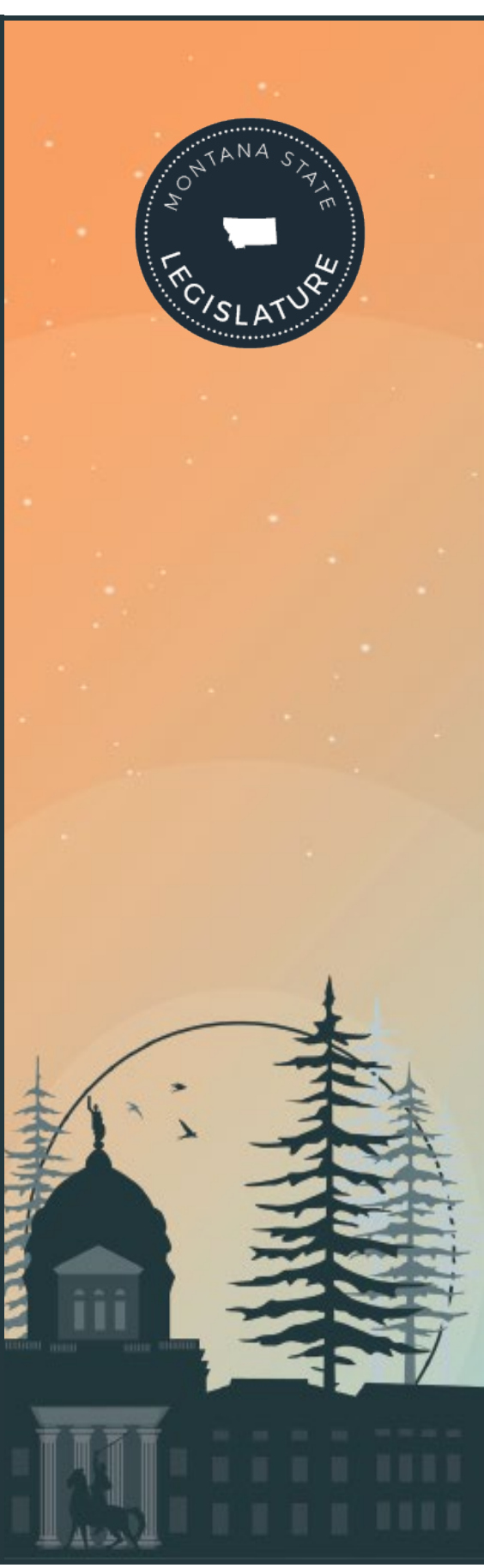




2023 LAND USE LEGISLATION: EASING THE HOUSING CRISIS

FINAL REPORT TO THE 69TH
MONTANA LEGISLATURE

Local Government Interim Committee
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This report is a summary of the work of the Local Government Interim Committee

, specific to the Local Government Interim Committee's 2023-2024 study as outlined in the committee's 2023-2024 work plan. Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Local Government Interim Committee (LGIC) in reaching its conclusions. To review additional information, including audio minutes and exhibits, visit the LGIC website: <https://leg.mt.gov/committees/interim/lgic>.

A full report, including links to the documents referenced in this print report, is available at the LGIC website: <https://leg.mt.gov/committees/interim/lgic/lgic-land-use-legislation>.

LAND USE LEGISLATION

EASING THE HOUSING CRISIS

Arguably, the topic of housing dominated the 2023 legislative session. Fifty-six bills with “housing” included as a subject were introduced in 2023 compared to seven in 2021 and eight in 2019. During and after the 2020 pandemic, housing prices steadily increased as the Montana population increased and the housing supply dropped. Under these conditions, compounded by high mortgage rates, many citizens struggled to purchase homes, and renters also felt the strain of high housing costs. Legislators attempted various strategies to ease the “crisis,” with most legislation falling into one of two camps: either amend the state’s regulatory framework, namely land use and planning statutes, or provide state funding for housing development.

Land use–related bills passed during the 2023 session became known through national news outlets as the “Montana Miracle.”

Both the House and Senate Local Government committees heard multiple bills that addressed land use and planning because local governments are often the entities who adopt and enforce land use planning regulations that most directly affect citizens. A raft of land use and planning bills passed the 2023 session on a mostly bipartisan basis in what became known through national news outlets as the “Montana Miracle.”¹

Of these bills, one of the most complex and wide-ranging was [Senate Bill 382](#), known as the “Montana Land Use and Planning Act” or “LUPA.” The 52-page bill creates a new framework for certain cities with the intent of modernizing and streamlining future project development. Sen. Forrest Mandeville, the sponsor of SB 382, also sponsored a companion study resolution: [Senate Joint Resolution 21](#), which required an interim committee to monitor the implementation and progress of SB 382. While SJ 21 failed to pass, the LGIC chose to undertake most of the study during the 2023-2024 interim.

Additionally, the committee moved to include review of other significant 2023 land use legislation, including [Senate Bill 323](#) (duplexes), [Senate Bill 245](#) (urban in-fill), and [Senate Bill 528](#) (accessory dwelling units).

SB 382: THE MONTANA LAND USE AND PLANNING ACT

OVERVIEW

SB 382 applies to cities with populations over 5,000 that are located in counties with populations over 70,000. All other cities and counties remain under existing law unless a city or county “opts in” to the new framework.

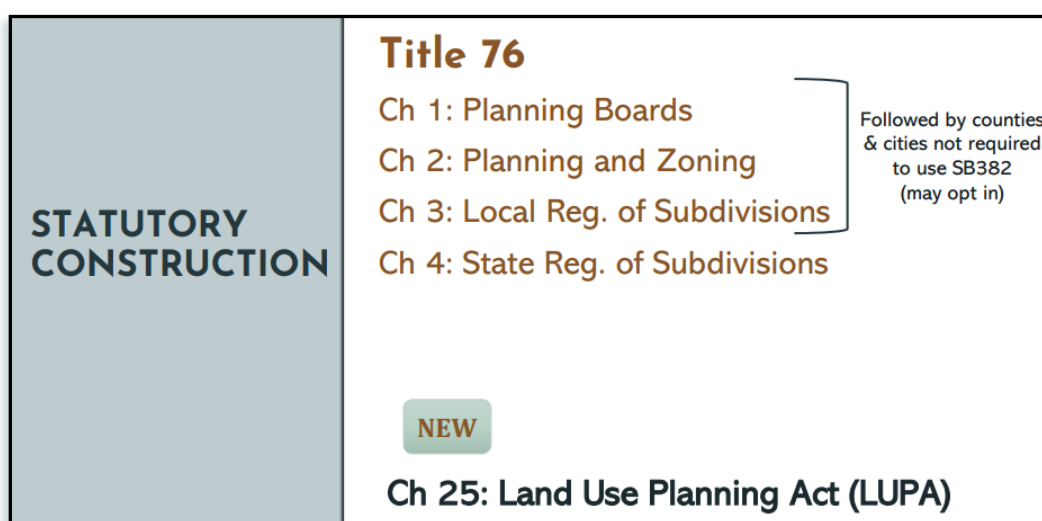
¹ Kriston Capps first used the term “Montana Miracle” in her article “[How YIMBYs Won Montana](#)”, published by Bloomberg in April of 2023. Other news outlets followed suit, including [The Atlantic](#), [Sightline Institute](#), and [Governing](#).

The LGIC focused a majority of its time on the 10 cities² mandated to follow SB 382:

Belgrade, Billings, Bozeman, Columbia Falls, Great Falls, Helena, Kalispell, Laurel, Missoula, and Whitefish.

The LGIC began its study of land use legislation by going back to the basics: what are the current Montana land use and planning statutes, and how do the SB 382 requirements compare? To help answer this question, Kelly Lynch, Executive Director of the Montana League of Cities and Towns (MLCT), presented “[Land Use Planning in Montana: The Basics](#)” in September, followed by a staff-produced “[2023 Land Use Legislation Summary](#)” presentation.

SB 382 is codified as a new chapter in [Title 76, Chapter 25](#), of the Montana Code Annotated. It provides a more front-loaded, public participation process and focuses on seven key criteria forecasted for 20 years.



Cities meeting the threshold requirement of SB 382 have three years³ to complete a “Land Use Plan” and “Future Land Use Map”⁴ that analyze current conditions and 20-year projections for the following:

- | | |
|--|-------------|
| Housing ⁵ | Environment |
| Local Services & Facilities ⁶ | Hazards |
| Economic Development ⁷ | Land Use |
| Natural Resources ⁸ | |

² The city of Lewistown opted in, so a total of 11 cities are currently undergoing the process outlined in SB 382. However, Lewistown opted in after the LGIC had conducted most of its study.

³ SB 382 mandates that cities fully implement the requirements within 3 years of the effective date of the bill. Cities are to complete implementation by May 17, 2026.

⁴ [Title 76, Chapter 25, Part 2, MCA](#), Land Use Plan.

⁵ [76-25-206, MCA](#).

⁶ [76-25-207, MCA](#).

⁷ [76-25-208, MCA](#).

⁸ [76-25-209, MCA](#) (includes natural resources, environment, hazards, and land use).

For more information on the Land Use Plan and Future Land Use Map requirements, please refer to the [Overview of Land Use Plan and Map Requirements](#).

During the process of developing the Land Use Plan and Future Land Use Map, the local government entity must allow for robust public participation⁹ before the adoption of a final version. The local government is also required to adopt zoning regulations ([Title 76, Chapter 25, Part 3, MCA](#)) and subdivision regulations ([Title 76, Chapter 25, Part 4, MCA](#)).

STUDY METHODOLOGY

SJ 21 instructed the committee to monitor and review the implementation of SB 382, request feedback from cities required to develop land use plans and maps, and identify any necessary legislative changes for introduction in the 2025 session. The LGIC undertook these requirements with the understanding that cities needed time to develop a general implementation plan, which may include hiring consultants, determining funding sources, locating data sources, and developing a public participation plan. All these items take time, and the committee was aware of the 3-year timeline allowed in SB 382. Due to the nature of the work and the implementation timeline, the committee was at times limited by the amount of information available.

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After learning the basics of both existing land use policy and the new requirements of SB 382, the committee scheduled two panel presentations, each including five of the ten cities required to follow SB 382. The first panel presented at the [January 24, 2024](#), meeting, and the other cities joined the [March 20, 2024](#), meeting.

The first panel included the cities of Billings, Bozeman, Great Falls, Helena, and Kalispell and focused primarily on basic questions, such as a general implementation schedule, public participation strategies, and any challenges or potential challenges identified as they worked through the bill requirements. The first panel also discussed potential funding challenges that led to committee questions and a [Financial Information Follow-up Memo](#) received in March.

The second panel included Belgrade, Columbia Falls, Laurel, Missoula, and Whitefish and presented information more directly related to actionable steps taken toward developing a land use plan and future land use map. The panelists discussed the need for data analysis and how the SB 382 requirements compare to previous growth plan requirements.

According to the Montana League of Cities and Towns, cities met monthly throughout the interim to discuss planning and implementation of SB 382. Cities reported working on various public outreach plans and strategies, namely Whitefish who utilized the high school senior class to work on visuals and other public engagement and Great Falls who developed a one-page public information handout that other cities can use.

⁹ [76-25-106, MCA](#).

Belgrade moved quickly and has already drafted a land use map and intends to work with Gallatin County to address areas outside city limits. Bozeman drafted a Unified Development Code in the fall of 2023 but was ultimately placed on pause while the community pushed back on the quick timeline. A few of the smaller towns, like Columbia Falls and Laurel, reported struggling to meet the requirements mainly due to financial challenges and the lack of dedicated staff since some cities do not have planning departments.

A NEW VOLUNTEER & POTENTIAL LEGISLATIVE CHANGES

The Montana League of Cities and Towns (MLCT) updated the committee on July 17, 2024, and reported that in addition to the ten statutorily required cities, the town of Lewistown has opted-in to implementing SB 382. Currently, Lewistown is the only local government to voluntarily follow the SB 382 framework although any city or county is eligible to opt-in.

Additionally, the MLCT reported the following potential legislative “clean ups” in development for the 2025 session. Since stakeholders are still considering these changes, the committee decided it would not seek a committee bill.

Identified areas of improvement:

- Create transition language for a city/county joint planning board to become one planning commission as required in SB 382 or allow the county to retain or create its own planning board;
 - Background: Originally, SB 382 required counties to participate in the new process, but counties were removed during the legislative process, resulting in confusion in multiple locations with joint city/county planning boards since SB 382 no longer applies to counties;
- Clarify that cities and counties who choose to implement extraterritorial zoning may continue the relationship; and
- Identify or create funding sources for cities to implement land use plans and maps.

FINANCIAL CHALLENGES

Most cities reported that while they appreciate and welcome the general idea of SB 382, the cost to compile data and complete the required analysis is high. Most SB 382 cities received \$30,000 planning grants from the Department of Commerce through HB 819, but many reported expected costs closer to \$200,000 to over \$500,000.

The Department of Commerce applied for a statewide U.S. Department of Housing and Urban Development (HUD) [Pathways to Removing Obstacles \(PRO\) Housing Grant](#) in 2023 but was not awarded funds. After learning that Montana was passed over for the FY23 PRO Housing Grant, the committee directed staff to draft a [letter](#) to HUD and the Montana Congressional delegation urging HUD to consider Montana for the 2024 PRO Housing Grant since the state has taken steps to streamline planning and encourage housing development. The FY24 PRO Housing Grant application is due October 15, 2024.

OTHER LAND USE LEGISLATION

The committee broadened its study to other land use legislation, namely SB 323, SB 245, and SB 528.

All three bills share a common theme — increasing housing density:

- [Senate Bill 323](#) requires cities with populations of over 5,000 residents to allow duplex housing on lots zoned for single-family residences.
- [Senate Bill 245](#) requires cities that are designated as urban areas by the United States Census Bureau and have populations of over 5,000 residents to allow multiple-unit dwellings and mixed-use developments located in a commercial zone.
 - A “mixed-use development” is defined as “a development consisting of residential and nonresidential uses in which the nonresidential uses are less than 50% of the total square footage of the development” and on the first floor; and
 - A “multiple-unit dwelling” is defined as “a building designed for five or more dwelling units in which the dwelling units share a common separation”¹⁰.
- [Senate Bill 528](#) requires cities to adopt zoning regulations that allow a minimum of one accessory dwelling unit (ADU) by right on a lot or parcel with a single-family dwelling.
 - An “accessory dwelling unit” is a self-contained living unit that may be attached, detached, or internal to the single-family dwelling, but must be smaller than the single-family dwelling.
 - A city may charge a permit fee of up to \$250 dollars and require the ADU to have a will-serve letter from the municipal water and wastewater system¹¹.

The committee received an overview of these bills at its September meeting during the [2023 Land Use Legislation Summary](#) presentation, but monitoring the bills’ implementation came to a halt when all three bills became subject to litigation.

LITIGATION

All four bills that the LGIC studied — SB 382, SB 323, SB 245, and SB 528 — were subject to a suit filed against the State of Montana by Montanans Against Irresponsible Densification, or MAID, on December 15, 2023. The [original filing](#) requested a permanent injunction from the state or cities implementing the four bills.

On December 29, 2023, the district court issued a preliminary injunction enjoining the implementation of SB 323 (duplexes) and SB 528 (ADUs).

The LGIC moved to track the litigation and received the following updates, which include additional background of the case:

- [January 10, 2024, Litigation Update](#)
- [March 11, 2024, Litigation Update](#)

¹⁰ [76-2-304, MCA.](#)

¹¹ [76-2-345, MCA.](#)

- [May 13, 2024, Litigation Update](#)
- [July 17, 2024, Litigation Update](#)
- [September 10, 2024, Litigation Update](#)

Summary of action as of September 10, 2024:

The State appealed the preliminary injunction to the Montana Supreme Court on January 17, 2024. A number of amicus briefs were filed with the appellate court, including one from the legislative leadership in support of the State. On September 3, 2024, the Montana Supreme Court issued its opinion in which it reversed the District Court's order granting the preliminary injunction. *See Montanans Against Irresponsible Densification, LLC v. State*, 2024 MT 200. The Supreme Court remanded the matter back to the District Court where proceedings will continue. The Plaintiffs are seeking a permanent injunction and a declaratory judgment that the four challenged bills are unconstitutional.

HOMEOWNERS' ASSOCIATIONS

The committee also fielded questions related to the operation of homeowners' associations and potential challenges that restrictive covenants may pose for cities when amending zoning regulations.

The committee received various educational materials and presentations related to the governance of homeowners' associations:

- [HOA Governance in Montana](#)
- [HOA Governance in Other States](#)
- [Homeowners' Associations Legal Primer](#)
- [Private Deed Restrictions & the Power of State Legislatures](#) – *Pepperdine Law Review*
- [2003 Legal Opinion, Zoning Ordinance Validity](#) – City of Missoula

Greg Sullivan, Bozeman city attorney, also presented at the [March 20, 2024](#), meeting to explain the authority of both the state and local governments and the interplay of zoning regulations and covenants imposed by homeowners' associations.

Additionally, the Business, Estates, Trusts, Tax, and Real Property (BETTR) section of the Montana Bar Association reported that they are working on potential legislation related to homeowners' associations, modeled after the [2021 Uniform Common Interest Ownership Act](#). The committee decided to receive additional updates from the BETTR section to monitor the development of potential legislation.

At the July 17, 2024 meeting, the committee heard from the BETTR section that stakeholders continue discussions on the Uniform Common Interest Ownership Act. They note the process is arduous since the Act is lengthy and complex, so while some hope it will be ready for introduction to the 2025 session, it may become an ongoing project.

GOVERNOR'S HOUSING TASK FORCE

The Governor's Housing Task Force¹² also studied various housing topics during the interim, often holding discussions similar to the LGIC. The committee received updates from the Task Force in May and July 2024. The Task Force completed and presented a [Final Report](#) on August 21, 2024, that included multiple land use policy-related recommendations that were often mentioned or discussed in the LGIC.

¹² Gov. Greg Gianforte extended the Housing Task Force by [Executive Order](#) in June 2023. For more information on the Task Force, including links to meeting recordings, see <https://deq.mt.gov/about/Housing-Task-Force>.

APPENDIX A: LOCAL GOVERNMENT INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, House and Senate leadership appoint lawmakers to interim committees. The members of the Local Government Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

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