

SUBDIVISIONS

When land is subdivided, that division of land is subject to the requirements of both chapter 3 (Subdivision and Platting Act) and chapter 4 (Sanitation in Subdivisions Act) of Title 76, Montana Code Annotated. An explanation of each chapter follows.

SANITATION IN SUBDIVISIONS (Title 76, chapter 4)

The Montana Department of Environmental Quality (DEQ) sets standards for the review and approval of water systems for subdivisions to protect the quality of water for public uses and to assure that adequate sanitation facilities can be constructed, operated, and maintained to support each division of land. Review under the sanitation in subdivisions regulations is limited to sanitation facilities, including water supply, sewage disposal, solid waste disposal, and storm drainage systems. Review of certain subdivisions and enforcement of these requirements may be delegated to a local department or board of health.

1. Types of Activities Regulated

Divisions of land that create a parcel of less than 20 acres and any condominium, mobile home park, and recreational vehicle park, regardless of size, are subject to sanitary review. A person may not dispose of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision until the subdivision has been reviewed and approved by the Montana Department of Environmental Quality (DEQ) or by the local reviewing authority if the DEQ has certified a local department or board of health. Subdivisions within the jurisdictional areas that have growth policies that meet the requirements described in statute (76-4-127, MCA), or within a first-class or second-class municipality and for which municipal water, sewage disposal, solid waste, and storm drainage will be provided are not subject to review, but will be required to provide a notice of certification of adequate municipal facilities (municipal facilities checklist).

Statute: 76-4-101, *et seq.*, MCA (Sanitation in Subdivisions Act)

Rule: ARM 17.36.101-17.36.800, *et seq.*, local regulations
ARM 17.36.900, *et seq.*, minimum standards

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY
Water Quality Division
Public Water & Subdivisions Bureau

LOCAL GOVERNMENT
Health Department

2. Application Requirements

An applicant planning to subdivide land must submit a completed subdivision application form, supporting information (see ARM 17.36.103), and public comment collected by the governing body regarding water and sanitation information to the DEQ. If the DEQ has certified a local department or board of health to review subdivisions, the application must be submitted to the local reviewing authority. Application forms are available from the DEQ or on the department website at <http://deq.mt.gov/Water/PWSUB/sub/subreviewforms>.

Statute: 76-3-504 (1)(g)(iii)(B), 76-3-604, 76-3-622, 76-4-104, and 76-4-125, MCA

Rule: ARM 17.36.101-17.36.104

3. Review Procedures

- A. The DEQ has 55 days for final action on receipt of a subdivision application, resubmittal or additional information provided by the applicant. If an Environmental Impact Statement is required, final action must be taken within 120 days. See MONTANA ENVIRONMENTAL POLICY ACT, p. 132.
- B. If a local government or board of health has been certified as the reviewing authority, it has 45 days to recommend action on the application to the DEQ. The DEQ then has 10 days to take final action. If the application is denied, the statutory time limits begin again once a response has been received.

Statute: 76-4-104 and 76-4-125, MCA

Rule: ARM 17.36.106 and 17.36.108

4. Criteria

The DEQ's rules set standards and procedures relating to size of lots, topography, geology, hydrology, type of facilities proposed, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife. There must be adequate water supply, drainage, sewage, and solid waste disposal systems. The DEQ will issue a certificate of subdivision approval when it is satisfied that adverse impacts to state waters will not occur and the water supply is of adequate quantity, quality, and

176 SUBDIVISIONS

dependability; the sewage disposal facility is sufficient in terms of capacity and dependability; and the solid waste disposal and storm drainage plans and designs are in accordance with state and local laws and regulations.

Rule: ARM 17.36.101, *et seq.*

5. Fees

A schedule of fees is set out in the rules. Contact the DEQ, see the fee schedules in the rules, or the fee checklist with the application materials.

Statute: 76-4-105, MCA

Rule: ARM 17.36.801, *et seq.*

6. Additional Information

If there is a denial of approval of the subdivision that relates to environmental health facilities, the aggrieved developer may request a hearing before the Board of Environmental Review.

Statute: 76-4-126, MCA

SUBDIVISION AND PLATTING ACT (Title 76, chapter 3)

The purpose of the Montana Subdivision and Platting Act is to promote orderly development and protect public health and safety. The Act requires local governments to adopt subdivision regulations that are consistent with state law. Subdivision regulations are one of the three basic legal elements local governments are authorized to use to address growth and development. Comprehensive plans (or growth policies) and zoning regulations are the other two.

1. Types of Activities Regulated

All divisions of land creating parcels less than 160 acres in size for sale, rent, lease, or other conveyance, including condominiums and manufactured home or recreational vehicle parks, are regulated under the Montana Subdivision and Platting Act and rules pursuant to the Act, unless exempt (see next page).

Title to land may not be sold or transferred until a certificate of survey or a final subdivision plat (if required) approved by the governing body has been filed with the county clerk and recorder.

Exemptions: There are numerous exemptions outlined in Title 76, chapter 3, part 2, MCA, that exclude certain divisions of land from surveying requirements, local subdivision review, or both. As an example, local subdivision review is not required for the following divisions of land under certain conditions, although applicable zoning regulations apply and a certificate of survey and certification that property taxes and special assessments have been paid are required: divisions for the purpose of relocation of common boundaries, a one-time gift or sale to an immediate family member (one per family member per county), and transfers that include a covenant running with the land that limits the use of the land exclusively to agriculture.

Exemptions may not be used for the purpose of evading the Montana Subdivision and Platting Act. Local governments must adopt evasion criteria as part of their subdivision regulations. These criteria are used to evaluate whether or not a proposed exemption represents an intention to evade the requirements of the Act.

Statute: 76-3-101, *et seq.*, Title 76, chapter 3, part 2, and 76-3-302, MCA

Rule: ARM 24.183.1101, *et seq.*

Contact: LOCAL GOVERNMENT

2. Review Procedures

- 1) General Information: Cities, counties, and towns are required to adopt subdivision regulations that establish procedures for submission and review of subdivision plats. The procedures and requirements vary depending on the size and nature of the proposed subdivision and whether or not a planning board has been appointed. A general overview of the procedures that apply to most major subdivisions (a *major subdivision* creates six or more parcels; a *minor subdivision* creates five or fewer parcels) is provided below, but all of Title 76, chapter 3, parts 5 and 6 and local regulations should be consulted.

For jurisdictions with planning boards, the review may be two-tiered: the planning board conducts the initial review and acts in an advisory capacity, and the final decision is made by the governing body. For areas without planning boards, the governing body is the only reviewing entity. Whether or not a hearing or a subsequent hearing will be held depends on the

circumstances. In most jurisdictions, a subdivision administrator (planner or sanitarian) will be the subdivider's initial contact person and liaison.

- 2) The state Act requires that local subdivision regulations provide for a preapplication meeting between the subdivider and subdivision administrator. The Act also requires that the local governing body provide certain information to the subdivider at the preapplication stage. Local regulations may also require a list of information that must be submitted by the subdivider at the preapplication stage.
- 3) A subdivision application, including, in most cases, either an environmental assessment or a summary of probable impacts, must be submitted to the governing body or its authorized agent or agency. A fee may be assessed by the governing body to defray the expense of subdivision review.
- 4) The local governing body, after notice and a public hearing (if a hearing is required), may approve, conditionally approve, or deny the proposed subdivision. Depending on the size of the major subdivision, the governing body must make its final decision within 60 or 80 working days of a determination that the application is sufficient for review (35 working days for certain minor subdivisions) unless the parties mutually agree to an extension or suspension of the review period or a subsequent public hearing is scheduled upon the receipt of new information regarding the subdivision application. A penalty may be assessed if the governing body does not act on a major subdivision within the statutory time limits.
- 5) The governing body shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, if required, to determine whether a subdivision application should be approved, conditionally approved, or denied by the governing body. As part of the subdivision review process, the governing body must collect public comment submitted at a hearing or hearings regarding the water and sanitation information presented and make the comments available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat. The subdivider must, as part of the application for sanitation approval, forward the comments provided by the governing body to the DEQ or its certified agent for subdivisions that will create one or more parcels containing less than 20 acres and to the local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

- 6) In general, the developer of a major subdivision and some minor subdivisions must donate a portion of the subdivided land for public parks. A cash contribution may be accepted in lieu of a land donation.
- 7) Once the governing body approves, conditionally approves, or denies the subdivision, it must provide a written statement to the applicant within 30 days following its decision. The written statement must identify the regulations and statutes used in reaching the decision and an explanation of how they apply; the facts and conclusions that are the basis for the decision, including documents, testimony, or other materials that form the basis of the decision; the conditions that must be satisfied before the final plat may be approved; and information regarding the appeal process.
- 8) If a governing body approves or conditionally approves a subdivision, it grants preliminary plat approval to the applicant. The preliminary plat may be approved for one to three years. During this time frame, the subdivider must meet the conditions of preliminary plat approval, file for, and obtain final plat approval before it may move forward with the subdivision. Certain extensions to the preliminary plat time frame are permitted under the Act.
- 9) Final subdivision plats must be prepared and certified by a licensed professional land surveyor. The final plat and certificate of title must be submitted to the governing body. The final plat must be approved by the governing body only if it conforms with the conditions imposed on the preliminary plat and all property taxes and special assessments have been paid.
- 10) Compliance with the Sanitation in Subdivisions Act is required before a final plat that creates one or more parcels of less than 20 acres may be filed with the county clerk and recorder. See SANITATION IN SUBDIVISIONS, p. 174.
- 11) The subdivider may bring an action in District Court to recover damages caused by a decision of the governing body that is arbitrary or capricious under the Subdivision and Platting Act. Certain other aggrieved parties, including contiguous landowners and county commissioners, may appeal a decision on a preliminary or final plat to the District Court within 30 days from the date of the written decision.

Statute: 76-3-402, 76-3-501 through 76-3-510, 76-3-601 through 76-3-612, 76-3-615, 76-3-616, 76-3-620 through 76-3-622, 76-3-625, and 76-4-122, MCA

3. **Subdivision Review Criteria**

The Montana Subdivision and Platting Act establishes minimum requirements for local subdivision regulations. Local subdivision regulations include both procedural and substantive requirements. Among other requirements, the regulations must include standards for design of lots, streets, and roads; grading and drainage; and for water supply, sewage, and solid waste disposal at least as stringent as Montana Department of Environmental Quality rules.

In reviewing a proposed subdivision, the governing body must consider: 1) compliance with local subdivision regulations and the Title 76, chapter 3, part 6 review procedure; 2) compliance with surveying requirements; 3) provision and recording of legal and physical access to each lot within the subdivision; 4) provision of easements within and to the proposed subdivision for any planned utilities; and 5) the subdivision's impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety (*primary criteria*). In specific circumstances, the local government may waive certain requirements and procedures in areas where a growth policy and zoning regulations are in place.

Statute: 76-3-501 through 76-3-511, 76-3-608, and 76-3-616, MCA

4. **Water and Sanitation Information**

Unless exempt from review under Title 76, chapter 4, MCA, (see SANITATION IN SUBDIVISIONS, p. 174), information about water and sanitation must be submitted to the governing body, or its agent or agency, with the subdivision application for a proposed subdivision that will include new water supply or wastewater facilities, including gray water irrigation. Public comment about the water and wastewater facilities will be provided to the subdivider for submission to the DEQ.

Statute: 76-3-604 and 76-3-622, MCA