

OVERVIEW OF WHY WE MUST REVISE MCA 76-2-205 & RESCIND SB294 -
REV 9-7-2023

In Brief:

1. Montana Supreme Court ruled MCA 76-2-205 unconstitutional because the 40%/50% vote was not equitable and did not impose any standards. Plus this MCA has wording allowing highly inefficient and ineffective communication between the municipal and the property owners.

2. SB294 amended MCA 76-2-205 with a new rule that said a zoning district with a petition of 20% or more of real property owners in that county could eliminate the district zoning.
 - a. SB294 is worse than the original MCA 76-2-205, although making MCA 76-2-205 constitutional because now a small majority (20%) can potentially petition the county commissioners to eliminate zoning completely with no replacement. Attorney Wally Condon in Polson agrees this is not a good law.

 - b. In addition, SB294 does not include wording that allows 51% of the property owners to vote on proposed zoning or a zoning amendment. The proposed changes Jack has made to MCA 76-205 solves all these issues.

 - c. [SB294 MUST be rescinded](#) (Link) and replaced with the proposed revisions to MCA 76-2-205. Some wording of SB294 was transferred to MCA 76-2-205. Much of the wording that is in the current SB294 was just extracted word for word from MCA 76-2-205 and some sentences then lined out to eliminate the 40%/50% unconstitutional ruling in 2013.

Bottom Line:

The new proposed REVISED MCA 76-2-205 will eliminate the need for SB294 and the 20% zoning change problem and adds back wording requiring any new zoning or zoning amendments will require an informed vote of the impacted local property owners whereby a 51% majority vote would decide the zoning amendment changes as opposed to the former unconstitutional 40%/50% in MCA 76-2-205.

[MCA 76-2-205 REVISED](#) (Link) will also solve the current cumbersome county process of making zoning changes using overly repetitive polling to an informed consent and simple vote by the local property and business owners impacted by the zoning change. This will greatly decrease the worry and burden upon the county commissioners and reduce the numerous rounds of polling the public and the property owners to a simple majority vote of the property and business owners. The current process is broken and needs to be fixed. I have given this legislation change to Montana Senator Mark Nolan with his promise to introduce during the 2022 to 23 legislative session.

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