

SENATE BILL NO. 418

INTRODUCED BY E. BOLDMAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO HOME-BASED BUSINESSES; ALLOWING FOR THE OPERATION OF HOME-BASED BUSINESSES; PROHIBITING LOCAL GOVERNMENT POWER TO PROHIBIT HOME-BASED BUSINESSES; ALLOWING REASONABLE MUNICIPAL REGULATIONS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 7-1-111, 7-21-4204, 76-2-304, AND 76-2-309, MCA."

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

Section 1. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

- 1 (8) any power that defines as an offense conduct made criminal by state statute, that defines an
2 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6
3 months' imprisonment, or both, except as specifically authorized by statute;
- 4 (9) any power that applies to or affects the right to keep or bear arms;
- 5 (10) any power that applies to or affects a public employee's pension or retirement rights as
6 established by state law, except that a local government may establish additional pension or retirement
7 systems;
- 8 (11) any power that applies to or affects the standards of professional or occupational competence
9 established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;
- 10 (12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to
11 or affects Title 75, chapter 7, part 1, or Title 87;
- 12 (13) (a) any power that applies to or affects landlords, as defined in 70-24-103 and 70-33-103, when
13 that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is
14 provided in Title 70, chapters 24, 25, and 33; or
- 15 (b) any power to deviate from or add to the exclusive application of the provisions of:
- 16 (i) the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24;
- 17 (ii) residential tenants' security deposit law in Title 70, chapter 25; or
- 18 (iii) the Montana Residential Mobile Home Lot Rental Act, Title 70, chapter 33.
- 19 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;
- 20 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,
21 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government
22 may enter into a cooperative agreement with the department of agriculture concerning the use and application
23 of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local
24 government from adopting or implementing zoning regulations or fire codes governing the physical location or
25 siting of fertilizer manufacturing, storage, and sales facilities.
- 26 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production,
27 processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or
28 vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local

1 government from adopting or implementing zoning regulations or building codes governing the physical location
2 or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or
3 distribution facilities.

4 (17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,
5 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired
6 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
7 communications commission of the United States;

8 (18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio
9 antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a
10 person who holds an unrevoked and unexpired official amateur radio station license and operator's license,
11 "technician" or higher class, issued by the federal communications commission of the United States;

12 (19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles,
13 load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a
14 highway that is under the jurisdiction of an entity other than the local government unit;

15 (20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in
16 relation to a wildfire;

17 (21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition,
18 sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(4);

19 (22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in
20 accordance with 7-1-116;

21 (23) any power to require an employer, other than the local government unit itself, to provide an
22 employee or class of employees with a wage or employment benefit that is not required by state or federal law;

23 (24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and
24 any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-
25 5-121(2)(c)(iv);

26 (25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in
27 16-11-313(1);

28 (26) any power to control the amount of rent charged for private residential or commercial property.

Private residential property does not include property in which the local government unit has a property interest or in which the local government unit has an interest through a housing authority.

(27) any power to require additional licensing when the state is the original issuer of the license;

(28) any power to prohibit or impede the connection or reconnection of an electric, natural gas, propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or other energy or fuel provider;

(29) any power to prohibit the purchase or use of any fuel derived from petroleum, including but not limited to methane, propane, gasoline, and diesel fuel, or the installation or use of any vehicles, vessels, tools, or commercial and residential appliances that burn or transport petroleum fuels; or

(30) any power to require that buildings be constructed to have solar panels or wiring, batteries, or other equipment for solar panels or electric vehicles; ~~;~~ or

(31) any power to prohibit the use of a residential dwelling for a home-based business pursuant to 7-21-4204."

Section 2. Section 7-21-4204, MCA, is amended to read:

"7-21-4204. Regulation of location of businesses, factories, and steam boilers -- exception for no-impact home-based businesses. (1) The city or town council has power:

(1)(a) to regulate the location of slaughterhouses, breweries, distilleries, livery stables, foundries, blacksmith shops, planing mills, soap factories, and tanneries within the city or town and to prohibit any offensive and unwholesome establishments within the city or town limits or within 3 miles ~~thereof~~ of the city or town limits; and

(2)(b) to regulate the location of steam boilers.

(2) A municipality may not prohibit a no-impact home-based business as defined in this section or otherwise require a person to apply, register, or obtain a permit, license, variance, or other type of prior approval from the municipality to operate a no-impact home-based business.

(3) A municipality may establish reasonable regulations on a home-based business if the regulations are narrowly tailored for any of the following purposes:

(a) the protection of the public health and safety, including rules and regulations related to fire and

building codes, health and sanitation, transportation and traffic control, solid and hazardous waste, and pollution and noise control;

(b) ensuring that the business activity is:

(i) compatible with residential use of the property and surrounding residential use;

(ii) secondary to the use as a residential dwelling; and

(iii) complying with state and federal law and paying applicable taxes.

(c) limiting or prohibiting the use of a home-based business as defined in this section for the purposes of selling illegal drugs, selling liquor, operating or maintaining a structured sober living home, or conducting business related to pornography, obscenity, nude or topless dancing, and other adult-oriented businesses.

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

(a) "Home-based business" means a business for the manufacture, provision, or sale of goods or services that is owned and operated by the owner or tenant of the residential dwelling.

(b) "No-impact home-based business" means a home-based business for which all of the following apply:

(i) the total number of onsite employees and clients does not exceed the municipal occupancy limit for the residential property; and

(ii) the business activities are characterized by all of the following:

(A) the business activities are limited to the sale of lawful goods and services;

(B) the business activities do not generate on-street parking or a substantial increase in traffic through the residential area;

(C) the business activities occur inside the residential dwelling or in the yard; and

(D) the business activities are not visible from the street."

Section 3. 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:

- 1 (i) secure safety from fire and other dangers;
- 2 (ii) promote public health, public safety, and the general welfare; and
- 3 (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other
- 4 public requirements.
- 5 (2) In the adoption of zoning regulations, the municipal governing body shall consider:
- 6 (a) reasonable provision of adequate light and air;
- 7 (b) the effect on motorized and nonmotorized transportation systems;
- 8 (c) promotion of compatible urban growth;
- 9 (d) the character of the district and its peculiar suitability for particular uses; and
- 10 (e) conserving the value of buildings and encouraging the most appropriate use of land throughout
- 11 the jurisdictional area.
- 12 (3) The use of a residential dwelling for a home-based business as defined in 7-21-4204 is a
- 13 permitted use, except that this permission does not supersede any of the following:
- 14 (a) any deed restriction, covenant, or agreement restricting the use of land; and
- 15 (b) any master deed, bylaw, or other document applicable to a common interest ownership
- 16 community.
- 17 (4) A municipality may not require a person as a condition of operating a home-based business to:
- 18 (a) rezone the property for commercial use; or
- 19 (b) install or equip fire sprinklers in a detached single-family residence or any residential dwelling
- 20 with no more than two dwelling units pursuant to 50-60-203.
- 21 ~~(3)~~(5) In a city with a population of at least 5,000 residents, duplex housing must be allowed as a
- 22 permitted use on a lot where a single-family residence is a permitted use, and zoning regulations that apply to
- 23 the development or use of duplex housing may not be more restrictive than zoning regulations that are
- 24 applicable to single-family residences.
- 25 ~~(4)~~(6) (a) In a municipality that is designated as an urban area by the United States census bureau
- 26 with a population over 5,000 as of the most recent census, the city council or other legislative body of the
- 27 municipality shall allow as a permitted use multiple-unit dwellings and mixed-use developments that include
- 28 multiple-unit dwellings on a parcel or lot that:

1 (i) has a will-serve letter from both a municipal water system and a municipal sewer system; and

2 (ii) is located in a commercial zone.

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

5 (i) one off-street parking space for each unit and accessible parking spaces as required by the
6 Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.; or

7 (ii) an equivalent number of spaces required under subsection ~~(4)(b)(i)~~ (6)(b)(i) provided through a
8 shared parking agreement.

9 ~~(5)(7)~~ As used in this section, the following definitions apply:

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

12 (b) "Family unit" means:

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

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

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

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

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

22
23 **Section 4.** Section 76-2-309, MCA, is amended to read:

24 **"76-2-309. Conflict with other laws.** (1) Wherever the regulations made under authority of this part
25 require a greater width or size of yards, courts, or other open spaces, require a lower height of building or a
26 fewer number of stories, require a greater percentage of a lot to be left unoccupied, or impose other higher
27 standards than are required in any other statute or local ordinance or regulation, the provisions of the
28 regulations made under authority of this part must govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces, require a lower height of building or a fewer number of stories, require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this part, except for restrictions provided in 76-2-304(3) and (4)(5) and (6), the provisions of the other statute or local ordinance or regulation must govern."

6 - END -