

HOUSE BILL NO. 802

INTRODUCED BY S. MANESS, E. TILLEMAN, C. HINKLE, B. MITCHELL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ZONING LAWS; PROVIDING THAT THE RENTAL OF PRIMARY RESIDENCES IS A PERMISSIBLE USE IN COUNTY AND MUNICIPAL ZONING REGULATIONS; AMENDING SECTION 76-25-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Rental use of primary residences, accessory dwelling units, neighboring lots, and short-term rentals -- permissible use. (1) An express prohibition on rentals of any duration, including short-term rentals, in a jurisdictional area or a zoning district or subdistrict, if the jurisdictional area is divided into zoning districts or subdistricts, may not preclude the short-term rental of:

- (a) all or part of a property owner's primary residence;
- (b) a residence on the same parcel as a property owner's primary residence including an accessory dwelling unit as defined in 76-2-345; or
- (c) a residence on a separate property from the property owner's primary residence that shares a boundary with the primary residence, inclusive of properties that are separated by a public right-of-way but would otherwise share a boundary.

(2) As used in this section:

- (a) "primary residence" means a dwelling in which the property owner can demonstrate the owner's occupancy at least 183 days of the year; and

- (b) "short-term rental" has the same meaning as provided in 15-68-101.

NEW SECTION. Section 2. Rental use of primary residences, accessory dwelling units, neighboring lots, and short-term rentals -- permissible use. (1) An express prohibition on rentals of any duration, including short-term rentals, in a jurisdictional area or a zoning district or subdistrict, if the jurisdictional

1 area is divided into zoning districts or subdistricts, may not preclude the short-term rental of:

2 (a) all or part of a property owner's primary residence;

3 (b) a residence on the same parcel as a property owner's primary residence including an
4 accessory dwelling unit as defined in 76-2-345; or

5 (c) a residence on a separate property from the property owner's primary residence that shares a
6 boundary with the primary residence, inclusive of properties that are separated by a public right-of-way but
7 would otherwise share a boundary.

8 (2) As used in this section:

9 (a) "primary residence" means a dwelling in which the property owner can demonstrate the
10 owner's occupancy at least 183 days of the year; and

11 (b) "short-term rental" has the same meaning as provided in 15-68-101.
12

13 **NEW SECTION. Section 3. Rental use of primary residences, accessory dwelling units,**
14 **neighboring lots, and short-term rentals -- permissible use.** (1) An express prohibition on rentals of any
15 duration, including short-term rentals, in a jurisdictional area or a zoning district or subdistrict, if the jurisdictional
16 area is divided into zoning districts or subdistricts, may not preclude the short-term rental of:

17 (a) all or part of a property owner's primary residence;

18 (b) a residence on the same parcel as a property owner's primary residence including an
19 accessory dwelling unit as defined in 76-2-345; or

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

23 (2) As used in this section:

24 (a) "primary residence" means a dwelling in which the property owner can demonstrate the
25 owner's occupancy at least 183 days of the year; and

26 (b) "short-term rental" has the same meaning as provided in 15-68-101.
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28 **Section 4.** Section 76-25-303, MCA, is amended to read:

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

2 may not:

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

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

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

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

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

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

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

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

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

24 (ii) a community residential facility serving eight or fewer persons, if the facility provides care on a
25 24-hour-a-day basis; or

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

28 (g) except as provided in subsection (3), apply any safety or sanitary regulation of the department

1 of public health and human services or any other agency of the state or a political subdivision of the state that is
2 not applicable to residential occupancies in general to a community residential facility serving 8 or fewer
3 persons or to a day-care home serving 12 or fewer children; or

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

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).

14 (4) An express prohibition on rentals of any duration, including short-term rentals, may not
15 preclude the short-term rental of:

16 (a) all or part of a property owner's primary residence;

17 (b) a residence on the same parcel as a property owner's primary residence including an
18 accessory dwelling unit as defined in 76-2-345; or

19 (c) a residence on a separate property from the property owner's primary residence that shares a
20 boundary with the primary residence, inclusive of properties that are separated by a public right-of-way but
21 would otherwise share a boundary.

22 (5) As used in this section:

23 (a) "primary residence" means a dwelling in which the property owner can demonstrate the
24 owner's occupancy at least 183 days of the year; and

25 (b) "short-term rental" has the same meaning as provided in 15-68-101."
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27 **NEW SECTION. Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as an
28 integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [section 1].

