

1 SENATE BILL NO. 379  
2 INTRODUCED BY S. FITZPATRICK, K. ZOLNIKOV  
3  
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 AND OTHER REQUIREMENTS FOR ACCESSORY DWELLING UNITS; PROVIDING  
12 ADDITIONAL REQUIREMENTS FOR TRANSFERS OF LAND TO IMMEDIATE FAMILY MEMBERS;  
13 PROHIBITING CERTAIN CRITERIA THAT A LOCAL GOVERNING BODY MAY CONSIDER WHEN  
14 DETERMINING IF AN EXEMPTION IS AN ATTEMPT TO EVADE THE SUBDIVISION AND PLATTING ACT;  
15 PROVIDING DEFINITIONS; AMENDING SECTIONS 76-2-114, 76-2-203, 76-2-216, 76-2-302, 76-2-304, AND  
16 76-2-309, AND 76-3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE  
17 APPLICABILITY DATE."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20  
21 (Refer to Introduced Bill)  
22 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**  
26 **guidelines -- prohibitions.** (1) A local governing body may not adopt a resolution under this part that includes  
27 a requirement to:

**Amendment - 1st Reading/2nd House-blue - Requested by: Katie Zolnikov - (H) Local Government**

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Drafter: Joe Carroll, 406-444-3804

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

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

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

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

9 (e) implement setback requirements:

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

13 (ii) FOR AN ACCESSORY DWELLING UNIT THAT ARE GREATER THAN THE SETBACK REQUIREMENTS FOR THE  
14 PRIMARY DWELLING of more than 4 feet from the side and rear lot lines for a newly constructed accessory  
15 dwelling unit that is not constructed in the same location and with the same dimensions as an existing structure;  
16 or

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

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

20 (a) allow for at least one accessory dwelling unit as a permitted use on a lot or parcel AT LEAST  
21 35% OF THE LOTS OR PARCELS zoned for residential use; and

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

24 (3) An accessory dwelling unit:

25 (a) may be any size provided that the square footage of the accessory dwelling unit is less than  
26 the square footage of the primary dwelling located on the lot or parcel and that all other requirements of this  
27 section are met UP TO 75% OF THE SQUARE FOOTAGE OF THE PRIMARY DWELLING;

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

2 and

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

4 regulations for the lot or parcel.

5 (4) A short-term rental is a residential use of property.

6 (5) (a) A local unit of government may not adopt or enforce zoning ordinance provisions that have  
7 the effect of regulating the short-term rental of all or part of:

8 (i) a property owner's primary residence;

9 (ii) a single, separate residence on the same parcel as a property owner's primary residence;

10 (iii) a single residence on a separate property from the property owner's primary residence that  
11 shares a boundary with the property in subsection (5)(a)(i), inclusive of properties that are separated by a public  
12 right-of-way but would otherwise share a boundary.

13 (b) A local unit of government may not adopt or enforce zoning ordinance provisions that prohibit  
14 or have the effect of prohibiting short-term rentals of any residences that are not listed in subsection (5)(a).

15 (c) A local government unit may suspend a licensee's ability to operate a short-term rental for a  
16 period of time that does not exceed 30 days if the licensee has been adjudicated of violating the same local  
17 ordinance three or more times within a 180-day period.

18 ~~(2)(4)(6)~~ A dedication of real property as prohibited in subsection (1)(b) includes a payment or  
19 other contribution to a local housing authority or the reservation of real property for future development of  
20 housing for specified income levels or specified sale prices.

21 ~~(5)(7)~~ As used in this section,:

22 (a) "accessory-Accessory dwelling unit" has the meaning provided in 76-2-304.

23 (b) "Short-term rental" has the meaning provided in 15-68-101."

24

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

26 **"76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

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

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- 1 (b) designed to:
- 2 (i) secure safety from fire and other dangers;
- 3 (ii) promote public health, public safety, and general welfare; and
- 4 (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other
- 5 public requirements.
- 6 (2) In the adoption of zoning regulations, the board of county commissioners shall consider:
- 7 (a) reasonable provision of adequate light and air;
- 8 (b) the effect on motorized and nonmotorized transportation systems;
- 9 (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the
- 10 areas around municipalities;
- 11 (d) the character of the district and its peculiar suitability for particular uses; and
- 12 (e) conserving the value of buildings and encouraging the most appropriate use of land throughout
- 13 the jurisdictional area.
- 14 (3) Zoning regulations must:
- 15 (a) as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities;
- 16 (b) allow for at least one accessory dwelling unit as a permitted use on a lot or parcel AT LEAST
- 17 35% OF THE LOTS OR PARCELS zoned for residential use; and
- 18 (c) ensure manufactured housing as defined in 76-2-302 is treated the same as other types of
- 19 conventional housing allowed in a zoning district.
- 20 (4) An accessory dwelling unit:
- 21 (a) may be any size provided that the square footage of the accessory dwelling unit is less than
- 22 the square footage of the primary dwelling located on the lot or parcel and that all other requirements of this
- 23 section are met UP TO 75% OF THE SQUARE FOOTAGE OF THE PRIMARY DWELLING;
- 24 (b) may not be considered to exceed the allowable density for the lot or parcel where it is located;
- 25 and
- 26 (c) must be considered a residential use consistent with the existing growth policy and zoning
- 27 regulations for the lot or parcel.

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1           ~~(4)~~(5) Zoning regulations may not include a requirement to:

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

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

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

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

10          (e) implement setback requirements:

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

14          (ii) FOR AN ACCESSORY DWELLING UNIT THAT ARE GREATER THAN THE SETBACK REQUIREMENTS FOR THE  
15 PRIMARY DWELLING of more than 4 feet from the side and rear lot lines for a newly constructed accessory  
16 dwelling unit that is not constructed in the same location and with the same dimensions as an existing structure;  
17 or

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

20          ~~(5)~~(6) A dedication of real property as prohibited in subsection ~~(4)~~(5)~~(b)~~ (b) includes a payment or  
21 other contribution to a local housing authority or the reservation of real property for future development of  
22 housing for specified income levels or specified sale prices.

23          (7) A short-term rental is a residential use of property.

24          (8) (a) A local unit of government may not adopt or enforce zoning ordinance provisions that have  
25 the effect of regulating the short-term rental of all or part of:

26          (i) a property owner's primary residence;

27          (ii) a single, separate residence on the same parcel as a property owner's primary residence;

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1 (iii) a single residence on a separate property from the property owner's primary residence that  
2 shares a boundary with the property in subsection (8)(a)(i), inclusive of properties that are separated by a public  
3 right-of-way but would otherwise share a boundary.

4 (b) A local unit of government may not adopt or enforce zoning ordinance provisions that prohibit  
5 or have the effect of prohibiting short-term rentals of any residences that are not listed in subsection (8)(a).

6 (c) A local government unit may suspend a licensee's ability to operate a short-term rental for a  
7 period of time that does not exceed 30 days if the licensee has been adjudicated of violating the same local  
8 ordinance three or more times within a 180-day period.

9 (7)(9) As used in this section:

10 (a) "~~accessory~~Accessory dwelling unit" has the meaning provided in 76-2-304.

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

12

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

14 **"76-2-216. Wholly surrounded county property -- change of use -- hearing.** (1) If a county parcel  
15 for which zoning regulations have been adopted is wholly surrounded by municipal property and a change of an  
16 allowed use in the county zoning district occurs, the county governing body shall notify the municipality and all  
17 owners of municipal property within 300 feet of the county property of the change of use.

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

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

25

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

27 **"76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or other

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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.

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

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

9 (4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a  
10 factory on or after January 1, 1990, that is placed on a permanent foundation, ~~is at least 1,000 square feet in~~  
11 ~~size,~~ has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations,  
12 used on site-built homes, and is in compliance with the applicable prevailing standards of the United States  
13 department of housing and urban development at the time of its production. A manufactured home does not  
14 include a mobile home or housetrailer, as defined in 15-1-101.

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

18 (6) 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 (c) comply with dimensional standards that cumulatively result in an effective minimum lot size of  
24 greater than 2,500-4,000 square feet for a lot that is currently serviced by both a municipal water system and a  
25 municipal sewer system; or

26 (d) on a lot that is less than 4,000-6,500 square feet:

27 (i) implement dwelling setbacks more than 10 feet from the front and rear lot lines or more than 5

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1 feet from the side lot lines; or

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

3 (7) A short-term rental is a residential use of property.

4 (8) (a) A local unit of government may not adopt or enforce zoning ordinance provisions that have  
5 the effect of regulating the short-term rental of all or part of:

6 (i) a property owner's primary residence;

7 (ii) a single, separate residence on the same parcel as a property owner's primary residence;

8 (iii) a single residence on a separate property from the property owner's primary residence that  
9 shares a boundary with the property in subsection (8)(a)(i), inclusive of properties that are separated by a public  
10 right-of-way but would otherwise share a boundary.

11 (b) A local unit of government may not adopt or enforce zoning ordinance provisions that prohibit  
12 or have the effect of prohibiting short-term rentals of any residences that are not listed in subsection (8)(a).

13 (c) A local government unit may suspend a licensee's ability to operate a short-term rental for a  
14 period of time that does not exceed 30 days if the licensee has been adjudicated of violating the same local  
15 ordinance three or more times within a 180-day period.

16 (7)(9) A dedication of real property as prohibited in subsection (6)(b) includes a payment or other  
17 contribution to a local housing authority or the reservation of real property for future development of housing for  
18 specified income levels or specified sale prices.

19 (8)(10) As used in this section:

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

25 (b) "Short-term rental" has the meaning provided in 15-68-101."

26

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



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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 AT LEAST

9 35% OF THE LOTS OR PARCELS zoned for 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 UP TO 75% OF THE SQUARE FOOTAGE OF THE PRIMARY DWELLING;

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:

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

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

5 (c) implement setback requirements:

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

9 (ii) FOR AN ACCESSORY DWELLING UNIT THAT ARE GREATER THAN THE SETBACK REQUIREMENTS FOR THE  
10 PRIMARY DWELLING of more than 4 feet from the side and rear lot lines for a newly constructed accessory  
11 dwelling unit that is not constructed in the same location and with the same dimensions as an existing structure;  
12 or

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

15 (5) A short-term rental is a residential use of property.

16 (6) (a) A local unit of government may not adopt or enforce zoning ordinance provisions that have  
17 the effect of regulating the short-term rental of all or part of:

18 (i) a property owner's primary residence;

19 (ii) a single, separate residence on the same parcel as a property owner's primary residence;

20 (iii) a single residence on a separate property from the property owner's primary residence that  
21 shares a boundary with the property in subsection (6)(a)(i), inclusive of properties that are separated by a public  
22 right-of-way but would otherwise share a boundary.

23 (b) A local unit of government may not adopt or enforce zoning ordinance provisions that prohibit  
24 or have the effect of prohibiting short-term rentals of any residences that are not listed in subsection (6)(a).

25 (c) A local government unit may suspend a licensee's ability to operate a short-term rental for a  
26 period of time that does not exceed 30 days if the licensee has been adjudicated of violating the same local  
27 ordinance three or more times within a 180-day period.

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1 ~~(5)(7)~~ As used in this section:-:

2 ~~(a)~~ "~~accessory~~Accessory dwelling unit" means a residential living unit on the same parcel as a  
3 single-family dwelling or a multifamily structure that provides complete independent living facilities for one or  
4 more persons and whose location may include but is not limited to:

5 ~~(a)(i)~~ an accessory structure on a parcel or lot;

6 ~~(b)(ii)~~ a detached garage;

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

8 ~~(d)(iv)~~ a unit in a multifamily dwelling.

9 ~~(b)~~ "~~short-term~~Short-term rental" has the meaning provided in 15-68-101."

10

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

12 **"76-2-309. Conflict with other laws.** (1) Wherever the regulations made under authority of this part  
13 require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less  
14 number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards  
15 than are required in any other statute or local ordinance or regulation, the provisions of the regulations made  
16 under authority of this part shall govern.

17 (2) Wherever the provisions of any other statute or local ordinance or regulation require a greater  
18 width or size of yards, courts, or other open spaces; require a lower height of building or a less number of  
19 stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are  
20 required by the regulations made under authority of this part, except for the requirements provided in 76-2-  
21 304(3) and (4), the provisions of such statute or local ordinance or regulation shall govern."

22

23 **NEW SECTION. Section 7. — Review of family transfer exemptions.** (1) When evaluating a claimed  
24 division of land under 76-3-207(1)(b), the governing body may not consider the following criteria to determine  
25 whether or not the requirements of this chapter apply to the division of land:

26 (a) — the age of an immediate family member as defined in 76-3-103;

27 (b) — the claimant's intended use of the property;