

SENATE BILL NO. 252

INTRODUCED BY D. FERN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO MANUFACTURED AND FACTORY-BUILT HOUSING; REQUIRING THAT MUNICIPAL AND COUNTY ZONING REGULATIONS TREAT MANUFACTURED AND FACTORY-BUILT HOUSING THE SAME AS OTHER TYPES OF RESIDENTIAL PROPERTY; INCLUDING MANUFACTURED HOUSING AS AN ALLOWABLE COMMERCIAL PURPOSE IN STATE TRUST LAND LEASES; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 76-2-202, 76-2-302, ~~76-2-304~~, 76-25-103, 76-25-303, AND 77-1-902, MCA."

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

NEW SECTION. SECTION 1. REGULATION OF CONSTRUCTION TYPES. (1) REGULATIONS ADOPTED UNDER THIS PART MAY NOT TREAT MANUFACTURED HOUSING OR FACTORY-BUILT HOUSING UNITS DIFFERENT FROM ANY OTHER RESIDENTIAL UNITS.

(2) IN A PROCEEDING FOR A PERMIT OR VARIANCE TO PLACE MANUFACTURED HOUSING OR FACTORY-BUILT HOUSING WITHIN A RESIDENTIAL ZONING DISTRICT, THERE IS A REBUTTABLE PRESUMPTION THAT PLACEMENT OF A MANUFACTURED HOME OR FACTORY-BUILT HOME WILL NOT ADVERSELY AFFECT PROPERTY VALUES OF CONVENTIONAL HOUSING.

(3) AS USED IN THIS PART, "FACTORY-BUILT HOUSING" MEANS A FACTORY-BUILT BUILDING AS DEFINED IN 50-60-101 THAT IS INTENDED FOR RESIDENTIAL USE AND MEETS THE INSPECTION REQUIREMENT OF TITLE 50, CHAPTER 60, PART 4.

Section 2. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507 and for the purposes provided in 76-2-201, the board of county commissioners may by resolution establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning

districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land, including the creation of zoning districts that allow tiny dwelling units.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within 6 months after the date of the order by the board of county commissioners creating the district or adopting the regulations.

(2) (a) Zoning regulations adopted under this part may not treat manufactured housing or factory-built housing units differently from any other residential units.

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

(3) The regulations in one district may differ from those in other districts.

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

(a) "Factory-built housing" means a factory-built building as defined in 50-60-101 that is intended for residential use and meets the inspection requirements of Title 50, chapter 60, part 4.

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

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

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

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

1 **Section 3.** Section 76-2-302, MCA, is amended to read:

2 **"76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or other
3 legislative body may divide the municipality into districts of the number, shape, and area as are considered best
4 suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection,
5 construction, reconstruction, alteration, repair, or use of buildings, structures, or land, including the creation of
6 zoning districts that allow tiny dwelling units.

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

9 (3) (a) Zoning regulations adopted under this part may not treat manufactured housing or factory-
10 built housing units differently from any other residential units.

11 (b) In a proceeding for a permit or variance to place manufactured housing or factory-built housing
12 within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home or
13 factory-built home will not adversely affect property values of conventional housing.

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

15 (a) "Factory-built housing" means a factory-built building as defined in 50-60-101 that is intended
16 for residential use and meets the inspection requirements of Title 50, chapter 60, part 4.

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

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

23 (ii) Appendix Q, tiny houses, of the International Building Code as it was printed on January 1,
24 2023, may govern all other requirements of a tiny dwelling unit that is 350 to 750 square feet.

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

(6) 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.

(7) A dedication of real property as prohibited in subsection (6)(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.

(8) (a) Except as provided in subsection (8)(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) 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 4. Section 76-2-304, MCA, is amended to read:

~~"76-2-304. Criteria and guidelines for zoning regulations.~~ (1) Zoning regulations must be:

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

(b) ~~designed to:~~

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

(ii) ~~promote public health, public safety, and the 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 municipal governing body shall consider:~~

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

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

(c) — promotion of compatible urban growth;

(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) — In a city with a population of at least 5,000 residents, duplex housing must be allowed as a permitted use on a lot where a single-family residence is a permitted use, and zoning regulations that apply to the development or use of duplex housing may not be more restrictive than zoning regulations that are applicable to single-family residences.

(4) — (a) In a municipality that is designated as an urban area by the United States census bureau with a population over 5,000 as of the most recent census, the city council or other legislative body of the municipality shall allow as a permitted use multiple-unit dwellings and mixed-use developments that include multiple-unit dwellings on a parcel or lot that:

- (i) — has a will-serve letter from both a municipal water system and a municipal sewer system; and
- (ii) — is located in a commercial zone.

(b) — Zoning regulations in municipalities meeting the requirements of subsection (4)(a) may not include a requirement to provide more than:

- (i) — one off-street parking space for each unit and accessible parking spaces as required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.; or
- (ii) — an equivalent number of spaces required under subsection (4)(b)(i) provided through a shared parking agreement.

(5) — Manufactured housing and factory-built housing as defined in 76-2-302 must be allowed on a parcel or lot that has a will-serve letter from both a municipal water system and a municipal sewer system.

(5)(6) — As used in this section, the following definitions apply:

(a) — "Duplex housing" means a parcel or lot with two dwelling units that are designed for residential occupancy by not more than two family units living independently from each other.

(b) — "Family unit" means:

- (i) — a single person living or residing in a dwelling or place of residence; or
- (ii) — two or more persons living together or residing in the same dwelling or place of residence.

(c) ~~"Mixed-use development" means a development consisting of residential and nonresidential uses in which the nonresidential uses are less than 50% of the total square footage of the development and are limited to the first floor of buildings that are two or more stories.~~

(d) ~~"Multiple-unit dwelling" means a building designed for five or more dwelling units in which the dwelling units share a common separation like a ceiling or wall and in which access cannot be gained between units through an internal doorway, excluding common hallways.~~

(e) ~~"Single-family residence" has the meaning provided in 70-24-103."~~

Section 4. Section 76-25-103, MCA, is amended to read:

"76-25-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

(2) "Applicant" means a person who seeks a land use permit or other approval of a development proposal.

(3) "Built environment" means man-made or modified structures that provide people with living, working, and recreational spaces.

(4) "Cash-in-lieu donation" is the amount equal to the fair market value of unsubdivided, unimproved land.

(5) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(6) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(7) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to

1 this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous
2 division of land is not a division of land.

3 (8) "Dwelling " means a building designed for residential living purposes, including single-unit, two-
4 unit, and multi-unit dwellings.

5 (9) "Dwelling unit" means one or more rooms designed for or occupied exclusively by one
6 household.

7 (10) "Examining land surveyor" means a registered land surveyor appointed by the governing body
8 to review surveys and plats submitted for filing.

9 (11) "Factory-built housing" means a factory-built building as defined in 50-60-101 that is intended
10 for residential use and meets the inspection requirements of Title 50, chapter 60, part 4.

11 ~~(11)(12)~~"Final plat" means the final drawing of the subdivision and dedication required by this chapter
12 to be prepared for filing for record with the county clerk and recorder and containing all elements and
13 requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

14 ~~(12)(13)~~"Four-unit dwelling" or "fourplex" means a building designed for four attached dwelling units in
15 which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be
16 gained between the units through an internal doorway, excluding common hallways.

17 ~~(13)(14)~~"Immediate family" means a spouse, children by blood or adoption, and parents.

18 ~~(14)(15)~~"Irrigation district" means a district established pursuant to Title 85, chapter 7.

19 ~~(15)(16)~~"Jurisdictional area" or "jurisdiction" means the area within the boundaries of the local
20 government. For municipalities, the term includes those areas the local government anticipates may be
21 annexed into the municipality over the next 20 years.

22 ~~(16)(17)~~"Land use permit" means an authorization to complete development in conformance with an
23 application approved by the local government.

24 ~~(17)(18)~~"Land use plan" means the land use plan and future land use map adopted in accordance with
25 this chapter.

26 ~~(18)(19)~~"Land use regulations" means zoning, zoning map, subdivision, or other land use regulations
27 authorized by state law.

28 ~~(19)(20)~~"Local governing body" or "governing body" means the elected body responsible for the

1 administration of a local government.

2 ~~(20)~~(21)"Local government" means a county, consolidated city-county, or an incorporated municipality
3 to which the provisions of this chapter apply as provided in 76-25-105.

4 ~~(24)~~(22)"Manufactured housing" means a dwelling for a single household, built offsite in a factory that is
5 in compliance with the applicable prevailing standards of the United States department of housing and urban
6 development at the time of its production. A manufactured home does not include a mobile home or
7 housetrailer, as defined in 15-1-101.

8 ~~(22)~~(23)"Ministerial permit" means a permit granted upon a determination that a proposed project
9 complies with the zoning map and the established standards set forth in the zoning regulations. The
10 determination must be based on objective standards, involving little or no personal judgment, and must be
11 issued by the planning administrator.

12 ~~(23)~~(24)"Multi-unit dwelling" means a building designed for five or more attached dwelling units in which
13 the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained
14 between the units through an internal doorway, excluding common hallways.

15 ~~(24)~~(25)"Permitted use" means a use that may be approved by issuance of a ministerial permit.

16 ~~(25)~~(26)"Planning administrator" means the person designated by the local governing body to review,
17 analyze, provide recommendations, or make final decisions on any or all zoning, subdivision, and other
18 development applications as required in this chapter.

19 ~~(26)~~(27)"Plat" means a graphical representation of a subdivision showing the division of land into lots,
20 parcels, blocks, streets, alleys, and other divisions and dedications.

21 ~~(27)~~(28)"Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the
22 layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a
23 governing body.

24 ~~(28)~~(29)"Public utility" has the meaning provided in 69-3-101, except that for the purposes of this
25 chapter, the term includes a county water or sewer district as provided for in Title 7, chapter 13, parts 22 and
26 23, and municipal sewer or water systems and municipal water supply systems established by the governing
27 body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

28 ~~(29)~~(30)"Single-room occupancy development" means a development with dwelling units in which

residents rent a private bedroom with a shared kitchen and bathroom facilities.

~~(30)~~(31)"Single-unit dwelling" means a building designed for one dwelling unit that is detached from any other dwelling unit.

~~(34)~~(32)"Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

~~(32)~~(33)"Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

~~(33)~~(34)"Subdivision guarantee" means a form of guarantee that is approved by the commissioner of insurance and is specifically designed to disclose the information required in 76-25-413.

~~(34)~~(35)"Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

~~(35)~~(36)"Three-unit dwelling" or "triplex" means a building designed for three attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway, excluding common hallways.

~~(36)~~(37)"Two-unit dwelling" or "duplex" means a building designed for two attached dwelling units in which the dwelling units share a common separation, such as a ceiling or wall, and in which access cannot be gained between the units through an internal doorway."

Section 5. 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:

(a) treat manufactured housing or factory-built housing units differently from any other residential units;

- 1 (b) include in a zoning regulation any requirement to:
- 2 (i) pay a fee for the purpose of providing housing for specified income levels or at specified sale
- 3 prices; or
- 4 (ii) dedicate real property for the purpose of providing housing for specified income levels or at
- 5 specified sale prices, including a payment or other contribution to a local housing authority or the reservation of
- 6 real property for future development of housing for specified income levels or specified sale prices;
- 7 (c) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to
- 8 accommodate amateur radio service communications by a person who holds an unrevoked and unexpired
- 9 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
- 10 communications commission of the United States;
- 11 (d) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the
- 12 ground;
- 13 (e) subject to subsection (2) and outside of incorporated municipalities, prevent the complete use,
- 14 development, or recovery of any mineral, forest, or agricultural resources identified in the land use plan, except
- 15 that the use, development, or recovery may be reasonably conditioned or prohibited within residential zones;
- 16 (f) except as provided in subsection (3), treat the following differently from any other residential
- 17 use of property:
- 18 (i) a foster home, kinship foster home, youth shelter care facility, or youth group home operated
- 19 under the provisions of 52-2-621 through 52-2-623, if the home or facility provides care on a 24-hour-a-day
- 20 basis;
- 21 (ii) a community residential facility serving eight or fewer persons, if the facility provides care on a
- 22 24-hour-a-day basis; or
- 23 (iii) a family day-care home or a group day-care home registered by the department of public
- 24 health and human services under Title 52, chapter 2, part 7;
- 25 (g) except as provided in subsection (3), apply any safety or sanitary regulation of the department
- 26 of public health and human services or any other agency of the state or a political subdivision of the state that is
- 27 not applicable to residential occupancies in general to a community residential facility serving 8 or fewer
- 28 persons or to a day-care home serving 12 or fewer children; or

(h) 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) 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)(f) and (1)(g) if those zoning standards and conditions do not conflict with the requirements of subsections (1)(f) and (1)(g)."

Section 6. Section 77-1-902, MCA, is amended to read:

"77-1-902. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Cancellation" means the cessation of a lessee's possessory rights and privileges under a lease due to the lessee's breach of some term of the lease, applicable statutes, or applicable administrative rules.

(2) "Commercial lease" means a contract to use state trust land for a commercial purpose.

(3) (a) "Commercial purpose" means an industrial enterprise, retail sales outlet, business and professional office building, warehouse, motel, hotel, hospitality enterprise, commercial or concentrated recreational use, multifamily residential development, the development of mobile home parks or multiple manufactured housing units for lease or rent, and other similar business.

(b) The term does not include the following uses:

(i) agriculture;

(ii) grazing;

(iii) exploration or development of oil and gas, minerals, and resources from geothermal, wind, or solar;

(iv) single-family residences, home sites, and cabin sites; and

(v) utility rights-of-way.

(4) "Land value" is the monetary value of the land determined by an appraisal by a certified general appraiser or a department staff appraiser or by a limited valuation.

(5) "Limited valuation" means estimating the land value of commercial lease land by analyzing comparable land valuations conducted within 2 years of the lease commencement date as provided by real estate appraisers, local tax assessors, local realtors, an evaluation of local market rents, or a combination of those methods.

(6) "Termination" means the automatic completion or ending of the term of a contract according to its provisions. Upon termination, the lessee ceases to have any possessory rights or privileges under a lease."

NEW SECTION. SECTION 7. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 76, CHAPTER 2, PART 1, AND THE PROVISIONS OF TITLE 76, CHAPTER 2, PART 1, APPLY TO [SECTION 1].

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