



# **SB 382**

# **Montana Land Use and Planning Act**

**Kelly A. Lynch, JD, AICP**  
Executive Director  
Montana League of Cities and Towns

Governor's Housing Task Force  
SUCSESSES Study Group Meeting  
April 1, 2024

# SB 382

## WHY did we need these changes?

- Montana's land use and planning statutes are outdated, inconsistent with each other, duplicative, and bureaucratic
- Cities, staff, developers, consultants, and public all frustrated with the slow, expensive, risky process set forth in the statutes
- No alignment between growth policy elements, zoning (*Lowe*) criteria, or subdivision -608 criteria; every level of permitting must duplicate full review
- Administrative review and other streamlining processes are prohibited under current statutes
- No ability to rely on previous planning or analysis in permitting

# SB 382

## WHO does it apply to? (*Section 76-25-105*)

- Belgrade
- Billings
- Bozeman
- Columbia Falls
- Great Falls
- Helena
- Kalispell
- Laurel
- Missoula
- Whitefish

All other jurisdictions may OPT IN - Lewistown

Other cities under 5,000 in a county of 70,000 be mandatory after next decennial census.

# SB 382

## WHEN does it apply? (*Section 76-25-105*)

- Must adopt land use plan, zoning, and subdivision regulations that meet the new framework within 3 years from effective date of the Act
- IF growth policy adopted in previous 5 years, then 5 years from adoption or 3 years from effective date of Act, whichever is later

# WHAT is in it?



Entirely new statutes for:

- Land Use Plan and Map (*Title 76, Chapter 25, Part 2*)
- Zoning Regulations and Map (*Title 76, Chapter 25, Part 3*)
- Subdivision Regulations and Map (*Title 76, Chapter 25, Part 4*)

# Planning Commission

## *(Section 76-25-104)*

- Consolidates all existing boards and commissions
- Responsible for recommendations on all legislative land use and planning decisions:
  - land use plan and future land use map
  - zoning regulations and map
  - subdivision regulations; and
  - any other legislative land use planning document the local governing body designates
- Hears appeals from administrative decisions

# Public Participation Plan

## *(Section 76-25-106)*

- Used throughout the framework. Must identify how you will provide:
  - dissemination of documents;
  - opportunity for comments;
  - public meetings;
  - electronic communication and access; and
  - analysis of and response to public comments.
- Must emphasize that public comment will be narrowed as the process moves to site-specific development

# Land Use Plan

## *(Sections 76-25-203 through 209)*

- Existing conditions, future estimates, and anticipated needs for:
  - Housing
    - Population projections for 20 years
    - Number of housing units needed for that population
  - Local Services and Facilities
    - Public safety and emergency services
    - Water, wastewater, solid waste
    - Transportation network
    - Coordinate with school systems
  - Economic Development
  - Natural Resources, Environment, and Hazards



# Future Land Use Map

## *(Section 76-25-213)*

- Identify preferred and anticipated pattern and intensities of development within the jurisdiction and any areas anticipated for future annexation
- Must reflect adequate area to accommodate the housing units and other needs reflected in the plan

# Implementation Plan

## *(Section 76-25-216)*

- Analysis of inconsistencies in current regulation with plan and map
- Steps to bring them into compliance
- Schedule for adopting or amending CIP
- Schedule for updating plan for extension of services
- Procedures for monitoring and evaluating progress

# Update Review

## *(Section 76-25-202)*

- Every 5 years, PC must review plan and map to determine whether an update must be performed
  - ❑ Staff prepares determination regarding new or increased impacts
  - ❑ Public participation and comment provided
- If no new or increased impacts from original analysis, no update necessary
- If new or increased impacts, staff conducts analysis necessary to provide opportunity to comment on and consider all potential impacts resulting from the changes to the plan or map

# Zoning Regulations

*(Sections 76-25-301 and -302)*

- Authority to regulate:
  - ❑ uses of land;
  - ❑ density and types of uses;
  - ❑ size, character, number, form, and mass of structures; and
  - ❑ development standards mitigating the impacts of development, as identified and analyzed in review and adoption of land use plan and zoning regulations
  
- Must adopt 5 of 14 housing reforms identified in Section 19. If your code already meets them or doesn't have such regulations, you can count those towards the 5.

# Subdivision Regulations

*(Sections 76-25-402 and -404)*

- Authority to adopt standards for:
  - ❑ grading and erosion control;
  - ❑ design and arrangement of lots, streets, and roads;
  - ❑ location and installation of public utilities, including water supply and sewage and solid waste disposal;
  - ❑ provision of other public improvements; and
  - ❑ legal and physical access to all lots
  
- Same exemptions to subdivision but consolidated and made consistent (all must meet zoning)

# Miscellaneous Provisions

*(Sections 76-25-201, -304, -403)*

- Adoption of these documents all follows same process:
  - PC adopts PPP
  - PC follows PPP in drafting and revising plan/regulations/map; recommends drafts to CC for approval
  - CC adopts final plan/regulations/map
  
- Amendments to any of these documents follow same process
  - ❑ Amendment may be initiated by petition, applicant, or governing body;
  - ❑ Consistency with plan and map made with each amendment to zoning regulations and map or subdivision regulation

# Miscellaneous Provisions

*(Sections 76-25-301, -502, -503, -504)*

- Authority to adopt and set fees.
- New enforcement section that provides for civil enforcement with notice of violation.
- Variances all treated under consistent language and administrative decision (Section 35)
- Appeals to all administrative decisions (including variances) can be made by applicant or aggrieved person to PC. All decisions by PC can be appealed to CC (Section 37)
- Administrative exhaustion process for filing in DC, limited to administrative record in DC, 30-day statute of limitations.

# Site-Specific Review

- Development proposal comes in
- Administrative review to determine if, with or without variances (Sections 22 and 29), the proposal is:
  - ❑ In substantial compliance with zoning regs, map/subdivision regs; AND
  - ❑ Impacts resulting from development previously analyzed and underwent public review and comment.
- If meets both, staff issues permit/prelim plat



# Site Specific Review, cont.

- If in substantial compliance with regs/map, BUT there are new or significantly increased potential impacts not previously analyzed or considered, then:
  - ❑ 15-day written comment period
  - ❑ Staff issues permit/prelim plat
  
- If not in substantial compliance with regs/map, then must follow land use/zoning/subreg amendment process.

# MAID v State of Montana

- Challenge to SB 245, 323, 528, and 382 in Gallatin County
- Allege violation of due process, equal protection, and public's right to know and participate:
  - ▣ “The public has the right to expect governmental agencies to afford such *reasonable opportunity* for citizen participation in the operation of the agencies *prior to the final decision* as may be *provided by law.*” (Art. II, § 8)
  - ▣ “No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions...” (Art. II, § 9)
- Declaratory relief that bills do not interfere with private covenants

# MAID v State of Montana

- Court issued TRO then permanent injunction against SB 528 and SB 323; state appealed to MSC and that is being briefed.
- State's opening brief raises questions about whether plaintiffs have suffered any injury to support an injunction (or whether they can establish any standing at all?)
- Last Friday MAID withdrew its objection to a stay on merits while MSC hears and decides on injunction, so likely no movement until that issue decided.

# MAID v State of Montana

- SB 245 (effective May 17) and SB 382 (effective May 18, compliance required by May 18, 2026) must be complied with at this time unless court rules to modify or void.
- Existing zoning authority already allows municipalities to allow duplexes in SF zones and ADUs on lots with SF homes. Bozeman, Missoula, Whitefish already moved/moving ahead; Helena has allowed duplexes in SF zones for over a decade.