

SENATE BILL NO. 214

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ZONING LAWS; PROVIDING THAT THE FREE USE OF PROPERTY MUST BE FAVORED IN CASES INVOLVING AN INTERPRETATION OF USE OR WHETHER A NONCONFORMING USE OF LAND IS ALLOWED AND THERE IS AMBIGUITY AS TO THE USE OR PRIOR USE; REMOVING THE EXCEPTION THAT HISTORIC PRESERVATION BOARDS MAY REVIEW APPLICATIONS FOR ZONING PERMITS AND VARIANCES; AND AMENDING SECTIONS 76-2-105, 76-2-113, 76-2-208, 76-2-210, 76-2-302, 76-2-308, AND 76-25-301, MCA."

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

Section 1. Section 76-2-105, MCA, is amended to read:

"76-2-105. Continuation of ~~prior nonconforming uses~~. (1) Existing or prior nonconforming uses may be continued although not in conformity with ~~such~~the zoning regulations.

(2) Any ambiguity or uncertainty as to whether a nonconforming use is allowed or whether the use was allowed when it was commenced must be interpreted in favor of the free use of property."

Section 2. Section 76-2-113, MCA, is amended to read:

"76-2-113. Enforcement and interpretation of zoning provisions. (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

(4)(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2)(b) restrain, correct, or abate a violation;

(3)(c) prevent the occupancy of a building, structure, or land; or

(4)(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) In interpreting a use and in determining whether a use violates this part or a resolution adopted under this part, any ambiguity or uncertainty as to whether the use is in violation must be interpreted in favor of the free use of property."

Section 3. Section 76-2-208, MCA, is amended to read:

"76-2-208. Continuation of nonconforming uses. (1) Any lawful use ~~which is made of~~ land or buildings at the time or prior to the time any a zoning resolution is adopted by the board of county commissioners may be continued although ~~such the~~ use does not conform to the provisions of ~~such the~~ resolution.

(2) Any ambiguity or uncertainty as to whether a nonconforming use is allowed or whether the use was allowed when it was commenced must be interpreted in favor of the free use of property."

Section 4. Section 76-2-210, MCA, is amended to read:

"76-2-210. Enforcement and interpretation of zoning provisions. (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(b) restrain, correct, or abate a violation;

(c) prevent the occupancy of the building, structure, or land; or

(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) In interpreting a use and in determining whether a use violates this part or a resolution adopted under this part, any ambiguity or uncertainty as to whether the use is in violation must be interpreted in favor of the free use of property.

(2)(3) For the purposes of enforcing subsections (1)(a) through (1)(c), the county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.

1 ~~(3)~~(4) The board of county commissioners may appoint enforcing officers to supervise and enforce
2 the provisions of the zoning resolutions."

3
4 **Section 5.** Section 76-2-302, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

16

17 **Section 6.** Section 76-2-308, MCA, is amended to read:

18 **"76-2-308. Enforcement and interpretation of zoning regulations and ordinances.** (1) The city or
19 town council or other legislative body may provide by ordinance for the enforcement of this part and of any a
20 regulation or ordinance made ~~thereunder~~ under the provisions of this part.

21 (2) In case any building or structure is erected, constructed, reconstructed, altered, repaired,
22 converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or
23 other regulation made under authority conferred ~~hereby~~ by this part, the proper local authorities of the
24 municipality, in addition to other remedies, may institute any appropriate action or proceedings to:

25 (a) prevent such the unlawful erection, construction, reconstruction, alteration, repair, conversion,
26 maintenance, or use;

27 (b) to restrain, correct, or abate ~~such a~~ violation; ~~to~~

28 (c) prevent the occupancy of such the building, structure, or land; or ~~to~~

1 (d) _____ prevent any illegal act, conduct, business, or use in or ~~about such~~ near the premises.

2 (3) _____ In interpreting a use and in determining whether a use violates this part or a resolution adopted
3 under this part, any ambiguity or uncertainty as to whether the use is in violation must be interpreted in favor of
4 the free use of property."

5
6 NEW SECTION. Section 7. Continuation of nonconforming uses. (1) The zoning regulations must
7 allow for the nonconforming use of land or buildings legal at the time or prior to the time that a zoning regulation
8 or amendment to the regulation is adopted, but the local government may provide grounds for discontinuing
9 nonconforming uses based on changes to or abandonment of the use of the land or buildings after the adoption
10 of a zoning regulation or amendment.

11 (2) Any ambiguity or uncertainty as to whether a nonconforming use is allowed or whether the use
12 was allowed when it was commenced must be interpreted in favor of the free use of property.

13
14 **Section 8.** Section 76-25-301, MCA, is amended to read:

15 **"76-25-301. Authority to adopt local zoning regulations.** (1) (a) A local government subject to this
16 chapter, within its respective jurisdiction, has the authority to and shall regulate the use of land in substantial
17 compliance with its adopted land use plan by adopting zoning regulations.

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

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

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

27 (a) uses of land;

28 (b) density of uses;

1 (c) types of uses;

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

3 (e) development standards mitigating the impacts of development, as identified and analyzed
4 during the land use planning process and review and adoption of zoning regulations pursuant to this chapter.

5 (3) The local government shall incorporate any existing zoning regulations adopted pursuant to
6 Title 76, chapter 2, into the zoning regulations meeting the requirements of this chapter.

7 (4) The local government shall adopt a zoning map for the jurisdiction in substantial compliance
8 with the land use plan and future land use map and the zoning regulations adopted pursuant to this section,
9 graphically illustrating the zone or zones that a property within the jurisdiction is subject to.

10 (5) The local government may provide for the issuance of permits as may be necessary for the
11 implementation of this chapter.

12 (6) (a) The zoning regulations and map must identify areas that may necessitate the denial of a
13 development or a specific type of development, such as unmitigable natural hazards, insufficient water supply,
14 inadequate drainage, lack of access, inadequate public services, or the excessive expenditure of public funds
15 for the supply of the services.

16 (b) The regulations must prohibit development in the areas identified in subsection (6)(a) unless
17 the hazards or impacts may be eliminated or overcome by approved construction techniques or other mitigation
18 measures identified in the zoning regulations.

19 (c) Approved construction techniques or other mitigation measures described in subsection (6)(b)
20 may not include building regulations as defined in 50-60-101 other than those identified by the department of
21 labor and industry as provided in 50-60-901.

22 (7) The zoning regulations and map must mitigate the hazards created by development in areas
23 located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to
24 be subject to flooding by the governing body. If the hazards cannot be mitigated, the zoning regulations and
25 map must identify those areas where future development is limited or prohibited.

26 (8) (a) The zoning regulations must allow for the continued use of land or buildings legal at the
27 time that any zoning regulation, map, or amendment ~~thereto~~ of these is adopted, but the local government may
28 provide grounds for discontinuing nonconforming uses based on changes to or abandonment of the use of the

1 land or buildings after the adoption of a zoning regulation, map, or amendment.

2 (b) Any ambiguity or uncertainty of whether a nonconforming use is allowed or whether the use
3 was allowed when it was commenced must be interpreted in favor of the free use of property.

4 (9) In interpreting a use and in determining whether a use violates this chapter or a resolution
5 adopted under this chapter, any ambiguity or uncertainty as to whether the use is in violation must be
6 interpreted in favor of the free use of property."

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

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