

4 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE PROHIBITION ON LOCAL GOVERNMENTS  
5 FROM REQUIRING HOUSING FEES OR DEDICATIONS OF REAL PROPERTY FOR THE PURPOSES OF  
6 PROVIDING HOUSING FOR SPECIFIED INCOME LEVELS OR SALE PRICES; PROVIDING FOR  
7 INCLUSIONARY ZONING REGULATIONS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 7-  
8 2-4203, 76-2-203, 76-2-302, 76-25-303, 76-25-301, AND 76-25-401, MCA; AND REPEALING SECTIONS 76-  
9 2-114 AND 76-3-514, MCA."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **NEW SECTION. Section 1. Inclusionary zoning regulations -- limitations.** (1) A municipality with a  
14 population of at least 5,000 residents according to the latest decennial census that meets the requirements of  
15 this section may adopt inclusionary zoning regulations.

16 (2) Inclusionary zoning regulations must require that no more than 15% of all units produced in a  
17 residential development be considered affordable housing units unless additional units are accepted by the  
18 municipality in exchange for specific variances or deviations from zoning standards, subdivision standards, or  
19 public works design standards.

20 (3) (a) The municipality may adopt inclusionary zoning regulations only if the area median home  
21 price exceeds the annual area median income by at least 700%. If the median house price drops below 700%  
22 of the annual area median income, the municipality shall suspend the creation of additional affordable housing  
23 units under this section.

24 (b) If a municipality is required to suspend the creation of additional affordable housing units as  
25 provided in subsection (3)(a), the municipality may resume the creation of additional affordable housing units  
26 when the area median home sale price exceeds 700% of the annual area median income, after the governing  
27 body of the municipality passes a resolution and provides public notice as provided in 7-1-4127.

28 (4) As used in this section, the following definitions apply:

(a) "Affordable housing unit" means a housing unit intended for a specified income level or sale price as determined by the municipality.

(b) "Annual area median income" means the income amount as determined by the United States department of housing and urban development.

(c) "Inclusionary zoning regulations" means regulations that include a requirement:

- (i) to pay a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

(ii) to dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices.

**Section 2.** Section 7-2-4203, MCA, is amended to read:

**"7-2-4203. Imposition of conditions for approval of addition.** (1) The council has power by

13 ordinance to compel the owners of these additions to lay out streets, avenues, and alleys that correspond in  
14 width and direction and are continuations of the streets, avenues, and alleys in the city or town or in the addition  
15 contiguous to or near the proposed addition.

16 (2) The owner of any addition has no rights or privileges unless the owner complies with the terms  
17 and conditions of the ordinance and the plat has been submitted to, approved by, and endorsed by the mayor  
18 and council.

(3) The council may not compel the owner of an addition to:

20 (a) pay a fee for the purpose of providing housing for specified income levels or at specified sale  
21 prices; or

22 (b) dedicate real property for the purpose of providing housing for specified income levels or at  
23 specified sale prices.

24 (4) A dedication of real property as prohibited in subsection (3)(b) includes a payment or other  
25 contribution to a local housing authority or the reservation of real property for future development of housing for  
26 specified income levels or specified sale prices."

27

**Section 3.** Section 76-2-203, MCA, is amended to read:

1       **"76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

2           (a) made in accordance with the growth policy; and

3           (b) designed to:

4           (i) secure safety from fire and other dangers;

5           (ii) promote public health, public safety, and general welfare; and

6           (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other

7       public requirements.

8           (2) In the adoption of zoning regulations, the board of county commissioners shall consider:

9           (a) reasonable provision of adequate light and air;

10          (b) the effect on motorized and nonmotorized transportation systems;

11          (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the

12       areas around municipalities;

13          (d) the character of the district and its peculiar suitability for particular uses; and

14          (e) conserving the value of buildings and encouraging the most appropriate use of land throughout  
15       the jurisdictional area.

16          (3) Zoning regulations must, as nearly as possible, be made compatible with the zoning

17       ordinances of nearby municipalities.

18          (4) ~~Zoning regulations may not include a requirement to:~~

19          (a) ~~pay a fee for the purpose of providing housing for specified income levels or at specified sale~~  
20       ~~prices; or~~

21          (b) ~~dedicate real property for the purpose of providing housing for specified income levels or at~~  
22       ~~specified sale prices.~~

23          (5) ~~A dedication of real property as prohibited in subsection (4)(b) includes a payment or other~~  
24       ~~contribution to a local housing authority or the reservation of real property for future development of housing for~~  
25       ~~specified income levels or specified sale prices."~~

27       **Section 4.** Section 76-2-302, MCA, is amended to read:

28       **"76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or other

1 legislative body may divide the municipality into districts of the number, shape, and area as are considered best  
2 suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection,  
3 construction, reconstruction, alteration, repair, or use of buildings, structures, or land, including the creation of  
4 zoning districts that allow tiny dwelling units.

5 (2) All regulations must be uniform for each class or kind of buildings throughout each district, but  
6 the regulations in one district may differ from those in other districts.

7 (3) In a proceeding for a permit or variance to place manufactured housing within a residential  
8 zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely  
9 affect property values of conventional housing.

10 (4) As used in this section, the following definitions apply:

11 (a) "Manufactured housing" means a single-family dwelling, built offsite in a factory, that is in  
12 compliance with the applicable prevailing standards of the United States department of housing and urban  
13 development at the time of its production. A manufactured home does not include a mobile home or  
14 housetrailer, as defined in 15-1-101.

15 (b) (i) "Tiny dwelling unit" means a residential dwelling unit that is 350 to 750 square feet, is on a  
16 permanent foundation, and is used as a single-family dwelling for at least 45 days or longer.

17 (ii) Appendix Q, tiny houses, of the International Building Code as it was printed on January 1,  
18 2023, may govern all other requirements of a tiny dwelling unit that is 350 to 750 square feet.

19 (5) This section may not be construed to limit conditions imposed in historic districts, local design  
20 review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part  
21 2. Local design review standards imposed by a local government must be clear, objective, and necessary to  
22 protect public health or safety or to comply with federal law.

23 (6) Zoning regulations may not include a requirement to:

24 (a) pay a fee for the purpose of providing housing for specified income levels or at specified sale  
25 prices; or

26 (b) dedicate real property for the purpose of providing housing for specified income levels or at  
27 specified sale prices.

28 (7) A dedication of real property as prohibited in subsection (6)(b) includes a payment or other

1 contribution to a local housing authority or the reservation of real property for future development of housing for  
2 specified income levels or specified sale prices.

3 (8)(6) (a) Except as provided in subsection (8)(b) (6)(b), when reviewing an application for a zoning  
4 permit or variance from local design review standards, the determination of compliance with local design review  
5 standards as provided in subsection (5) must be conducted by employees of the municipality, and the  
6 municipality may not require review by an external board.

7 (b) Subsection (8)(a)-(6)(a) does not apply to historic preservation boards reviewing an application  
8 for a permit or variance to structures or districts that the local government has designated as historic or that are  
9 listed on the national register of historic places as defined in the National Historic Preservation Act of 1966 as it  
10 read on October 1, 2023."

11

12 **Section 5.** Section 76-25-301, MCA, is amended to read:

13 **"76-25-301. Authority to adopt local zoning regulations -- inclusionary zoning regulations. (1)**

14 (a) A local government subject to this chapter, within its respective jurisdiction, has the authority to and shall  
15 regulate the use of land in substantial compliance with its adopted land use plan by adopting zoning  
16 regulations.

17 (b) The governing body of a county or city has the authority to adopt zoning regulations in  
18 accordance with this part by an ordinance that substantially complies with 7-5-103 through 7-5-107.

19 (c) A municipality shall adopt zoning regulations for the portions of the jurisdictional area outside of  
20 the boundaries of the municipality that the governing body anticipates may be annexed into the municipality  
21 over the next 20 years. Unless otherwise agreed to by the applicable jurisdictions, zoning regulations on  
22 property outside the municipal boundaries may not apply or be enforced until those areas are annexed or are  
23 being annexed into the municipality.

24 (2) Local zoning regulations authorized in subsection (1) include but are not limited to ordinances  
25 prescribing the:

- 26 (a) uses of land;
- 27 (b) density of uses;
- 28 (c) types of uses;

(d) size, character, number, form, and mass of structures; and

(e) development standards mitigating the impacts of development, as identified and analyzed

3 during the land use planning process and review and adoption of zoning regulations pursuant to this chapter.

(3) The local government shall incorporate any existing zoning regulations adopted pursuant to , chapter 2, into the zoning regulations meeting the requirements of this chapter.

(4) The local government shall adopt a zoning map for the jurisdiction in substantial compliance with the land use plan and future land use map and the zoning regulations adopted pursuant to this section, graphically illustrating the zone or zones that a property within the jurisdiction is subject to.

(5) The local government may provide for the issuance of permits as may be necessary for the implementation of this chapter.

(6) (a) The zoning regulations and map must identify areas that may necessitate the denial of a development or a specific type of development, such as unmitigable natural hazards, insufficient water supply, inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds for the supply of the services.

(b) The regulations must prohibit development in the areas identified in subsection (6)(a) unless the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation measures identified in the zoning regulations.

(c) Approved construction techniques or other mitigation measures described in subsection (6)(b) may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(7) The zoning regulations and map must mitigate the hazards created by development in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body. If the hazards cannot be mitigated, the zoning regulations and map must identify those areas where future development is limited or prohibited.

(8) The zoning regulations must allow for the continued use of land or buildings legal at the time that any zoning regulation, map, or amendment thereto is adopted, but the local government may provide grounds for discontinuing nonconforming uses based on changes to or abandonment of the use of the land or buildings after the adoption of a zoning regulation, map, or amendment.

1                   (9) A municipality that meets the requirements of this subsection (9) may adopt inclusionary zoning  
2 regulations.

3                   (a) Inclusionary zoning regulations must require that no more than 15% of all units produced in a  
4 residential development be considered affordable housing units unless additional units are accepted by the  
5 municipality in exchange for specific variances or deviations from zoning standards, subdivision standards, or  
6 public works design standards.

7                   (b) (i) The municipality may adopt inclusionary zoning regulations only if the area median home  
8 price exceeds the annual area median income by at least 700%. If the median house price drops below 700%  
9 of the annual area median income, the municipality shall suspend the creation of additional affordable housing  
10 units under this subsection (9).

11                   (ii) If a municipality is required to suspend the creation of additional affordable housing units as  
12 provided in subsection (9)(b)(i), the municipality may resume the creation of additional affordable housing units  
13 when the area median home sale price exceeds 700% of the annual area median income, after the governing  
14 body of the municipality passes a resolution and provides public notice as provided in 7-1-4127.

15                   (10) As used in this section, the following definitions apply:

16                   (a) "Affordable housing unit" means a housing unit intended for a specified income level or sale  
17 price as determined by the municipality.

18                   (b) "Annual area median income" means the income amount as determined by the United States  
19 department of housing and urban development.

20                   (c) "Inclusionary zoning regulations" means regulations that include a requirement:

21                   (i) to pay a fee for the purpose of providing housing for specified income levels or at specified sale  
22 prices; or

23                   (ii) to dedicate real property for the purpose of providing housing for specified income levels or at  
24 specified sale prices."

25  
26                   **Section 6.** Section 76-25-303, MCA, is amended to read:

27                   **"76-25-303. Limitations on zoning authority.** (1) A local government acting pursuant to this part

28 may not:

1                   (a)     treat manufactured housing units differently from any other residential units;

2                   (b)     include in a zoning regulation any requirement to:

3                    (i)     pay a fee for the purpose of providing housing for specified income levels or at specified sale

4     prices; or

5                    (ii)    dedicate real property for the purpose of providing housing for specified income levels or at

6     specified sale prices, including a payment or other contribution to a local housing authority or the reservation of

7     real property for future development of housing for specified income levels or specified sale prices;

8                   (c)(b)    prevent the erection of an amateur radio antenna at heights and dimensions sufficient to

9     accommodate amateur radio service communications by a person who holds an unrevoked and unexpired

10    official amateur radio station license and operator's license, "technician" or higher class, issued by the federal

11    communications commission of the United States;

12                   (d)(c)    establish a maximum height limit for an amateur radio antenna of less than 100 feet above the

13    ground;

14                   (e)(d)    subject to subsection (2) and outside of incorporated municipalities, prevent the complete use,

15    development, or recovery of any mineral, forest, or agricultural resources identified in the land use plan, except

16    that the use, development, or recovery may be reasonably conditioned or prohibited within residential zones;

17                   (f)(e)    except as provided in subsection (3), treat the following differently from any other residential

18    use of property:

19                   (i)     a foster home, kinship foster home, youth shelter care facility, or youth group home operated

20    under the provisions of 52-2-621 through 52-2-623, if the home or facility provides care on a 24-hour-a-day

21    basis;

22                   (ii)    a community residential facility serving eight or fewer persons, if the facility provides care on a

23    24-hour-a-day basis; or

24                   (iii)    a family day-care home or a group day-care home registered by the department of public

25    health and human services under Title 52, chapter 2, part 7;

26                   (g)(f)    except as provided in subsection (3), apply any safety or sanitary regulation of the department

27    of public health and human services or any other agency of the state or a political subdivision of the state that is

28    not applicable to residential occupancies in general to a community residential facility serving 8 or fewer

1 persons or to a day-care home serving 12 or fewer children; or

2 (h)(g) prohibit any existing agricultural activities or force the termination of any existing agricultural  
3 activities outside the boundaries of an incorporated city, including agricultural activities that were established  
4 outside the corporate limits of a municipality and thereafter annexed into the municipality.

5 (2) Regulations that condition or prohibit uses pursuant to subsection (1)(e)-(1)(d) must be in effect  
6 prior to the filing of a permit application or at the time a written request is received for a preapplication meeting  
7 pursuant to 82-4-432.

8 (3) Except for a day-care home registered by the department of public health and human services,  
9 a local government may impose zoning standards and conditions on any type of home or facility identified in  
10 subsections (1)(e) and (1)(f) and (1)(g) if those zoning standards and conditions do not conflict with the  
11 requirements of subsections (1)(e) and (1)(f) and (1)(g)."

12

13 **Section 7.** Section 76-25-401, MCA, is amended to read:

14 **"76-25-401. Authority to adopt local subdivision regulations --limitations.** (1) (a) Within its  
15 respective jurisdiction, a local government shall regulate the creation of lots in substantial compliance with its  
16 adopted land use plan and zoning regulations by adopting subdivision regulations.

17 (b) The governing body of a county or city has the authority to adopt subdivision regulations in  
18 accordance with this part by an ordinance that substantially complies with 7-5-103 through 7-5-107.

19 (c) A municipality shall adopt subdivision regulations for those portions of the jurisdictional area  
20 outside the boundaries of the municipality that the governing body anticipates may be annexed into the  
21 municipality over the next 20 years. Unless otherwise agreed to by the applicable jurisdictions, subdivision  
22 regulations on property outside the municipal boundaries may not apply or be enforced until the areas are  
23 annexed or being annexed into the municipality.

24 (2) The subdivision regulations must provide a process for the application and consideration of  
25 subdivision exemptions, certificates of survey, preliminary plats, and final plats as necessary for the  
26 implementation of this chapter.

27 (3) (a) A local governing body may not require, as a condition for approval of a subdivision under  
28 this part:

**NEW SECTION. Section 8. Repealer.** The following sections of the Montana Code Annotated are

13      repealed:

14 76-2-114. Housing fees and dedication of real property prohibited.

15 76-3-514. Housing fees and dedication of real property prohibited.

**NEW SECTION. Section 9. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 76, chapter 2, part 3, and the provisions of Title 76, chapter 2, part 3, apply to [section 1].

- END -