



Resolution No. 1380

A RESOLUTION OF THE PARK COUNTY COMMISSIONERS CREATING PETITION REQUIREMENTS AND REVIEW PROCEDURES FOR PART 1 CITIZEN INITIATED ZONING DISTRICT

WHEREAS, Park County is authorized to create Planning and Zoning Districts as outlined in Section 76-2-101, MCA; and

WHEREAS, Park County has the legal jurisdiction over the unincorporated areas of Park County, Montana, and;

WHEREAS, Park County created petition requirements and review procedures July 13, 2004; and

WHEREAS, the current Park County Part 1 Petition requirements and review procedures do not accurately reflect changes to State Statute, or reflect current Case Law.

NOW THEREFORE, BE IT RESOLVED Park County approves the updated Part 1 Citizen Initiated Zoning District Petition Application Requirements and Review Procedures as attached;

Dated this 12th day of July, 2022.

Signed:

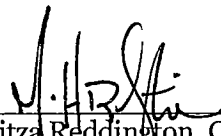


Steve Caldwell, Chairman




Bill Berg, Commissioner

Clint Tinsley, Commissioner



Maritza Reddington, Clerk & Recorder

Approved as to Form:



Kendra Lassiter, County Attorney





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CITIZEN INITIATED ZONING DISTRICT (CIZD) – STATUTORY AUTHORITY AND DEFINITIONS

Whenever the public interest and convenience may require and upon petition of 60% of the affected real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and may appoint a planning and zoning commission of up to seven members. *Section 76-2-101(1) Mont. Code Ann. 2021*

A planning and zoning district may not be created in an area that has been zoned by an incorporated city. *Section 76-2-101(2) Mont. Code Ann. 2021*

The word “district” means any area that consists of not less than 40 acres. *Section 76-2-101(3) Mont. Code Ann. 2021*

Regulations adopted pursuant to a CIZD may not regulate lands used for grazing, horticulture, agriculture, the growing of timber, or the complete use, development, or use of any mineral. *Section 76-2-109(1) Mont. Code Ann. 2021*

The acreage in a zoning district must be one contiguous 40-acre parcel. “The suggestion that the district can be cobbled together from separate and detached blocks of property directly contradicts the intention of a zoning scheme, which is to provide for an area’s organized development.”
42 Op. Atty Gen. Mont. No. 43 (1987)

CIZD PROCEDURE

1. CLERK AND RECORDER CERTIFIES REAL PROPERTY OWNER LIST WITHIN THE DISTRICT

- A. The applicant provides the Clerk and Recorder with:
- i. a legal description of the proposed district boundaries;
 - ii. a map of the zoning district prepared by a certified land surveyor (containing current parcel data (geocode);
 - iii. A complete list of real property owners within the proposed zoning district.
- B. Within sixty business days the Clerk and Recorder will certify that the list of names of the real property owners within the proposed district are eligible to sign a petition. A fee of \$ 1500.00 will be assessed at the time the list of certified names is provided to the applicant by the Clerk and Recorder's Office.

2. APPLICANT CIRCULATES PETITION AND COLLECTS SIGNATURES

- A. The petition requesting that a District be established is circulated to all real property owners using the certified real property owner list from the Clerk and Recorder's Office.
- B. The Petition must include:
- (i) A "Development Pattern". *Section 76-2-104(1) & (2) Mont. Code Ann. (2021)*
"Development Pattern" – A plan that describes what the "development district" will look like, including, but not limited to, a description of permitted land uses and densities. It establishes a framework for the proposed regulations.
Maps and plats for the Development Pattern are necessary only when the commission divides the planning and zoning district into more than one development district. *48 Op. Atty. Gen. Mont. No.5 (1999)*
 - (ii) Proposed land use and zoning regulations. *Section 76-2-107 Mont. Code Ann. (2021)*
- C. Each Petition signature page must be notarized and shall include the following: a statement of petition purpose, a separate line for each signature, a date line, a separate line for signatory's printed name, a line for signatory's mailing address, and a line for signatory's physical address. The following shall be attached to each signature page: a map showing exterior boundaries of the proposed district and a current deed for the signatory's affected real property. *Carbon County Procedure in Martinelli v. Board of County Comm'rs, 2016 MT 136, 373 P.3d 34, ¶ 15.* If a real property owner holds an interest through a Contract for Deed, a recorded Notice of Purchaser's Interest must be attached to the signature page.
- D. If property was acquired in different names, i.e. S. Daniel Jones, Sam Daniel Jones, and Daniel Jones, an affidavit must be attached to signature page stating they are one and the same person.

- E. Each affected real property owner is counted in the total number of affected real property owners within the boundaries of the district and can sign the petition. If property is held jointly, or as tenants in common, each joint tenant or each tenant is counted as an affected real property owner and may sign the petition.
- F. A trust is counted as one affected real property owner. The trustee of the trust must sign the petition as "trustee of the S. Daniel Jones living trust" and provide the copy of the first page of the trust, the signature page of the trust and the page showing that the person signing on behalf of the trust is a current trustee.
- G. A corporation is counted as one affected real property owner. Standard bylaws usually require both the president and secretary sign as "president of Jones, Inc" and "secretary of Jones, Inc." If bylaws provide otherwise, a copy of the relevant page of the bylaws and the first page of the bylaws must be attached to the signature page.
- H. A partnership is counted as one affected real property owner. All partners must sign or the non-signing partners must authorize one partner to sign for the partnership and a copy of that authorization must be attached to the signature page. The partners must sign as "partner."
- I. A limited partnership is counted as one affected real property owner. All partners must sign or the general partner may sign if authorized by all the limited partners to sign for the partnership. A copy of the authorization must be attached to the signature page. The partners must sign as either "general partner" or "limited partner."
- J. A limited liability company is counted as one affected real property owner. Depending on what is authorized by the articles of organization or operating agreement, one member or the manager may sign. A copy of the relevant page of the articles of organization or operating agreement and the first page of the articles of organization or operating agreement must be attached to the signature page. The member must sign as "member" or the manager must sign as "manager."
- K. A limited liability partnership is counted as one affected real property owner. All partners must sign or the non-signing partners must authorize one partner to sign for the partnership and a copy of that authorization must be attached to the signature page. The partners must sign as "partner."
- L. Each real property owner may only sign once, regardless of how many parcels owned. If one parcel has multiple owners, each owner is counted as a real property owner and is entitled to sign the Petition.
- M. Petition signatures must match titled ownership exactly.

3. THE CLERK AND RECORDER VALIDATES THE PETITION

- A. After the notarized signatures are gathered, the applicant submits the complete petition to the Clerk and Recorder.
- B. Within ninety days, the Clerk and Recorder will review the signature pages to ascertain if 60% of the real property owners have signed and confirm the district is contiguous. If 60% of the real property owners have signed, the Clerk and Recorder will validate the Petition and forward it to the County Commissioners. If the petition has less than the required number of signatures or the signature page or attachment requirements are not met, the applicants will have forty - five days to correct the identified deficiencies.

4. COUNTY COMMISSIONERS CREATE PLANNING AND ZONING DISTRICT, AND THEN APPOINT A PLANNING AND ZONING COMMISSION

- A. If the County Commissioners determine “public interest or convenience” requires creation of the planning and zoning district, and “60% of the affected real property owners” in the proposed district have petitioned for the proposed district, they create a planning and zoning district.
- B. After creating the planning and zoning district, the County Commissioners appoint a Planning and Zoning Commission (PZC). If PZC already exists, County Commissioners refer Petition to PZC to “make and adopt a development pattern for the physical and economic development” of the planning and zoning district. *Section 76-2-102-104 Mont. Code Ann. 2021; Petty v. Flathead Bd. Of County Comm’rs., 754 P.2d. 496, 499, 231 Mont. 428, 433 (1988)*
- C. The PZC consists of three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district, or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners. *Section 76-2-102 Mont. Code Ann. 2021*

5. PLANNING AND ZONING COMMISSION MAKES AND ADOPTS DEVELOPMENT PATTERN

- A. Adoption of the development district must be made by the affirmative vote of the majority of the whole PZC provided that, prior to adoption, a public hearing shall be held not less than 15 days after notice thereof shall have been posted in at least three public places within the affected area. *Section 76-2-106(1) Mont. Code Ann. 2021*
- B. The PZC forwards their recommendations for the CIZD development pattern, zoning, and land use regulations, to the Board of County Commissioners for their consideration. If the PZC is unable to adopt a development pattern and regulations for the district, the Commissioners may void the district. *Section 76-2-106(2) Mont. Code Ann. 2021*

6. COUNTY COMMISSIONERS ADOPT DEVELOPMENT PATTERN AND REGULATIONS

- A. The County Commissioners review the Petition and the PZC recommendations to determine whether adoption of the Development Plan and regulations are required by public interest or convenience. The County Commissioners shall consider whether the Petition complies with Montana Statute and the County Growth Policy. *Section 76-1-605 Mont. Code Ann. (2021)*
- B. In a public meeting advertised at least 48 hours in advance, the County Commissioners shall receive public comment on the proposed district. Based on their initial Petition review and public comment, the County Commissioners shall take action on the Planning and Zoning District.

7. PROTEST CIZD/APPEAL

- A. Any person aggrieved by *any* decision of the commission or the board of county commissioners may, within 30 days after such decision or order, appeal to the district court in the county in which the property involved is located. *Section 76-2-110 Mont. Code Ann. 2021.*
- B. An action challenging the creation of a planning and zoning district must begin within 6 months after the date of the order by the County Commissioners creating the district. *Section 76-2-101(4) Mont. Code Ann. 2021.*
- C. *(Section 76-2-101(5) Mont. Code Ann. 2021 prohibits district creation when real property owners representing 50% of the titled property ownership in the district protest within 90 days of its creation; however, a similar provision in Part 2 Zoning has been ruled unconstitutional)*