



AN ACT GENERALLY REVISING LAND USE LAWS; ALLOWING LOCAL GOVERNMENTS TO ADOPT GROWTH POLICIES THAT ADDRESS INFRASTRUCTURE PLANNING; ALLOWING CERTAIN GOVERNING BODIES TO ASSESS PLANNING FEES; EXEMPTING CERTAIN LAND DIVISIONS FROM REVIEW; AMENDING SECTIONS 76-1-103, 76-1-601, 76-3-605, 76-3-608, AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 76-1-103, MCA, is amended to read:

"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) "Mayor" means mayor of a city.
- (7) "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.
- ~~(6)~~(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.
- ~~(7)~~(9) "Person" means any individual, firm, or corporation.
- ~~(8)~~(10) "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.
- ~~(9)~~(11) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and

includes replats or amended plats.

~~(10)~~(12) "Public place" means any tract owned by the state or its subdivisions.

~~(11)~~(13) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

~~(12)~~(14) "Utility" means any facility used in rendering service that the public has a right to demand."

Section 2. Section 76-1-601, MCA, is amended to read:

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

(2) A growth policy must include the elements listed in subsection (3) ~~by October 1, 2006~~. The extent to which a growth policy addresses the elements ~~of a growth policy that are~~ 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)~~(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

- ~~(viii)~~(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); and
- (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted.
- (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) 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.~~

(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."

Section 3. 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.

Section 4. 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.

Section 5. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on subdivision application. (1) Except as provided in 76-3-609 [and section 4] 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."

Section 6. Section 76-3-608, MCA, is amended to read:

"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 when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509 ~~or in, [section 4], or 76-3-609(2) or (4), the impact~~ 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~~ 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.~~

(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)~~ (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."

Section 7. Section 76-3-609, MCA, is amended to read:

"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 section 4 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."

Section 8. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 76, chapter 1, part 4, and the provisions of Title 76, chapter 1, part 4, apply to [section 3].

(2) [Section 4] is intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 4].

Section 9. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0201, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 201

INTRODUCED BY LAIBLE, GILLAN, HAWKS, NOONEY, HANDS, GRINDE, MURPHY, O'HARA, EBINGER,
WISEMAN, DUTTON, JACOBSON, ARNTZEN, MACLAREN

AN ACT GENERALLY REVISING LAND USE LAWS; ALLOWING LOCAL GOVERNMENTS TO ADOPT GROWTH POLICIES THAT ADDRESS INFRASTRUCTURE PLANNING; ALLOWING CERTAIN GOVERNING BODIES TO ASSESS PLANNING FEES; EXEMPTING CERTAIN LAND DIVISIONS FROM REVIEW; AMENDING SECTIONS 76-1-103, 76-1-601, 76-3-605, 76-3-608, AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.