

HOUSE BILL NO. 378

INTRODUCED BY D. POWERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) designed to:

(i) secure safety from fire and other dangers;

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

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

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

(a) reasonable provision of adequate light and air;

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

(c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;

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

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

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities.

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

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

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

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

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

"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~~

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

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

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

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

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

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

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

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

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

(a) uses of land;

(b) density of uses;

(c) types of uses;

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

(e) development standards mitigating the impacts of development, as identified and analyzed 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 Title 76, 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.

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

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

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

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

(10) 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 6. Section 76-25-303, MCA, is amended to read:

"76-25-303. Limitations on zoning authority. (1) A local government acting pursuant to this part may not:

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- 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 (e)(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

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

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

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

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

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

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

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

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

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

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

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(i) — the payment of a fee for the purpose of providing housing for specified income levels or at specified sale prices; or

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

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

(4) — The local governing body may not change, in the subdivision regulations or in the process for subdividing, any timelines or procedural requirements for an application to subdivide other than provided for in this part."

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

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

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 -