

HOUSE BILL NO. 669
INTRODUCED BY YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PARK DEDICATION REQUIREMENTS FOR SUBDIVISIONS; PROVIDING THAT A SUBDIVIDER MAY DEDICATE LAND OUTSIDE OF A SUBDIVISION; AUTHORIZING THE GOVERNING BODY TO DISPOSE OF DEDICATED LAND THAT IS OUTSIDE OF THE SUBDIVISION AND TO USE THE PROCEEDS FOR PARKS TO SERVE THE SUBDIVISION WITHOUT VOTER APPROVAL; AND AMENDING SECTIONS 7-8-4201 AND SECTION 76-3-621, MCA."

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

~~Section 1.~~ Section 7-8-4201, MCA, is amended to read:

~~"7-8-4201. Disposal or lease of municipal property.~~ (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, or lease any property belonging to the city or town:

~~(2) (a) Except for property described in subsection (3), the lease or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.~~

~~(b) Except for property acquired by tax deed or property described in subsection (3) or land dedicated pursuant to 76-3-621, if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. The election must be held in conjunction with a regular or primary election.~~

~~(3) If a city or town owns property containing a historically significant building or monument, the city or town may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:~~

~~(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and~~

~~(b) provides for the reversion of the property to the city or town for noncompliance with conditions attached to the transfer.~~

~~(4) This section may not be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city that were acquired for parks within the limitations prescribed by 7-16-4223."~~

Section 1. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), ~~(6)~~, and ~~(6)~~ (7) 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) a minor subdivision;
 - (b) land proposed for subdivision into parcels larger than 5 acres;
 - (c) subdivision into parcels that are all nonresidential;
 - (d) 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
 - (e) 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. ~~The~~

~~governing body may dispose of dedicated land that is outside of the subdivision, subject to the provisions of 7-8-4201, Title 7, chapter 8, part 25, or 7-16-2324.~~

(b) The governing body may use the dedicated money ~~or proceeds from the disposition of land under subsection (5)(a)~~ 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); ~~or~~

(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); ~~or~~.

~~(e) (i)(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

~~(ii)~~(B) the area of the land to be subject to long-term protection, as provided in subsection ~~(6)(e)(i)~~ (7)(A), equals or exceeds the area of the dedication required under subsection (1).

~~(7)~~(8) 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.

~~(8)~~(9) A land donation under this section may be inside or outside of the subdivision."

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