

1 SENATE BILL NO. 379

2 INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ZONING LAWS; PROHIBITING ~~ADOPTION OF~~  
5 ~~MINIMUM LOT SIZE REGULATIONS MORE THAN 1 MILE BEYOND MUNICIPAL BOUNDARIES;~~  
6 ~~AMENDING SECTIONS 76-2-212 AND 76-2-310~~ MUNICIPAL ZONING REGULATIONS FROM IMPOSING  
7 CERTAIN MINIMUM LOT SIZES ON A LOT THAT IS SERVICED BY A MUNICIPAL WATER AND SEWER  
8 SYSTEM; PROHIBITING CERTAIN DWELLING SETBACKS AND AREA RESERVED FOR OPEN SPACE;  
9 REQUIRING THAT MANUFACTURED HOUSING BE CONSIDERED THE SAME AS CONVENTIONAL  
10 HOUSING IN RELATION TO ZONING; PROHIBITING A LOCAL GOVERNMENT FROM ENACTING  
11 CERTAIN PARKING REQUIREMENTS FOR ACCESSORY DWELLING UNITS; PROVIDING ADDITIONAL  
12 REQUIREMENTS FOR TRANSFERS OF LAND TO IMMEDIATE FAMILY MEMBERS; PROHIBITING  
13 CERTAIN CRITERIA THAT A LOCAL GOVERNING BODY MAY CONSIDER WHEN DETERMINING IF AN  
14 EXEMPTION IS AN ATTEMPT TO EVADE THE SUBDIVISION AND PLATTING ACT; PROVIDING  
15 DEFINITIONS; AMENDING SECTIONS 76-2-114, 76-2-203, 76-2-216, 76-2-302, 76-2-304, 76-2-309, AND 76-  
16 3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY  
17 DATE."

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

20

21 (Refer to Introduced Bill)

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Strike everything after the enacting clause and insert:

23

24 **Section 1.** Section 76-2-114, MCA, is amended to read:

25 **"76-2-114. ~~Housing fees and dedication of real property prohibited~~Zoning resolution guidelines**

26 **-- prohibitions.** (1) A local governing body may not adopt a resolution under this part that includes a  
27 requirement to:

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

1 prices;~~or~~

2 (b) dedicate real property for the purpose of providing housing for specified income levels or at  
3 specified sale prices;

4 (c) except to provide for accessible parking spaces pursuant to 49-4-302, provide minimum  
5 parking space requirements for accessory dwelling units;

6 (d) implement a minimum lot size for a parcel or lot with an accessory dwelling unit that is larger  
7 than the minimum lot size for other single-family dwellings or townhouses in the same zoning district;

8 (e) implement setback requirements:

9 (i) that are in addition to existing setback requirements for an accessory dwelling unit that utilizes  
10 an existing structure or that is constructed in the same location and with the same dimensions as an existing  
11 structure; or

12 (ii) of more than 4 feet from the side and rear lot lines for a newly constructed accessory dwelling  
13 unit that is not constructed in the same location and with the same dimensions as an existing structure; or

14 (f) establish owner occupancy requirements for any dwelling on a lot or parcel that contains one or  
15 more accessory dwelling units.

16 (2) A resolution adopted under this part must:

17 (a) allow for at least one accessory dwelling unit as a permitted use on a lot or parcel zoned for  
18 residential use; and

19 (b) ensure manufactured housing as defined in 76-2-302 is treated the same as other types of  
20 conventional housing allowed in a zoning district.

21 (3) An accessory dwelling unit:

22 (a) may be any size provided that the square footage of the accessory dwelling unit is less than  
23 the square footage of the primary dwelling located on the lot or parcel and that all other requirements of this  
24 section are met;

25 (b) may not be considered to exceed the allowable density for the lot or parcel where it is located;  
26 and

27 (c) must be considered a residential use consistent with the existing growth policy and zoning  
28 regulations for the lot or parcel.

(2)(4) A dedication of real property as prohibited in subsection (1)(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.

(5) As used in this section, "accessory dwelling unit" has the meaning provided in 76-2-304.

**Section 2.** 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:

(a) as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities;

(b) allow for at least one accessory dwelling unit as a permitted use on a lot or parcel zoned for residential use; and

(c) ensure manufactured housing as defined in 76-2-302 is treated the same as other types of conventional housing allowed in a zoning district.

(4) An accessory dwelling unit:

1 (a) may be any size provided that the square footage of the accessory dwelling unit is less than  
2 the square footage of the primary dwelling located on the lot or parcel and that all other requirements of this  
3 section are met;

4 (b) may not be considered to exceed the allowable density for the lot or parcel where it is located;  
5 and

6 (c) must be considered a residential use consistent with the existing growth policy and zoning  
7 regulations for the lot or parcel.

8 ~~(4)~~(5) Zoning regulations may not include a requirement to:

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

11 (b) dedicate real property for the purpose of providing housing for specified income levels or at  
12 specified sale prices;

13 (c) except to provide for accessible parking spaces pursuant to 49-4-302, provide minimum  
14 parking space requirements for accessory dwelling units;

15 (d) implement a minimum lot size for a parcel or lot with an accessory dwelling unit that is larger  
16 than the minimum lot size for other single-family dwellings or townhouses in the same zoning district;

17 (e) implement setback requirements:

18 (i) that are in addition to existing setback requirements for an accessory dwelling unit that utilizes  
19 an existing structure or that is constructed in the same location and with the same dimensions as an existing  
20 structure; or

21 (ii) of more than 4 feet from the side and rear lot lines for a newly constructed accessory dwelling  
22 unit that is not constructed in the same location and with the same dimensions as an existing structure; or

23 (f) establish owner occupancy requirements for any dwelling on a lot or parcel that contains one or  
24 more accessory dwelling units.

25 ~~(5)~~(6) A dedication of real property as prohibited in subsection ~~(4)~~(b)~~(5)~~(b) includes a payment or  
26 other contribution to a local housing authority or the reservation of real property for future development of  
27 housing for specified income levels or specified sale prices.

28 (7) As used in this section, "accessory dwelling unit" has the meaning provided in 76-2-304."

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**Section 3.** Section 76-2-216, MCA, is amended to read:

**"76-2-216. Wholly surrounded county property -- change of use -- hearing.** (1) If a county parcel for which zoning regulations have been adopted is wholly surrounded by municipal property and a change of an allowed use in the county zoning district occurs, the county governing body shall notify the municipality and all owners of municipal property within 300 feet of the county property of the change of use.

(2) Upon request of either the municipality or at least 10% of the property owners in the municipality who have received the notice, the county governing body shall hold a hearing on the change of use.

(3) If the county governing body determines, based on testimony provided at the hearing, that the regulations in the county district are no longer as compatible as possible with the municipal zoning ordinances as provided in ~~76-2-203(3)~~ 76-2-203(3)(a), the county governing body may initiate a revision to the zoning district or amendments to the regulations as provided in this part."

**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 legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

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

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

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, ~~is at least 1,000 square feet in size,~~ has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States

1 department of housing and urban development at the time of its production. A manufactured home does not  
2 include a mobile home or housetrailer, as defined in 15-1-101.

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

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

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

9 (b) dedicate real property for the purpose of providing housing for specified income levels or at  
10 specified sale prices;

11 (c) comply with dimensional standards that cumulatively result in an effective minimum lot size of  
12 greater than 2,500 square feet for a lot that is currently serviced by both a municipal water system and a  
13 municipal sewer system; or

14 (d) on a lot that is less than 4,000 square feet;

15 (i) implement dwelling setbacks more than 10 feet from the front and rear lot lines or more than 5  
16 feet from the side lot lines; or

17 (ii) reserve more than 40% of lot area for open space or permeable surface.

18 (7) A dedication of real property as prohibited in subsection (6)(b) includes a payment or other  
19 contribution to a local housing authority or the reservation of real property for future development of housing for  
20 specified income levels or specified sale prices.

21 (8) As used in this section, "dimensional standard" means a development requirement that  
22 establishes the maximum size of buildings and structures located on a lot and the buildable area within a lot  
23 where a building can be located. The term includes but is not limited to requirements for lot coverage, building  
24 height, floor area ratio, density standards, lot width and depth requirements, setback requirements, or other  
25 standards defined in zoning regulations adopted pursuant to this part."

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**Section 5.** Section 76-2-304, MCA, is amended to read:

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

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

3 (b) ~~be~~ designed to:

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

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

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

7 public requirements;

8 ~~(c) allow for at least one accessory dwelling unit as a permitted use on a lot or parcel zoned for~~

9 ~~residential use; and~~

10 ~~(d) ensure manufactured housing as defined in 76-2-302 is treated the same as other types of~~

11 ~~conventional housing allowed in a zoning district.~~

12 ~~(2) An accessory dwelling unit:~~

13 ~~(a) may be any size provided that the square footage of the accessory dwelling unit is less than~~

14 ~~the square footage of the primary dwelling located on the lot or parcel and that all other requirements of this~~

15 ~~section are met;~~

16 ~~(b) may not be considered to exceed the allowable density for the lot or parcel where it is located;~~

17 ~~and~~

18 ~~(c) must be considered a residential use consistent with the existing growth policy and zoning~~

19 ~~regulations for the lot or parcel.~~

20 ~~(2)(3)~~ In the adoption of zoning regulations, the municipal governing body shall consider:

- 21 (a) reasonable provision of adequate light and air;
- 22 (b) the effect on motorized and nonmotorized transportation systems;
- 23 (c) promotion of compatible urban growth;
- 24 (d) the character of the district and its peculiar suitability for particular uses; and
- 25 (e) conserving the value of buildings and encouraging the most appropriate use of land throughout
- 26 the jurisdictional area.

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

28 ~~(a) except to provide for accessible parking spaces pursuant to 49-4-302, provide minimum~~

parking space requirements for accessory dwelling units;

(b) implement a minimum lot size for a parcel or lot with an accessory dwelling unit that is larger than the minimum lot size for other single-family dwellings or townhouses in the same zoning district;

(c) implement setback requirements:

(i) that are in addition to existing setback requirements for an accessory dwelling unit that utilizes an existing structure or that is constructed in the same location and with the same dimensions as an existing structure; or

(ii) of more than 4 feet from the side and rear lot lines for a newly constructed accessory dwelling unit that is not constructed in the same location and with the same dimensions as an existing structure; or

(d) establish owner occupancy requirements for any dwelling on a lot or parcel that contains one or more accessory dwelling units.

(5) As used in this section, "accessory dwelling unit" means a residential living unit on the same parcel as a single-family dwelling or a multifamily structure that provides complete independent living facilities for one or more persons and whose location may include but is not limited to:

(a) an accessory structure on a parcel or lot;

(b) a detached garage;

(c) a unit that is part of an expanded or remodeled single-family unit; or

(d) a unit in a multifamily dwelling."

**Section 6.** Section 76-2-309, MCA, is amended to read:

**"76-2-309. Conflict with other laws.** (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part shall govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; require a lower height of building or a less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are



1 required by the regulations made under authority of this part, except for the requirements provided in 76-2-  
2 304(3) and (4), the provisions of such statute or local ordinance or regulation shall govern."

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5 **NEW SECTION. Section 7. Review of family transfer exemptions.** (1) When evaluating a claimed

6 division of land under 76-3-207(1)(b), the governing body may not consider the following criteria to determine  
7 whether or not the requirements of this chapter apply to the division of land:

- 8 (a) the age of an immediate family member as defined in 76-3-103;
- 9 (b) the claimant's intended use of the property;
- 10 (c) whether the division could be accomplished by a different exemption suitable for the intended  
11 use;
- 12 (d) whether a transfer of land by one immediate family member to another is followed by a  
13 subsequent transfer by one immediate family member to another on the same tract of land;
- 14 (e) whether the landowner intends to divide land for the purpose of a gift or sale to the landowner's  
15 spouse or minor children;
- 16 (f) whether the remaining tract of land is intended to be sold for the purpose of financing  
17 construction on a tract of land gifted and transferred to a spouse;
- 18 (g) whether there is a declared intent on the occupancy or use of the transferred tract of land by  
19 receiving family members;
- 20 (h) whether the family member intends to transfer or sell the newly divided land; and
- 21 (i) the nature of a claimant's business, including whether the claimant is in the business of  
22 construction or dividing, developing, or selling land.

23 (2) For a division of land allowed under 76-3-207(1)(b):

- 24 (a) a parent acting as a guardian or conservator of a minor child may manage the interest in the  
25 division of land on behalf of the child and not on behalf of the parent;
- 26 (b) the governing body may not prohibit a division of land allowed in 76-3-207(1)(b) on tracts of  
27 land that were previously approved for division under 76-3-207(1)(b);
- 28 (c) transfers of land must be approved for each eligible family member provided that the division is

1 not a clear and convincing evasion of this chapter; and

2 (d) the governing body has the burden of proof for a denial of a division of land.

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4 **Section 8.** Section 76-3-207, MCA, is amended to read:

5 **"76-3-207. Divisions or aggregations of land exempted from review but subject to survey**

6 **requirements and zoning regulations -- exceptions -- fees for examination of division.** (1) Except as

7 provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter,

8 the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot

9 created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying

10 requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to

11 applicable zoning regulations adopted under Title 76, chapter 2:

12 (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary

13 lines between adjoining properties;

14 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each

15 county to each member of the landowner's immediate family;

16 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in

17 which the landowner enters into a covenant for the purposes of this chapter with the governing body that runs

18 with the land and provides that the divided land will be used exclusively for agricultural purposes, subject to the

19 provisions of 76-3-211;

20 (d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

21 (e) divisions made for the purpose of relocating a common boundary line between a single lot

22 within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the

23 original platted lot or original unplatted parcel continues to apply to those areas.

24 (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the

25 boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are

26 established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply

27 to those areas.

28 (2) Notwithstanding the provisions of subsection (1), within a platted subdivision filed with the

1 county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the  
2 number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the  
3 governing body before an amended plat may be filed with the county clerk and recorder.

4 (3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless  
5 the county treasurer has certified that all real property taxes and special assessments assessed and levied on  
6 the land to be divided have been paid.

7 (b) (i) If a division of land includes centrally assessed property and the property taxes applicable to  
8 the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate  
9 the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed  
10 property shall ensure that the prorated real property taxes and special assessments are paid on the land being  
11 sold before the division of land is made.

12 (ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection  
13 (3)(b) as a partial payment of the total tax that is due.

14 (4) ~~The Pursuant to [section 7], the~~ governing body may examine a division or aggregation of land  
15 to determine whether or not the requirements of this chapter apply to the division or aggregation and may  
16 establish reasonable fees, not to exceed \$200, for the examination."

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19 NEW SECTION. Section 9. Codification instruction. [Section 7] is intended to be codified as an  
20 integral part of Title 76, chapter 3, part 2, and the provisions of Title 76, chapter 3, part 2, apply to [section 7].

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NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

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NEW SECTION. Section 11. Retroactive applicability. [Sections 1 through 6] apply retroactively,  
within the meaning of 1-2-109, to zoning resolutions, ordinances, and regulations adopted on or before [the  
effective date of this act].

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- END -