

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  
28 services and infrastructure, ~~protection of the~~ HUMAN environment, natural resources, and recreation, and a

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1 diversified and sustainable economy.

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

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

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

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

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

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

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

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

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

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

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

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

28 (d) allows for streamlined administrative review decisionmaking for site-specific development

1 applications.

2

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

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

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

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

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

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

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

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

24 (8) "Dwelling ~~unit~~" means a building designed for residential structure in which a person or persons  
25 reside living purposes, including single-unit, two-unit, and multi-unit dwellings.

26 (9) "Dwelling unit" means one or more rooms designed for or occupied exclusively by one  
27 household.

28 (9)(10) "Examining land surveyor" means a registered land surveyor appointed by the governing body

1 to review surveys and plats submitted for filing.

2 ~~(10)(11)~~"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 (12) "Four-unit dwelling" or "fourplex" means a building designed for four attached dwelling units in  
7 which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be  
8 gained between the units through an internal doorway, excluding common hallways.

9 ~~(11)(13)~~"IMMEDIATE FAMILY" MEANS A SPOUSE, CHILDREN BY BLOOD OR ADOPTION, AND PARENTS.

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

11 ~~(12)(15)~~"JURISDICTIONAL AREA" OR "JURISDICTION" MEANS THE AREA WITHIN THE BOUNDARIES OF THE LOCAL  
12 GOVERNMENT. FOR MUNICIPALITIES, THE TERM INCLUDES THOSE AREAS THE LOCAL GOVERNMENT ANTICIPATES MAY BE  
13 ANNEXED INTO THE MUNICIPALITY OVER THE NEXT 20 YEARS.

14 ~~(11)(13)(16)~~ "Land use permit" means an authorization to complete development in conformance  
15 with an application approved by the local government.

16 ~~(12)(14)(17)~~ "Land use plan" means the land use plan and future land use map adopted in  
17 accordance with [sections 1 through 3738].

18 ~~(13)(15)(18)~~ "Land use regulations" means zoning, zoning map, subdivision, or other land use  
19 regulations authorized by state law.

20 ~~(14)(16)(19)~~ "Local governing body" or "governing body" means the elected body responsible for the  
21 administration of a local government.

22 ~~(15)(17)(20)~~ "Local government" means a county, consolidated city-county, or an incorporated  
23 municipality to which the provisions of [sections 1 through 3738] apply AS PROVIDED IN [SECTION 5].

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

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1 include a mobile home or housetrailer, as defined in 15-1-101.

2 ~~(17)(19)(22)~~ "Ministerial permit" means a permit granted upon a determination that a proposed  
3 project complies with the zoning map and the established standards set forth in the zoning regulations. The  
4 determination must be based on objective standards, involving little or no personal judgment, and must be  
5 issued by the planning administrator.

6 (23) "Multi-unit dwelling" means a building designed for five or more attached dwelling units in which  
7 the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained  
8 between the units through an internal doorway, excluding common hallways.

9 (24) "Permitted use" means a use that may be approved by issuance of a ministerial permit.

10 ~~(18)(20)(25)~~ "Planning administrator" means the person designated by the local governing body to  
11 review, analyze, provide recommendations, or make final decisions on any or all zoning, subdivision, and other  
12 development applications as required in [sections 1 through ~~3738~~].

13 ~~(19)(21)(26)~~ "Plat" means a graphical representation of a subdivision showing the division of land  
14 into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

15 ~~(20)(22)(27)~~ "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing  
16 the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a  
17 governing body.

18 ~~(21)(23)(28)~~ "Public utility" has the meaning provided in 69-3-101, except that for the purposes of  
19 [sections 1 through ~~3738~~], the term includes a county water or sewer district as provided for in Title 7, chapter  
20 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by  
21 the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

22 (29) "Single-room occupancy development" means a development with dwelling units in which  
23 residents rent a private bedroom with a shared kitchen and bathroom facilities.

24 (30) "Single-unit dwelling" means a building designed for one dwelling unit that is detached from any  
25 other dwelling unit.

26 ~~(22)(24)(31)~~ "Subdivider" means a person who causes land to be subdivided or who proposes a  
27 subdivision of land.

28 ~~(23)(25)(32)~~ "Subdivision" means a division of land or land so divided that it creates one or more

1 parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States  
2 government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise  
3 transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its  
4 size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or  
5 mobile homes will be placed.

6 ~~(24)(26)(33)~~ "Subdivision guarantee" means a form of guarantee that is approved by the  
7 commissioner of insurance and is specifically designed to disclose the information required in [section ~~3334~~].

8 ~~(25)(27)(34)~~ "Tract of record" means an individual parcel of land, irrespective of ownership, that can be  
9 identified by legal description, independent of any other parcel of land, using documents on file in the records of  
10 the county clerk and recorder's office.

11 (35) "Three-unit dwelling" or "triplex" means a building designed for three attached dwelling units in  
12 which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be  
13 gained between the units through an internal doorway, excluding common hallways.

14 (36) "Two-unit dwelling" or "duplex" means a building designed for two attached dwelling units in  
15 which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be  
16 gained between the units through an internal doorway.

17  
18 **NEW SECTION. Section 4. Planning commission.** (1) (a) Each local government shall establish, by  
19 ordinance or resolution, a planning commission.

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

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

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

28 (A) designate, combine, consolidate, or modify one or more of the authorized boards or

1 commissions as the planning commission; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2

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

6 (2) A municipality within a county identified in subsection (1) with a population at or exceeding  
7 5,000 LOCATED WITHIN A COUNTY WITH A POPULATION AT OR EXCEEDING 70,000 in the most recent decennial  
8 census shall comply with the provisions of [sections 1 through ~~3738~~].

9 (3)(2) (a) Except as provided in subsection (3)(b) (2)(B), any local government MUNICIPALITY that  
10 meets the population thresholds of SUBSECTION (1) or (2) on [the effective date of this act] shall  
11 comply with the provisions of [sections 1 through ~~3738~~] within 3 years of [the effective date of this act].

12 (b) A local government MUNICIPALITY that has adopted a growth policy within 5 years prior to [the  
13 effective date of this act] shall comply with the provisions of [sections 1 through ~~3738~~] within 5 years of the date  
14 that the growth policy was adopted or within the deadline established in subsection (3)(a) (2)(A), whichever  
15 occurs later.

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

20 (4)(3) (a) A local government that ~~does not meet the population thresholds set forth in subsections (1)~~  
21 ~~or (2) may decide to~~ IS NOT REQUIRED TO comply with the provisions of [sections 1 through ~~3738~~] MAY DECIDE TO  
22 COMPLY WITH THE PROVISIONS OF [SECTIONS 1 THROUGH ~~3738~~] by an affirmative vote of the local governing body.  
23 After an affirmative vote, the governing body shall comply with the provisions of [sections 1 through ~~3738~~] by  
24 December 31 of the fifth year after the date of the vote.

25 (b) A local government that votes pursuant to subsection (4)(a) (3)(A) to comply with the provisions  
26 of [sections 1 through ~~3738~~] may subsequently decide to not comply with the provisions of [sections 1 through  
27 ~~3738~~] by an affirmative vote.

28 (5)(4) A local government that complies with [sections 1 through ~~3738~~] is not subject to any provision



1 of Title 76, chapters 1, 2, 3, or 8.

2

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

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

8 (i) dissemination of draft documents;

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

10 (iii) public meetings after effective notice;

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

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

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

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

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

20 (ii) notice of written comment on applications for land use permits pursuant to [sections 1 through  
21 3738].

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

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

28 (d) The department of commerce established in 2-15-1801 and functioning pursuant to 90-1-103

1 shall develop a list of public participation methods and best practices for use by local governments in  
2 developing, adopting, or updating a land use plan or regulations.

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

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

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

11 (c) the final adopted land use plan, including amendments or updates to the final adopted land use  
12 plan, comprises the basis for implementing land use regulations in substantial compliance with the land use  
13 plan; and

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

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

20  
21 NEW SECTION. Section 7. Adoption or amendment of land use plan and future land use map.

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

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

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

28 (b) accept, consider, and respond to public comment on the proposed land use plan and future

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1 land use map. All public comment must be part of the administrative record transmitted to the governing body.

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

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

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

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

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

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

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

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

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

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

- 1 (8) The governing body may not amend the land use plan or future land use map unless:
- 2 (a) the amendment is found in substantial compliance with the land use plan; and
- 3 (b) the potential impacts resulting from development in substantial compliance with the proposed
- 4 amendment have been made available for public review and comment and have been fully considered by the
- 5 governing body.

6

7 **NEW SECTION. Section 8. Update of land use plan or future land use map.** (1) After a local

8 government adopts a land use plan and future land use map in accordance with [section 7], the land use plan

9 and future land use map must be reviewed by the planning commission every fifth year after adoption to

10 determine whether an update to the land use plan and future land use map must be performed. The planning

11 commission shall:

12 (a) make a preliminary determination regarding the existence of new or increased impacts to or

13 from local facilities, services, natural resources, natural environment, or natural hazards from those previously

14 described and analyzed when the land use plan and future land use map were previously adopted;

15 (b) provide public notice and participation in accordance with [section 6]; and

16 (c) accept, consider, and respond to public comment on the review of the land use plan and future

17 land use map. All public comment must be part of the administrative record transmitted to the governing body.

18 (2) (a) If the planning commission finds new or increased impacts under subsection (1), the

19 planning commission shall recommend an update to the land use plan, future land use map, or both.

20 (b) If the planning commission finds no new or increased impacts under subsection (1), the

21 planning commission shall make a recommendation to the governing body that no update to the land use plan

22 or future land use map is necessary.

23 (3) After receiving the recommendation of the planning commission, the governing body may direct

24 that an update of the land use plan, future land use map, or both be completed or may readopt the current land

25 use plan, future land use map, or both.

26 (4) (a) In developing, drafting, and considering an update to the land use plan or future land use

27 map, the planning commission shall follow the process set forth in [section 7] with respect to the changes

28 proposed to the land use plan or future land use map.

1 (i) identify planned capital and service transportation improvements necessary to serve the  
2 projected population.

3 (2) The local government shall:

4 (a) coordinate with school districts within the jurisdiction to determine the existing capacity of,  
5 planned expansion of, and anticipated improvements necessary for the local K-12 school system to serve the  
6 projected population in the jurisdiction; and

7 (b) request that the local school district provide any inventory and maps of existing K-12  
8 educational facilities within the jurisdictional area and identify any capital and service improvements necessary  
9 to meet the projected population.

10 (3) The local government may include an analysis of existing capacity and service levels, planned  
11 expansions of, and anticipated improvements necessary to provide other services to the projected population in  
12 the jurisdiction.

13 (4) The local government may incorporate by reference any information or policies identified in  
14 other relevant local services or facilities assessments adopted by the local governing body, such as a capital  
15 improvements plan or an impact fee study.

16 (5) The amount of detail provided in the analysis beyond the minimum criteria established in this  
17 section is at the discretion of the local governing body.

18

19 **NEW SECTION. Section 12. Economic development.** (1) The land use plan must:

20 (a) assess existing and potential commercial, industrial, small business, and institutional  
21 enterprises in the jurisdiction, including the types of sites and supporting services needed by the enterprises;

22 (b) summarize job composition and trends by industry sector, including existing labor force  
23 characteristics and future labor force requirements, for existing and potential enterprises in the jurisdiction;

24 (c) assess the extent to which local characteristics, assets, and resources support or constrain  
25 existing and potential enterprises, including access to transportation to market goods and services, and assess  
26 historic, cultural, and scenic resources and their relationship to private sector success in the jurisdiction;

27 (d) inventory sites within the jurisdiction, including zoned, unzoned, vacant, underutilized, and  
28 potentially redeveloped sites, available to meet the jurisdiction's economic development needs;

1 (e) assess the adequacy of existing and projected local facilities and services, schools, housing  
2 stock, and other land uses necessary to support existing and potential commercial, industrial, and institutional  
3 enterprises; and

4 (f) assess the financial feasibility of supporting anticipated economic growth in the jurisdiction.

5 (2) The local government may incorporate by reference any information or policies identified in  
6 other relevant economic development assessments.

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

9  
10 **NEW SECTION. Section 13. Natural resources, environment, and hazards.** (1) The land use plan

11 must:

12 (a) include inventories and maps of natural resources within the jurisdiction, including but not  
13 limited to agricultural lands, agricultural water user facilities, minerals, sand and gravel resources, forestry  
14 lands, and other natural resources identified by the local government;

15 (b) describe the natural resource characteristics of the jurisdictional area, including a summary of  
16 historical natural resource utilization, data on existing utilization, and projected future trends;

17 (c) include an inventory, maps, and description of the natural environment of the jurisdictional  
18 area, including a summary of important natural features and the conditions of and real and potential threats to  
19 soils, geology, topography, vegetation, surface water, groundwater, aquifers, floodplains, scenic resources,  
20 wildlife, wildlife habitat, wildlife corridors, and wildlife nesting sites within the jurisdiction; and

21 (d) include maps of, identify factors related to, and describe natural hazards within the jurisdictional  
22 area, including flooding, fire, earthquakes, steep slopes and other known geologic hazards and other natural  
23 hazards identified by the jurisdiction, with a summary of past significant events resulting from natural hazards  
24 that includes:

25 (i) a description of land use constraints resulting from natural hazards;

26 (ii) a description of the efforts that have been taken within the local jurisdiction to mitigate the  
27 impact of natural hazards; and

28 (iii) a description of the role that natural resources and the environment play in the local economy.

1           (2)     The local government may incorporate by reference any information or policies identified in  
2 other relevant assessments of natural resources, environment, or hazards.

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

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

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

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

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

18           (a)     a statement of intent describing the jurisdiction’s applicable zoning, subdivision, and other land  
19 use regulations;

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

21               (i)     categories of public and private use;

22               (ii)    general descriptions of use types and densities of those uses;

23               (iii)   general descriptions of population; and

24               (iv)   other aspects of the built environment;

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

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

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

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

5 (d) a statement acknowledging areas within the jurisdiction known to be subject to covenants,  
6 codes, and restrictions that may limit the type, density, or intensity of housing development projected in the  
7 future land use map; and

8 ~~(d)~~(e) areas of or adjacent to the jurisdiction subject to increased growth pressures, higher  
9 development densities, or other urban development influences.

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

12 (6) The land use plan may:

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

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

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

19  
20 NEW SECTION. Section 15. Area plans. (1) A local governing body may adopt area plans for a  
21 portion of the jurisdiction to provide a more localized analysis of all or any part of a land use plan. An area plan  
22 may include but is not limited to a neighborhood plan, a corridor plan, or a subarea plan.

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

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

27  
28 NEW SECTION. Section 16. Issue plans. (1) A local governing body may adopt issue plans for all or



- 1 (iv) a schedule for expanding or replacing public facilities and the anticipated costs and revenue
- 2 sources proposed to meet those costs, which must be reflected in a jurisdiction’s capital improvement program;
- 3 (v) if applicable, a schedule for updating the plan for extension of services required in 7-2-4732 to
- 4 be in substantial compliance with the land use plan; and
- 5 (vi) a schedule for implementing any other specific actions necessary to achieve the components of
- 6 the land use plan, including a timeframe or prioritization of each specific public action; and
- 7 (c) procedures for monitoring and evaluating the local government’s progress toward meeting the
- 8 implementation schedule.

9

10 **NEW SECTION. Section 18. Authority to adopt local zoning regulations.** (1) (a) A local

11 government subject to [sections 1 through 3738], within its respective jurisdiction, has the authority to and shall

12 regulate the use of land in substantial compliance with its adopted land use plan by adopting zoning

13 regulations.

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

15 accordance with [sections 18 through 24] by an ordinance that substantially complies with 7-5-103 through 7-5-

16 107.

17 (c) A MUNICIPALITY SHALL ADOPT ZONING REGULATIONS FOR THE PORTIONS OF THE JURISDICTIONAL AREA

18 OUTSIDE OF THE BOUNDARIES OF THE MUNICIPALITY THAT THE GOVERNING BODY ANTICIPATES MAY BE ANNEXED INTO

19 THE MUNICIPALITY OVER THE NEXT 20 YEARS. UNLESS OTHERWISE AGREED TO BY THE APPLICABLE JURISDICTIONS,

20 ZONING REGULATIONS ON PROPERTY OUTSIDE THE MUNICIPAL BOUNDARIES MAY NOT APPLY OR BE ENFORCED UNTIL

21 THOSE AREAS ARE ANNEXED OR ARE BEING ANNEXED INTO THE MUNICIPALITY.

22 (2) Local zoning regulations authorized in subsection (1) include but are not limited to ordinances

23 prescribing the:

- 24 (a) uses of land;
- 25 (b) density of uses;
- 26 (c) types of uses;
- 27 (d) size, character, number, form, and mass of structures; and
- 28 (e) development standards mitigating the impacts of development, as identified and analyzed

1 during the land use planning process and review and adoption of zoning regulations pursuant to [sections 1  
2 through 3738].

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

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

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

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

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

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

20 (7) The zoning regulations and map must prohibit-mitigate the hazards created by development in  
21 areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or  
22 determined to be subject to flooding by the governing body. If the hazards cannot be mitigated, the zoning  
23 regulations and map must identify those areas where future development is limited or prohibited.

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

28

1 NEW SECTION. Section 19. Encouragement of development of housing. (1) The zoning  
2 regulations authorized in [section 18] must include a minimum of five of the following housing strategies,  
3 applicable to the majority of the area, ~~that allow for~~ WHERE residential development IS PERMITTED in the  
4 jurisdictional area ~~or that are adopted as programs applicable to the entire jurisdiction:~~

5 (a) allow, AS A PERMITTED USE, for at least two residential units per lot on a majority of land zoned to  
6 ~~allow for residential development~~ A DUPLEX RESIDENTIAL UNIT WHERE A SINGLE-FAMILY HOME- single-unit dwelling  
7 IS PERMITTED;

8 (b) ~~permit housing units to be incorporated in a wider range of development by adopting mixed-use~~  
9 ~~zoning;~~

10 (e)(B) zone for higher density housing near transit stations, places of employment, higher education  
11 facilities, and other appropriate population centers, as determined by the local government;

12 (d)(C) ~~provide reduced~~ ELIMINATE OR REDUCE OFF-STREET parking requirements TO REQUIRE NO MORE  
13 THAN ONE PARKING SPACE PER RESIDENTIAL-dwelling UNIT;

14 (e)(D) ~~reduce or eliminate local IMPACT fees for~~ ACCESSORY DWELLING UNITS OR developments that  
15 include MULTIFAMILY housing units-multi-unit dwellings OR REDUCE THE FEES BY AT LEAST 25%;

16 (f)(E) allow, AS A PERMITTED USE, for AT LEAST ONE for internal or detached accessory dwelling units  
17 unit in all residential zones ON A LOT WITH A SINGLE-FAMILY HOME-single-unit dwelling OCCUPIED AS A PRIMARY  
18 RESIDENCE;

19 (g)(F) allow for single room-single-room occupancy developments;

20 (h) ~~create or support a community land trust program and rezone land trust lots to allow for higher~~  
21 ~~residential densities;~~

22 (i) ~~reduce or eliminate impact fees for accessory dwelling units;~~

23 (j)(G) allow for, AS A PERMITTED USE, a triplex or fourplex residential units per lot WHERE A SINGLE-  
24 FAMILY HOME-single-unit dwelling IS PERMITTED;

25 (k)(H) ~~reduce or eliminate minimum lot sizes~~ OR REDUCE THE EXISTING MINIMUM LOT SIZE REQUIRED BY AT  
26 LEAST 25%;

27 (l)(I) ~~reduce or eliminate aesthetic, material, shape, bulk, size, height, floor area, and other massing~~  
28 ~~requirements~~ FOR MULTIFAMILY-multi-unit dwellings OR MIXED-USE RESIDENTIAL-DEVELOPMENTS OR REMOVE AT

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- 2023

68th Legislature 2023

Drafter: Toni Henneman, 406-444-3593

SB0382.002.003

1 LEAST HALF OF THOSE REQUIREMENTS;

2 ~~(m)(j)~~ provide for zoning that specifically allows or encourages the development of tiny houses, as  
3 defined in Appendix Q of the International Residential Code as it was printed on January 1, 2023;

4 ~~(n)(k)~~ ~~reduce or eliminate setback requirements~~ OR REDUCE EXISTING SETBACK REQUIREMENTS BY AT  
5 LEAST 25%; or

6 ~~(o)(l)~~ INCREASE BUILDING HEIGHT LIMITS FOR ~~RESIDENTIAL DWELLINGS~~ dwelling units BY AT LEAST 25%;

7 ~~(m)~~ allow ~~MULTIFAMILY RESIDENTIAL MULTI-UNIT DWELLINGS~~ OR MIXED-USE development ~~in all areas zoned~~  
8 ~~to allow~~ AS A PERMITTED USE ON ALL LOTS WHERE office, retail, or commercial development ~~as a~~ ARE PRIMARY  
9 permitted use USES; OR

10 ~~(n)~~ ALLOW ~~MULTIFAMILY RESIDENTIAL DEVELOPMENT~~ multi-unit dwellings AS A PERMITTED USE ON ALL  
11 LOTS WHERE ~~THREE triplexes~~ OR ~~MORE RESIDENTIAL UNITS~~ fourplexes ARE PERMITTED USES.

12 (2) ~~To meet the requirements of this section, a strategy allowed in subsection (1) must be~~  
13 ~~measured in comparison to regulations adopted by a local government on or after January 1, 2021~~ IF A LOCAL  
14 GOVERNMENT'S EXISTING ZONING ORDINANCE ADOPTED PURSUANT TO TITLE 76, CHAPTER 2, BEFORE [THE EFFECTIVE  
15 DATE OF THIS ACT] DOES NOT CONTAIN A ZONING REGULATION THAT IS LISTED AS A REGULATION TO BE ELIMINATED OR  
16 REDUCED IN SUBSECTION (1), THAT STRATEGY IS CONSIDERED ADOPTED BY THE LOCAL GOVERNMENT.

17 (3) If the adoption of a housing strategy allowed in subsection (1) subsumes another housing  
18 strategy allowed in subsection (1), only one strategy may be considered to have been adopted by the local  
19 government.

20  
21 NEW SECTION. Section 20. Limitations on zoning authority. (1) A local government acting  
22 pursuant to [sections 18 through 24] may not:

23 (a) treat manufactured housing units differently from any other residential units;

24 (b) include in a zoning regulation any requirement to:

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

27 (ii) dedicate real property for the purpose of providing housing for specified income levels or at  
28 specified sale prices, including a payment or other contribution to a local housing authority or the reservation of

- 1 (i) the regulation, map, or amendment is in substantial compliance with the land use plan; and
- 2 (ii) the impacts resulting from development in substantial compliance with the proposed zoning
- 3 regulation, map, or amendment have been made available for public review and comment and have been fully
- 4 considered by the governing body.

5 (6) After the zoning regulation, map, or amendment has been adopted by the governing body,

6 there is a presumption that:

- 7 (a) all permitting in substantial compliance with the zoning regulation, map, or amendment is in
- 8 substantial compliance with the land use plan; and
- 9 (b) the public has been provided a meaningful opportunity to participate.

10

11 **NEW SECTION. Section 22. Effect on zoning regulations and map.** (1) After the adoption of a

12 zoning regulation, map, or amendment pursuant to [section 21], any application proposing development of a

13 site is subject to the process set forth in this section.

14 (2) (a) When a proposed development lies entirely within an incorporated city, or is proposed for

15 annexation into the city, the application must be submitted to and approved by the city.

16 (b) Except as provided in subsections (2)(a) or (2)(c), when a proposed development lies entirely

17 in an unincorporated area, the application must be submitted to and approved by the county.

18 (c) If a proposed development lies within an area subject to increased growth pressures, higher

19 development densities, or other urban development influences identified by either jurisdiction in [section 14], the

20 jurisdiction shall provide other impacted jurisdictions the opportunity to review and comment on the application.

21 (d) If the proposed development lies partly within an incorporated city, the application and

22 materials must be submitted to and approved by both the city and the county governing bodies.

23 (3) Zoning compliance permits and other ministerial permits may be issued by the planning

24 administrator or the planning administrator's designee without any further review or analysis by the governing

25 body, except as provided in [section 3637].

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

27 in substantial compliance with the zoning regulations or map and all impacts resulting from the development

28 were previously analyzed and made available for public review and comment prior to the adoption of the land

1 use plan, zoning regulation, map, or amendment thereto, the application must be approved, approved with  
2 conditions, or denied by the planning administrator and is not subject to any further public review or comment,  
3 except as provided in [section 3637].

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

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

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

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

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

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

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

26  
27 **NEW SECTION. Section 23. Zoning and annexation.** (1) A municipality ~~may~~ SHALL review and  
28 consider a proposed annexation in conjunction with the ~~proposed-zoning~~ REGULATIONS for the property to be

1 annexed ADOPTED PURSUANT TO [SECTION 18(1)(C)] following the procedures set forth in [section 22].

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

4  
5 **NEW SECTION. Section 24. Interim zoning ordinances.** (1) A local government, to protect the  
6 public safety, health, and welfare and without following the procedures otherwise required prior to adopting a  
7 zoning regulation, may adopt an interim zoning ordinance as an urgency measure to regulate or prohibit uses  
8 that may conflict with a zoning proposal that the governing body is considering or studying or intends to study  
9 within a reasonable time.

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

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

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

18  
19 **NEW SECTION. Section 25. Authority to adopt local subdivision regulations -- limitations.** (1)  
20 Within its respective jurisdiction, a local government shall regulate the creation of lots in substantial compliance  
21 with its adopted land use plan and zoning regulations by adopting subdivision regulations.

22 (b) The governing body of a county or city has the authority to adopt subdivision regulations in  
23 accordance with [sections 25 through **3334**] by an ordinance that substantially complies with 7-5-103 through 7-  
24 5-107.

25 (C) A MUNICIPALITY SHALL ADOPT SUBDIVISION REGULATIONS FOR THOSE PORTIONS OF THE  
26 JURISDICTIONAL AREA OUTSIDE THE BOUNDARIES OF THE MUNICIPALITY THAT THE GOVERNING BODY ANTICIPATES MAY  
27 BE ANNEXED INTO THE MUNICIPALITY OVER THE NEXT 20 YEARS. UNLESS OTHERWISE AGREED TO BY THE APPLICABLE  
28 JURISDICTIONS, SUBDIVISION REGULATIONS ON PROPERTY OUTSIDE THE MUNICIPAL BOUNDARIES MAY NOT APPLY OR BE

1 ENFORCED UNTIL THE AREAS ARE ANNEXED OR BEING ANNEXED INTO THE MUNICIPALITY.

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

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

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

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

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

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

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

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

24 (a) subject to subsection (2), the creation of four or fewer new lots or parcels from an original lot or  
25 parcel:

26 (i) by order of a court of record in this state;

27 (ii) by operation of law; or

28 (iii) that, in the absence of agreement between the parties to a sale, could be created by court



1 order in this state pursuant to the law of eminent domain, Title 70, chapter 30;

2 (b) subject to subsection (3), the creation of a lot to provide security for mortgages, liens, or trust  
3 indentures for the purpose of construction, improvements to the land being divided, or refinancing, if the land  
4 that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage,  
5 lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture;

6 (c) the creation of an interest in oil, gas, minerals, or water that is severed from the surface  
7 ownership of real property;

8 (d) the creation of cemetery lots;

9 (e) the reservation of a life estate on a portion of a tract of record;

10 (f) the lease or rental of a portion of a tract of record for farming and agricultural purposes;

11 (g) the division of property over which the state does not have jurisdiction;

12 (h) the creation of rights-of-way or utility sites;

13 (i) the creation of condominiums, townhomes, townhouses, or conversions, as those terms are  
14 defined in 70-23-102, when any applicable park dedication requirements as set forth in [sections 18 through 24]  
15 are complied with;

16 (j) the lease or rental of contiguous airport-related land owned by a city, a county, the state, or a  
17 municipal or regional airport authority;

18 (k) subject to subsection (4), a division of state-owned land, unless the division creates a second  
19 or subsequent residential parcel from a single tract for sale, rent, or lease after July 1, 1974;

20 (l) the creation of lots by deed, contract, lease, or other conveyance executed prior to July 1,  
21 1974;

22 (m) the relocation of common boundary lines between or aggregations of adjoining properties  
23 ~~within a municipality or in a platted subdivision approved under [sections 1 through 37]~~ that does not result in an  
24 increase in the number of lots;

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

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

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

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

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

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

15  
16 **NEW SECTION. Section 27. Adoption and amendment of subdivision regulations.** (1) (a) The  
17 governing body shall adopt or amend subdivision regulations only after consideration by and on the  
18 recommendation of the planning commission.

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

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

21 (ii) on petition of at least 15% of the electors of the local government jurisdiction to which the  
22 regulations apply, as registered at the last general election; or

23 (iii) by a property owner, AS RELATED TO AN APPLICATION applying for any zoning, subdivision, or  
24 other land use permit or approval.

25 (2) Prior to making a recommendation to the governing body to adopt or amend subdivision  
26 regulations, the planning commission shall:

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

28 (b) accept, consider, and respond to public comment on the proposed subdivision regulation or

1 adoption of the subdivision regulation or amendment to a subdivision regulation.

2 (4) After meeting the requirements of subsection (2), the planning commission shall make a final  
3 recommendation to the governing body to approve, modify, or reject the proposed subdivision regulation or  
4 amendment to a subdivision regulation.

5 (5) (a) The governing body shall consider each subdivision regulation or amendment to a  
6 subdivision regulation that the planning commission recommends to the governing body.

7 (b) After providing public notice and participation in accordance with [section 6], the governing  
8 body may adopt, adopt with revisions that the governing body considers appropriate, or reject the subdivision  
9 regulation or amendment to a subdivision regulation as proposed by the planning commission.

10 (c) The governing body may not adopt or amend a subdivision regulation unless the governing  
11 body finds:

12 (i) the subdivision regulation or amendment to a subdivision regulation is in substantial  
13 compliance with the land use plan and zoning regulations; and

14 (ii) the impacts resulting from development in substantial compliance with the proposed  
15 subdivision regulation or amendment to a subdivision regulation have been made available for public review  
16 and comment, which have been fully considered by the governing body.

17 (6) After the subdivision regulation or amendment to a subdivision regulation has been adopted by  
18 the governing body, there is a presumption that:

19 (a) all subdivisions in substantial compliance with the adopted regulation or amendment are in  
20 substantial compliance with the land use plan and zoning regulations; and

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

22

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

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

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

1 including:

2 (i) standards for grading and erosion control;

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

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

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

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

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

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

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

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

18 (d) except as provided in subsection (2), a requirement that the subdivider establish ditch  
19 easements that:

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

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

- 1 (iii) are a sufficient distance from the centerline of the ditch to allow for construction, repair,
- 2 maintenance, and inspection of the ditch; and
- 3 (iv) prohibit the placement of structures or the planting of vegetation other than grass within the
- 4 ditch easement without the written permission of the ditch owner;
- 5 (e) criteria that the planning administrator must use to determine whether a proposed method of
- 6 disposition using the exemptions provided in [sections 1 through 3738] is an attempt to evade the requirements
- 7 of [sections 1 through 3738];
- 8 (f) a list of the materials that must be included in order for the application to be determined
- 9 complete;
- 10 (g) subject to subsection (4), identification of circumstances or conditions that may necessitate the
- 11 denial of any or specific types of development, such as unmitigable natural hazards, insufficient water supply,
- 12 inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds
- 13 for the supply of the services;
- 14 (h) subject to subsection (5), a list of public utilities and agencies of local, state, and federal
- 15 government that the local government must seek input from during review of an application and for what
- 16 information or analysis; or
- 17 (i) subject to subsection (6), requirements for the dedication of land, cash-in-lieu thereof, or a
- 18 combination of both for parks and recreation purposes, not to exceed 0.03 acres per dwelling unit.
- 19 (2) A land donation under this section may be inside or outside of the subdivision.
- 20 (3) The regulations may not require ditch easements if:
- 21 (a) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
- 22 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
- 23 land that the lots may continue to be assessed for irrigation water delivery even though the water may not be
- 24 deliverable; or
- 25 (b) the water rights are removed or the process has been initiated to remove the water rights from
- 26 the subdivided land through an appropriate legal or administrative process and the removal or intended removal
- 27 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
- 28 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and

1 shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

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

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

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

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

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

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

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

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

16 (b) Subject to the approval of the local governing body and acceptance by the school district  
17 trustees, a subdivider may dedicate a land donation provided in subsection (6)(a) to a school district to be used  
18 for school facilities or buildings.

19  
20 **NEW SECTION. Section 29. Local review procedure for preliminary plats

divisions of land.** (1)

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

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

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

1 (b) may not impose conditions on the approval of an exemption from subdivision review except for  
2 conditions necessary to ensure compliance with the survey requirements of [section ~~25(5)~~ 33(1)]; and  
3 (c) may require the certificate of survey to be reviewed for errors and omissions in calculation or  
4 drafting by an examining land surveyor before filing with the county clerk and recorder. The examining land  
5 surveyor shall certify compliance in a printed or stamped certificate signed by the surveyor on the certificate of  
6 survey. A professional land surveyor may not act as an examining land surveyor in regard to a certificate of  
7 survey in which the surveyor has a financial or personal interest.

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

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

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

15 (d) If the proposed subdivision lies partly within an incorporated city, the application and  
16 preliminary plat must be submitted to and approved by both the city and the county governing bodies.

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

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

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

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

27 (6) A subdivider may propose a phasing plan for approval with a preliminary plat. The phasing plan  
28 must include a phasing plan and map that demonstrates what lots will be included with each phase, what public

1 facilities will be completed with each phase, and the timeline for the proposed phases.

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

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

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

12 (8) (a) If an application proposes subdivision of a site that, with or without variances or deviations  
13 from adopted standards, is in substantial compliance with the zoning and subdivision regulations but may result  
14 in new or significantly increased potential impacts that have not been previously identified and considered in the  
15 adoption of the land use plan, zoning regulations, or subdivision regulations, or any amendments thereto, the  
16 planning administrator shall proceed as follows:

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

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

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

26 (b) Any additional analysis or public comment on the proposed development is limited to only new  
27 or significantly increased potential impacts resulting from the proposed development to the extent that the  
28 impact was not previously identified in the consideration and adoption of the land use plan, zoning regulations,



1 subdivision regulations, or any amendments thereto.

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

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

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

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

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

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

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

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

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

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

23 (a) be provided to the applicant;

24 (b) be made available to the public;

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

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

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

1 (14) Any changes to an approved preliminary plat that increases the number of lots or redesigns or  
2 rearranges six or more lots must undergo consideration and approval of an amended plat following the  
3 requirements of this section.  
4

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

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

10 (c) On receipt of a request for an extension, the planning administrator shall determine whether  
11 the preliminary plat remains in substantial compliance with the zoning and subdivision regulations. If the  
12 preliminary plat is no longer in substantial compliance with the zoning or subdivision regulations, the extension  
13 may not be granted.

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

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

19 (2) An approved or conditionally approved phased preliminary plat must be in effect for 20  
20 calendar years.  
21

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

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

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

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

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

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

8           ~~(3)(4)~~ (a) Within 10 business days of receipt of a final plat, the planning administrator shall determine  
 9 whether the final plat contains the information required under subsection (1) and shall notify the subdivider in  
 10 writing.

11           (b)     If the planning administrator determines that the final plat does not contain the information  
 12 required under subsection (1), the planning administrator shall identify the final plat's defects in the notification.

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

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

18           ~~(4)(5)~~ (a) Once a determination is made under subsection ~~(3)(4)~~ that the final plat contains the  
 19 information required under subsection (1), the governing body shall review and approve or deny the final plat  
 20 within 20 business days.

21           ~~(5)(6)~~ (b) The subdivider or the subdivider's agent and the governing body or its reviewing agent or  
 22 agency may mutually agree to extend the review periods provided for in this section.

23           ~~(6)(7)~~ (a) For a period of 5 years after approval of a phased preliminary plat, the subdivider may apply  
 24 for final plat of any one or more phases following the process set forth in subsections (1) through ~~(5)~~ (6).

25           (b)     After 5 years have elapsed since approval of a phased preliminary plat, the planning  
 26 administrator shall review each remaining phase to determine if a phase may result in new or significantly  
 27 increased potential impacts that have not been previously identified and considered in the adoption of the land  
 28 use plan, zoning or subdivision regulations, or review and approval of the phased preliminary plat. If the

1 planning administrator identifies any new or significantly increased potential impacts not previously identified  
2 and considered, the planning administrator shall proceed as set forth in [section 29(8)].

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

5  
6 **NEW SECTION. Section 32. Filing and recordation of plats and certificates of survey.** (1) (a)

7 Except as provided in subsection (1)(b), every final ~~subdivision~~ plat or certificate of survey must be filed for  
8 record with the county clerk and recorder before title to the ~~subdivided~~ land may be sold or transferred in any  
9 manner. The clerk and recorder of the county may not accept any final plat or certificate of survey for record  
10 that has not been approved in accordance with ~~[section 31]~~ sections 25 through 34 unless the final plat or  
11 certificate of survey is located in an area over which the state does not have jurisdiction.

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

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

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

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

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

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

28 (2) (a) Subject to subsection (2)(b), no division of land may be made unless the county treasurer

1 has certified that all real property taxes and special assessments assessed and levied on the land to be divided  
2 have been paid.

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

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

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

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

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

22 (5) (a) Any plat prepared and recorded as provided in [sections 25 through ~~3334~~] may be vacated  
23 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)  
24 and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall  
25 determine to which properties the title to the streets and alleys of the vacated portions must revert. The  
26 governing body or the district court, as provided in 7-5-2502, shall take into consideration:

27 (i) the previous platting;

28 (ii) the manner in which the right-of-way was originally dedicated, granted, or conveyed;

- 1 (iii) the reasons stated in the petition requesting the vacation;
- 2 (iv) the parties requesting the vacation; and
- 3 (v) any agreements between the adjacent property owners regarding the use of the vacated area.

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

6 (b) Notwithstanding the provisions of subsection (5)(a), when any poleline, pipeline, or any other  
 7 public or private facility is located in a vacated street or alley at the time of the reversion of the title to the  
 8 vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to  
 9 continue the operation and maintenance of the public utility facility.

11 **NEW SECTION. Section 33. Survey requirements.** (1) Divisions of land under [sections 1 through  
 12 38] must follow the uniform standards governing monumentation, certificates of survey, and subdivision plats  
 13 prescribed and adopted by the board of professional engineers and professional land surveyors.

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

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

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

- 28 (a) provides material evidence not appearing on any map filed with the county clerk and recorder

1 or contained in the records of the United States bureau of land management;

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

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

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

6 (5) A certificate of survey is not required for any survey that is made by the United States bureau  
7 of land management, that is preliminary, or that will become part of a subdivision plat being prepared for  
8 recording under the provisions of [sections 1 through 38].

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

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

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

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

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

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

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

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

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

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

1 (ii) included in an irrigation district.

2

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

6 (a) (i) In lieu of the completion of the construction of any public improvements prior to the approval  
7 of a final plat, the governing body shall, at the subdivider's option, allow the subdivider to provide or cause to be  
8 provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the  
9 governing body, providing for and securing the construction and installation of the improvements within a period  
10 specified by the governing body and expressed in the bonds or other security. The governing body shall reduce  
11 bond or security requirements commensurate with the completion of improvements. Failure of the local  
12 government to require the renewal of a bond does not waive the subdivider's responsibility to complete the  
13 required improvements prior to the approval of the final plat.

14 (ii) In lieu of requiring a bond or other means of security for the construction or installation of all the  
15 required public improvements under subsection (2)(a)(i), the governing body may enter into a subdivision  
16 improvements agreement with the subdivider that provides for an incremental payment, guarantee plan, or  
17 other method of completing the necessary improvements to serve the development as set forth in the  
18 preliminary plat approval.

19 (b) Approval by the governing body of a final plat prior to the completion of required improvements  
20 and without the provision of the security required under subsection (1)(a) is not an act of a legislative body for  
21 the purposes of 2-9-111.

22 (c) The governing body may require a percentage of improvements or specific types of  
23 improvements necessary to protect public health and safety to be completed before allowing bonding, other  
24 reasonable security, or entering into a subdivision improvements agreement for purposes of filing a final plat.  
25 The requirement is applicable to approved preliminary plats.

26 (2) (a) A local government may require a subdivider to pay or guarantee payment for part or all of  
27 the costs of extending capital facilities related to public health and safety, including but not limited to public  
28 roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the



1 expected impacts directly attributable to the subdivision. A local government may not require a subdivider to  
2 pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to  
3 education.

4 (b) All fees, costs, or other money paid by a subdivider under this subsection (2) must be  
5 expended on the capital facilities for which the payments were required.

6  
7 **NEW SECTION. Section 35. Variances.** (1) All land use regulations must include a process for the  
8 submission and review of variances.

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

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

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

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

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

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

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

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

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

23 (6) Variance requests must be reviewed and determined by the planning administrator. The  
24 planning administrator's decision is final and no further action may be taken except as provided in [section  
25 3637].

26  
27 **NEW SECTION. Section 36. Fees.** The governing body may establish reasonable fees to be paid by  
28 an applicant for a zoning permit, subdivision application, appeals, or any other review performed by the local

1 government pursuant to [sections 1 through 3738] to defray the expense of performing the review.

2

3 **NEW SECTION. Section 37. Appeals.** (1) Appeals of any final decisions made pursuant to [sections  
4 1 through 3738] must be made in accordance with this section.

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

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

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

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

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

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

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

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

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

28 (5) (a) No person may challenge in district court a land use decision until that person has

1 exhausted the person's administrative appeal process as provided in this section.

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

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

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

10 (7) Nothing in [sections 1 through 3738] is subject to any provision of Title 2, chapter 4.  
11

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

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

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

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

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

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

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

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

24 or

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

28 (4) In any enforcement action taken under this section or remedy sought thereunder, the parties

1 shall pay their own costs and attorney fees.

2

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

4 repealed:

5 7-21-1001. Legislative findings and purpose.

6 7-21-1002. Definitions.

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

8

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

11

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

13

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

16

- END -