

HOUSE BILL NO. 465

INTRODUCED BY K. WILLIAMS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING DEVELOPMENT AGREEMENTS BETWEEN A LOCAL
5 GOVERNING BODY AND A PROPERTY OWNER OR DEVELOPER UNDER CERTAIN CIRCUMSTANCES;
6 REQUIRING PUBLIC PARTICIPATION BEFORE A DEVELOPMENT AGREEMENT MAY BE EXECUTED;
7 REQUIRING A DEVELOPMENT AGREEMENT TO BE CONSISTENT WITH A GROWTH POLICY; REQUIRING
8 THAT A DEVELOPMENT AGREEMENT BE BASED ON APPROVED OR CONDITIONALLY APPROVED LAND
9 USES; PROVIDING THAT A DEVELOPMENT AGREEMENT DOES NOT REPLACE AND MAY NOT BE LESS
10 STRINGENT THAN EXISTING REGULATIONS; PROVIDING THE ITEMS THAT MAY BE INCLUDED IN A
11 DEVELOPMENT AGREEMENT; PROVIDING THAT A DEVELOPMENT AGREEMENT DOES NOT AUTHORIZE
12 IMPOSITION OF IMPACT FEES OR OTHER PAYMENTS; AND AMENDING SECTION 76-3-610, MCA."

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

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16 NEW SECTION. **Section 1. Development agreements.** (1) The purpose of this section is to:

17 (a) provide a mechanism for local governments and owners and developers of land to form agreements,
18 binding on all parties, regarding land use and development;

19 (b) promote innovation in land use planning and development regulation by allowing local governments
20 to form agreements with owners and developers of land that include terms, conditions, and other provisions for
21 land use and development that might not otherwise be authorized under chapter 2 and this chapter;

22 (c) promote stability and certainty in land use planning and development regulation by providing for the
23 full enforcement of development agreements by the local government and the owners and developers of land;
24 and

25 (d) provide a procedure for the adoption of development agreements that ensures participation and
26 opportunity to comment by members of the public and elected officials.

27 (2) For the purposes of this section, "development agreement" means an agreement between a local
28 governing body, alone or with other local governing bodies having jurisdiction, and an owner of property within
29 the governing body's jurisdictional boundaries or in an area proposed to be annexed into the jurisdictional
30 boundaries regarding development and use of the owner's property.

1 (3) (a) A local governing body may, by ordinance or resolution and after a public hearing, enter into a
2 development agreement with a person having ownership or control of real property within the governing body's
3 jurisdictional boundaries if:

4 (i) the governing body has adopted a growth policy that includes the elements required under 76-1-601
5 or has adopted a development pattern under 76-2-104 that includes the elements required for a growth policy
6 under 76-1-601; and

7 (ii) the development agreement is based on a subdivision application that has been approved or
8 conditionally approved under this chapter or on an approved zoning permit or variance authorized under chapter
9 2.

10 (b) A municipal governing body may, by ordinance or resolution and after a public hearing, enter into a
11 development agreement with a person having ownership or control of real property outside of the municipality's
12 boundaries if the property is part of a proposed annexation or agreement for provision of services.

13 (4) A development agreement:

14 (a) may apply only to property within an area for which zoning regulations have been adopted under
15 chapter 2, parts 1 through 3;

16 (b) has the force and full effect of a land use regulation adopted under chapter 2 or this chapter;

17 (c) must specify the time period during which the agreement is in effect;

18 (d) is enforceable only by a party to the agreement;

19 (e) must be consistent with the growth policy adopted under 76-1-601 or with a development pattern
20 adopted under 76-2-104 that includes the elements required for a growth policy under 76-1-601;

21 (f) must be recorded with the real property records of the county in which the property is located within
22 60 days of execution of the agreement;

23 (g) may not impose a development standard, mitigation measure, or other provision that is less stringent
24 than a regulation adopted by a local governing body under chapter 2 or this chapter unless the process for
25 obtaining a variance, exception, or adjustment pursuant to chapter 2 or this chapter has been followed;

26 (h) may not be used to alter an existing regulation adopted by a local governing body under chapter 2
27 or this chapter; and

28 (i) must include development standards, mitigation measures, and other provisions that apply to and
29 govern the development and use of the property for the duration specified in the agreement.

30 (5) Provisions of the development agreement may include but are not limited to:

- 1 (a) project elements such as permitted uses, residential and nonresidential densities, and building sizes;
- 2 (b) the amount and payment of impact fees or water or wastewater service connection charges imposed
- 3 or agreed to in accordance with any applicable provisions of state law, reimbursement provisions, other financial
- 4 contributions by the property owner, inspection fees, or dedications;
- 5 (c) design standards such as maximum building height, setbacks, drainage and water quality
- 6 requirements, landscaping, and other development features;
- 7 (d) housing costs;
- 8 (e) parks and preservation of open space;
- 9 (f) development phasing;
- 10 (g) review procedures and standards for implementing decisions;
- 11 (h) a schedule for implementation of applicable standards; and
- 12 (i) infrastructure standards and requirements.
- 13 (6) The execution of a development agreement is a proper exercise of a governing body's police power
- 14 and contract authority.
- 15 (7) A permit issued or approval of an activity granted by a local governing body to a property owner or
- 16 developer with whom a development agreement has been executed must be consistent with the development
- 17 agreement.
- 18 (8) (a) Except as provided in subsections (8)(b) and (8)(c), an amendment to a land use regulation
- 19 adopted under chapter 2 or this chapter after a development agreement has been executed may not affect the
- 20 provisions of the agreement during the time period that the agreement is in effect or during the implementation
- 21 schedule provided in the agreement.
- 22 (b) A development agreement may expressly allow for amendments to land use regulations to affect its
- 23 provisions.
- 24 (c) The provisions of subsection (8)(a) do not apply if a local governing body must impose a new
- 25 regulation or amend an existing regulation to protect public health or public safety.
- 26 (9) During the time period that the development agreement is in effect, the agreement is binding on the
- 27 parties to the agreement and their successors or assigns, including a municipality that assumes jurisdiction
- 28 through incorporation or annexation in an area in which a development agreement is in effect.
- 29 (10) This section does not authorize a local governing body to impose impact fees, inspection fees, or
- 30 dedications or to require any other financial contributions or mitigation measures except as expressly authorized

1 by other applicable provisions of state law.

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3 **Section 2.** Section 76-3-610, MCA, is amended to read:

4 **"76-3-610. Effect of approval of application and preliminary plat.** (1) (a) Upon approving or
5 conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with
6 a dated and signed statement of approval.

7 (b) This approval must be in force for not more than 3 calendar years or less than 1 calendar year or for
8 a period of time established in a development agreement executed pursuant to [section 1].

9 (c) At the end of ~~this~~ the period of time that the approval is in force, the governing body may, at the
10 request of the subdivider, enter into a development agreement or, in the absence of a development agreement,
11 extend its approval for ~~no more than 1~~ additional calendar year, ~~except that~~

12 (d) In the absence of a development agreement, the governing body may extend its approval for ~~a period~~
13 ~~of more than 1 year~~ additional 1-year periods if that ~~approval period extension~~ approval period extension is included as a specific condition
14 of a written agreement between the governing body and the subdivider, according to 76-3-507.

15 (2) Except as provided in 76-3-507 or [section 1], after the application and preliminary plat are approved,
16 the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat
17 approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

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19 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
20 integral part of Title 76, chapter 3, and the provisions of Title 76, chapter 3, apply to [section 1].

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