SENATE BILL NO. 336

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING SHORT-TERM RENTAL LAWS; ESTABLISHING THAT A SHORT-TERM RENTAL IS A RESIDENTIAL USE OF PROPERTY; ESTABLISHING THAT SHORT-TERM RENTALS ARE PERMISSIBLE UNLESS PROHIBITED THROUGHOUT A ZONING DISTRICT; REQUIRING ADDITIONAL ANALYSIS WHEN SHORT TERM RENTALS ARE RESTRICTED OR PROHIBITED; AMENDING A DEFINITION; AMENDING SECTIONS 15-68-101, 76-2-104, 76-2-203, 76-2-303, AND 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. Short-term rentals.** (1) Unless the clear and express terms of a covenant provide otherwise, a short-term rental is a residential use of property and is not a commercial, business, or other use.

(2) As used in this section, "short-term rental" has the same meaning as provided in 15-68-101.

NEW SECTION. **Section 2. Short-term rentals.** (1) Unless the clear and express terms of a homeowners' association's bylaws or other governing instrument provide otherwise, a short-term rental is a residential use of property and is not a commercial, business, or other use.

(2) As used in this section, "short-term rental" has the same meaning as provided in 15-68-101.

NEW SECTION. **Section 3. Short-term rentals -- residential and permissible use.** (1) A short-term rental is a residential use of property and is not a commercial, business, or other use.

(2) (a) Unless expressly prohibited in the entirety of a jurisdictional area or a zoning district, if the jurisdictional area is divided into zoning districts, short-term rentals are permissible in any zoned area where residential use is allowed, including but not limited to areas where the use of single-family dwelling units,

multifamily dwelling units, other dwelling units, or units or A group of units in a condominium, cooperative, timeshare, or owner-occupied residential home is allowed.

(b) An express prohibition on short-term rentals may not preclude the short-term rental of all or part of a property owner's primary residence and:

(i) a single, separate residence on the same parcel as a property owner's primary residence; or

(ii) a single residence on a separate property from the property owner's primary residence that shares a boundary with the property described in subsection (2)(b), inclusive of properties that are separated by a public right-of-way but would otherwise share a boundary.

(3) 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 4. Short term rentals -- residential and permissible use.** (1) A short-term rental is a residential use of property and is not a commercial, business, or other use.

(2) (a) Unless expressly prohibited in the entirety of a jurisdictional area or a zoning district, if the jurisdictional area is divided into zoning districts, short-term rentals are permissible in any zoned area where residential use is allowed, including but not limited to areas where the use of single-family dwelling units, multifamily dwelling units, other dwelling units, or units or a group of units in a condominium, cooperative, timeshare, or owner-occupied residential home is allowed.

(b) An express prohibition on short-term rentals may not preclude the short-term rental of all or part of a property owner's primary residence and:

(i) a single, separate residence on the same parcel as a property owner's primary residence; or

(ii) a single residence on a separate property from the property owner's primary residence that shares a boundary with the property described in subsection (2)(b), inclusive of properties that are separated by a public right-of-way but would otherwise share a boundary.

(3) 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 5. Short-term rentals -- residential and permissible use.** (1) A short-term rental is a residential use of property and is not a commercial, business, or other use.

(2) (a) Unless expressly prohibited in the entirety of a municipality or a zoning district, if the municipality is divided into zoning districts, short-term rentals are permissible in any zoned area where residential use is allowed, including but not limited to areas where the use of single-family dwelling units, multifamily dwelling units, other dwelling units, or units or A group of units in a condominium, cooperative, timeshare, or owner-occupied residential home is allowed.

(b) An express prohibition on short-term rentals may not preclude the short-term rental of all or part of a property owner's primary residence and:

(i) a single, separate residence on the same parcel as a property owner's primary residence; or

(ii) a single residence on a separate property from the property owner's primary residence that shares a boundary with the property described in subsection (2)(b), inclusive of properties that are separated by a public right-of-way but are otherwise adjacent.

(3) 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.

Section 6. Section 15-68-101, MCA, is amended to read:

"**15-68-101. Definitions.** For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Accommodations" means short-term rentals or individual sleeping rooms, suites, camping spaces, or other units offered for overnight lodging periods of less than 30 days to the general public for compensation.

(b) Accommodations include units located in property represented to the public as a hotel, motel,

campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, bed and breakfast facility, vacation home, home, apartment, timeshare, room, or rooms rented by or on behalf of the owner or seller.

(c) The term does not include:

(i) a health care facility, as defined in 50-5-101;

(ii) any facility owned by a corporation organized under Title 35, chapter 2 or 3;

(iii) a facility that is used primarily by persons under 18 years of age for camping purposes; or

(iv) rooms or spaces offered separately to the general public for nonlodging purposes, including meeting, conference, or banquet spaces.

(2) (a) "Base rental charge" means the following:

(i) charges for time of use of the rental vehicle and mileage, if applicable;

(ii) charges accepted by the renter for insurance;

(iii) charges for additional drivers or underage drivers; and

(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

(i) rental vehicle price discounts allowed and taken;

(ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;

(iii) motor fuel;

(iv) intercity rental vehicle drop charges; or

(v) taxes imposed by the federal government or by state or local governments.

(3) (a) "Campground" means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(4) "Engaging in business" means carrying on or causing to be carried on any activity with the

purpose of receiving direct or indirect benefit.

(5) (a) "Motor vehicle" means:

(i) a light vehicle as defined in 61-1-101;

(ii) a motorcycle as defined in 61-1-101;

(iii) a motor-driven cycle as defined in 61-1-101;

(iv) a quadricycle as defined in 61-1-101;

(v) a motorboat or a sailboat as defined in 23-2-502; or

(vi) an off-highway vehicle as defined in 23-2-801 that:

(A) is rented for a period of not more than 30 days;

(B) is rented without a driver, pilot, or operator; and

(C) is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

(i) a rental vehicle rented pursuant to a contract for insurance; and

(ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

(6) "Online hosting platform" means any person that provides an online application, software, website, or system through which a seller may advertise, rent, or furnish accommodations or rental vehicles and through which a purchaser may arrange for use of those accommodations or the use or lease of rental vehicles. Online hosting platforms include any online travel company or third-party reservation intermediary that facilitates the sale or use of accommodations or rental vehicles.

(7) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, online hosting platform, or any other legal entity.

(8) "Purchaser" means a person to whom a sale of accommodations or a rental vehicle is made or to whom a service is furnished.

(9) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.

(10) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease,

or subrent.

(11) [(a)] "Sale" or "selling" means the rental or use of accommodations or rental vehicles for consideration or the performance of a service for consideration.

[(b) The term does not include providing accommodations to victims of domestic violence or human trafficking for grant money received pursuant to 44-4-1505.]

(12) (a) "Sales price" applies to the measure subject to the tax under Title 15, chapter 65, and this chapter and means the total amount paid by the purchaser in the form of consideration, including cash, credit, property, and services, for which sales of accommodations, rental vehicles, or services are provided, sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:

(i) the seller's cost of the property sold;

(ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) charges by the seller for any services necessary to complete the sale;

(iv) delivery charges; or

(v) installation charges.

(b) The amount received for charges listed in subsections (12)(a)(ii) through (12)(a)(v) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser and the charge is not subject to subsection (12)(d).

(c) The term does not include:

(i) charges for meals, transportation, entertainment, or any other similar charges; or

(ii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(d) Unless specifically excluded, sales price includes any separate charge or fee that a purchaser must pay to facilitate the sale or rental of the accommodations or rental vehicle, including a fee or a service, commission, or other charge by an online hosting platform.

(13) "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102.

(14) "Seller" means a person that makes sales of accommodations or rental vehicles, including an

online hosting platform.

(15) (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of accommodations or rental vehicles. Service includes activities performed by an online hosting platform.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(16) "Short-term rental" means any individually or collectively owned single-family house, multifamily dwelling unit, ~~or~~ other dwelling unit, or any unit or group of units in a condominium, cooperative, timeshare, or owner-occupied residential home or portion of a dwelling unit that is offered for a fee for 30 days or less.

(17) "Short-term rental marketplace" means a person that provides a platform through which a seller or the authorized agent of the seller offers a short-term rental to an occupant.

(18) "Timeshare" means any facility for which multiple parties or individuals own a right to use the facility for lodging purposes, and these parties or individuals do not hold claim to ownership of the physical property. (Bracketed language in subsection (11) terminates June 30, 2027--sec. 10, Ch. 758, L. 2023.)"

Section 7. Section 76-2-104, MCA, is amended to read:

"**76-2-104. Development pattern.** (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

(3) If zoning district boundaries or regulations would restrict or prohibit short-term rentals as defined in 15-68-101 or long-term rentals, a specific analysis of that restriction or prohibition must consider the

elements required in this subsection and be part of the documentation provided to the public for the adoption or amendment of zoning regulations. The analysis must include:

(a) whether the zoning regulation is consistent with the growth policy; and

(b) documentation that the zoning regulation is designed to:

(i) secure safety from fire and other dangers;

(ii) promote public health, public safety, and general welfare; or

(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements."

Section 8. Section 76-2-203, MCA, is amended to read:

"**76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

(a) made in accordance with the growth policy; and

(b) designed to:

(i) secure safety from fire and other dangers;

(ii) promote public health, public safety, and 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 board of county commissioners shall consider:

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;

(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) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities.

(4) 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.

(5) A dedication of real property as prohibited in subsection (4)(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.

(6) If zoning district boundaries or regulations would prohibit short-term rentals as defined in 15-68-101 or long-term rentals, a specific analysis of that restriction or prohibition must consider all the elements in subsection (1) and be part of the documentation provided to the public for the adoption or amendment of zoning regulations."

Section 9. Section 76-2-303, MCA, is amended to read:

"**76-2-303. Procedure to administer certain annexations and zoning laws -- hearing and notice.** (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, enforced, and changed, subject to the requirements of subsection (2).

(2) (a) A regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(b) Notice of a regulation, restriction, or boundary that would restrict or prohibit the use of short-term rentals as defined in 15-68-101 must demonstrate how the restriction or prohibition furthers the criteria and guidelines provided in 76-2-304(1) and (2).

(3) (a) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation if the proposed municipal zoning regulations for the annexed property:

(i) authorize land uses comparable to the land uses authorized by county zoning;

(ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to Title 76, chapter 2, part 1 or 2; or

(iii) are consistent with zoning requirements recommended in a growth policy adopted pursuant to Title 76, chapter 1, for the annexed property.

(b) A joint hearing authorized under this subsection (3) fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation."

Section 10. Section 76-25-303, MCA, is amended to read:

"**76-25-303. Limitations on zoning authority.** (1) A local government acting pursuant to this part may not:

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

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

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

(ii) dedicate real property for the purpose of providing housing for specified income levels or at specified sale prices, including 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;

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

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

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

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

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

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

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

(g) except as provided in subsection (3), apply any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children; or

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

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

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

(4) (a) Unless expressly prohibited in the entirety of a municipality or a zoning district, if the municipality is divided into zoning districts, short-term rentals as defined in 15-68-101 are considered a residential use of property and are permissible in any area zoned to allow residential use, including but not limited to areas where the use of single-family dwelling units, multifamily dwelling units, other dwelling units, or units or a group of units in a condominium, cooperative, timeshare, or owner-occupied residential home is allowed.

(b) An express prohibition on short-term rentals may not preclude the short-term rental of all or part

of a property owner's primary residence and:

(i) a single, separate residence on the same parcel as a property owner's primary residence; or

(ii) a single residence on a separate property from the property owner's primary residence that shares a boundary with the property described in subsection (4)(b), inclusive of properties that are separated by a public right-of-way but are otherwise adjacent.

(5) As used in this section, "primary residence" means a dwelling in which the property owner can demonstrate the owner's occupancy at least 183 days of the year."

NEW SECTION. **Section 11. Application for existing short-term rentals.** A short-term rental that was in existence on or before [the effective date of this act] may not be prohibited or further restricted by regulations adopted pursuant to [sections 3, 4, or 5] or any additional regulation that was not in existence as of [the effective date of this act].

NEW SECTION. **Section 12. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 70, chapter 17, part 9, and the provisions of Title 70, chapter 17, part 9, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 76, chapter 2, part 2, and the provisions of Title 76, chapter 2, part 2, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 76, chapter 2, part 3, and the provisions of Title 76, chapter 2, part 3, apply to [section 5].

NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 14. Retroactive applicability.** [Sections 1 and 2] apply retroactively, within

the meaning of 1-2-109, to covenants on residential property and homeowners' association bylaws or other governing instruments that do not clearly and expressly address short-term rentals.

NEW SECTION. **Section 15. Applicability.** [Sections 1 and 2] apply to covenants on residential property and homeowners' association bylaws or other governing instruments in existence on or after [the effective date of this act] that do not clearly and expressly address short-term rentals.

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