

Public Participation Requirements Under Montana's Land Use Planning Act

A local government participating in the Montana Land Use Planning Act must establish a planning commission by ordinance or resolution. [§ 76-25-104](#), Montana Code Annotated. The ordinance or resolution establishing the commission must set forth the requirement for notice of commission meetings. [§ 76-25-104\(2\)\(e\)](#).

The Act requires the governing body of a local government and planning commission to provide public notice and public participation in accordance with [§ 75-26-106](#), MCA, prior to recommending, adopting, amending or updating a land use plan or map, zoning regulations or subdivision regulations. [§§ 76-25-201\(2\)\(a\) and \(5\)\(b\)](#), [-202\(1\)\(b\)](#), [-304\(2\)\(a\)](#), [-304\(5\)\(b\)](#), [-403\(2\)\(a\)](#); see also [§ 76-25-201\(8\)\(b\)](#).

Public participation means, at a minimum:

- Dissemination of draft documents
- Opportunity for written and verbal comments
- Public meetings after effective notice
- Electronic communication regarding the process, including online access to documents, updates and comments
- An analysis of and response to public comments.

[§75-25-106\(1\)\(b\)](#), MCA.

In addition to the requirements of Montana's public participation laws, the Montana Land Use Planning Act explicitly provides:

- All meetings and records of the planning commission must be open to the public. § 76-25-104(2)(c).
- Minutes must be kept of all meetings of the planning commission. § 76-25-104(2)(c).
- All public comment submitted to the planning commission must be part of the administrative record that is transmitted to the governing body. § 76-25-201(2)(b), -202(1)(c), -304(2)(b).
- Prior to making any recommendation to the governing body, the planning commission must accept, consider and respond to public comment, including public comment on the adoption, amendment or update of a land use plan or map, zoning regulations (including zoning map) or subdivision regulations. § 76-25-201(2)(b), -202(1)(c), -304(2)(b), -403(2)(b).
- Every fifth year after a local government adopts a land use plan and land use map, a planning commission must provide public notice and allow for public participation in accordance with § 76-25-106 before deciding whether to recommend an update of the land use plan or map. § 76-25-202(1)(b).

In considering adoption or amendment of a zoning regulation or map, the governing body must find that the public had the opportunity to review and comment on impacts resulting from development in substantial compliance with the proposed zoning regulation, map or amendment. § 76-25-304(5)(d). After the governing body has adopted a zoning regulation, map or amendment, there is a presumption that the public has been provided a meaningful opportunity to participate.

The Act explicitly precludes public review or comment when a proposed development or subdivision is in substantial compliance with all regulations developed in the land use regulation adoption process. This includes a proposed development or subdivision that may require variances or deviations from adopted standards. The potential impacts resulting from the proposed development or subdivision were previously analyzed and made available for public review and comment prior to the adoption or amendment of the land use plan or map, zoning regulations (including zoning map) or subdivision regulations. §§ [76-25-305\(4\)](#), [-408\(7\)\(a\)](#).

If a proposed development or proposed subdivision is in substantial compliance with regulations but may result in new or significantly increased potential impacts not previously identified and considered in the adoption of the land use plan or zoning regulations, the planning administrator must provide for notice of a written comment period – a minimum of 15 business days – during which the public has the reasonable opportunity to participate in the consideration of impacts that have not been previously identified and considered in the adoption of the land use plan, zoning regulations or subdivision regulations. §§ [76-25-305\(5\)](#), [-408\(8\)\(a\)\(iii\)](#). Public comment must be limited to only new or significantly increased impacts potentially resulting from the proposed development or subdivision. § [76-25-305\(6\)](#), [-408\(8\)\(b\)](#). The Act is silent with respect to a local government's obligation to respond in writing to public comment in this circumstance.