



A Guide to Public Participation  
Under the Montana Land Use  
Planning Act

**Methods and Best Practices**

In 2023, the Montana Legislature directed certain local governments to create a comprehensive land use plan by enacting [Senate Bill 382](#), the Montana Land Use Planning Act. The Act is codified within Title 76 of the Montana Code Annotated. See §§ [76-25-101, et seq.](#), Montana Code Annotated. This guide refers to the Act by citing the MCA rather than citing sections of S.B. 382.

The Act requires local governments that meet certain population thresholds to comply with its provisions. § [76-25-105](#), MCA. Local governments that do not meet those population thresholds may “decide to comply with” the Act. *Id.* Local governments bound by the Act must “provide **continuous public participation** when adopting, amending, or updating land use plans or regulations.” See § [76-25-106](#), MCA (emphasis added). Additionally, local governments must “adopt a public participation plan detailing how the local government will meet the requirements of [the Act].” § [76-25-106\(5\)](#), MCA. Local governments also may be required to comply with other aspects of Montana’s public participation laws, which are grounded in Montana’s Constitution and statutes.

The Act directs the Department of Commerce to “develop a list of public participation methods and best practices for use by local governments in developing, adopting, or updating a land use plan or regulations.” *Id.* The purpose of this guide is to identify unique aspects of Montana’s public participation laws—both constitutional and statutory—that local governments may need to consider when acting in accordance with the Act, and to identify various practices and procedures that local governments may wish to implement. Lieutenant Governor Kristen Juras also has published a PowerPoint titled “Montana’s Public Meeting Laws” that provides similar information, which can be found [here](#). This guide does not analyze specific provisions of the Act that are not directly related to public participation.



This guide is general in nature, is not comprehensive and does not consider every factual situation that local governments may encounter when adopting, amending or updating land use plans or regulations. Commerce may update and revise this guide as needed. Additionally, the guide does not constitute legal advice and is not binding on the State of Montana or its political subdivisions. Accordingly, local governments should seek independent advice from their own attorneys on how best to comply with Montana's public participation laws when implementing the Act.

## Introduction to Montana’s Public Participation Laws

The Montana Constitution guarantees Montanans a “right of participation” in governmental operations and a “right to know” about the deliberations of public bodies. The Montana Legislature has enacted statutes to implement the constitutional right of participation and right to know. Those provisions of Montana law are summarized below, but not all exceptions that might apply are discussed herein. Complete copies of the constitutional and statutory provisions referenced below can be found at the end of this guide. Local governments seeking to comply with the Act should carefully review these provisions of Montana law and determine the extent to which they may apply.

### Right of Participation

[Article II, § 8](#) of Montana’s Constitution states in full: “The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.”

The Montana Supreme Court has held that “‘the essential elements of public participation’ required by Article II, Section 8, are ‘notice and an opportunity to be heard.’” *Citizens for a Better Flathead v. Bd. Of Cnty. Comm’rs*, 2016 MT 256, ¶ 39, 385 Mont. 156, 381 P.3d 555.

Public bodies must allow for the public to comment during all public meetings, including: (i) prior to taking action on an item listed on the meeting’s agenda; and (ii) on any non-agenda matter that is of “significant interest to the public” and

“within the jurisdiction of the agency conducting the meeting.” See [51 Mont. A.G. Op. 12](#) (2005) (quoting § 2-3-103(1)(a) and § 7-1-4143, MCA); see also *Moe v. Butte-Silver Bow Cnty.*, 2016 MT 103, ¶¶ 28, 383 Mont. 297, 371 P.3d 415 (“Public participation procedures are required when a final decision is made.”).

The public’s right to participate requires more than simply an “uninformed opportunity to speak.” *Bryan v. Yellowstone Cnty. Elementary Sch. Dist. No. 2*, 2002 MT 264, ¶¶ 44, 312 Mont. 257, 60 P.3d 381.

## Right to Know

[Article II, § 9](#) of Montana’s Constitution states in full, “No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.”

The right to know “is a companion to the preceding right of participation.” *Bryan*, ¶¶ 31.

When analyzing these “companion rights,” the Montana Supreme Court has acknowledged that “to participate effectively and knowledgeably in the political process of a democracy one must be permitted the fullest imaginable freedom of speech and one must be fully apprised of what government is doing, has done, and is proposing to do.” *Bryan*, ¶¶ 31 (quoting Larry M. and Deborah E. Elison, *Comments on Government Censorship and Secrecy*, 55 Mont. L. Rev. 175, 177 (1994)).

If a government agency does not provide the public with “all of the information presented to the [government body] for its consideration” prior to acting, then

Montana courts may void the government agency's action, even if the government body provided some information to the public and allowed the public to comment based on that limited information. *Bryan*, ¶ 52; see also *Citizens for a Better Flathead*, ¶ 41 (citing § 2-3-114, MCA).

The Montana Legislature also has implemented the [Article II, § 9](#) “right to know” by enacting the Montana Public Records Act. See §§ 2-6-1001, et seq., MCA. Subject to certain exceptions, this law presumes that most documents maintained by public agencies — including local governments — may be examined by members of the public and used to effectively participate in governmental operations. See, e.g., *Nelson v. City of Billings*, 2018 MT 36, ¶ 37, 390 Mont. 290, 412 P.3d 1058; see also *Bryan*, ¶ 44.

## Montana’s Public Participation in Governmental Operations Act

Article II, §§ 8 and 9 guarantee Montanans important rights. The Montana Legislature “implemented these constitutional rights by enacting” the Montana Public Participation in Governmental Operations [Act](#). *Mont. Indep. Living Project v. State, DOT*, 2019 MT 298, ¶ 39, 398 Mont. 204, 454 P.3d 1216 (citing *Citizens for a Better Flathead*, ¶ 40). That piece of legislation primarily consists of two distinct parts: Part 1, which is titled “Notice and Opportunity to Be Heard”; and Part 2, which is titled “Open Meetings.” The Montana Legislature also generally has directed municipalities to hold meetings that are open to the public, to encourage public participation “in decisions that are of significant interest to the public,” and to allow for public comment “prior to the final decision.” See Mont. Code Ann. §§ 7-1-4141, -4142, and -4143.

## Notice and Opportunity to Be Heard—§§ 2-3-101, et seq., MCA.

The Montana Legislature has adopted “legislative guidelines . . . to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.” § 2-3-101, MCA. “Public participation procedures are required **when a final decision is made.**” *Moe v. Butte-Silver Bow Cnty.*, 2016 MT 103, ¶ 28, 383 Mont. 297, 371 P.3d 415 (emphasis added).

These guidelines apply to all Montana “agencies,” a term that is defined in relevant part to include “any board, bureau, commission, department, authority or officer of the state or local government authorized by law to make rules, determine contested cases or enter into contracts.” § 2-3-102(1), MCA (emphasis added).

Each agency must “develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public.” § 2-3-103(1)(a) and -111, MCA. If a local government already has adopted those procedures, it should follow them when complying with the Act. Montana law defines the term “significant interest to the public” to mean “any non-ministerial decision or action . . . which has meaning to or affects a portion of the community.” *Moe*, ¶ 28.

If a proposed “final agency action . . . is of significant interest to the public,” the agency’s procedures “must ensure adequate notice and assist public participation” before the agency acts, § 2-3-103(1)(a), MCA; *see also Mont. Indep. Living Project*, ¶ 39 (“All meetings of public or governmental bodies must be open to the public”).

Local governments generally must publish notice of the proposed action, as well as an agenda for the meeting at which the proposed action will be discussed publicly, in various ways, including:

Publishing the notice and agenda on the website of a newspaper of general circulation in the county where the agency is located, if provided free of charge

Posting a link to the meeting agenda on the agency's primary website

Posting the agenda on the social media site of the agency. See [§ 2-3-103\(1\)\(b\)](#), MCA; see also [§ 2-3-104](#), MCA (identifying exceptions when no additional notice is required).

Under Montana law, however, there is “not a specific method of notification required, only that notice is ‘adequate.’” *Mont. Indep. Living Project*, ¶ 39.

If a local government fails to comply with the foregoing provisions of Montana law, Montana courts may set aside any resulting agency decision if an interested party successfully enforces their legal rights; that successful litigant also “may be awarded costs and reasonable attorney fees.” [§ 2-3-114](#), MCA; see also *Bryan*, ¶ 52.

## Open Meetings—[§§ 2-3-201, et seq.](#), MCA.

Montana's Constitution guarantees individuals a “reasonable opportunity” to participate in government operations. Mont. Const. art. II, § 8. Accordingly, the Montana Legislature has declared that “actions and deliberations of all public agencies shall be conducted openly.” [§ 2-3-201](#), MCA.

Under Montana law, a meeting is defined to be the “convening of a quorum of the constituent membership of a public agency ... whether corporal or by means of electronic equipment, to hear, discuss or act upon a matter over which the agency has



supervision, control, jurisdiction or advisory power.” § 2-3-202, MCA. In other words, a meeting could be conducted in person, by telephone conference call, by videoconferencing or by email, among other possibilities. A meeting occurs whenever “a quorum of the membership convene to conduct its public business” irrespective of whether the meeting will “produce some particular result or action, or that a vote on something be taken.” *Associated Press v. Crofts*, 2004 MT 120, ¶ 30, 321 Mont. 193, 89 P.3d 971.

Public agencies must give “adequate” notice to the public prior to holding an open meeting. See § 2-3-103, MCA and *Mont. Indep. Living Project*, ¶ 39. Posting notice 48 hours prior to a meeting may be adequate. See, e.g., *47 Mont. Op. Att’y Gen. No. 13* at 6 (1998).

The Act, however, encourages robust public participation, and therefore, local governments should make every effort to give more than the bare minimum of 48-hour notice. Notice should be posted no less than 48 business hours prior to the beginning of the meeting. At minimum, public agencies must publish a meeting agenda prior to holding a meeting that lists each matter the agency intends to discuss and allows public comment: (i) on each agenda item; and (ii) “on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting.” See §§ 2-3-103 and -111, MCA. That public comment period must allow “interested persons reasonable opportunity to submit data, views or arguments, orally or in written form,” prior to the public agency acting. § 2-3-111, MCA. If the public agency’s agenda does not specifically list a proposed action, the public agency may not take that action until adequate public notice is provided. See § 2-3-103(1)(c), MCA.

If the agency holds a public hearing, it “must be held in an accessible facility in the impacted community or area or in the nearest community or area with an accessible facility” to allow for this public comment to occur. § 2-3-111(2), MCA. Local governments

also must accept public comment through an electronic mail system and shall disseminate by appropriate media its electronic mail address to which public comment may be made. See [§ 2-3-301](#), MCA.

To ensure that Montanans are permitted a “reasonable opportunity” to participate in governmental operations, the Montana Supreme Court also has held that individuals must be “fairly apprised” of the actions the government is considering taking, i.e., an individual’s “right to know” and examine government documents related to the proposed action must be satisfied to allow meaningful public participation at the meeting. See *Bryan*, ¶¶ 43-44.

Meetings of “public or governmental bodies [or] boards” must be open to the public, unless an established exception applies. Section [2-3-203\(1\)](#), MCA. The “meetings” of public agencies may be closed in certain circumstances, including: (i) when the presiding officer “determines that the demands of individual privacy clearly exceed the merits of public disclosure”; (ii) the public agency intends to discuss litigation strategy and an open meeting “would have a detrimental effect on the litigating position of the public agency”; and (iii) as otherwise recognized by Montana law. See [§ 2-3-203\(3\)-\(4\)](#), MCA.

The governmental bodies must either keep minutes of their meetings or create audio recordings accompanied by logs or time stamps, which must be open to public inspection. [§ 2-3-212\(1\)](#), (3), MCA. Meeting minutes must contain all of the information required by [§ 2-3-212\(2\)](#), MCA, and members of the public generally must be allowed to record the meeting. [§ 2-3-211](#), MCA.

If the actions of a public agency do not comply with Montana’s Open Meetings Act, those actions “may be declared void” by a Montana court. [§ 2-3-213](#), MCA. The

prevailing party in such an action “may be awarded costs and reasonable attorney fees.” § 2-3-221, MCA.

## Open Records

Article II, section 9, of the Montana Constitution provides: “No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.”

Article II, section 9, of the Montana Constitution applies to local government. *AP v. State*, 250 Mont. 299, 302, 820 P.2d 421, 422 (1991).

Montana law ensures “efficient and effective management of public records and public information, in accordance with Article II, sections 8 through 10, of the Montana constitution, for the state of Montana and its political subdivisions.” § 2-6-1001, MCA.

Public information is information prepared, owned, used or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law. § 2-6-1002(11).

A document submitted by a member of the public to a public body, including information submitted during a public hearing, becomes a public writing subject to disclosure under the right to know provision of the Montana constitution. *Denny Driscoll Boys Home v. State*, 227 Mont. 177, 737 P.2d 1150 (1987).

With some exceptions, “every person has a right to examine and obtain a copy of any public information of this state.” § 2-6-1003, MCA. The following are exceptions to the general rule:

Art. II, sec. 10, of the Montana Constitution provides: “The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.” Information in the government’s possession that implicates an individual’s right to privacy cannot be disclosed absent a court order.

Information relating to individual safety, public safety or the security of public facilities including public schools, jails, public and private correctional facilities, and prisons may be withheld if release of the information jeopardizes the safety of facility personnel, the public, students in a public school or inmates of a facility. § 2-6-1003, MCA.

The Montana Historical Society may honor restrictions on the release of private documents imposed by private donors because the restrictions do not apply to public information. However, such restriction must expire no later than 50 years from the date the private record was received. *Id.*

A flood plain study filed with the city as part of a property development request was readily ascertainable by anyone and thus not protected as a confidential trade secret. The developer was denied an injunction to prohibit the city from providing copies of the study to owners of nearby property. *Billmayer v. Kalispell*, 2007 MT 116.

A nonhuman entity seeking protective measures for alleged confidential material filed with a governmental regulating agency must support its claim with a supporting affidavit making a prima facie showing that the materials constitute property rights that are

protected by due process. *Great Falls Tribune v. Mont. Pub. Serv. Comm'n*, 2003 MT 359.

A school district violated parents' right to know when it disseminated incomplete information that did not include a system of rating schools and explaining the rating system. The rating system was used by the district to decide school closures, but the school board did not include the information in documents requested by and shared with the public. *Bryan v. Yellowstone County Elementary School District No. 2*, 2002 MT 264.

## **Public Participation Methods for Montana's Land Use Planning Act**

Public participation is beneficial to the planning process as it allows community members to identify goals, concerns, opportunities and solutions. Ongoing public participation may lead to better decision making, as well as communication and transparency between the community and local government. Local governments are encouraged to consider a variety of methods permitted by Montana law to adequately communicate public meeting times, project timelines, and design and map proposals. Local governments should strive to involve a broad cross-section of the community to promote robust and diverse public participation.

The following analysis identifies what public participation actions local governments should consider taking when implementing the Act, including those referenced in the Act. Local governments are encouraged to consult with their attorneys to ensure a proposed course of action complies with Montana law.

## Step 1—General Compliance with Montana’s Public Participation Laws

Local governments always should consider whether an action they are considering taking is “of significant interest to the public.” See § 2-3-103(1)(a), MCA. If it is, the local government should evaluate how Montana’s Public Participation in Governmental Operations Act and/or Article II, §§ 8 and 9 of Montana’s Constitution apply to the proposed action. *Id.* Those legal principles are discussed above.

## Step 2—Compliance with Montana’s Land Use Planning Act

In addition to complying with Montana’s public participation laws, local governments also must comply with the specific public participation requirements of the Act. See, e.g., § 76-25-106, MCA. The Montana Legislature has explained its intention that the Act “provides ... for broad public participation” in various ways. See § 76-25-102(3)(a), MCA.

Notably, local governments must “adopt a public participation plan detailing how the local government will meet the requirements of this section.” § 76-25-102(5), MCA. The public participation plan should identify which procedural requirements apply for the type of action under consideration and how the local government intends to meet those requirements. A local government may broadly disseminate their adopted public participation plan.

The Act directs local governments, at minimum, to take certain specific actions, including: (i) disseminating draft documents; (ii) providing opportunities for written and verbal comments; (iii) facilitating public meetings after effective notice is provided; (iv) providing the public with electronic communications, access to online documents and

the ability to submit comments online; (v) analyzing and responding to public comments. § 76-25-106(1)(b), MCA.

Local governments also must document: (i) “all public outreach and participation performed as part of the administrative record”; and (ii) “what methods it used to provide continuous participation in the development, adoption or update of a land use plan or regulation and shall document all comments received.” § 76-25-106(2) and (3)(c), MCA.

## **Dissemination of Draft Documents**

Broad dissemination means the local government has made the documents widely available and provided information on how to access the available documents and how to provide comments. Whenever public comment is sought, the relevant drafts should be available prior to the public meeting so participants can comment appropriately.

Methods of broad dissemination may include:

Posting online copies of draft documents, maps, photos and plans on the local government’s official website or a website created specifically for the land use planning process

Displaying physical copies at designated locations, such as local libraries or government offices for public inspection

Providing physical copies of draft documents at public meetings

## **Public Notice**

The methods for public notice might vary across the state, depending on the different needs of the community. Local governments should consider how notice procedures will be best received by community members. Public notice procedures should encompass multiple notice strategies with a wide range of media types, to ensure robust and diverse public access. Notices should clearly specify the nature of the land use plan or regulation under consideration, what type of comments the local government is seeking from the public, and how the public may participate. When appropriate, notices should announce the availability of relevant draft documents and how they may be obtained.

### I. Initial Announcement

Local governments may consider hosting a “kick-off” event to announce the planning process to community members. This event allows community members to view a presentation covering the project purpose and the adopted participation plan.

### II. Newspaper Access

Local governments may consider the use of a local newspaper or newspaper’s website as a method for providing notice. A newspaper may be used to publish notices of upcoming meetings and updates to the land use plan. Local governments should determine if community members can access the newspaper and if this form of notice would result in robust public access.

### III. Website

Local governments may consider the use of a dedicated website as a method for providing notice. An online presence for most planning studies has become a standard practice. A website would allow local governments to provide notice of upcoming meetings and changes to the land use planning process. Notice on a website may



include, but is not limited to, an electronic calendar or a newsletter. Local governments should consider how they will notify community members of the website, determine if community members can access the website and if this form of notice would result in robust and diverse public access. Finally, local governments should consider their capacity to update and maintain the website throughout the planning process.

#### IV. Social Media

Local governments may consider the use of social media as a method for providing public notice. Social media has evolved as a convenient tool for local governments to reach many community members. Local governments may consider creating accounts and pages dedicated to the land use planning process with timely and reliable updates. Potential platforms include Instagram and Facebook. These accounts may also include upcoming meetings and allow community members to RSVP their attendance. Local governments should consider how they will notify community members of the account(s), determine if community members can access the social media account(s) and if this form of notice would result in robust and diverse public access. Local governments should establish internal policies or procedures on handling social media accounts which clearly delineate the officials or employees who have access to and authority to post on each social media account. Finally, local governments should consider their capacity to maintain the account(s) throughout the planning process.

#### V. Flyers

Local governments may consider posting flyers of upcoming meetings in public spaces likely to be accessed by many community members. Additionally, local governments may consider distributing flyers to community members when they attend other events. Local governments should determine if the use of flyers would result in robust and diverse public access.

Appropriate locations may include:

- Local businesses
- Senior centers
- Public transit
- Government offices
- Local schools
- Public libraries
- Neighborhood councils
- Grocery stores
- Community notice boards
- Government offices

## VI. Personal Invitation

Local governments may consider identifying community members interested in the land use planning process. After identifying members, local governments may consider reaching out directly to the range of interested members who should be in attendance and extend personal invitations to upcoming meetings. Personal invitations may occur through mass email. Local governments may utilize personal invitations in addition to other notice procedures to promote robust and diverse public access.

## Public Meetings

All persons desiring to speak during a public meeting should be allowed to do so, but a local government may establish a reasonable time limitation on verbal comments. Local governments should establish rules of conduct and procedure to require that public

meetings be civil. Procedures are established in local government charters and ordinances.

Each meeting should include updates on status, events and the remaining schedule.

## I. In-Person Meetings

A common method is to host in-person meetings at a designated location. Local governments may hold a series of public meetings at different locations throughout the jurisdiction. Utilizing different locations promotes robust and diverse public access by reducing barriers for individuals who cannot travel. Additionally, local governments should hold public meetings at ADA compliant buildings. Local governments should provide reasonable accommodation for individuals in attendance who request assistance. A reasonable accommodation may include providing hearing devices. Local governments should consider whether a hybrid meeting model, with in-person and online options, would promote public access and participation.

## II. Online Meetings

A common method is to host meetings utilizing a secure, online platform. Utilizing an online platform, such as Zoom or Google Meet, promotes robust and diverse public access for individuals who cannot attend in person. Online meetings should be treated similarly to in-person meetings and allow for an equivalent level of participation. Local governments should consider whether a hybrid meeting model, with in person and online options, would promote public access and participation.

Local governments should anticipate that online meetings may require additional technical assistance. Additionally, local governments should consider community access to internet connection and electronic devices.

### III. Meeting Record

Local governments should make an accurate and appropriate record of each meeting. The Act requires that minutes must be kept of all meetings of the planning commission. § 76-25-104(2)(c).

Methods to keep record may include:

- Meeting minutes
- Audio/video recording

### Public Comment

Public comment procedures should encompass multiple strategies with a wide range of media types, to ensure robust and diverse public comment. Planning officials may demonstrate a willingness to listen by incorporating suggestions received from public comments into the planning, but it is not required. The Act requires a local government to “accept, consider and respond to public comment” on a proposed land use plan or map, zoning regulations or map and subdivision regulations or amendment thereof. §§ 76-25-202(1)(c), -304(2)(b), -403(2)(b).

### I. Public Meetings

All persons desiring to provide public comments during a public meeting should be allowed to do so, but a local government may establish a reasonable time limitation on verbal comments. Local governments should establish rules of conduct and procedure to require that public meetings be civil. Procedures are established in local government charters and ordinances. Public comment may be given verbally or in writing.

## II. Online Access

### Website

Local governments may consider the use of a dedicated website as a method for receiving and displaying public comments. An online presence for most planning studies has become a standard practice. Public comments on a website may include, but are not limited to, interactive posts that allow community members to comment or an electronic inbox or form on the website where community members can submit public comments. Local governments should consider how they will track and display public comments through a designated website.

### Social Media

Local governments may consider the use of a social media account as a method for receiving and displaying public comments. Social media has evolved as an interactive tool for local governments to reach community members. An online presence for most planning studies has become a standard practice. Local governments may consider creating accounts and pages dedicated to the land use planning process that allow community members to provide public comments. Potential platforms include Instagram and Facebook. These accounts may include interactive posts or a messaging system where community members can submit comments. Local governments should consider how they will track, display and respond to public comments posted on a social media account.

### Email

Local governments may consider the use of a designated email account as a method for receiving public comments.

### III. Surveys

Local governments may consider utilizing mail or electronic surveys, polls or questionnaires. Surveys can be an efficient way to gather and organize public input. Surveys can be utilized at meetings, sent via email or mailed. It is important that questions are neutral and clear and allow for all answers that may be received.

### IV. Community Engagement

Local governments may consider hosting or attending events where community members normally congregate to capture broad input from community members who may not otherwise participate in the planning process. Community engagements may include:

- Encouraging direct involvement of students from local schools
- Requesting opportunities to get on agendas for various civic group meetings
- Hosting small informal workshops to foster small group communication, discussion of proposed ideas and brainstorm problem solving for planning obstacles
- Hosting highly interactive meetings where attendees work in groups to draw maps, develop goals and policies, and provide public feedback on draft documents
- Creating a volunteer focus group comprised of representatives of the community

## Land Use Planning Act Requirements

### Comprehensive Planning

This Act requires local governments to adopt and maintain a public participation plan detailing how the local government will provide continuous public participation. § 76-25-106(5), MCA. The public participation plan should identify which procedural requirements apply for the type of action under consideration and how the local government intends to meet those requirements. A local government may broadly disseminate their adopted public participation plan.

### Discretion Under the Act

Under the Act, a local government has discretion to decide the method for providing public notice and participation, as well as notice of written comments. § 76-25-106(3).

### Documentation

The local government shall document and retain all public outreach performed and the methods used to provide continuous public participation. § 76-25-106(2). This documentation shall be a part of the administrative record in accordance with the retention schedule published by the secretary of state. Additionally, the local government shall document to all comments received by the public. §§ 76-25-106(2) and (3)(c), MCA.

### Public Participation

Under the Act, the public's right to notice and opportunity to participate in the process is an essential component to land use decisions by local governments. The Act requires a planning commission to "accept, consider and respond to public comment" prior to making a recommendation to the governing body about the adoption, amendment or updating of a land use plan, zoning regulations or subdivision regulations. [§ 76-25-201\(2\)\(b\)](#), [-202\(1\)\(c\)](#), [-304\(2\)\(b\)](#), [-403\(2\)\(b\)](#).

Local governments shall provide continuous public participation when adopting, amending or updating a land use plan or zoning regulations under the Act. [§ 76-25-106\(1\)\(a\)](#), MCA. The scope of and opportunity for public participation and comment on site-specific development in substantial compliance with the land use plan, however, must be limited only to those impacts or significantly increased impacts that were not previously identified and considered in the adoption, amendment or update of the land use plan, zoning regulations or subdivision regulations.

Throughout the creation of the land use plan, the local government shall emphasize that the land use plan is intended to identify the opportunities for development of land within the planning area while addressing the impacts that development may bring, and the process provided for continuous public participation. The final adopted land use plan and amendments comprise the basis for implementing land use regulations in substantial compliance with the land use plan. The scope of public participation on site-specific development in substantial compliance with the land use plan must be limited only to those impacts that were not previously identified and considered in the adoption, amendment or update of the land use plan, zoning regulations or subdivision regulations. [§ 76-25-106\(4\)](#), MCA.

## **Minimum Requirements**

At a minimum, public participation must provide for:



- Dissemination of draft documents
- An 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. [§ 76-25-106\(1\)\(b\)](#), MCA.

## Notice

Local governments must provide public notice for the adoption, amendment or update of a land use plan or regulation. All notices must clearly specify the nature of the land use plan or regulation under consideration, what type of comments the local government is seeking from the public and how the public may participate. [§ 76-25-106\(3\)\(b\)](#), MCA.

## Public Meetings

Public meetings may only be held after effective notice is given. [§ 76-25-106\(1\)\(a\)\(iii\)](#).

## Access to Documents

Local governments, including a planning commission, must disseminate draft documents related to the land use planning process. [§ 76-25-106\(1\)\(b\)\(i\)](#), MCA. Local governments must provide online access to documents, updates, meeting minutes and comments related to the planning process. [§ 76-25-106\(1\)\(b\)\(iv\)](#), MCA.

## Public Comment

Local governments must provide an opportunity for written and verbal comments. § 76-25-106(1)(b)(ii). Additionally, local governments must provide online access to public comments. § 76-25-106(1)(b)(iv).

## **Consideration of Public Comment**

A local government's engagement with community members continues throughout the planning process by analyzing and responding to public comments. All public comments must receive a response. All public comments and responses must be documented and included as part of the administrative record. §§ 76-25-106(1)(b)(ii), -201(2)(b), -202(1)(c), -304(2)(b), -403(2)(b).

## **Environmental Considerations**

The Montana Environmental Policy Act requires certain governmental agencies to conduct an environmental review of state actions. See § 75-1-201 (2023), MCA. For detailed information on MEPA, see “[A Guide to the Montana Environmental Policy Act](#)”, or “[A Citizen's Guide to Public Participation in Environmental Decision Making](#).”

## **Conclusion**

Local governments must create opportunities for public participation in the adoption, amendment or update of a land use plan or implementation of regulations. Many methods exist to meet this obligation, and the adoption of methods is unique to each community. When adopting methods, local governments should be conscious of Montana's legal requirements, accessibility and opportunities for robust and diverse participation.

## Appendix

### **Constitutional and Statutory Provisions Referenced in this Guide**

## The Constitution of the State of Montana

### Article II—Declaration of Rights

**Section 8. Right of participation.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

**Section 9. Right to know.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

### Montana Public Participation in Governmental Operations Act

**2-3-101. Legislative intent.** The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

**2-3-102. Definitions.** As used in this part, the following definitions apply:

1. "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

- (a) the legislature and any branch, committee, or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
- (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

2. "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.

3. "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

- (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
- (b) declaratory rulings as to the applicability of any statutory provision or of any rule.

**2-3-103. Public participation -- governor to ensure guidelines adopted -- procedures for publishing notice.**

(1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(b) The agency shall publish an agenda for a meeting, as defined in [2-3-202](#), as follows:

- (i) if a newspaper of general circulation in the county where the agency is located publishes electronic notices and links to meeting agendas free of charge to the agency on the newspaper's website, the agency shall provide the notice and agenda to the newspaper to post on the newspaper's website;

(ii) if the agency does not have an option to post notices and links to meeting agendas free of charge, the agency shall provide adequate notice of a meeting by doing at least one of the following:

(A) posting a link to the meeting agenda on the agency's primary website;

or

(B) posting the agenda on the social media site of the agency.

(c) The agenda must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter.

(d) Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in [2-3-212](#).

(e) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

#### **2-3-104. Requirements for compliance with notice provisions.**

An agency shall be considered to have complied with the notice provisions of [2-3-103](#) if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

**2-3-105. Supplemental notice by radio or television.**

(1) An official of the state or any of its political subdivisions who is required by law to publish a notice required by law may supplement the publication by a radio or television broadcast of a summary of the notice or by both when in the official's judgment the public interest will be served.

(2) The summary of the notice must be read without a reference to any person by name who is then a candidate for political office.

(3) The announcements may be made only by duly employed personnel of the station from which the broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless a broadcast station does not exist in that county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

**2-3-106. Period for which copy retained.** Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

**2-3-107. Proof of publication by broadcast.** Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

**2-3-111. Opportunity to submit views -- public hearings.**

- (1) Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.
- (2) When a state agency other than the board of regents proposes to take an action that directly impacts a specific community or area and a public hearing is held, the hearing must be held in an accessible facility in the impacted community or area or in the nearest community or area with an accessible facility.

**2-3-112. Exceptions.**

The provisions of [2-3-103](#) and [2-3-111](#) do not apply to:

- (1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;
- (2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or
- (3) a decision involving no more than a ministerial act.

**2-3-113. Declaratory rulings to be published.** The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under [2-4-623\(6\)](#) and [2-4-501](#), respectively.

**2-3-114. Enforcement -- attorney fees.**

- (1) The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition of any person whose rights have been prejudiced. A petition pursuant to this section must be filed within 30 days of the date on which the person learns, or reasonably should have learned, of the agency's decision.



(2) A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 8, of the Montana constitution may be awarded costs and reasonable attorney fees.

## Montana Open Meetings Act

**2-3-201. Legislative intent -- liberal construction.** The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

**2-3-202. Meeting defined.** As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in [2-3-203](#), whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

### **2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions.**

(1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

**2-3-211. Recording.** A person may not be excluded from any open meeting under this part and may not be prohibited from photographing, televising, transmitting images or audio by electronic or digital means, or recording open meetings. The presiding officer may ensure that these activities do not interfere with the conduct of the meeting.

**2-3-212. Minutes of meetings -- public inspection.**

(1) Appropriate minutes of all meetings required by [2-3-203](#) to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

- (a) the date, time, and place of the meeting;
- (b) a list of the individual members of the public body, agency, or organization who were in attendance;
- (c) the substance of all matters proposed, discussed, or decided; and
- (d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

(4) Any time a presiding officer closes a public meeting pursuant to [2-3-203](#), the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.

**2-3-213. Voidability.** Any decision made in violation of [2-3-203](#) may be declared void by a district court having jurisdiction. A suit to void a decision must be commenced within 30 days of the date on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's decision.

**2-3-214. (Temporary) Recording of meetings for certain boards.**

(1) Except as provided in [2-3-203](#), the following boards shall record their public meetings in a video or audio format:

- (a) the board of investments provided for in [2-15-1808](#);
- (b) the public employees' retirement board provided for in [2-15-1009](#);
- (c) the teachers' retirement board provided for in [2-15-1010](#);
- (d) the board of public education provided for in Article X, section 9, of the Montana constitution; and
- (e) the board of regents of higher education provided for in Article X, section 9, of the Montana constitution.

(2) All good faith efforts to record meetings in a video format must be made, but if a board is unable to record a meeting in a video format, it must record the meeting in an audio format.

(3) (a) The boards listed in subsection (1) must make the video or audio recordings of meetings under subsection (1) publicly available within 1 business day after the meeting through broadcast on the state government broadcasting service as provided in [5-11-1111](#) or through publication of streaming video or audio content on the respective board's website.

(b) The department of administration may develop a memorandum of understanding with the legislative services division for broadcasting executive branch content on the state government broadcasting service or live-streaming audio or video executive branch content over the internet.

**2-3-214. (Effective July 1, 2024) Recording of meetings for certain boards.**

(1) Except as provided in [2-3-203](#) and subsection (6) of this section, the following boards shall record their public meetings in an audio and video format:

(a) the board of investments provided for in [2-15-1808](#);

(b) the public employees' retirement board provided for in [2-15-1009](#);

(c) the teachers' retirement board provided for in [2-15-1010](#);

(d) the board of public education provided for in Article X, section 9, of the Montana constitution;

(e) the board of regents of higher education provided for in Article X, section 9, of the Montana constitution;

(f) except as provided in subsection (7)(a), the governing board of a county provided for in Title 7, chapter 1, part 21;

(g) except as provided in subsection (7)(b), the governing board of a first-class and second-class city provided for in Title 7, chapter 1, part 41;

(h) a first-class or second-class school district board of trustees provided for in Article X, section 8, of the Montana constitution, [20-6-201](#), and [20-6-301](#); and

- (i) a local board of health provided for in Title 50, chapter 2, part 1.
- (2) (a) The boards listed in subsections (1)(a) through (1)(e) shall make the audio and video recordings of meetings under subsection (1) publicly available within 1 business day after the meeting through broadcast on the state government broadcasting service as provided in [5-11-1111](#) or through publication of streaming audio and video content on the respective board's website.
- (b) The boards listed in subsections (1)(f) through (1)(i) shall make the audio and video recordings publicly available within 5 business days after the meeting with a link to the recording on the respective board's website. If the board does not maintain a website, it shall maintain a social media page and provide a link to the recording on the social media page.
- (c) The department of administration may develop a memorandum of understanding with the legislative services division for broadcasting executive branch content on the state government broadcasting service or live-streaming audio or video executive branch content over the internet.
- (3) For the boards listed in subsections (1)(f) through (1)(i) that maintain minutes as required by [2-3-212](#), the audio and video recordings created pursuant to this section are not required to be the official record of the meeting. If a recording is not designated as the official record, the recording may be destroyed after being retained online for 1 year and is not subject to the requirements of Title 2, chapter 6, for public information requests.
- (4) A board is not required to disrupt or reschedule a meeting if there is a technological failure of the meeting recording. If the recording is not able to be made available online, the board shall prominently post a notice in the same manner as a notice of a public meeting and shall post a notice at all locations where the meeting recording links are available. The notice must explain the reason the meeting was not recorded and describe the steps taken to remedy the failure prior to the next meeting.

(5) The requirements of this section apply only when a board is acting on a matter over which the board has supervision, control, jurisdiction, or advisory power at a public meeting as defined in [2-3-202](#) that has been publicly noticed as required by [2-3-103](#).

(6) The requirements of this section do not apply to a board listed in subsection (1)(f) when a quorum is incidentally established as described in [7-5-2122](#)(4) and (5) solely on the basis of sharing a common office space.

(7) The following boards must meet the requirements of this section, except that meetings may be recorded, retained, and made available in audio format only:

- (a) the governing board of a county with a population of less than 4,500; and
- (b) the governing board of a third-class city.

(8) Expenditures by a school district on staff, consultants, equipment, software licenses, storage, or security made to fulfill the requirements of this section qualify as a school facility project under [20-9-525](#).

**2-3-221. Costs to prevailing party in certain actions to enforce constitutional right to know.** A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution may be awarded costs and reasonable attorney fees.

## Use of Electronic Mail Systems

**2-3-301. Agency to accept public comment electronically -- dissemination of electronic mail address and documents required -- fees prohibited.**

(1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which [2-3-111](#) applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:

- (a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;
- (b) the telephone directory of state agencies published by the department of administration;
- (c) any notice of agency existence, purpose, and operations published on the internet; or
- (d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).

(3) An agency shall, at the request of another agency or person and subject to [2-6-1003](#), disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. Notification of the availability of an electronic notice of proposed rulemaking may be sent to an interested person as provided in [2-4-302\(2\)\(a\)\(ii\)](#). An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.

(5) As used in this section, "agency" means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government.

## Montana Public Records Act

[2-6-1001](#). **Purpose.** The purpose of this chapter is to ensure efficient and effective management of public records and public information, in accordance with Article II,

sections 8 through 10, of the Montana constitution, for the state of Montana and its political subdivisions.

**2-6-1002. Definitions.** As used in this chapter, the following definitions apply:

(1) "Confidential information" means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:

- (a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure;
- (b) related to judicial deliberations in adversarial proceedings;
- (c) necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state; and
- (d) designated as confidential by statute or through judicial decisions, findings, or orders.

(2) "Constitutional officer" means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, or auditor, who are the constitutionally designated and elected officials of the executive branch of government.

(3) "Constitutional officer record" means a public record prepared, owned, used, or retained by a constitutional officer.

(4) "Essential record" means a public record immediately necessary to:

- (a) respond to an emergency or disaster;
- (b) begin recovery or reestablishment of operations during and after an emergency or disaster;
- (c) protect the health, safety, and property of Montana citizens; or
- (d) protect the assets, obligations, rights, history, and resources of a public agency, its employees and customers, and Montana citizens.

(5) "Executive branch agency" means a department, board, commission, office, bureau, or other public authority of the executive branch of state government.



- (6) "Historic record" means a public record found by the state archivist to have permanent administrative or historic value to the state.
- (7) "Local government" means a city, town, county, consolidated city-county, special district, or school district or a subdivision of one of these entities.
- (8) "Local government records committee" means the committee provided for in [2-6-1201](#).
- (9) "Permanent record" means a public record designated for long-term or permanent retention.
- (10) "Public agency" means the executive, legislative, and judicial branches of Montana state government, a political subdivision of the state, a local government, and any agency, department, board, commission, office, bureau, division, or other public authority of the executive, legislative, or judicial branch of the state of Montana.
- (11) "Public information" means information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law.
- (12) "Public officer" means any person who has been elected or appointed as an officer of state or local government.
- (13) "Public record" means public information that is:
- (a) fixed in any medium and is retrievable in usable form for future reference; and
  - (b) designated for retention by the state records committee, judicial branch, legislative branch, or local government records committee.
- (14) "Records manager" means an individual designated by a public agency to be responsible for coordinating the efficient and effective management of the agency's public records and information.
- (15) "State records committee" means the state records committee provided for in [2-6-1107](#).

**2-6-1003. Access to public information -- safety and security exceptions -- Montana historical society exception.**

(1) Except as provided in subsections (2) and (3), every person has a right to examine and obtain a copy of any public information of this state.

(2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.

(3) The Montana historical society may honor restrictions imposed by private record donors as long as the restrictions do not apply to public information. All restrictions must expire no later than 50 years from the date the private record was received. Upon the expiration of the restriction, the private records must be made accessible to the public.

(4) A public agency may not refuse to disclose public information because the requested public information is part of litigation or may be part of litigation unless the information is protected from disclosure under another applicable law.

**2-6-1006. Public information requests -- fees.**

(1) (a) A person may request public information from a public agency. A public agency shall make the means of requesting public information accessible to all persons.

(b) (i) All public agencies are governed by this subsection (1).

(ii) A public agency that is not an executive branch agency must meet the requirements of subsection (2) when responding to a public information request.

(iii) (A) Except as provided in subsections (1)(b)(iii)(B) and (1)(b)(iv), all executive branch agencies must meet the requirements of subsection (3) when responding to a public information request.

(B) The provisions of subsection (3) apply to the secretary of state, the justice department, the superintendent of public instruction, and the state auditor beginning on October 1, 2025.

(iv) The secretary of state must meet the requirements of subsection (4) regarding fees.

(c) A public agency other than the office of the secretary of state may charge, pursuant to this subsection (1)(c), a fee for fulfilling a public information request. Except where a fee is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time required to gather public information. The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.

(d) A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person.

(e) If a public agency agrees to a request to customize a records request response, the costs of the customization may be included in the fees charged by the agency.

(2) Upon receiving a request for public information, a public agency that is not an executive branch agency shall respond in a timely manner to the requesting person by:

(a) making the public information maintained by the public agency available for inspection and copying by the requesting person; or

(b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered and any fees that may be charged pursuant to subsection (1)(c).

(3) (a) An executive branch agency shall respond to a public information request by acknowledging receipt of the request within 5 business days of the agency's designated contact person receiving the request. Except for confidential, privileged, or otherwise protected information that is not subject to public disclosure under

applicable law and information withheld from public scrutiny as provided in [2-6-1003](#), the executive branch agency shall respond by:

- (i) making the public information maintained by the executive branch agency available in a timely manner for inspection and copying by the requesting person;
  - (ii) providing a specified public record to the requesting person within 5 working days of the executive branch agency's acknowledgment of receipt of the request if the request is for a single, specific, clearly identifiable, and readily available public record. This subsection (3)(a)(ii) does not apply to requests pertaining only to a specified person or property, including requests for applications, vital records, licenses, permits, or registrations; or
  - (iii) responding as provided in subsection (3)(b).
- (b) (i) If a request seeks public information that cannot be readily identified and gathered, the agency shall provide the requesting person an estimate of the time it will take to fulfill the request and any fees that may be charged pursuant to subsection (1)(c) and shall provide the public information to the requesting person in a timely manner, which may be, except as provided in subsection (3)(b)(ii), within:
- (A) 90 days of the public agency's acknowledgment of the request; or
  - (B) 6 months of the public agency's acknowledgment of the request if the agency determines 90 days is not feasible for a response and the agency provides the requesting person written notice explaining why the agency is unable to provide a response within 90 days.
- (ii) If an executive branch agency requires a requesting person to pay an estimated fee pursuant to subsection (1)(c), the agency's obligation to respond to the request is suspended upon sending the estimate to the requesting person and remains suspended until the requesting person makes payment.
- (c) An executive branch agency may request additional information or clarification from a requesting person for the purpose of expediting the agency's response to the request. If the agency has requested additional information or clarification, the

agency's obligation to respond to the request is suspended until the requesting person provides the requested information or clarification or until the requesting person denies the agency's request for additional information or clarification. If a person requesting public information fails to respond within 30 days to an agency's request for additional information or clarification, the agency may close the request after notifying the requesting person.

(d) Each executive branch agency must have a designated contact for public information requests posted on its website.

(e) By November 1, 2024, or 1 month after this section becomes applicable to an executive branch agency, whichever occurs second, an executive branch agency that is subject to this subsection (3) shall:

(i) establish a public information request process describing the steps for submitting a request and the process the agency will follow when responding to a request for public information, which must be published on a state website;

(ii) provide statistics about public information requests received by the designated contact of the agency, including the number of requests and the agency's response time to fulfill or otherwise resolve the requests; and

(iii) retain and publish on a state website the public information requests the agency has received and the agency's response. The agency is not required to publish requests or responses if the request:

(A) was not submitted according to the agency's posted process;

(B) pertains only to a specific person or property, including requests for applications, vital records, licenses, permits, registrations, and related supporting documents; or

(C) was for information accessible on a state website or other publication available at the time the request was made.

(4) (a) The secretary of state is authorized to charge fees under this section. The fees must be set and deposited in accordance with [2-15-405](#). The fees must be collected in advance.

(b) The secretary of state may not charge a fee to a member of the legislature or public officer for any search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

**2-6-1007. Special fees allowable for certain information.**

(1) In addition to the fee allowed under [2-6-1006](#), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the Montana tax appeal board, or any legislative body or its members or staff.

(2) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(3) All fees received by the department of revenue under [2-6-1006](#) and this section must be deposited in the property value improvement fund as provided in [15-1-521](#).

(4) In accordance with the fees allowed under [2-6-1006](#), the Montana historical society may charge fees as approved by its board of trustees for copies of materials contained in its collections, based on documentable curatorial duties as set forth in [22-3-101](#).

**2-6-1008. Certified copies of records -- historic records and constitutional officer records -- exception.**

(1) A person may request a certified copy of a public record from a public agency subject to the provisions of [2-6-1003](#). The public agency may charge a fee for the certified copy in accordance with [2-6-1006](#).

(2) A person may request a certified copy of a historic record or a constitutional officer record from the Montana historical society subject to the provisions of [2-6-1003](#). The Montana historical society may charge a fee for the certified copy in accordance with [2-6-1006](#) and [2-6-1007](#)(4).

(3) A certified copy created by the Montana historical society of a historic record or a constitutional officer record has the same force in law as if made by the original public agency that created the record.

(4) Pursuant to [2-15-403](#), this section does not apply to certified copies provided by the secretary of state for information contained in the secretary of state's corporate and uniform commercial code electronic filing system.

**[2-6-1009](#). Written notice of denial -- failure to meet response deadline -- civil action -- costs to prevailing party in certain actions to enforce constitutional or statutory rights.**

(1) A public agency that denies an information request to release information or records shall provide a written explanation for the denial.

(2) If a person who makes an information request receives a denial from a public agency and believes that the denial violates the provisions of this chapter, the person may file a complaint pursuant to the Montana Rules of Civil Procedure in district court.

(3) If a person who makes an information request to an executive branch agency does not receive a response from the agency as required in [2-6-1006](#)(3), the person may file a complaint in district court.

(4) A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution or under the provisions of Title 2, chapter 6, parts 10 through 12, may be awarded costs and reasonable attorney fees.

**[2-6-1012](#). Management of public records -- disposal and destruction.**

- (1) (a) Each public officer is responsible for properly managing the public records within the public officer's possession or control through an established records management plan that satisfies the requirements of this chapter.
- (b) Executive branch agencies shall manage public records according to the provisions of Title 2, chapter 6, part 11, and the rules and guidelines established by the secretary of state, the state records committee, and the Montana historical society.
- (c) Local governments shall manage public records according to the provisions of Title 2, chapter 6, part 12, and the rules and guidelines established by the secretary of state, the local government records committee, and the Montana historical society.
- (d) Pursuant to [5-2-503](#) and [5-11-105](#), the legislative council shall administer the records management plan for the legislative branch. The legislative branch shall cooperate with the secretary of state, the state records committee, the local government records committee, and the Montana historical society in the development, implementation, and administration of the legislative records management plan using Title 2, chapter 6, part 11, as guidance.
- (e) The judicial branch shall establish a records management plan. The judicial branch may seek assistance from the secretary of state, the state records committee, the local government records committee, and the Montana historical society regarding development, implementation, and administration of the judicial records management plan.
- (2) When a public record has reached the end of its retention period, the public officer shall ensure the record is disposed of, destroyed, or transferred according to the provisions of this chapter.

**2-6-1013. Preservation of public records -- possession of public records.**

- (1) All public records are and remain the property of the public agency possessing the records. The public records must be delivered by outgoing public officers and employees to their successors and must be preserved, stored, transferred, destroyed,



or disposed of and otherwise managed only in accordance with the provisions of this chapter.

(2) If an outgoing public officer or employee refuses or fails to deliver to the current public officer or employee any public records that pertain to that public office, the current public officer or employee may file a complaint in the district court of the county where the outgoing public officer or employee resides, pursuant to the Montana Rules of Civil Procedure, to compel the outgoing public officer or employee to deliver any public records still in the outgoing public officer or employee's possession to the current public officer or employee.

**2-6-1014. Protection and storage of essential records.**

(1) To provide for the continuity and preservation of civil government, each public officer shall designate certain public records as essential records. The list must be continually maintained by the public officers to ensure its accuracy. Each public officer shall collaborate with the appropriate continuity of government programs to ensure essential records are identified and maintained.

(2) Each public officer shall ensure essential records are efficiently and effectively secured. Each public officer shall look to the guidance provided by the state records committee or the local government records committee in choosing appropriate methods to protect, store, back up, and recover essential records.

**2-6-1017. Prohibition on dissemination or use of distribution lists -- exceptions - - penalties.**

(1) Except as provided in subsections (3) through (10), to protect the privacy of those who deal with state and local government:

(a) a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and

(b) a list of persons prepared by a public agency may not be used as a distribution list except by the public agency or another public agency without first securing the permission of those on the list.

(2) As used in this section, "distribution list" means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.

(3) This section does not prevent an individual from compiling a distribution list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in [13-2-115](#);

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver's licenses or Montana identification cards provided for under [61-5-127](#);

(d) persons holding professional or occupational licenses governed by Title 37, chapters 1 through 4, 6 through 20, 22 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73, and Title 50, chapters 39, 72, 74, and 76;

(e) persons who own property in a county water and/or sewer district provided for in [7-13-2275\(4\)\(d\)](#); or

(f) persons certified as claims examiners under [39-71-320](#).

(5) This section does not prevent an agency from providing a list to persons providing preclicensing or continuing education courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to the secretary of state's electronic filing system developed pursuant to [2-15-404](#) and containing corporate and uniform commercial code information.

(8) This section does not apply to the use by the public employees' retirement board of a list of board-administered retirement system participants to send materials on behalf

of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the list is not released to the organization.

(9) This section does not apply to lists of individuals who sign attendance sheets or sign-in sheets at a hearing or meeting of a public agency.

(10) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(11) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

**2-6-1020. Concealment of public hazards prohibited -- concealment of information related to settlement or resolution of civil suits prohibited.**

(1) This section may be cited as the "Gus Barber Antisecrecy Act".

(2) As used in this section, "public hazard" means a device, instrument, or manufactured product or a condition of a device, instrument, or manufactured product that endangers public safety or health and has caused injury, as defined in [27-1-106](#).

(3) Except as otherwise provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.

(4) Any portion of a final order or judgment entered or a written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.

(6) This section does not apply to:

- (a) trade secrets, as defined in [30-14-402](#), that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;

(b) other information that is confidential under state or federal law; or

(c) a health care provider, as defined in [27-6-103](#).

(7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.

(8) The court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public concerning the public hazard.

(9) This section does not apply to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).