge in district court a land use decision until that person has
18 exhausted the person's administrative appeal process as provided in this section.

19 (b) Any final land use decision of the governing body may be challenged by presenting a petition
20 setting forth the grounds for review of a final land use decision with the district court within 30 calendar days
21 after the written decision is issued.

22 (c) A challenge in district court to a final land use decision of the governing body is limited to the
23 issues raised by the challenger on administrative appeal.

24 (6) Every final land use decision made pursuant to this section must be based on the
25 administrative record as a whole and must be sustained unless the decision being challenged is arbitrary,
26 capricious, or unlawful.

27 (7) Nothing in this chapter is subject to any provision of Title 2, chapter 4."
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