



## 2015 Legislative Session Policy Statement

### Montana Zoning Laws

**Background:** Montana is a diverse state with great variation in communities from rural and urban. These communities have evolved to meet the needs of diverse economic bases, local geography and local preferences. As these communities were built, many different approaches to physical organization were used to address the local circumstances and concerns. Because of this great degree of complexity and local diversity, questions of land use and community development are best handled at the city and county level.

Zoning is a tool that many Montana communities have chosen to use to help them address the complexities of land development. Local government zoning is authorized through Title 76 Chapter 2 Parts 1-3. A few changes to these parts were made in the 2013 Session with the most attention focused on Interim Zoning. The choice to use zoning in addressing community needs is left to each community to decide for itself. The authorizing statutes provide local government the necessary flexibility in establishing standards and procedures that are relevant to their community.

Specific purposes for the use of zoning are established in the authorizing statutes. The purposes focus on avoiding injury to others, ensuring adequate public facilities, and protecting the investments made in real property. These purposes match with the old saying of "An ounce of prevention is worth a pound of cure." Avoiding problems before they occur is most cost effective for both public and private parties. The purposes of zoning also correspond with the statement in Article II, Section 3 of the Montana Constitution that the enjoyment of rights brings with it responsibilities.

Real property is often the largest investment and asset of Montanans. The development and use of land affects adjoining properties as well as entire neighborhoods. The public process required to adopt and administer zoning standards provides a forum to discuss the benefits and impacts of development, and how any impacts can be effectively mitigated. As locally elected County Commissioners and City Councils are intimately familiar with their communities, they can work with their citizens to adopt standards that are reflective of local needs, concerns, and priorities. Once adopted, zoning regulations can be modified to match changing local priorities and to help implement an adopted Growth Policy.

Well structured and administered zoning regulations provide predictability to sellers, purchasers, and developers of property, as well as their neighbors. Good regulations support fairness by establishing clear standards that apply equally to all. Zoning that is predictable, fair, and locally relevant provides a stable framework within which private initiative and entrepreneurship can thrive.

**Position:** MAP supports the ability of local communities to use zoning to address local growth and development issues. MAP encourages careful consideration of any amendments to state zoning enabling legislation to weigh the potential impacts of amendments on all communities across the state.

**Legislative Direction:** The 2012 judicial decision from the Missoula District Court in *Williams v Missoula County* that was affirmed by the Montana Supreme Court on August 28, 2013, may prompt legislation that would recodify some modified protest provisions that were struck down in the county “part 2” zoning process. Specifically, the Supreme Court ruled unconstitutional the provision in MCA 76-2-205(6) which “...allows agricultural and forest property owners representing 50 percent of such land within a district to block the board of county commissioners from adopting a zoning proposal and prohibiting the board from proposing further zoning regulations for one year.” One remedy, as noted in the Opinion, is to provide for a proper legislative bypass or override, as found in MCA 76-2-305 the zoning statute which governs zoning within a municipality.

MAP supports the ability of cities and counties to establish zoning through an inclusive community process. The ability to establish zoning in an open and equitable way could help start to shift the regulation of land use to zoning, where it is appropriate. Currently, too many counties use subdivision review to regulate land use and this has created problems in the Subdivision and Platting Act since subdivision review is not the appropriate process to regulate land use.