

## M.C.A. – County Zoning

**76-2-201. County zoning authorized.** (1) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that has adopted a growth policy pursuant to chapter 1 is authorized to adopt zoning regulations for all or parts of the jurisdictional area in accordance with the provisions of this part.

(2) For the purpose of promoting the public health, safety, morals, and general welfare, a board of county commissioners that adopted a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may, until October 1, 2006, adopt or revise zoning regulations that are consistent with the master plan.

**History:** En. Sec. 1, Ch. 246, L. 1963; R.C.M. 1947, 16-4701; amd. Sec. 14, Ch. 582, L. 1999; amd. Sec. 2, Ch. 87, L. 2003; amd. Sec. 8, Ch. 599, L. 2003.

**76-2-202. Establishment of zoning districts -- regulations.** (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of [76-1-501](#) through [76-1-503](#) or [76-1-504](#) through [76-1-507](#) and for the purposes provided in [76-2-201](#), the board of county commissioners may by resolution establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within 6 months after the date of the order by the board of county commissioners creating the district or adopting the regulations.

(2) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(3) The regulations in one district may differ from those in other districts.

(4) As used in this section, "manufactured housing" means a dwelling for a single household, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or house trailer, as defined in [15-1-101](#).

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

**History:** En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971; R.C.M. 1947, 16-4703; (1)(b)En. Sec. 2, Ch. 441, L. 1989; amd. Sec. 1, Ch. 505, L. 1993; amd. Sec. 274, Ch. 42, L. 1997; amd. Sec. 236, Ch. 542, L. 2005; amd. Sec. 123, Ch. 596, L. 2005; amd. Sec. 6, Ch. 446, L. 2009.

**76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

(a) made in accordance with the growth policy; and

(b) designed to:

- (i) secure safety from fire and other dangers;
- (ii) promote public health, public safety, and general welfare; and
- (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the board of county commissioners shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities.

**History:** En. Sec. 4, Ch. 246, L. 1963; R.C.M. 1947, 16-4704; amd. Sec. 15, Ch. 582, L. 1999; amd. Sec. 3, Ch. 87, L. 2003; amd. Sec. 7, Ch. 446, L. 2009.

**76-2-204. Role of planning boards.** (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.

(2) This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

**History:** En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971; R.C.M. 1947, 16-4702.

**76-2-205. Procedure for adoption of regulations and boundaries.** The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must:

(a) state:

- (i) the boundaries of the proposed district;
- (ii) the general character of the proposed zoning regulations;
- (iii) the time and place of the public hearing;
- (iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(b) be posted not less than 45 days before the public hearing in at least five public places, including but not limited to public buildings and adjacent to public rights-of-way, within the proposed district; and

(c) be published once a week for 2 weeks in a newspaper of general circulation within the county.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of

the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the real property owners within the district whose names appear on the last-completed assessment roll or if real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under [15-7-202](#) or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year.

**History:** En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971; R.C.M. 1947, 16-4705; amd. Sec. 2, Ch. 591, L. 1995; amd. Sec. 8, Ch. 446, L. 2009.

#### **76-2-206. Interim zoning district or regulation.**

(1) Except as provided in [76-2-240](#) and subject to subsection (3) of this section, the board of county commissioners may establish an interim zoning district or interim regulation to address an emergency that involves the public health, safety, morals, or general welfare if:

(a) the purpose of the interim zoning district or interim regulation is to classify those uses and related matters that must be regulated to mitigate the emergency; and

(b) within 30 working days, the county initiates a study or investigation to verify that an emergency exists and to identify the facts and circumstances that constitute the emergency, the potential options for mitigating the emergency, and the course of action that the governing body intends to take, if any, during the term of the interim zoning district or interim regulation to mitigate the emergency.

(2) A resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. Subject to subsections (4) and (5), the board of county commissioners may extend the resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published as provided in [7-1-2121](#). In addition to the requirements of [7-1-2121](#), the notice must state:

- (i) the boundaries of the proposed district;
  - (ii) the specific emergency compelling the establishment of the proposed interim zoning district or interim regulation;
  - (iii) the general character of the proposed interim zoning district or interim regulation, including how those uses and related matters that must be regulated to mitigate the emergency will be classified and regulated; and
  - (iv) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.
- (b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.
- (c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation.
- (4) The board of county commissioners shall observe the following procedures in the extension of a resolution pursuant to subsection (2):
- (a) A study or investigation as provided in subsection (1)(b) must be completed prior to the hearing on the proposed extension of the resolution.
  - (b) Notice of a public hearing on the proposed extension of the resolution must be published as provided in [7-1-2121](#). In addition to the requirements of [7-1-2121](#), the notice must state:
    - (i) the boundaries of the existing interim zoning district;
    - (ii) the specific emergency that compelled the establishment of the existing interim zoning district or interim regulation and the reason for the proposed extension of the resolution; and
    - (iii) that the proposed extension of the resolution is on file for public inspection at the office of the county clerk and recorder.
  - (c) At the public hearing, which must be held prior to the expiration of the existing interim zoning district or interim zoning regulation, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed extension of the resolution.
- (5) After the hearing provided for in subsection (4), the board of county commissioners may in its discretion extend the resolution for the interim zoning district or interim regulation.

**History:** En. 16-4711 by Sec. 20, Ch. 273, L. 1971; R.C.M. 1947, 16-4711; amd. Sec. 16, Ch. 582, L. 1999; amd. Sec. 4, Ch. 87, L. 2003; amd. Sec. 9, Ch. 446, L. 2009; amd. Sec. 5, Ch. 56, L. 2013; amd. Sec. 1, Ch. 416, L. 2013.

**76-2-207. Permits authorized.** The board of county commissioners may provide for the issuance of location or conformance permits and may collect a fee for each such permit. The proceeds of such fees shall be deposited in the general fund of the county.

**History:** En. Sec. 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4708(part).

**76-2-208. Continuation of nonconforming uses.** Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution.

**History:** En. Sec. 9, Ch. 246, L. 1963; R.C.M. 1947, 16-4709.

**76-2-209. Effect on natural resources.** (1) Except as provided in [82-4-431](#), [82-4-432](#), and subsection (2) of this section, a resolution or rule adopted pursuant to the provisions of this part, except [76-2-206](#), may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest, or agricultural resource.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel or an operation that mixes concrete or batches asphalt may be reasonably conditioned or prohibited on a site that is located within a geographic area zoned as residential, as defined by the board of county commissioners.

(3) Zoning regulations adopted under this chapter may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel and may condition an operation that mixes concrete or batches asphalt in all zones other than residential.

**History:** En. Sec. 10, Ch. 246, L. 1963; R.C.M. 1947, 16-4710; amd. Sec. 2, Ch. 408, L. 1991; amd. Sec. 1, Ch. 340, L. 2005.

**76-2-210. Enforcement of zoning provisions.** (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(b) restrain, correct, or abate a violation;

(c) prevent the occupancy of the building, structure, or land; or

(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) For the purposes of enforcing subsections (1)(a) through (1)(c), the county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under [76-2-211](#).

(3) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.

**History:** En. Secs. 7, 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part), 16-4708(part); amd. Sec. 10, Ch. 446, L. 2009.

**76-2-211. Violations and penalties.** A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding \$500 or imprisonment in the county jail not exceeding 6 months or both.

**History:** En. Sec. 7, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part); amd. Sec. 7, Ch. 266, L. 1979.

**76-2-216. Wholly surrounded county property -- change of use -- hearing.**

(1) If a county parcel for which zoning regulations have been adopted is wholly surrounded by municipal property and a change of an allowed use in the county zoning district occurs, the county governing body shall notify the municipality and all owners of municipal property within 300 feet of the county property of the change of use.

(2) Upon request of either the municipality or at least 10% of the property owners in the municipality who have received the notice, the county governing body shall hold a hearing on the change of use.

(3) If the county governing body determines, based on testimony provided at the hearing, that the regulations in the county district are no longer as compatible as possible with the municipal zoning ordinances as provided in [76-2-203](#)(3), the county governing body may initiate a revision to the zoning district or amendments to the regulations as provided in this part.

**History:** En. Sec. 1, Ch. 274, L. 2013.

**76-2-220. Zoning commission -- appointment -- duties.** (1) For the purpose of providing an optional method of amending any zoning regulations or zoning classification, the county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications. Such a zoning commission must be composed of at least five citizen members appointed at large from the zoning district. The county commissioners may adopt bylaws for the zoning commission pertaining to the qualifications of the members and such other matters as the commissioners consider necessary.

(2) If a commission is appointed, it shall hold a public hearing to receive relevant testimony. The hearing, which may be held jointly with the hearing by the county commissioners, must be upon at least 15 days' notice of the time and place of the hearing and must be published in the contracted newspaper provided for in [7-5-2411](#) or a newspaper of general circulation in the county. Recommendations of the zoning commission must be submitted to the county commissioners.

**History:** En. Sec. 1, Ch. 462, L. 1981.

**76-2-221. Board of adjustment.** (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment must be held at the call of the presiding officer and at times that the board may determine. The presiding officer or in the presiding officer's absence the acting presiding officer may administer oaths and compel the attendance of witnesses.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part); amd. Sec. 2512, Ch. 56, L. 2009.

**76-2-222. Membership and term of board members -- vacancies.** (1) The board of adjustment consists of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of [76-2-321](#) through [76-2-328](#).

(2) Vacancies must be filled for the unexpired term of any member whose term becomes vacant.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(1); amd. Sec. 1, Ch. 47, L. 1987; amd. Sec. 275, Ch. 42, L. 1997.

**76-2-223. Powers of board of adjustment.** (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution;

(c) to authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(5), (6).

**76-2-224. Vote needed for board action.** The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution; or to effect any variation in such resolution.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(7).

**76-2-225. Public access to board activities.** (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

**76-2-226. Appeals to board of adjustment.** (1) Appeals to the board of adjustment may be taken by any person or persons, jointly or severally, aggrieved by a decision of the administrative officer or by an officer, department, board, or bureau of the county affected by any decision of the administrative officer. The appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of the appeal.

(2) The officer from whom the appeal is taken shall transmit to the board in a timely manner all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In that case, proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice of the hearing as well as due notice to the parties in interest, and decide the appeal within a reasonable time.

(5) At the hearing, a party may appear in person or by the party's attorney.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(3), (4); amd. Sec. 2513, Ch. 56, L. 2009; amd. Sec. 1, Ch. 171, L. 2015.

**76-2-227. Appeals -- board of county commissioners or board of adjustment to court of record -- county commissioners may establish appeal process.** (1) (a) The board of county commissioners may establish in the zoning regulations a process for an appeal of a decision by the board of adjustment to the board of county commissioners by any person or persons, jointly or severally, aggrieved by a decision of the board of adjustment or an officer, department, board, or bureau of the county.

(b) The process, if established, must provide that an appeal to the board of county commissioners be initiated by presenting to the board of county commissioners a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality.

(c) The petition must be presented to the board of county commissioners within 30 days after the filing of the decision of the board of adjustment, and a final decision must be made within 60 days of receipt of the petition.

(d) The board of county commissioners may:

(i) remand the special exception to the board of adjustment;

(ii) reverse or affirm, wholly or partly, the decision of the board of adjustment; or

(iii) modify the decision of the board of adjustment.

(2) Any person or persons, jointly or severally, aggrieved by a decision of the board of county commissioners or the board of adjustment may present to a court of record a petition, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the office of the appropriate board.

(3) Upon presentation of a petition, the court may allow a writ of certiorari directed to the board of county commissioners or the board of adjustment to review the decision of the board and shall prescribe in the writ the time within which a return must be made and served upon the relator's attorney, which may not be less than 10 days and may be extended by the court. The allowance of the writ may not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board of county commissioners or the board of adjustment, and on due cause shown, grant a restraining order. The board of county commissioners or the board of adjustment may not be required to return the original papers acted

upon by it, but it is sufficient to return certified or sworn copies of the original papers or of portions of the original papers that may be called for by the writ. The return must concisely set forth other facts that may be pertinent and material to show the grounds of the decision appealed from and must be verified.

(4) If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the proceedings upon which the determination of the court must be made.

(5) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(8) thru (11); amd. Sec. 2514, Ch. 56, L. 2009; amd. Sec. 2, Ch. 171, L. 2015.

**76-2-228. Awarding of costs upon appeal from board decision.** Costs may not be allowed against the board of county commissioners or the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

**History:** En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(12); amd. Sec. 3, Ch. 171, L. 2015.

**76-2-240. Effect on amateur radio antenna.** A resolution or rule adopted pursuant to this part may not:

(1) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States; or

(2) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the ground.

**History:** En. Sec. 3, Ch. 56, L. 2013.

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