Montana State Legislature

2011 Session

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DATE 1-18-11
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MONTANA CODE ANNOTATED 2009

TITLE 76
LAND RESOURCES AND USE

STATE OF MONTANA
Governor Brian Schweitzer

MONTANA DEPARTMENT OF COMMERCE
Anthony J. Preite, Director

December 2009

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TITLE 76
LAND RESOURCES AND USE

Compiled by the
Montana Department of Commerce
Community Development Division
Community Technical Assistance Program (CTAP)

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TITLE 76
LAND RESOURCES AND USE

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2. Planning and Zoning.
3. Local Regulation of Subdivisions.
4. State Regulation of Subdivisions.

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Part 1

General Provisions

76-1-101. Planning boards authorized. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county or any combination thereof may create a planning board in order to promote the orderly development of its governmental units and its environs.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Growth policy" means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted

nis chapter on or after October 1, 1999.
.and use management techniques and incentives" include but are not limited to zoning
ubdivision regulations, and market incentives.
Market incentives" may include but are not limited to an expedited subdivision review
orized by 76-3-609, reductions in parking requirements, and a sliding scale of development

Mayor" means mayor of a city.
Neighborhood plan" means a plan for a geographic area within the boundaries of the
area that addresses one or more of the elements of the growth policy in more detail.
Person" means any individual, firm, or corporation.
Planning board" means a city planning board, a county planning board, or a joint city-
ng board.
Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan,
eplats or amended plats.
Public place" means any tract owned by the state or its subdivisions.
Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.
Utility" means any facility used in rendering service that the public has a right to demand.

y: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973;
11-3803(part); amd. Sec. 1, Ch. 266, L. 1979; amd. Sec. 4, Ch. 582, L. 1999; amd. Sec. 1, Ch.
amd. Sec. 1, Ch. 455, L. 2007.

104. Procedure to establish county planning board -- protest. (1) Before a county
d may be created, the board of county commissioners shall by resolution give public notice
to create such planning board and of a public hearing thereon by publication of notice of
e of hearing on such resolution in each newspaper published in the county not less than 15
30 days prior to the date of hearing.
resolution creating a county planning board shall not be adopted by the board of county
s if disapproved in writing, not later than 60 days after such hearing, by a majority of the
ors of the county residing outside the limits of the jurisdictional area of an existing city-
ng board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated
city and town in the county.

y: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971;
11-3801(part).

105. Role of county in formation of city planning board. (1) Prior to enacting an ordinance
planning board, the city council shall notify in writing the county commissioners of the
h the city is located of their intention to form a city planning board.
e board of county commissioners shall elect to form a city-county planning board or to
to form a city planning board and shall notify in writing the city council of its election
from receipt of notice of the city's intention to form a planning board. In the event the
ssioners so elect, the planning board to be so formed shall be a city-county planning

y: En. Sec. 5, Ch. 246, L. 1957; R.C.M. 1947, 11-3805.

76-1-106. Role of planning board. (1) To ensure the promotion of public health, safety, morals, convenience, or order or the general welfare and for the sake of efficiency and economy in the process of community development, if requested by the governing body, the planning board shall prepare a growth policy and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands; or

(d) the laying out and development of public ways and services to platted and unplatted lands.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(1), (2); amd. Sec. 5, Ch. 582, L. 1999; amd. Sec. 2, Ch. 599, L. 2003.

76-1-107. Role of planning board in relation to subdivisions and plats. (1) Except as provided in subsection (2), the governing body of any city, town, or county that has formed a planning board and adopted a growth policy pursuant to this chapter and subdivision regulations pursuant to chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

(2) The planning board may delegate to its staff its responsibility under subsection (1) to advise the governing body on any or all proposed minor subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971; R.C.M. 1947, 11-3842.1; amd. Sec. 6, Ch. 582, L. 1999.

76-1-108. City-county planning board as a zoning commission. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under 76-2-307.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(3).

76-1-109. Interaction of local government and city-county planning board. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board, but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(4).

76-1-110. Cooperation with planning board by state and local governments. Whenever the board undertakes the preparation of a growth policy, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, information, documents, and plans that have been prepared or, upon the request of the board, shall provide any information that relates to the board's activity.

History: En. Sec. 29, Ch. 246, L. 1957; R.C.M. 1947, 11-3829; amd. Sec. 7, Ch. 582, L. 1999.

76-1-111. Representation of county or additional cities or towns on existing boards. (1) Any city, county, or town or any combination of cities, counties, or towns wishing to be represented upon an

ıg board may, by agreement of the governing body or bodies then represented on the
epresentation on the board and share in the membership duties and costs of the board
reeable to the governing body or bodies creating the board.
membership, as well as the jurisdictional area of any board, may be increased to provide
ion and planning of any additional cities, counties, or towns seeking representation.
city, county, or town that becomes represented upon an existing planning board
section may appropriate funds for expenses necessary to cover the costs of
Subject to 15-10-420, the governing bodies of any represented city, county, or town
property that is added to the jurisdictional area of an existing board by representation a
board purposes under procedures set forth in Title 7, chapter 6, part 40.

: En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971; R.C.M. 1947, 11-3815; amd.
4, L. 1999; amd. Sec. 189, Ch. 574, L. 2001.

.2. **Joint or consolidated planning boards.** (1) Any existing city, county, or city-county
may form a joint or consolidated planning board with any other existing city, county, or
ıning board or with any combination of these boards.
manner of combination must be by interlocal agreement of the cities, counties, and
ted on the existing planning boards pursuant to Title 7, chapter 11, part 1.
interlocal agreement must:
e the name of the combined board;
cify whether a joint or combined board is formed;
cify the representation, means and manner of appointment, membership duties, and
ing costs of the combined board which may, subject to subsection (6), be on any basis
e governing bodies of the cities, counties, and towns represented on the existing
s.
consolidated board is formed, the existing city, county, and city-county planning boards
ed and the consolidated board has the rights, duties, powers, and obligations of the
ıg boards.
joint board is formed, the existing planning boards may not be dissolved and the joint
ights, duties, powers, and obligations that are contained in the interlocal agreement.
mbership of any city-county board formed pursuant to this section must have
consistent with the requirements of part 2 of this chapter.

: En. 11-3815.1 by Sec. 1, Ch. 101, L. 1975; R.C.M. 1947, 11-3815.1; amd. Sec. 1, Ch. 274,

.3. **Effect of chapter on natural resources.** (1) Except as provided in subsection (2),
:hapter may be considered to authorize an ordinance, resolution, or rule that would
nplete use, development, or recovery of any mineral, forest, or agricultural resources by
eof.
complete use, development, or recovery of a mineral by an operation that mines sand
an operation that mixes concrete or batches asphalt on a site that is located within a
ı zoned as residential are subject to the zoning regulations adopted under Title 76,

: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959; R.C.M. 1947, 11-3853; amd.

Sec. 1, Ch. 408, L. 1991.

Part 2

Membership

76-1-201. Membership of city-county planning board. (1) Except as provided in subsection (2), a city-county planning board consists of no fewer than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member to be appointed by the board of supervisors of a conservation district provided for in 76-15-311 from the members or associate members of the board of supervisors, subject to approval of the members provided for in subsections (1)(a) through (1)(d).

(2) Subsection (1)(e) does not apply if there is no member or associate member of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In that case, the ninth member of the city-county planning board must be selected by the eight officers and citizen members pursuant to subsections (1)(a) through (1)(d), with the consent and approval of the board of county commissioners and the city council.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(part); amd. Sec. 1, Ch. 192, L. 1979; amd. Sec. 1, Ch. 509, L. 1985; amd. Sec. 1, Ch. 151, L. 2007.

76-1-202. Qualifications of citizen members of city-county planning board. (1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)Ap. p. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; Ap. p. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; Sec. 11-3810, R.C.M.

Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. .0(part), 11-3812(part), 11-3813.

-203. Term of members of county and city-county planning boards. The terms of the o are officers of any governmental unit represented on the board shall be coextensive with ive terms of office to which they have been elected or appointed; the terms of the other ill be 2 years, except that the terms of the first members appointed shall be fixed by nd rule of the governing bodies represented on the board for 1 or 2 years in order that a mber of terms shall expire in any year.

ry: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. ec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(3).

204. Vacancies on county and city-county planning boards. (1) Vacancies occurring on the :ial members and by death or resignation of citizen members shall be filled for the 'm by the governing bodies having appointed them.
acancies occurring in citizen members on the county planning board at the end of a term by the board of county commissioners.
acancies occurring in citizen members on the city-county planning board at the end of a filled alternately by the mayor and the board of county commissioners represented on the encing with the mayor.
the event more than one city is represented on a board, the representation and s to be made by the respective cities and counties shall be by agreement and rule of the

ry: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971; R.C.M. 1947, 11-3811.

205 through 76-1-210 reserved.

211. Membership of county planning board. (1) County planning boards consist of not members appointed by the board of county commissioners. At least one member of a ng board existing on or formed after July 1, 1973, must be a member of the governing nservation district as provided for in chapter 15, an associate member of a conservation ated by the governing board of a conservation district, or a member of a state cooperative t if officers of either of the districts or the designated associate member of a conservation in the county.
a city or town subsequently becomes represented on the county planning board pursuant dditional members of the planning board representing the cities or towns must be the respective city councils.

y: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. c. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(2); amd. Sec. 2, 07.

212. Citizen members of county planning board. (1) The citizen members of the county d shall be resident freeholders in the area over which the planning board has jurisdiction. ny citizen appointee may be removed from office by a majority vote of the governing body

of the governmental unit represented by such appointee.

History: (1)En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3812(part), 11-3813.

76-1-213 through 76-1-220 reserved.

76-1-221. Membership of city planning board. (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: (1)En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959; Sec. 11-3804, R.C.M. 1947; (2)En. Sec. 7, Ch. 246, L. 1957; Sec. 11-3807, R.C.M. 1947; R.C.M. 1947, 11-3804(part), 11-3807.

76-1-222. City council member of city planning board. (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member must be coextensive with the term of office to which the member has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless the member's term is terminated as provided in this part.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957; R.C.M. 1947, 11-3806; amd. Sec. 2511, Ch. 56, L. 2009.

76-1-223. County representative for city planning board. When a city council has enacted an ordinance creating a city planning board or when a vacancy occurs in the county's membership on the city planning board, the board of county commissioners of the county in which the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. The mayor may not reject or refuse to appoint to the city planning board a representative designated by a board of county commissioners as provided in this section, but if the county fails to designate a representative, then the mayor may appoint as a representative of the county a person of the mayor's own choosing and at the mayor's sole discretion.

History: En. Sec. 14, Ch. 246, L. 1957; R.C.M. 1947, 11-3814; amd. Sec. 2, Ch. 266, L. 1979; amd. Sec. 1, Ch. 269, L. 2003.