

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to public participation and the amendment of ARM 8.111.201 incorporation of model rules, 8.111.202 meetings of the board and 8.111.602 definitions) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On March 30, 2023, at 10:00 a.m., the Department of Commerce will hold a public hearing via zoom to consider the proposed adoption and amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

a. Video:

https://mt-gov.zoom.us/webinar/register/WN_yhljO9IBQmOAF9abVYip2g

Webinar ID: 899 3287 0850

Password: 900565

b. Phone: Dial in by Telephone: 406-444-9999

Meeting ID: 899 3287 0850

Password: 900565

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m. on March 28, 2023, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; fax (406) 841-2771; TDD (406) 841-2702; or e-mail docadministrativerules@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I PUBLIC PARTICIPATION IN BOARD OF HOUSING

OPERATIONS (1) The board welcomes and encourages public participation in its operations in accordance with the requirements of state law and board rules.

(2) The board will conduct contested cases and rulemaking in accordance with the applicable provisions of the Montana Administrative Procedure Act (MAPA). The board will conduct its meetings and other non-MAPA proceedings in accordance with ARM 8.111.202 and other applicable board rules.

(3) Members of the public may submit written comment to the board regarding any matter within the jurisdiction of the board by electronic mail to the email address provided on the board's website at www.housing.mt.gov. To be considered in any board rulemaking, such comment must be submitted within the time specified in any relevant rule notice. To be considered in any board meeting under ARM 8.111.202, a comment must be received at least two business days before the board meeting.

(4) The board shall provide continuing policy, program, and technical information at the earliest practicable times and at places reasonably accessible to interested or affected persons and organizations so that they can make informal and constructive contributions to board decision-making.

(5) The board shall maintain a current electronic list of interested persons and organizations including any who have requested inclusion on such list for the distribution of information such as that listed in (4) or notice of public hearings or meetings. This shall be in addition to lists maintained as required by the Montana Administrative Procedure Act. The board shall provide any interested persons and organizations that have requested inclusion on such list with information as provided in (4) and, in addition to providing general notice of board meetings in accordance with ARM 8.111.202, provide such interested persons and organizations with informal advance notice of its public hearings and meetings.

(6) The board shall make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the board in the discharge of its functions and, upon request, provide a copy of any rule. Unless otherwise provided by statute, the board may require the payment of the cost of providing such copies.

(7) The board's public records, not including confidential information, are open to public inspection in accordance with the applicable provisions of Title 2, chapter 6, part 10, MCA. The board may charge a fee for fulfilling public record requests determined in accordance with 2-6-1006, MCA.

AUTH: 2-4-201, MCA

IMP: 2-3-101 through 2-3-114, 2-3-301, 2-4-103, 2-4-201, 2-6-1003, 2-6-1006, MCA

REASON: Proposed New Rule I is necessary to provide for and describe the board's procedures implementing public participation statutes by permitting and encouraging public participation in board operations, including decisions of significant interest to the public, as required by 2-3-102 and 2-4-201, MCA. Proposed New Rule I would supplement board rules in ARM 8.111.201 and 8.111.202, which also describe board procedures and public participation opportunities.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.111.201 INCORPORATION OF MODEL RULES (1) The Board of Housing ~~has adopted and incorporated~~ adopts and incorporates by reference the Attorney General's model organizational and procedural rules for contested cases

and declaratory rulings 1 through 28 by reference to such rules as stated in ARM 1.3.101 1.3.211 through ARM 1.3.234 1.3.233, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2840, or at the board's web site www.housing.mt.gov.

AUTH: ~~2-4-201~~, 2-4-202, MCA

IMP: ~~2-4-201~~, 2-4-202, MCA

REASON: The proposed amendments are necessary to correct the current rule's reference incorporating the Attorney General's model rules and to comply with MAPA requirements for incorporations by reference. The current rule incorporates by reference ARM 1.3.101 and 1.3.102, which generally direct state agencies to adopt rules facilitating and providing reasonable opportunity for public participation in agency actions of significant interest to the public. However, ARM 1.3.101 and 1.3.102 are not part of the Attorney General's model rules.

The current rule also incorporates ARM 1.3.203 through 1.3.210 (now renumbered as ARM 1.3.305 through 1.3.313), the Secretary of State's organizational and procedural rules, and ARM 1.3.234, which does not exist. The proposed amendments would revise the rule to incorporate only the Attorney General's model rules and to delete reference to the Secretary of State's organizational and procedural rules and nonexistent ARM 1.3.234. Other existing board rules, including ARM 8.111.202 and Proposed New Rule I address the content of ARM 1.3.101 and 1.3.102 in a manner specific to the Board of Housing.

The proposed amendments would also revise the rule to comply with the requirements of the Montana Administrative Procedure Act at 2-4-301, MCA, which provides that a rule adopting material by reference must contain a citation to the adopted material and a statement of its general subject matter and must state where a copy of the material may be obtained.

8.111.202 MEETINGS OF THE BOARD (1) All meetings of the board are open to the public pursuant to ~~90-6-105, MCA~~, except to the extent any meeting is closed during discussion of a matter of individual privacy or litigation strategy in accordance with 2-3-203, MCA.

(2) Notice of the board's regular meetings shall be given by:

(a) posting a statement of the time, place, and agenda of the meeting on the state's electronic ~~bulletin board~~ calendar at <https://app.mt.gov/cal/html/event/statewide/>; and

(b) mailing ~~a~~ said notice to any interested parties who have notified the board in writing.

(~~2~~)(3) Notice of the board's special or emergency meetings and notice of committee meetings shall be given by posting a statement of the time, place, and nature of the meeting on the state's electronic ~~bulletin board~~ calendar at <https://app.mt.gov/cal/html/event/statewide/>.

(3)(4) In the case of matters determined by the board to be of significant interest to the public, adequate and appropriate notice shall be given in accordance with 2-3-101 through 2-3-114, MCA.

(5) The agenda for all board meetings shall include an item allowing opportunity for public comment on any public matter that is not on the meeting agenda and that is within the jurisdiction of the board.

(6) The board may not take action on any matter discussed at a meeting unless specific notice of that matter is included on the meeting agenda and public comment has been allowed on that matter.

(7) Minutes of board meetings shall be kept and shall be available for inspection by the public on the board's website www.housing.mt.gov.

(a) The opportunity for public comment provided in (5), public comment received at a meeting, and comment received in accordance with [New Rule I](3) shall be included in the minutes.

(b) If the presiding officer closes a meeting pursuant to 2-3-203, MCA, minutes shall be kept of the closed portion of the meeting but may not be made available for public inspection except pursuant to a court order.

(8) Meetings of the board are not contested cases or rulemaking proceedings unless specifically designated as such in written notice by the board. Rulemaking proceedings, contested cases, and other adjudicatory proceedings are not board meetings for purposes of this rule.

AUTH: 2-4-201, 90-6-104, 90-6-106, MCA

IMP: 2-3-101 through 2-3-114, 2-3-201 through 2-3-221, 2-4-201, 90-6-105, MCA

REASON: The proposed amendments are necessary to revise the rule to more completely and accurately provide for and describe the board's procedures encouraging and permitting public participation in board operations, including decisions of significant interest to the public, as required by 2-3-102 and 2-4-201, MCA.

8.111.602 DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

(1) and (2) remain the same.

(3) "QAP" means the board's "Housing Credit Program ~~2023~~ 2024 Qualified Allocation Plan," which sets forth the application process and selection criteria used by the board for evaluation and selection of projects to receive awards for allocation of housing credits for calendar year ~~2023~~ 2024. The board adopts and incorporates by reference the Housing Credit Program ~~2023~~ 2024 Qualified Allocation Plan, copies of which may be obtained by contacting the Board of Housing, Multifamily Program Manager, by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2845, or at the board's web site www.housing.mt.gov.

(4) and (5) remain the same.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.602 are necessary to adopt and incorporate by reference the board's Housing Credit Program 2024 Qualified Allocation Plan (QAP).

Federal low income housing tax credits are allocated by the federal government to the states, according to their population, for allocation to particular buildings. Each state's share of federal low income housing tax credits is allocated to particular buildings under programs administered by the respective state's housing credit agencies. The Montana Board of Housing is Montana's housing credit agency for purposes of administering the tax credit program and allocating tax credits in the state of Montana. In Montana, the program is known as the Montana Housing Credit Program. Federal law requires that tax credits allocated to the state by the federal government must be allocated by the state pursuant to a "qualified allocation plan" or "QAP."

Prior to publication of this notice, the board conducted several public meetings to consider suggestions and comments regarding the provisions of the 2024 QAP. After public notice of the proposed 2024 QAP and of the opportunity for public comment was published and distributed on September 16, 2022, a public hearing on the proposed 2024 QAP was held on October 20, 2022 and written comments were also received. At its November 14, 2022 meeting, after hearing and considering written and oral comments on the proposed 2024 QAP, staff recommendations, additional public comment and various proposed revisions in response to comments, the board approved the 2024 QAP for submission to and approval by the Montana Governor, as required by the federal tax credit statute, 26 U.S.C. § 42. The Governor approved the 2024 QAP on December 8, 2022.

A copy of the 2024 QAP is available on the internet at <http://housing.mt.gov/MFQAP> or by requesting a copy from: Board of Housing, Multifamily Program Manager, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail to Jason.Hanson@mt.gov.

5. Concerned persons may submit their data, views, or arguments either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Board of Housing, Multifamily Program Manager, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2048; or e-mail to docadministrativerules@mt.gov, and must be received no later than 5:00 p.m., April 7, 2023.

6. Bonnie Martello, paralegal, Department of Commerce, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

BOARD OF HOUSING
Sheila Rice, Chair

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Interim Deputy Director
Department of Commerce

Certified to the Secretary of State February 28, 2023.