

Governor's Housing Task Force – Regulatory and Permitting Subtask

Brainstorming – Regulatory and Permitting Solutions for Increasing the Supply of Housing in Montana

18 August 2022

How we got here:

1. A [survey](#) was distributed with the meeting announcement of the Regulatory and Permitting Subtask meeting inviting Task Force members as well as the general public to submit solution ideas for the August 15, 2022, meeting. Responses may be viewed [here](#).
2. On August 15, the Regulatory and Permitting Subtask held a publicly noticed and [recorded](#) meeting to review and discuss submitted solutions. Brainstorming notes [here](#).
3. Engagement with stakeholders, including a focus group held by subtask co-lead Mark Egge in Bozeman on August 16, 2022.

Challenges are in **bold**. Solutions are underlined. Solutions presented below are intended to be applicable to all large cities and some counties and smaller municipalities.

Permitting takes too long. Several related issues, here:

- 1) **Statutory deadlines not adhered to.** a) Some entities will refuse to accept new applications or will require the applicant to sign a waiver of the required timelines if they are “too busy;” b) clock doesn't start on initial submittal, clock starts when the entity accepts the application (meaning it has already been reviewed, revised, etc.); c) entities play “speed chess” — kick applications back based on trivial details or reset timeframes with trivial actions.

Solution: borrowing from [Minnesota](#), legislate that “failure of an agency to deny a request within 60 days is approval of the request” with allowance for one 60 day extension for reasons stated in writing. All denials must state the reason for denial (with appeal to the judicial system). This will encourage efficient and disciplined review processes, improve transparency and predictability, and build trust in local review.

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- 2) **Not enough things have statutory timelines.** (Noting a need for verification) there are statutory timelines for subdivision review and annexations, but not site plans, zoning map amendments, and building permits. Building permits, in particular, should have statutory deadlines.

Solution: through the Legislature, establish statutory timelines for building permits, zone map amendments, site plans, and other commonly permitted development activities.

- 3) **Redundant public hearings.** (Noting a need for verification) duplicative hearings on applications between a planning board, zoning board, and city commission/council for the same application slows the process and drags both the public and the applicant through a long and redundant process. SB 161 results in qualifying subdivision applications be considered with only a single public hearing. This approach should be extended to other development activities. Additionally, modify state statute to make planning and zoning boards optional.

Solution: Extend SB 161 approach to other common development applications (e.g. zone map amendments, annexations, etc.) to require not more than a single public hearing.

- 4) **Understaffed planning departments.** While this challenge is multifaceted, one direct solution would be for cities to establish self-certification programs, allowing qualified licensed professionals to self-certify compliance with existing building codes and obtain expedited building permits (e.g. the [City of Tempe Fast Track permitting program](#)). Currently, there is a duplicative city review between when a building application is submitted and again when Certificate of Occupancy applied for. For qualified professionals, self-certification places the risk and burden of compliance on the architect or engineering firm. Compliance is reduced to a single evaluation at the time of Certificate of Occupancy.

Solution: recommend self-certification for expedited building permits as a best practice for cities. The Department of Labor must enable local self-certification. The Department of Commerce (or other state agency) can help establish a model self-certification program that can be adopted by cities.

Land is Expensive; Infrastructure is Scarce. Solutions:

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- 1) Remove bans on duplexes, triplexes, and fourplexes in municipal areas, as described in [HB 134](#). For more details, refer to the [Montana Zoning Atlas](#). This enables unlocks land and enables additional housing creation in areas already served by municipal infrastructure.
- 2) Modify zoning enabling statute to put housing-supportive sideboards on the use zoning practices that make land artificially scarce through dimensional requirements such as lot size minimums, lot width minimums, setbacks, off-street parking requirements, floor area ratio maximums, and lot coverage maximums.
- 3) Decadal affirmation of existing covenants, conditions, and restrictions of homeowners' associations. Many CC&Rs have outlived their associated HOA and there is no longer any mechanism to maintain or modify. Once per decade a plurality of association members must affirm their desire to maintain existing CC&Rs.
- 4) Land value taxation or split rate property taxes. Create legislation to allow cities to opt into a revenue neutral [land value property tax](#) if approved by voters. This would incentivize development of otherwise speculatively held empty sites served by municipal infrastructure and remove a disincentive associated with creating housing.

We don't have the data. We don't know how many units are being constructed. We don't know how many permit applications are being submitted. We don't know how long it takes for the permits to be processed. We don't know how many are approved on first submittal. We don't know the actual sales prices of houses. Cities are struggling to identify and regulate short-term rentals. Even defining what constitutes "affordable" or attainable housing is difficult (and there's no "LEED Certified" equivalent for social impact-aligned housing). We don't know how many of the housing units constructed in the last five years are empty vacation homes or speculative investments. Filling these data and information gaps will help craft effective solutions and track progress.

Solutions:

- Require disclosure of home sale prices
- Dept. of Revenue to disclose short term rental stays
- Permitting benchmarking initiative among cities – OR – state permitting portal to collect information about permit application timeliness and outcomes.

Water Rights and Well Permitting. Issues related to wells and water permitting are a frequent barrier to housing creation.

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Solution: DNRC's comprehensive water review process. This process is focused on meeting future water needs while protecting existing users. For the past year Stakeholder Working Groups have been tackling challenging water quantity issues through constructive and deliberative dialog, ensuring that water issues are comprehensively addressed. Working groups have already made progress on streamlining the permitting processes (consistent with the Governor's Red Tape initiative), which is critical to meeting our growing water needs in a timely and transparent fashion. Additionally, the working groups are exploring recommendations on mitigation. The working group's conversations will continue after session to address growth and permit exceptions.

Ranking & Prioritization

Solutions are assigned a 1 (low) to 5 (high) score for their potential to move the needle on the creation of housing and ability to be implemented in a beneficial timeline. The two are added to produce a solution score, which in turn informs recommended ranking / prioritization.

Solution	Impact Potential	Ease of Implementation	Score	Rank
120 Day Deadline for Agency Action	4	3	7	2
Create statutory deadlines for building permits, zone map amendments, variances, and other common development applications	3	3	6	3
Development applications subject to not more than one public hearing	2	3	5	4
Self-Certification	4	1	5	4
Remove bans on multifamily housing	4	4	8	1
Zoning sideboards	4	3	7	2
CC&R Decadal Review	2	3	5	4
Land value tax	4	1	5	4
Reporting requirements	1	3	4	5
DNRC water review process				Already in process