

# TITLE 76

## LAND RESOURCES AND USE

- Ch.
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  2. Planning and Zoning.
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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; H.C.M. 1947, 11-3801(part).

Cross-References

Building regulations — appointment of zoning commission, Title 76, ch. 2, part 3.

**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; H.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 pursuant to this chapter on or after October 1, 1999.
- (5) "Land use management techniques and incentives" include but are not limited to zoning regulations, subdivision regulations, and market incentives.
- (6) "Market incentives" may include but are not limited to an expedited subdivision review process authorized by 76-3-609, reductions in parking requirements, and a sliding scale of development review fees.
- (7) "Mayor" means mayor of a city.
- (8) "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

(9) "Person" means any individual, firm, or corporation.

(10) "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.

(11) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and includes replats or amended plats.

(12) "Public place" means any tract owned by the state or its subdivisions.

(13) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(14) "Utility" means any facility used in rendering service that the public has a right to demand.

**History:** En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; R.C.M. 1947, 11-3803(part); amd. Sec. 1, Ch. 266, L. 1979; amd. Sec. 4, Ch. 582, L. 1999; amd. Sec. 1, Ch. 599, L. 2003; amd. Sec. 1, Ch. 455, L. 2007.

**Compiler's Comments**

**2007 Amendment:** Chapter 455 inserted definition of land use management techniques and incentives and definition of market incentives; and made minor changes in style. Amendment effective May 8, 2007.

**76-1-104.** Procedure to establish county planning board — protest. (1) Before a county planning board may be created, the board of county commissioners shall by resolution give public notice of their intent to create such planning board and of a public hearing thereon by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than 15 or more than 30 days prior to the date of hearing.

(2) A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than 60 days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated limits of each city and town in the county.

**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).

**Cross-References**

Publication of legal notices, 7-5-2411: Title 18, ch. 7, part 2.

**76-1-105.** Role of county in formation of city planning board. (1) Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing the county commissioners of the county in which the city is located of their intention to form a city planning board.

(2) The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within 30 days from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect, the planning board to be so formed shall be a city-county planning board.

**History:** 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. 1967; 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; K.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; H.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 existing planning board may, by agreement of the governing body or bodies then represented on the board, obtain representation on the board and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership, as well as the jurisdictional area of any board, may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town that becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of representation. Subject to 15-10-420, the governing bodies of any represented city, county, or town may levy on all property that is added to the jurisdictional area of an existing board by representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 40.

**History:** En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971; R.C.M. 1947, 11-3815; amd. Sec. 137, Ch. 584, L. 1999; amd. Sec. 189, Ch. 574, L. 2001.

**76-1-112.** Joint or consolidated planning boards. (1) Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board or with any combination of these boards.

(2) The manner of combination must be by interlocal agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.

(3) The interlocal agreement must:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties, and manner of sharing costs of the combined board which may, subject to subsection (6), be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing city, county, and city-county planning boards must be dissolved and the consolidated board has the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning boards may not be dissolved and the joint board has the rights, duties, powers, and obligations that are contained in the interlocal agreement.

(6) Membership of any city-county board formed pursuant to this section must have representation consistent with the requirements of part 2 of this chapter.

History: **En. 11-3815.1** by **Sec. 1, Ch. 101, L. 1975; R.C.M. 1947, 11-3815.1; amd. Sec. 1, Ch. 274, L. 1997.**

**76-1-113. Effect of chapter on natural resources.** (1) Except as provided in subsection (2), nothing in this chapter may be considered to authorize an ordinance, resolution, or rule that would **prevent** the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an **operation** that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2.

History: **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. 1966; 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; nmd. Sec. 1, Ch. 151, L. 2007.**

### Compiler's Comments

**2007 Amendment:** Chapter 151 in (1)(e) near beginning after "member" substituted "to be appointed by" for "to be selected by the eight officers and citizen members hereinabove provided for from the members of" and at end inserted "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)"; in (2) in first sentence near middle after "**member**" inserted "or associate member"; and made minor **changes** in style. Amendment effective April 6, 2007.

**Transition: Section 3, Ch. 151, L. 2007,** provided: "(1) The **members** of a city-county planning board, established pursuant to 76-1-201, or a county planning board, established pursuant to 76-1-211, who are **members** on [the effective date of this act] may continue to serve the remainder of their terms as described under the provisions of 76-1-203.

(2) Appointments to a city-county planning board after [the effective date of this act] must be made as described in 76-1-201. Appointments to county planning board after [the effective date of this act] **must** be **made as** described in 76-1-211." Effective April 6, 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. 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, 11-3810(part), 11-3812(part), 11-3813.****

76-1-203. **Term** of members of county and city-county planning boards. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

**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(3).**

**76-1-204.** Vacancies on county and city-county planning boards. (1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.

(2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.

(3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.

(4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

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

76-1-205 through 76-1-210 reserved.

76-1-211. Membership of county planning board. (1) County planning boards consist of not less than five members appointed by the board of county commissioners. At least one member of a county planning board existing on or formed after July 1, 1973, must be a member of the governing board of a conservation district as provided for in chapter 15, an associate member of a conservation district designated by the governing board of a conservation district, or a member of a state cooperative grazing district if officers of either of the districts or the designated associate member of a conservation district reside in the county.

(2) If a city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing the cities or towns must be appointed by the respective city councils.

**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(2); amd. Sec. 2, Ch. 151, L. 2007.**

**Compiler's Comments**

**2007 Amendment:** Chapter 151 in (1) in second sentence near middle after "chapter 15" inserted "or an associate member of a conservation district designated by the governing board of a conservation district, or a member of" and near end after "either" inserted "of the districts or the designated associate member of a conservation district": and made minor changes in style. Amendment effective April 6, 2007.

**Transition:** Section 3, Ch. 151, L. 2007, provided: "(1) The members of a city-county planning board, established pursuant to 76-1-201, or a county planning board, established pursuant to 76-1-211, who are members on [the effective date of this act] may continue to serve the remainder of their terms as described under the provisions of 76-1-203.

(2) Appointments to a city-county planning board after [the effective date of this act] must be made as described in 76-1-201. Appointments to a county planning board after [the effective date of this act] must be made as described in 76-1-211." Effective April 6, 2007.

**76-1-212.** Citizen members of county planning board. (1) The citizen members of the county planning board shall be resident freeholders in the area over which the **planning** board has jurisdiction.

(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) **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; H.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 shall be coextensive with the term of office to which he 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 his term is terminated as hereinafter provided.

(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; H.C.M. 1947, 11-3806.

**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.

**76-1-224.** Citizen members of city planning board. (1) The citizen members shall:

- (a) be qualified by knowledge and experience in matters pertaining to the development of the city: and
  - (b) hold no other office in the city **government**.
- (2) Any **citizen** appointee may be removed from office by a majority vote of the governing body of the city.

**History:** En. **Secs. 8, 13**, Ch. 246, L. 1957; amd. **Secs. 3, 5**, Ch. 247, L. 1963; R.C.M. 1947, 11-3808, 11-3813; amd. **Sec. 3**, Ch. 266, L. 1979.

### Part 3 Organization and Administration

#### Part Cross-References

Right of public participation. Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Conut.: Title 2, ch. 3, part 2.

Expense allowances for state, 2-18-501 through 2-18-503.

**76-1-301. Planning board meetings.** (1) The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

(2) Special meetings of the planning board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all members, at least 2 days in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting or if all members are present at the special meeting.

History: En. Secs. 16, 17, Ch. 246, L. 1957; R.C.M. 1947, 11-3816, 11-3817.

**76-1-302. Planning board officers.** At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: En. Sec. 21, Ch. 246, L. 1957; H.C.M. 1947, 11-3821.

**76-1-303. Offices.** The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: En. Sec. 23, Ch. 246, L. 1957; R.C.M. 1947, 11-3823.

**76-1-304. Quorum — official action.** (1) A majority of members constitutes a quorum.

(2) An action of the planning board is not official unless a quorum is present and unless the action is authorized by a majority of the quorum at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957; amd. Sec. 6, Ch. 247, L. 1963; R.C.M. 1947, 114818; amd. Sec. 1, Ch. 172, L. 2007.

#### Compiler's Comments

*2007 Amendment:* Chapter 172 in (2) near middle after "unless" inserted "a quorum is present and unless the action is" and after "majority of" substituted "the quorum" for "members of the board"; and made minor changes in style. Amendment effective April 10, 2007.

**76-1-305. Administration of board.** To effectuate the purpose of this chapter, the board shall have the power and duty to:

(1) exercise general supervision of and make regulations for the administration of the affairs of the board;

(2) prescribe uniform rules pertaining to investigations and hearings;

(3) keep an accurate and complete record of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the board;

(4) make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction;

(5) prepare, publish, and distribute reports, proposed ordinances and proposed resolutions, and other material relating to the activities authorized under this chapter.

History: En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; H.C.M. 1947, 11-3824(part).

**76-1-306. Staff — service contracts.** The governing body shall assign staff employed by the governing body to assist the planning board in conducting its duties. The planning board may delegate to assigned staff the authority to perform ministerial acts in all cases except when final action of the planning board is necessary. The governing body may make contracts for special or temporary services and any professional services.

History: (1), (3) En. Sec. 22, Ch. 246, L. 1957; Sec. 11-3822, R.C.M. 1947; (2) En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; R.C.M. 1947, 11-3822, 11-3824(part); amd. Sec. 3, Ch. 599, L. 2003.

**76-1-307. Compensation and expenses of board members and employees.** (1) The members of planning boards shall receive no salary for serving on the planning board but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state

transportation reimbursements and allowable expenses incurred in attending planning board meetings.

(2) When the planning board determines that it is necessary for members or employees to attend a regional or national conference or interview in another city, county, or state dealing with planning or related problems, the planning board may pay the actual expenses of the attending members or employees provided the amount has been made available in the board's appropriation.

**History:** (1) **En. Sec. 19, Ch. 246, L. 1957; amd. Sec. 1, Ch. 291, L. 1974; Sec. 11-3819, R.C.M. 1947; (2) En. Sec. 20, Ch. 246, L. 1957; amd. Sec. 7, Ch. 247, L. 1963; Sec. 11-3820, R.C.M. 1947; R.C.M. 1947, 11-3819, 11-3820.**

#### **Part 4 Financial Administration**

**76-1-401. Fiscal administration.** (1) To effectuate the purpose of this chapter, the board shall have the power and duty to:

- (a) supervise the fiscal affairs and responsibilities of the board;
- (b) prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

(2) The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this chapter.

**History:** (1) **En. Sec. 24, Ch. 246, L. 1967; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; (2) En. Sec. 26, Ch. 246, L. 1967; Sec. 11-3826, H.C.M. 1947; R.C.M. 1947, 11-3824(part), 11-3826.**

**76-1-402. Funding of board operation.** (1) After a city council has by ordinance, a board of county commissioners has by ordinance and resolution, or a city council and board of county commissioners have by ordinance and resolution created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

(2) When a planning board has been created by agreement of more than one governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

**History:** **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(1), (2).**

**76-1-403. Tax levy by county for certain county planning districts authorized.** When a county planning board has been established, the board of county commissioners may create a planning district that must include the property that lies outside the limits of the jurisdictional area, as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established, as well as that property that lies outside the limits of any incorporated cities and towns. Subject to 15-10-420, the board of county commissioners may levy a tax on the taxable value of all taxable property located within the planning district for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

**History:** **En. Sec. 26, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(5); amd. Sec. 4, Ch. 266, L. 1979; amd. Sec. 138, Ch. 684, L. 1999; amd. Sec. 190, Ch. 574, L. 2001.**

**76-1-404. Tax levy by county for city-county planning board authorized.** When a city-county planning board has been established, the board of county commissioners may create a planning district that must include the property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 that lies outside the limits of any incorporated cities and towns. Subject to 15-10-420, the board of county commissioners may levy on the taxable value of all taxable property located within the planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

**History:** **En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(4); amd. Sec. 139, Ch. 684, L. 1999; amd. Sec. 191, Ch. 574, L. 2001.**

**76-1-405. Repealed.** Sec. 253, Ch. 574, L. 2001.

History: En. **Sec. 25**, Ch. 246, L. 1957; **amd. Sec. 9**, Ch. 247, L. 1963; **amd. Sec. 7**, Ch. 273, L. 1971; R.C.M. **1947, 11-3825(part)**; **amd. Sec. 140**, Ch. 584, L. 1999.

**76-1-406.** Tax levy by municipalities authorized. Subject to 15-10-420, the governing body of any city or town represented on a planning board may levy a tax upon the taxable value of all taxable property located within the city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 40.

History: En. **Sec. 25**, Ch. 246, L. 1957; **amd. Sec. 9**, Ch. 247, L. 1963; **amd. Sec. 7**, Ch. 273, L. 1971; R.C.M. **1947, 11-3825(3)**; **amd. Sec. 5**, Ch. 266, L. 1979; **amd. Sec. 141**, Ch. 584, L. 1999; **amd. Sec. 192**, Ch. 574, L. 2001.

**76-1-407.** Repealed. **Sec. 253**, Ch. 574, L. 2001.

History: En. **Sec. 25**, Ch. 246, L. 1957; **amd. Sec. 9**, Ch. 247, L. 1963; **amd. Sec. 7**, Ch. 273, L. 1971; R.C.M. **1947, 11-3825(part)**; **amd. Sec. 142**, Ch. 584, L. 1999.

**76-1-408.** Acceptance and administration of gifts and donations. (1) A city, county, or city-county planning board organized pursuant to the provisions of this chapter is hereby empowered and given the right to:

(a) accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest or any property (real, personal, or **mixed**) or any **improved** or **unimproved** park or playground; **and**

(b) utilize, hold, or dispose of the same for planning purposes not inconsistent with the provisions of this chapter.

(2) Any **money** so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing **officer** of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board.

History: En. **Sec. 27**, Ch. 246, L. 1957; **amd. Sec. 1**, Ch. 133, L. 1965; R.C.M. **1947, 11-3827(part)**.

**76-1-409.** Acceptance and **administration** of government funds and **services**. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, **from** state or local governments or their agencies and instrumentalities, or from civic sources; may contract with respect thereto; and may provide such information and reports as may be necessary to secure such financial aid.

History: En. **Sec. 27**, Ch. 246, L. 1957; **amd. Sec. 1**, Ch. 133, L. 1965; R.C.M. **1947, 11-3827(part)**; **amd. Sec. 6**, Ch. 266, L. 1979.

**76-1-410.** Planning fees — limit. (1) Governing bodies that have committed in a resolution to adopting or that have adopted a growth policy that includes the provisions of 76-1-601(4)(c) may **assess** planning fees to pay for services that fulfill the **purposes** of Title 76, chapter 1. The planning fees are in addition to any other fees authorized by law and may be collected as part of either subdivision applications or zoning permits.

(2) Planning fees may not exceed \$50 for each residential lot or unit or \$250 for each commercial, industrial, or other type of lot or unit.

History: En. **Sec. 3**, Ch. 455, L. 2007.

**Compiler's Comments**

**Effective Date:** Section 9, Ch. 455, L. 2007, provided: "[**Trisact**] is effective on passage and approval." Approved May 8, 2007.

## Part 5 Jurisdictional Area

**76-1-501.** Jurisdictional area of county planning board. The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507. Should any city or town become represented on the county planning board pursuant to 76-1-111, the jurisdictional area of the county planning board shall be extended to include that city or town.

History: En. 11-3830.2 by **Sec. 8**, Ch. 273, L. 1971; R.C.M. **1947, 11-3830.2(1)**.

**76-1-502.** Filing of map of jurisdictional area of county planning board — revision of boundaries. The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(2).

**76-1-503.** Resolution of conflicts involving jurisdictional area of county planning boards. (1) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in 76-1-502 and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(2) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing bodies, and a map showing the boundary lines so agreed upon shall be filed as provided in 76-1-502 and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(3), (4).

**76-1-504.** Jurisdictional area of city-county planning board. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1969; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; H.C.M. 1947, 11-3830(part).

**76-1-505.** Extension of boundaries of city-county planning board jurisdictional area. (1) The boundaries of the jurisdictional area can be extended further than 4 ½ miles from the limits of the cities only upon petition signed by 5% or more of the resident freeholders living in excess of 4 ½ miles and not more than 12 miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits and upon presentation of said petition to the board of county commissioners.

(2) Thereafter, the board of county commissioners must by resolution set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition by publication of notice of time and place of hearing on said petition and resolution. Said notice is to be published in a newspaper published in the county not less than 10 or more than 20 days prior to the date of said hearing. Thereafter, the boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than 12 miles beyond the limits of any city within the jurisdictional area.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1969; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

#### Cross-References

Publication of legal notices, 7-5-2411: Title 18, ch. 7, part 2.

**76-1-506.** Filing of map of jurisdictional area of city-county planning board — revision of boundaries. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the

governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

**History:** En. Sec. 30, Ch. 246, L. 1967; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(2).

**76-1-507.** Resolution of conflicts over jurisdictional areas of several **city-county** planning boards. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be **determined** by agreement between the planning boards involved with the approval of their respective governing bodies. A map showing the boundary lines so agreed upon and approved shall be filed as provided in 76-1-506 and thereafter shall **fix** the limit of territorial jurisdiction of the respective planning boards.

**History:** En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(3).

**76-1-508.** Planning projects outside city-county planning board jurisdictional area — broad construction. (1) Any city-county planning board organized pursuant to the provisions of this chapter is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county and outside of the jurisdictional area of said city-county planning board as defined in 76-1-504 through 76-1-507.

(2) Such authority to conduct specific planning projects outside of the **jurisdictional** area of the city-county planning board upon request of the board of county commissioners shall be broadly **construed** so as to enable the county to qualify under **the** provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

**History:** En. Sec. 1, Ch. 190, L. 1965; R.C.M. 1947, 11-3830.1.

## Part 6 Growth Policy

### Part Cross-References

Compliance with growth policy required for annexation. 7-2-4734(3).

Publication of legal notices, 7-6-2411; Title 18, ch. 7, part 2.

Compliance required by cemetery associations, 35-20-201.

**76-1-601.** Growth policy — contents. (1) A growth policy may cover all or part of the **jurisdictional** area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the **jurisdictional area**, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local **services**;

(vi) public facilities;

(vii) natural resources; and

(viii) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements;

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural **resources**; and

- (vii) other elements proposed by the planning board and adopted by the governing bodies;
- (d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);
- (e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater **treatment** facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;
- (f) an implementation strategy that includes:
  - (i) a timetable for implementing the growth policy;
  - (ii) a list of conditions that will lead to a revision of the growth policy; and
  - (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;
- (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:
  - (i) if a governing body is a city or **town**, how the governing body will coordinate and cooperate with the **county** in which the city or town is located on matters related to the growth policy;
  - (ii) if a governing **body** is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the **growth** policy;
- (h) a statement explaining how the governing bodies will:
  - (i) define the criteria in 76-3-608(3)(a); and
  - (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);
- (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
- (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
  - (i) delineate the wildland-urban interface; and
  - (ii) adopt regulations requiring:
    - (A) defensible space **around** structures;
    - (B) adequate **ingress** and egress to and from structures and developments to facilitate fire suppression activities; and
    - (C) adequate water supply for fire protection.
- (4) A growth policy may:
  - (a) include **one** or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.
  - (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
  - (c) establish an **infrastructure** plan that, at a minimum, includes:
    - (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next **20** years;
    - (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;
    - (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next **20** years;
  - (iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;
  - (v) for cities and counties, a land use **map** that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;
  - (vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the

infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote **development** within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure **planning** areas for cities and counties could adversely impact:

- (A) threatened or endangered wildlife and critical wildlife habitat and corridors;
- (B) water available to agricultural water users and facilities;
- (C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;
- (D) a local government's ability to provide adequate local **services**, including but not limited to emergency, fire, and police protection;
- (E) the **safety** of people and property **due** to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;
- (F) natural resources, including but not limited to forest lands, mineral resources, streams, rivers, lakes, wetlands, and ground water; and
- (G) agricultural lands and agricultural production; and
- (ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter.

History: Ap. p. **Sec. 31, Ch. 246, L. 1957**; amd. **Sec. 12, Ch. 247, L. 1963**; amd. **Sec. 1, Ch. 166, L. 1973**; **Sec. 11-3831, R.C.M. 1947**; Ap. p. **Sec. 3, Ch. 246, L. 1957**; amd. **Sec. 2, Ch. 247, L. 1963**; amd. **Sec. 1, Ch. 349, L. 1973**; **Sec. 11-3803, R.C.M. 1947**; **R.C.M. 1947, 11-3803(part), 11-3831**; amd. **Sec. 8, Ch. 682, L. 1999**; amd. **Sec. 4, Ch. 599, L. 2003**; amd. **Sec. 1, Ch. 443, L. 2007**; amd. **Sec. 2, Ch. 465, L. 2007**.

#### Compiler's Comments

**2007 Amendments** — Composite Section: Chapter 443 in (2) deleted former **first** sentence that read: "A growth policy must include the elements listed in subsection (3) by October 1, 2006"; inserted (3)(j) requiring that a growth policy **include** an evaluation of the potential for fire and wildland fire in the jurisdictional area; and **made minor** changes in style. Amendment effective May 8, 2007.

Chapter 455 in (2) at end of **first sentence** deleted "by October 1, 2006" and in second sentence after "elements" deleted "of a growth policy that are": **deleted** former (4)(c) through (4)(f) that read: "(c) address the criteria in 76-3-608(3)(a);

- (d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);
- (e) describe **zoning** regulations that will be implemented to address the criteria in 76-3-608(3)(a); and
- (f) identify geographic **areas** where the governing body intends to authorize an exemption from review of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608"; inserted (4)(c) setting out minimum criteria for an infrastructure plan; and **made** minor changes in style. Amendment effective May 8, 2007.

Applicability: Section 8, Ch. 443, L. 2007, provided that this section **applies** on or after October 1, 2009.

**76-1-602.** Public hearing on proposed growth policy. (1) Prior to the submission of the proposed growth policy to the governing bodies, the board shall give notice and hold a public hearing on the growth policy.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. **Sec. 33, Ch. 246, L. 1957**; amd. **Sec. 13, Ch. 247, L. 1963**; **R.C.M. 1947, 11-3833**; amd. **Sec. 9, Ch. 582, L. 1999**.

**76-1-603.** Adoption of growth policy by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution:

- (1) recommend the proposed growth policy and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the planning board;

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- (2) recommend that a growth policy not be adopted; or
- (3) recommend that the governing body take some other action related to preparation of a growth policy.

**History:** En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963; R.C.M. 1947, 11-3834; amd. Sec. 10, Ch. 582, L. 1999; amd. Sec. 5, Ch. 599, L. 2003.

**76-1-604.** Adoption, revision, or rejection of growth policy. (1) The governing body shall adopt a resolution of intention to adopt, adopt with revisions, or reject the proposed growth policy.

(2) If the governing body adopts a resolution of intention to adopt a growth policy, the governing body may submit to the qualified electors of the area covered by the growth policy proposed by the governing body at the next primary or general election or at a special election the referendum question of whether or not the growth policy should be adopted. A special election must be held in conjunction with a regular or primary election.

(3) A governing body may:

(a) revise an adopted growth policy following the procedures in this chapter for adoption of a proposed growth policy; or

(b) repeal a growth policy by resolution.

(4) The qualified electors of the area covered by the growth policy may by initiative or referendum adopt, revise, or repeal a growth policy under this section. A petition for initiative or referendum must contain the signatures of 15% of the qualified electors of the area covered by the growth policy.

(5) A master plan adopted pursuant to this chapter before October 1, 1999, may be repealed following the procedures in this section for repeal of a growth policy.

(6) Until October 1, 2006, a master plan that was adopted pursuant to this chapter before October 1, 1999, may be revised following the procedures in this chapter for revision of a growth policy.

(7) Except as otherwise provided in this section, the provisions of Title 7, chapter 5, part 1, apply to an initiative or referendum under this section.

**History:** En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 1, Ch. 541, L. 1981; amd. Sec. 68, Ch. 387, L. 1995; amd. Sec. 11, Ch. 582, L. 1999; amd. Sec. 1, Ch. 87, L. 2003; amd. Sec. 6, Ch. 599, L. 2003.

**76-1-605.** Use of adopted growth policy. (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to 76-1-601 must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

(c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

**History:** En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 12, Ch. 582, L. 1999; amd. Sec. 1, Ch. 527, L. 2001; amd. Sec. 7, Ch. 599, L. 2003.

**76-1-606.** Effect of growth policy on subdivision regulations. When a growth policy has been approved, the subdivision regulations adopted pursuant to chapter 3 of this title must be made in accordance with the growth policy.

**History:** En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971; K.C.M. 1947, 11-3842; amd. Sec. 13, Ch. 582, L. 1999; amd. Sec. 2, Ch. 527, L. 2001.

## CHAPTER 2 PLANNING AND ZONING

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Chapter Cross-References

Duty to notify **weed** management district when **proposed** project will disturb **land**. 7-22-2152.

## Part 1 County Planning and Zoning Commission

Part **Cross-References**

Property development review, Title 7, ch. 21, part 10.

**76-2-101.** Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected freeholders, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission **consisting** of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means **any** area that consists of not less than 40 acres.

(4) **Except** as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within 5 years after the date of the **order** by the board of county commissioners creating the district.

(5) If freeholders representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. **An** area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year.

History (1), (2) **En. Sec.** 1, Ch. 154, L. 1953; **amd. Sec.** 16, Ch. 273, L. 1971; **Sec.** 16-4101, R.C.M. 1947; (3) **En. Sec.** 7, Ch. 154, L. 1953; **amd. Sec.** 1, Ch. 229, L. 1955; **Sec. 16-4107**, R.C.M. 1947; H.C.M. 1947, **16-4101(part), 16-4107**; (4) **En. Sec.** 1, Ch. 441, L. 198% **amd. Sec.** 1, Ch. 591, L. 1995; **amd. Sec.** 1, Ch. 288, L. 2001.

**76-2-102.** Organization and operation of commission. (1) The planning and zoning commission consists of the three county commissioners, the county surveyor, two citizen members, each of whom resides in a different planning and zoning district, and a county **official** appointed by the **county** commissioners. The **citizen** members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term **and** the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of **the** planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable **property** within the district.

**History:** En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; R.C.M. 1947, 16-4101(part); amd. Sec. 137, Ch. 27, Sp. L. November 1995; amd. Sec. 143, Ch. 584, L. 1999; amd. Sec. 2, Ch. 288, L. 2001; amd. Sec. 193, Ch. 574, L. 2001.

**76-2-103.** Powers of commission and employees. (1) In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this part.

(2) The planning and zoning commission and any of its members, officers, and employees in the performance of their functions may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

**History:** En. Sec. 4, Ch. 154, L. 1955; R.C.M. 1947, 16-4104(part).

**76-2-104.** Development pattern. (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

**History:** En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

**76-2-105.** Continuation of prior nonconforming uses. Existing nonconforming uses may be continued although not in conformity with such zoning regulations.

**History:** En. Sec. 2, Ch. 154, L. 1963; R.C.M. 1947, 16-4102(part).

**76-2-106.** Adoption of development district. (1) Adoption by the planning and zoning commission of the development district or any change therein may be in whole or in part but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected.

(2) The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district shall refer expressly to the maps, charts, and descriptive matters forming the pattern or part thereof. The board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

**History:** En. Sec. 3, Ch. 154, L. 1955; R.C.M. 1947, 16-4103.

**76-2-107.** Preparation of resolutions and other materials. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part thereof previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof and including procedure for appeals from decisions made under the authority of such regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is hereby authorized to adopt such resolutions.

**History:** En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

**76-2-108.** Permits authorized. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration, or enlargement of any building or structure otherwise subject to the provisions of this part and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

**History:** En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

**76-2-109.** Effect on natural resources. No planning district or recommendations adopted under this part shall regulate lands used for grazing, horticulture, agriculture, or the growing of timber.

**History:** En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

**76-2-110.** Appeal procedure. Any person aggrieved by any decision of the commission or the board of county commissioners may, within 30 days after such decision or order, appeal to the district court in the county in which the property involved is located.

**History:** En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

**76-2-111.** Cooperation by public agencies with **commission**. All public officials, departments, and agencies having information, maps, and data deemed by the **commission** pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

**History:** En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

**76-2-112.** Effect on powers of incorporated **communities** to plan adjacent areas. The authority heretofore **granted** by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this part except and until the board of county commissioners having **jurisdiction** over such adjacent area establishes a planning commission and adopts initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

**History:** En. Sec. 6, Ch. 154, L. 1953; R.C.M. 1947, 16-4106.

**76-2-113.** Enforcement of zoning provisions. **If** any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

(1) **prevent** the unlawful erection, construction, reconstruction, alteration, repair, **conversion**, maintenance, or use:

(2) restrain, correct, or abate a violation;

(3) prevent the occupancy of a building, structure, or land; or

(4) prevent any illegal act, conduct, business, or use in or near the premises.

**History:** En. Sec. 3, Ch. 288, L. 2001.

**76-2-114 through 76-2-116 reserved.**

**76-2-117.** Addition of territory adjacent to existing planning and zoning district. Territory that is directly adjacent to an existing planning and **zoning** district but that is not **part** of the district may be added to the district subject to the procedures provided in this part.

**History:** En. Sec. 1, Ch. 439, L. 2003.

## Part 2 County Zoning

### Part Cross-References

Property development review, Title 7, ch. 21, part 10.

**76-2-201.** County zoning authorized. (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.

(2) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may, until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan.

**History:** En. Sec. 1, Ch. 246, L. 1963; R.C.M. 1947, 16-4701; amd. Sec. 14, Ch. 582, L. 1999; amd. Sec. 2, Ch. 87, L. 2003; amd. Sec. 8, Ch. 599, L. 2003.

**76-2-202.** Establishment of zoning districts — regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of

76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced within 5 years after the date of the order by the board of county commissioners creating the district.

(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings **must** be limited and future building setback lines must be established.

(5) All regulations must be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, "manufactured housing" means a single-family dwelling, built **offsite** in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are **customarily, as defined** by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the **time** of its production. A manufactured home does not include a mobile home or house trailer, as defined in 15-1-101.

(7) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

**History:** En. Sec. 3, Ch. 246, L. 1963; **amd. Sec. 18, Ch. 273, L. 1971; R.C.M. 1947, 164703; (1)(b) En. Sec. 2, Ch. 441, L. 1989; amd. Sec. 1, Ch. 505, L. 1993; amd. Sec. 274, Ch. 42, L. 1997; amd. Sec. 236, Ch. 542, L. 2005; amd. Sec. 123, Ch. 596, L. 2005.**

**76-2-203.** Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) made in accordance with the growth policy or a master plan, as provided for in 76-2-201(2); and

(b) designed to:

- (i) lessen congestion in the streets;
- (ii) secure safety from fire, panic, and other dangers;
- (iii) **promote** public health and general welfare;
- (iv) provide adequate light and air;
- (v) prevent the overcrowding of land;
- (vi) avoid undue concentration of population; and

(vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

**History:** En. Sec. 4, Ch. 246, L. 1963; R.C.M. 1947, 16-4704; **amd. Sec. 16, Ch. 582, L. 1999; amd. Sec. 3, Ch. 87, L. 2003.**

**76-2-204.** Role of planning boards. (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.

(2) This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971; R.C.M. 1947, 16-4702.

**76-2-206. Procedure for adoption of regulations and boundaries.** The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) the time and place of the public hearing;
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the freeholders within the district whose names appear on the last-completed assessment roll or if freeholders representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year.

History: En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971; R.C.M. 1947, 164706; amd. Sec. 2, Ch. 591, L. 1995.

**76-2-206. Interim zoning map or regulation.** (1) The board of county commissioners may adopt an interim zoning map or regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

- (a) the purpose of the interim zoning map or regulation is to classify and regulate those uses and related matters that constitute the emergency; and
- (b) the county:
  - (i) is conducting or in good faith intends to conduct studies within a reasonable time; or
  - (ii) has held or is holding a hearing for the purpose of considering any of the following:
    - (A) a growth policy;
    - (B) zoning regulations; or
    - (C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) **An** interim resolution must be limited to 1 year from the date it becomes effective. The board of county commissioners may extend the interim resolution for 1 year, but not more than one extension may be made.

History: **En. 16-4711 by Sec. 20, Ch. 273, L. 1971; R.C.M. 1947, 16-4711; amd. Sec. 16, Ch. 582, L. 1999; amd. Sec. 4, Ch. 87, L. 2003.**

**76-2-207. Permits** authorized. The board of county commissioners may provide for the issuance of location or conformance permits and may collect a fee for each such permit. The proceeds of such fees shall be deposited in the general fund of the county.

History: **En. Sec. 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4708(part).**

**76-2-208.** Continuation of nonconforming uses. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution.

History: **En. Sec. 9, Ch. 246, L. 1963; R.C.M. 1947, 16-4709.**

**76-2-209.** Effect on natural resources. (1) Except as provided in **82-4-431, 82-4-432**, and subsection (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not prevent the **complete use**, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest, or agricultural resource.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel or an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners.

(3) Zoning regulations adopted **under** this chapter may reasonably condition, but **not** prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel and may condition an operation that mixes concrete or batches asphalt in all zones other than residential.

History: **En. Sec. 10, Ch. 246, L. 1983; R.C.M. 1947, 16-4710; amd. Sec. 2, Ch. 408, L. 1991; amd. Sec. 1, Ch. 340, L. 2005.**

**76-2-210.** Enforcement of zoning provisions. (1) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, **may** institute any appropriate **action** or proceedings to prevent such unlawful erection. **construction**, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

(2) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.

History: **En. Secs. 7, 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part), 16-4708(part).**

**76-2-211.** Violations and penalties. A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be **punishable** by a fine not exceeding \$500 or imprisonment in the county jail not exceeding 6 months or both.

History: **En. Sec. 7, Ch. 246, L. 1963; H.C.M. 1947, 16-4707(part); amd. Sec. 7, Ch. 266, L. 1979.**

**76-2-212 through 76-2-219** reserved.

**76-2-220.** Zoning commission — appointment — duties. (1) For the purpose of providing an optional method of amending any zoning regulations or zoning classification, the county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications. Such a zoning commission must be composed of at least five citizen members appointed at large from the zoning district. The county commissioners may adopt bylaws for the zoning commission pertaining to the qualifications of the members and such other matters as the commissioners consider necessary.

(2) If a commission is appointed, it shall hold a public hearing to receive relevant testimony. The hearing, which may be held jointly with the hearing by the county commissioners, must be upon at least 15 days' notice of the time and place of the hearing and must be published in the contracted newspaper provided for in 7-5-2411 or a newspaper of general circulation in the

county. Recommendations of the zoning commission must be submitted to the county commissioners.

**History:** En. Sec. 1, Ch. 462, L. 1981.

**76-2-221. Board of adjustment.** (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

**76-2-222. Membership and term of board members — vacancies.** (1) The board of adjustment consists of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.

(2) Vacancies must be filled for the unexpired term of any member whose term becomes vacant.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(1); amd. Sec. 1, Ch. 47, L. 1987; amd. Sec. 275, Ch. 42, L. 1997.

**76-2-223. Powers of board of adjustment.** (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution;

(c) to authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(5), (6).

**76-2-224. Vote needed for board action.** The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution; or to effect any variation in such resolution.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(7).

**76-2-225. Public access to board activities.** (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

#### Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9. Mont. Const.: Title 2, ch. 3, part 2.

**76-2226. Appeals to board of adjustment.** (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any **decision** of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal **specifying** the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which **the** action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer **from whom the** appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon **the** hearing, any party may appear **in** person or by his **attorney**.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(3), (4).

**76-2-227. Appeals from board to court of record.** (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the county may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of **the** board of adjustment and shall **prescribe** therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be **extended** by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (upon application, on notice to the board, and on due cause **shown**) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall **concisely** set forth such other facts as may be pertinent and material to show the grounds of the **decision** appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the **court** that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report **the** same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or **affirm**, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(8) thru (11).

**76-2228. Awarding of costs upon appeal from board decision.** Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 6, Ch. 246, L. 1963; H.C.M. 1947, 16-4706(12).

### Part 3 Municipal Zoning

#### Part Cross-References

Property development review, Title 7, ch. 21, part 10.

**76-2-301.** Municipal zoning authorized. For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the **size** of yards, courts, and other open spaces; the **density** of population; and the **location** and use of buildings, structures, and land for trade, industry, residence, or other purposes.

**History:** En. Sec. 1, Ch. 136, L. 1929; re-en. Sec. 5305.1, R.C.M. 1935; R.C.M. 1947, 11-2701.

**Cross-References**

Incorporation of **technical** codes by reference, 7-5-4202.

**76-2-302.** Zoning districts. (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may **differ from** those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a **manufactured** home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a single-family dwelling, built **offsite** in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States **department** of housing and urban development at the time of its production. A manufactured home does not include a mobile home or house trailer, as defined in 15-1-101.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

**History:** En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(1); amd. Sec. 2, Ch. 505, L. 1993; amd. Sec. 276, Ch. 42, L. 1997; amd. Sec. 237, Ch. 542, L. 2005.

**76-2-303.** Procedure to administer certain annexations and zoning laws — hearing and notice. (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation **in** conjunction with a hearing on the zoning of the proposed annexation, provided that the proposed municipal zoning regulations for the annexed property:

- (i) authorize land uses comparable to the land uses authorized by county zoning;
- (ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to part 1 or 2 of this chapter; or
- (iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to chapter 1 of this title or in a master plan, as provided for in 76-2-304(3), for the annexed property.

(b) A joint hearing authorized under this subsection fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation.

**History:** En. Sec. 4, Ch. 136, L. 1929; re-en. Sec. 5305.4, R.C.M. 1935; R.C.M. 1947, 11-2704; amd. Sec. 1, Ch. 217, L. 1997; amd. Sec. 1, Ch. 355, L. 1999; Sec. 34, Ch. 582, L. 1999; amd. Sec. 5, Ch. 87, L. 2003.

**Cross-References**

**Publication of legal notices**, 7-5-2411; **Title 18, ch. 7, part 2.**

**76-2-304.** Purposes of zoning. (1) Zoning regulations must be:

- (a) except as provided in subsection (3), made in accordance with a growth policy; and
- (b) designed to:
  - (i) lessen congestion in the streets;
  - (ii) secure safety from fire, panic, and other dangers;
  - (iii) promote health and the general welfare;
  - (iv) provide adequate light and air;
  - (v) prevent the overcrowding of land;
  - (vi) avoid undue concentration of population; and
  - (vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999.

**History:** En. Sec. 3, Ch. 136, L. 1929; re-en. Sec. 5305.3, R.C.M. 1936; R.C.M. 1947, 11-2703; amd. Sec. 17, Ch. 582, L. 1999; amd. Sec. 6, Ch. 87, L. 2003.

**76-2-305.** Alteration of zoning regulations — protest. (1) A regulation, restriction, and boundary may be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice apply equally to all changes or amendments.

(2) An amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the city or town council or legislative body of the municipality if a protest against a change pursuant to subsection (1) is signed by the owners of 25% or more of:

- (a) the area of the lots included in any proposed change; or
- (b) those lots 150 feet from a lot included in a proposed change.

**History:** En. Sec. 5, Ch. 136, L. 1929; re-en. Sec. 6305.5, R.C.M. 1936; amd. Sec. 1, Ch. 161, L. 1969; R.C.M. 1947, 11-2705; amd. Sec. 1, Ch. 492, L. 1999.

**76-2-306.** Interim zoning ordinances. (1) The city or town council or other legislative body of such municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time.

(2) Such interim ordinance shall only be applicable within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and shall take effect upon passage; provided, however, a hearing is first held upon notice reasonably designed to inform all affected parties and in no event shall notice be less than publication in a newspaper of general circulation at least 7 days before the hearing.

(3) Such interim ordinance shall be of no further force and effect 6 months from the date of adoption thereof. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend such interim ordinance for 1 year. Any such extension shall require a two-thirds vote for passage and shall become effective upon passage. Not more than two such extensions may be adopted.

**History:** En. 11-2711 by Sec. 1, Ch. 488, L. 1975; R.C.M. 1947.11-2711.

**76-2-307.** Zoning commission. In order to avail itself of the powers conferred by this part, except 76-2-306, the city or town council or other legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such

city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

**History:** En. Sec. 6, Ch. 136, L. 1929; re-en. Sec. 5305.6, R.C.M. 1935; R.C.M. 1947, 11-2706.

**Cross-References**

City-County Planning Boards, Title 76, ch. 1.

**76-2-308. Enforcement of zoning regulations and ordinances.** (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of any regulation or ordinance made thereunder.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

**History:** En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 8, Ch. 266, L. 1979.

**76-2-309. Conflict with other laws.** (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part shall govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; require a lower height of building or a less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by the regulations made under authority of this part, the provisions of such statute or local ordinance or regulation shall govern.

**History:** En. Sec. 9, Ch. 136, L. 1929; re-en. Sec. 6305.9, R.C.M. 1936; R.C.M. 1947, 11-2709.

**76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries.** (1) Except as provided in 76-2-312 and except in locations where a county has adopted zoning or subdivision regulations, a city or town council or other legislative body that has adopted a growth policy pursuant to chapter 1 for the area to be affected by the regulations may extend the application of its zoning or subdivision regulations beyond its limits in any direction subject to the following limits:

- (a) up to 3 miles beyond the limits of a city of the first class as defined in 7-1-4111;
- (b) up to 2 miles beyond the limits of a city of the second class; and
- (c) up to 1 mile beyond the limits of a city or town of the third class.

(2) When two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by 76-2-302, 76-2-311, and this section, then the extension of zoning or subdivision regulations, or both, by these cities must terminate at a boundary line agreed upon by the cities.

**History:** En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part); amd. Sec. 18, Ch. 582, L. 1999; amd. Sec. 9, Ch. 599, L. 2003.

**76-2-311. Administration of regulations in extended area.** (1) A city or town council or other legislative body may enforce regulations adopted pursuant to 76-2-310, as if the property were situated within its corporate limits, until the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area that is to be affected. These representatives must be appointed by the board of county commissioners. Representation must cease when the county board adopts a growth policy pursuant to chapter 1 and accompanying zoning or subdivision resolutions that include the area.

History: En. **Sec. 2**, Ch. 136, L. 1929; re-en. **Sec. 5305.2**, R.C.M. 1935; amd. **Sec. 1**, Ch. 273, L. 1971; amd. **Sec. 1**, Ch. 354, L. 1973; R.C.M. **1947, 11-2702(part)**; amd. **Sec. 19**, Ch. 582, L. 1999.

**76-2-312.** Exclusion for commission-manager plan municipalities. A city or town which has as its plan of **government** the commission-manager plan shall be excluded from the provisions of 76-2-310 and 76-2-311 which define extraterritorial authority to review proposed subdivisions.

History: En. **Sec. 2**, Ch. 136, L. **1929**; re-en. **Sec. 5305.2**, R.C.M. 1935; amd. **Sec. 1**, Ch. 273, L. 1971; amd. **Sec. 1**, Ch. 354, L. 1973; R.C.M. **1947, 11-2702(part)**.

76-2-313. Renumbered **76-2-411**. Code Commissioner, 1983.

76-2-314. Renumbered **76-2-412**. Code Commissioner, 1983.

**76-2-315.** Violations and penalties. (1) **A** violation of this part or of such ordinance or regulation made pursuant to **76-2-308(1)** is a misdemeanor, and such city or town council or other legislative body may provide for the **punishment thereof by fine** or imprisonment or both.

(2) It is also empowered to provide civil penalties for such violation.

History: En. **Sec. 8**, Ch. 136, L. 1929; re-en. **Sec. 5305.8**, R.C.M. 1935; R.C.M. **1947, 11-2708(part)**; amd. **Sec. 9**, Ch. 266, L. 1979.

76-2-316 through 76-2-320 reserved.

**76-2-321.** Board of adjustment. (1) Such city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment **may**, in appropriate cases and subject to appropriate conditions and safeguards, make special **exceptions** to the terms of the ordinance in harmony with its general purposes and **intent** and in accordance with the general or specific rules therein contained.

(2) An ordinance adopted pursuant to **this** section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(3) The board shall adopt rules in accordance with the **provisions** of any ordinance adopted pursuant to this part. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such **chairman** or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: En. **Sec. 7**, Ch. 136, L. 1929; re-en. **Sec. 5305.7**, R.C.M. 1935; amd. **Sec. 1**, Ch. 13, L. 1975; R.C.M. **1947, 11-2707(part)**.

**76-2-322.** Membership and term of board members — vacancies. (1) The board of adjustment shall consist of not less than five or more than seven members to be appointed for a term to be specified by the city or town council or other legislative body or, if no term is specified, then for a term of 3 years. A member is removable for cause by the appointing authority upon written **charges** and **after** public hearing.

(2) Vacancies shall be filled for the unexpired term of any **member** whose term becomes vacant.

History: En. **Sec. 7**, Ch. 136, L. 1929; re-en. **Sec. 5305.7**, R.C.M. 1935; amd. **Sec. 1**, Ch. 13, L. 1975; R.C.M. **1947, 11-2707(1)**; amd. **Sec. 1**, Ch. 67, L. 1985; amd. **Sec. 1**, Ch. 110, L. 1987.

**76-2-323.** Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any ordinance adopted pursuant thereto;

(b) to hear and decide special exceptions **to** the terms of the ordinance upon which such board is required to pass under such ordinance;

(c) to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the **ordinance** will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, such board may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement,

decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(5), (6).

**Cross-References**

Application of Montana Rules of Civil Procedure to this section, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

**76-2-324.** Vote needed for board action. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(7).

**76-2-325.** Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

**Cross-References**

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

**76-2-326.** Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing any party may appear in person or by attorney.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(3), (4).

**Cross-References**

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

**76-2-327.** Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance

of the writ shall not stay proceedings upon the decision appealed from, but the court may (on application, on notice to the board, and on due cause shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(8) thru (11).

**Cross-References**

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

**76-2-328.** Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

**History:** En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(12).

#### Part 4 Application to Governmental Agencies Group and Foster Homes

**76-2-401.** Definitions. As used in 76-2-402, the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

**History:** En. Sec. 1, Ch. 397, L. 1981.

**76-2-402.** Local zoning regulations — application to agencies. Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

(1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

**History:** En. Sec. 2, Ch. 397, L. 1981.

**76-2-403 through 76-2-410 reserved.**

**76-2-411.** Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons that does not provide skilled or intermediate nursing care;

(2) a youth foster home, a kinship foster home, a youth shelter care facility, a transitional living program, or youth group home as defined in 52-2-602;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons;

(4) a licensed adult foster family care home; or

(5) an assisted living facility licensed under 50-5-227.

**History:** En. Sec. 1, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974; amd. Sec. 6, Ch. 364, L. 1975; R.C.M. 1947.11-2702.1; MCA 1981, 76-2-313; redes. 76-2-411 by Code Commissioner, 1983; amd. Sec. 28, Ch. 465, L. 1983; amd. Sec. 1, Ch. 309, L. 1985; amd. Sec. 9, Ch. 514, L. 1987; amd. Sec. 236, Ch. 418, L. 1995; amd. Sec. 545, Ch. 546, L. 1995; amd. Secs. 1, 2, Ch. 400, L. 2003; amd. Sec. 31, Ch. 504, L. 2003.

**76-2-412.** Relationship of foster homes, kinship foster homes, youth shelter care facilities, youth group homes, community residential facilities, and **day-care** homes to zoning. (1) A foster home, kinship foster home, youth shelter care facility, or youth group home operated under the provisions of 52-2-621 through 52-2-623 or a community residential facility serving eight or fewer persons is considered a residential **use** of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. **Any** safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in **general** may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services.

**History:** En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974; R.C.M. 1947, 11-2702.2; MCA 1981, 76-2-314; redes. 76-2-412 by Code Commissioner, 1983; amd. Sec. 29, Ch. 465, L. 1983; amd. Sec. 1, Ch. 181, L. 1987; amd. Sec. 237, Ch. 418, L. 1995; amd. Sec. 646, Ch. 546, L. 1995; amd. Sec. 32, Ch. 504, L. 2003.

## Parts 5 through 8 resewed

### Part 9 Agricultural Activities

**76-2-901.** Agricultural activities — legislative finding and purpose. (1) The legislature finds that agricultural lands and the ability and right of farmers and ranchers to produce a safe, abundant, and secure food and fiber supply have been the basis of economic growth and development of all sectors of Montana's economy. In order to sustain Montana's valuable farm economy and land bases associated with it, farmers and ranchers must be encouraged and have the right to stay in farming.

(2) It is therefore the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances.

**History:** En. Sec. 1, Ch. 309, L. 1995.

#### Cross-References

Nuisance defined, 27-30-101.

**76-2-902.** Definitions. As used in this part, the following definitions apply:

(1) "Agricultural activity" means a condition or activity that provides an annual gross income of not less than \$1,500 or that occurs on land classified as agricultural or forest land for taxation purposes. The condition or activity must occur in connection with the commercial production of farm products and includes but is not limited to:

- (a) produce **marketed** at roadside stands or **farm** markets;
- (b) noise;
- (c) odors;
- (d) dust;
- (e) fumes;
- (f) operation of machinery and irrigation pumps;
- (g) movement of water for agricultural activities, including but not limited to use of existing county road **ditches**, streams, rivers, canals, and drains, and use of water for agricultural activities;
- (h) ground and aerial application of seed, fertilizers, conditioners, and plant protection products;
- (i) employment and use of labor;

- (j) roadway movement of equipment and livestock;
  - (k) protection **from** damage from wildlife;
  - (l) **prevention** of trespass;
  - (m) construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and **maintenance** of streambanks and watercourses;
  - (n) conversion from one agricultural activity to another, provided that the conversion does not adversely impact adjacent property owners;
  - (o) timber harvesting, thinning, and timber regeneration;
  - (p) burning and stubble and slash disposal; and
  - (q) plant nursery and commercial greenhouse activities.
- (2) "Commercial production of farm products" means the growing, raising, or marketing of plants or animals by the owner, owner's agent, or lessee of land that provides an annual gross income of not less than \$1,500 or that occurs on land that is classified as agricultural or forest land for taxation purposes. The term includes but is not limited to:
- (a) forages and sod crops;
  - (b) dairy and dairy products;
  - (c) poultry and poultry products;
  - (d) livestock, including breeding, feeding, and grazing of livestock and recreational equine use;
  - (e) fruits;
  - (f) vegetables;
  - (g) flowers;
  - (h) seeds;
  - (i) grasses;
  - (j) trees, including commercial timber;
  - (k) fresh water fish and fish products;
  - (l) apiaries;
  - (m) equine and other similar products; or
  - (n) any other product that incorporates the use of food, feed, fiber, or fur.
- History: En. **Sec. 2, Ch. 309, L. 1995.**

**76-2-903. Local ordinances.** A city, county, taxing district, or other political subdivision of this state may not adopt an ordinance or resolution that prohibits any existing agricultural activities or forces the termination of any existing agricultural activities outside the boundaries of an incorporated city or town. **Zoning** and **nuisance** ordinances may not prohibit agricultural activities that were established outside the corporate limits of a municipality and then incorporated into that municipality by annexation.

History: En. **Sec. 3, Ch. 309, L. 1995.**

## CHAPTER 3 LOCAL REGULATION OF SUBDIVISIONS

### Part 1 — General Provisions

- 76-3-101. Short title.
- 76-3-102. Statement of purpose.
- 76-3-103. Definitions.
- 76-3-104. What constitutes subdivision.
- 76-3-105. **Violations.**

### Part 2 — Miscellaneous Exemptions

- 76-3-201. **Exemption** for certain divisions of land — fees for examination of division.
- 76-3-202. **Exemption for structures on all sub lands.**
- 76-3-203. **Exemption for tax delinquencies.**
- 76-3-204. **Exemption** for conveyances of one or **more** parts of a structure **or** improvement.
- 76-3-205. Exemption for airport land and state-owned lands — exception.
- 76-3-206. Exemption for conveyances executed prior to July 1, 1974.
- 76-3-207. **Divisions** of land exempted from review but subject to survey requirements and zoning regulations — exceptions — fees for examination of division.
- 76-3-208. Subdivisions exempted from **surveying** and filing **requirements** but **subject** to **review** provisions.

- 76-3-209. Exemption from **surveying** and platting requirements for lands acquired for state highways.  
 76-3-210. **Subdivisions** exempted from requirement of an **environmental** assessment.

Part 3 — Land Transfers

- 76-3-301. **General** restriction on transfer of title to subdivided lands.  
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- 76-3-401. Survey requirements for lands other than subdivisions.  
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- 76-3-501. Local subdivision regulations.  
 76-3-502. Repealed.  
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 76-3-508. Repealed.  
 76-3-509. Local option cluster development regulations and **exemptions** authorized.  
 76-3-510. Payment for extension of capital facilities.  
 76-3-511. Local regulations no more stringent than state regulations or guidelines.

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- 76-3-601. Submission of application and preliminary plat for review — water and sanitation information **required**.  
 76-3-602. Fees.  
 76-3-603. Contents of environmental assessment.  
 76-3-604. Review of subdivision application — review for **required** elements and sufficiency of information.  
 76-3-605. Hearing on subdivision application.  
 76-3-606. **Repealed**.  
 76-3-607. **Repealed**.  
 76-3-608. Criteria for local government review.  
 76-3-609. Review **procedure** for minor subdivisions — determination of sufficiency of application — governing body to adopt regulations.  
 76-3-610. Effect of approval of application and preliminary plat.  
 76-3-611. Review of final plat.  
 76-3-612. Abstract of title required for review process.  
 76-3-613. Index of plats to be kept by county clerk and recorder.  
 76-3-614. Correction of recorded plat.  
 76-3-615. Subsequent hearings — consideration of **new information** — requirements for regulations.  
 76-3-616. Exemption for certain subdivisions.  
 76-3-617 through 76-3-619 reserved.  
 76-3-620. Review requirements — written statement.  
 76-3-621. Park dedication requirement.  
 76-3-622. Water and sanitation information to accompany **preliminary** plat.  
 76-3-623 and 76-3-624 reserved.  
 76-3-625. Violations — actions against governing body.

Chapter Cross-References

- Municipal subdivisions required to conform to subdivision laws, 7-3-4445.  
 Duty to notify weed management district when proposed project will disturb land, 7-22-2152.  
**Conservation** easements preventing subdivision of land, 76-6-203.  
 Water use — ground water, Title 85, ch. 2, part 5.

**Part 1**  
**General Provisions**

Part Cross-References

- Conservation **easements** preventing subdivision of land, 76-6-203.

**76-3-101.** Short title. This chapter may be cited as the "Montana Subdivision and Platting Act".

**History:** En. Sec. 1, Ch. 500, L. 1973; R.C.M. 1947, 11-3859.

**76-3-102.** Statement of purpose. It is the purpose of this chapter to:

- (1) promote the public health, safety, and general welfare by regulating the subdivision of land;
- (2) prevent overcrowding of land;
- (3) lessen congestion in the streets and highways;
- (4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;
- (5) require development in harmony with the natural environment;
- (6) promote preservation of open space;
- (7) promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;
- (8) protect the rights of property owners; and
- (9) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

**History:** En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860; amd. Sec. 1, Ch. 272, L. 1993; amd. Sec. 2, Ch. 468, L. 1995; amd. Sec. 2, Ch. 348, L. 2001.

**76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

- (1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.
- (2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.
- (3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.
- (4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.
- (5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.
- (6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.
- (7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.
- (8) "Immediate family" means a spouse, children by blood or adoption, and parents.
- (9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.
- (10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.
- (11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a **subdivision** that furnish a basis for review by a governing body.

(13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, **the** term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23.

(14) "Subdivider" **means** a person who causes land to **be** subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and **further** includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that **can** be identified by legal description, independent of **any** other parcel of land, using documents on file in the records of the county clerk and recorder's **office**.

(b) Each individual tract of record continues to **be** an individual parcel of land unless **the** owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have **been** expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the **instrument** states, "This instrument is intended to **merge** individual parcels of land to form the aggregate **parcel(s)** described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a **merger** of parcels.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 140, Ch. 370, L. 1987; amd. Sec. 2, Ch. 272, L. 1993; amd. Sec. 1, Ch. 503, L. 1997; amd. Sec. 3, Ch. 348, L. 2001; amd. Sec. 1, Ch. 298, L. 2005.

**76-3-104.** What constitutes subdivision. A subdivision comprises only those parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1976; R.C.M. 1947, 11-3861(part); amd. Sec. 3, Ch. 272, L. 1993.

**76-3-105.** Violations. Any person who violates any provision of **this** chapter or any local regulations **adopted** pursuant thereto **shall be** guilty of a misdemeanor and **punishable** by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both **fine** and imprisonment. Each sale, lease, or transfer of each separate parcel **of land** in violation of any provision of **this** chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

**History:** En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977; R.C.M. 1947, 11-3876.

## Part 2 Miscellaneous Exemptions

### Part Cross-References

County taxation, Title 7, ch. 6, part 25.

Property tax levies, Title 15, ch. 10.

Unit Ownership Act, Title 70, ch. 23.

**76-3-201.** Exemption for certain divisions of land — fees for **examination** of division. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

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

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

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

(3) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter if applicable.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 652, L. 1977; R.C.M. 1947, 11-3862(9); amd. Sec. 2, Ch. 503, L. 1997; amd. Sec. 1, Ch. 340, L. 2001; amd. Sec. 3, Ch. 549, L. 2003; amd. Sec. 1, Ch. 563, L. 2003.

**76-3-202.** Exemption for structures on complying subdivided lands. Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 10, Ch. 266, L. 1979.

**76-3-203.** Exemption for certain condominiums. Condominiums constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76-3-621 are complied with: or

(2) the condominium proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 1, Ch. 534, L. 2001; amd. Sec. 1, Ch. 229, L. 2007.

Compiler's Comments

**2007 Amendment:** Chapter 229 in introductory clause after "with" inserted "parts 5 and 6" and after "chapter" inserted "or on lots within incorporated cities and towns"; and made minor change in style. Amendment effective April 17, 2007.

**76-3-204.** Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building,

structure, or other improvement, whether existing or proposed, is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10); amd. Sec. 1, Ch. 500, L. 1986.

**76-3-205.** Exemption for airport land and state-owned lands — exception. (1) A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the requirements of this chapter if the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities.

(2) A division of state-owned land is not subject to the requirements of this chapter unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1976; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5); amd. Sec. 1, Ch. 548, L. 1999.

**76-3-206.** Exemption for conveyances executed prior to July 1, 1974. This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

**History:** En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(part).

**76-3-207.** Divisions of land exempted from review but subject to survey requirements and zoning regulations — exceptions — fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be tiled with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

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

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial **payment** of the total tax that is due.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

History: En. **Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6); amd. Sec. 1, Ch. 379, L. 1985; amd. Sec. 1, Ch. 569, L. 1989; amd. Sec. 4, Ch. 272, L. 1993; amd. Sec. 3, Ch. 366, L. 1993; amd. Sec. 3, Ch. 468, L. 1996; amd. Sec. 2, Ch. 436, L. 2003; amd. Sec. 2, Ch. 563, L. 2003; amd. Sec. 1, Ch. 252, L. 2005.**

**76-3-208.** Subdivisions exempted from surveying and filing requirements but subject to review provisions. Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but **must** be submitted for review and approved by the governing body before portions thereof may be rented or leased.

History: En. **Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).**

**76-3-209.** Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of **survey** and plats when presented for recording.

History: **En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 662, L. 1977; R.C.M. 1947, 11-3862(4).**

**76-3-210.** Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within an area that is covered by all of the following are considered to be in the public interest and are exempt from the requirement of an environmental assessment:

- (a) a growth policy adopted pursuant to chapter 1;
- (b) zoning regulations pursuant to 76-2-201 or chapter 2, part 3; and
- (c) a strategy for development, maintenance, and **replacement** of public infrastructure pursuant to 76-I-601.

(2) (a) A planning board established pursuant to chapter 1 may exempt a proposed subdivision within its jurisdictional area from the requirement for completion of any portion of the environmental assessment if:

(i) the subdivision is proposed in an area for which a growth policy **has** been adopted pursuant to chapter 1 **and** the proposed subdivision will be in compliance with the growth policy; **or**

(ii) the subdivision will contain fewer than 10 parcels and less than 20 acres.

(b) When an exemption is granted under this subsection (2), the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the preliminary plat of the subdivision when it is submitted for review.

(c) If a properly established planning board having jurisdiction does not exist, the governing body may grant exemptions as specified in this subsection (2).

History: **(1) En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 652, L. 1977; Sec. 11-3862, R.C.M. 1947; (2) En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1); amd. Sec. 20, Ch. 682, L. 1999; amd. Sec. 10, Ch. 699, L. 2003.**

### Part 3 Land Transfers

#### Part Cross-References

County taxation, Title 7, ch. 6, part 25.  
Property tax levies, Title 15, ch. 10.

**76-3-301.** General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk

and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of **76-3-611(1)** in proper form unless the plat is located in an area over which the state does not have jurisdiction.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in **76-3-207(1)**.

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of the action must be imposed against the party not prevailing.

History: **En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 633, L. 1979; amd. Sec. 2, Ch. 340, L. 2001.**

**76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements.** (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument that purports to transfer title to or possession of a parcel or tract of land that is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) Subsection (1) does not apply when the parcel or tract to be transferred:

(a) is in a location in which the state does not have jurisdiction; or

(b) was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents that, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.

(3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property.

History: **En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(3); amd. Sec. 1, Ch. 268, L. 1987; amd. Sec. 3, Ch. 340, L. 2001.**

**76-3-303. Contract for deed permitted if buyer protected.** Notwithstanding the provisions of **76-3-301**, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract;

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

(5) that the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner."

History: **En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; H.C.M. 1947, 11-3867(4); amd. Sec. 2, Ch. 379, L. 1985.**

**76-3-304. Effect of recording complying plat.** The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

History: **En. Sec. 12, Ch. 500, L. 1978; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(3).**

**76-3-305.** Vacation of plats — utility easements. (1) Any plat prepared and recorded as provided in this part may be vacated 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) and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

**History:** En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1); amd. Sec. 1, Ch. 100, L. 1995; amd. Sec. 277, Ch. 42, L. 1997.

**76-3-306.** Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

**History:** En. Sec. 11, Ch. 500, L. 1973; R.C.M. 1947, 11-3869.

#### Cross-References

Covenants running with land, Title 70, ch. 17, part 2.

**76-3-307.** Donations or grants to public considered a grant to donee. Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

**History:** En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.

## Part 4 Survey Requirements

### Part Cross-References

Board of Professional Engineers and Professional Land Surveyors — licensing, Title 37, ch. 67.

**76-3-401.** Survey requirements for lands other than subdivisions. All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of 76-3-406.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(1); amd. Sec. 2, Ch. 136, L. 1993.

**76-3-402.** Survey and platting requirements for subdivided lands. (1) Every subdivision of land after June 30, 1973, must be surveyed and platted in conformance with this chapter, including the requirements of 76-3-406, by or under the supervision of a registered land surveyor.

(2) Subdivision plats must be prepared and filed in accordance with this chapter and regulations adopted pursuant to this chapter.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with this chapter and regulations adopted pursuant to this chapter.

**History:** En. Sec. 4, Ch. 600, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(2); amd. Sec. 3, Ch. 136, L. 1993.

**76-3-403.** Monumentation. (1) The board of professional engineers and professional land surveyors shall, in conformance with the Montana Administrative Procedure Act., prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

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

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(11), (12); amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 211, Ch. 483, L. 2001; amd. Sec. 6, Ch. 190, L. 2003.

**Cross-References**

Montana Administrative Procedure Act. Title 2, ch. 4.

**76-3-404.** Certificate of survey. (1) Except as provided in 70-22-105, within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in the map;

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

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

(2) A certificate of survey is not required for any survey that is made by the United States bureau of land management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey must be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and must conform to monumentation and surveying requirements promulgated under this chapter.

**History:** En. Sec. 14, Ch. 500, L. 1973; R.C.M. 1947, 11-3872; amd. Sec. 2, Ch. 633, L. 1979; amd. Sec. 4, Ch. 549, L. 2003.

**76-3-405.** Administration of oaths by registered land surveyor. (1) Every registered land surveyor may administer and certify oaths when:

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

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

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404.

**History:** En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979.

**76-3-406.** Surveys affecting irrigation districts — additional survey requirements. (1) (a) A surveyor who completes a survey identified in subsection (2) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than 1 section shall note on the survey the acreage of the farm unit or created parcel in each section.

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

(2) The requirements of subsection (1) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

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

(b) included in an irrigation district.

(3) For purposes of this section, "irrigation district" means a district established pursuant to Title 85, chapter 7.

**History:** En. Sec. 1, Ch. 136, L. 1993.

## Part 5 Local Regulations

**76-3-501.** Local subdivision regulations. The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- (1) the orderly development of their jurisdictional areas;
- (2) the coordination of roads within subdivided land with other roads, both existing and planned;
- (3) the dedication of land for roadways and for public utility easements;
- (4) the improvement of roads;
- (5) the provision of adequate open spaces for travel, light, air, and recreation;
- (6) the provision of adequate transportation, water, and drainage;
- (7) subject to the provisions of 76-3-511, the regulation of sanitary facilities;
- (8) the avoidance or minimization of congestion; and
- (9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

**History:** En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1988; amd. Sec. 17, Ch. 471, L. 1995; amd. Sec. 2, Ch. 298, L. 2005; amd. Sec. 2, Ch. 443, L. 2007.

**Compiler's Comments**

*2007 Amendment:* Chapter 443 in (9) near middle after "hazard" inserted "including but not limited to fire and wildland fire"; and made minor changes in style. Amendment effective May 8, 2007.

*Applicability:* Section 8, Ch. 443, L. 2007, provided that this section applies on or after October 1, 2009.

**76-3-502.** Repealed. Sec. 4, Ch. 236, L. 1981.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1976; R.C.M. 1947, 11-3863(part); amd. Sec. 6, Ch. 274, L. 1981.

**76-3-503.** Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501 or 76-3-509, it shall hold a public hearing on the regulations and shall give public notice of its intent to adopt the regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

**History:** En. Sec. 5, Ch. 600, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 4, Ch. 348, L. 2001.

**76-3-504.** Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

- (a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);
- (b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;
- (c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;
- (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;
- (e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the **floodway** of a flood of 100-year frequency, as **defined** by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of **76-3-511**, water supply and sewage and solid **waste** disposal that meet the:

(A) regulations adopted by the department of environmental quality under **76-4-104** for subdivisions that will create one or more parcels containing less than **20** acres; and

(B) standards provided in **76-3-604** and **76-3-622** for subdivisions that will create one or more parcels containing **20** acres or more and less than **160** acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the **review** of subdivision applications by **affected** public utilities and those agencies of local, state, and federal government identified during the preapplication **consultation** conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time **limits** specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than **5** acres, require the subdivider to:

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

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

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

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

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

(B) are a sufficient distance **from** the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within **the** ditch **easement** without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is **1** acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided **land** through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is **not** complete **upon** filing of the final plat, the subdivider shall provide written notification to

prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch **easements** for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are **necessary** to convey water through the **subdivision** to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are **consistent** with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true **and** correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its **agent** or agency will address information presented at the hearing or hearings held pursuant to **76-3-605** and **76-3-615**;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of **the state** laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be **contacted** for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an **application** must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in 76-3-501, the **subdivision** regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications.

**History:** En. Sec. 5, Ch. 500, L. 1973; **amd. Sec. 3**, Ch. 334, L. 1974; **amd. Sec. 20**, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); **amd. Sec. 1**, Ch. 236, L. 1981; **amd. Sec. 17**, Ch. 274, L. 1981; **amd. Sec. 238**, Ch. 418, L. 1995; **amd. Sec. 18**, Ch. 471, L. 1995; **amd. Sec. 1**, Ch. 201, L. 1999; **amd. Sec. 21**, Ch. 582, L. 1999; **amd. Sec. 5**, Ch. 348, L. 2001; **amd. Sec. 3**, Ch. 627, L. 2001; **amd. Sec. 1**, Ch. 564, L. 2001; **amd. Sec. 11**, Ch. 599, L. 2003; **amd. Sec. 3**, Ch. 298, L. 2005; **amd. Sec. 1**, Ch. 302, L. 2005; **amd. Sec. 1**, Ch. 317, L. 2007; **amd. Sec. 3**, Ch. 443, L. 2007.

#### Compiler's Comments

*2007 Amendments — Composite Section:* Chapter 317 in (1)(q)(i) at beginnings substituted "requires" for "allows". Amendment effective April 27, 2007.

Chapter 443 in (1)(e) at end of second sentence after "techniques" inserted "or other mitigation measures authorized under 76-3-608(4) and (5)" and inserted third sentence providing that approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901; and made minor changes in style. Amendment effective May 8, 2007.

**Applicability:** Section 8, Ch. 443, L. 2007, provided that this section applies on or after October 1, 2009.

**76-3-505.** Repealed. Sec. 16, Ch. 298, L. 2005.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5); amd. Sec. 1, Ch. 579, L. 1985; amd. Sec. 1, Ch. 256, L. 1987; amd. Sec. 239, Ch. 418, L. 1995; amd. Sec. 22, Ch. 582, L. 1999; amd. Sec. 12, Ch. 599, L. 2003.

**76-3-506.** Provision for granting variances. Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6).

**76-3-507.** Provision for bonding requirements to ensure construction of public improvements. (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete required improvements within the subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

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

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7); amd. Sec. 4, Ch. 468, L. 1995; amd. Sec. 3, Ch. 503, L. 1997.

**Cross-References**

**Suretyship,** Title 28, ch. 11, part 4.

**76-3-508.** Repealed. Sec. 4, Ch. 236, L. 1981.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(8).

**76-3-509.** Local option cluster development regulations and exemptions authorized. (1) If the governing body has adopted a growth policy that meets the requirements of 76-1-601, the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:

(a) establish a maximum size for each parcel in a cluster development;

(b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and

(c) establish requirements, including a minimum size for the area to be preserved, for preservation of open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant to this section. The regulations must require that open space be preserved through an irrevocable conservation easement, granted in perpetuity, as provided for in Title 76, chapter 6, prohibiting further division of the parcel.

(3) Regulations adopted under this section may:

(a) establish a shorter timeframe for review of proposed cluster developments;

(b) establish procedures and requirements that provide an incentive for cluster development subdivisions that are consistent with the provisions of this chapter;

(c) authorize the review of a division of land that involves more than one existing parcel as one subdivision proposal for the purposes of creating a cluster development;

(d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided in subsection (3)(c); and

(e) establish exemptions from the following:

(i) the requirements of an environmental assessment pursuant to 76-3-603;

(ii) review of the criteria in 76-3-608(3)(a); and

(iii) park dedication requirements pursuant to 76-3-621.

(4) Except as provided in this section, the provisions of this chapter apply to cluster development subdivisions.

History: En. Sec. 6, Ch. 348, L. 2001.

**76-3-510.** Payment for extension of capital facilities. A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

History: En. Sec. 8, Ch. 468, L. 1996.

**76-3-511.** Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a regulation under 76-3-501 or 76-3-504(1)(f)(iii) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement 76-3-501 or 76-3-504(1)(f)(iii) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment;

and

(b) the local standard or requirement to be imposed call mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation.

History: En. Sec. 5, Ch. 471, L. 1996; amd. Sec. 278, Ch. 42, L. 1997; amd. Sec. 2, Ch. 302, L. 2005.

## Part 6 Local Review Procedure

76-3-601. Submission of application and preliminary plat for review — water and sanitation information required. (1) Subject to the submittal deadlines established as provided in 76-3-504(3), the subdivider shall present to the governing body or to the **agent** or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements and must be accompanied by the preliminary water and sanitation information required under 76-3-622.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town **governing** body.

(b) When the **proposed** subdivision is situated entirely in an unincorporated area, the application **and** preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing **body** shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide a summary of the information contained in the application and preliminary plat to school district trustees.

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

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize **duplication** of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate **subdivisions** beyond their corporate limits pursuant to 7-3-4444.

**History:** En. Sec. 8, Ch. 500, L. 1973; umd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981; amd. Sec. 4, Ch. 506, L. 1995; amd. Sec. 23, Ch. 582, L. 1999; amd. Sec. 67, Ch. 7, L. 2001; amd. Sec. 4, Ch. 298, L. 2005; amd. Sec. 3, Ch. 302, L. 2005.

76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision applications.

**History:** En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868; amd. Sec. 5, Ch. 298, L. 2006.

**76-3-603.** Contents of environmental assessment. When required, the environmental assessment must accompany the subdivision application and must include:

(1) for a major subdivision:

(a) a description of every body or stream of surface water that may be **affected** by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(b) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608; and

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

(2) except as provided in 76-3-609, for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.

**History:** En. Sec. 5, Ch. 600, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4); amd. Sec. 2, Ch. 236, L. 1981; amd. Sec. 5, Ch. 468, L. 1996; umd. Sec. 6, Ch. 298, L. 2005.

76-3-604. Review of subdivision application — review for required elements and sufficiency of information. (1) (a) Within 5 working days of **receipt** of a subdivision

application submitted in accordance with any deadlines established pursuant to **76-3-504(3)** and receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by **76-3-504(1)(a)** and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or **agency's determination**.

(b) If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required **elements** as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter **and** the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or **agency's determination**.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains **sufficient** information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body **and** does not limit the ability of the reviewing agent or agency or the governing body to request **additional** information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that **the application contains the required elements and sufficient information**; and

(b) the subdivider or the subdivider's agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or **deny** the proposed subdivision within 60 working days, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

(5) If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of **76-3-621.3**.

(6) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to **76-3-622** and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will **create** one or more parcels containing less than 20 acres; and

(ii) 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.

(7) (a) For a proposed subdivision that will create one or more parcels containing less than **20** acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels **containing** 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622, that there is an adequate **water** source and at least one area for a septic system and a replacement drainfield for each lot.

(8) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1976; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 236, L. 1999; amd. Sec. 24, Ch. 582, L. 1999; amd. Sec. 4, Ch. 527, L. 2001; amd. Sec. 7, Ch. 298, L. 2005; amd. Sec. 5, Ch. 302, L. 2005.

**76-3-605.** Hearing on subdivision application. (1) Except as provided in 76-3-609 and 76-3-616 and subject to the regulations adopted pursuant to 76-3-504(1)(o) and 76-3-615, at least one public hearing on the subdivision application must be held by the governing body, its authorized agent or agency, or both and the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the subdivision application should be approved, conditionally approved, or denied by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the subdivision application and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or denial of the proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 working days after the public hearing.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 2, Ch. 89, L. 1981; amd. Sec. 21, Ch. 526, L. 1983; amd. Sec. 25, Ch. 582, L. 1999; amd. Sec. 8, Ch. 298, L. 2006; amd. Sec. 5, Ch. 455, L. 2007.

**Compiler's Comments**

*2007 Amendment:* Chapter 455 in (1) near beginning after "76-3-609" inserted "and 76-3-616". Amendment effective May 8, 2007.

76-3-606. Repealed. Sec. 11, Ch. 468, L. 1995.

**History:** En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(1), (2); amd. Sec. 1, Ch. 703, L. 1979.

76-3-607. Repealed. Sec. 11, Ch. 468, L. 1995.

**History:** En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(3) thru (7).

**76-3-608.** Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal **must** undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

- (i) the survey requirements provided for in part 4 of this chapter;
- (ii) the local subdivision regulations provided for in part 5 of this chapter; and
- (iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

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

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

- (a) the governing body has adopted a growth policy pursuant to chapter 1 that:
  - (i) addresses the criteria in subsection (3)(a);
  - (ii) evaluates the impact of development on the criteria in subsection (3)(a);
  - (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and
  - (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and
- (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:
  - (i) apply to the entire area subject to the exemption; and
  - (ii) address the criteria in subsection (3)(a), as described in the growth policy.

(7) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 655, L. 1977; R.C.M. 1947, 11-3866(4); amd. Sec. 5, Ch. 272, L. 1993; amd. Sec. 6, Ch. 468, L. 1995; amd. Sec. 26, Ch. 582, L. 1999; amd. Sec. 7, Ch. 348, L. 2001; amd. Sec. 10, Ch. 298, L. 2006; amd. Sec. 6, Ch. 302, L. 2006; amd. Sec. 6, Ch. 455, L. 2007.

**Compiler's Comments**

*2007 Amendment:* Chapter 455 in (3)(a) near middle after "76-3-609(2) or (4)" inserted "or 76-3-616"; and made minor changes in style. Amendment effective May 8, 2007.

**76-3-609.** Review procedure for minor subdivisions — determination of sufficiency of application — governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a

determination by the reviewing agent or agency that the application contains required elements **and sufficient** information for review. The determination and notification to the subdivider must be made in the same manner as is provided in **76-3-604(1)** through **(3)**.

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection **(2)(d)(iii)**, an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in **76-3-608(3)**.

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection **(2)**:

(i) the requirement to prepare an environmental assessment;

(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and

(iii) the requirement to review the subdivision for the criteria contained in **76-3-608(3)(a)** if the **minor subdivision** is proposed in the **portion** of a jurisdictional area that has adopted zoning regulations that address the criteria in **76-3-608(3)(a)**.

(e) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) **76-3-608(3)**; and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor **subdivision** that is not a first minor subdivision **from** a tract of record, as provided in subsection **(2)**, is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in **subsection (2)**.

(b) If **regulations** change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

**History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 655, L. 1977; R.C.M. 1947, 11-3866(6); amd. Sec. 2, Ch. 579, L. 1985; amd. Sec. 2, Ch. 256, L. 1987; amd. Sec. 7, Ch. 468, L. 1995; amd. Sec. 2, Ch. 236, L. 1999; amd. Sec. 11, Ch. 298, L. 2005; amd. Sec. 7, Ch. 455, L. 2007.**

**Compiler's Comments**

**2007 Amendment:** Chapter 455 in (3) near beginning in exception clause inserted "76-3-616 and": and made minor changes in style. Amendment effective May 8, 2007.

76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period **the** governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the application and preliminary plat are approved, the governing body and its subdivisions may not impose **any** additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1).

**History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 223, L. 1981; amd. Sec. 1, Ch. 190, L. 1983; amd. Sec. 12, Ch. 298, L. 2005.**

**76-3-611.** Review of final plat. (1) The governing body shall examine each final subdivision plat and shall approve the plat only if:

(a) it conforms to the conditions of approval set forth on the preliminary plat **and** to the terms of this chapter and regulations adopted pursuant to this chapter; and

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

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to this chapter, the examining land surveyor shall certify the compliance in a printed or stamped certificate on **the** plat or certificate of survey. The **certificate** must be signed by the suveyor.

(b) A land surveyor may not act as an examining land suveyor in regard to a plat or certificate of survey in which the surveyor has a financial or personal interest.

**History:** En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981; amd. Sec. 1, Ch. 293, L. 1995.

**76-3-612.** Abstract of title required for review process. (1) The subdivider shall **submit** with the final plat a certificate of a title abstracter **showing** the **names** of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to **the** subdivision by the owners of the land, if **other** than the subdivider, and any lienholders or claimants of record against the land.

(2) **The** governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies **within** the limits of a city or town.

**History:** En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 576, L. 1981.

**76-3-613.** Index of plats to be kept by county clerk and recorder. (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

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

**History:** En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947.11-3873.

**76-3-614.** Correction of recorded plat. When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made **and** recorded in the office of the county clerk **and** recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The **surveyor** making the resurvey shall endorse the corrected plat referring to the **original** plat and noting the defect existing therein and the corrections **made**.

**History:** En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 113874.

**76-3-615.** Subsequent hearings — consideration of new **information** — requirements for regulations. (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this section.

(2) The governing body shall determine whether public comments or **documents** presented to the governing body at a hearing held pursuant to 76-3-605 constitute:

(a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a hearing during which the subdivision application was considered.

(3) If the governing body determines that the public comments or documents constitute the information described in subsection (2)(b), the governing body may:

(a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in 76-3-604(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

**History:** En. Sec. 9, Ch. 298, L. 2005.

**76-3-616.** Exemption for certain subdivisions. (1) A subdivision that meets the criteria in subsection (2) is exempt from the following requirements:

- (a) preparation of an environmental assessment as required by 76-3-603;
- (b) a public hearing on the subdivision application pursuant to 76-3-605; and
- (c) review of the subdivision for the criteria listed in 76-3-608(3)(a).

(2) To qualify for the exemptions in subsection (1), a subdivision must meet the following criteria:

(a) the proposed subdivision is entirely within an area inside or adjacent to an incorporated city or town where the governing body has adopted a growth policy that includes the provisions of 76-1-601(4)(c);

(b) the proposed subdivision is entirely within an area subject to zoning adopted pursuant to 76-2-203 or 76-2-304 that avoids, significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of 76-1-601(4)(c); and

(c) the subdivision proposal includes a description of future public facilities and services, using maps and text, that are necessary to efficiently serve the projected development.

**History:** En. Sec. 4, Ch. 455, L. 2007.

**Compiler's Comments**

*Effective Date:* Section 9, Ch. 455, L. 2007, provided: "[This act] is effective on passage and approval." Approved May 8, 2007.

**76-3-617 through 76-3-619** reserved.

**76-3-620.** Review requirements — written statement. In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

(1) includes information regarding the appeal process for the denial or imposition of conditions;

(2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;

(3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

**History:** En. Sec. 2, Ch. 224, L. 1995; amd. Sec. 13, Ch. 298, L. 2005.

**76-3-621.** Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres: and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

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

(b) subdivision into parcels that are all nonresidential;

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

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

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or **conservation** easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land **and** any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural **interests**; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) **the** area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required **under** subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses **sufficient** to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of **dedication** required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical **wildlife** habitat, cultural, historical, or natural **resources**, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) A local **governing** body may, at its discretion, require a park dedication for a minor subdivision. A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication **will** be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in **subsection (1)** to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, **unimproved** land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision.

**History:** En. Sec. 9, Ch. 468, L. 1995; amd. Sec. 27, Ch. 582, L. 1999; amd. Sec. 8, Ch. 348, L. 2001; amd. Sec. 1, Ch. 469, L. 2003; amd. Sec. 2, Ch. 333, L. 2005; amd. Sec. 1, Ch. 264, L. 2007.

**Compiler's Comments**

**2007 Amendment:** Chapter 264 deleted former (3)(a) that read: "(a) a minor subdivision"; inserted (8) making park dedication for minor subdivision discretionary; and made minor changes in style. Amendment effective October 1, 2007.

**Cross-References**

Sale, lease, or exchange of dedicated park lands, 7-16-2324.

76-3-622. Water and sanitation **information** to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior **property** line of the subdivision and on the **proposed** lots, of:

(A) flood plains;

(B) surface water features;

(C) springs;

(D) irrigation ditches;

(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;

(F) for parcels less than 20 acres, mixing zones identified as provided in **subsection (1)(g)**; and

(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and

(ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the **department of environmental quality** pursuant to 76-4-104;

(d) evidence of suitability for new **onsite** wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under 76-4-125(2) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in 76-3-511.

**History: En. Sec. 4, Ch. 302, L. 2005.**

**76-3-623 and 76-3-624 reserved.**

**76-3-625. Violations — actions against governing body.** (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

History: En. **Sec. 10**, Ch. **468**, L. **1995**; amd. **Sec. 14**, Ch. **298**, L. **2005**.

## CHAPTER 4 STATE REGULATION OF SUBDIVISIONS

### Part 1 — Sanitation in Subdivisions

- 76-4-101. Public policy.
- 76-4-102. Definitions.
- 76-4-103. **What** constitutes subdivision.
- 76-4-104. Rules for administration and enforcement.
- 76-4-105. **Subdivision** fees — subdivision program funding.
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- 76-4-111. Exemption for certain condominiums.
- 76-4-112. Easements and restrictive covenants.
- 76-4-113. Notification to purchasers.
- 76-4-114 through 76-4-120 reserved.
- 76-4-121. Restrictions on subdivision activities.
- 76-4-122. Filing or recording of noncomplying plat or certificate of survey prohibited.
- 76-4-123. Repealed.
- 76-4-124. Repealed.
- 76-4-125. Review of subdivision application — land divisions excluded from review.
- 76-4-126. Right to hearing.
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- 76-4-128. Repealed.
- 76-4-129. Joint application form and concurrent review.
- 76-4-130. Deviation from certificate of subdivision approval.
- 76-4-131. Applicability of public water supply laws.
- 76-4-132. Special **revenue** account — deposit and use of fees.
- 76-4-133. Installation inspection.
- 76-4-134 reserved.
- 76-4-135. State regulations no more stringent than federal regulations or guidelines.

### Parts 2 through 9 reserved

### Part 10 — Penalties, Fees, and Interest

- 76-4-1001. Penalty factors.
- 76-4-1002. Collection of penalties, fees, late fees, and interest.

### Part 11 — **Out-of-State** Sales of In-State Subdivisions (Repealed)

### Part 12 — In-State Sales of Out-of-State Subdivisions (Repealed)

#### Chapter Cross-References

Penalties, fees, and interest, Title 76, ch. 4, part 10.

## Part 1 Sanitation in Subdivisions

#### Part Cross-References

Solid waste disposal exception, **75-10-214**.

Water use — ground water, Title 85, ch. 2, part 5.

**76-4-101. Public policy.** It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells

affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to **agriculture**, industry, recreation, and wildlife.

**History:** En. Sec. 148, Ch. 197, L. 1967; amd. Sec. 1, Ch. 509, L. 1973; R.C.M. 1947, 69-5001.

**76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.

(2) "Board" means the board of environmental review.

(3) "Department" means the department of environmental quality.

(4) "Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.

(5) "Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.

(6) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(7) "Mixing zone" has the meaning provided in 75-5-103.

(8) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in 75-6-102.

(9) "Public water supply system" has the meaning provided in 75-6-102.

(10) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(11) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(12) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under 76-4-104.

(13) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(14) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

(15) "Solid waste" has the meaning provided in 75-10-103.

(16) "Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

(17) "Water service line" means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

**History:** En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; H.C.M. 1947, 69-5002(part); amd. Sec. 1, Ch. 490, L. 1985; amd. Sec. 1, Ch. 592, L. 1985; amd. Sec. 240, Ch. 418, L. 1996; amd. Sec. 4, Ch. 280, L. 2001.

**76-4-103. What constitutes subdivision.** A subdivision shall comprise only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels, whether contiguous or not. The rental or lease of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part.

**History:** En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 629, L. 1975; amd. Sec. 2, Ch. 557, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 2, Ch. 592, L. 1985.

76-4-104. Rules for administration and enforcement. (1) The department shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving **subdivisions** for various **types** of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water **and** sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by a local department or board of health, as described in **Title 50, chapter 2, part 1**, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water **supply** systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the systems is required.

(4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part **and** other documentation showing **the** layout or plan of development, including:

(i) **total** development area; and

(ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage disposal:

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) **adequate** evidence that a sewage disposal facility is **sufficient in** terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and **designs**, including soil testing and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) criteria for granting waivers and deviations from the standards and technical procedures adopted under **subsections (6)(e) through (6)(h)**;

(j) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the preliminary or final plan or plat; and

(k) evidence to demonstrate that appropriate easements, covenants, agreements, and **management** entities have been established to **ensure** the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

(7) If the reviewing authority is a local department or board of health, it shall notify the department of its recommendation for approval or disapproval of the subdivision not later than **50** days from its receipt of the subdivision application. The department shall make a final decision on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not later than 60 days after **the submission** of a **complete** application, as provided in 76-4-125.

(8) Review and certification or denial of **certification** that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the **reviewing** authority, **except** that in cases in which **current rules** would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum **standards** necessary to protect public health and water quality apply.

(9) The reviewing authority may not deny or condition a **certificate** of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

- (a) the reason for the denial or condition imposition;
- (b) the evidence that justifies the denial or condition imposition; and
- (c) information regarding the **appeal** process for the **denial** or **condition** imposition.

(10) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be **submitted** under 76-3-622.

**History:** En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(part); amd. Sec. 2, Ch. 378, L. 1985; amd. Sec. 2, Ch. 490, L. 1985; amd. Sec. 1, Ch. 224, L. 1995; amd. Sec. 19, Ch. 471, L. 1995; amd. Sec. 5, Ch. 280, L. 2001; amd. Sec. 7, Ch. 302, L. 2006.

**76-4-105. Subdivision fees — subdivision program funding.** (1) The department shall adopt rules setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The rules must provide for a schedule of fees to be paid by the applicant to the department or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction. The fees must be used for review of plats and subdivisions, conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The fees must be based on the complexity of the subdivision, including but not limited to:

- (a) **number** of lots in the subdivision;
- (b) the type of water system to serve the development;
- (c) the type of sewage disposal to **serve** the development; and
- (d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees to the local reviewing authority for reviews conducted pursuant to 76-4-104, inspections conducted pursuant to 76-4-107, and enforcement activities conducted pursuant to 76-4-108.

**History:** Ap. p. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1976; amd. Sec. 3, Ch. 557, L. 1977; Sec. 69-5005, R.C.M. 1947; Ap. p. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(part), 69-5005(part); amd. Sec. 1, Ch. 553, L. 1981; amd. Sec. 33, Ch. 281, L. 1983; amd. Sec. 1, Ch. 696, L. 1983; amd. Sec. 3, Ch. 490, L. 1985; amd. Sec. 3, Ch. 692, L. 1986; amd. Sec. 1, Ch. 708, L. 1985; (5) En. Sec. 2, Ch. 708, L. 1985; amd. Sec. 9, Ch. 645, L. 1991; amd. Sec. 1, Ch. 514, L. 1993; amd. Sec. 6, Ch. 280, L. 2001.

**76-4-106.** Cooperation with other governmental agencies. (1) The reviewing authority may require the use of records of all state, county, and municipal agencies and may seek the assistance of those agencies.

(2) State, county, and municipal officers and employees, including local health officers and sanitarians, shall cooperate with the reviewing authority in furthering the purposes of this part so far as is practical and consistent with their own duties.

(3) A local reviewing authority without a registered sanitarian or a registered professional engineer to conduct a review under this part may contract with another local reviewing authority for the services of its registered sanitarian or registered professional engineer to conduct the review.

**History:** En. **Sec. 8, Ch. 509**, L. 1973; **H.C.M. 1947, 69-5009**; **amnd. Sec. 4, Ch. 490**, L. 1985.

**76-4-107.** Authority to inspect and monitor — certification. (1) In order to carry out the objectives of this part, to monitor the installation of sewage disposal and water supply systems, and to prevent the occurrence of water pollution problems associated with subdivision development, the reviewing authority whenever any water supply or sewage disposal system is proposed or has been constructed may:

(a) enter upon any public or private property, at reasonable times and after presentation of appropriate credentials by an authorized representative of the reviewing authority, to inspect **such** systems in order to assure that the plans and specifications approved for the system have been adhered to and that the provisions of this part, rules, or orders are being satisfied;

(b) require as a condition of approval that records concerning the operation of a sewage disposal or water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of data related to water quality.

(2) The reviewing authority shall require certification from a registered professional engineer that a public water supply system or a public sewage disposal system has been constructed according to approved specifications.

**History:** En. **69-5010 by Sec. 1, Ch. 557**, L. 1977; **R.C.M. 1947, 69-5010**; **amnd. Sec. 5, Ch. 490**, L. 1985; **amnd. Sec. 1, Ch. 294**, L. 1987.

**76-4-108.** Enforcement. (1) If the reviewing authority has reason to believe that a violation of this part or a rule adopted or an order issued under this part has occurred, the reviewing authority may have written notice and an order served personally or by certified mail on the alleged violator or the alleged violator's agent. The notice must state the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required by the reviewing authority, and the time within which the action is to be taken. A notice and order issued by the department under this section may also assess an administrative penalty as provided in **76-4-109**. The alleged violator may, **no later than 30** days after service of a notice and order under this section, request a hearing before the local reviewing authority if it issued the notice of violation or the board if the department issued the notice of violation. A request for a hearing must be filed in writing with the appropriate entity and must state the reason for the request. If a request is tiled, a hearing must be held within a reasonable time.

(2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate action to compel compliance with this part.

(3) The provisions of this part may be enforced by a reviewing authority other than the department or board only for those divisions described in **76-4-104(3)**. If a local reviewing authority fails to adequately enforce the provisions of this part, the department or the board may compel compliance with this part under the provisions of this section.

(4) When a local reviewing authority exercises the authority delegated to it by this section, the local reviewing authority is legally responsible for its actions under this part.

(5) If the department or a local reviewing authority determines that a violation of this part, a rule adopted under this part, or an order issued under this part has occurred, the department or the local reviewing authority may revoke its certificate of approval for the subdivision and reimpose sanitary restrictions following written notice to the alleged violator. Upon revocation of a certificate, the **person** aggrieved by revocation may request a hearing. A hearing request **must** be filed in writing within 30 days after receipt of the notice of revocation and must state the

reason for the request. The hearing is before the board if the department revoked the certificate or before the local reviewing authority if the local reviewing authority revoked the certificate.

(6) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

**History:** En. Sec. 6, Ch. 509, L. 1973; R.C.M. 1947, 69-5007; amd. Sec. 6, Ch. 490, L. 1985; (5) En. Sec. 16, Ch. 490, L. 1985; amd. Sec. 4, Ch. 79, L. 2001; amd. Sec. 7, Ch. 443, L. 2005.

**76-4-109.** Penalties. (1) A person who violates a provision of this part, except 76-4-122(1), or a rule adopted or an order issued under this part is guilty of an offense and subject to a fine in an amount not to exceed \$1,000.

(2) (a) In addition to the fine specified in subsection (1), a person who violates any provision of this part or any rule adopted or order issued under this part is subject to an administrative penalty in an amount not to exceed \$250 or a civil penalty in an amount not to exceed \$1,000. Each day of violation constitutes a separate violation.

(b) Penalties assessed under this subsection (2) must be determined in accordance with the penalty factors in 76-4-1001. An action to recover penalties must be brought in the district court of the county in which the violation occurred or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark County.

(3) Penalties imposed under subsection (1) or (2) do not bar enforcement of this part or rules or orders issued under it by injunction or other appropriate remedy.

(4) The purpose of this section is to provide additional and cumulative remedies.

**History:** En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part); amd. Sec. 7, Ch. 490, L. 1985; amd. Sec. 8, Ch. 443, L. 2005; amd. Sec. 23, Ch. 487, L. 2005.

**Cross-References**

Misdemeanor defined, 45-2-101.

**76-4-110.** Additional remedies available. This part does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this part or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of his rights in equity or under the common law or statutory law.

**History:** En. Sec. 7, Ch. 509, L. 1973; R.C.M. 1947, 69-5008(part).

**76-4-111.** Exemption for certain condominiums. (1) Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units for rental or lease, the construction of the same or a fewer number of condominium units on that parcel is not subject to the provisions of this part, provided that no new extension of a public water supply system or extension of a public sewage system is required.

**History:** En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 609, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 657, L. 1977; R.C.M. 1947, 69-5002(part); amd. Sec. 4, Ch. 592, L. 1985; (3) En. Sec. 9, Ch. 592, L. 1985; amd. Sec. 28, Ch. 582, L. 1999; amd. Sec. 7, Ch. 280, L. 2001.

**Cross-References**

Unit Ownership Act, Title 70, ch. 23.

**76-4-112.** Easements and restrictive covenants. (1) The reviewing authority may require the owner of a proposed subdivision to grant an easement or enter into a restrictive covenant pursuant to rules adopted by the department for the purpose of:

(a) ensuring the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(b) protecting state waters; or

(c) prohibiting the placement of water wells within a ground water mixing zone.

(2) An easement or covenant required under this section must run with the land. The easement or covenant may be enforced by the reviewing authority. The easement or covenant may not be terminated without the consent of the reviewing authority.

**History:** En. Sec. 1, Ch. 280, L. 2001.

**76-4-113.** Notification to purchasers. The developer or owner of an approved subdivision shall provide each purchaser of property within the subdivision with a copy of the

plat or certificate of survey and the certificate of subdivision approval specifying the approved locations of water supply, storm water drainage, and sewage disposal facilities. Each subsequent seller of property within the subdivision shall include within the instruments of transfer a reference to the conditions of the certificate of subdivision approval. A written verification of notice that is signed by both the seller and the purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance with this section for that transaction.

History: En. **Sec. 2**, Ch. 280, L. 2001.

**76-4-114** through **76-4-120** reserved.

**76-4-121.** Restrictions on subdivision activities. 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:

(1) a certificate of subdivision approval has been issued pursuant to 76-4-125 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(2) the governing body has provided certification pursuant to 76-4-127 that the subdivision is within a jurisdictional area that has adopted a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and will be provided with adequate municipal facilities and adequate storm water drainage; or

(3) the subdivision is otherwise exempt from review under 76-4-125.

History: En. **Sec. 150**, Ch. 197, L. 1967; amd. **Sec. 4**, Ch. 509, L. 1973; **amd. Sec. 2**, Ch. **529**, L. 1975; **amd. Sec. 12**, Ch. 140, L. 1977; amd. **Sec. 1**, Ch. 564, L. 1977; R.C.M. **1947, 69-5003(4)**; **amd. Sec. 8**, Ch. 490, L. 1985; **amd. Sec. 8**, Ch. 280, L. 2001; amd. **Sec. 1**, Ch. 543, L. 2003.

**76-4-122.** Filing or recording of noncomplying plat or certificate of survey prohibited. (1) The county clerk and recorder may not file or record any plat or certificate of survey subject to review under this part showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat or certificate of survey subject to review under this part for filing until one of the following conditions has been met:

(a) the person wishing to file the plat or certificate of survey has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority and a certificate of subdivision approval has been issued pursuant to 76-4-125 indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(b) the person wishing to file the plat or certificate of survey has obtained a certificate from the governing body pursuant to 76-4-127 that the subdivision is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and will be provided with adequate municipal facilities and adequate storm water drainage; or

(c) the person wishing to file the plat or certificate of survey has placed on the plat or certificate of survey an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption.

History: (1) **En. Sec. 151, Ch. 197, L. 1967; R.C.M. 1947, 69-5004**; (2) **En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; Sec. 69-5003, R.C.M. 1947; R.C.M. 1947, 69-5003(7), 69-5004**; amd. **Sec. 9**, Ch. 490, L. 1985; amd. **Sec. 5, Ch. 592, L. 1985; amd. Sec. 29, Ch. 582, L. 1999; amd. Sec. 9, Ch. 280, L. 2001; amd. Sec. 13, Ch. 599, L. 2003.**

Cross-References

Classification of municipalities, 7-1-4111.

**76-4-123.** Repealed. **Sec. 15**, Ch. 280, L. 2001.

History: En. **Sec. 160**, Ch. 197, L. 1967; amd. **Sec. 4**, Ch. **509**, L. 1973; arnd. **Sec. 2**, Ch. **529**, L. 1975; **amd. Sec. 12**, Ch. 140, L. 1977; amd. **Sec. 1**, Ch. 554, L. 1977; R.C.M. **1947, 69-5003(1)**; **amd. Sec. 10**, Ch. 490, L. 1985; amd. **Sec. 6**, Ch. 592, L. 1985; amd. **Sec. 30**, Ch. 582, L. 1999.

**76-4-124.** Repealed. **Sec. 15**, Ch. 280, L. 2001.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 564, L. 1977; R.C.M. 1947, 69-5003(2), (3); amd. Sec. 11, Ch. 490, L. 1985; amd. Sec. 7, Ch. 592, L. 1985; amd. Sec. 31, Ch. 582, L. 1999.

**76-4-125.** Review of subdivision application — land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(6), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(8), (10); amd. Sec. 12, Ch. 490, L. 1985; amd. Sec. 1, Ch. 289, L. 1997; amd. Sec. 10, Ch. 280, L. 2001; amd. Sec. 9, Ch. 299, L. 2001; amd. Sec. 8, Ch. 302, L. 2006; amd. Sec. 12, Ch. 337, L. 2005; amd. Sec. 1, Ch. 111, L. 2007; arnd. Sec. 11, Ch. 150, L. 2007.

**Compiler's Comments**

**2007 Amendments** — Composite Section: Chapter 111 in (2)(e)(ii) near middle substituted "serving a discharge source that was in **existence**" for "**that** was constructed" and after "installed" inserted "the system". **Amendment** effective March 30, 2007.

Chapter 150 in (3) after "50-2-116" deleted "(1)(i)". Amendment effective October 1, 2007.

76-4-126. Right to hearing. (1) **Upon** a denial of approval of subdivision plans and specifications relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing before the board. A hearing request must be filed, in writing, within 30 days **after** receipt of the notice of denial and must state the reason for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(2) If the **grounds** for a denial of approval under this part include **noncompliance** with local laws or regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and disposal of sewage, the board shall upon receipt of a hearing request refer the local compliance **issues** to the appropriate local authority. After opportunity for a hearing, the local authority shall issue a determination regarding the local compliance issues, and the board shall **incorporate** the determination of the local authority in the board's **final** decision.

**History:** En. Sec. 5, Ch. 509, L. 1973; R.C.M. 1947, 69-5006; amd. Sec. 13, Ch. 490, L. 1985; amd. Sec. 5, Ch. 79, L. 2001.

**Cross-References**

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

**76-4-127.** Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for **the** exemption from review set out in **76-4-125(2)(d)**, the governing body, as defined in **76-3-103**, shall, prior to final plat approval under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the **subdivision**.

(2) The **notice** of certification must include the following:

- (a) the name and address of the applicant;
- (b) a copy of **the** preliminary plat included with the application for **the** proposed subdivision or a final plat when a preliminary plat is not necessary;
- (c) the number of proposed parcels in the subdivision;
- (d) a copy of any applicable zoning ordinances in effect;
- (e) how construction of the **sewage** disposal and water supply **systems** or extensions will be financed;
- (f) certification that the subdivision is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in 7-1-4111, and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;
- (g) the relative location of the subdivision to the city or town;
- (h) **certification** that adequate municipal facilities for the supply of **water** and disposal of sewage and solid waste are available or will be provided within the time provided in 76-3-507;
- (i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and
- (j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(part); amd. Sec. 14, Ch. 490, L. 1985; amd. Sec. 8, Ch. 592, L. 1985; amd. Sec. 32, Ch. 582, L. 1999; amd. Sec. 11, Ch. 280, L. 2001; amd. Sec. 14, Ch. 699, L. 2003; amd. Secs. 1, 2, Ch. 433, L. 2005.

76-4-128. Repealed. Sec. 15, Ch. 280, L. 2001.

**History:** En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977; R.C.M. 1947, 69-5005(5); amd. Sec. 2, Ch. 653, L. 1981.

76-4-129. Joint application **form** and concurrent review. (1) Within 90 days **after** July 1, 1977, the department shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an **application** is received by either the department or a local

government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity.

(2) The review required by this part and the provisions of chapter 3 shall occur concurrently.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 629, L. 1976; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(11); amd. Sec. 3, Ch. 236, L. 1981; amd. Sec. 6, Ch. 274, L. 1981.

**76-4-130.** Deviation from certificate of subdivision approval. A person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 629, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(9); amd. Sec. 15, Ch. 490, L. 1985; amd. Sec. 12, Ch. 280, L. 2001.

**76-4-131.** Applicability of public water supply laws. The exclusions provided for in 76-4-121, 76-4-122, and 76-4-125 do not relieve any person of the duty to comply with the requirements of Title 75, chapter 6. An extension of a public water supply system or an extension of a public sewage system to serve a subdivision must be reviewed in accordance with the provisions of Title 75, chapter 6.

**History:** En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd. Sec. 1, Ch. 554, L. 1977; R.C.M. 1947, 69-5003(6); amd. Sec. 13, Ch. 280, L. 2001.

**76-4-132.** Special revenue account — deposit and use of fees. (1) All fees collected by the department under 76-4-105 must be deposited in an account in the state special revenue fund.

(2) Funds in the account established in subsection (1) may be used only as provided in 76-4-105.

**History:** En. Sec. 2, Ch. 514, L. 1995; amd. Sec. 14, Ch. 280, L. 2001.

**76-4-133.** Installation inspection. A person who owns or controls a parcel of land that has been approved under this chapter for the installation of an individual or multiple-user sewage system shall:

(1) have the system inspected during installation by the local health officer, as defined in 50-1-101, or by the installer or other person designated by the local health officer; and

(2) file with the local board of health a certification by the inspector that the system has been installed in compliance with the certificate of subdivision approval and any conditions of approval.

**History:** En. Sec. 3, Ch. 280, L. 2001; amd. Sec. 12, Ch. 150, L. 2007.

**Compiler's Comments**

**2007 Amendment:** Chapter 150 in (1) after "defined in" substituted "50-1-101" for "50-2-101". Amendment effective October 1, 2007.

**76-4-134** reserved.

**76-4-135.** State regulations no more stringent than federal regulations or guidelines. (1) After April 14, 1995, except as provided in subsections (2) through (5) or unless required by state law, the department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The department may incorporate by reference comparable federal regulations or guidelines.

(2) The department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if the department makes a written finding after a public hearing and public comment and based on evidence in the record that:

(a) the proposed state standard or requirement protects public health or the environment of the state; and

(b) the state standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the department's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed state standard or requirement.

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(4) (a) A person affected by a rule of the department adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable federal regulations or guidelines may petition the department to review the rule. If the department determines that the rule is more stringent than comparable federal regulations or guidelines, the **department** shall comply with this section by either revising the rule to **conform** to the federal regulations or guidelines or by making the written finding, as provided under subsection (2), **within** a reasonable period of **time**, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The department may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the department for a rule review under subsection (4)(a) if the department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted department rule.

(5) This section does not apply to a rule adopted under the emergency rulemaking provisions of 2-4-303(1).

**History:** En. Sec. 3, Ch. 471, L. 1995.

## Parts 2 through 9 reserved

### Part 10

#### Penalties, Fees, and Interest

76-4-1001. Penalty factors. (1) In determining the amount of an administrative or civil penalty to which subsection (4) applies, the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

- (a) the nature, extent, and gravity of the violation;
- (b) the circumstances of the violation;
- (c) the violator's prior history of any violation, which:
  - (i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;
  - (ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is **being** assessed; and
  - (iii) **may** not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;
- (d) the economic benefit or savings resulting from the violator's action;
- (e) the violator's good faith and cooperation;
- (f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and
- (g) other matters that justice **may** require.

(2) **After** the amount of a penalty is determined under subsection (1), the department of **environmental** quality or the district court, as appropriate, may consider the violator's **financial** ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) The department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally **required to perform**.

(4) **This** section applies to penalties assessed by the department of environmental quality or the district court under Title 75, chapters 2, 5, 6, 11, and 20; Title 75, chapter 10, parts 2, 4, 5, and 12; and Title 76, chapter 4.

(5) The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section.

**History:** En. Sec. 1, Ch. 487, L. 2005.

**76-4-1002.** Collection of penalties, fees, late fees, and interest. (1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of Title 75 or Title 76, chapter 4, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

History: En. Sec. 2, Ch. 487, L. 2005.

### Part 11 Out-of-State Sales of In-State Subdivisions (Repealed)

**76-4-1101.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: (1) En. Sec. 9, Ch. 191, L. 1963; Sec. 67-2109, R.C.M. 1947; (2) thru (4) En. Sec. 1, Ch. 191, L. 1963; amd. Sec. 321, Ch. 350, L. 1974; Sec. 67-2101, R.C.M. 1947; R.C.M. 1947, 67-2101, 67-2109; amd. Sec. 6, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

**76-4-1102.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 2, Ch. 191, L. 1963; amd. Sec. 322, Ch. 350, L. 1974; R.C.M. 1947, 67-2102.

**76-4-1103.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(1).

**76-4-1104.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 3, Ch. 191, L. 1963; amd. Sec. 323, Ch. 350, L. 1974; R.C.M. 1947, 67-2103(2).

**76-4-1105.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 4, Ch. 191, L. 1963; R.C.M. 1947, 67-2104.

**76-4-1106.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 5, Ch. 191, L. 1963; amd. Sec. 324, Ch. 350, L. 1974; R.C.M. 1947, 67-2105.

**76-4-1107.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 350, L. 1974; R.C.M. 1947, 67-2106(part).

**76-4-1108.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 6, Ch. 191, L. 1963; amd. Sec. 325, Ch. 360, L. 1974; R.C.M. 1947, 67-2106(part); amd. Sec. 1, Ch. 277, L. 1983.

**76-4-1109.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 7, Ch. 191, L. 1963; amd. Sec. 326, Ch. 360, L. 1974; R.C.M. 1947, 67-2107.

**76-4-1110.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 13, Ch. 191, L. 1963; amd. Sec. 330, Ch. 350, L. 1974; R.C.M. 1947, 67-2113.

**76-4-1111.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 12, Ch. 191, L. 1963; amd. Sec. 329, Ch. 350, L. 1974; R.C.M. 1947, 67-2112.

**76-4-1112.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 11, Ch. 191, L. 1963; R.C.M. 1947, 67-2111.

**76-4-1113.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 10, Ch. 191, L. 1963; amd. Sec. 328, Ch. 350, L. 1974; R.C.M. 1947, 67-2110.

**76-4-1114.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. Sec. 8, Ch. 191, L. 1963; amd. Sec. 327, Ch. 350, L. 1974; R.C.M. 1947, 67-2108.

**76-4-1115.** Repealed. Sec. 6, Ch. 170, L. 1999.

History: En. **Sec. 16**, Ch. 191, L. 1963; **amd. Sec. 332**, Ch. 350, L. 1974; R.C.M. **1947, 67-2116**; **amd. Sec. 12**, Ch. 266, L. 1979.

76-4-1116. **Repealed. Sec. 6**, Ch. 170, L. 1999.

History: En. **Sec. 14**, Ch. 191, L. 1963; **amd. Sec. 331**, Ch. 350, L. 1974; R.C.M. **1947, 67-2114**.

76-4-1117. **Repealed. Sec. 6**, Ch. 170, L. 1999.

History: En. **Sec. 15**, Ch. 191, L. 1963; R.C.M. **1947, 67-2115**; **amd. Sec. 13**, Ch. 266, L. 1979.

## Part 12 In-State Sales of Out-of-State Subdivisions (Repealed)

76-4-1201. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 20**, Ch. 97, L. 1969; R.C.M. **1947, 67-2136**.

76-4-1202. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 1**, Ch. 97, L. 1969; **amd. Sec. 333**, Ch. 350, L. 1974; R.C.M. **1947, 67-2117**; **amd. Sec. 7**, Ch. 497, L. 1979; **amd. Sec. 3**, Ch. 274, L. 1981.

76-4-1203. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Secs. 2, 10, Ch. 97, L. 1969**; **amd. Secs. 334, 340**, Ch. 350, L. 1974; R.C.M. **1947, 67-2118(part)**, **67-2126(1)**; **amd. Sec. 8**, Ch. 497, L. 1979.

76-4-1204. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 10**, Ch. 97, L. 1969; **amd. Sec. 340**, Ch. 350, L. 1974; R.C.M. **1947, 67-2126(4)**.

76-4-1205. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 10**, Ch. 97, L. 1969; **amd. Sec. 340**, Ch. 350, L. 1974; R.C.M. **1947, 67-2126(6)**.

76-4-1206. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: **En. Secs. 10, 11, Ch. 97, L. 1969**; **amd. Secs. 340, 341**, Ch. **350, L. 1974**; R.C.M. **1947, 67-2126(5)(b)**, **67-2127(1)**.

76-4-1207. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 11**, Ch. 97, L. **1969**; **amd. Sec. 341**, Ch. 350, L. 1974; R.C.M. **1947, 67-2127(2), (3)**.

76-4-1208. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 11**, Ch. 97, L. **1969**; **amd. Sec. 341**, Ch. 350, L. 1974; R.C.M. **1947, 67-2127(part)**.

76-4-1209. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 11**, Ch. 97, L. **1969**; **amd. Sec. 341**, Ch. 350, L. 1974; R.C.M. **1947, 67-2127(part)**.

76-4-1210. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 11**, Ch. 97, L. 1969; **amd. Sec. 341**, Ch. 360, L. 1974; R.C.M. **1947, 67-2127(part)**.

76-4-1211. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 2**, Ch. 97, L. 1969; **amd. Sec. 334**, Ch. 350, L. 1974; R.C.M. **1947, 67-2118(part)**.

76-4-1212. **Repealed. Sec. 46, Ch. 481, L. 1997.**

History: En. **Sec. 2, Ch. 97, L. 1969**; **amd. Sec. 334**, Ch. 350, L. 1974; R.C.M. **1947, 67-2118(part)**; **amd. Sec. 1**, Ch. 277, L. 1983.

76-4-1213. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Secs. 2, 10**, Ch. 97, L. **1969**; **amd. Secs. 334, 340**, Ch. 350, L. 1974; R.C.M. **1947, 67-2118(part)**, **67-2126(5)(c)**; **amd. Sec. 1**, Ch. 277, L. 1983.

76-4-1214 through 76-4-1220 reserved.

76-4-1221. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 3**, Ch. 97, L. 1969; R.C.M. **1947, 67-2119(part)**.

76-4-1222. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 3, Ch. 97, L. 1969**; R.C.M. **1947, 67-2119(part)**; **amd. Sec. 8, Ch. 351, L. 1979**.

76-4-1223. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 3**, Ch. 97, L. 1969; R.C.M. **1947, 67-2119(part)**.

76-4-1224. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 3**, Ch. 97, L. 1969; R.C.M. **1947, 67-2119(part)**.

76-4-1225. **Repealed. Sec. 46**, Ch. 481, L. 1997.

History: En. **Sec. 10**, Ch. 97, L. **1969**; **amd. Sec. 340**, Ch. 350, L. 1974; R.C.M. **1947, 67-2126(7)**.

- 76-4-1226. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 4, Ch. 97, L. 1969; R.C.M. 1947, 67-2120.
- 76-4-1227. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Secs. 5, 10, Ch. 97, L. 1969; amd. Sec. 335, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(part), 67-2126(5)(a).
- 76-4-1228. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(b), (f), (g), (h), (i), (j), (k), (l).
- 76-4-1229. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(d), (e).
- 76-4-1230. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(1)(a), (c), (m), (n), (o).
- 76-4-1231. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(2).
- 76-4-1232. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 5, Ch. 97, L. 1969; amd. Sec. 335, Ch. 350, L. 1974; R.C.M. 1947, 67-2121(3).
- 76-4-1233. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(1).
- 76-4-1234. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Secs. 6, 10, Ch. 97, L. 1969; amd. Secs. 336, 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(2), 67-2126(2).
- 76-4-1235. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 6, Ch. 97, L. 1969; amd. Sec. 336, Ch. 350, L. 1974; R.C.M. 1947, 67-2122(3).
- 76-4-1236. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 7, Ch. 97, L. 1969; amd. Sec. 337, Ch. 350, L. 1974; R.C.M. 1947, 67-2123.
- 76-4-1237. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).
- 76-4-1238. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(part).
- 76-4-1239. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974; R.C.M. 1947, 67-2124(4).
- 76-4-1240. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 9, Ch. 97, L. 1969; amd. Sec. 339, Ch. 350, L. 1974; R.C.M. 1947, 67-2125.
- 76-4-1241. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(1).
- 76-4-1242. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 12, Ch. 97, L. 1969; amd. Sec. 342, Ch. 350, L. 1974; R.C.M. 1947, 67-2128(2).
- 76-4-1243. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 13, Ch. 97, L. 1969; amd. Sec. 343, Ch. 350, L. 1974; amd. Sec. 55, Ch. 359, L. 1977; R.C.M. 1947, 67-2129.
- 76-4-1244. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974; R.C.M. 1947, 67-2126(3).
- 76-4-1246. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 15, Ch. 97, L. 1969; R.C.M. 1947, 67-2131; amd. Sec. 14, Ch. 266, L. 1979.
- 76-4-1246. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 18, Ch. 97, L. 1969; R.C.M. 1947, 67-2134.
- 76-4-1247. Repealed. Sec. 46, Ch. 481, L. 1997.**  
History: En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(a), (b), (e).
- 76-4-1248. Repealed. Sec. 46, Ch. 481, L. 1997.**

**History:** En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(c), (d).

**76-4-1249. Repealed. Sec. 46, Ch. 481, L. 1997.**

**History:** En. Sec. 16, Ch. 97, L. 1969; R.C.M. 1947, 67-2132(f).

**76-4-1250. Repealed. Sec. 46, Ch. 481, L. 1997.**

**History:** En. Sec. 17, Ch. 97, L. 1969; R.C.M. 1947, 67-2133.

**76-4-1251. Repealed. Sec. 46, Ch. 481, L. 1997.**

**History:** En. Sec. 19, Ch. 97, L. 1969; amd. Sec. 344, Ch. 350, L. 1974; R.C.M. 1947, 67-2135.