

SENATE BILL NO. 243

INTRODUCED BY E. BOLDMAN

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING ZONING REGULATIONS TO ALLOW TALLER BUILDINGS IN CERTAIN MUNICIPALITIES; AND AMENDING SECTIONS 76-2-304 AND 76-25-303, MCA."

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

Section 1. 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

1 with a population over 5,000 as of the most recent census, the city council or other legislative body of the
2 municipality shall allow as a permitted use multiple-unit dwellings and mixed-use developments that include
3 multiple-unit dwellings on a parcel or lot that:

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

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

8 (i) a requirement to provide more than one off-street parking space for each unit and accessible
9 parking spaces as required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.; or

10 (ii) a requirement to provide more than an equivalent number of spaces required under subsection
11 (4)(b)(i) provided through a shared parking agreement; or

12 (iii) a height restriction on buildings to be fewer than 6 stories.

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

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

16 (b) "Family unit" means:

17 (i) a single person living or residing in a dwelling or place of residence; or

18 (ii) two or more persons living together or residing in the same dwelling or place of residence.

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

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

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

26
27 **Section 2.** Section 76-25-303, MCA, is amended to read:

28 **"76-25-303. Limitations on zoning authority.** (1) A local government acting pursuant to this part

1 may not:

2 (a) treat manufactured housing units differently from any other residential units;

3 (b) include in a zoning regulation any requirement to:

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

6 (ii) dedicate real property for the purpose of providing housing for specified income levels or at
7 specified sale prices, including a payment or other contribution to a local housing authority or the reservation of
8 real property for future development of housing for specified income levels or specified sale prices;

9 (c) prevent the erection of an amateur radio antenna at heights and dimensions sufficient to
10 accommodate amateur radio service communications by a person who holds an unrevoked and unexpired
11 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
12 communications commission of the United States;

13 (d) establish a maximum height limit for an amateur radio antenna of less than 100 feet above the
14 ground;

15 (e) subject to subsection (2) and outside of incorporated municipalities, prevent the complete use,
16 development, or recovery of any mineral, forest, or agricultural resources identified in the land use plan, except
17 that the use, development, or recovery may be reasonably conditioned or prohibited within residential zones;

18 (f) except as provided in subsection (3), treat the following differently from any other residential
19 use of property:

20 (i) a foster home, kinship foster home, youth shelter care facility, or youth group home operated
21 under the provisions of 52-2-621 through 52-2-623, if the home or facility provides care on a 24-hour-a-day
22 basis;

23 (ii) a community residential facility serving eight or fewer persons, if the facility provides care on a
24 24-hour-a-day basis; or

25 (iii) a family day-care home or a group day-care home registered by the department of public
26 health and human services under Title 52, chapter 2, part 7;

27 (g) except as provided in subsection (3), apply any safety or sanitary regulation of the department
28 of public health and human services or any other agency of the state or a political subdivision of the state that is

1 not applicable to residential occupancies in general to a community residential facility serving 8 or fewer
2 persons or to a day-care home serving 12 or fewer children; ~~or~~

3 (h) prohibit any existing agricultural activities or force the termination of any existing agricultural
4 activities outside the boundaries of an incorporated city, including agricultural activities that were established
5 outside the corporate limits of a municipality and thereafter annexed into the municipality; or

6 (i) enact a height restriction that would violate 76-2-304(4)(b)(iii).

7 (2) Regulations that condition or prohibit uses pursuant to subsection (1)(e) must be in effect prior
8 to the filing of a permit application or at the time a written request is received for a preapplication meeting
9 pursuant to 82-4-432.

10 (3) Except for a day-care home registered by the department of public health and human services,
11 a local government may impose zoning standards and conditions on any type of home or facility identified in
12 subsections (1)(f) and (1)(g) if those zoning standards and conditions do not conflict with the requirements of
13 subsections (1)(f) and (1)(g)."

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