

1 SENATE BILL NO. 382
2 INTRODUCED BY F. MANDEVILLE, D. FERN, S. VINTON, M. BERTOGLIO, L. BREWSTER, M. HOPKINS, E.
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4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA LAND USE PLANNING ACT;
6 REQUIRING COUNTIES AND CITIES CITIES THAT MEET CERTAIN POPULATION THRESHOLDS TO
7 UTILIZE THE LAND USE PLAN, MAP, ZONING REGULATIONS, AND SUBDIVISION REGULATIONS
8 PROVIDED IN THE ACT; ALLOWING OTHER LOCAL GOVERNMENTS THE OPTION TO UTILIZE THE
9 PROVISIONS OF THE ACT; REQUIRING PUBLIC PARTICIPATION DURING THE DEVELOPMENT,
10 ADOPTION, OR AMENDMENT OF A LAND USE PLAN, MAP, ZONING REGULATION, OR SUBDIVISION
11 REGULATION; PROVIDING STRATEGIES TO MEET POPULATION PROJECTIONS; PROVIDING FOR
12 CONSIDERATION OF FACTORS SUCH AS HOUSING, LOCAL FACILITIES, ECONOMIC DEVELOPMENT,
13 NATURAL RESOURCES, ENVIRONMENT, AND NATURAL HAZARDS WHEN DEVELOPING A LAND USE
14 PLAN, MAP, AND ZONING REGULATION; PROVIDING FOR A PROCEDURE TO REVIEW SUBDIVISIONS
15 AND APPROVE FINAL PLATS; PROVIDING FOR A LOCAL GOVERNING BODY TO COLLECT FEES;
16 PROVIDING AN APPEALS PROCESS, ENFORCEMENT MECHANISMS, AND PENALTIES; PROVIDING
17 DEFINITIONS; REPEALING SECTIONS 7-21-1001, 7-21-1002, AND 7-21-1003, MCA; AND PROVIDING AN
18 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
19

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
21

22 NEW SECTION. **Section 1. Short Title.** [Sections 1 through 3738] may be cited as the "Montana
23 Land Use Planning Act".
24

25 NEW SECTION. **Section 2. Legislative purpose, findings, and intent.** (1) It is the purpose of
26 [sections 1 through 3738] to promote the health, safety, and welfare of the people of Montana through a system
27 of comprehensive planning that balances private property rights and values, ~~economic efficiency in~~ public

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 services and infrastructure, ~~protection of the~~ HUMAN environment, natural resources, and recreation, and a
2 diversified and sustainable economy.

3 (2) The legislature finds that coordinated and planned growth ~~within cities and counties will~~
4 encourage, AND support, ~~and protect~~:

5 (a) sufficient housing units for the state's growing population that are attainable for citizens of all
6 income levels;

7 (b) the provision of adequate public services and infrastructure in the most cost-effective manner
8 possible, shared equitably among all residents, businesses, and industries;

9 (c) the natural environment, including wildlife and wildlife habitat, sufficient and clean water, and
10 healthy air quality;

11 (d) agricultural, forestry, and mining lands for the production of food, fiber, and minerals and their
12 economic benefits;

13 (e) the state's economy and tax base through job creation, business development, and the
14 revitalization of established communities;

15 (f) persons, property, infrastructure, and the economy against natural hazards, such as flooding,
16 earthquake, wildfire, and drought; and

17 (g) local consideration, participation, and review of plans for projected population changes and
18 impacts resulting from those plans.

19 (3) It is the legislature's intent that the comprehensive planning authorized in [sections 1 through
20 3738]:

21 (a) provides the broadest and most comprehensive level of collecting data, identifying and
22 analyzing existing conditions and future opportunities and constraints, acknowledging and addressing the
23 impacts of development on each jurisdiction, and providing for broad public participation;

24 (b) serves as the basis for implementing specific land use regulations that are in substantial
25 compliance with the local land use plan;

26 (c) provides for local government approval of development proposals in substantial compliance
27 with the land use plan, based on information, analysis, and public participation provided during the development

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 and adoption of the land use plan and implementing regulations; and

2 (d) allows for streamlined administrative review decisionmaking for site-specific development
3 applications.

4

5 NEW SECTION. Section 3. Definitions. As used in [sections 1 through [3738](#)], unless the context or
6 subject matter clearly requires otherwise, the following definitions apply:

7 (1) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest,
8 as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the
9 decision.

10 (2) "Applicant" means a person who seeks a land use permit or other approval of a development
11 proposal.

12 (3) "Built environment" means man-made or modified structures that provide people with living,
13 working, and recreational spaces.

14 (4) "Cash-in-lieu donation" is the amount equal to the fair market value of unsubdivided,
15 unimproved land.

16 (5) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for
17 the purpose of disclosing facts pertaining to boundary locations.

18 (6) "Dedication" means the deliberate appropriation of land by an owner for any general and public
19 use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the
20 public use to which the property has been devoted.

21 (7) "Division of land" means the segregation of one or more parcels of land from a larger tract held
22 in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly
23 filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to
24 [sections 1 through [3738](#)]. The conveyance of a tract of record or an entire parcel of land that was created by a
25 previous division of land is not a division of land.

26 (8) " Dwelling unit" means a residential structure in which a person or persons reside.

27 (9) "Examining land surveyor" means a registered land surveyor appointed by the governing body

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 to review surveys and plats submitted for filing.

2 (10) "Final plat" means the final drawing of the subdivision and dedication required by [sections 1
3 through ~~3738~~] to be prepared for filing for record with the county clerk and recorder and containing all elements
4 and requirements set forth in [sections 1 through ~~3738~~] and in regulations adopted pursuant to [sections 1
5 through ~~3738~~].

6 ~~(11)~~ "IMMEDIATE FAMILY" MEANS A SPOUSE, CHILDREN BY BLOOD OR ADOPTION, AND PARENTS.

7 ~~(12)~~ "Irrigation district" means a district established pursuant to Title 85, chapter 7.

8 ~~(12)(13)~~ "JURISDICTIONAL AREA" OR "JURISDICTION" MEANS THE AREA WITHIN THE BOUNDARIES OF THE LOCAL
9 GOVERNMENT. FOR MUNICIPALITIES, THE TERM INCLUDES THOSE AREAS THE LOCAL GOVERNMENT ANTICIPATES MAY BE
10 ANNEXED INTO THE MUNICIPALITY OVER THE NEXT 20 YEARS.

11 ~~(14)(13)(14)~~ "Land use permit" means an authorization to complete development in conformance
12 with an application approved by the local government.

13 ~~(12)(14)(15)~~ "Land use plan" means the land use plan and future land use map adopted in
14 accordance with [sections 1 through ~~3738~~].

15 ~~(13)(15)(16)~~ "Land use regulations" means zoning, zoning map, subdivision, or other land use
16 regulations authorized by state law.

17 ~~(14)(16)(17)~~ "Local governing body" or "governing body" means the elected body responsible for the
18 administration of a local government.

19 ~~(15)(17)(18)~~ "Local government" means a county, consolidated city-county, or an incorporated
20 municipality to which the provisions of [sections 1 through ~~3738~~] apply AS PROVIDED IN [SECTION 5].

21 ~~(16)(18)(19)~~ "Manufactured housing" means a dwelling for a single household, built offsite in a
22 factory ~~on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in~~
23 ~~size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations,~~
24 ~~used on site-built homes, and that~~ is in compliance with the applicable prevailing standards of the United States
25 department of housing and urban development at the time of its production. A manufactured home does not
26 include a mobile home or housetrailer, as defined in 15-1-101.

27 ~~(17)(19)(20)~~ "Ministerial permit" means a permit granted upon a determination that a proposed

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 project complies with the zoning map and the established standards set forth in the zoning regulations. The
2 determination must be based on objective standards, involving little or no personal judgment, and must be
3 issued by the planning administrator.

4 ~~(18)(20)(21)~~ "Planning administrator" means the person designated by the local governing body to
5 review, analyze, provide recommendations, or make final decisions on any or all zoning, subdivision, and other
6 development applications as required in [sections 1 through ~~3738~~].

7 ~~(19)(21)(22)~~ "Plat" means a graphical representation of a subdivision showing the division of land
8 into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

9 ~~(20)(22)(23)~~ "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing
10 the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a
11 governing body.

12 ~~(24)(23)(24)~~ "Public utility" has the meaning provided in 69-3-101, except that for the purposes of
13 [sections 1 through ~~3738~~], the term includes a county water or sewer district as provided for in Title 7, chapter
14 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by
15 the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

16 ~~(22)(24)(25)~~ "Subdivider" means a person who causes land to be subdivided or who proposes a
17 subdivision of land.

18 ~~(23)(25)(26)~~ "Subdivision" means a division of land or land so divided that it creates one or more
19 parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States
20 government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise
21 transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its
22 size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or
23 mobile homes will be placed.

24 ~~(24)(26)(27)~~ "Subdivision guarantee" means a form of guarantee that is approved by the
25 commissioner of insurance and is specifically designed to disclose the information required in [section ~~3334~~].

26 ~~(25)(27)(28)~~ "Tract of record" means an individual parcel of land, irrespective of ownership, that can be
27 identified by legal description, independent of any other parcel of land, using documents on file in the records of

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 the county clerk and recorder's office.

2

3 **NEW SECTION. Section 4. Planning commission.** (1) (a) Each local government shall establish, by
4 ordinance or resolution, a planning commission.

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

7 (c) (i) Any combination of legally authorized planning boards, zoning commissions, planning and
8 zoning commissions, or boards of adjustment existing prior to [the effective date of this act] may be considered
9 duly constituted under [sections 1 through **3738**] as a planning commission by agreement of the governing
10 bodies of each jurisdiction represented on the planning commission.

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

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

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

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

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

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

22 (c) Minutes must be kept of all meetings of the planning commission and all meetings and records
23 must be open to the public.

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

27 (e) The ordinance, resolution, or interlocal agreement creating the planning commission must set

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 forth the requirements for appointments, terms, qualifications, removal, vacancies, meetings, notice of
2 meetings, officers, reimbursement of costs, bylaws, or any other requirement determined necessary by the local
3 governing body.

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

7 (i) the land use plan and future land use map as provided in [section 7];

8 (ii) zoning regulations and map as provided in [sections 18 through 24];

9 (iii) subdivision regulations as provided in [sections 25 through 3334]; and

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

11 (b) In accordance with [section 3637], the planning commission shall hear and decide appeals
12 from any site-specific land use decisions made by the planning administrator pursuant to the adopted
13 regulations described in subsection (3)(a). Decisions of the planning commission may be appealed to the local
14 governing body as provided in [section 3637].

15 (4) The planning commission may be funded pursuant to 76-1-403 and 76-1-404.

17 **NEW SECTION. Section 5. Applicability and compliance.** (1) ~~A county with a population at or~~
18 ~~exceeding 70,000 in the most recent decennial census shall comply with the provisions of [sections 1 through~~
19 ~~37].~~

20 (2) A municipality ~~within a county identified in subsection (1) with a population at or exceeding~~
21 ~~5,000~~ LOCATED WITHIN A COUNTY WITH A POPULATION AT OR EXCEEDING 70,000 in the most recent decennial
22 census shall comply with the provisions of [sections 1 through 3738].

23 ~~(3)(2)~~ (a) Except as provided in subsection ~~(3)(b)~~ ~~(2)(B)~~, any ~~local government~~ MUNICIPALITY that
24 meets the population thresholds of ~~subsections~~ SUBSECTION (1) ~~or (2)~~ on [the effective date of this act] shall
25 comply with the provisions of [sections 1 through 3738] within 3 years of [the effective date of this act].

26 (b) A ~~local government~~ MUNICIPALITY that has adopted a growth policy within 5 years prior to [the
27 effective date of this act] shall comply with the provisions of [sections 1 through 3738] within 5 years of the date

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 that the growth policy was adopted or within the deadline established in subsection ~~(3)(a)~~ (2)(A), whichever
2 occurs later.

3 (c) A local government MUNICIPALITY that meets the population thresholds of subsections
4 SUBSECTION (1) ~~or (2)~~ on any decennial census completed after [the effective date of this act] shall comply with
5 the provisions of [sections 1 through 3738] by December 31 of the ~~fifth~~-THIRD year after the date of the
6 decennial census.

7 ~~(4)(3)~~ (a) A local government that ~~does not meet the population thresholds set forth in subsections (1)~~
8 ~~or (2) may decide to~~ IS NOT REQUIRED TO comply with the provisions of [sections 1 through 3738] MAY DECIDE TO
9 COMPLY WITH THE PROVISIONS OF [SECTIONS 1 THROUGH 3738] by an affirmative vote of the local governing body.
10 After an affirmative vote, the governing body shall comply with the provisions of [sections 1 through 3738] by
11 December 31 of the fifth year after the date of the vote.

12 (b) A local government that votes pursuant to subsection ~~(4)(a)~~ (3)(A) to comply with the provisions
13 of [sections 1 through 3738] may subsequently decide to not comply with the provisions of [sections 1 through
14 3738] by an affirmative vote.

15 ~~(5)(4)~~ A local government that complies with [sections 1 through 3738] is not subject to any provision
16 of Title 76, chapters 1, 2, 3, or 8.

17
18 NEW SECTION. Section 6. Public participation. (1) (a) A local government shall provide continuous
19 public participation when adopting, amending, or updating a land use plan or regulations pursuant to [sections 1
20 through 3738].

21 (b) Public participation in the adoption, amendment, or update of a land use plan or implementing
22 regulations must provide for, at a minimum:

23 (i) dissemination of draft documents;

24 (ii) an opportunity for written and verbal comments;

25 (iii) public meetings after effective notice;

26 (iv) electronic communication regarding the process, including online access to documents,
27 updates, and comments; and

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 (v) an analysis of and response to public comments.

2 (2) A local government shall document and retain all public outreach and participation performed
3 as part of the administrative record in accordance with the retention schedule published by the secretary of
4 state.

5 (3) (a) A local government may decide the method for providing:

6 (i) general public notice and participation in the adoption, amendment, or update of a land use
7 plan or regulation; and

8 (ii) notice of written comment on applications for land use permits pursuant to [sections 1 through
9 [3738](#)].

10 (b) All notices must clearly specify the nature of the land use plan or regulation under
11 consideration, what type of comments the local government is seeking from the public, and how the public may
12 participate.

13 (c) The local government shall document what methods it used to provide continuous participation
14 in the development, adoption, or update of a land use plan or regulation and shall document all comments
15 received.

16 (d) The department of commerce established in 2-15-1801 and functioning pursuant to 90-1-103
17 shall develop a list of public participation methods and best practices for use by local governments in
18 developing, adopting, or updating a land use plan or regulations.

19 (4) Throughout the adoption, amendment, or update of the land use plan or regulation processes,
20 a local government shall emphasize that:

21 (a) the land use plan is intended to identify the opportunities for development of land within the
22 planning area for housing, businesses, AGRICULTURE, and the extraction of natural resources, while
23 acknowledging and addressing the impacts of that development on adjacent properties, the community, the
24 natural environment, public services and facilities, and natural hazards;

25 (b) the process provides for continuous and extensive public notice, review, comment, and
26 participation in the development of the land use plan or regulation;

27 (c) the final adopted land use plan, including amendments or updates to the final adopted land use

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 plan, comprises the basis for implementing land use regulations in substantial compliance with the land use
2 plan; and

3 (d) the scope of and opportunity for public participation and comment on site-specific development
4 in substantial compliance with the land use plan must be limited only to those impacts or significantly increased
5 impacts that were not previously identified and considered in the adoption, amendment, or update of the land
6 use plan, zoning regulations, or subdivision regulations.

7 (5) THE LOCAL GOVERNING BODY SHALL ADOPT A PUBLIC PARTICIPATION PLAN DETAILING HOW THE LOCAL
8 GOVERNMENT WILL MEET THE REQUIREMENTS OF THIS SECTION.

9

10 **NEW SECTION. Section 7. Adoption or amendment of land use plan and future land use map.**

11 (1) The local governing body shall adopt or amend by resolution a land use plan and future land use map in
12 accordance with [sections 7 through 17] only after consideration by and on the recommendation of the planning
13 commission.

14 (2) Prior to making a recommendation to the governing body to adopt or amend a land use plan
15 and future land use map, the planning commission shall:

16 (a) provide public notice and participation in accordance with [section 6]; and

17 (b) accept, consider, and respond to public comment on the proposed land use plan and future
18 land use map. All public comment must be part of the administrative record transmitted to the governing body.

19 (3) After meeting the requirements of subsection (2), the planning commission shall make a final
20 recommendation to the governing body to adopt, modify, or reject the proposed land use plan and future land
21 use map or any amendment to the proposed land use plan and future land use map.

22 (4) The governing body shall incorporate any existing neighborhood, area, or plans adopted
23 pursuant to Title 76, chapter 1, that meet the requirements of [sections 1 through 3738] into the land use plan
24 and future land use map.

25 (5) (a) The governing body shall consider the recommendation of the planning commission to
26 adopt, modify, or reject the proposed land use plan and future land use map or any amendment to the
27 proposed land use plan and future land use map.

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 (b) After providing public notice and participation in accordance with [section 6], the governing
2 body may adopt, with any revisions the local governing body considers appropriate, or reject the land use plan
3 and future land use map or any amendment to the proposed land use plan and future land use map proposed
4 by the planning commission.

5 (6) An amendment to a land use plan or future land use map may be initiated:

6 (a) by majority vote of the governing body;

7 (b) on petition of at least 15% of the electors of the local government jurisdiction to which the plan
8 applies, as registered at the last general election; or

9 (c) by a property owner applying for a zoning, subdivision, or other land use permit.

10 (7) (a) After the initiation of an amendment to a land use plan or future land use map allowed in
11 subsection (6), the planning commission shall make a preliminary determination of whether the proposed land
12 use plan or future land use map amendment results in new or increased impacts to or from local facilities,
13 services, natural resources, natural environment, or natural hazards from those previously described and
14 analyzed in the assessment conducted in the development of the land use plan.

15 (b) If the planning commission finds new or increased impacts from the proposed land use plan or
16 future land use map amendment, the local government shall collect additional data and conduct additional
17 analysis necessary to provide the planning commission with the opportunity to consider all potential impacts
18 resulting from the amendment before proceeding under subsection (2).

19 (8) The governing body may not amend the land use plan or future land use map unless:

20 (a) the amendment is found in substantial compliance with the land use plan; and

21 (b) the potential impacts resulting from development in substantial compliance with the proposed
22 amendment have been made available for public review and comment and have been fully considered by the
23 governing body.

24
25 **NEW SECTION. Section 8. Update of land use plan or future land use map.** (1) After a local
26 government adopts a land use plan and future land use map in accordance with [section 7], the land use plan
27 and future land use map must be reviewed by the planning commission every fifth year after adoption to

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 section is at the discretion of the local governing body.

2

3 **NEW SECTION. Section 14. Land use and future land use map.** (1) A land use plan must include
4 a future land use map and a written description of the proposed general distribution, location, and extent of
5 residential, commercial, mixed, industrial, agricultural, recreational, and conservation uses of land and other
6 categories of public and private uses, as determined by the local government.

7 (2) The future land use map must reflect the anticipated and preferred pattern and intensities of
8 development for the jurisdiction over the next 20 years, based on the information, analysis, and public input
9 collected, considered, and relevant to the population projections for and economic development of the
10 jurisdiction and the housing and local services needed to accommodate those projections, while acknowledging
11 and addressing the natural resource, environment, and natural hazards of the jurisdiction.

12 (3) The future land use map may not confer any authority to regulate what is not otherwise
13 specifically authorized in [sections 1 through ~~3738~~].

14 (4) The future land use map and the written description must include:

15 (a) a statement of intent describing the jurisdiction's applicable zoning, subdivision, and other land
16 use regulations;

17 (b) descriptions of existing and future land uses, including:

- 18 (i) categories of public and private use;
- 19 (ii) general descriptions of use types and densities of those uses;
- 20 (iii) general descriptions of population; and
- 21 (iv) other aspects of the built environment;

22 (c) geographic distribution of future land uses in the jurisdiction, anticipated over a 20-year
23 planning period that specifically demonstrate:

24 (i) adequate land to support the projected population in all land use types in areas where local
25 services can be adequately and cost-effectively provided for that population;

26 (ii) adequate sites to accommodate the type and supply of housing needed for the projected
27 population; and

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 (iii) areas of the jurisdiction that are not generally suitable for development and the reason, based
2 on the constraints identified through the land use plan analysis; and

3 (d) areas of or adjacent to the jurisdiction subject to increased growth pressures, higher
4 development densities, or other urban development influences.

5 (5) To the greatest extent possible, local governments shall create compatibility in the land use
6 plans and future land use map in those areas identified in subsection (4)(d).

7 (6) The land use plan may:

8 (a) provide information required by a federal land management agency for the local governing
9 body to establish or maintain coordination or cooperating agency status; and

10 (b) incorporate by reference any information or policies identified in other relevant assessments
11 adopted by the local governing body, such as a pre-disaster mitigation plan or wildfire protection plan.

12 (7) The amount of detail provided in the analysis beyond the minimum criteria established in this
13 section is at the discretion of the local governing body.

14
15 **NEW SECTION. Section 15. Area plans.** (1) A local governing body may adopt area plans for a
16 portion of the jurisdiction to provide a more localized analysis of all or any part of a land use plan. An area plan
17 may include but is not limited to a neighborhood plan, a corridor plan, or a subarea plan.

18 (2) The adoption, amendment, or update of an area plan must follow the same process as a land
19 use plan provided for in [sections 7 through 17] and may be adopted as an amendment to the land use plan.

20 (3) The area plan must be in substantial compliance with the land use plan. To the extent an area
21 plan is inconsistent with the land use plan, the land use plan controls.

22
23 **NEW SECTION. Section 16. Issue plans.** (1) A local governing body may adopt issue plans for all or
24 part of a jurisdiction that provide a more detailed or thorough analysis for any component of the land use plan.

25 (2) The adoption, amendment, or update of an issue plan must follow the same process as a land
26 use plan provided for in [sections 7 through 17].

27 (3) If an issue plan covers the jurisdictional area of the land use plan, the issue plan may serve as

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 be in substantial compliance with the land use plan; and

2 (vi) a schedule for implementing any other specific actions necessary to achieve the components of
3 the land use plan, including a timeframe or prioritization of each specific public action; and

4 (c) procedures for monitoring and evaluating the local government's progress toward meeting the
5 implementation schedule.

6
7 **NEW SECTION. Section 18. Authority to adopt local zoning regulations.** (1) (a) A local
8 government subject to [sections 1 through 3738], within its respective jurisdiction, has the authority to and shall
9 regulate the use of land in substantial compliance with its adopted land use plan by adopting zoning
10 regulations.

11 (b) The governing body of a county or city has the authority to adopt zoning regulations in
12 accordance with [sections 18 through 24] by an ordinance that substantially complies with 7-5-103 through 7-5-
13 107.

14 (C) A MUNICIPALITY SHALL ADOPT ZONING REGULATIONS FOR THE PORTIONS OF THE JURISDICTIONAL AREA
15 OUTSIDE OF THE BOUNDARIES OF THE MUNICIPALITY THAT THE GOVERNING BODY ANTICIPATES MAY BE ANNEXED INTO
16 THE MUNICIPALITY OVER THE NEXT 20 YEARS. UNLESS OTHERWISE AGREED TO BY THE APPLICABLE JURISDICTIONS,
17 ZONING REGULATIONS ON PROPERTY OUTSIDE THE MUNICIPAL BOUNDARIES MAY NOT APPLY OR BE ENFORCED UNTIL
18 THOSE AREAS ARE ANNEXED OR ARE BEING ANNEXED INTO THE MUNICIPALITY.

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

21 (a) uses of land;

22 (b) density of uses;

23 (c) types of uses;

24 (d) size, character, number, form, and mass of structures; and

25 (e) development standards mitigating the impacts of development, as identified and analyzed

26 during the land use planning process and review and adoption of zoning regulations pursuant to [sections 1

27 through 3738].

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 (3) The local government shall incorporate any existing zoning regulations adopted pursuant to
2 Title 76, chapter 2, into the zoning regulations meeting the requirements of [sections 1 through ~~3738~~].

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

6 (5) The local government may provide for the issuance of permits as may be necessary for the
7 implementation of [sections 1 through ~~3738~~].

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

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

15 (c) Approved construction techniques or other mitigation measures described in subsection (6)(b)
16 may not include building regulations as defined in 50-60-101 other than those identified by the department of
17 labor and industry as provided in 50-60-901.

18 (7) The zoning regulations and map must prohibit development in areas located within the
19 floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to
20 flooding by the governing body.

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

25

26 NEW SECTION. **Section 19. Encouragement of development of housing.** (1) The zoning
27 regulations authorized in [section 18] must include a minimum of five of the following housing strategies,

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 body finds that:

2 (i) the regulation, map, or amendment is in substantial compliance with the land use plan; and

3 (ii) the impacts resulting from development in substantial compliance with the proposed zoning
4 regulation, map, or amendment have been made available for public review and comment and have been fully
5 considered by the governing body.

6 (6) After the zoning regulation, map, or amendment has been adopted by the governing body,
7 there is a presumption that:

8 (a) all permitting in substantial compliance with the zoning regulation, map, or amendment is in
9 substantial compliance with the land use plan; and

10 (b) the public has been provided a meaningful opportunity to participate.

11

12 **NEW SECTION. Section 22. Effect on zoning regulations and map.** (1) After the adoption of a
13 zoning regulation, map, or amendment pursuant to [section 21], any application proposing development of a
14 site is subject to the process set forth in this section.

15 (2) (a) When a proposed development lies entirely within an incorporated city, or is proposed for
16 annexation into the city, the application must be submitted to and approved by the city.

17 (b) Except as provided in subsections (2)(a) or (2)(c), when a proposed development lies entirely
18 in an unincorporated area, the application must be submitted to and approved by the county.

19 (c) If a proposed development lies within an area subject to increased growth pressures, higher
20 development densities, or other urban development influences identified by either jurisdiction in [section 14], the
21 jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

22 (d) If the proposed development lies partly within an incorporated city, the application and
23 materials must be submitted to and approved by both the city and the county governing bodies.

24 (3) Zoning compliance permits and other ministerial permits may be issued by the planning
25 administrator or the planning administrator's designee without any further review or analysis by the governing
26 body, except as provided in [section 3637].

27 (4) If a proposed development, with or without variances or deviations from adopted standards, is

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 in substantial compliance with the zoning regulations or map and all impacts resulting from the development
2 were previously analyzed and made available for public review and comment prior to the adoption of the land
3 use plan, zoning regulation, map, or amendment thereto, the application must be approved, approved with
4 conditions, or denied by the planning administrator and is not subject to any further public review or comment,
5 except as provided in [section [3637](#)].

6 (5) (a) If a proposed development, with or without variances or deviations from adopted standards,
7 is in substantial compliance with the zoning regulations and map but may result in new or significantly
8 increased potential impacts that have not been previously identified and considered in the adoption of the land
9 use plan or zoning regulations, the planning administrator shall proceed as follows:

10 (b) request that the applicant collect any additional data and perform any additional analysis
11 necessary to provide the planning administrator and the public with the opportunity to comment on and consider
12 the impacts identified in subsection (5)(a);

13 (c) collect any additional data or perform additional analysis the planning administrator determines
14 is necessary to provide the local government and the public with the opportunity to comment on and consider
15 the impacts identified in subsection (5)(a); and

16 (d) provide notice of a 15-business day written comment period during which the public has the
17 reasonable opportunity to participate in the consideration of the impacts identified in subsection (5)(a).

18 (6) (a) Any additional analysis or public comment on a proposed development described in
19 subsection (5) must be limited to only any new or significantly increased impacts potentially resulting from the
20 proposed development, to the extent the impact was not previously identified or considered in the adoption or
21 amendment of the land use plan or zoning regulations.

22 (b) The planning administrator shall approve, approve with conditions, or deny the application. The
23 planning administrator's decision is final and no further action may be taken except as provided in [section
24 [3637](#)].

25 (7) If an applicant proposes to develop a site in a manner or to an extent that the development is
26 not in substantial compliance with the zoning regulations or map, the applicant shall propose an amendment to
27 the regulations or map and follow the process provided for in [section 21].

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1

2 **NEW SECTION. Section 23. Zoning and annexation.** (1) A municipality ~~may~~SHALL review and
3 consider a proposed annexation in conjunction with the ~~proposed~~-zoning REGULATIONS for the property to be
4 annexed ADOPTED PURSUANT TO [SECTION 18(1)(C)] following the procedures set forth in [section 22].

5 (2) The joint public process authorized in subsection (1) fulfills the notice and public hearing
6 requirements for a proposed annexation required in Title 7, chapter 2, parts 42 through 47.

7
8 **NEW SECTION. Section 24. Interim zoning ordinances.** (1) A local government, to protect the
9 public safety, health, and welfare and without following the procedures otherwise required prior to adopting a
10 zoning regulation, may adopt an interim zoning ordinance as an urgency measure to regulate or prohibit uses
11 that may conflict with a zoning proposal that the governing body is considering or studying or intends to study
12 within a reasonable time.

13 (2) Before adopting an interim zoning ordinance, the governing body shall first hold a public
14 hearing upon notice reasonably designed to inform all affected parties. A notice must be published in a
15 newspaper of general circulation at least 7 days before the public hearing.

16 (3) An interim zoning ordinance takes effect immediately on passage and approval after first
17 reading
18 and may be in effect no longer than 1 year from the date of its adoption.

19 (4) A local government may not act under the authority provided for in this section until the local
20 government has adopted a land use plan and zoning regulations pursuant to [sections 1 through 3738].

21

22 **NEW SECTION. Section 25. Authority to adopt local subdivision regulations -- limitations.** (1)
23 Within its respective jurisdiction, a local government shall regulate the creation of lots in substantial compliance
24 with its adopted land use plan and zoning regulations by adopting subdivision regulations.

25 (b) The governing body of a county or city has the authority to adopt subdivision regulations in
26 accordance with [sections 25 through 3334] by an ordinance that substantially complies with 7-5-103 through 7-
27 5-107.

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 (C) A MUNICIPALITY SHALL ADOPT SUBDIVISION REGULATIONS FOR THOSE PORTIONS OF THE
2 JURISDICTIONAL AREA OUTSIDE THE BOUNDARIES OF THE MUNICIPALITY THAT THE GOVERNING BODY ANTICIPATES MAY
3 BE ANNEXED INTO THE MUNICIPALITY OVER THE NEXT 20 YEARS. UNLESS OTHERWISE AGREED TO BY THE APPLICABLE
4 JURISDICTIONS, SUBDIVISION REGULATIONS ON PROPERTY OUTSIDE THE MUNICIPAL BOUNDARIES MAY NOT APPLY OR BE
5 ENFORCED UNTIL THE AREAS ARE ANNEXED OR BEING ANNEXED INTO THE MUNICIPALITY.

6 (2) The subdivision regulations must provide a process for the application and consideration of
7 subdivision exemptions, ~~certificate~~certificates of survey, preliminary plats, and final plats as necessary for the
8 implementation of [sections 1 through 3738].

9 (3) (a) A local governing body may not require, as a condition for approval of a subdivision under
10 this [sections 25 through 3334]:

11 (i) the payment of a fee for the purpose of providing housing for specified income levels or at
12 specified sale prices; or

13 (ii) the dedication of real property for the purpose of providing housing for specified income levels
14 or at specified sale prices.

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

18 (4) The local governing body may not change, in the subdivision regulations or in the process for
19 subdividing, any timelines or procedural requirements for an application to subdivide other than provided for in
20 [sections 25 through 3334].

21 ~~(5) — Subdivisions under [sections 1 through 37] must follow the uniform standards governing~~
22 ~~certificates of survey and subdivision plats adopted by the board of professional engineers and professional~~
23 ~~land surveyors.~~

24
25 NEW SECTION. Section 26. Exemptions to subdivision review. (1) The following divisions of land,
26 if made in substantial compliance with zoning regulations adopted pursuant to [sections 18 through 24], are not
27 subject to the requirements of [sections 1 through 3738]:

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

- 1 (a) subject to subsection (2), the creation of four or fewer new lots or parcels from an original lot or
2 parcel:
- 3 (i) by order of a court of record in this state;
- 4 (ii) by operation of law; or
- 5 (iii) that, in the absence of agreement between the parties to a sale, could be created by court
6 order in this state pursuant to the law of eminent domain, Title 70, chapter 30;
- 7 (b) subject to subsection (3), the creation of a lot to provide security for mortgages, liens, or trust
8 indentures for the purpose of construction, improvements to the land being divided, or refinancing, if the land
9 that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage,
10 lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture;
- 11 (c) the creation of an interest in oil, gas, minerals, or water that is severed from the surface
12 ownership of real property;
- 13 (d) the creation of cemetery lots;
- 14 (e) the reservation of a life estate on a portion of a tract of record;
- 15 (f) the lease or rental of a portion of a tract of record for farming and agricultural purposes;
- 16 (g) the division of property over which the state does not have jurisdiction;
- 17 (h) the creation of rights-of-way or utility sites;
- 18 (i) the creation of condominiums, townhomes, townhouses, or conversions, as those terms are
19 defined in 70-23-102, when any applicable park dedication requirements as set forth in [sections 18 through 24]
20 are complied with;
- 21 (j) the lease or rental of contiguous airport-related land owned by a city, a county, the state, or a
22 municipal or regional airport authority;
- 23 (k) subject to subsection (4), a division of state-owned land, unless the division creates a second
24 or subsequent residential parcel from a single tract for sale, rent, or lease after July 1, 1974;
- 25 (l) the creation of lots by deed, contract, lease, or other conveyance executed prior to July 1,
26 1974;
- 27 (m) the relocation of common boundary lines between or aggregations of adjoining properties

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 ~~within a municipality or in a platted subdivision approved under [sections 1 through 37]~~ that does not result in an
2 increase in the number of lots;

3 (n) a single gift or sale in each county to each member of the landowner's immediate family; or

4 (o) subject to subsection (5), the creation of lots by deed, contract, lease, or other conveyance in
5 which the landowner enters into a covenant with the governing body that runs with the land that provides that
6 the divided land must be used exclusively for agricultural purposes.

7 (2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify
8 the governing body of the pending division and allow the governing body to present written comment on the
9 division.

10 (3) A transfer of divided land by the owner of the property at the time that the land was divided to
11 any party other than those identified in subsection (1)(b) subjects the division of land to the requirements of
12 [sections 1 through ~~3738~~].

13 (4) Instruments of transfer of land that is acquired for state highways may refer by parcel and
14 project number to state highway plans that have been recorded in compliance with 60-2-209 and are exempted
15 from the surveying and platting requirements of [sections 1 through ~~3738~~]. If the parcels are not shown on
16 highway plans of record, instruments of transfer of the parcels must be accompanied by and refer to
17 appropriate certificates of survey and plats when presented for recording.

18 (5) The governing body, in its discretion, may revoke the covenant provided for in subsection (1)(o)
19 without subdivision review if the original lot lines are restored through aggregation of the covenanted land prior
20 to or in conjunction with the revoking of the covenant.

21

22 **NEW SECTION. Section 27. Adoption and amendment of subdivision regulations.** (1) (a) The
23 governing body shall adopt or amend subdivision regulations only after consideration by and on the
24 recommendation of the planning commission.

25 (b) An amendment to adopted subdivision regulations may be initiated:

26 (i) by majority vote of the governing body;

27 (ii) on petition of at least 15% of the electors of the local government jurisdiction to which the

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 substantial compliance with the land use plan and zoning regulations; and

2 (b) the public has been provided a meaningful opportunity to participate.

3

4 **NEW SECTION. Section 28. Contents of local subdivision regulations.** (1) The subdivision
5 regulations adopted under [sections 25 through ~~3334~~] are limited to the following requirements:

6 (a) the date the regulations initially become effective under [sections 1 through ~~3738~~] and the
7 effective dates and the ordinance numbers for all subsequent amendments;

8 (b) design standards for all subdivisions in the jurisdiction, which may be incorporated by reference
9 or may be based on the information and analysis contained in the land use plan and zoning regulations,

10 including:

11 (i) standards for grading and erosion control;

12 (ii) standards for the design and arrangement of lots, streets, and roads;

13 (iii) standards for the location and installation of public utilities, including water supply and sewage
14 and solid waste disposal;

15 (iv) standards for the provision of other public improvements; and

16 (v) legal and physical access to all lots;

17 (c) when a subdivision creates parcels with lot sizes averaging less than 5 acres, a requirement
18 that the subdivider:

19 (i) reserve all or a portion of the appropriation water rights owned by the owner of the subject
20 property, transfer the water rights to a single entity for use by landowners within the subdivision who have a
21 legal right to the water, and reserve and sever any remaining surface water rights from the land;

22 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed
23 to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement that is
24 administered through a single entity and that specifies administration and the rights and responsibilities of
25 landowners within the subdivision who have a legal right and access to the water; or

26 (iii) reserve and sever all surface water rights from the land;

27 (d) except as provided in subsection (2), a requirement that the subdivider establish ditch

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 easements that:

2 (i) are in locations of appropriate topographic characteristics and sufficient width to allow the
3 physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of
4 water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit
5 of an irrigation district or other private or public entity formed to provide for the use of the water right on the
6 subdivision lots;

7 (ii) unless otherwise provided for under a separate written agreement or filed easement, provide
8 for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the
9 subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the
10 subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

11 (iii) are a sufficient distance from the centerline of the ditch to allow for construction, repair,
12 maintenance, and inspection of the ditch; and

13 (iv) prohibit the placement of structures or the planting of vegetation other than grass within the
14 ditch easement without the written permission of the ditch owner;

15 (e) criteria that the planning administrator must use to determine whether a proposed method of
16 disposition using the exemptions provided in [sections 1 through 3738] is an attempt to evade the requirements
17 of [sections 1 through 3738];

18 (f) a list of the materials that must be included in order for the application to be determined
19 complete;

20 (g) subject to subsection (4), identification of circumstances or conditions that may necessitate the
21 denial of any or specific types of development, such as unmitigable natural hazards, insufficient water supply,
22 inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds
23 for the supply of the services;

24 (h) subject to subsection (5), a list of public utilities and agencies of local, state, and federal
25 government that the local government must seek input from during review of an application and for what
26 information or analysis; or

27 (i) subject to subsection (6), requirements for the dedication of land, cash-in-lieu thereof, or a

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 combination of both for parks and recreation purposes, not to exceed 0.03 acres per dwelling unit.

2 (2) A land donation under this section may be inside or outside of the subdivision.

3 (3) The regulations may not require ditch easements if:

4 (a) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
5 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
6 land that the lots may continue to be assessed for irrigation water delivery even though the water may not be
7 deliverable; or

8 (b) the water rights are removed or the process has been initiated to remove the water rights from
9 the subdivided land through an appropriate legal or administrative process and the removal or intended removal
10 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
11 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and
12 shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

13 (4) (a) The regulations must prohibit development in circumstances or conditions identified in
14 subsection (1)(g) unless the hazards or impacts may be eliminated or overcome by approved construction
15 techniques or other mitigation measures identified in the subdivision regulations.

16 (b) Approved construction techniques or other mitigation measures described in subsection (4)(a)
17 may not include building regulations as defined in 50-60-101 other than those identified by the department of
18 labor and industry as provided in 50-60-901.

19 (5) If a proposed subdivision is situated within a rural school district, as described in 20-9-615, the
20 local government shall provide a copy of the application and preliminary plat to the school district.

21 (6) (a) A park dedication may not be required for:

22 (i) land proposed for subdivision into parcels larger than 5 acres;

23 (ii) subdivision into parcels that are all nonresidential;

24 (iii) a subdivision in which parcels are not created, except when that subdivision provides multiple
25 permanent spaces for recreational camping vehicles, mobile homes, or condominiums; or

26 (iv) a subdivision in which only one additional parcel is created.

27 (b) Subject to the approval of the local governing body and acceptance by the school district

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 trustees, a subdivider may dedicate a land donation provided in subsection (6)(a) to a school district to be used
2 for school facilities or buildings.

3
4 NEW SECTION. Section 29. Local review procedure for preliminary plats (1)

5 An applicant may request a preapplication submittal and response from the planning administrator prior to
6 submitting a subdivision application. The preapplication review must take place no more than 30 business days
7 from the date that the planning administrator receives a written request for a preapplication review from the
8 subdivider.

9 (2) On receipt of an application for an exemption from subdivision review under [section 26] that
10 contains all materials and information required by the governing body under subsection (5), the local
11 government ~~shall~~:

12 (a) shall approve or deny the application within 20 business days; ~~and~~

13 (b) may not impose conditions on the approval of an exemption from subdivision review except for
14 conditions necessary to ensure compliance with the survey requirements of [section ~~25(5) 33(1)~~]; ~~and~~

15 (c) may require the certificate of survey to be reviewed for errors and omissions in calculation or
16 drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land
17 surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the certificate of
18 survey. A professional land surveyor may not act as an examining land surveyor in regard to a certificate of
19 survey in which the surveyor has a financial or personal interest.

20 (3) (a) When a proposed subdivision lies entirely within an incorporated city or is proposed for
21 annexation into the city, the application and preliminary plat must be submitted to and approved by the city.

22 (b) Except as provided in subsection (3)(c), when a proposed subdivision lies entirely in an
23 unincorporated area, the application and preliminary plat must be submitted to and approved by the county.

24 (c) If the proposed subdivision lies within an area subject to increased growth pressures, higher
25 development densities, or other urban development influences identified by either jurisdiction in [section 14], the
26 jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

27 (d) If the proposed subdivision lies partly within an incorporated city, the application and

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 preliminary plat must be submitted to and approved by both the city and the county governing bodies.

2 (4) A subdivision application is considered received on the date the application is delivered to the
3 reviewing agent or agency if accompanied by the review fee.

4 (5) (a) The planning administrator has 20 business days to determine whether the application
5 contains all information and materials necessary to complete the review of the application as set forth in the
6 local subdivision regulations.

7 (b) The planning administrator may review subsequent submissions of the application only for
8 information found to be deficient during the original review of the application under subsection (5)(a).

9 (c) A determination that an application contains sufficient information for review as provided in
10 subsection (5)(a) does not ensure approval or conditional approval of the proposed subdivision and does not
11 limit the ability of the planning administrator to request additional information during the review process.

12 (6) A subdivider may propose a phasing plan for approval with a preliminary plat. The phasing plan
13 must include a phasing plan and map that demonstrates what lots will be included with each phase, what public
14 facilities will be completed with each phase, and the timeline for the proposed phases.

15 (7) (a) If an application proposes a subdivision of a site that, with or without variances or deviations
16 from adopted standards, is in substantial compliance with the zoning and subdivision regulations and all
17 impacts resulting from the development were previously analyzed and made available for public review and
18 comment prior to the adoption of the land use plan, zoning regulations, and subdivision regulations, or any
19 amendment thereto, the planning administrator shall issue a written decision to approve, approve with
20 conditions, or deny the preliminary plat.

21 (b) The application is not subject to any further public review or comment, except as provided in
22 [section [3637](#)].

23 (c) The decision by the planning administrator must be made no later than 15 business days from
24 the date the application is considered complete.

25 (8) (a) If an application proposes subdivision of a site that, with or without variances or deviations
26 from adopted standards, is in substantial compliance with the zoning and subdivision regulations but may result
27 in new or significantly increased potential impacts that have not been previously identified and considered in the

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 adoption of the land use plan, zoning regulations, or subdivision regulations, or any amendments thereto, the
2 planning administrator shall proceed as follows:

3 (i) request the applicant to collect additional data and perform additional analysis necessary to
4 provide the planning administrator and the public with the opportunity to comment on and consider the impacts
5 identified in this subsection (8)(a);

6 (ii) collect additional data or perform additional analysis that the planning administrator determines
7 is necessary to provide the local government and the public with the opportunity to comment on and consider
8 the impacts identified in this subsection (8)(a); and

9 (iii) provide notice of a written comment period of 15 business days during which the public must
10 have a reasonable opportunity to participate in the consideration of the impacts identified in this subsection
11 (8)(a).

12 (b) Any additional analysis or public comment on the proposed development is limited to only new
13 or significantly increased potential impacts resulting from the proposed development to the extent that the
14 impact was not previously identified in the consideration and adoption of the land use plan, zoning regulations,
15 subdivision regulations, or any amendments thereto.

16 (9) Within 30 business days of the end of the written comment period provided in subsection
17 (8)(a)(iii), the planning administrator shall issue a written decision to approve, conditionally approve, or deny a
18 proposed subdivision application.

19 (10) The basis of the decision to approve, conditionally approve, or deny a proposed preliminary
20 plat is based on the administrative record as a whole and a finding that the proposed subdivision:

21 (a) meets the requirements and standards of [sections 1 through ~~3738~~];

22 (b) meets the survey requirements provided in [~~section 25(5)~~section 33(1)];

23 (c) provides the necessary easements within and to the proposed subdivision for the location and
24 installation of any planned utilities; and

25 (d) provides the necessary legal and physical access to each parcel within the proposed
26 subdivision and the required notation of that access on the applicable plat and any instrument of transfer
27 concerning the parcel.

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 (11) (a) The written decision must identify each finding required in subsection (10) that supports the
2 decision to approve, conditionally approve, or deny a proposed preliminary plat, including any conditions placed
3 on the approval that must be satisfied before a final plat may be approved.

4 (b) The written decision must identify all facts that support the basis for each finding and each
5 condition and identify the regulations and statutes used in reaching each finding and each condition.

6 (c) When requiring mitigation as a condition of approval, a local government may not unreasonably
7 restrict a landowner's ability to develop land. However, in some instances, the local government may determine
8 that the impacts of a proposed development are unmitigable and preclude approval of the subdivision.

9 (12) The written decision to approve, conditionally approve, or deny a proposed subdivision must:

10 (a) be provided to the applicant;

11 (b) be made available to the public;

12 (c) include information regarding the appeal process; and

13 (d) state the timeframe the approval is in effect.

14 (13) The planning administrator's decision is final, and no further action may be taken except as
15 provided in [section 3637].

16 (14) Any changes to an approved preliminary plat that increases the number of lots or redesigns or
17 rearranges six or more lots must undergo consideration and approval of an amended plat following the
18 requirements of this section.

19
20 **NEW SECTION. Section 30. Effect of preliminary plat approval.** (1) (a) An approved or
21 conditionally approved preliminary plat must be in effect for not more than 5 calendar years and not less than 1
22 calendar year.

23 (b) At the end of the period, the planning administrator may, at the request of the subdivider,
24 extend the approval once by written agreement.

25 (c) On receipt of a request for an extension, the planning administrator shall determine whether
26 the preliminary plat remains in substantial compliance with the zoning and subdivision regulations. If the
27 preliminary plat is no longer in substantial compliance with the zoning or subdivision regulations, the extension

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 may not be granted.

2 (d) After a preliminary plat is approved, the local government may not impose any additional
3 conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended
4 approval period.

5 (e) Any subsequent requests by the subdivider for extension of the approval must be reviewed and
6 approved by the governing body.

7 (2) An approved or conditionally approved phased preliminary plat must be in effect for 20
8 calendar years.

9

10 **NEW SECTION. Section 31. Local review procedure for final plats.** (1) The following must be
11 submitted with a final plat application:

12 (a) information demonstrating the final plat conforms to the written decision and all conditions of
13 approval set forth on the preliminary plat;

14 (b) a plat that meets the survey requirements provided in [section 33(1)]; and

15 (b)(c) confirmation the county treasurer has certified that all real property taxes and special
16 assessments assessed and levied on the land to be subdivided have been paid.

17 (2) The final plat may be required to be reviewed for errors and omissions in calculation or drafting
18 by an examining land surveyor before filing with the county clerk and recorder. The examining land surveyor
19 shall certify compliance in a printed or stamped certificate signed by the surveyor on the final plat. A
20 professional land surveyor may not act as an examining land surveyor in regard to a plat in which the surveyor
21 has a financial or personal interest.

22 (3) A final plat application is considered received on the date the application is delivered to the
23 governing body or the agent or agency designated by the governing body if accompanied by the review fee.

24 ~~(3)~~(4) (a) Within 10 business days of receipt of a final plat, the planning administrator shall determine
25 whether the final plat contains the information required under subsection (1) and shall notify the subdivider in
26 writing.

27 (b) If the planning administrator determines that the final plat does not contain the information

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 required under subsection (1), the planning administrator shall identify the final plat's defects in the notification.

2 (c) The planning administrator may review subsequent submissions of the final plat only for
3 information found to be deficient during the original review of the final plat under subsection ~~(3)(a)~~ (4)(a).

4 (d) A determination that the application for a final plat contains sufficient information for review as
5 provided in subsection ~~(3)(a)~~ (4)(a) does not ensure approval of the final plat and does not limit the ability of the
6 planning administrator to request additional information during the review process.

7 ~~(4)(5)~~ Once a determination is made under subsection ~~(3)(4)~~ that the final plat contains the
8 information required under subsection (1), the governing body shall review and approve or deny the final plat
9 within 20 business days.

10 ~~(5)(6)~~ The subdivider or the subdivider's agent and the governing body or its reviewing agent or
11 agency may mutually agree to extend the review periods provided for in this section.

12 ~~(6)(7)~~ (a) For a period of 5 years after approval of a phased preliminary plat, the subdivider may apply
13 for final plat of any one or more phases following the process set forth in subsections (1) through ~~(5)~~ (6).

14 (b) After 5 years have elapsed since approval of a phased preliminary plat, the planning
15 administrator shall review each remaining phase to determine if a phase may result in new or significantly
16 increased potential impacts that have not been previously identified and considered in the adoption of the land
17 use plan, zoning or subdivision regulations, or review and approval of the phased preliminary plat. If the
18 planning administrator identifies any new or significantly increased potential impacts not previously identified
19 and considered, the planning administrator shall proceed as set forth in [section 29(8)].

20 (c) If necessary to mitigate impacts identified in subsection ~~(6)(b)~~ (7)(b), the planning administrator
21 may impose conditions on any phase before final plat approval is sought.

22

23 **NEW SECTION. Section 32. Filing and recordation of plats and certificates of survey.** (1) (a)

24 Except as provided in subsection (1)(b), every final ~~subdivision~~ plat or certificate of survey must be filed for
25 record with the county clerk and recorder before title to the ~~subdivided~~ land may be sold or transferred in any
26 manner. The clerk and recorder of the county may not accept any final plat or certificate of survey for record
27 that has not been approved in accordance with [~~section 31~~ sections 25 through 34] unless the final plat or

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 certificate of survey is located in an area over which the state does not have jurisdiction.

2 (b) After the preliminary plat of a subdivision has been approved or conditionally approved, the
3 subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following contract
4 conditions are imposed and met:

5 (i) the purchasers of lots in the proposed subdivision make payments to an escrow agent, which
6 must be a bank or savings and loan association chartered to do business in the state of Montana;

7 (ii) the payments made by purchasers of lots in the proposed subdivision may not be distributed by
8 the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and
9 recorder;

10 (iii) if the final plat of the proposed subdivision is not filed with the county clerk and recorder within
11 the approval period of the preliminary plat, the escrow agent shall immediately refund to each purchaser any
12 payments the purchaser has made under the contract;

13 (iv) the county treasurer has certified that no real property taxes assessed and levied on the land to
14 be divided are delinquent; and

15 (v) the following language is conspicuously set out in each contract: "The real property that is the
16 subject of this contract has not been finally platted, and until a final plat identifying the property has been filed
17 with the county clerk and recorder, title to the property may not be transferred in any manner".

18 (2) (a) Subject to subsection (2)(b), no division of land may be made unless the county treasurer
19 has certified that all real property taxes and special assessments assessed and levied on the land to be divided
20 have been paid.

21 (b) (i) If a division of land includes centrally assessed property and the property taxes applicable to
22 the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate
23 the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed
24 property shall ensure that the prorated real property taxes and special assessments are paid on the land being
25 sold before the division of land is made.

26 (ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection
27 (2)(b) as a partial payment of the total tax that is due.

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 (3) (a) The county clerk and recorder shall maintain an index of all recorded and filed subdivision
2 plats and certificates of survey.

3 (b) The index must list plats and certificates of survey by the quarter section, section, township,
4 and range in which the platted or surveyed land lies and must list the recording or filing numbers of all plats or
5 certificates of survey depicting lands lying within each quarter section. Each quarter section list must be
6 definitive to the exclusion of all other quarter sections. The index must also list the names of all subdivision
7 plats in alphabetical order and the place where filed.

8 (4) The recording of any plat made in compliance with the provisions of [sections 1 through 3738]
9 must serve to establish the identity of all lands shown on and being part of the plat. When lands are conveyed
10 by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as
11 being a true copy thereof must be regarded as incorporated into the instrument of conveyance and must be
12 received in evidence in all courts of this state.

13 (5) (a) Any plat prepared and recorded as provided in [sections 25 through 3334] may be vacated
14 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)
15 and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall
16 determine to which properties the title to the streets and alleys of the vacated portions must revert. The
17 governing body or the district court, as provided in 7-5-2502, shall take into consideration:

- 18 (i) the previous platting;
19 (ii) the manner in which the right-of-way was originally dedicated, granted, or conveyed;
20 (iii) the reasons stated in the petition requesting the vacation;
21 (iv) the parties requesting the vacation; and
22 (v) any agreements between the adjacent property owners regarding the use of the vacated area.

23 The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the
24 properties within the platted area adjacent to the vacated portions.

25 (b) Notwithstanding the provisions of subsection (5)(a), when any poleline, pipeline, or any other
26 public or private facility is located in a vacated street or alley at the time of the reversion of the title to the
27 vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 continue the operation and maintenance of the public utility facility.

2

3 **NEW SECTION. Section 33. Survey requirements.** (1) Divisions of land under [sections 1 through
4 38] must follow the uniform standards governing monumentation, certificates of survey, and subdivision plats
5 prescribed and adopted by the board of professional engineers and professional land surveyors.

6 (2) All division of sections into aliquot parts and retracement of lines must conform to United States
7 bureau of land management instructions, and all public land survey corners must be filed in accordance with
8 Title 70, chapter 22, part 1. Engineering plans, specifications, and reports required in connection with public
9 improvements and other elements of the subdivision required by the governing body must be prepared and filed
10 by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance
11 with [sections 25 through 34] and regulations adopted pursuant to [sections 25 through 34].

12 (3) All divisions of land for sale other than a subdivision created after July 1, 1974, divided into
13 parcels that cannot be described as 1/32 or larger aliquot parts of a United States government section or a
14 United States government lot must be surveyed by or under the supervision of a registered land surveyor.
15 Surveys required under this section must comply with the requirements of subsection (8).

16 (4) Except as provided in 70-22-105, within 180 days of the completion of a survey, the
17 professional land surveyor responsible for the survey, whether the surveyor is privately or publicly employed,
18 shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the
19 survey:

20 (a) provides material evidence not appearing on any map filed with the county clerk and recorder
21 or contained in the records of the United States bureau of land management;

22 (b) reveals a material discrepancy in the map;

23 (c) discloses evidence to suggest alternate locations of lines or points; or

24 (d) establishes one or more lines not shown on a recorded map, the positions of which are not
25 ascertainable from an inspection of the map without trigonometric calculations.

26 (5) A certificate of survey is not required for any survey that is made by the United States bureau
27 of land management, that is preliminary, or that will become part of a subdivision plat being prepared for

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 recording under the provisions of [sections 1 through 38].

2 (6) It is the responsibility of the governing body to require the replacement of all monuments
3 removed in the course of construction.

4 (7) (a) A registered land surveyor may administer and certify oaths when:

5 (i) it becomes necessary to take testimony for the identification of old corners or reestablishment
6 of lost or obliterated corners;

7 (ii) a corner or monument is found in a deteriorating condition and it is desirable that evidence
8 concerning it be perpetuated; or

9 (iii) the importance of the survey makes it desirable to administer an oath to the surveyor's
10 assistants for the faithful performance of their duty.

11 (b) A record of oaths must be preserved as part of the field notes of the survey and noted on the
12 certificate of survey filed under subsection (4).

13 (8) (a) (i) A surveyor who completes a survey identified in subsection (8)(b) that establishes or
14 defines a section line and creates a parcel that crosses the established or defined section line so that an
15 irrigation district assessment boundary is included in more than one section shall note on the survey the
16 acreage of the farm unit or created parcel in each section.

17 (ii) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the
18 purpose of the survey.

19 (b) The requirements of subsection (8)(a) apply only to surveys for which the surveyor determines
20 that, based on available public records, the survey involves land:

21 (i) traversed by a canal or ditch owned by an irrigation district; or

22 (ii) included in an irrigation district.

23
24 **NEW SECTION. Section 34. Public improvements and extension of capital facilities.** (1) Except
25 as provided in subsections (1)(a) and (1)(c), the governing body shall require the subdivider to complete
26 required improvements within the proposed subdivision prior to the approval of the final plat.

27 (a) (i) In lieu of the completion of the construction of any public improvements prior to the approval

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1

2 NEW SECTION. Section 35. Variances. (1) All land use regulations must include a process for the
3 submission and review of variances.

4 (2) The application for a variance must be for relief from land or building form design standards or
5 subdivision design and improvement standards.

6 (3) Variance applications must be considered and approved or approved with conditions before
7 application or in conjunction with application for a zoning permit or subdivision approval.

8 (4) The granting of a variance must meet all of the following criteria:

9 (a) the variance is not detrimental to public health, safety or general welfare;

10 (b) the variance is due to conditions peculiar to the property, such as physical surroundings,
11 shape, or topographical conditions;

12 (c) strict application of the regulations to the property results in an unnecessary hardship to the
13 owner as compared to others subject to the same regulations and that is not self-imposed;

14 (d) the variance may not cause a substantial increase in public costs; and

15 (e) the variance may not place the property in nonconformance with any other regulations.

16 (5) Additional criteria may apply if the variance is associated with a floodplain or floodway pursuant
17 to the requirements of Title 76, chapter 5.

18 (6) Variance requests must be reviewed and determined by the planning administrator. The
19 planning administrator's decision is final and no further action may be taken except as provided in [section

20 [3637](#)].

21

22 NEW SECTION. Section 36. Fees. The governing body may establish reasonable fees to be paid by
23 an applicant for a zoning permit, subdivision application, appeals, or any other review performed by the local
24 government pursuant to [sections 1 through [3738](#)] to defray the expense of performing the review.

25

26 NEW SECTION. Section 37. Appeals. (1) Appeals of any final decisions made pursuant to [sections
27 1 through [3738](#)] must be made in accordance with this section.

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

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

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

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

10 (c) The planning commission shall hear the appeal de novo. The planning commission is not
11 bound by the decision that has been appealed, but the appeal must be limited to the issues raised on appeal.
12 The appellant has the burden of proving that the appealed decision was made in error.

13 (e) A decision of the planning commission on appeal takes effect on the date when the planning
14 commission issues a written decision.

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

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

19 (c) The governing body shall hear the appeal de novo. The governing body is not bound by the
20 decision that has been appealed, but the appeal must be limited to the issues raised on appeal. The appellant
21 has the burden of proving that the appealed decision was made in error.

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

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

26 (b) Any final land use decision of the governing body may be challenged by presenting a petition
27 setting forth the grounds for review of a final land use decision with the district court within 30 calendar days

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 after the written decision is issued.

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

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

7 (7) Nothing in [sections 1 through 3738] is subject to any provision of Title 2, chapter 4.

8
9 **NEW SECTION. Section 38. Enforcement and penalties.** (1) A local government may, by
10 ordinance, establish civil penalties for violations of any of the provisions of [sections 1 through 3738] or of any
11 ordinances adopted under the authority of [sections 1 through 3738].

12 (2) Prior to seeking civil penalties against a property owner, a local government shall provide:

13 (a) written notice, by mail or hand delivery, of each ordinance violation to the address of the owner
14 of record on file in the office of the county recorder;

15 (b) a reasonable opportunity to cure a noticed violation; and

16 (c) a schedule of the civil penalties that may be imposed on the owner for failure to cure the
17 violation before expiration of a time certain.

18 (3) A local government may, in addition to other remedies provided by law, seek:

19 (a) an injunction, mandamus, abatement, or any other appropriate action provided for in law;

20 (b) proceedings to prevent, enjoin, abate, or remove an unlawful building, use, occupancy, or act;

21 or

22 (c) criminal prosecution for violation of any of the provisions of [sections 1 through 3738] or of any
23 ordinances adopted under the authority of [sections 1 through 3738] as a misdemeanor punishable by a fine not
24 to exceed \$500 per day for each violation.

25 (4) In any enforcement action taken under this section or remedy sought thereunder, the parties
26 shall pay their own costs and attorney fees.

27

Amendment - 1st Reading/2nd House-blue - Requested by: Forrest Mandeville - (H) Local Government

- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.001

1 NEW SECTION. Section 39. Repealer. The following sections of the Montana Code Annotated are

2 repealed:

3 7-21-1001. Legislative findings and purpose.

4 7-21-1002. Definitions.

5 7-21-1003. Local government regulations -- restrictions.

6

7 NEW SECTION. Section 40. Codification instruction. [Sections 1 through ~~3738~~] are intended to be
8 codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through ~~3738~~].

9

10 NEW SECTION. Section 41. Effective date. [This act] is effective on passage and approval.

11

12 NEW SECTION. Section 42. Applicability. [This act] applies to local governments that currently
13 meet the population thresholds in [section 5].

14

- END -