

**Amendment - 2nd Reading/2nd House-tan - Requested by: Connie Keogh - (H) Committee of the Whole**

- 2025

69th Legislature 2025

Drafter: Pad McCracken,

SB0214.002.004

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; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

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~~ THE ZONING REGULATIONS MUST ALLOW FOR THE NONCONFORMING USE OF LAND OR BUILDINGS LEGAL AT THE TIME OR PRIOR TO THE TIME THAT A ZONING REGULATION OR AMENDMENT TO THE REGULATION WAS ADOPTED, BUT THE BOARD OF COUNTY COMMISSIONERS MAY PROVIDE GROUNDS FOR DISCONTINUING NONCONFORMING USES BASED ON CHANGES TO OR ABANDONMENT OF THE USE OF THE LAND OR BUILDINGS AFTER THE ADOPTION OF A ZONING REGULATION OR AMENDMENT.

~~(2) Any ambiguity or uncertainty IN THE ZONING REGULATIONS 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~~ NONCONFORMING USE."

**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

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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 IN THE ZONING REGULATIONS as to whether the use is in violation must be interpreted in favor of the free use of property IN QUESTION.

~~(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.

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

**Section 5. 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, including the creation of zoning districts that allow tiny dwelling units.~~

~~(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.~~

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

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

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

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

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

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

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

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

~~(7) — A dedication of real property as prohibited in subsection (6)(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.~~

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

~~(b) — Subsection (8)(a) does not apply to historic preservation boards reviewing an application for a permit or variance to structures or districts that the local government has designated as historic or that are~~

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~~listed on the national register of historic places as defined in the National Historic Preservation Act of 1966 as it read on October 1, 2023."~~

**Section 5.** Section 76-2-308, MCA, is amended to read:

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

(2) In case 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 ordinance or other regulation made under authority conferred ~~hereby~~ by this part, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to:

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

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

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

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

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

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

(2) Any ambiguity or uncertainty IN THE ZONING REGULATIONS 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

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1 implementation of this chapter.

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

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

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

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

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

20 (b) Any ambiguity or uncertainty of IN THE ZONING REGULATIONS AS TO whether a nonconforming use  
21 is allowed or whether the use was allowed when it was commenced must be interpreted in favor of the free  
22 NONCONFORMING use of property.

23 (9) In interpreting a use and in determining whether a use violates this chapter or a resolution  
24 adopted under this chapter, any ambiguity or uncertainty IN THE ZONING REGULATIONS as to whether the use is in  
25 violation must be interpreted in favor of the free-use of property IN QUESTION."

26  
27 NEW SECTION. Section 8. Codification instruction. [Section ~~7~~ 6] is intended to be codified as an

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1 integral part of Title 76, chapter 2, part 3, and the provisions of Title 76, chapter 2, part 3, apply to [section-~~7~~6].

2

3 NEW SECTION. SECTION 9. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

4 - END -