

RESOLUTION 2013-27

ADOPTING BUILDING FOR LEASE OR RENT APPLICATION & REVIEW PROCESS Under the authority of SB 324 Carbon County, Montana

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

WHEREAS, the new land use review process allows local governments to establish regulations that guide the application and review process for the creation of four (4) or more buildings for rent or lease on a single tract of land, when not otherwise exempt pursuant to SB 324 or requiring review pursuant to SB 324; and

WHEREAS, pursuant to Section 7-1-2121, MCA, the Carbon County Board of County Commissioners 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 Carbon County Board of County Commissioners held a public hearing on December 5, 2013, to consider comments from the public regarding the proposed regulations; and

WHEREAS, following the conclusion of the public hearing and amendments to applicable findings, the Carbon County Board of County Commissioners passed a resolution to adopt the proposed regulations; and

NOW, THEREFORE, the Carbon County Board of County Commissioners hereby adopts the regulations set forth in Exhibit A attached hereto and incorporated herein for the purpose of reviewing buildings for rent or lease in Carbon County, Montana, pursuant to the provisions of **SB 324**.

ADOPTED by the Carbon County Board of County Commissioners this 5th day of December 2013.

Carbon County Commissioners


John L. Grewell
Presiding Officer


Doug Tucker
Commissioner


John E. Prinkki
Commissioner

ATTEST


Marcia Henigman, Clerk and Recorder

**Carbon County, Montana
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 Carbon County, Montana. 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 Section 76-8-10, et seq., MCA.
- B. The Subdivision Administrator is designated by the Board of County Commissioners of Carbon County, Montana to administer these regulations, including the review and enforcement of any certificate of compliance issued pursuant to the terms set forth herein.

3. Applicability

- A. These regulations apply to all lands within Carbon County, Montana.
- B. In their interpretation and application, the provisions of this chapter may be regarded as the minimum requirements for the protection of the public health, safety, comfort, prosperity and welfare.
- C. This resolution/ordinance is not intended to abrogate or annul any building permit, certificate of occupancy, variance, or other lawful permit issued before the effective date of this Resolution/Ordinance.

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 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 76-3-103(15) 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 MCA, the department of environmental quality provided for in 2-15-3501.
- E. *Governing body* – As defined in Section 76-8-101 MCA, the legislative authority for a city, town, county, or consolidated city-county government.
- F. *Landowner* – As defined in Section 76-8-101 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 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 MCA, a unanimous affirmative vote of the present and voting county commissioners.
- I. *Tract* – As defined in Section 76-8-101 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. The following buildings created for lease or rent that are not or will not be served by water or wastewater are exempt from the provisions of these regulations when:
 - i. The building is in conformance with applicable zoning regulations;
 - ii. 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;
 - iii. The building is a facility as defined in 15-65-101 that is subject to the lodging facility use tax under Title 15, Chapter 65, except for recreational camping vehicles or mobile home parks; or
 - iv. The building is for farming or agricultural purposes.
- B. The following buildings created for lease or rent, that are or will be served by water and wastewater facilities, must comply with the provisions of subsection (C) but are exempt from all other provisions of these regulations when:
 - i. The building is in conformance with applicable zoning regulations;
 - ii. 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;
 - iii. The building is a facility as defined in 15-65-101 that is subject to the lodging facility use tax under Title 15, Chapter 65, except for recreational camping vehicles or mobile home parks;
 - iv. The building is for farming or agricultural purposes; or
 - v. The landowner records a notarized declaration with the Carbon 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. The declaration must include:
 - a. The name and address of the landowner;
 - b. A legal description of the tract upon which the proposed building will be located; and
 - c. A specific description of the building on the tract of record.
- C. 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) or (B), 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 Carbon County Clerk and Recorder.
- D. 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 Title 76, chapter 8.

6. Application for Creation 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 governing body, 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;
 - 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 private or public utilities serving the subject property;
 - VII. The location of existing and proposed buildings or structures on the subject property.
 - d. A description 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 description of the proposed water, wastewater, stormwater, and solid waste disposal facilities intended to serve the buildings for lease or rent;
 - f. A description of the emergency medical, fire, and law enforcement services proposed to serve the buildings for lease or rent.
- 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, submit the application to the governing body 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 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 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.
 - v. 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. Appeal
- i. An applicant who is aggrieved by a final decision of the department or the local reviewing authority 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. 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 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 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 30 days for voluntary compliance has lapsed, compliance has not been attained or an appeal has not been filed, the administrator shall request the County Attorney begin legal action against the landowner or any other responsible party.
- D. Upon request by the administrator, the 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 violation of these regulations is a misdemeanor punishable by a fine not exceeding \$500.