

Formation of a Citizen Initiated Zoning District (Part I Zoning)
Stillwater County, Montana

Highly recommended first steps:

1. Area residents should meet with interested landowners in the area to determine interest and the reasons for why a zoning district might be appropriate for the area. Collect input from landowners as to types of land restrictions that might be proposed in the regulations for the district. Methods to collect input might include informal discussions, neighborhood meetings, phone surveys, written questionnaires, a combination of strategies or many other alternatives.
2. Representatives of area residents should meet with the County's **Planning Department** to discuss the process for creating a Citizen Initiated Zoning District. Suggested meeting items to include, a vicinity map, parcel map of the area in question, information on the purpose or reason for establishing a district and property owners' desired goals for it, as well as questions from preliminary meetings and contacts with real property owners.
3. Prepare a map of the proposed zoning district and draft a set of proposed regulations. Using the input received from area residents, the petitioning group should prepare a draft map of the district and the proposed regulations for the district. Highly recommend providing property owners with ample opportunities to review the proposed drafts.
4. Once you have completed the draft map and draft regulations, you should submit copies to the **Planning Department** for an initial review. The **Planning Department** and the **County Attorney's Office** will review the documents to make sure that the draft map and regulations are clear, legal, and enforceable.
5. Develop a list of affected property owners. This list will include all real property owners within the district who are eligible to sign a zoning petition and the legal description of property (mineral/mining right owners are required when subsurface rights may be at risk). Suggested places for this information: **County GIS**, Montana Cadastral, or **Clerk and Recorder's Office** (Note: Clerk and Recorder's Office recorded/filed documents are the official documents and shall be the final determining factor on real property ownership along with the Title Report required below in Paragraph 2).

Required Steps:

1. Final draft of map must be prepared by a certified land surveyor indicating the boundaries of the area of land to be included in the proposed zoning district and attached to the petition that will circulate for signatures. Names of real property owners shall be clearly marked on the map.
2. Final list of real property owners must be obtained via an ownership report from a Title Company for all legal descriptions. Ownership report must include: owner names, deed reference, mailing address, and tax codes. **Petition signatures must match the recorded ownership signatures on the deeds exactly.** This includes corporations, partnerships, trusts,

etc. Note: Any signature that differs in any way from the recorded deed will be voided from the petition.

3. Petitioners will collect the needed signatures. The signature pages are required to include: the petition, separate line for each real property owner signature, line for each real property owner printed name, line for each real property owner mailing address, line for date of each real property owner signature, and legal description of real property owner property (sample petition is attached). An Affidavit by the person or persons circulating the petition signature pages must be attached to the signature pages circulated attesting that they collected those signatures OR each signature of the real property owner must be notarized. (The Notary may not be related to anyone in the affected proposed zoning district, may not be an individual named or a real property owner from within the affected proposed zoning district or cannot be an individual or real property owner that directly benefits from the passage of the proposed zoning district. Please see current Montana Notary Handbook for notary guidelines).

4. Guidance for Signatures:

- If property was acquired in different names, for example, J. D. Smith, Jon D. Smith and J. David Smith, an affidavit must be attached to the signature page stating that each name variation is the one and same person and accurately represents a true and correct signature.
- Each individual real property owner within a proposed district can sign a petition and if found to be a proper signature, each will be counted toward the total number of real property owners within the proposed zoning district boundary. Only signatures of the real property owners with affected property within the proposed zoning district boundaries may sign the petition.
- A Real Property Owner(s) who owns multiple parcels within the boundaries of the proposed zoning district will count as one real property owner and the signature will only be counted once.
- If property is held jointly or as tenants in common, each joint tenant or tenant in common is counted as a real property owner and may sign the petition.
- A trust is counted as one real property owner. The trustee must execute the petition as a trustee of the named trust and provide a copy of the identification and signature pages of the trust showing that the person signing the petition on behalf of the trust is a current trustee.
- A corporation is counted as one real property owner. Signatures must be executed by the corporate officers as provided for in the corporation's By-laws or controlling documents. A copy of the identification page and any other relevant pages of the Corporate By-laws must be attached to the signature page showing proper signature authorization.

- A partnership is counted as one real property owner. All partners must sign in accordance with the partnership agreement and partners must sign as partners. An aggrieved partner can vote against the said proposed zoning district but cannot agree to something other than what the majority partner vote tallies with regard to a proposed zoning district. A copy of the identification page and any other relevant pages of the partnership agreement must be attached to the signature page showing proper signature authorization.
- A limited partnership is counted as one real property owner. All limited partners must sign or the general partner may sign if authorized by all limited partners to sign for the partnership in accordance with the limited partnership agreement. A copy of the identification page and any other relevant pages of the partnership agreement must be attached to the signature page showing proper signature authorization. The partners must sign as either a general partner or a limited partner.
- A limited liability company is counted as one real property owner. The manager or member(s) may sign in accordance with the Articles of Organization or the operating agreement, whichever controls. A copy of the identification page and any other relevant pages of the Articles of Organization or operating agreement must be attached to the signature page showing proper signature authorization. A member must sign as a member or the manager must sign as the manager.
- A limited liability partnership is counted as one real property owner. All partners must sign or the non-signing partners must authorize one partner to sign for the partnership in accordance with the partnership agreement. A copy of the identification page and any other relevant pages of the Articles of Organization or operating agreement must be attached to the signature page showing proper signature authorization. The partners must sign as a partner.
- Signatures of real property owner's that meet the criteria will be counted, signatures of those that do not meet the criteria will not be counted.

5. **Signature Validation:** Once the needed signatures have been gathered, submit the petition to the **Clerk and Recorder Office**, where the petition will be stamped received, dated and initialed by the receiving party. Once the petition has been submitted, it can no longer be withdrawn or returned for corrections or modifications. The validation process will begin with the **Clerk and Recorder** counting every real property owner within the district and compare that number to the number of signatures obtained. (No matter how many lots you own you still only count as one real property owner, yet if one parcel has multiple owners, each owner is counted as a real property owner and is entitled to sign the petition). If the amount of signatures meeting the proper criteria has reached the threshold amount of 60% or greater, the **Clerk and Recorder** will certify the petition to the **Board of County Commissioners** for the Board's consideration. Mont. Code Ann. §76-2-101(1).

Fees:

1. A fee of \$4 per certified name will be assessed at the time the list of certified names is provided by the **Clerk and Recorder’s Office** (i.e. 85 certified signatures x \$4 = \$340).
2. Application fee of \$450 to be paid before validation process begins.
3. Postage and handling, will be by certified mail (current postage rates apply) and petitioning party will be responsible for all postage incurred due to real property owner notification process (i.e. 300 real property owner x \$7 for certified mail = \$2100).

Action Steps:

1. Upon receipt of a petition signed by at least 60% of the real property owners within a proposed Citizen Initiated Zoning district, the **Board of County Commissioners**, at its discretion, may adopt a resolution that states their intention to create the district and appoints the Planning and Zoning Commission. Mont. Code Ann. §76-2-101(1). The public meeting at which the creation of a Citizen Initiated Zoning district is considered will be noticed in a newspaper of general circulation at least two weeks in advance. To adopt a resolution the **Board of County Commissioners** must determine that the creation of the district is in the public interest.
2. The **Planning Department** will provide an informational notice to the district real property owners of the commissioners’ action and remind owners of the next step in the process.
3. Protest Period: For thirty (30) days following the creation of the district, the Commissioners will receive written protests. If landowners representing 50% of the titled real property ownership in the district protest the establishment of the district within 30 days of its creation, the **Board of County Commissioners** may not create the district. Mont. Code Ann. §76-2-101(5).

Definitions:

1. Real property is defined at Montana Code Annotated §70-15-101:

Real or immovable property consists of:

- Land;
- That which is affixed to land;
- That which is incidental or appurtenant to land;
- That which is immovable by law.

Land is further defined by §70-15-102, MCA as the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.