

Chapter 1. Comprehensive Land Use Planning by Local Jurisdictions

Part 1. General Provisions

Section 1. Legislative Purpose, Findings, and Intent. (1) It is the purpose of [this chapter] to promote the health, safety, and welfare of the people of Montana through a system of comprehensive planning that balances private property rights and values, economic efficiency in public services and infrastructure, protection of the environment, natural resources, and recreation, and a diversified and sustainable economy.

Commented [KL1]: Tighten up this language

(2) The legislature finds that coordinated and planned growth within the cities and counties of Montana will encourage, support, and protect:

(a) sufficient housing units for Montana's growing population that are affordable across all income categories;

Commented [KL2]: Is this the right description for what we are aiming for? This is the current term used by housing advocates.

(b) the provision of adequate public services and infrastructure in the most cost-effective manner possible, shared equitably among all residents, businesses, and industries; and

(c) the natural environment, including wildlife and wildlife habitat, sufficient and clean water, and healthy air quality;

(c) agricultural, forestry, and mining lands for the production of food, fiber and minerals and their economic benefits;

(d) Montana's economy and tax base through job creation, business development, and the revitalization of established communities;

(e) persons, property, infrastructure, and the economy against natural hazards such as flooding, earthquake, wildfire, and drought;

(g) local consideration, participation, review, and planning of growth while meeting the state's broader comprehensive planning purposes set forth in [subsection 1].

(3) It is the Legislature's intent that the comprehensive planning authorized in [this chapter]:

(a) provides the broadest and most comprehensive level of collecting data, identifying and analyzing existing conditions and future opportunities and constraints, and mitigating the impacts of development on each local government jurisdiction;

(b) be the basis for the specific land use regulations which implement the policies expressed through a local comprehensive plan;

(c) anticipates tiering of information, analysis, public participation, and judicial review of subsequent development decisions made by the local government in substantial conformity with the local comprehensive plan; and

(d) results in simplifying local discretionary review and decision-making at the site-specific development level. applicability statements

Section 2. Definitions

Section 3. Planning Commission. (1)(a) Each local government shall establish, by ordinance or resolution, a planning commission.

(b) Any combination of local governments may create a multi-jurisdiction planning commission or join an existing commission pursuant to interlocal agreement.

(c) Legally authorized planning boards, zoning commissions, or planning and zoning commissions existing prior to enactment of [this chapter]:

(i) may be considered to be duly constituted under this chapter as a planning commission by agreement of the governing bodies of each local jurisdictions represented thereon.

(ii) If more than one legally authorized planning board, zoning commission, or planning and zoning commission exists, the governing bodies of each local jurisdiction may agree to designate one of them as the planning commission, combine, consolidate, or modify one or more of them as the planning commission, or create a new planning commission pursuant to [this section] and disband the existing boards and commissions.

(2)(a)(i) Each planning commission shall consist of an odd number of not less than three (3) voting members and confirmed by majority vote of each local governing body.

(ii) The membership of a multi-jurisdiction planning commission must provide equal representation each of the local government jurisdictions represented thereon.

(b) The planning commission shall meet at least once every six (6) months.

(c) Minutes shall be kept of the meetings of the planning commission, and all meetings and records shall be open to the public.

(d) A majority of currently appointed voting members of the commission constitutes a quorum. An action of the planning commission is not official unless a quorum is present, as defined by the local governing body, and unless the action is authorized by a majority of the quorum at a regular or properly called special meeting.

(e) The ordinance, resolution, or interlocal agreement creating the commission shall set forth the requirements for appointments, terms, qualifications, removal, vacancies, meetings, officers, reimbursement of costs, bylaws, or any other requirement deemed necessary by the local governing body.

Commented [KL3]: Is there a better term? More efficient, effective, and faster? Narrowing? Focused? Avoids duplication?

Commented [KL4]: Both “discretionary” and “administrative” as used throughout would be defined. Administrative is a ministerial decision, where the proposal either meets the standards/requirements or it doesn’t – no room or allowance for discretion on the part of the decision-maker. These decisions are usually delegated to the land use administrator – the Planning Director or similar position – and appealable to the local governing body under current law. (i.e., is a fence 6 ft tall? Is an ADU allowed in that zone and does the proposal meet the required setbacks?)

Discretionary indicates a decision where the reviewer has the authority and is expected to use their discretion in whether and how an application meets the standards or criteria. This can mean imposing ad hoc conditions or denying the application when, in the opinion of the decision-maker, the application cannot or does not meet a standard or criteria. These decisions, under current law, are almost always made by the local governing body (i.e., does the proposed development significantly impact wildlife? Does the proposed use conform to the character of the neighborhood?)

MACO comments: Does this mean any decision of a planning director? E.g. can an element and sufficiency denial be appealed? And who can appeal? Can members of the public appeal an administrative land use decision? Example being, public, at a hearing, says over and over a subdivision application doesn’t meet element and sufficiency? Can they appeal the planning director? Also, will this undermine any positive working relationship between a commission and the staff that report to it?

MACo comment: There will still have to be some level of public notice/participation for administrative decisions; even if it is only putting the decision on a consent agenda for the governing body. I just don’t see how we cut the public out of administrative decisions and how are they appealable if they don’t even know about them.

Commented [KL5]: Concerns expressed about large jurisdictions where existing city/county planning board handles policies and subdivisions for each jurisdiction but not city-only zoning issues? Flexibility to continue multiple planning advisory boards/commissions?

Commented [KL6]: Consider identifying certain professional experience/background for members

(3)(a) Except as set forth in [subsection (b)], the planning commission shall review and make recommendations to the local governing body regarding the development, adoption, amendment, review, and approval or denial of the following documents and any discretionary land use decisions made pursuant thereto:

- (i) the comprehensive plan;
- (ii) zoning regulations;
- (iii) subdivision regulations;
- (iv) any other land use planning document the local governing body designates.

(b) The planning commission shall hear appeals from any administrative land use decisions made pursuant to the adopted documents set forth in [subsection (a)] in accordance with [new section on appeals in zoning and subdivision chapters]. Planning commission decisions shall be appealable to the local governing body as set forth in [xxxx].

(c) At the discretion of the local governing body, the planning commission may review and make final decisions regarding any discretionary land use decisions made pursuant to the adopted documents set forth in [subsection (a)]. Planning commission decisions shall be appealable to the local governing body as set forth in [xxxx].

Section 4. Applicability (description of what elements are required for what communities)

Section 5. Adoption and Amendment (includes public participation)

Section 6. Effects of Comprehensive Plan

Part II – Elements of Comprehensive Plan

Section 1. Existing Conditions. (1) A comprehensive plan shall include inventories and detailed descriptions of existing conditions on aspects of the built environment, natural environment, social and demographic conditions, housing and affordability, and economic conditions within the plan’s jurisdictional boundary.

(2) The plan inventories and detailed descriptions must be based, but are not limited to, surveys, maps, diagrams, charts, descriptive material, studies, and reports necessary to explain and supplement the following components:

(a) Demographics of the jurisdiction provide by the most recent official census or census estimate of the United States Census Bureau. Population projections for a

Commented [KL7]: Under existing law, the planning board only prepares the growth policy if requested by the governing body. I am proposing we just say planning commission reviews and makes recommendations to governing body for all land use planning documents and any decisions made thereunder.

Commented [KL8]: See comments in purpose section regarding definitions of administrative and discretionary.

Commented [KL9]: Discuss keeping as “growth policy” or changing to “comprehensive plan” or something else

Commented [KL10]: MACO comments: I understand the intent is to allow more administrative land use decisions if most of the planning happens upfront but I have concerns about public participation in these administrative land use decisions, i.e. we have had to litigate this in Flathead County. And the type of appeal needs to be very specific; an appeal on the record or a de novo review. Same comment regarding appeals to the local governing body.

Commented [KL11]: Who decides when it meets these requirements? Part of the conversation about state resources.

Commented [KL12]: Leave it to discretion of local entity how to format/organize data and analysis of the topics and elements.

Commented [KL13]: Need to ensure the data is consistent, based on consistent parameters, and allows for more granular analysis at the local level. Want the best data available.

Commented [KL14]: How would we integrate existing plans and reports that already reflect existing conditions, analysis, and goals or objectives for topic areas in this list.

Commented [KL15]: We don’t intend this as a “data dump” and would want it to be a helpful, focused analysis of the data that matters.

20-year period based upon permanent and seasonal population estimates, which shall either be those published by the Montana Department of Commerce, generated by the local government based upon a professionally acceptable methodology, or produced by a professional firm specializing in projections and based upon a professionally acceptable methodology. When a population projection is not available for a jurisdiction within a portion of a county from one of the sources listed above, population projections for this area within a county must, at a minimum, be reflective of the area's proportional share of the total county population and the total county population growth.

(b) Housing by location, type, age, condition, owner and renter occupancy and affordability; projections of housing needs to accommodate existing and future population; analysis of local regulations and market-based incentives that could affect or encourage the development of affordable housing; integrate with housing needs assessment.

(c) Local services and facilities within the jurisdiction including the current capacity or levels of services for public sewage, public water, waste disposal, drainage, public utilities, police and fire protection, K-12 school districts, and other public services identified by the jurisdiction. Transportation facilities within the jurisdiction including descriptions of the general location, alignment, extent, general capacity, and the managing agency of major thoroughfares, major transportation routes, non-motorized transportation routes, and public transit as identified by the jurisdiction.

(d) Economic development and financial feasibility of the land use plan.

(e) Natural resources, including agriculture and agriculture water user facilities, minerals including sand and gravel resources, forestry lands, and other natural resources identified by the jurisdiction.

(f)(i) Natural environment within the jurisdiction including the location, condition, and threats to forest resources, grasslands, lakes, rivers and streams, wetlands, fisheries, wildlife and wildlife habitat; and

(ii) Natural hazards affecting the jurisdiction, including flood hazards, high fire hazards, steep slopes, stream channels and other environmentally sensitive areas, shallow groundwater, known geologic hazards, and other natural hazards identified by the jurisdiction.

(g) Existing land uses, including categories of public and private use of land, general descriptions of existing uses, general descriptions of population density and building intensity, and other aspects of the built environment as identified by the jurisdiction.

Section 2. Housing

Section 3. Local Services and Facilities. Communities must plan for and coordinate delivery of public health and safety services, local utilities infrastructure and services, garbage collection, park and recreation, and transportation infrastructure and services, activities essential to the growth, longevity, development or redevelopment of the community. Local services and facilities include the following:

(1) Public Health and Safety

(a) A community must be able to provide public safety and emergency services to its residents, as well as determine how changes in population and new development (residential and commercial) impacts the capacity and tools needed to meet community needs.

(b) Resource balance based on a community's size and capacity must be a factor in this required comprehensive plan element. Support from state and federal agencies is critical to ensure all communities are successful in public safety, health care and emergency services system coordination as part of the comprehensive planning process.

(c) Incorporating public safety service current conditions and future planning into the comprehensive planning process provides direction to developers of where and how the community is able to serve residential and commercial property, the potential financial impacts that new development patterns have on public safety response time, equipment, and capacity, and where investments are planned to be made in the public safety system.

(d) The comprehensive plan must determine the existing and planned levels of public safety and emergency services in the community, and how they are equipped to handle added growth and development. Local jurisdictions shall:

(i) Collect data regarding law enforcement, fire protection, ambulance/EMS agencies, and local health care organizations;

(ii) Include tools like local pre-disaster mitigation plans, health needs assessments, and public safety service plans and budgets, where applicable to determine service levels and needs;

(iii) Prepare an inventory and map of fire stations, police and sheriff offices, emergency service and law enforcement jurisdictional areas, descriptions of mutual aid or cooperative service agreements, and hospitals or clinics in the jurisdiction;

(iv) A minimum future 5-year capital and service improvement plan showing public safety, emergency and health service programming plans for the community. (Section 76-1-601(4)(c)(vi), MCA.) A pre-disaster mitigation plan or a local emergency planning committee could provide substantive information for meeting the analysis requirements in this section.

(2) Public Utilities and Solid Waste (drinking water, wastewater, stormwater and solid waste)

(3) Parks and Recreation (natural open space, developed parks, recreation centers, trails)

(4) Transportation Infrastructure and Services (roads, bridges, sidewalks, side paths, bike lanes, bikeways, bike boulevards, traffic control systems, transit)

(5) Other Community Services (schools, child care, libraries, community centers, broadband, cemeteries, corrections, etc.)

Section 4. Economic Development and Financial Feasibility. A comprehensive plan must include an economic development element assessing local economic conditions and projected trends and establishing local goals and objectives for economic growth and vitality. The economic development element shall include the following subelements:

(1) an assessment of existing and potential commercial, industrial, and institutional enterprises within the local government’s jurisdiction including the types of sites and supporting services needed by these enterprises;

(2) job composition and trends by industry sector including existing labor force characteristics and future labor force requirements for existing and potential enterprises;

(3) an assessment of local characteristics, assets, and resources including access to transportation to market for goods and services and historic, cultural, and scenic resources within the local government’s jurisdiction and their relation to economic development;

(4) an inventory of commercial, industrial, and institutional lands within the local government’s jurisdiction that are vacant or significantly underused including the size of such sites, supporting public services and facilities, and any site constraints;

(5) an assessment of recent economic development efforts within the local government’s jurisdiction and tools available to the local government to encourage economic development; and

(6) an assessment of the adequacy of existing and projected infrastructure, including housing stock, within the local government’s jurisdiction for existing and potential commercial, industrial, and institutional enterprises.

Commented [KL16]: Start with a brief summary of each topic and why its important and relevant to planning and identifying future land uses.

Commented [KL17]: Identify other locations this becomes relevant – housing element, infrastructure element, land use element

Section 5 – Natural Resources

Section 6 – Natural Environment and Hazards

Section 7. Future Land Uses and Map. (1) The land use element describes proposed future general distribution, location, and extent of the uses of land for residential, commercial, mixed-use, industry, agriculture, recreation, conservation,

and other categories of public and private uses of land as determined by the jurisdiction.

(2) The land use element establishes as policy the long-term end toward which land use implementation activities are ultimately directed. The land use element is not regulatory and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(3) The land use element must include the following:

(a) A vision statement describing the desired outcomes the local government's programs, activities, and land development regulations. will have on the existing conditions and trends identified and analyzed in [Sections 1 through 6]. The format of the vision statement is at the discretion of the local government, but typically is expressed in a combination of principals, goals, objectives, policies, and strategies.

(b) Descriptions of future land uses that must be defined in terms of general land use and must include descriptions of the distribution of population densities and building and structure intensities. The descriptions of future land uses, as a whole, must include the types of housing necessary to meet future demand, consider the presence of natural resources and hazards within the jurisdiction, and consider the need for job creation and diversification of the community's economy.

(c) A future land use map showing the geographic distribution of future land uses in the jurisdiction anticipated over a 20-year horizon. The future land use map must consider the Existing Conditions and Trends identified in [this section], and the vision statement in [this subsection], and specifically demonstrate:

- (i) The adequate amount of land required to accommodate anticipated growth;
- (ii) The projected permanent and seasonal population of the area;
- (iii) The type and supply of housing necessary to meet future demand;
- (iv) The general suitability and character of lands based on the presence of natural resources and identified hazards;
- (v) The availability of water supplies, public facilities, and services;
- (vi) The need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy;
- (vii) Circulation needed for future land uses consisting of the general location of major thoroughfares, major transportation routes, non-motorized transportation routes, and public transit as identified by the jurisdiction.

(d) Identify any obstacles to implementing the future land use map developed pursuant to [subsection (c)], and what actions the jurisdiction will taken to overcome them (e.g., securing water rights, utility permitting/expansion, transportation ROW, avoiding important natural features, overcoming expected public opposition (why?), coordinating with other government entities, obtaining funding, annexing adjacent land).

Commented [KL18]: To what degree of detail? How specific do we need to be to get the tiering we want to happen?

Part III – Implementation of Comprehensive Plan

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