Housing Task Force - Phase III Assignment #4
DRAFT Recommendations – CHALLENGES Study Group
5-6-2024

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1 - Minimum Lot Sizes

Submitted By: Mark Egge

Common Theme: Regulatory Barriers; Construction Costs

Recommendation: Reduce or eliminate minimum lot size restrictions within cities.

Rationale:

A 2021 University of Montana report found Minimum Lot Areas raise housing prices by as much as 20% by forcing buyers to purchase more land than they want. Several additional studies have confirmed this finding.

Minimum lot sizes make it financially difficult for builders to create affordable starter homes and contribute to urban sprawl. Minimum lot sizes increase city infrastructure costs by forcing housing development to spread out. The City of Bozeman 2021 Development Code Audit for Affordable Housing notes that "additional-lot-area-per-unit standards are a significant contributor to high housing prices for non-single-household development."

Minimum lot sizes also create "de facto single-family zoning" when the number of units permitted on a lot is tied to the lot size - even if the actual building takes up no more lot space than a single-family home (e.g. stacked duplex and triplex design). In many cases this prevents the creation of more affordable multifamily housing.

In 2019, the City of Helena abolished nearly all minimum lot size requirements. The Helena Association of Realtors said abolishing Minimum Lot Sizes would "address housing goals by increasing dwelling unit supply while also protecting the character and quality of the city's neighborhoods." Billings also recently abandoned from minimum lot size requirements to a simpler lot width requirement. Cities that have significantly reduced or abolished lot size minimums have seen significant in start homes like townhouses.

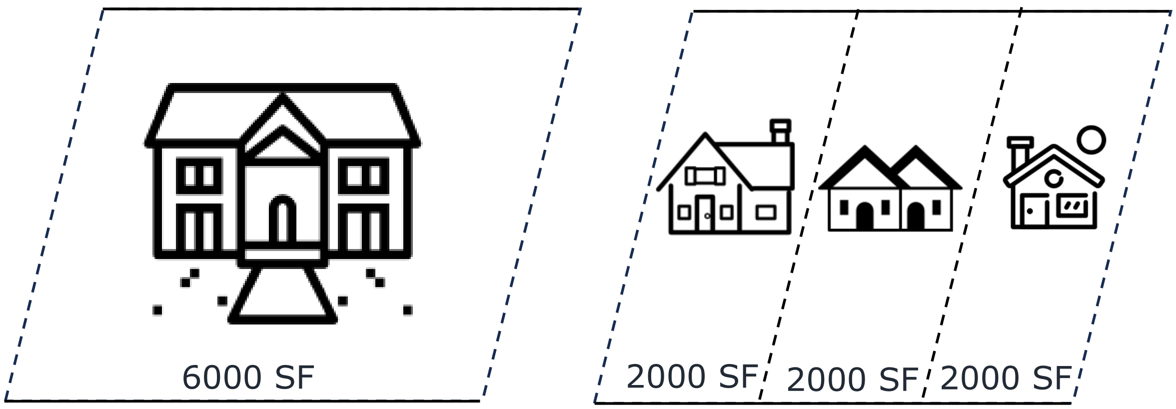
Barriers Addressed:

Reducing or eliminating minimum lot sizes can reduce the cost of construction by removing an artificial floor on the minimum amount of land someone must purchase in order to purchase a home; eliminates a key barrier to creating multifamily housing (e.g. according to the Montana Zoning Atlas, 13.5% of residential areas zoned for multifamily housing in Bozeman are "de facto" single-family zoning due to lot size minimums); and, reduces urban sprawl and associated infrastructure costs.

Key Strategies:
Noting that a municipality may establish lot-line setbacks, lot coverage maximums, floor-area ratio maximums, minimum open space standards, and other provisions as necessary to protect healthy, safety, and the general welfare of a community, limit maximum lot sizes within municipalities to not greater than 2,000 square feet.

Dissenting Opinions: NA

Supporting Graphics:



Dimensional Standards Comparison Communities

	Lot Area	Lot Width	Max. Height	Lot Area/ Unit	FAR	Min. Open Space	Max. Lot Cov.	Max. Rear Lot Cov.
Bozeman	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**
Missoula	Yes	No	Yes	Yes	No	No	No	Yes
Billings	No	Yes	Yes	No	No	Yes [2]	Yes	No
Helena[1]	No [3]	No	Yes [3]	No	No	No	Yes	No
Laramie, Wyoming	Yes	Yes	Yes	Yes	No	No	No	No
Spokane, Washington	Yes	Yes	Yes	No	Some	Yes	Yes	No
Bend, Oregon	Yes	Yes	Yes	Yes	Yes	No	Yes	No

[1] N/A for downtown residential development.
[2] Multi-unit/mixed-use development only
[3] Rural districts only

__Table Source__: City of Bozeman Unified Development Code Affordable Housing Assessment, December 2021.

2 - Parking Mandates

Submitted By: Mark Egge

Common Theme: Regulatory Barriers; Construction Costs

Recommendation:

Noting that demand for parking will still lead to its creation in conjunction with new development, limit parking mandates in cities with robust transit and regional transportation planning.

Rationale:

Reducing or eliminating costly parking mandates may be the most commonly cited (and evidence based) regulatory reform to support the creation of affordable housing. Examples about from small places like Sandpoint Idaho to large cities like Seattle and Minneapolis demonstrate that allowing consumer preferences and willingness to pay rather than planning rules to dictate how much parking is created associated with new developments reduces a key barrier to housing creation and leads to lower prices. The experience of cities that have eliminated costly parking mandates is that new parking continues to be created, though in many cases less parking than would have been previously required.

More than half of renter households in Montana have one or zero vehicles available, yet in most Montana cities any dwelling with two or more bedrooms would be required to have at least two parking spaces. Parking spaces add measurably to the cost of housing. Surface parking spaces are estimated to cost $5,000 (in addition to the cost of land), structured parking $30,000 per space, and underground parking $60,000 per space and up.

Planning rules that require renters and businesses to pay for more parking than they want or need drive up costs for everyone.

Barriers Addressed:

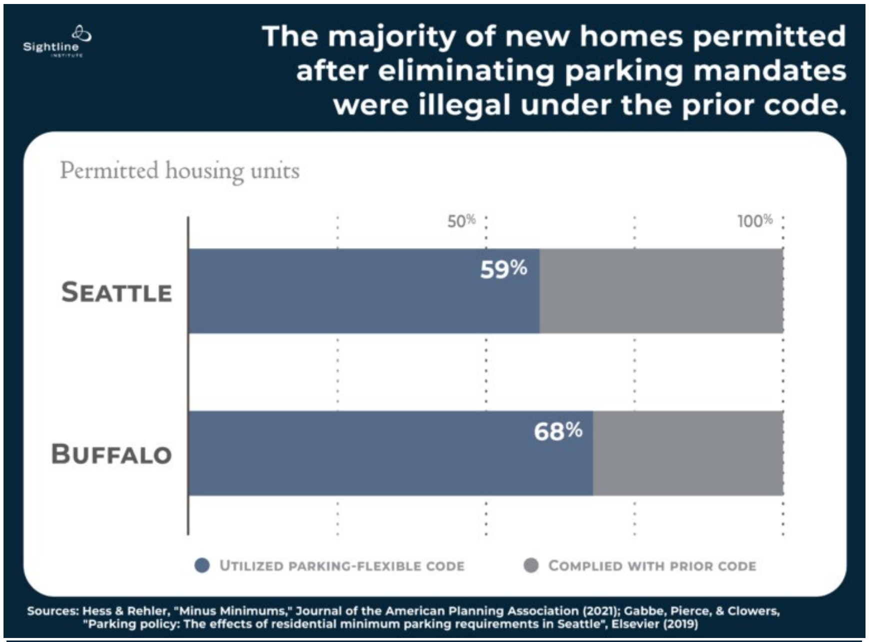
Limiting the ability of cities (especially those with robust multimodal transportation systems) to impose costly parking mandates on new development will remove a key barrier that prevents the creation of housing (especially infill construction) and drives up costs.

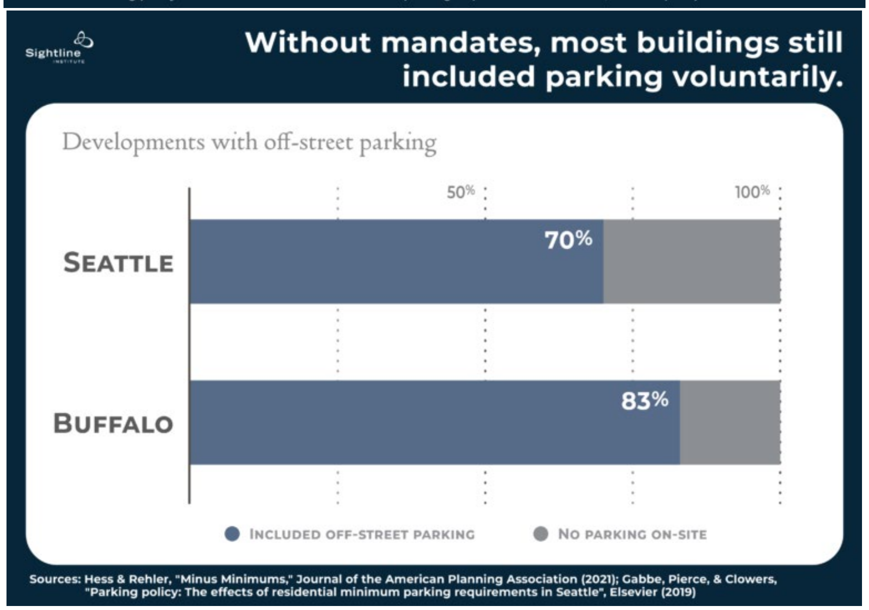
Key Strategies:

Introduce legislation prohibiting municipalities within the boundaries of a metropolitan planning organization and with transit service funded under Federal Transit Administration 5307 Urbanized Area Formula Grants from enforcing minimum parking requirements for real property. (Refer to Colorado HB 24-1304 for an example of a similar statewide bill.)

Dissenting Opinions: NA

Supporting Graphics:





3 - Building Code Provisions for Missing Middle Housing

Submitted By: Mark Egge

Common Theme: Regulations; Planning; Construction

Recommendation:

Investigate and adopt building code reforms intended to lower the costs and construction timelines of middle density dwellings. Examples from elsewhere highlight many examples of building code reforms that make it more economical to build "missing middle" type housing without compromising health or safety. These reforms include allowing small multiplexes to be built or renovated under the International Residential Code (IRC) rather than the more-costly International Building Code (IBC), allowing single-stair buildings of more than three stories, removing sprinkler requirements when other strong fire-safety standards are implemented, and other related modifications that are appropriate to middle density housing units.

Rationale:

Changes to the local residential building code can significantly lower costs and construction timelines, which empowers owners and developers to consider new housing types. For example, the City of Memphis governs construction and modification of 3 to 6-unit structures under the International Residential Code, removes sprinkler requirements for 2-hour fire-rated wall and ceiling/floor assemblies, modified seismic and egress provisions, and no longer requires separate mechanical, electrical, and plumbing drawings. As a result, Memphis has a more diverse housing market with new and updated homes that are available and potentially more affordable for renters and homeowners. The city worked with the state's fire marshal to address initial safety concerns when modifying these building standards.

Barriers Addressed:

Modifications to the building code can reduce the cost and construction timelines of building middle density housing. Lowering the cost of "missing middle" housing will increase the housing supply and help address the shortage of affordable housing.

Key Strategies:

Adopt legislation directing the Building Codes Program within the Montana Department of Labor & Industry to establish a Technical Advisory Committee to make recommendations to reduce the cost and permitting and construction timelines for middle density housing. This legislation may follow the examples provided by North Carolina's 2023 HB 488 and Washington's 2024 HB 2071. Include consideration of moving 3- to 6-unit buildings under the less-costly residential code with 1- and 2-unit homes by applying the IRC to structures of 3- to 8-units.

Dissenting Opinions: NA

Supporting Graphics: NA

4 - Affordable Housing Revolving Loan Fund (AHRLF) Funding

Submitted By: Joe McKenney

Common Theme: Financial - Low Income Housing

Recommendation:

'Substantially' increase state funding for the Housing Montana Fund (HMF), Affordable Housing Revolving Loan Fund (AHRLF) established under §90-6-133 and 90-6-134, MCA and administered by the Montana Board of Housing (MBOH).

Rationale:

The HMF includes an AHRLF account established under §90-3-133 and 90-6-134, MCA which can provide lower interest rate loans to eligible applicants for the development and financing of low- and moderate-income housing. The only revenues currently are interest income on mortgage loans and investments, any monthly P&I payments, and payoffs into the account. To date, the MBOH has not received contributions permitted under this subsection. The current fund balance, as of April 2024, is approximately $170,000.

Barriers Addressed:

CHALLENGE – The financing for affordable housing projects can be a barrier. Although bank financing and developer equity can provide substantial financing there may remain a gap of needed financing to complete the project. Bridge financing may be necessary to make development for low-income or moderate-income households feasible. The Housing Montana Fund AHRFL, under §90-6-134(3)(b), MCA already provides a framework for "bridge financing necessary to make a low-income housing development or a moderate-income housing development financially feasible." Bridge financing loans can revolve more quickly when permanent financing takes out the bridge loan, allowing for additional loans to be made.

Key Strategies:

The HMF fund was established in 1999 by SB 349. The legislative declaration in SB 349 remains as or more applicable today as when it was drafted in 1999:

(1) *The legislature finds that current economic conditions, federal housing policies, and declining resources at the federal, state, and local levels adversely affect the ability of low-income and moderate-income persons to obtain safe, decent, and affordable housing.*
(2) *The legislature finds that the state will lose substantial sums allocated to it by the federal government for affordable housing for low-income and moderate-income households unless matching funds are provided.*
(3) *The legislature declares that it is in the public interest to establish a continuously renewable financial resource known as an affordable housing revolving loan fund to assist low- and moderate-income citizens in meeting their basic housing needs.*

There were no state legislative appropriations made to the AHRLF account at the time of SB 349 passage, nor any appropriates made subsequently. Following establishment of the account in 1999, the MBOH put Affordable Housing Program loans funded by Federal Home Loan Bank of Seattle into the account and - based on cashflow - these loans have been paid back over time. The following session after its inception, the legislature transferred $500,000 from the Commerce Housing Division’s Section 8 Reserves into the account. Only a handful of loans have been made under the AHRLF over the last 10 years due to insufficient funding available.

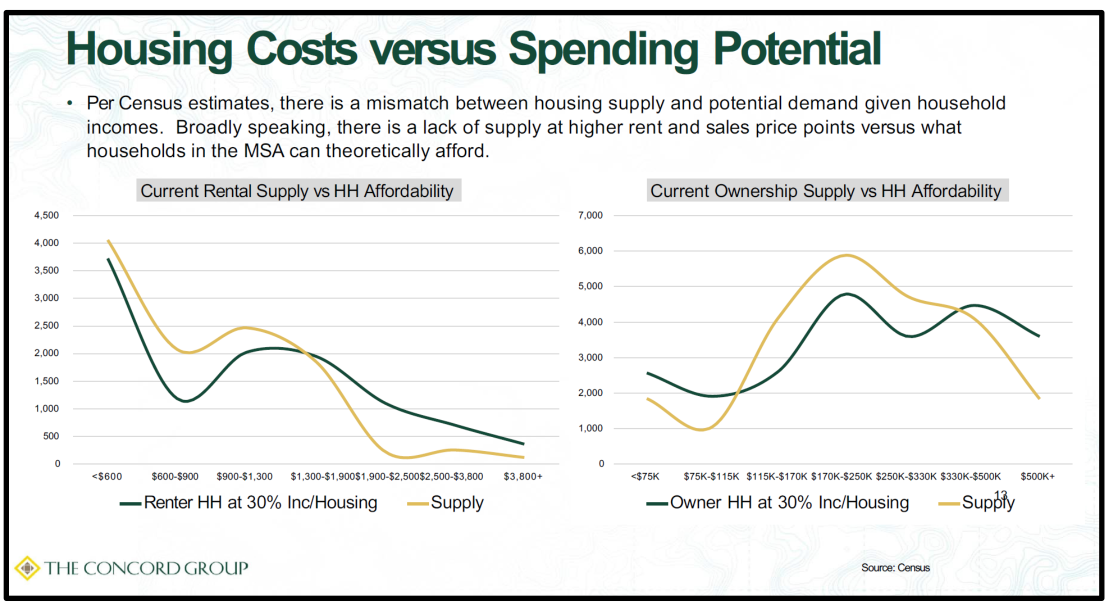
The HMF-AHRLF could, with sufficient state appropriation, serve as a flexible state housing trust fund to provide matching funds to support the development and financing of low- and moderate-income housing (up to 95% of median income). The MBOH has existing Administrative Rules governing the program, allowing for rapid and flexible deployment of funds to meet urgent housing needs in Montana communities.

Dissenting Opinions:

Opinions vary of criticisms of this approach may include:

(1) State government should focus efforts on removing barriers and implementing reforms to legalize missing middle housing options and provide greater incentivizes to encourage private sector development to meet Montana’s housing needs.
(2) The HMF-AHRLF is specific to low-interest rate loans and does not allow for deployment of funds as grants. Some developers may advocate for additional grant funding for affordable housing development.
(3) A state housing tax credit could be established in lieu of direct state appropriations to the AHRLF.

Supporting Graphic:



5 - Board of Investments Revolving Loan Funds

Submitted By: Joe McKenney

Common Theme: Financial

Recommendation:
Board of Investments (BOI) revolving loan funds for developing critical public infrastructure to support housing development and to provide bridge financing.

Rationale:
Many developers can obtain financing and contribute equity. However, it is common to need bridge (gap) financing to complete the financial requirements of the project.

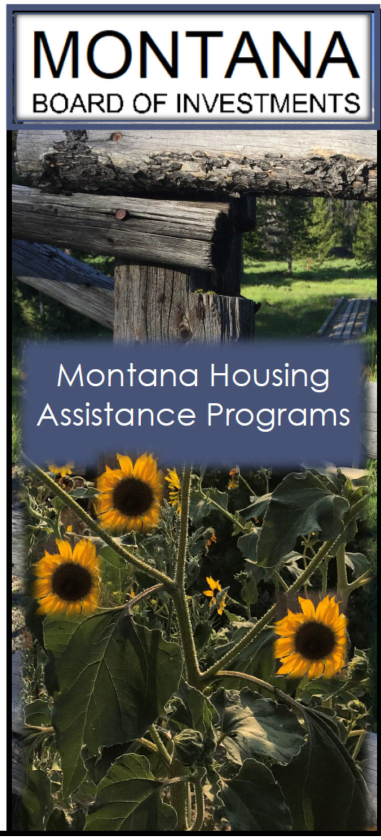
Barriers Addressed:
CHALLENGE – The financing of housing projects can be a barrier. Although bank financing and developer equity can provide substantial financing there may remain a gap of needed financing to complete the project. Bridge financing can close the financial gap.

Key Strategies:
Substantially increase BOI Linked Deposit funding for bridge financing.

Ease restrictions or matching funds of the 'BOI revolving loan fund' for infrastructure financing. The funds may be accessed by approved local or regional certified development organizations or financial institutions.

Dissenting Opinions: NA

Supporting Graphics:



General

- Low fixed-rate financing for up to 20 years.
- Online applications.
- Fast turnaround.
- Experienced staff ready to help your community and project succeed!

Contacts

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P.O. Box 200126
Helena, MT 59620-0126
Phone: (406) 444-0001
http://www.investmentmt.com

Bond Program

The Montana Housing Infrastructure Revolving Bond Program is designed to help local governments and housing developers lower the cost of infrastructure development.

- ☑ Funds may be used to expand or extend water, wastewater, storm water, street, road, curb, gutter, and sidewalk infrastructure to serve new or rehabilitated residential development.
- ☑ Local governments or security co-purchaser may apply online. BOI to participate in up to 50% of a local government security at a rate up to 25% of the co-purchaser's rate (exclusive of any fees).
- ☑ Program requirements:
  - Minimum gross density of 10 units for each acre.
  - Local government must waive or offsets all impact fees for the developer up to the amount of the security.
  - BOI bond counsel review required at borrower expense.

Program QR Code

Loan Program

Montana Housing Infrastructure Revolving Loan Program is designed to help local governments and housing developers lower the cost of infrastructure development.

- ☑ Funds may be used to cover the costs of demolition or to expand or extend water, wastewater, storm water, street, road, curb, gutter, and sidewalk infrastructure to serve new or rehabilitated residential development.
- ☑ BOI Approved Lender applies online on behalf of the local government or developer for a note not to exceed $1 million or 50% of the project costs. Interest rate locked on reservation date.
- ☑ Program requirements:
  - Minimum gross density of 10 units for each acre.
  - Borrower must pay all impact fees due up to the loan amount.
  - Reservation fee 0.25% of BOI participated amount.
- ☑ MHIR Loan Program Rate Sheet posted weekly on BOI website.

Program QR Code

Impact Fee Loan Program

The Impact Fee Loan Program will help housing developers pay local government fees with no interest to eliminate carrying costs of expanding housing opportunities in Montana.

- ☑ Funds must be used to pay impact fees, latecomer fees, or other state/local government-imposed administration fees (collectively "impact fees").
- ☑ BOI Approved Lender applies online on behalf of the developer for a maximum of $3 million participation per project.
- ☑ 0% interest rate for no more than a 24-month term.
- ☑ Reservation fee 0.25% of BOI participated amount. Funds may be reserved for up to one year.
- ☑ Must have an executed development agreement between state/local government and developer before funds can be distributed to government entity.

Program QR Code

Linked Deposit

The Linked Deposit Program will help housing developers and Approved Lenders lower interest rates during the construction period of an affordable housing development.

- ☑ BOI and Approved Lender will negotiate a fully collateralized deposit per 17-6-102, MCA. Deposit amount will rely on credit quality and affordability of the project.
- ☑ Housing developer pays Federal Home Loan Bank Community Advance Straight Line Amortizing CIA 2-year rate (FHLBCA) for the construction loan.
  - Approved Lender earns first 350 bps (3.5%).
  - BOI earns remainder (FHLBCA - 3.5%).
- ☑ Maximum 24-month term.
- ☑ Program Requirements:
  - Minimum gross density of 10 units for each acre may be required.
  - Proceeds must be used for construction loan.

Program QR Code

6 - State-based Housing Trust Fund and Housing Tax Credit

Submitted By: Don Sterhan

Common Themes:

Construction - The following recommendation will lead to more affordable housing being built in Montana.

Financing - This recommendation will provide needed "gap" financing, which is a form of public financing that fills the gap between the amount of capital a project needs to be financially viable (full capital stack) and what it can raise from other traditional sources. Often times in today's market environment, it is difficult for a developer to achieve and to source the full amount of the capital needed to build/complete an affordable housing project; there is often a "gap" that must be addressed (and filled) with other forms of funding beyond traditional sources. Providing a source of funding to fill this gap will ensure affordable housing projects have the financing they need to be completed.

Recommendation:

Fund a state-based Housing Trust Fund. Authorize one-time funding of $50 million for the Housing Montana Fund; create more flexibility by authorizing funds to also be used for grants and/or state housing tax credits.

Rationale:

As we've heard from the Montana Board of Housing, there is a pressing need for affordable housing funds. The demand currently outweighs the available funds, and developers are struggling with rising prices on materials, making affordable housing a challenging prospect. We must act swiftly and decisively to invest in affordable housing and close the gap on the affordable housing needs in Montana. To date we have relied heavily on federal programs to carry the load and bear the brunt of our funding needs for affordable housing in Montana; there is now a need and an opportunity for shared responsibility and some level of state participation (financial assistance) to meet the demand and the need.

State-based funding for affordable housing will help us leverage additional federal funding and provide much-needed "gap" financing for projects that need a bit more funding to be achievable. The Coal Trust Multifamily Homes program is the only state-based program that provides gap financing, which is an excellent resource, but cannot solve the problem by itself. Putting another tool in our toolbelt, either by increasing the funding available or funding a state-based Housing Trust Fund, can only be a positive move toward more flexibility and freedom for developers to bridge the gap and build more homes for Montanans.

Montana already has a state-based housing trust fund called the **Housing Montana Fund**, created in 1999, but it has yet to receive an appropriation.

I recommend funding the Housing Montana Fund with a one-time allocation of $50 million and, at the same time, create more flexibility in the program to allow it to make grants and issue state tax credits (instead of just providing loans). Providing flexibility in how the funds can be used will enable the professional staff (the experts) at the Montana Board of Housing to determine the best way for Montana to get the biggest bang for the buck. This funding will provide needed "soft" financing for affordable housing developers, helping them create a capital stack for projects that pencil out and ensure that housing can be offered at lower than market rental rates based on the Area Median Income (AMI). At least 32 states have a state-based housing tax credit, so this is a proven and effective public-private partnership that will build more affordable housing for Montanans.

The University of *Montana's Bureau of Business and Economic Research* released a report on a state-based housing tax credit and found that funding a tax credit for $1.5 million per year would not only build more affordable housing but provide significant economic benefits to the broader community, such as increased construction activity, job creation, ongoing property operations, and higher incomes.

- Projections for Montana indicate that over ten years, a state housing tax credit would mobilize enough private capital to generate over $143 million in economic activity in construction, job creation, ongoing property operations, and increased incomes.
- For every 1 dollar spent on claimed tax credits, it would produce $2.69 in public & private investment spending in the broader state economy.

Legislation proposed in the past does include some of these ideas. In the 2021 session, SB 117 would have allowed the Housing Montana Fund to make grants instead of just loans. However, SB 117 was tabled in Senate Business & Labor after discussion that the legislature wouldn't be appropriating any funds to the Housing Montana Fund so the bill was not needed. In the 2021 session, HB 397 created a State-based workforce housing tax credit. That bill passed both the House and Senate but was vetoed by Governor Gianforte because the funding was tied to the federal funding of tax credits.

In the 2023 session, HB 829 created a state-based workforce housing tax credit funded at $1.5 million/year for six years. HB 829 passed the House on 2nd reading by a vote of 65-35, but was tabled in House Appropriations.

Barriers Addressed:

This recommendation addresses the barriers discussed in making affordable housing projects pencil out for private-sector developers, particularly in providing a source of "gap" financing. Recognizing the influence of rising costs in today's market environment (high construction costs, higher interest rates, manpower shortages, supply chain deficiencies, etc.), the need for gap financing has become critically important. Since the 1980s, when the federal government moved away from actually building housing developments and instead provided funding to private sector developers, this public-private partnership model has been very successful. However, under current market conditions and with Montana experiencing such a severe housing shortage, additional funding is needed over and above the federal funding provided.

Key Strategies:
Legislation would need to be passed in the 2025 session to accomplish these recommendations.

Dissenting Opinions:
Historical opposition to any funding the state provides is mostly ideological around the role of government. Opponents believe it is outside the government's role to provide funding for housing; it is believed such funding is a responsibility of the private sector alone.

Supporting Graphic:
The Montana Housing Coalition has used this graphic to explain how housing tax credits work:

7 - Reauthorize the Coal Trust Multifamily Homes Program

Submitted By: Don Sterhan

Common Themes:

Construction - The following recommendations will lead to more affordable housing being built in Montana.

Financing - This recommendation will provide needed "gap" financing, which is a form of public financing that fills the gap between the amount of capital a project needs to be financially viable (full capital stack) and what it can raise from other traditional sources. Often in today's market environment, it is difficult for a developer to achieve and to source the full amount of the capital needed to build/complete an affordable housing project; there is often a "gap" that must be addressed (and filled) with other forms of funding beyond traditional sources. Providing a source of funding to fill this gap will ensure affordable housing projects have the financing they need to be completed.

Recommendation:

Reauthorize the Coal Trust Multifamily Homes program (CTMH). Authorize an additional $50 million in funding from the coal trust to be allocated to the CTMH program and remove the requirement that properties funded by the program must pay property taxes.

Rationale:

As we've heard from the Montana Board of Housing, there is a pressing need for affordable housing funds. The demand currently outweighs the available funds, and developers are struggling with rising prices on materials, making affordable housing a challenging prospect. We must act swiftly and decisively to invest in affordable housing and close the gap on the affordable housing needs in Montana. To date we have relied heavily on federal programs to carry the load and bear the brunt of our funding needs for affordable housing in Montana; there is now a need and an opportunity for shared responsibility and some level of state participation (financial assistance) to meet the demand and the need. State-based funding for affordable housing will help us leverage additional federal funding and provide much-needed "gap" financing for projects that need a bit more funding to be achievable. The Coal Trust Multifamily Homes program is the only state-based program that provides gap financing, which is an excellent resource.

The CTMH is a proven public-private partnership that leverages the coal tax trust fund to provide loans to affordable housing developers. The program was first authorized in 2019 (HB 16) at $15 million and then reauthorized in 2023 (HB 819) with an additional $50 million. The program has funded both new construction and rehabilitation of existing buildings. Of the $65 million allocated, only $14.5 million remains, and we expect those funds to be allocated before the 2025 session, illustrating the appetite and need for more funding. The CTMH provides interest rates below market rate, but interest rates are tied to the investment yields of other coal trust investments, ensuring that the coal trust remains whole and that the program doesn't potentially reduce other initiatives funded by coal trust funds.

There is one tweak (modification) that could be made to this enormously successful program – remove the provision stipulating that any developed properties utilizing these funds must pay property taxes. Many affordable housing developers that use this program are non-profits that do not have to pay property taxes when they use federal funds to develop housing.

By requiring the properties to pay property taxes, additional operating costs are being added to the metrics. By adding these additional costs, there is a corresponding and negative impact that surfaces in one of two ways (or both): 1) developers are forced to build fewer homes to make the development pencil out, or 2) the added costs are passed along to the tenants, resulting in higher monthly rental rates (and isn't "affordability" our goal?). By removing the property tax requirement, developers can build more affordable homes and keep rents lower, which should indeed be our goal and priority.

Barriers Addressed:

This recommendation addresses the barriers discussed in making affordable housing projects pencil out for private-sector developers, particularly in providing a source of "gap" financing. Recognizing the influence of rising costs in today's market environment (high construction costs, higher interest rates, manpower shortages, supply chain deficiencies, etc.), the need for gap financing has become critically important. Since the 1980s, when the federal government moved away from building housing developments and instead provided funding to private sector developers, this public-private partnership model has been very successful. However, under current market conditions and with Montana experiencing such a severe housing shortage, additional funding is needed over and above the federal funding provided.

Key Strategies:

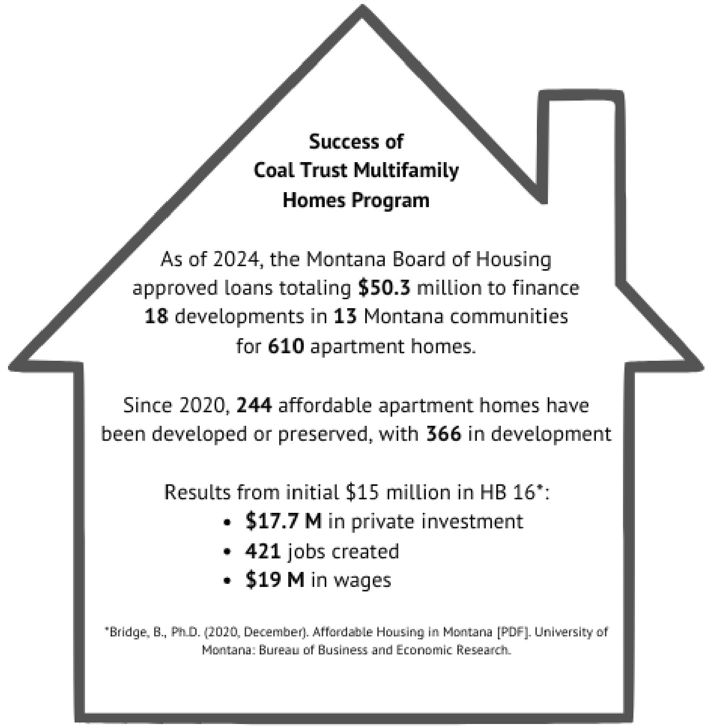
Legislation would need to be passed in the 2025 session to accomplish these recommendations.

Dissenting Opinions:

Historical opposition to any funding the state provides is mostly ideological around the role of government. Opponents believe it is outside the government's role to provide funding for housing; it is believed such funding is a responsibility of the private sector alone.

Members of the Appropriations and Finance and Claims Committees and individuals representing the Board of Investments have claimed that the CTMH program "starves" the coal trust fund because the interest rates were lower than what the fund could make on traditional investments. That argument ignores the economic activity created by building housing that adds to the tax base. Still, in the 2023 session, the interest rates were tied to coal trust fund investment yields, making that argument moot.

Supporting Graphic:
The Montana Housing Coalition has used this graphic in support of CTMH:



8 - Assess Flexibility of Coal Trust Multifamily Homes Loan Terms

Submitted By: Cheryl Cohen

Common Theme: Regulations; Financial

Recommendation:

House Bill 819 passed during the 68th Legislature directs the Montana Board of Investments (BOI) to allow the Montana Board of Housing (BOH) to administer up to $65 million of the coal tax trust fund for the purpose of providing loans for the development and preservation of homes and apartments to assist eligible low-income and moderate-income applicants. Section 17(3)(ii) of HB 819 states "The loan must be in first lien position" and 3(v) states "Projects funded with the loans must be subject to property taxes, except for those located on tribal lands." These requirements are captured in §90-6-137(3)(i) and §90-6-137(3)(ii), MCA, and were both carried forward from House Bill 16, Ch. 460 of the 2019 (66th) Legislature. HB 819 in 2023 continued these requirements but did add a subject to property taxes exception for Tribal land projects.

This recommendation is to draft and introduce legislation to provide for more flexible terms for loans made under the Coal Trust Multifamily Homes (CTMH) program, administered by the BOH, and established under §90-6-137, MCA. Specifically, to reassess first lien position and subject to property taxes requirements or at minimum illuminate potential unintended consequences associated with these policies for lawmakers to consider.

Rationale:

Current statutory parameters of the CTMH program, specifically the first lien position and subject to property taxes requirements, limit the potentially eligible universe of applicants and project types, and create various unintended consequences. Illuminating the unintended consequences of these statutory requirements through the deliberative legislative process can provide elected officials with additional information for their consideration, particularly if the $65 million authority is increased in the future.

Barriers Addressed:

Other major funders in an affordable housing development's capital stack may not agree to subordinate to a first lien position CTMH loan, particularly if the other funders' loan amount exceeds the CTMH loan amount. At times, other funders may agree to a pari-passu "equal footing" or pro rata loan approaches, but BOH – in consultation with legal counsel – has determined these loan approaches would not fully meet the statutory first lien requirement. Capital stacks in affordable housing developments typically include multiple loans and negotiated "waterfall" distribution structures. Developers have indicated that the first lien requirement significantly reduces their ability to leverage this loan program in conjunction with other major funders of affordable housing, including but not limited to regional/national banking institutions as well as financing available through HUD/FHA, Fannie Mae, and/or Freddie Mac. Partnering with these larger institutional investors would likely require a statutory change to permit CTMH loans in second lien position.

Montana Code Annotated §15-6-221 provides for a property tax “exemption for rental housing providing affordable housing to lower-income tenants.” Eligible properties include but are not limited to properties allocated Low-Income Housing Tax Credits by the BOH and properties owned and operated by a nonprofit corporation and that was constructed using federal Home Investment Partnership Program grants. This property tax exemption is one of the significant ways the state of Montana contributes to the financial feasibility of affordable housing serving lower-income tenants, and most properties applying for a CTMH loan would be eligible to apply for this exemption, except for the requirement in §90-6-137(3)(ii), MCA.

The ”subject to property taxes” requirement results in unintended consequence. For example, this requirement can inadvertently necessitate a larger CTMH loan in the project’s capital stack in order to offset the property tax payments requirement over the operating proforma period. CTMH properties are subject to rent limitations which already reduce available net operating income (NOI). A requirement to pay property taxes further reduces operating revenues available for property maintenance, replacement reserve deposits and other longer-term asset management needs to ensure properties can successfully operate for the required 30-year period of affordability. Reducing available NOI for preventative and capital maintenance place properties at risk of insufficient funds to maintain properties, potentially leading to increased needs for additional public subsidy before the property’s period of affordability has concluded.

There are also various scenarios this requirement may not have anticipated. For example, BOH – in consultation with legal counsel – has determined that Payment-In-Lieu-Of-Taxes or PILOT programs which are administered by various units of local government to allow reduced property taxes for certain eligible uses including affordable housing, cannot be leveraged by CTMH properties given the legislative requirement and intent to be “subject to property taxes.”

Additional scenarios include properties developed on Community Land Trust (CLT) parcels where property taxes on the land versus improvements are distributed to the CLT and property owner separately.

Key Strategies:

Draft and introduce legislation to provide for more flexible terms for loans made under the Coal Trust Multifamily Homes (CTMH) program. Testimony from BOH subject matter experts and the affordable housing developer community during the 69th legislative session can provide lawmakers with additional details and scenarios for their consideration.

Dissenting Opinions:

- A strict first lien position requirement provides the best assurance and security for coal trust tax fund dollars loaned for affordable housing development.
- Allowing CTMH properties to either be exempt from payment of property taxes and/or allowing for reduced property taxes under PILOT programs reduces property tax revenue to the state and units of local governments. This revenue is needed for the delivery of essential services.

Supporting Graphics: NA

9 - Fair Market Rent Reevaluation - Fund Rental Housing Surveys

Submitted By: Cheryl Cohen

Common Theme: Regulatory; Financial

Recommendation:

Governor's Housing Task Force to submit a letter of support to the Behavioral Health System for Future Generations Commission for an appropriation of funds to support statistically relevant Fair Market Rent (FMR) reevaluation rental housing surveys per HUD regulations to support an increase to base federal Fair Market Rents (FMRs), thereby increasing Montana's Section 8 Housing Choice Voucher Payment Standards. Should the Commission decline, the Task Force may solicit an alternative appropriation for the study.

Note: The HB 872 Behavioral Health System for Future Generations Commission is also assessing a recommendation to "Increase support for people with serious mental illness (SMI) and/or substance use disorder" by "coordinat[ing] with appropriate housing authorities to develop a Fair Market Rent (FMR) review to increase the purchasing power of housing vouchers." The Commission's April 23, 2024 meeting discussed a potential appropriation of $750,000 under the HB 872 framework to support this effort, given the correlation between persons served under DPHHS behavioral health programs and those same individuals utilizing or needing to utilize federal rental assistance vouchers to maintain housing stability.

Rationale:

The Montana Department of Commerce statewide Public Housing Authority, known as the Rental Assistance Bureau within the Montana Housing Division, has maximized its Section 8 Housing Choice Voucher Payment Standards (VPS) using available U.S. Department of Urban Development (HUD) waivers, including HUD's "Success Rate Payment" and "Exception Rate Payment Standards." Under the program, participants pay 30% of their adjusted monthly income toward rent and the federal Housing Assistance Payment (HAP) covers the difference up to a maximum Voucher Payment Standard. VPS are based on FMRs, which are in turn based on standard quality, recent mover rents at the 40th percentile. HUD has acknowledged that "assessing the accuracy of FMRs is difficult because at any given time the true 40th percentile rent paid by recent moves is unknown." This is especially the case in rural/frontier areas with limited rental housing stock from which to base a statistically relevant sample.

Despite leveraging multiple HUD waivers to increase the VPS, Montana's 2023 VPS for studios, 1 bedrooms and 2 bedrooms were – on average - $134, $119 and $93/month LESS per month than the applicable 60% Low-Income Housing Tax Credit (LIHTC) restricted rents. This discrepancy is particularly acute in growing markets and more rural/frontier areas. For example, in Lewis & Clark County the difference was $274, $222 and $202/month LESS per month than the applicable 60% LIHTC restricted rents. In Big Horn county, the difference was $167, $158 and $142/month LESS per month. Finally, the various waivers to increase VPS currently offered by HUD could change in the future. Assessing the discrepancy between Montana's base FMR and LIHTC 60% rents (average of all 56 counties) illustrates the considerably acute discrepancy between HUD's FMR methodology and the IRS/Treasury methodology for restricted below-market rents.

	Avg Difference 2023 VPS - 2023 LIHTC 60%
Studio / Efficiency	(134)
1 Bedroom	(119)
2 Bedroom	(93)
3 Bedroom	90
4 Bedroom	182

	Avg Difference 2023 FMR - 2023 LIHTC 60%
Studio / Efficiency	(262)
1 Bedroom	(261)
2 Bedroom	(271)
3 Bedroom	(149)
4 Bedroom	(98)

In short, if VPS are not keeping up with restricted, below-market rents in LIHTC properties, they are certainly not keeping up with general market rate rental costs. This is significantly reducing the leasing success rate of Montanans issued federal rental assistance vouchers. In fact, less than 50% of households issued vouchers are able to successfully lease up in the private rental market within the allowable 120-day timeline permitted by HUD.

HUD does provide for another option to increase Fair Market Rents (upon which VPS are based) if the jurisdiction can provide "statistically representative rental housing survey data" to justify the increase. Some HUD publications estimate this type of survey to cost between $20,000 - $30,000 per county. In partnership with other locals PHAs, the Montana Housing Division has learned a more realistic cost might be around $50,000 per county. Some states have conducted this survey on a regional, rather than individual county basis, which could help reduce overall costs.

The Montana Housing Division with the Department of Commerce is currently exploring an initial pilot rental housing survey for the Lewis & Clark, Broadwater, and Jefferson tri-county region, in partnership with the City of Helena, Lewis & Clark County, and Helena Housing Authority. This pilot could inform a regional, statewide approach. The City of Helena, Lewis & Clark County and the Helena Housing Authority are each contributing to cost-share for this initiative pilot, which is estimated at approximately $100,000. HUD is providing technical assistance resources for this effort.

The Rental Assistance Bureau's HUD administrative fees and HUD-held reserves are insufficient to undertake a broader state-wide effort, which could provide a more permanent solution to challenges with the voucher under-utilization and the difficulties of participants to secure a rental unit on the private market. Increasing the VPS could also support efforts to "project base" some of the tenant-based vouchers by pairing them in LIHTC or other affordable rental developments.

§982.503 Payment standard amount and schedule.
(c) ***HUD approval of exception payment standard amount*** *—*
(3) ***Above 120 percent of FMR.***
(i) At the request of a PHA, the Assistant Secretary for Public and Indian Housing may approve an exception payment standard amount for the total area of a county, PHA jurisdiction, or place if the Assistant Secretary determines that:
(A) Such approval is necessary to prevent financial hardship for families;
(B) Such approval is supported by statistically representative rental housing survey data to justify HUD approval in accordance with the methodology described in §888.113 of this title; and
(C) Such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section.
(ii) For purposes of paragraph (c)(3) of this section, the term "place" is an incorporated place or a U.S. Census designated place. An incorporated place is established by State law and includes cities, boroughs, towns, and villages. A U.S. Census designated place is the statistical counterpart of an incorporated place.

Applicable §888.113 reference:
(e) ***Data sources.***
(1) HUD uses the most accurate and current data available to develop the FMR estimates and may add other data sources as they are discovered and determined to be statistically valid. The following sources of survey data are used to develop the base-year FMR estimates:
(i) The most recent American Community Survey conducted by the U.S. Census Bureau, which provides statistically reliable rent data.
(ii) Locally collected survey data acquired through Address-Based Mail surveys or Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.
(iii) Statistically valid information, as determined by HUD, presented to HUD during the public comment and review period.

Barriers Addressed:

- Improved voucher utilization rate of state and local PHA Section 8 Housing Choice Vouchers.
- Increased "success rate" of participants able to successfully lease up in the rental market with their voucher within 120 days. Commerce PHA "Success Rate" is currently around 48%.
- Address current catch-22 cycle of low utilization rates placing state and local PHA HUD-held reserves at risk of federal capture, as has occurred in recent years to the tune of $4.5 million.
- Increased housing stability for Montanans experiencing SMI/SUD at risk of housing instability or homelessness.
- Improved alignment between VPS with market rental rates.
- Increased landlord recruitment and retention.

- Increasing Montana's base FMRs would be a more permanent and wholistic solution, versus smaller scale proposals such as a landlord retention/recruitment bonus, landlord mitigation fees for tenant damages beyond what can be covered by security deposit and/or proposed tax credits to landlords for renting before market rate.

Key Strategies:
- Identify source of state appropriation (HB 872, general fund etc.), in consultation with the Governor's Office of Budget and Public Planning (OBPP and the HB 872 Commission).
- Consider balance of state funding contributions versus local match from either local PHAs and/or local governments.
- Continue advocacy efforts at the federal level to address underlying challenges with HUD methodology that disproportionately impacts rural Montana.
- Procure reputable university and/or consultant team to conduct surveys.
- Completion of tri-county study in partnership with City of Helena and Helena Housing Authority; process and results to inform statewide, regional approach.
- Completion of rental housing surveys by FYE 2026 to inform FY2027 submission to HUD for review and approval.

Dissenting Opinions:
- To minimize the need for any additional FTE resources, Commerce could explore partnering with one or both state universities or other reputable consultants with prior rental housing survey experience to complete this work.
- A cost sharing or match requirement with local public housing authority, tribal housing authority or units of local government could be considered.
- Competing needs for use of state funds.

Supporting Graphics: NA

10 - Increase State Gap Financing for Affordable Housing

Submitted By: Cheryl Cohen

Common Theme: Regulatory; Financial

Recommendation:

Montana's ability to fully leverage available federal funds for affordable housing development, thereby increasing our supply of affordable housing overall, is limited by the availability of gap financing or "soft debt" options our state and local governments offer. This lack of gap financing is reducing the quantity of affordable housing supply for low- and moderate-income households that can be built.

- For tax credit properties, once permanent debt financing and equity are considered, there is often a financing gap between the total costs to develop the property and the supportable debt plus tax credit equity that needs to be filled.
- To bridge the gap, developers often must obtain funding from a variety of federal, state, and local sources, that can be used to finance the creation and preservation of affordable housing.
- Often referred to as "soft financing" or "soft debt," funding from these sources often has more favorable financing and repayment terms than conventional loans.

Source: https://rentalhousingaction.org/wp-content/uploads/2021/11/NovogradacSoftFinancingSourcesSummary-April2021-Final.pdf

Rationale:

The Montana Board of Housing's (BOH) competitive 9% Low-Income Housing Tax Credit (LIHTC) application cycle has historically been oversubscribed 3:1. The BOH typically receives between 12-15 Letters of Intent per year, from which the Board selects 8 projects to submit full application and ultimately only 5 projects receive allocations of our limited 9% LIHTCs.

In 2024, BOH received only seven (7) Letters of Intent for its 9% LIHTC application cycle. Staff has heard resoundingly from developers that the primary factor in their decision to not submit an application this round was due to the lack of other gap financing / soft debt sources available to make these project financially viable.

The state's Volume Bond Cap (VBC) total for 2024 is estimated at $378,230,000. Of that total, 70% allocated to state issuers. Tax Exempt Bonds under VBC can leverage federal 4% Low-Income Housing Tax Credits; in fact, it's the only use of VBC that can leverage another federal resource in this way. The BOH allocated $112M in Tax Exempt Bonds in 2020, $97M in 2021, $40.5M in 2022, and $146M in 2023. Our current pipeline estimated at nearly $260M for projects anticipating to close between now and the summer of 2025. A very significant portion of these tax-exempt bond / 4% housing credit deals are being done in communities that have other resources developers could potentially tap into – such as Tax Increment Financing (TIF) and other local affordable housing funds. The BOH staff is increasingly concerned about the ability of these projects to make it successfully to the finish line without other gap financing available.

Of the $65M authorized under the Coal Trust Multifamily Homes (CTMH) program under HB 819, BOH currently has approximately $15 million left unobligated and anticipates all $65M to be obligated by the end of 2024. The CTMH program's parameters, including first lien position, hard monthly P&I payments and subject to paying property taxes, make this source more "hard debt" that soft debt or gap financing.

The state of Montana has typically received about $3 million per year in both the federal HOME Investment Partnerships Program (HOME) and the National Housing Trust Fund (HTF). The Montana Housing Division with Department of Commerce has already forward allocated some funds and won't firmly know or receive our FFY24 allocations until likely September 2024. The state's HOME application used to be as high as $5.3 million in 2004 and ranged in the $4M range until 2012 when it was cut to $3M. National HTF is expected to decline this year due to its formula under the Government Sponsored Enterprises (GSEs…Fannie Mae and Freddie Mac) and market implications.

Affordable housing developers need to look elsewhere for soft financing - including local city and county funds, philanthropic grants, and/or launch capital campaigns to raise funds. Montana's ability to fully leverage federal funds allocated to our state will be limited by the availability of gap financing / soft debt resources.

38 states have a State Housing Trust Fund: Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia.

23 states have a State Housing Tax Credit: Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Maine, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Utah, Vermont, Virginia, Wisconsin. Source: State Housing Finance Agency Factbook: 2022 NCSHA Annual Survey Results. Montana has neither a funded state housing trust fund nor a state housing tax credit to augment our federally allocated resources.

Barriers Addressed:

- Limited financial resources to make affordable housing developments "pencil".
- Lack of affordable homes for low- and moderate-income Montanans.
- Increasing number of Montanans experiencing housing instability and homelessness.
- Limited number of affordable housing developments proposed in rural/underserved Montana communities due to lack gap financing, TIF or other resources in those communities to pair with federal resources.

Key Strategies:

- Engage in deliberative discussions with the Governor's Office of Budget and Public Planning, applicable stakeholders, and elected officials to draft a legislative proposal(s) to increase gap financing resources for affordable housing development. Approaches could include but may not be limited to:
    - Introducing a bill to establish a state housing tax credit.
    - Providing an appropriation to the Housing Montana Fund - Affordable Housing Revolving Loan Program, to be deployed as Montana's state housing trust fund.
    - Expanding use of Tax Increment Financing for Workforce Housing.

Dissenting Opinions:

- Local governments and the private sector should increase contributions to affordable housing, not solely state government.
- A state housing tax credit approach could increase professional/legal costs associated with development due to financing complexities.
- A state housing tax credit approach may introduce additional uncertainties with respect to the credit value to dollar that can be achieved.

Supporting Graphics: NA

11 - Build Housing Montana Fund & Engage Underserved Communities

Submitted By: Cheryl Cohen

Common Theme: Planning; Financial

Recommendation:

Provide an additional Full-Time Equivalent (FTE) position within the Montana Board of Housing (BOH), with a corresponding appropriation to fund the FTE. This FTE would focus on:

1) Engaging the private sector, including employers/businesses and philanthropic organizations, to make contributions, gifts and/or grants to the Housing Montana Fund (HMF) - Affordable Housing Revolving Loan Fund (AHRLF).
2) Outreaching underserved communities, including rural cities/towns and Tribal governments, to gain an increased understanding of each community's specific housing needs and financial challenges.

This position would provide a continuous feedback loop between the identified needs of underserved communities, how existing BOH policies for funding allocations could be modified to better meet the needs of underserved communities, and to articulate these needs to interested private sector employers/businesses and philanthropic organizations. This would include identification of and application to applicable grant opportunities to build the AHRLF.

Rationale:

The Montana Board of Housing's (BOH) Housing Montana Fund (HMF) was established in 1999 by Senate Bill 349. The HMF includes the Affordable Housing Revolving Loan Fund (AHRLF) established under §90-3-133 and §90-6-134, MCA which can provide lower interest rate loans to eligible applicants for the development and financing of low- and moderate-income housing. The only revenues currently are interest income on mortgage loans and investments, any monthly P&I payments, and payoffs into the account. The current fund balance, as of April 2024, is approximately $170,000.

Pursuant to §90-6-133(4), MCA "The board may accept contributions, gifts, and grants for deposit into the fund." To date, the BOH has not had sufficient staffing capacity to engage the private sector to make such contributions, or to identify and apply for any applicable private sector or philanthropic grant opportunities.

Montana's decades in the making shortage of affordable, attainable housing is a problem that cannot be solved with additional state funding alone. Employers/businesses and philanthropic organizations based in Montana have a shared interest in ensuring adequate affordable, attainable housing supply to retain their current workforce, expand their businesses and achieve mission-driven goals.

Barriers Addressed:

- Insufficient gap financing resources available for affordable housing development.
- Gather an increased understanding of the specific housing needs and financial challenges of underserved communities, including rural and Tribal communities.
- Expand private sector contributions to support the development of new, affordable homes.
- Provide a meaningful avenue for private sector participation in solving Montana's housing crisis.

Key Strategies:

- Include FTE allocation to the BOH in Governor's Executive Budget.
- Assess whether BOH has sufficient proprietary funds to partially support this FTE or if a state appropriation would be needed to fund the entire position, taking into account the position's intent to focus on building a state-level program.

Dissenting Opinions:

- The BOH may have some ability to fund this position with its proprietary funds. The BOH does not receive any general fund appropriations for its administration or operations; the only state resources BOH currently administers are coal trust tax fund dollars specific for the Veterans' Home Loan Program (VHLP) and Coal Trust Multifamily Homes (CTMH) loan program.
- General concerns over the expansion of state government and increased FTEs.
- The current HMF AHRLF is specific to loans and does not allow monies to be distributed as grants. Private sector contributions to the fund may include parameters for grant versus loan administration and terms. Allowing for some portion of the fund to be allocated as grants may provide flexibility needed to align with private sector contribution goals.

Supporting Graphics: NA

12 - Develop Strategies to Address Rising Costs of Property Insurance

Submitted By: Cheryl Cohen

Common Theme: Regulatory; Financial

Recommendation:
Establish a stakeholder working group to explore root causes and recommend implementable solutions to address the rising costs and coverage limitations of single-family and multi-family property and casualty insurance. Stakeholder group membership may include, but not be limited to: housing industry professionals (mortgage servicers, rental property operators, HUD-certified housing counselors), insurance companies, emergency/disaster professionals, and the state insurance commissioner.

Rationale:
Single-family homeowners and multi-family rental property operators are experiencing significant increases in property insurance premiums and deductibles, as well as increased challenges in securing adequate coverage in the Montana market. These cost escalations are resulting in escrow shortfalls for homeowners, reducing affordability for new homebuyers, drastically reducing net operating income for multifamily rental property operators and necessitating increases in monthly rents passed on to tenants. In the case of affordable multifamily rental property operators who have regulatory limitations on rent increases, some parent companies need to front deductibles that individual properties cannot individually afford due to limited rental income.

Multifamily Rental Properties:

One nonprofit affordable housing developer reported premium increases for all properties by nearly 20% with some premiums doubling or tripling. See table below for specific property examples. Note that all premium figures listed do not include wind/hail coverage.

Common coverage challenges include older pre-1970s structures (properties with dated fire suppression systems and/or aid pull cords in units serving senior/disabled residents), high rises over 4 stories, properties with commercial kitchens and properties in eastern Montana with higher wind/hail risks.

	2023 Premium	2024 Premium	% Increase
Property #1 - Anaconda	37,724	87,475	132%
Property #2 - Billings	40,928	79,170	93%
Property #3 - Billings	51,127	99,687	95%
Property #4 - Billings	16,974	45,566	168%

Deductibles also increased substantially, reducing already limited net operating income.

- Deductibles increased from $5,000 to $25,000 per claim.
- Deductibles for wind/hail increased from $5,000 per claim to 2% of building value. The resulting deductible for a small 20-unit property valued at $12 million is now $240,000.
- Deductibles for water damage are now limited to $50,000 in damage, which is likely insufficient for multifamily rental properties. For example, when a flooding event occurs on an upper story unit causing damage to all units below and/or sprinkler system deployment causing water damage throughout the property.

Single-Family Properties:

Insurance premiums and deductibles are also increasing for homeowners. Coverage for older homes and manufactured homes is increasingly challenging and homeowners are seeing more coverage exclusions in their policies. Factors are similar to the multifamily rental property space, but include age of property, eastern Montana hail/wind risks and homes located in jurisdictions served by volunteer fire departments.

Data/Research:

Freddie Mac's March 2024 Spotlight included an analysis of The Cost of Homeowners' Insurance, which concluded "as a component of ongoing housing expenses, HO insurance costs are growing but are a small fraction compared to the mortgage principal and interest payment. However, even a small incremental increase in HO insurance cost will impact those at the margin. Our findings highlight substantial heterogeneity in such costs and the cost burdens experienced by borrowers. We find that the effective HO insurance rates were the highest in the central U.S., leading to notable cost burdens in several states within this region.

Among all income groups, lower-income borrowers were more challenged. While the costs of HO insurance remain a small fraction of housing expenses, it's a trend that we will continue to track going forward."

EXHIBIT 2

Annual homeowners (HO) insurance premium and effective rate, 2018-2023

	2018	2019	2020	2021	2022	2023
Average annual HO insurance premium	$1,081	$1,124	$1,203	$1,298	$1,373	$1,522
Average effective HO insurance rate (annual premium per $1,000 of home value)	$4.7	$4.6	$4.3	$4.2	$4.4	$4.9

Source: Closing costs data where the mortgages were funded by Freddie Mac.
Note: Single-family owner-occupied property with a fully amortizing 30-year fixed-rate purchase mortgage.

Additional Reading:
The Factors Influencing the High Cost of Insurance for Consumers | congress.gov
Wind, Fire, Water, Hail: What Is Going on In the Property Insurance Market and Why Does It Matter? | Office of Financial Research

Barriers Addressed:

- Rising property insurance costs, coupled with rising purchase prices and interest rates, are directly contributing to the inability of aspiring buyers to afford a home.
- Current homeowners are experiencing increases in monthly housing costs and escrow shortfalls, which are particularly impactful to low- and moderate-income households including older Montanans on fixed incomes.
- Rising insurance costs in multifamily properties reduce revenue available for property maintenance, taxes, and other operating costs and/or these increased costs are passed on to renters in the form of higher monthly rents.
- Ensuring adequate consumer education and protections with respect to property and casualty insurance, including but not limited to wind/hail, flood, and renters' insurance, may encourage/incentive property owners to make more informed decisions with respect to paying higher premiums for casualty insurance.
- Montana will continue to experience natural disasters, including wildfires and floods, and our ability to recover and rebound from these events will be directly correlated with the availability of adequate insurance coverage options and property owners' decisions to purchase appropriate property and casualty insurance.

Key Strategies:

- The insurance marketplace is complex. Before offering up policy solutions to address the complex insurance marketplace, additional efforts to precisely identify root causes and collaboratively explore solutions with applicable stakeholders, in particular the Montana Commissioner of Securities and Insurance, are needed.
- Efforts to regulate the insurance marketplace in other states have illustrated that government intervention in this sector can have significant and negative unintended consequences. Montana should approach this issue with care and in full partnership with the Montana Commissioner of Securities and Insurance.
- The Governor could establish an Insurance Task Force similar to the Housing Task Force and Property Tax Task Force, or the Montana Commissioner of Securities and Insurance could take lead to establish a housing-focused working group.
- The Legislature could identify member(s) to serve on said Task Force or working group and/or a specific a Legislative committee with applicable oversight on insurance matters could request periodic reports on progress, including soliciting recommendations for future state legislative efforts.

Dissenting Opinions:

- Establishing an additional working group does not immediately address challenges and may be duplicative to Montana Commissioner of Securities and Insurance efforts already underway.
- Composition/appointees to the working group may not be representative of all applicable stakeholder interests, resulting in "skewed" recommendations.

Supporting Graphics: NA

13 - Planning Grants to Increase Housing Supply

Submitted By: Cheryl Cohen

Common Theme: Planning; Financial

Recommendation:

Draft legislation to propose an ongoing appropriation for planning grants to local governments and tribal governments for planning and zoning to increase housing supply, and to provide rule-making authority to the Department of Commerce to establish parameters for this housing-specific planning grant program via a public administrative rule-making process.

Rationale:

House Bill 825 from the 68th legislative session, short title “Home Ownership Means Economic Security Act” or the HOMES Act, included a $25 million appropriation from the state special revenue account to the Department of Commerce to administer planning grants to eligible entities. The intent of this fund was to “provide planning grants to local governments and tribal governments for planning and zoning to increase housing supply” and “cover administration costs of the program.” HB 825 further included rule- making authority for the Department of Commerce for this planning grant program.

The original intent of the planning grant funds in HB 825 included reviewing criteria and the application scoring system to prioritize applications to the Montana Board of Investment’s (BOI) Montana Housing Infrastructure earnings state special revenue account program (also proposed in HB 825). These application reviews were to include: (1) ensuring readiness to proceed; (2) ensuring subdivision improvement agreement; and (3) reviewing other factors relevant to promoting successful housing developments that meet a minimum gross density of ten units per each acre. HB 825 missed the deadline to appropriation bill transmittal.

Portions of the HB 825 HOMES Act were later included in HB 819, which was passed by the 68th legislature and signed into law by Governor Gianforte. However, the planning grant appropriation was reduced from $25 million to $1 million, rule-making authority was removed and the planning grants were de-coupled from the HOMES Act / BOI components of HB 825 which were ultimately included in HB 819. The resulting language in HB 819 is ambiguous and limited to “provide planning grants to local governments and tribal governments for planning and zoning to increase housing supply” and “cover administration costs of the grant program”, without any reference to the HOMES Act / BOI program in HB 819 nor to SB 382.

Currently, stakeholders have expressed differences of opinion as to the use/prioritization of the $1 million planning grant appropriation that was included in HB 819. As one example, the League of Cities and Towns has indicated a preference for the Department of Commerce to prioritize these planning grants for communities impacted by SB 382 “Create the Montana Land Use Planning Act”, which focuses on municipalities with a population at or exceeding 5,000 located within a county with a population at or exceeding 70,000 in the most recent decennial census.

Barriers Addressed:

Section 22 of HB 819 passed in the 68th legislative session includes a $1 million appropriation from the general fund to the Department of Commerce for the biennium beginning July 1, 2023, for planning grants. The bill language is unclear as to whether this is a one-time only appropriation or an ongoing appropriation each biennium, and rule-making authority to clarify use/prioritization of planning grant funds was not provided.

Cities and towns have expressed concerns as to their local capacity and costs associated with the implementation of SB 382.

Costs of various common planning grant deliverables, such as Preliminary Engineering Reports, have more than doubled over the last several years (increasing from approximately $35,000 to $65,000 - $70,000), limiting the reach of other existing Department of Commerce resources, including the federal Community Development Block Grant (CDBG) and state Montana Coal Endowment Program (MCEP) planning grant programs.

While the CDBG planning grant program can be used to support local planning and zoning efforts to increase the housing supply, such as Growth Polices, Housing Needs Assessments, Zoning Regulations, etc., there are federal requirements for eligibility, match requirements and necessary grant administration that some local jurisdictions are not able to meet. Furthermore, demand for these planning grants greatly exceeds available funding. Separately, MCEP planning grants currently cannot be used to support local planning and zoning efforts to *increase* housing supply as they can only be used by local governments with infrastructure planning efforts tied to upgrading *existing* water or wastewater facilities, sanitary or storm water systems, and bridges.

Key Strategies:

Increasing and providing for an ongoing appropriation for planning grants specific to new housing growth, which may include planning grants to support SB 382 implementation, will enable local governments to focus additional efforts to identify housing growth needs and to develop and implement activities to increase housing supplies.

Allowing for rule-making authority provides a public process for input on prioritization of planning grant funds resulting in increased collaboration between the state and local governments.

Dissenting Opinions:

- The Department of Commerce could prioritize existing planning grants to support local governments with planning and zoning to increase housing supply, instead of an additional appropriation.

- The Department of Commerce’s Community Technical Assistance Program (CTAP) has experienced various challenges including staffing transitions which has limited its impact in recent years.
- Local governments should not rely on state planning grants but should instead consider ways to allocate additional local funds to these efforts.

Supporting Graphics: NA

14 - Construction Defect Litigation Reform

Submitted By: Danny Tenenbaum

Common Theme: Reduce costs for new construction; construction.

Recommendation:
Change the statute of repose (§27-2-208, MCA) for construction defects to 4 to 6 years after substantial completion of construction.

Rationale:
Montana's statute of repose currently exposes builders to liability for 10 years after project completion. This is significantly higher than many other states that strike a more balanced approach to construction litigation (Idaho, Nevada, Michigan, Tennessee, Texas, Washington e.g. use a 4 to 6 year window). Maintaining a longer window of liability leads to higher insurance costs for builders. It also disincentivizes homeownership opportunities in multifamily development - a recent analysis from Colorado (which is currently reforming its defect laws) found insurance policies for new multifamily housing were 5x higher when units were individually owned v. rented.

Barriers Addressed:
Updating Montana's construction-defect liability laws addresses the CHALLENGE of high costs in new construction, by reducing insurance costs and allowing more projects to pencil-out.

Key Strategies:
Amend §27-2-208 (1) and (2), MCA, replacing "10" and "10th" with "4" and "4th," respectively.

Dissenting Opinions:
The Montana Trial Lawyers Association typically opposes any legislation that limits liability. They may argue limiting the statute of repose could prevent plaintiffs from recovering damages, or that the states with shorter windows of liability suffer from lower overall quality construction.

Supporting Graphics: NA

15 - Set Reasonable Limits on Impact Fees

Submitted By: Danny Tenenbaum

Common Theme: Reduce costs for new construction; construction.

Recommendation:
Strengthen limits on government-mandated "impact fees" imposed on the construction of new homes.

Rationale:
Montana has some of the highest impact fees in the US. Impact fees directly increase the cost of new construction.

Barriers Addressed:
Establishing reasonable limits on these fees addresses head-on the CHALLENGE of high costs in new construction.

Key Strategies:
- Amend §7-6-1601(7), MCA to limit impact fees collection to statutorily defined "public facilities" (transportation, water, wastewater, stormwater, fire and police facilities). Eliminate subsection (f), the "catch all" provision.
- Amend §7-6-1601(5)(a), MCA to eliminate the 5% allowable increase for "administration" of the fee.
- Limit growth in impact fees to inflation.

Dissenting Opinions:
Some believe new homeowners *should* be required to pay more in the form of an "impact fee", beyond their annual property taxes, to account for as much of their impact as allowed without violating the due process clause. Local governments should be entrusted to spend impact fee collections on appropriate facilities, and the "catch all" provision is important for funding expenditures beyond transportation, water, sewers, fire and police.

Supporting Graphics: NA

16 - Streamline Design Review Process for Builders

Submitted By: Danny Tenenbaum

Common Theme: Simplify and speed up the construction process; construction.

Recommendation:
Streamline design review process to ensure rules do not slow down or block new construction.

Rationale:
SB 407 (2023) laid a foundation for improving design rules some municipal governments in Montana choose to impose. Since passage, we have observed attempts to improve local design rules with mixed success. Whitefish, for example, still sends projects to go before a volunteer Design Review Board where projects endure a hearing and can be delayed for objections to things like sconce design and paint colors. Other cities still impose mandates to recess/setback upper floors, articulate rooflines, and "break up the massing" for new construction. The claimed justification for maintaining these aesthetic design rules is that they comply with the legal requirement of being "necessary to protect public health or safety." Requiring complex, articulated construction, as opposed to simply straight lines and smooth surfaces, drives up costs and results in heat loss due to increased surface area. Clarifying the language of SB 407 will improve predictability and speed for builders.

Barriers Addressed:
Streamlining design review procedures, the CHALLENGE of delay and uncertainty making new construction more expensive.

Key Strategies:

- To avoid legal ambiguity, provide explicit statutory guidelines for cities to follow if they decide to regulate building design. The framework of Utah's HB 1003, passed in 2021, may be a useful template (see graphic below).
- SB 407's standard "necessary to protect public health or safety" could be amended to become "demonstrably necessary and narrowly tailored to fulfill a compelling public safety objective."
- Appeals of city staff design review decisions must go directly to the city's governing body.
- Make explicit that design rules that do not comply with MCA may not be enforced.

Dissenting Opinions:
Until 2023, cities enjoyed unlimited authority to regulate the aesthetic details of new construction–usually delegating this task to a volunteer board. Cities opposed SB 407 in 2023 and will likely oppose any further efforts to set sideboards on their regulatory powers based on a general preference for "local control."

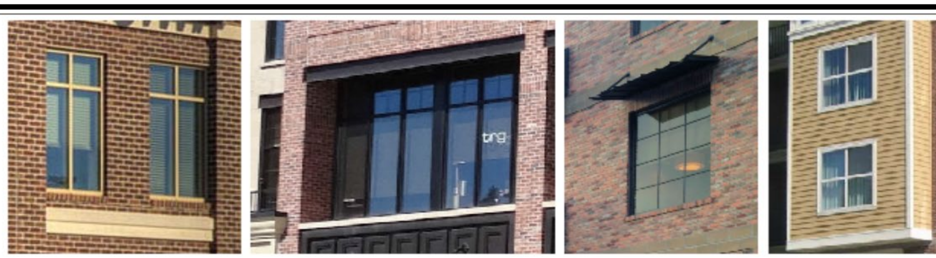
Supporting Graphics:

Example from Utah's HB 1003, passed in 2021. This effort provides explicit statutory guidelines for cities to follow if they decide to regulate building design:

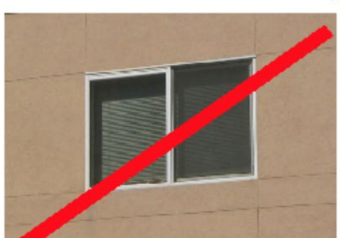
duplex, twin home, or cottage style development. The prohibition applies to new construction and any addition or alteration to an existing building. The following building design elements listed in the bill are prohibited from being required:

a) exterior color;
b) type or style of exterior cladding material;
c) style, dimensions, or materials of a roof structure, roof pitch, or porch;
d) exterior nonstructural architectural ornamentation;
e) location, design, placement, or architectural styling of a window or door;
f) location, design, placement, or architectural styling of a garage door, not including a -loading garage door;
g) number or type of rooms;
h) interior layout of a room;
i) minimum square footage over 1,000 square feet, not including a garage;
j) rear yard landscaping requirements;
k) minimum building dimensions; or
l) a requirement to install front yard fencing.

Examples from the City of Bozeman's current code:



Recessed and/or trimmed windows.



The window in the left image lacks any other detail that adds visual interest.

Figure 38.530.050.C.

Acceptable and unacceptable window design examples.

Both buildings use modulated entry feature to help break up the perceived massing and add visual interest.

The left building on East Main (about 110' wide) uses an articulated partial third floor along with smaller articulation treatments on the main floors to effectively break up the perceived scale and add visual interest (this would be a good departure example). The building to the right would not be an acceptable example. While the articulated features on the lower floors help, the monotony of the very long upper floor and roofline would not be acceptable.

Figure 38.530.040.E.

Illustrating maximum façade width standards and good and bad examples.

17 - Strengthen SB 245 (2023 mixed-use zoning bill) to Allow Taller Buildings

Submitted By: Danny Tenenbaum

Common Theme: Legalize taller buildings in commercial and mixed-use zone designated under SB 245 (2023); construction.

Recommendation:

Relaxing height restrictions in commercial and mixed-use zones to legalize 5 over 1s– for the most common form of new multifamily construction in the U.S.

Rationale:

Relaxing height restrictions in Montana cities (meeting the same criteria as SB 245) help to expand housing options in walkable neighborhoods that are typically closer to jobs, shopping, restaurants, and other value-adding amenities. This is directly in support of Governor Gianforte's mission to make it easier for Montanans to live where they work. Taller buildings can provide more rental or condo units, increasing property tax revenue for the cities on existing infrastructure. Tall buildings are good for the economy too - they support more businesses in the area. Often, these 6-story buildings have commercial space on the ground floor with residential units above. This can create a more lively and active area throughout the day.

Barriers Addressed:

Relaxing height restrictions addresses the CHALLENGE of siting multifamily housing and mixed-use development in cities.

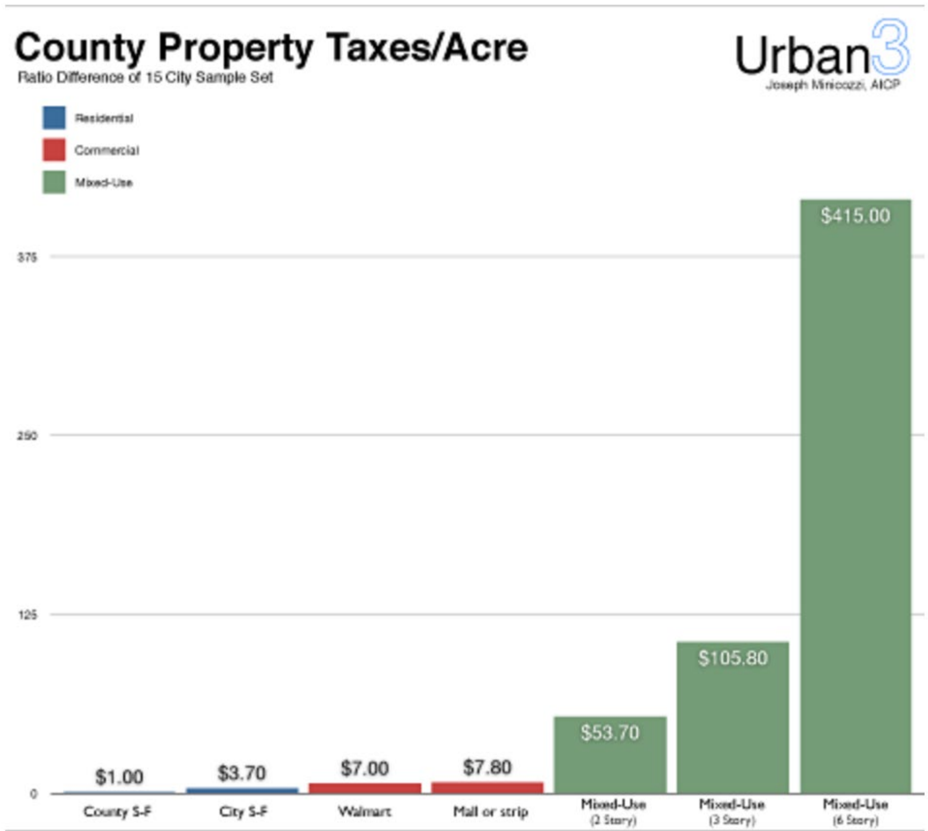
Key Strategies:

- Amend §76-2-304(3)(b), MCA to relax height restrictions on buildings up to 6 stories in commercial areas of cities that meet (3)(a) criteria.

Dissenting Opinions:

- Some people think taller buildings do not belong in cities.

Supporting Graphic:



Average county property tax/acre ratio across sample set of 15 different cities from Montana to Florida.

18 - Allow Taller Single-Stair Buildings with Fire Safety Measures

Submitted By: Danny Tenenbaum

Common Theme: Reduce costs for new construction; construction.

Recommendation:
Allow for taller single-stair buildings when necessary, fire safety elements are included.

Rationale:
The Montana building code currently forbids single-stair buildings taller than three stories. Legalizing single stair buildings up to medium heights allows for more efficient use of building area, ultimately reducing construction costs and lowering rents. Without the constraint of a second staircase location, architects have more freedom to create a wider variety of unit sizes, more functional floor plans, more natural light, and improved ventilation. The flexibility and cost savings from a single staircase design makes urban infill development more feasible. This could encourage participation from smaller developers and create a more diverse housing market.

In the past few years, single stair reforms have passed or are in the legislative process in Virginia, Minnesota, Connecticut, Colorado, California, New York, Oregon, Hawaii, British Columbia, and a growing number of cities, small and large, with their own building codes.

Barriers Addressed:
Legalizing certain single stair buildings with necessary fire safety elements addresses the CHALLENGE of high costs in new infill construction.

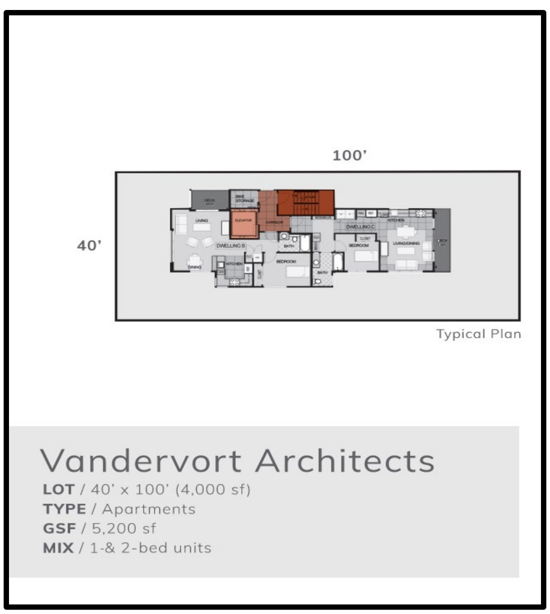
Key Strategies:

- Amend §50-60-203, MCA to allow for single stair building up to 6 stories when they meet minimum fire safety elements in consultation with the Montana State Fire Chiefs Association (e.g. sprinklers, firewalls, etc).

Dissenting Opinions:
Some may worry that a single fire escape route could be dangerous. Proponents counter that fire safety codes can be adapted for single-stair buildings, including requiring features like fireproof doors, sprinklers, and well-maintained evacuation plans.

Supporting Graphics:
A recently completed single stair infill project in Washington state.

Image Credit: Vandervort Architects



19 - Montana Land Use and Planning Act Updates

Submitted By: Danny Tenenbaum

Common Theme: Increase Housing Supply in Montana's Cities; planning and construction.

Recommendation:
Eliminate redundancies and vague language in SB 382's "menu of options" for municipal comp plans and encourage cities to more closely follow best practices in planning. §76-25-302, MCA.

Rationale:
The Montana Land Use and Planning Act offers cities a menu of options when updating their comprehensive plans. Under the current statutory framework, cities' plans must comply with at least five of the 14 provided options. Some of these options are redundant to other legislation passed in 2023, others use vague standards that do not require meaningful improvement to existing zoning codes.

Tightening up the requirements of SB 382 and requiring closer adherence to best practices in planning, while still allowing for some flexibility, will increase housing options over the long term beyond SB 382's current form.

Barriers Addressed:
Updating the Montana Land Use and Planning Act will help tackle the long-term CHALLENGE of boosting inventory in larger cities.

Key Strategies:

- Eliminate or modify subsections (a) (b) (c) (d) (e) (i) (j) and (m), which set requirements that cities must already meet through other legislation.
- Clarify the language in (h) (k) and (l) to ensure modifications are made citywide.
- Eliminate (n).
- Encourage cities to adopt best practices in planning by providing seven options from which cities must meet a minimum of five.
- These modifications should be given a 2027 effective date to allow cities time to draft and adopt ordinance changes.

Dissenting Opinions: NA

Supporting Graphic:

76-25-302, MCA. Encouragement of Development of Housing EFFECTIVE

Montana Law / Land Resources and Use / Montana Land Use Planning Act / Zoning

(1) The zoning regulations authorized in 76-25-301 must include a minimum of five of the following housing strategies, applicable to the majority of the area, where residential development is permitted in the jurisdictional area:

(a) allow, as a permitted use, for at least a duplex where a single-unit dwelling is permitted;

(b) zone for higher density housing near transit stations, places of employment, higher education facilities, and other appropriate population centers, as determined by the local government;

(c) eliminate or reduce off-street parking requirements to require no more than one parking space per dwelling unit;

(d) eliminate impact fees for accessory dwelling units or developments that include multi-unit dwellings or reduce the fees by at least 25%;

(e) allow, as a permitted use, for at least one internal or detached accessory dwelling unit on a lot with a single-unit dwelling occupied as a primary residence;

(f) allow for single-room occupancy developments;

(g) allow, as a permitted use, a triplex or fourplex where a single-unit dwelling is permitted;

(h) eliminate minimum lot sizes or reduce the existing minimum lot size required by at least 25%;

(i) eliminate aesthetic, material, shape, bulk, size, floor area, and other massing requirements for multi-unit dwellings or mixed-use developments or remove at least half of those requirements;

(j) provide for zoning that specifically allows or encourages the development of tiny houses, as defined in Appendix Q of the International Residential Code as it was printed on January 1, 2023;

(k) eliminate setback requirements or reduce existing setback requirements by at least 25%;

(l) increase building height limits for dwelling units by at least 25%;

(m) allow multi-unit dwellings or mixed-use development as a permitted use on all lots where office, retail, or commercial are primary permitted uses; or

(n) allow multi-unit dwellings as a permitted use on all lots where triplexes or fourplexes are permitted uses.

(2) If a local government's existing zoning ordinance adopted pursuant to Title 76, chapter 2, before May 17, 2023, does not contain a zoning regulation that is listed as a regulation to be eliminated or reduced in subsection (1), that strategy is considered adopted by the local government.

(3) If the adoption of a housing strategy allowed in subsection (1) subsumes another housing strategy allowed in subsection (1), only one strategy may be considered to have been adopted by the local government.

Source:
https://leg.mt.gov/bills/mca/title_0760/chapter_0250/part_0030/section_0020/0760-0250-0030-0020.html
| 2024-05-02

20 - Require a Majority Vote for Rezone Petitions

Submitted By: Danny Tenenbaum

Common Theme: Reexamine Barriers to Housing Construction; regulations and planning.

Recommendation:
Require all rezone petitions to pass a majority vote of the governing body.

Rationale:
Title 76-2-305, MCA currently requires a person seeking to rezone their property to win 2/3rds of present and voting members on the municipal's governing body when 25% or more of landowners within 150 feet sign a protest. Requiring a supermajority vote allows a minority to overrule the wishes of the majority. This may make sense for major proposals like constitutional amendments. Modifications to municipal zoning maps, by contrast, happen regularly throughout Montana's cities and towns, frequently not even making the local news. Rejecting the will of the majority specifically for requests to modify zoning is simply undemocratic. If a party with standing believes the rezone petition was granted unlawfully, they retain the ability to seek redress in court.

Barriers Addressed:
Reforming the municipal rezoning statute addresses the CHALLENGE of improving the speed and predictability of securing permission to construct.

Key Strategies:

- Amend §76-2-305(2), MCA to state rezone petitions are granted with "a favorable vote of the majority of present and voting members".

Dissenting Opinions:
Title §76-2-303, MCA lays out the notice requirements when a rezone petition is filed, however some may express concern that neighbors may prefer being contacted directly by the city and offered an individualized opportunity to protest.

Supporting Graphics: NA

21 - Targeting Public Investment in Affordable Housing

Submitted By: Danny Tenenbaum

Common Theme: Maximize impact of public investment in affordable housing; finance.

Recommendation:
Add statutory criteria to public investments in affordable housing (e.g. Coal Trust Loans, Housing Montana Fund, Montana Housing Infrastructure Revolving Loan Program, potential state tax credits) to ensure these funds do not go to projects in MTLUPA-applicable cities (see §76-25-105(1), MCA) that choose to maintain regulatory barriers to housing affordability. This recommendation does not affect eligibility for projects located in jurisdictions that are not MTLUPA-applicable.

Rationale:
Governor Gianforte stated in his 2021 letter vetoing HB 397 (State LIHTC legislation), "The most effective way to address housing affordability challenges in our growing state is to reduce the panoply of regulations faced by housing development." Adding common sense sideboards to state affordable housing funding will incentivize city governments to proactively reduce regulatory barriers to housing affordability. Good stewardship of public funds means ensuring our investments in affordable housing projects have the greatest impact.

Bipartisan federal legislation similar to this recommendation (H.R. 4351, Yes In My Backyard Act) recently passed Congress on a voice vote, without any opposition.

Barriers Addressed:
Incentivizing cities to adopt better planning practices addresses CHALLENGE of increasing housing options for Montana families.

Key Strategies:
- Amend §17-6-308, MCA (Coat Trust Loans), §90-6-133, MCA (Housing Montana Fund), and §17-6-801, MCA (Montana Housing Infrastructure Revolving Loan Program) to exclude funding eligibility from project proposals located in MTLUPA-applicable cities that do not meet all regulatory reform criteria listed in §76-25-302, MCA.
- Ensure proposed state affordable housing tax credit legislation excludes funding eligibility from project proposals located in MTLUPA-applicable cities that do not meet all regulatory reform criteria listed in §76-25-302, MCA.

Dissenting Opinions: NA

Supporting Graphics: NA

22 - Revise Montana Public Works Standard for Sidewalk Requirements

Submitted By: Mike Smith

Common Theme: Regulations, Construction

Recommendation:
Revise section 02529-5A of the Montana Public Works (MPW) standards (Pg.492) and Section 608 Sidewalks of the Montana Department of Transportation (MDT) standards to follow the International Residential Code (IRC) depth requirements for driveway and garage thickness.

Rationale:
When a developer pours a city sidewalk to receive the final plat approval, they are required to pour it 4-inches thick. When a builder goes to install a driveway, the driveway is required by the IRC to be 4-inches thick as well. However, during the process of installing the driveway the MPW and MDT require that the builder tear out the freshly poured (developer) sidewalk and install a 6-inch thick sidewalk.

This misalignment in sidewalk depth when a builder installs a new driveway requires the builder to remove the recent developer-poured sidewalk and replace it with thicker sidewalks to meet code requirements.

Barriers Addressed:
Removing the sidewalks and taking it to the landfill while also re-pouring it to 6-inch depth incurs about $2,000 of additional cost per home which gets passed onto the homeowner. This does not include administrative time or cycle time pertaining to new home construction. The newly enforced standard also carries an environmental impact through the dumping of perfectly good concrete into the landfill.

Key Strategies:
Changing the MPW standards (Pg. 492) and Section 608 Sidewalks of the MDT standards to follow the IRC’s depth requirement for driveway and garage thickness.

Dissenting Opinions:
A thinner sidewalk may be more prone to cracking.

Supporting Graphics: NA

23 - Establish Housing Improvement Districts

Submitted By: Chris Dorrington

Common Theme: Financial

Recommendation:
Establish Housing Improvement Districts with state-level backing for special assessment bonds to pay infrastructure costs.

Rationale:
Emphasizing infrastructure investment is a follow-on success from HTF 1 & 2.

Infrastructure (water, sewer, roads, stormwater, sidewalks, etc.) represents a significant upfront cost, and therefore barrier, to delivering additional housing inventory, particularly with respect to large scale development on previously undeveloped property. By creating a public/private partnership between developers and local governments, upfront costs can be financed on a tax-exempt basis for a lower interest cost and amortized over many years, with savings passed onto buyers or renters.

Barriers Addressed:
CHALLENGE: Developer Default - Pledging of taxing authority by local governments in the event of developer default has been a hinderance to finance infrastructure costs through special assessment bonds under existing statutes. The state can step into this role through the Board of Investments and pledge state resources as a backstop rather than local property taxes.

CHALLENGE: Disconnect Between Costs and Affordability - Developers need to recover their costs when selling or renting newly developed property, including infrastructure costs. This can be either absorbed into a mortgage or take out financing, respectively, however, typically these mechanisms have interest rates higher than those of a tax-exempt public bond issuance spread over a longer term. Providing a more cost-effective means of financing upfront infrastructure costs will lower total project costs, allowing developers to deliver more housing at a more affordable cost.

Key Strategies:
1. Create Housing Improvement Districts in Montana code which:
    a. Require a petition by the developer or owner of land to be included,
    b. Require the developer meet the requirements of the HOMES Act,
    c. Partner developers with local governments to solve housing affordability and inventory issues at a local level, and
    d. Leverage the Board of Investments significant financial expertise and tools to minimize costs.

Dissenting Opinions: NA

Supporting Graphics: NA

24 - Allow Small Lot Development

Submitted By: Emily Hamilton

Common Theme: Planning

Recommendation:

Prohibit local lot size or lot width requirements in areas that are served by public sewer and water systems. To make this small lot development feasible to build, the Study Group recommends these limits on regulations for "small lots," those that are less than 4,000 square feet:

- Localities can set small lot setbacks up to 10 feet front and rear, up to five feet side. Localities can also allow attached housing with no side setbacks on small lots.
- Localities cannot require more than one parking space per unit and cannot mandate covered parking or off-site parking for small lots.
- Localities cannot require more than 40% open space or permeable surface on a small lot.
- Localities cannot set a height limit below three stories on a small lot.
- In cases where small lot construction would violate historic preservation rules, deed restrictions, or Home Owner Association (HOA) rules, they need not be allowed.

Rationale:

The Legislature could consider limiting localities' authority to require large lot sizes for new housing. One way this could be achieved is by amending to §76-2-302, MCA to prevent localities from implementing minimum lot size or lot width requirements in places with wet utilities. Large minimum lot size requirements are one of the primary zoning tools that drive up housing costs because they set a high floor on the cost of building a new house, particularly in places where land is expensive. Minimum lot size and lot width requirements incentivize the construction of large, high-end housing construction and limit the feasibility of starter house construction, including manufactured housing on owner-occupied lots. Since localities have the authority to regulate land use because the State delegates them this police power for the purpose of protecting health, safety, and the general welfare, the State has a role to set limits on local land use restrictions that exceed this authority.

Barriers Addressed:

Minimum lot size requirements mandate sprawling development that prevents walkability and makes transit and bicycle infrastructure difficult to provide. Larger lots require more infrastructure for streets, sidewalks, lighting, sewer, and water for each household, requiring more local government spending and higher taxes as a result. Minimum lot size mandates that match lot sizes on the ground prevent neighborhoods and localities from accommodating more households over time as demand for housing increases, necessitating that new housing construction consumes agricultural land or open space at the outskirts of cities and that residents of new housing have to drive further to reach job centers and daily necessities. Limiting local minimum lot size requirements does not mean that new housing on larger lots would be banned, it simply means that property owners and homebuyers have the right to build and live on smaller pieces of land if they choose to. Setting limits on lot size requirements is not a one-size-fits-all solution; on the contrary, it would allow property owners to put their land to higher value uses as market conditions change in their neighborhoods.

Key Strategies:
Draft legislation that would have bipartisan support to amend §76-2-302, MCA to set a limit on local minimum lot size requirements for residential lots and limit other barriers to construction on small lots.

Dissenting Opinions: NA

Supporting Graphics: NA

25 - Clarifying Roles and Responsibilities Between Building Codes and Fire Marshalls

Submitted By: Sarah Swanson

Common Theme: Regulations

Recommendation:
There is confusion amongst regulatory offices and the construction industry on who has the authority to prescribe building requirements prior to issuing occupancy. This change would clarify the law to ensure a single resource is utilized for determining building requirements.

Rationale:
Montana's Building Code is designed to allow for alternative means and new technologies to allow the construction industry to leverage affordable building techniques while maintaining public health and safety standards.

Barriers Addressed:
Currently, there are examples of multiple regulatory agencies imposing certain building requirements that exceed minimal standards. These requirements add costs, delays, and confusion to the building process.

Key Strategies:
These recommendations all require statutory changes. If accepted, the Department of Labor & Industry would conduct stakeholder outreach in anticipation of the next legislative session.

Below is a list of recommended MCA changes. Proposed changes are underlined or ~~strikethrough~~:

1) §50-60-101, MCA. "…or designee's jurisdiction for the purpose of determining whether the existing building or premises conforms to laws and rules relating to fire hazards and fire safety."
2) §50-60-102(1)(b), MCA. "…inspect existing public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter."
3) §50-60-102(2), MCA. "…state if the rules do not conflict with building regulations adopted and occupancy issued by the department of labor and industry."
4) §50-60-202, MCA. "…and regulations for conformity with rules promulgated and occupancy granted by the department."
5) §50-3-103,(1),(a-d), MCA. "a) ~~design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction;~~ operation, storage, handling, maintenance, or use of existing buildings. (b) building restrictions within congested districts; (c) maintenance of exit facilities from existing structures; (d)

maintenance of existing fire extinguishers, fire alarm systems, and fire extinguishing systems."

6) §7-33-4208, MCA. "The governing body of an incorporated city or town may adopt technical fire codes, in whole or in part, for application to existing buildings and occupancies by reference under the procedure provided in §7-5-4202, MCA."
7) §50-61-101, MCA. "…and to allow for inspection of the existing buildings and premises by specified officers."
8) §50-61-114(2), MCA. "may enter into all other existing buildings and upon all other premises within the jurisdiction."
9) There is no MCA authorizing the certification of local fire departments to enforce an adopted fire code on existing buildings. The State Fire Marshall should be granted authority to certify local jurisdictions and provide regular oversight (and authority to decertify if necessary).

Dissenting Opinions:

There are varying opinions on the applicability of the fire code versus the building code. Certain regulatory bodies believe they have the authority to require additional building requirements and do so to enhance public safety.

Supporting Graphics: NA

END OF DOCUMENT