

Colorado Statutes - **CRS 29-20**:

Title 29 Government - Local:

Land Use Control and Conservation:

Article 20-

## LOCAL GOVERNMENT REGULATION OF LAND USE

**Law reviews.** For article, "Vested Property Rights in Colorado: The Legislature Rushes in Where ....", see Den. U. L. Rev. 31 (1988); for article, "Cooperative Management of Urban Growth Areas Through IGAs", see 29 Colo. Law. 85 (November 2000); for article, "Transferable Development Rights and Their Application in Colorado: An Overview", see 34 Colo. Law. 75 (March 2005).

### PART 1 LOCAL GOVERNMENT LAND USE CONTROL ENABLING ACT

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**PART 1 LOCAL GOVERNMENT LAND USE CONTROL ENABLING ACT**

**29-20-101. Short title.**

This article shall be known and may be cited as the "Local Government Land Use Control Enabling Act of 1974".

**Source: L. 74:** Entire article added, p. 353, § 1, effective May 17.

**ANNOTATION**

**Law reviews.** For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980).

**29-20-102. Legislative declaration.**

- (1) The general assembly hereby finds and declares that in order to provide for planned and orderly development within Colorado and a balancing of basic human needs of a changing population with legitimate environmental concerns, the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions. Nothing in this article shall serve to diminish the planning functions of the state or the duties of the division of planning.
- (2) The general assembly further finds and declares that local governments will be better able to properly plan for growth and serve new residents if they are authorized to impose impact fees as a condition of approval of development permits. However, impact fees and other development charges can affect growth and development patterns outside a local government's jurisdiction, and uniform impact fee authority among local governments will encourage proper growth management.

**Source: L. 74:** Entire article added, p. 353, § 1, effective May 17. **L. 2001, 2nd Ex. Sess.:** Entire section amended, p. 27, § 1, effective November 6.

**ANNOTATION**

**Applied** in *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981); *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

**29-20-103. Definitions.**

As used in this article, unless the context otherwise requires:

- (1) "Development permit" means any preliminary or final approval of an application for rezoning, planned unit development, conditional or special use permit, subdivision, development or site plan, or similar application for new construction.
- (1.5) "Local government" means a county, home rule or statutory city, town, territorial charter city, or city and county.
- (2) "Power authority" means an authority created pursuant to section 29-1-204.

**Source: L. 74:** Entire article added, p. 353, § 1, effective May 17. **L. 2001:** (2) added, p. 597, § 3, effective May 30. **L. 2001, 2nd Ex. Sess.:** (1) amended and (1.5) added, p. 27, § 2, effective November 6.

**29-20-104. Powers of local governments.**

- (1) Except as expressly provided in section 29-20-104.5, the power and authority granted by this section shall not limit any power or authority presently exercised or previously granted. Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:
- (a) Regulating development and activities in hazardous areas;
  - (b) Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;
  - (c) Preserving areas of historical and archaeological importance;
  - (d) Regulating, with respect to the establishment of, roads on 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 by 43 U.S.C. 932 (R.S. 2477) but does not include authority to prohibit, set conditions for, or require a permit for the establishment of any road authorized for mining claim purposes by 30 U.S.C. 21 et seq., or under any specific permit or lease granted by the federal government;
  - (e) Regulating the location of activities and developments which may result in significant changes in population density;
  - (f) Providing for phased development of services and facilities;
  - (g) Regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and
  - (h) 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.

**Source: L. 74:** Entire article added, p. 353, § 1, effective May 17. **L. 2001, 2nd Ex. Sess.:** IP(1) amended, p. 28, § 3, effective November 6.

**ANNOTATION**

**Law reviews.** For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For article, "A Municipal Perspective on Senate Bill 15: Impact Fees", see 31 Colo. Law. 93 (May 2002).

**This section does not confer upon counties the authority to impose conditions for granting permits for exploratory oil well operation** when such authority was granted exclusively to state oil and gas conservation commission under Oil and Gas Conservation Act. *Osborne v. County Comm'rs of Douglas Cty.*, 764 P.2d 397 (Colo. App. 1988), cert. denied, 778 P.2d 1370 (Colo. 1989).

**The Land Use Act (§ 29-20-101, C.R.S., et seq.) and the County Planning Code (§ 30-28-101, C.R.S., et seq.) authorize county regulation of land use in the unincorporated areas of the county.** Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993).

**This section provides independent authority** for local governments to regulate land use to protect wildlife habitat and wildlife species. Droste v. Bd. of County Comm'rs, 85 P.3d 585 (Colo. App. 2003).

**No authority to adopt "subdivision" definition contrary to § 30-28-101.** Sections 29-20-101 to 29-20-107 do not confer the authority upon a county to adopt a definition of "subdivision" in its regulations which is contrary to the express statutory definition found in § 30-28-101 (10). Pennobscot, Inc. v. Bd. of County Comm'rs, 642 P.2d 915 (Colo. 1982).

**Or to adopt regulations covering land specifically excluded.** Sections 29-20-101 to 29-20-107 do not confer the authority to adopt subdivision regulations covering parcels of land which are specifically excluded from the provisions of § 30-28-101 (10). Pennobscot, Inc. v. Bd. of County Comm'rs, 642 P.2d 915 (Colo. 1982).

**County regulations concerning wetlands protection and nuisance abatement were related to valid county concerns** under this act for local governments to regulate land use and protect environment. Colorado Springs v. Eagle County Bd. of County Comm'rs, 895 P.2d 1105 (Colo. App. 1994).

**Applied** in Theobald v. Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982); Bd. of County Comm'rs v. Bowen/Edwards Assoc., 830 P.2d 1045 (Colo. 1992).

**29-20-104.5. Impact fees.**

- (1) Pursuant to the authority granted in section 29-20-104 (1) (g) and as a condition of issuance of a development permit, a local government may impose an impact fee or other similar development charge to fund expenditures by such local government on capital facilities needed to serve new development. No impact fee or other similar development charge shall be imposed except pursuant to a schedule that is:
  - (a) Legislatively adopted;
  - (b) Generally applicable to a broad class of property; and
  - (c) Intended to defray the projected impacts on capital facilities caused by proposed development.
- (2) A local government shall quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee or development charge at a level no greater than necessary to defray such impacts directly related to proposed development. No impact fee or other similar development charge shall be imposed to remedy any deficiency in capital facilities that exists without regard to the proposed development.
- (3) Any schedule of impact fees or other similar development charges adopted by a local government pursuant to this section shall include provisions to ensure that no individual landowner is required to

provide any site specific dedication or improvement to meet the same need for capital facilities for which the impact fee or other similar development charge is imposed.

- (4) As used in this section, the term "*capital facility*" means any improvement or facility that:
  - (a) Is directly related to any service that a local government is authorized to provide;
  - (b) Has an estimated useful life of five years or longer; and
  - (c) Is required by the charter or general policy of a local government pursuant to a resolution or ordinance.
- (5) Any impact fee or other similar development charge shall be collected and accounted for in accordance with part 8 of article 1 of this title. Notwithstanding the provisions of this section, a local government may waive an impact fee or other similar development charge on the development of low- or moderate-income housing or affordable employee housing as defined by the local government.
- (6) No impact fee or other similar development charge shall be imposed on any development permit for which the applicant submitted a complete application before the adoption of a schedule of impact fees or other similar development charges by the local government pursuant to this section. No impact fee or other similar development charge imposed on any development activity shall be collected before the issuance of the development permit for such development activity. Nothing in this section shall be construed to prohibit a local government from deferring collection of an impact fee or other similar development charge until the issuance of a building permit or certificate of occupancy.
- (7) Any person or entity that owns or has an interest in land that is or becomes subject to a schedule of fees or charges enacted pursuant to this section shall, by filing an application for a development permit, have standing to file an action for declaratory judgment to determine whether such schedule complies with the provisions of this section. An applicant for a development permit who believes that a local government has improperly applied a schedule of fees or charges adopted pursuant to this section to the development application may pay the fee or charge imposed and proceed with development without prejudice to the applicant's right to challenge the fee or charge imposed under rule 106 of the Colorado rules of civil procedure. If the court determines that a local government has either imposed a fee or charge on a development that is not subject to the legislatively enacted schedule or improperly calculated the fee or charge due, it may enter judgment in favor of the applicant for the amount of any fee or charge wrongly collected with interest thereon from the date collected.
- (8)
  - (a) The general assembly hereby finds and declares that the matters addressed in this section are matters of statewide concern.
  - (b) This section shall not prohibit any local government from imposing impact fees or other similar development charges pursuant to a schedule that was legislatively adopted before October 1, 2001, so long as the local government complies with subsections (3), (5), (6), and (7) of this section. Any amendment of such schedule adopted after October 1, 2001, shall comply with all of the requirements of this section.
- (9) If any provision of this section is held invalid, such invalidity shall invalidate this section in its entirety, and to this end the provisions of this section are declared to be nonseverable.

**Source: L. 2001, 2nd Ex. Sess.:** Entire section added, p. 28, § 4, effective November 6.

**ANNOTATION**

**Law reviews.** For article, "A Municipal Perspective on Senate Bill 15: Impact Fees", see 31 Colo. Law. 93 (May 2002).

**29-20-105. Intergovernmental cooperation.**

- (1) Local governments are authorized and encouraged to cooperate or contract with other units of government pursuant to part 2 of article 1 of this title for the purposes of planning or regulating the development of land including, but not limited to, the joint exercise of planning, zoning, subdivision, building, and related regulations.
- (2) (a) Without limiting the ability of local governments to cooperate or contract with each other pursuant to the provisions of this part 1 or any other provision of law, local governments may provide through intergovernmental agreements 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. This section shall not affect the validity of any intergovernmental agreement entered into prior to April 23, 1989.
- (b) A comprehensive development plan may contain master plans, zoning plans, subdivision regulations, and building code, permit, and other land use standards, which, if set out in specific detail, may be in lieu of such regulations or ordinances of the local governments.
- (c) Notwithstanding any other statutory provisions of article 28 of title 30, C.R.S., review of comprehensive development plans by the planning commissions of the local governments shall be discretionary, unless otherwise required by local ordinance. This subsection (2) shall not apply to the requirements of sections 30-28-110 and 30-28-127, C.R.S.
- (d) An intergovernmental agreement providing for a comprehensive development plan 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 to the plan.
- (e) In the event that a plan is silent as to a specific land use matter, existing local land use regulations shall control.
- (f) (l) An intergovernmental agreement may contain provisions concerning annexation, including, but not limited to provisions:
  - (A) That a comprehensive development plan shall continue to control particular land areas even though the land areas are annexed or jurisdiction over the land areas is otherwise transferred pursuant to law between the local governmental entities who are parties to the agreement;
  - (B) For revenue sharing between local governments; and
  - (C) Concerning land areas that may be annexed by municipalities and the conditions related to such annexations as established in the comprehensive development plan.

- (II) Nothing in this paragraph (f) shall be construed to render invalid any intergovernmental agreement or comprehensive development plan entered into prior to November 6, 2001.
- (g) Each governing body that is a party to an intergovernmental agreement adopting a comprehensive development plan shall have standing in district court to enforce the terms of the agreement and the plan, including specific performance and injunctive relief. The district court shall schedule all actions to enforce an intergovernmental agreement and comprehensive development plan for expedited hearing.
- (h) Local governments may, pursuant to an intergovernmental agreement, provide for revenue-sharing.
- (i) Local governments shall not be required to enter into intergovernmental agreements or comprehensive development plans pursuant to this section.

**Source:** L. 74: Entire article added, p. 354, § 1, effective May 17. L. 89: Entire section amended, p. 1268, § 1, effective April 23. L. 99: (2)(a) amended, p. 590, § 2, effective July 1. L. 2001, 2nd Ex. Sess.: (2)(f) amended, p. 31, § 1, effective November 6.

#### ANNOTATION

**Law reviews.** For article, "Growth Management: Recent Developments in Municipal Annexation and Master Plans", see 31 Colo. Law. 61 (March 2002).

#### **29-20-106. Receipt of funds.**

Without limiting or superseding any authority presently exercised or previously granted, local governments are hereby authorized to receive and expend funds from other governmental and private sources for the purposes of planning for or regulating the use of land within their respective jurisdictions.

**Source:** L. 74: Entire article added, p. 354, § 1, effective May 17.

#### **29-20-107. Compliance with other requirements.**

Except as provided in section 29-20-105 (2), where other procedural or substantive requirements for the planning for or regulation of the use of land are provided by law, such requirements shall control.

**Source:** L. 74: Entire article added, p. 354, § 1, effective May 17. L. 89: Entire section amended, p. 1269, § 2, effective April 23.

#### ANNOTATION

**Under this section,** a county cannot disregard a limitation of its authority found in another statute. The zoned land exemption contained in § 24-65.1-107 (1)(c)(II) is not, however, a "requirement" that is meant to "control" under this section. Droste v. Bd. of County Comm'rs, 85 P.3d 585 (Colo. App. 2003).

**29-20-108. Local government regulation - location, construction, or improvement of major electrical or natural gas facilities - legislative declaration.**

- (1) The general assembly finds, determines, and declares that the location, construction, and improvement of major electrical and natural gas facilities are matters of statewide concern. The general assembly further finds, determines, and declares that:
  - (a) A reliable supply of electric power and natural gas statewide is of vital importance to the health, safety, and welfare of the people of Colorado;
  - (b) Electric power is transmitted by means of an interconnected grid system serving every area of the state, and natural gas is carried through a series of interconnected pipelines statewide;
  - (c) Impacts on the electric grid system or natural gas pipelines in one area of the state may have impacts on other areas of the state; and
  - (d) It is critical that public utilities and power authorities that supply electric or natural gas service maintain the ability to meet the demands for such service as growth continues to occur statewide.
- (2) Local government land use regulations shall require final local government action on any application of a public utility or a power authority providing electric or natural gas service that relates to the location, construction, or improvement of major electrical or natural gas facilities within one hundred twenty days after the utility's or authority's submission of a preliminary application, if a preliminary application is required by the local government's land use regulations, or within ninety days after submission of a final application. If the local government does not take final action within such time, the application shall be deemed approved. Within twenty-eight days of the submission by a utility or authority of an application pursuant to this subsection (2), the local government shall notify the utility or authority of any additional information that must be supplied by the utility or authority to complete the application. The notice shall specify the particular provisions of the local government's land use regulations that necessitate submission of the required information. The one hundred twenty- or ninety-day period, as applicable, during which the local government is to take action on an application shall commence on the date that the utility or authority provides the requested information to the local government in response to the notice required by this subsection (2). If the local government does not notify the utility or authority within twenty-eight days that additional information is required to complete the application, the one hundred twenty- or ninety-day period, as applicable, shall commence on the date of the submission by the utility or authority of its application, and any request by a local government for additional information after the completion of the twenty-eight-day period shall not extend the applicable deadline for final local government action in accordance with the requirements of this subsection (2). Nothing in this subsection (2) shall be construed to supersede any timeline set by agreement between a local government and a utility or authority applying for local government approval of location, construction, or improvement of major electrical or natural gas facilities as defined in subsection (3) of this section.
- (3) As used in this section, "major electrical or natural gas facilities" includes one or more of the following:
  - (a) Electrical generating facilities;



- (b) Substations used for switching, regulating, transforming, or otherwise modifying the characteristics of electricity;
  - (c) Transmission lines operated at a nominal voltage of sixty-nine thousand volts or above;
  - (d) Structures and equipment associated with such electrical generating facilities, substations, or transmission lines; or
  - (e) Structures and equipment utilized for the local distribution of natural gas service including, but not limited to, compressors, gas mains, and gas laterals.
- (4) (a) A public utility or power authority shall notify the affected local government of its plans to site a major electrical or natural gas facility within the jurisdiction of the local government prior to submitting the preliminary or final permit application, but in no event later than filing a request for a certificate of public convenience and necessity pursuant to article 5 of title 40, C.R.S., or the filing of any annual filing with the public utilities commission that proposes or recognizes the need for construction of a new facility or the extension of an existing facility. If a public utility or power authority is not required to obtain a certificate of public convenience and necessity pursuant to article 5 of title 40, C.R.S., or file annually with the public utilities commission to notify the public utilities commission of proposed construction of a new facility or the extension of an existing facility, then the public utility or power authority shall notify any affected local governments of its intention to site a major electrical or natural gas facility within the jurisdiction of the local government when such utility or authority determines that it intends to proceed to permit and construct the facility. Following such notification, the public utility or power authority shall consult with the affected local governments in order to identify the specific routes or geographic locations under consideration for the site of the major electrical or natural gas facility and attempt to resolve land use issues that may arise from the contemplated permit application.
- (b) In addition to its preferred alternative within its permit application, the public utility or power authority shall consider and present reasonable siting and design alternatives to the local government or explain why no reasonable alternatives are available.
- (5) (a) If a local government denies a permit or application of a public utility or power authority that relates to the location, construction, or improvement of major electrical or natural gas facilities, or if the local government imposes requirements or conditions upon such permit or application that will unreasonably impair the ability of the public utility or power authority to provide safe, reliable, and economical service to the public, the public utility or power authority may appeal the local government action to the public utilities commission for a determination under section 40-4-102, C.R.S., so long as one or more of the following conditions exist:
- (l) The public utility or power authority has applied for or has obtained a certificate of public convenience and necessity from the public utilities commission pursuant to section 40-5-101, C.R.S., to construct the major electrical or natural gas facility that is the subject of the local government action;

- (II) A certificate of public convenience and necessity is not required for the public utility or power authority to construct the major electrical or natural gas facility that is the subject of the local government action; or
  - (III) The public utilities commission has previously entered an order pursuant to section 40-4-102, C.R.S., that conflicts with the local government action.
- (b) Any appeal brought by a public utility or power authority to the public utilities commission under this section shall be conducted in accordance with the procedural requirements of section 40-6-109.5, C.R.S. In addition to the formal evidentiary hearing on the appeal, conducted in accordance with the procedural requirements of section 40-6-109, C.R.S., the public utilities commission shall take statements from the public concerning the appealed local government action at an open hearing held at a location specified by the local government.
- (c) An appeal brought pursuant to this subsection (5) shall include a statement of the reasons why the local government action would unreasonably impair the ability of a public utility or power authority to provide safe, reliable, and economical service to the public.
- (d) The public utilities commission shall balance the local government interest with the statewide interest in the location, construction, or improvement of major electrical or natural gas facilities. In striking such balance, the public utilities commission shall render a decision that is consistent with article 65.1 of title 24, C.R.S., including section 24-65.1-105, C.R.S., and the commission shall consider the following factors:
- (I) The demonstrated need for the major electrical or natural gas facility;
  - (II) The extent to which the proposed facility is inconsistent with existing applicable local or regional land use ordinances, resolutions, or master or comprehensive plans;
  - (III) Whether the proposed facility would exacerbate a natural hazard;
  - (IV) Applicable utility engineering standards, including supply adequacy, system reliability, and public safety standards;
  - (V) The relative merit of any reasonably available and economically feasible alternatives proposed by the public utility, the power authority, or the local government;
  - (VI) The impact that the local government action would have on the customers of the public utility or power authority who reside within and without the boundaries of the jurisdiction of the local government;
  - (VII) The basis for the local government's decision to deny the application or impose additional conditions to the application;
  - (VIII) The impact the proposed facility would have on residents within the local government's jurisdiction including, in the case of a right of way in which facilities have been placed underground, whether those residents have already paid to place such facilities underground, and if so, shall give strong consideration to that fact; and
  - (IX) The safety of residents within and without the boundaries of the jurisdiction of the local government.

- (e) The public utilities commission shall deny any appeal brought under this section unless the public utility or power authority has complied with the notification and consultation requirements of subsection (4) of this section.
- (f) The public utilities commission may consult with the department of local affairs on land use issues in connection with any appeal. All information provided by the department of local affairs to the public utilities commission shall be part of the official record of the appeal and shall be subject to cross-examination or comments by the parties to the appeal.
- (g) Unless otherwise specified in this subsection (5), the appeal shall be conducted in accordance with article 6 of title 40, C.R.S., including the provisions of section 40-6-116, C.R.S., concerning any stay or suspension of the final determination made by the public utilities commission.
- (h) Nothing in this section shall be construed to limit or diminish the right of a public utility, power authority, or local government to appeal a local government, public utility, or power authority action, decision, or determination to a court of law pursuant to any other provision of law, or any appeal brought in connection with any decision by the public utilities commission under this subsection (5). Appeals brought under this paragraph (h) shall be given priority over other pending matters.
- (i) Nothing in this section shall be construed to limit the authority of a municipal government to require or grant a public utility franchise.

**Source:** L. 2000: Entire section added, p. 1608, § 1, effective July 1. L. 2001: (1)(d) and (2) amended and (4) and (5) added, p. 593, § 2, effective May 30. L. 2005: (2) amended, p. 315, § 1, effective August 8.

**Editor's note:** Section 2 of chapter 85, Session Laws of Colorado 2005, provides that the act amending subsection (2) applies to applications of a public utility or a power authority relating to the location, construction, or improvement of major electrical or natural gas facilities submitted on or after August 8, 2005. The act was passed without a safety clause. For an explanation concerning the effective date, see page vii of this volume.

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