

**Montana Code Annotated - MCA 76-2-205 Suggested Wording Revisions and
Additions To Expedite and Improve The Deliberation Process For Zoning
Regulation - Jack & Stephanie Venrick - May 5, 2022**

NOTE: Additions and changes are in caps and bolded.

Montana Code Annotated 2019

TITLE 76. LAND RESOURCES AND USE

CHAPTER 2. PLANNING AND ZONING

Part 2. County Zoning

Procedure For Adoption Of Regulations And Boundaries

76-2-205. 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:

(a) state:

(i) the boundaries of the proposed district;

(ii) the general character of the proposed zoning regulations;

(iii) the time and place of the public hearing;

(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(b) be posted **AND BE SENT OUT VIA MAIL TO THOSE LOCAL PROPERTY OWNERS IMPACTED AND ON THE LAST COMPLETED TAX ASSESSMENT ROLL OF THE COUNTY; AND**

(C) TO BE NOTIFIED NOT MORE THAN 30 DAYS FROM RECEIPT OF THE APPLICATION AND not less than 45 days before the public hearing in at

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least five public places, including but not limited to public buildings and adjacent to public rights-of-way, within the proposed district **WITH ALL POSTING LOCATIONS TO BE ACCURATELY POSTED ON THE COUNTY WEB SITE**; and

(e) (D) be published once a week for 2 weeks in a newspaper of general circulation within the county **WITH THE NAMES AND DATES OF SUCH NEWSPAPERS TO BE POSTED ON THE COUNTY WEB SITE AND THE NEWSPAPER(S) SHALL BE LOCATED IN OR CLOSEST TO THE ZONING DISTRICT IMPACTED, I.E. NOT A LIMITED CIRCULATION NEWSLETTER.**

(E) IN THE EVENT THE APPLICANT IS REQUESTED TO COMMUNICATE TO THE PROPERTY OWNERS IMPACTED; THE COUNTY SHALL TRANSMIT THE COMMUNICATION VIA U.S. MAIL TO ALL IMPACTED PROPERTY OWNERS OR AT LEAST 90% WHO'S ADDRESSES ARE CORRECT ON THE LAST COMPLETED TAX ASSESSMENT ROLL. THIS INCLUDES ALL PROPERTY OWNERS IN DISTRICTS/SUBDISTRICTS WITH NO ZONING AS APPLIBLE.

(F) ONLY THE ELECTED COUNTY COMMISSIONERS AND LOCAL PROPERTY OWNER(S) ON THE LAST COMPLETED TAX ASSESSMENT ROLL OF THE COUNTY HAVE AUTHORITY TO CHANGE OR CREATE REGULATIONS AND BOUNDARIES. (REFERENCE 1 & 2)

(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 **IN EXERCISING THE CONSENT OF THE MAJORITY OF THE LOCAL PROPERTY OWNERS. (REFERENCE 1)**

(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

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**CONSISTENT WITH THE MAJORITY OF THE LOCAL IMPACTED
PROPERTY OWNERS. (REFERENCE 2)**

(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 **WITH THE NAMES AND DATES OF SUCH NEWSPAPERS TO BE POSTED ON THE COUNTY WEB SITE AND THE NEWSPAPER(S) SHALL BE LOCATED IN OR CLOSEST TO THE ZONING DISTRICT IMPACTED, I.E. NOT A LIMITED CIRCULATION NEWSLETTER.** 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 **SEND OUT REQUESTS FOR COMMENTS (RFC)** ~~receive written protests~~ **BY MAIL TO THE SUB DISTRICT OF THE ADOPTION OR AMENDMENT OF ZONING REGULATINS AS WELL AS TO THE NEIGHBORING SUB DISTRICTS IMPACTED BY** ~~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. **THIS INCLUDES ALL PROPETY OWNERS IN DISTRICTS/SUBDISTRICTS WITH NO ZONING.**

(E) EACH PROPERTY WILL BE ALLOWED ONE VOTE/COMMENT AND WILL IDENTIFY THE OWNER'S NAME(S), CARE TAKER IF APPLICABLE, PROPERTY ADDRESS, OWNER MAILING ADDRESS, PHONE NUMBER, AND TAX PAYER NUMBER. THIS INCLUDES PROPERTIES IN DISTRICTS/SUBDISTRICTS WITH NO ZOING AS APPLICABLE.

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(6) Within 30 days after the expiration of the **REQUEST FOR COMMENT** ~~protest~~ period, the board of county commissioners **WILL POST ALL THE LOCAL PROPERTY OWNER COMMENTS ON THE COUNTY WEB SITE FOR PUBLIC VIEWING** ~~may in its discretion adopt the resolution~~ creating the zoning district or establishing the zoning regulations for the district. However, if ~~40%~~ **MORE THAN 50%** of the real property owners within the district whose names appear on the last-completed assessment roll ~~or if real property owners 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. **(WHY ONLY 1 YEAR VS. LONGER OR PERMANENT?)**

(7) THE FOLLOWING STANDARDS AND GUIDELINES ARE REQUIRED IN PART OR TOTAL AS REASONS DETERMING A PROPERTY OWNER'S COMMENTS AS HAVING SUBSTANTIAL BEARING UPON THE PUBLIC HEALTH, SAFETY, MORALS AND GENERAL WELFARE CONSISTANT AND COMPATIBLE WITH THE COMMUNITY, E.G. IMPACT ON TRAFFIC, NOISE, ENVIRONMENT, WATER QUALITY, EMERGENCY SERVICE RESPONSE FOR FIRE, MEDICAL AND LAW ENFORCEMENT, GROWTH MANAGEMENT POLICY GOALS, PRESERVATION OF THE CHARACTER OF DISTRICT AND SUITABILITY FOR PARTICULAR USES, LIMITATION OF COMMERCIAL ACTIVITY, DEMOGRAPHICS OF THE AREA, PROPERTY VALUATION, EXTREME WEATHER CONDITIONS, E.G. HIGH WINDS, FOREST FIRES, WILDLIFE AND THEIR HABITAT, AGRICULTUREAL AND MINERAL RESOURCES, CONSIDERATION OF NEIGHORING PROPERTY OWNERS PEACE AND QUIET, RATIO OF THE PROPERTIES REQUESTING THE CHANGE TO THOSE WHO DO NOT WANT THE CHANGE AND RETROACTIVE CONSIDERATION. (REFERENCE 3)

(8) THE COUNTY GROWTH POLICY GOALS ARE TO BE FOLLOWED AS A STADARD INCLUDING DISTRICTS/SUBDISTRICTS WITH NO

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ZONING. IF ONLY ONE OR A FEW GOALS ARE USED TO JUSTIFY A NEW REGULATION, REGULATION CHANGE, ZONING AMENDMENT, ET AL, THIS SHOULD BE CONSIDERED REASON REQUIRING MORE OFFSETTING BENEFITS EXPECTED OF THE NEW REGULATION OR THE CHANGE REQUESTED FOR THE COMMUNITY AS A WHOLE.

(9) THE RURAL CHARACTER OF THE LAND IS INVESTED IN AND DERIVED FROM THE LOCAL PROPERTY OWNERS FIRST AS A WHOLE THROUGH THEIR DIRECT PARTICIPATION IN CREATING AND CHANGING THE LAWS AND THE OPERATION OF THE AGENCIES INVOLVED IN EXERCISING THE WILL OF THE PEOPLE ONLY. (REFERENCE 1)

(10) PROPERTY RIGHTS ARE TO BE CONSIDERED TO BE IN HARMONY AND BALANCE WITH THE APPLICABLE DISTRICT(S) /SUB DISTRICT(S) IN WHICH THERE IS AN ESTABLISHMENT OR REVISION OF BOUNDARIES FOR ZONING DISTRICTS AND IN THE ADOPTION OF AMENDMENT OF ZONING REGULATIONS INCLUDING IN DISTRICTS/SUBDISTRICTS WITH NO ZONING INCLUDING IN DISTRICTS/SUBDISTRICTS WITH NO ZONING. IN HARMONY MEANS SUPPORTING THE RURAL CHARACTER OF THAT PARTICULAR AFFECTED DISTRICT/SUB-DISTRICT.

(11) Minimum lot size restrictions. A board of county commissioners may not adopt zoning regulations under this part that require minimum lot sizes in an area zoned for residential use unless:

(a) the zoning regulation requiring minimum lot sizes is applied to land that is within 3 miles of the limits of an incorporated municipality; or

(b) the county has adopted a land use map in its growth policy pursuant to 76-1-601(5) that sets forth projected population densities and the recommended minimum lot sizes.

(c) Note: this part 11 has been transferred from SB 294 Section 3 and is identical word for word.

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References:

THE PUBLIC WILL BE INFORMED OF THE FOLLOWING LAWS.

- (1) The Constitution of the State of Montana SECTION 1. ALL POLITICAL POWER IS VESTED IN AND DERIVED FROM THE PEOPLE. ALL GOVERNMENT OF RIGHT ORIGINATES WITH THE PEOPLE, IS FOUNDED UPON THEIR WILL ONLY, AND IS INSTITUTED SOLEY FOR THE GOOD OF THE WHOLE. SECTION 2. SELF-GOVERNMENT. THE PEOPLE HAVE THE EXCLUSIVE RIGHT OF GOVERNING THEMSELVES AS A FREE, SOVEREIGN, AND INDEPENDENT STATE... SECTION 8. RIGHT OF PARTICIPATION. THE PUBLIC HAS THE RIGHT TO EXPECT GOVERNMENTAL AGENCIES TO AFFORD SUCH RESONABLE OPPORTUNITY FOR CITIZEN PARTICIPATION IN THE OPERATION OF THE AGENCIES PRIOR TO THE FINAL DECISION AS MAY BE PROVIDED BY LAW.**

- (2) IN MONTANA, THE ESTABLISHMENT OF LOCAL ZONING DISTRICTS IS GOVERN BY STATUTE. A LOCAL ZONING DISTRICT CAN BE CREATED IN TWO DIFFERENT WAYS. (1) BY CITIZEN PETITION TO THE BOARD OF COUNTY COMMISSIONERS UNDER PARA. 76-2-101, MCA, KNOWN AS "PART 1 ZONING OR (2) DIRECTLY BY THE BOARD OF COUNTY COMMISSIONERS UNDER PARA. 76-2-201, MCA, REFERRED TO AS "PART 2 ZONING". [MONTANA SUPREME COURT DECISION DA12-0343, 2013 MT 243, PAGE 15, PARA 37.](#)**

- (3) [MONTANA SUPREME COURT DECISION FILED AUGUST 28, 2013](#) CASE DA 12-0343 IN THE SUPREME COURT OF THE STTE OF MONTANA 2013 MT 243, L. REED WILLIAMS, PALINTIFF AND APPELLE, V. BOARD OF COUNTY COMMISSIONERS OF MISSIOULA COUNTY, DEFENDANTS AND APPELLEES.**

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(4) MT SUPREME COURT HOLDS PROTEST PROVISION UNCONSTITUTIONAL PREVENTING LARGE LANDOWNERS FROM ESSENTIALLY VETOING LOCAL ZONING BY PATRICIA SALKIN, OCTOBER 1, 2013.

(5) SB294 passed May 3, 2021. Note: Section 2 needs to be rewritten to align with this revision of MCA76-2-205 or SB294 needs to be revoked.

History: En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971; R.C.M. 1947, 16-4705; amd. Sec. 2, Ch. 591, L. 1995; amd. Sec. 8, Ch. 446, L. 2009.