

**RESOLUTION ADOPTING REGULATIONS
FOR THE APPLICATION & REVIEW OF BUILDINGS FOR LEASE OR RENT**

Under the authority of Title 76, Part 8, MCA

[Insert Name of Jurisdiction]

Resolution No. [redacted]

WHEREAS, the 63rd Legislature and the Governor of Montana established a new review process applicable to buildings for lease or rent, effective September 1, 2013; and

WHEREAS, the new review process allows local governments to establish regulations that guide the application and review of the creation of four (4) or more buildings for rent or lease on a single tract of land, when not otherwise exempt pursuant to Section 76-8-102, MCA; and

WHEREAS, pursuant to Section [7-1-2121 or 7-1-4127], MCA, the [insert name of jurisdiction] [Board of County Commissioners; City Council] noticed a public hearing on the proposed regulations governing review of buildings for rent or lease, posted not less than 30 days prior to the public hearing in at least five (5) public places throughout the jurisdiction, including but not limited to public buildings; and

WHEREAS, after publishing and posting such notice, the [insert name of jurisdiction] [Board of County Commissioners; City Council] held a public hearing on [insert date], to consider comments from the public [summarize public comment] regarding the proposed regulations; and

WHEREAS, based upon the public comment received, the [insert name of jurisdiction] [Board of County Commissioners; City Council] amended the proposed findings of fact¹ [summarize amendments, as appropriate] to address concerns; and,

WHEREAS, the final findings of fact in support of the adoption of the regulations governing review of buildings for lease or rent within the jurisdiction of the [insert name of jurisdiction] are attached hereto and specifically incorporated herein by this reference; and

WHEREAS, following the conclusion of the public hearing , consideration of public comments, and amendments to applicable findings, the [insert name of jurisdiction] [Board of County Commissioners; City Council] passed a resolution to adopt the proposed regulations; and

¹ For assistance in developing findings to support the adoption of these regulations, communities should refer to the model findings of fact developed by the Community Technical Assistance Program (CTAP) and available online at: <http://comdev.mt.gov/CTAP/ctaptrainingworkshops.mcp>

[OPTIONAL] WHEREAS, the [insert name of jurisdiction] [Board of County Commissioners; City Council] established a fee to be paid by the landowner, commensurate with the cost of reviewing applications for buildings for rent or lease, in the amount of [\\$]²; and

[OPTIONAL] WHEREAS, the [insert name of jurisdiction] [Board of County Commissioners; City Council] have determined the review of [insert number and/or type of building for lease or rent] shall not be required based on findings of fact establishing there will be minimal impact to public health, safety and general welfare; and

[OPTIONAL] WHEREAS, the [insert name of jurisdiction] [Board of County Commissioners; City Council] have determined the review of buildings for lease or rent requires additional regulations than the minimum set forth in Section 76-8-107, MCA, based on findings of fact establishing there would be otherwise be unacceptable impacts to public health, safety and general welfare; and

NOW, THEREFORE, the [insert name of jurisdiction] [Board of County Commissioners; City Council] hereby adopts [insert "by supermajority vote" if applicable] the regulations set forth in Exhibit A attached hereto and incorporated herein for the purpose of reviewing buildings for rent or lease in [insert name of jurisdiction], pursuant to the provisions of Sections 76-8-101, *et seq.*, MCA.

ADOPTED by the [insert name of jurisdiction] [Board of County Commissioners; City Council] this [insert date] day of [insert month and year].

Signature

[Name], Chairman

Signature

[Name]

Signature

[Name]

ATTEST:

Signature

[Name of County Clerk & Recorder or other designated official]

² Jurisdictions that have adopted a comprehensive fee schedule for land use applications should incorporate the application fee for buildings for rent or lease within their existing schedule; jurisdictions who do not have a schedule should use the resolution language provided to adopt a fee for the review of buildings for lease or rent.

EXHIBIT A
Buildings for Lease or Rent
Application & Review Process

1. Purpose

The following regulations are intended to provide an administrative process for the acceptance and review of applications for the creation of a building for rent or lease in [name of jurisdiction]. The rent or lease of a building on a tract of record may directly impact the property and its surroundings with regard to vehicular access, public health, safety, and general welfare, the provision of public services and utilities, and the physical environment. These regulations are adopted for the purpose of considering and mitigating potential impacts resulting from a building proposed for rent or lease on a single tract of record, ensuring protection of the public's health, safety and general welfare.

2. Authority & Administration

- A. These regulations are adopted under the authority of Sections 76-8-101, *et seq.*, MCA.
- B. The [redacted] is designated by the [governing body] of [name of jurisdiction] to administer these regulations.

3. Applicability

- A. These regulations apply to all lands within the [name of jurisdiction].
- B. In their interpretation and application, the provisions of these regulations may be regarded as the minimum requirements for the protection of the public health, safety, and general welfare.
- C. These regulations are not intended to abrogate or annul any building permit, subdivision approval, certificate of occupancy, variance, or other lawful permit issued before the effective date of these regulations.
- D. These regulations are not intended to abrogate or annul any other regulations applicable to a tract of land, including but not limited to, zoning, building codes, private covenants, or floodplain or lakeshore regulations.

4. Definitions

- A. *Administrator* – The individual designated by the governing body to carry out the terms of these regulations.
- B. *Applicant* – The owner, or designated representative, of land for which an application for the creation of a building for rent or lease has been submitted.
- C. *Building* – As defined in Section 76-8-101(1), MCA, a structure or a unit of a structure with a roof supported by columns or walls for the permanent or temporary housing or enclosure of persons or property or for the operation of a business. Except as provided in Section 76-3-103(15), MCA, the term includes a recreational camping vehicle, mobile home, or cell tower. The term does not include a condominium or townhome.
- D. *Department* – As defined in Section 76-8-101(2), MCA, the department of environmental quality provided for in 2-15-3501.
- E. *Governing body* – As defined in Section 76-8-101(3), MCA, the legislative authority for a city, town, county, or consolidated city-county government.
- F. *Landowner* – As defined in Section 76-8-101(4), MCA, an owner of a legal or equitable interest in real property. The term includes an heir, successor, or assignee of the ownership interest.
- G. *Local reviewing authority* – As defined in Section 76-8-101(5), MCA, a local department or board of health that is approved to conduct reviews under Title 76, chapter 4.

- H. *Supermajority* – As defined in Section 76-8-101(6), MCA, **[CHOOSE ONE]**: (1) an affirmative vote of at least two-thirds of the present and voting members of a **city or town council**; (2) a unanimous affirmative vote of the present and voting county commissioners in **counties with three county commissioners**; (3) an affirmative vote of at least four-fifths of the present and voting county commissioners in **counties with five commissioners**; (4) an affirmative vote of at least two-thirds of the present and voting county commissioners in **counties with more than five commissioners**; or (5) an affirmative vote of at least two-thirds of the present and voting members of the governing body of a **consolidated city-county government**.
- I. *Tract* – As defined in Section 76-8-101(7), MCA, an individual parcel of land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

5. Requirements for Buildings for Lease or Rent

- A. In areas where zoning regulations are in effect that the governing body has determined contain the elements of Section 76-8-107, MCA, the construction of all buildings must meet the requirements of the applicable zoning regulations and are exempt from these regulations.
- B. When applicable zoning regulations are not in effect, a building that is not created for rent or lease and is not or will not be served by water or wastewater facilities is exempt from these regulations.
- C. A building that is created for lease or rent and is not or will not be served by water or wastewater facilities is exempt from these regulations when:
- The building is one of three or fewer buildings for lease or rent that were in existence or under construction on the tract of record before September 1, 2013;
 - The building is a facility as defined in Section 15-65-101, MCA that is subject to the lodging facility use tax under Title 15, Chapter 65, except for recreational camping vehicles or mobile home parks; or
 - The building is for farming or agricultural purposes.
- D. A building that is created for lease or rent and is or will be served by water and wastewater facilities must comply with the provisions of subsection (E) but is exempt from all other provisions of these regulations when:
- The building is one of three or fewer buildings for lease or rent that were in existence or under construction on the tract of record before September 1, 2013;
 - The building is a facility as defined in Section 15-65-101, MCA that is subject to the lodging facility use tax under Title 15, Chapter 65, except for recreational camping vehicles or mobile home parks;
 - The building is for farming or agricultural purposes; or
 - The landowner records a notarized declaration with the **[name of county]** County Clerk and Recorder stating that the proposed building will not be leased or rented. The declaration runs with the land and is binding on the landowner and all subsequent landowners and successors in interest to the property, and may only be revoked by written approval of both the landowner and the governing body in accordance with these regulations. The declaration must be executed by the landowner and the administrator, and must include:
 - The name and address of the landowner;
 - A legal description of the tract upon which the proposed building will be located; and
 - A specific description of the building on the tract of record.
- E. The first three (3) or fewer buildings for lease or rent proposed on a single tract of record and not otherwise exempt under subsections (A)-(E), require review and approval by the department or local reviewing authority for sanitation review if required by Title 76, Chapter 4,

MCA, or to the local board or department of health if review is required by Title 50, MCA. If the department, local reviewing authority, or local board or department of health approves the application for sanitation review, the landowner shall record the certificate of approval and any conditions associated with the approval of the application with the [name of county] County Clerk and Recorder.

- F. All other buildings for lease or rent on a single tract of record require review and approval by the governing body, pursuant to the provisions of Section 6.
- G. A landowner may voluntarily request a certificate of compliance from the Administrator to document that a building is exempt from these regulations. Such requests should be made in writing to the Administrator on the form provided by the Administrator. The burden of proof rests with the landowner to demonstrate how an existing or proposed building meets an exemption from these regulations. The landowner may record a certificate of compliance with the [name of county] County Clerk and Recorder.

6. Application & Review of Building for Lease or Rent

A. Application Submittal

- i. An application for the creation of a building for rent or lease shall be submitted to the administrator on the form provided by the administrator, and accompanied by the payment of any fees established for the review of same.
- ii. The application shall include:
 - a. A copy of the deed or other legal description of the real property;
 - b. Evidence of the landowner's title and interest in the land for which the application is being made;
 - c. A site plan showing:
 - I. North arrow and scale bar (minimum scale of 1:20);
 - II. Property boundaries;
 - III. Existing and proposed onsite and adjacent offsite streets, roads and easements that will serve the proposal;
 - IV. Existing and proposed access to the subject property;
 - V. Pertinent geographic features of the subject property, including any significant topographical features and designated floodplain;
 - VI. Location of existing and proposed water, wastewater and solid waste facilities serving the subject property;
 - VII. The location of existing and proposed buildings or structures on the subject property.
 - d. A detailed narrative of existing and proposed buildings and their location on the subject property, including the uses proposed for each and the approximate floor area and ground coverage of each building;
 - e. A detailed narrative of the proposed water, wastewater, and solid waste disposal facilities intended to serve the buildings for lease or rent;
 - f. A detailed narrative of the emergency medical, fire, and law enforcement services proposed to serve the buildings for lease or rent.
 - g. A detailed narrative describing the existing and proposed access to and from the site, as well as the onsite circulation providing access to the existing and proposed buildings for lease or rent.
 - h. A detailed narrative assessing the potential significant impacts on the surrounding physical environment or human population as a result of the proposed building for lease

or rent, including a description of any proposed mitigation measures to avoid or minimize impacts anticipated.

B. Review Process

- i. Upon receipt of an application along with all applicable fees, the administrator shall, within ten (10) working days, determine whether the application is complete and notify the applicant in writing.
- ii. If the application is incomplete, the administrator shall identify, in writing, any missing materials or insufficient information necessary to conduct the required review.
- iii. If the application is complete, the administrator shall complete review of the application and the governing body shall approve, conditionally approve, or deny the application within sixty (60) working days. The timeframe may be extended upon mutual agreement, in writing, by the applicant and the governing body. Review and approval, conditional approval, or denial of an application for the creation of buildings for lease or rent pursuant to this section must be based upon the regulations in effect at the time an application is determined to be complete.
- iv. The governing body shall provide written notification to the landowner of the approval, conditional approval, or denial of the application within 60 working days after determining the application was complete.

C. Governing Body Decision

- i. The governing body may approve or conditionally approve the proposed buildings for lease or rent upon finding:
 - a. The proposed buildings for lease or rent, as submitted or conditioned, comply with these regulations and other regulations applicable to the property, and avoid or minimize potential significant impacts on the physical environment and human population in the area affected by the buildings for lease or rent;
 - b. Adequate water, wastewater, and solid waste facilities are available to serve the buildings for rent or lease;
 - c. Adequate access to the site is provided to serve the buildings for lease or rent;
 - d. Adequate emergency medical, fire protection, and law enforcement services are available to serve the buildings for rent or lease; and
 - e. The buildings for lease or rent comply with any applicable flood plain regulations.

D. Appeal

- i. Appeal of Sanitation Decision. An applicant who is aggrieved by a final decision of the department or the local reviewing authority made pursuant to Section 5(C) of these regulations may request a hearing as provided in Section 76-4-126(1), MCA. For purposes of this subsection, the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the proceeding.
- ii. Appeal of Local Governing Body Decision. An applicant or landowner with a property boundary contiguous to the tract on which buildings for lease or rent are proposed to be located who is aggrieved by a decision of the governing body pursuant to Section 6 of these regulations may, within 30 days of the date of the final decision of the governing body, appeal to the district court in the county in which the property involved is located.
- iii. For purposes of this section, "aggrieved" has the meaning provided in Section 76-3-625, MCA.

7. Enforcement and Penalties

- A. The administrator shall notify the landowner or any other responsible party of a violation of these regulations by certified mail and/or posting on the subject property. The notice shall describe the violation, cite the section of these regulations being violated, and request the responsible party to voluntarily comply within a minimum of 30 days.
- B. Any person who receives a notice of violation may, within the 30 days allowed, request inspection by the administrator to show that compliance has been attained or appeal the notice of violation to the governing body.
- C. If, after the minimum 30 days required for voluntary compliance has lapsed, compliance has not been attained or an appeal has not been filed, the administrator shall request the **[name of city/county]** Attorney begin legal action against the landowner or any other responsible party.
- D. Upon request by the administrator, the **[name of city/county]** Attorney may immediately commence any actions and proceedings available in law or equity to prevent the creation of a building for lease or rent in violation of these regulations; restrain, correct, or abate a building for lease or rent in violation of these regulations; or prevent the occupancy of a building for lease or rent in violation of these regulations.
- E. A fine not to exceed \$500 may be imposed for a violation of these regulations.