

1 SENATE BILL NO. 268
2 INTRODUCED BY G. HERTZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SHORT-TERM RENTAL LAWS;
5 ESTABLISHING THAT A SHORT-TERM RENTAL IS A RESIDENTIAL USE OF PROPERTY; ESTABLISHING
6 THAT SHORT-TERM RENTALS ARE PERMISSIBLE UNLESS PROHIBITED THROUGHOUT A ZONING
7 DISTRICT; PROVIDING A GRANDFATHER CLAUSE FOR CERTAIN SHORT-TERM RENTALS; AMENDING
8 SECTIONS 7-1-111, 70-24-104, ~~76-2-205~~ 76-2-203, AND 76-2-303, MCA; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND AN APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 NEW SECTION. Section 1. Short-term rentals. (1) Unless the clear and express terms of a
14 covenant provide otherwise, a short-term rental is a residential use of property.

15 (2) As used in this section, "short-term rental" has the meaning provided in 15-68-101.

16
17 NEW SECTION. Section 2. Short-term rentals. (1) Unless the clear and express terms of a
18 homeowners' association's bylaws or other governing instrument provide otherwise, a short-term rental is a
19 residential use of property.

20 (2) As used in this section, "short-term rental" has the meaning provided in 15-68-101.

21
22 NEW SECTION. Section 3. Short-term rentals. (1) A short-term rental is a residential use of
23 property.

24 (2) (a) Unless expressly prohibited in the entirety of a jurisdictional area or a zoning district, if the
25 jurisdictional area is divided into zoning districts, short-term rentals are permissible in areas zoned for
26 residential use.

27 (b) An express prohibition on short-term rentals may not preclude the short-term rental of all or part
28 of:

1 (i) ~~_____~~ a property owner's primary residence and; ~~or~~

2 (ii) ~~_____~~ a property adjacent to the property owner's primary residence.

3 ~~(i)~~ (i) A SINGLE, SEPARATE RESIDENCE ON THE SAME PARCEL AS A PROPERTY OWNER'S PRIMARY

4 RESIDENCE; OR

5 ~~(ii)~~ (ii) A SINGLE RESIDENCE ON A SEPARATE PROPERTY FROM THE PROPERTY OWNER'S PRIMARY RESIDENCE

6 THAT SHARES A BOUNDARY WITH THE PROPERTY DESCRIBED IN SUBSECTION ~~(2)(B)(i)(2)(b)~~, INCLUSIVE OF PROPERTIES

7 THAT ARE SEPARATED BY A PUBLIC RIGHT-OF-WAY BUT WOULD OTHERWISE SHARE A BOUNDARY.

8 (3) As used in this section;

9 (A) "PRIMARY RESIDENCE" MEANS A DWELLING IN WHICH THE PROPERTY OWNER CAN DEMONSTRATE THE

10 OWNER'S OCCUPANCY AT LEAST 7 MONTHS OF THE YEAR; AND

11 (B) "short-term rental" has the meaning provided in 15-68-101.

13 NEW SECTION. Section 4. Short-term rentals. (1) A short-term rental is a residential use of
14 property.

15 (2) (a) Unless expressly prohibited in the entirety of a municipality or a zoning district, if the
16 municipality is divided into zoning districts, short-term rentals are permissible in areas zoned for residential use.

17 (b) An express prohibition on short-term rentals may not preclude the short-term rental of all or part
18 of:

19 (i) a property owner's primary residence and; ~~or~~

20 (ii) ~~_____~~ a property adjacent to the property owner's primary residence

21 ~~(i)~~ (i) A SINGLE, SEPARATE RESIDENCE ON THE SAME PARCEL AS A PROPERTY OWNER'S PRIMARY

22 RESIDENCE; OR

23 ~~(ii)~~ (ii) A SINGLE RESIDENCE ON A SEPARATE PROPERTY FROM THE PROPERTY OWNER'S PRIMARY RESIDENCE

24 THAT SHARES A BOUNDARY WITH THE PROPERTY described IN SUBSECTION ~~(2)(B)(i)(2)(b)~~, INCLUSIVE OF PROPERTIES

25 THAT ARE SEPARATED BY a PUBLIC RIGHTS-OF-WAY/right-of-way BUT ARE OTHERWISE ADJACENT.

26 (3) As used in this section;

27 (A) "PRIMARY RESIDENCE" MEANS A DWELLING IN WHICH THE PROPERTY OWNER CAN DEMONSTRATE THE

28 OWNER'S OCCUPANCY AT LEAST 7 MONTHS OF THE YEAR; AND

1 (B) "short-term rental" has the meaning provided in 15-68-101.

2

3 **Section 5.** Section 7-1-111, MCA, is amended to read:

4 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from
5 exercising the following:

6 (1) any power that applies to or affects any private or civil relationship, except as an incident to the
7 exercise of an independent self-government power;

8 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject
9 to those provisions, it may exercise any power of a public employer with regard to its employees;

10 (3) any power that applies to or affects the public school system, except that a local unit may
11 impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and
12 shall exercise any power that it is required by law to exercise regarding the public school system;

13 (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of
14 public convenience and necessity pursuant to Title 69, chapter 12;

15 (5) any power that establishes a rate or price otherwise determined by a state agency;

16 (6) any power that applies to or affects any determination of the department of environmental
17 quality with regard to any mining plan, permit, or contract;

18 (7) any power that applies to or affects any determination by the department of environmental
19 quality with regard to a certificate of compliance;

20 (8) any power that defines as an offense conduct made criminal by state statute, that defines an
21 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6
22 months' imprisonment, or both, except as specifically authorized by statute;

23 (9) any power that applies to or affects the right to keep or bear arms;

24 (10) any power that applies to or affects a public employee's pension or retirement rights as
25 established by state law, except that a local government may establish additional pension or retirement
26 systems;

27 (11) any power that applies to or affects the standards of professional or occupational competence
28 established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

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1 (12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to
2 or affects Title 75, chapter 7, part 1, or Title 87;

3 (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is
4 intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title
5 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require
6 landlords to comply with ordinances or provisions that are applicable to all other businesses or residences
7 within the local government's jurisdiction.

8 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

9 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,
10 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government
11 may enter into a cooperative agreement with the department of agriculture concerning the use and application
12 of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local
13 government from adopting or implementing zoning regulations or fire codes governing the physical location or
14 siting of fertilizer manufacturing, storage, and sales facilities.

15 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production,
16 processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or
17 vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local
18 government from adopting or implementing zoning regulations or building codes governing the physical location
19 or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or
20 distribution facilities.

21 (17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,
22 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired
23 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
24 communications commission of the United States;

25 (18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio
26 antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a
27 person who holds an unrevoked and unexpired official amateur radio station license and operator's license,
28 "technician" or higher class, issued by the federal communications commission of the United States;

Amendment - 1st Reading/2nd House-blue - Requested by: (H) Judiciary

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1 (19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles,
2 load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a
3 highway that is under the jurisdiction of an entity other than the local government unit;

4 (20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in
5 relation to a wildfire;

6 (21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition,
7 sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(5);

8 (22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in
9 accordance with 7-1-116;

10 (23) any power to require an employer, other than the local government unit itself, to provide an
11 employee or class of employees with a wage or employment benefit that is not required by state or federal law;

12 (24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and
13 any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-
14 5-121(2)(c)(iv); ~~or~~

15 (25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in
16 16-11-313(1); or

17 (26) any power to prohibit short-term rentals of residential property, except as provided in [section 3]
18 or [section 4]."

19

20 **Section 6.** Section 70-24-104, MCA, is amended to read:

21 **"70-24-104. Exclusions from application of chapter.** Unless created to avoid the application of this
22 chapter, the following arrangements are not governed by this chapter:

23 (1) residence at a public or private institution if incidental to detention or the provision of medical,
24 geriatric, educational, counseling, religious, or similar service, including all housing provided by the Montana
25 university system and other postsecondary institutions;

26 (2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the
27 occupant is the purchaser or a person who succeeds to the purchaser's interest;

28 (3) occupancy by a member of a fraternal or social organization in the portion of a structure

1 operated for the benefit of the organization;

2 (4) transient occupancy in a hotel or motel;

3 (5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a
4 cooperative;

5 (6) occupancy under a rental agreement covering premises used by the occupant primarily for
6 commercial or agricultural purposes;

7 (7) occupancy by an employee of a landlord whose right to occupancy is conditional upon
8 employment in and about the premises; ~~and~~

9 (8) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or
10 agricultural privileges, along with the use of the dwelling unit.; and

11 (9) occupancy of a short-term rental as defined in 15-68-101."

12

13 **SECTION 7. SECTION 76-2-203, MCA, IS AMENDED TO READ:**

14 **"76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

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

16 (b) designed to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (6) If zoning district boundaries or regulations would prohibit short-term rentals, a specific analysis
12 of that prohibition must consider all the elements in subsection (1) and be part of the documentation provided to
13 the public for the adoption or amendment of zoning regulations."

14
15 **Section 7.** Section 76-2-205, MCA, is amended to read:

16 ~~"76-2-205. Procedure for adoption of regulations and boundaries.~~ The board of county
17 commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning
18 districts and in the adoption or amendment of zoning regulations:

19 (1) ~~Notice of a public hearing on the proposed zoning district boundaries and of regulations for the~~
20 ~~zoning district must:~~

21 (a) ~~state:~~

22 (i) ~~the boundaries of the proposed district;~~

23 (ii) ~~(A) the general character of the proposed zoning regulations; and~~

24 ~~(B) if the proposed zoning district boundaries or regulations would prohibit short-term rentals, how~~
25 ~~the prohibition furthers the criteria and guidelines provided in 76-2-203 ;~~

26 (iii) ~~the time and place of the public hearing;~~

27 (iv) ~~that the proposed zoning regulations are on file for public inspection at the office of the county~~
28 ~~clerk and recorder;~~

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1 ~~(b) — be posted not less than 45 days before the public hearing in at least five public places,~~
2 ~~including but not limited to public buildings and adjacent to public rights of way, within the proposed district; and~~

3 ~~(c) — be published once a week for 2 weeks in a newspaper of general circulation within the county.~~

4 ~~(2) — At the public hearing, the board of county commissioners shall give the public an opportunity to~~
5 ~~be heard regarding the proposed zoning district and regulations.~~

6 ~~(3) — After the public hearing, the board of county commissioners shall review the proposals of the~~
7 ~~planning board and shall make any revisions or amendments that it determines to be proper.~~

8 ~~(4) — The board of county commissioners may pass a resolution of intention to create a zoning~~
9 ~~district and to adopt zoning regulations for the district.~~

10 ~~(5) — The board of county commissioners shall publish notice of passage of the resolution of~~
11 ~~intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must~~
12 ~~state:~~

13 ~~(a) — the boundaries of the proposed district;~~

14 ~~(b) — the general character of the proposed zoning regulations;~~

15 ~~(c) — that the proposed zoning regulations are on file for public inspection at the office of the county~~
16 ~~clerk and recorder;~~

17 ~~(d) — that for 30 days after first publication of this notice, the board of county commissioners will~~
18 ~~receive written comments on the creation of the zoning district or to the zoning regulations from persons owning~~
19 ~~real property within the district whose names appear on the last completed assessment roll of the county.~~

20 ~~(6) — Within 30 days after the expiration of the comment period, the board of county commissioners~~
21 ~~may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for~~
22 ~~the district."~~

23

24 **Section 8.** Section 76-2-303, MCA, is amended to read:

25 **"76-2-303. Procedure to administer certain annexations and zoning laws -- hearing and notice.**

26 (1) The city or town council or other legislative body of a municipality shall provide for the manner in which
27 regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed,
28 subject to the requirements of subsection (2).

1 (2) (a) A regulation, restriction, or boundary may not become effective until after a public hearing in
2 relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to
3 be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an
4 official paper or a paper of general circulation in the municipality.

5 (b) Notice of a regulation, restriction, or boundary that would prohibit short-term rentals must
6 demonstrate how the prohibition furthers the criteria and guidelines provided in 76-2-304.

7 (3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in
8 conjunction with a hearing on the zoning of the proposed annexation if the proposed municipal zoning
9 regulations for the annexed property:

10 (i) authorize land uses comparable to the land uses authorized by county zoning;

11 (ii) authorize land uses that are consistent with land uses approved by the board of county
12 commissioners or the board of adjustment pursuant to Title 76, chapter 2, part 1 or 2; or

13 (iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to
14 Title 76, chapter 1, for the annexed property.

15 (b) A joint hearing authorized under this subsection (3) fulfills a municipality's obligation regarding
16 zoning notice and public hearing for a proposed annexation."
17

18 **NEW SECTION. Section 9. Grandfather clause.** A short-term rental that was in existence on [the
19 effective date of this act] is not subject to [sections 3 and 4] or any additional regulation that was not in
20 existence as of [the effective date of this act].
21

22 **NEW SECTION. Section 10. Codification instruction.** (1) [Section 1] is intended to be codified as
23 an integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to [section
24 1].

25 (2) [Section 2] is intended to be codified as an integral part of Title 70, chapter 17, part 9, and the
26 provisions of Title 70, chapter 17, part 9, apply to [section 2].

27 (3) [Section 3] is intended to be codified as an integral part of Title 76, chapter 2, part 2, and the
28 provisions of Title 76, chapter 2, part 2, apply to [section 3].

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1 (4) [Section 4] is intended to be codified as an integral part of Title 76, chapter 2, part 3, and the
2 provisions of Title 76, chapter 2, part 3, apply to [section 4].

3

4 NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

5

6 NEW SECTION. **Section 12. Retroactive applicability.** [Sections 1 and 2] apply retroactively, within
7 the meaning of 1-2-109, to covenants on residential property and homeowners' association bylaws or other
8 governing instruments that do not clearly and expressly address short-term rentals.

9

10 NEW SECTION. **Section 13. Applicability.** [Sections 1 and 2] apply to covenants on residential
11 property and homeowners' association bylaws or other governing instruments in existence on or after [the
12 effective date of this act] that do not clearly and expressly address short-term rentals.

13

- END -