# LAND USE PLANNING IN COLORADO

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**NOTE:** The following information is intended to provide a general overview of legislative enabling authority for land use planning in Colorado. Any local government considering utilizing any of the land use powers cited here should carefully review the relevant statutes and case law. This is not a complete review of all Colorado land use law, and is not to be construed as legal advice. All statutory citations refer to the Colorado Revised Statutes (CRS), as amended, through 2001.

## INTRODUCTION

Colorado has a strong tradition of local government control with respect to land use planning. Unlike some other states, Colorado does not have a statewide land use plan. Land use planning regulations, like zoning, sign codes and building codes, are, for the most part, locally designated.

The land use regulatory authority of counties and municipalities emanates from the "police power" of the state. That is, the state delegates this authority to local governments through enabling legislation. The exercise of this police power, be it in the enactment of land use controls or in decisions enforcing such regulations, must bear a rational relationship to the health, safety, and welfare of the community. This police power must be exercised in a manner consistent with federal and state constitutional rights.

## LAND USE ENACTMENT BY THE COLORADO GENERAL ASSEMBLY

The Colorado Legislature has passed many bills with implications for land use planning and regulation. It has placed the majority of land use responsibility and control at the local (county and municipal) level of government. The following discussion is primarily limited to those statutes that address land use planning and control directly, although there exists additional legislation enabling local governments and state agencies to perform a variety of functions that indirectly affect land use. All of the statutes listed below, unless otherwise noted, are enabling legislation only. This means that these are tools for local governments to use at their prerogative in planning; they are not mandated or enforced (unless otherwise noted).

### Local Government Statutes

- Counties (30-28-103) and municipalities (31-23-202) are authorized to appoint a **planning commission** (except where the county population is less than 15,000, in which case the board of county commissioners may constitute the planning commission, or appoint a separate body).

- County (30-28-106) and municipal planning commissions (31-23-206) are required to prepare and adopt a **master plan** (often referred to as a comprehensive plan) for the physical development of their jurisdictions. In 2001, legislation was passed requiring the more populous and faster growing counties and municipalities to formally adopt their master plans within a two-year timeframe. This legislation also requires that master plans adopted pursuant to this section include a recreation and tourism uses element.

### Planning Tools

- Land use regulation through **zoning** is available for counties (30-28-111) and municipalities (31-23-301).

- The adoption of **subdivision regulations** has also been ***required*** of counties since 1972 (30-28-133), while optional for municipalities (31-23-214). “Subdivisions” or “subdivided land” is defined (30-28-101 (10) for counties, 31-23-201 (2) for municipalities) as any parcel of land which is to be used for condominiums, apartments, or any other multiple dwelling units, or which is divided into two or more parcels unless specifically excluded in this same section. Specifically excluded from the definition of subdivision within counties is any division of land resulting in parcels of 35 acres or more.

- Counties and municipalities are authorized to use planned unit developments (**PUDs**) (24-67-101).

- The **Municipal Annexation Act of 1965** (31-12-101) gives municipalities the authority to annex, and sets eligibility, procedures and limitations for annexation. Legislation was passed in 2001 in an attempt to limit "flagpole annexations" by allowing landowners whose property abuts "the pole" (right-of-way, platted street or alley, etc. that establishes contiguity to the parcel to be annexed) to petition to be annexed under the same terms and conditions as the parcel to be annexed, a.k.a. "the flag" (31-12-105).

- In 1999, the General Assembly updated the **vested property rights** statutes (24-68-101) to allow municipalities and counties to establish a vesting process and determine when vesting occurs in the development review process within a jurisdiction. If a local government does not adopt an ordinance or resolution to determine when vesting occurs, vesting will automatically occur upon approval of any plan, plat, drawing or sketch. Development proposals must go through the review process under the same regulations that were in effect when the completed application was submitted (except in emergency/safety situations).

- Counties (30-28-201) and municipalities (31-15-601) may adopt **building codes** for consideration of and in accordance with the public health, safety, morals and general welfare and the safety, protection and sanitation of such dwellings, buildings, and structures. If a county or municipality does not have a building code, certain buildings intended for multiple occupancy (motels, hotels, multi-family structures, and factory-built housing) are subject to building standards set forth by the state Division of Housing (24-32-3301, et. seq.).

  Please note that county and municipal building codes do not apply to school construction. Schools are instead subject to building standards set forth by the Division of Oil and Public Safety within the Colorado Department of Labor and Employment (22-32-124).

- In 2001, broad **impact fee authority** was granted to counties and statutory municipalities, enabling them to better plan for growth and permitting that, to the extent practicable, certain costs of growth will be paid for by new development (29-20-104.5). Home rule municipalities have always had the authority to collect impact fees by virtue of their constitutional home rule powers.

- The **Local Government Land Use Control Enabling Act** (29-20-101, from HB 74-1034) grants counties and municipalities broad authority to plan for and regulate the use of land, with no restrictions, conditions, or procedures prescribed for local governments. According to this statute, each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

1. Regulating development and activities in hazardous areas;
2. Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;
3. Preserving areas of historical and archaeological importance;
4. Regulating, with respect to the establishment of, road and public lands administered by the federal government; this authority includes authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized under the general right-of-way granted to the public, but not for the establishment of any road authorized for mining claim purposes or under any specific permit or lease granted by the federal government;
5. Regulating establishment of road and public lands administered by the federal government (including authority to regulate public right-of-way, but not on roads authorized for mining claim purposes or under specific permit of lease granted by the federal government);
6. Regulating the location of activities and developments which may result in significant changes in population density;
7. Providing for phased development of services and facilities;
8. Regulating land use on the basis of the impact thereof on the community or surrounding areas;
9. Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

- The so-called **"1041 powers"** (the name is derived from HB 74-1041) found in 24-65.1-101 allow local governments to identify, designate, and regulate (through a permitting process) 21 statutorily defined "**areas and activities of state interest**." The 21 areas and activities are as follows:

  **Areas:**
  1. Mineral resource areas
  2. Geological hazard areas
  3. Wildfire hazard areas
  4. Flood hazard areas
  5. Historical and archaeological resource areas
  6. Significant wildlife area habitats
  7. Shorelands of major publicly-owned reservoirs
  8. Areas around airports
  9. Areas around major facilities of a public utility
  10. Areas around interchanges involving arterial highways
  11. Areas around rapid or mass transit facilities

**Activities:**

12. Site selection and construction of major new water and sewage treatment systems
13. Major extensions of existing domestic water and sewage treatment systems
14. Site selection and development of solid waste disposal sites
15. Site selection of airports
16. Site selection of rapid or mass transit facilities
17. Site selection of arterial highways and interchanges and collector highways
18. Site selection and construction of major facilities of a public utility
19. Site selection and development of new communities
20. Efficient utilization of municipal and industrial water projects
21. Conduct of nuclear detonations

## Extraterritorial and Cooperative Powers

In addition to the foregoing statutes regarding the use of land within respective jurisdictions, there exist other statutes that give one jurisdiction certain powers over land use activities in a different jurisdiction:

- 31-23-212 and 213 enable a municipality to enforce its major **street plan** on all land within three miles of its boundaries.

- 31-15-401 through 601 allows a municipality to prohibit or regulate **nuisances** such as bawdy, obscene or disorderly houses within three miles of city limits, and storage of explosives within one mile. 25-7-138(4) allows municipalities to consent to the location of a new land waste application site or new waste impoundment within one mile of their boundaries.

- 31-15-707 (IV) (b) allows a municipality to construct **waterworks** outside its boundaries and to protect the waterworks and water supply from pollution (up to five miles above the point from which the water is taken).

- 31-25-216, 217, 301, and 302 allow a municipality to establish, manage, and protect its **park lands**, recreation facilities and conservation easements (including the water in those parks) located beyond city limits.

- 31-23-225 ***requires*** a municipality to notify the county, as well as the Land Use Commission and State Geologist, of a **proposed major activity** (covering five or

more acres of land), prior to approving any zoning change, subdivision or building permit application associated with that activity.

- 30-28-136 ***requires*** counties to submit a copy of any **preliminary plan for a subdivision** to affected governments, including: school districts, special and other districts, counties and municipalities located within two miles of the proposal, and other agencies. The statute also requires the county to allow a twenty-one day review period before taking action.

- In 2001, legislation was enacted requiring jurisdictions intending to adopt or amend a master plan to give notice of the proposed plan or amendments to all neighboring jurisdictions for review. The neighboring jurisdictions may file objections to the proposed plan or amendments and may compel the planning jurisdiction to participate in mediation, prior to litigation, in order to settle the dispute over the master plan or amendments (24-32-3209).

Some statutes specifically address the power of local governments to cooperate with each other:

- 29-20-105 through 107 authorizes and encourages **local governments to cooperate or contract with other units of government** for purposes of planning or regulating the development of land. Local governments may provide through intergovernmental agreements **(IGAs)** for the joint adoption by the governing bodies, after notice and hearing, of **mutually binding and enforceable comprehensive development plans** for areas within their jurisdictions. The IGA may contain a provision that the plan may be amended only by the mutual agreement of the governing bodies of the local governments who are parties of the plan. Each governing body has standing in district court to enforce the terms of the agreement and the plan. Local governments may, pursuant to an IGA, provide for **revenue sharing**.

- 29-1-203 allows local governments to cooperate or **contract with one another to provide any function,** service, or facility lawfully authorized to each of the cooperating or contracting units. The contract may establish a separate legal entity to do so.

- 30-28-105 enables municipalities and counties to form multi-county and joint city/county planning commissions, known as **regional planning commissions**, to conduct studies and make and adopt a regional plan for the physical development of the region. 30-28-117(5) enables regional zoning boards of adjustment as well.

- 32-7-101 authorizes at least two counties (upon approval of the electors) to form a **regional service authority** to perform any of the nearly twenty service functions

(e.g., urban drainage and flood control, land and soil preservation, public surface transportation, etc).

- Special districts and school districts may, upon a vote of their boards, overrule development disapprovals by the board of county commissioners (30-28-110(c)).

## Home Rule Municipalities

Local governments are free to draw upon any and all authority delegated by the General Assembly, and home rule cities derive additional authority from their charters. Home rule municipality authority is found in Article XX of the Colorado Constitution. Article XX has been interpreted to mean that where a matter is of a local and municipal concern, the home rule city does not derive its powers over such matters from the General Assembly but rather derives its powers from Article XX of the Constitution. In matters of exclusively statewide concern, state statutes would supersede any conflicting local ordinances. The Colorado Courts have consistently ruled that zoning is a local and municipal matter, and the courts will look to the charter and the ordinances of the city for zoning matters and not to the Colorado statutes. For a home rule municipality, the authority for requiring the subdivision of land is also found in Article XX of the Colorado Constitution.

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