



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF LABOR AND INDUSTRY**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-120.1**

**Summary**

Adopting variance procedures for building codes

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**Hearing Date and Time**

Thursday, October 2, 2025, at 9:00 a.m.

**Virtual Hearing Information**

A public hearing will be held via remote conferencing to consider the proposed changes to the agency's rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/89284375696>

Meeting ID: 892 8437 5696; Password: 143416

Dial by Telephone: +1 646 558 8656

Meeting ID: 892 8437 5696; Password: 143416

**Comments**

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](https://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, October 10, 2025, at 5:00 p.m.

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## **Accommodations**

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, September 25, 2025, at 5:00 p.m.

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## **Contact**

Department of Labor and Industry  
(406) 444-5466  
laborlegal@mt.gov  
Montana Relay: 711

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## **General Reasonable Necessity Statement**

There is a reasonable necessity to adopt new rules to clarify and standardize the department's process for processing and approving building permits under the state building code. New rules are necessary to implement the requirements of 50-60-206, MCA, and to ensure the due process rights of building permit applicants. The new rules clarify the deadlines for the approval and review of building permits and the right to a hearing. The rules reflect many department practices that are already in place for the processing of building permits, and the rules will not have a significant and direct impact on the majority of building permit applications processed by the state.

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## **Rulemaking Actions**

### **ADOPT**

The rules proposed to be adopted are as follows:

### **NEW RULE 1 DEFINITIONS**

- (1) "Applicant" means any person applying for a building permit from the department pursuant to the State Building Code.
- (2) "Application" means the forms and materials required to complete a request for a building permit from the department.
- (3) "Building permit" means an official document issued by the department that authorizes any individual or person to begin construction of a building.

- (4) “Complete application” means an application deemed complete by the department in accord with these rules.
- (5) “Days” means calendar days, and shall be counted as set forth in Title 1, chapter 1, part 3, MCA.
- (6) “Modification” means a change to an application or building plans to ensure compliance with the State Building Code.
- (7) “Undue hardship” means the applicant demonstrates that strict compliance with the State Building Code would create a significant difficulty or expense for the applicant based on the applicant’s specific resources and circumstances.
- (8) “Variance” means a departure from strict compliance with the State Building Code and does not include the use of alternative means or methods permissible in the building code which meet the purposes set forth in 50-60-201, MCA.

**Authorizing statute(s):** 50-60-203, MCA

**Implementing statute(s):** 50-60-101, 50-60-102, 50-60-103, 50-60-108, 50-60-201, 50-60-203, 50-60-205, 50-60-206, MCA

### **Reasonable Necessity Statement**

This new rule defines the terms used by the department when processing building code permit applications pursuant to the State Building Code.

### **NEW RULE 2 BUILDING PERMIT APPLICATION**

- (1) An applicant shall submit an application to the department for a building permit for any non-exempt building being built, remodeled, moved, or undergoing a change of use.
- (2) The application shall be completed on forms provided by the department. The applicant shall include the following information with the application:
  - (a) a detailed description of the building use, or a description of the building change of use;
  - (b) any applicable fees pursuant to ARM 24.301.138; and
  - (c) building plans as described in [NEW RULE 3].

- (3) Applications and any attachments may be submitted to the department through the department's online portal, email, or mail to the Building and Commercial Measurements Bureau. Email attachments sized larger than 50 MG may be sent to the department over the state's File Transfer Service.
- (4) All applications and any attachments submitted to the department shall be in .pdf format, oriented consistently, and using minimum 12-point font.
- (5) When an application is complete, the department shall:
  - (a) inform the applicant;
  - (b) begin review of the application; and
  - (c) notify the state fire prevention and investigation section of the Department of Justice within five days.
- (6) The department may request additional information at any time before and during the department's review of the application. A failure of the applicant to provide additional information requested by the department may result in the application being returned unprocessed and no building permit being issued.
- (7) Any request for a variance from the State Building Code shall be included in an initial application for a building permit or as soon as practicable after the initial application is submitted. A variance request shall include a statement of undue hardship, and the variance request shall include alternative building plans to protect health, safety, and security.

**Authorizing statute(s):** 50-60-203, MCA

**Implementing statute(s):** 50-60-101, 50-60-102, 50-60-103, 50-60-108, 50-60-201, 50-60-203, 50-60-205, 50-60-206, MCA

### **Reasonable Necessity Statement**

This new rule standardizes and clarifies how to submit a building permit application to the department and the necessary requirements of a complete building permit application. The rule further ensures the department complies with 50-60-202, MCA, which states that "[t]he state fire prevention and investigation section of the department of justice shall review building plans and regulations for conformity with rules promulgated by the department."

### **NEW RULE 3 BUILDING PLANS**

- (1) An application for a building permit shall include building plans and specifications drawn to scale.
- (2) The building plans shall clearly indicate the location, nature, and extent of work proposed, and the building plans shall show conformity with the State Building Code.
- (3) The building plans shall include:
  - (a) a site plan locating the proposed building on the property;
  - (b) a dimensioned floor plan;
  - (c) identification of the use of each room or area;
  - (d) a dimensioned typical section through the structure showing footings, foundations, walls, floors, ceilings and roof materials, and details;
  - (e) material specifications as appropriate; and
  - (f) all building insulation R-values, and description of heating and ventilation equipment and combustion air provisions and equipment capacity.
- (4) The department may request the seal and certification of a licensed Montana engineer for the roof trusses used, and for footing/foundations designs that are not in compliance with the International Building Code, such as a slab on grade.

**Authorizing statute(s):** 50-60-203, MCA

**Implementing statute(s):** 50-60-101, 50-60-102, 50-60-103, 50-60-108, 50-60-201, 50-60-203, 50-60-205, 50-60-206, MCA

### **Reasonable Necessity Statement**

This new rule standardizes and clarifies the requirements for building plans that shall be included with a building permit application.

### **NEW RULE 4 FIRE PREVENTION REVIEW**

- (1) The Department of Justice may submit comments within seven days of the notification of a complete application under [NEW RULE 2].

**Authorizing statute(s):** 50-60-203, MCA

**Implementing statute(s):** 50-60-101, 50-60-102, 50-60-103, 50-60-108, 50-60-201, 50-60-202, 50-60-203, 50-60-205, 50-60-206, MCA

### **Reasonable Necessity Statement**

This new rule provides a specific opportunity for comment by the Department of Justice regarding building plans. The department will review timely submitted comments during its decision-making process with regard to applications.

### **NEW RULE 5 APPLICATION APPROVAL, MODIFICATION, OR DENIAL**

- (1) If an application includes a variance request, or the department begins initial review of the application and concludes that a variance request is necessary to issue a building permit, the department shall process the application pursuant to [NEW RULE 6]. If the application does not include a variance request, or the department begins an initial review of an application that includes a variance request, and the department determines that a variance request is not necessary to issue a building permit, the department may proceed with processing the application under (3).
- (2) The department shall inform the applicant in writing upon receipt of a completed application. The applicant shall submit any additional information requested by the department pursuant to the State Building Code.
- (3) The department shall review and make a determination to approve, modify, or deny an application for a building permit within 30 days of receipt of the completed application, as defined in [NEW RULE 2], as follows:
  - (a) If an application is approved, the department shall issue a building permit.
  - (b) If an application is approved with modifications, the department shall provide the modifications to the applicant in writing upon issuing the building permit.
  - (c) If an application is denied, the department shall provide a reason for the denial to the applicant in writing.
- (4) If an applicant disagrees with the department's modifications or denial of the permit, the applicant may request a hearing pursuant to [NEW RULE 7] within seven days of the department's determination.

**Authorizing statute(s):** 50-60-203, MCA

**Implementing statute(s):** 50-60-101, 50-60-102, 50-60-103, 50-60-108, 50-60-201, 50-60-203, 50-60-205, 50-60-206, MCA

### **Reasonable Necessity Statement**

This new rule standardizes and clarifies the processing of building permit applications by the department. The rule implements the 30-day deadline for processing of applications found in 50-60-206(1)(e), MCA. The new rule is necessary to clarify that a public hearing is only required when an application includes a variance request, and the majority of building permit applications submitted to the department do not require a public hearing under 50-60-206(1)(e), MCA ("The department has the power, on satisfactory proof after a public hearing, to: . . . within 30 days make a determination that the application or plans or specifications are in compliance with the provisions of the state building code . . . issue any permit, license, certificate, authorization, or other document required for the construction.") Section 50-60-206(1)(e), MCA, was originally adopted in 1969 as R.C.M. 1947, 69-2114. In over 50 years since the statute was adopted, the department has not required a public hearing on every application for a building permit; to do so would be an absurd interpretation of the statute, and it would be an unnecessary use of time and resources for both the department and applicants. The new rule clarifies that the majority of applications do not require a public hearing; however, a hearing is required when a variance request is made, and a hearing may be requested by an applicant who does not agree with the department's redetermination of the application.

### **NEW RULE 6 VARIANCE REQUEST**

- (1) Where a variance request is necessary to issue a building permit the department shall allow the applicant a reasonable time to submit the following:
  - (a) a variance request that includes the building code being varied;
  - (b) a statement of undue hardship; and
  - (c) alternative building plans to protect health, safety, and security.
- (2) The department shall inform the applicant in writing upon receipt of a completed variance request.
- (3) The applicant shall submit any additional information requested by the department pursuant to the State Building Code, including information to support a statement of undue hardship or alternative building plans.

- (4) Before the department approves, denies, or modifies any application for a building permit that includes a variance request, the requirements of [NEW RULE 7] must be satisfied.

**Authorizing statute(s):** 50-60-203, MCA

**Implementing statute(s):** 50-60-101, 50-60-102, 50-60-103, 50-60-108, 50-60-201, 50-60-203, 50-60-205, 50-60-206, MCA

### **Reasonable Necessity Statement**

This new rule clarifies and standardizes the department's processing of variance requests made as part of a building permit application. The rule implements the requirement for a hearing on a variance request found in 50-60-206, MCA. A variance request represents a departure from the State Building Code, and the department determines that a public hearing is necessary to properly address the issues of the applicant's claimed undue burden and proposed alternative means of protecting health and safety. A public hearing on a variance request affords the applicant, the department, and the Department of Justice additional time to address issues of safety and health.

### **NEW RULE 7 HEARING PROCEDURE**

- (1) A variance request and a request for hearing pursuant to 50-60-206, MCA, are considered a request for declaratory ruling by the department regarding the application of a particular provision of the State Building Code to the application.
- (2) The department shall schedule a hearing:
  - (a) between 21 and 35 days after completion of a variance request that the department determined is necessary for the application; or
  - (b) not more than 25 days after an applicant requests a hearing pursuant to [NEW RULE 5].
- (3) Notice of the hearing shall be posted on the department's website and be provided to the applicant, the Department of Justice, and the interested party list established for this purpose by the department.
- (4) The complete application shall be published on the department's website and provided to any person upon request.



- (5) The hearing shall be conducted by a hearing officer appointed by the department and may be in-person or over videoconferencing means as determined by the department. The hearing is not bound by common law or the rules of evidence. Questions may be asked only by the hearing officer. The hearing procedure is as follows:
  - (a) The applicant may explain the project, the need for the variance or other modification, and the legal sufficiency of the application.
  - (b) Proponents of the application may provide verbal or written comments.
  - (c) Opponents of the application may provide verbal or written comments.
  - (d) Informational witnesses, including department staff, may provide verbal or written comment on any issue relevant to the variance request.
  - (e) The applicant may close and provide rebuttal to comments received.
- (6) The department shall consider any comments regarding the application that are received between the date of the publication of notice of the hearing and the time of the close of the hearing.
- (7) The hearing officer shall issue a written decision regarding the application. The decision shall include the facts and reasoning supporting the determination.

**Authorizing statute(s):** 50-60-203, MCA

**Implementing statute(s):** 2-4-501, 50-60-101, 50-60-102, 50-60-103, 50-60-105, 50-60-108, 50-60-201, 50-60-203, 50-60-205, 50-60-206, MCA

### **Reasonable Necessity Statement**

This new rule implements the requirements of a hearing for a variance request under 50-60-206(1), MCA, or any party aggrieved by a department redetermination under 50-60-206(2), MCA. An applicant requesting a variance or aggrieved by a department redetermination is entitled to a hearing pursuant to the Administrative Procedure Act pursuant to 50-60-206(2) through (4), MCA.

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### **Small Business Impact**

These rules are not expected significantly and directly to impact small businesses. The department proposes to adopt rules of procedure to process, consider, and receive feedback for variances from the state building codes. These proposed rules align generally with existing

business practices, but provide for greater clarity for the public and stakeholders as to how to engage in the process. While applicants for variance may have costs associated with applying for a variance, these costs are not increased or exacerbated as a result of these rules. It remains a priority of the department to ensure the timely and efficient processing of variances.

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### **Bill Sponsor Notification**

The bill sponsor contact requirements do not apply.

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### **Interested Persons**

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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### **Rule Reviewer**

Quinlan L. O'Connor

### **Approval**

Sarah Swanson, Commissioner