



LAKE COUNTY PLANNING DEPARTMENT

106 FOURTH AVENUE EAST
POLSON, MT 59860-2175

PH: 406-883-7235 FAX: 406-883-7205
E-MAIL: planning@lakemt.gov

Date: November 3, 2016

To: Lake County Planning Board members

From: Lake County Planning Department staff

Re: Draft Lake County Buildings for Lease or Rent Regulations

Attached, please find a draft set of Buildings for Lease or Rent Regulations (a.k.a. “BLR Regulations”). This is the first draft set of BLR Regulations for Lake County that has been released to the public since the 2013 BLR legislation. This will be considered by the Planning Board at the November 9, 2016 public hearing. The Planning Board will be asked to make a recommendation to the Board of Lake County Commissioners.

The draft has been tailored to the unique situations in Lake County, including the following:

1. The entire county is zoned. In the unincorporated areas of Lake County, there are 13 local zoning districts, many of which have sub-units; these areas include the zoning districts like Finley Point Zoning, while much of the county is zoned by the Lake County Density Map and Regulations, which regulate “creation of parcels” (as defined by the regulations) by the density of “units” (as defined by the regulations).
2. None of the above-described zoning regulations contain the elements of 76-8-107, MCA. Therefore, the exemption in 76-8-103(1), MCA, which states, “*A building created for lease or rent on a single tract is exempt from the provisions of this part if: (a) the building is in conformance with applicable zoning regulations adopted pursuant to Title 76, chapter 2, parts 1 through 3, provided that the zoning contains the elements of 76-8-107*”, will never apply under the current county zoning format without updates to the various zoning regulations.
3. The draft was authored with an intent to make the proposed BLR Regulations go hand-in-hand with the Density Map and regulations and other zoning regulations in Lake County with specific language. Section 3, and most specifically, Subsection 3.F of the draft, attempt to explain this.

4. According to state law, a governing body may increase the minimum number of buildings created for lease or rent that are subject to review per 76-8-107; it may increase the minimum number subject to review for all buildings created for lease or rent or may limit the increase to specific types or uses of buildings created for lease or rent. Prior to completing the draft regulations, the Planning Department inquired with the Board of Lake County Commissioners as to whether the governing body would be interested in raising the number of buildings created by rent or lease for all buildings or certain types of buildings, such as mini-storages, vending machines, antennae, solar panels, and other situations where the buildings are not intended for human occupancy. The Commissioners supported that idea, so the draft includes such provisions. As a starting point, 30 buildings is the proposed threshold, but this could be changed through the review process for the regulations.
5. By raising the number of buildings for lease or rent used for human occupancy that are subject to review beyond 4, Section 5 of the draft regulations also reflects that. Section 5 addresses BLR projects that are not subject to review because they don't meet the threshold for full review under the regulations under Section 6. Section 5 attempts to reflect 76-8-106, MCA, which requires such project to still undergo sanitation review if required.
6. According to state law, with a supermajority vote, the governing body may adopt regulations that are in addition to the minimum requirements in 76-8-107. The governing body may adopt any regulations it considers necessary to protect public health, safety, or the general welfare. The Planning Department has also inquired with the Commissioners as to whether the Board would be interested in including additional standards beyond the minimum requirements of state law. The Commissioners suggested including a number of additional standards in the first draft for consideration by the Planning Board and the public, which may or may not end up in the adopted version. Therefore, Section 6 includes additional submittal requirements, review criteria, and development standards (6.d.iv) including those for outdoor lighting, utility burial, landscaping or fencing, building setbacks, and building heights.

Please note that the staff expects to have obtained comments on the draft regulations from legal counsel prior to the meeting, and any changes deemed necessary as a result will be discussed at the meeting. Then the changes will be incorporated into the draft that will subsequently be reviewed by the Board of Lake County Commissioners at the governing body public hearing.

Thank you in advance for your time and effort.

Lake County Buildings for Lease or Rent Regulations



Prepared to Comply with:
Montana Code Annotated
Title 76, Chapter 8

October 21, 2016 PUBLIC REVIEW DRAFT #1

Adopted Under Resolution Number: ____ - _____

Effective Date [TO BE DETERMINED]

Table of Contents
Lake County Buildings for Lease or Rent Regulations

1. Purpose..... 1

2. Authority 1

3. Applicability..... 1

4. Definitions..... 2

5. Requirements for Buildings for Lease or Rent not subject to full review 2

6. Application & Review of Buildings for Lease or Rent subject to full review..... 4

7. Variances..... 8

8. Enforcement and Penalties..... 9

Lake County Buildings for Lease or Rent Regulations
PUBLIC REVIEW DRAFT #1
October 21, 2016

1. Purpose

These regulations are intended to regulate the creation of buildings for lease or rent in the unincorporated areas of Lake County. The leasing or rental of buildings 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 addressing the requirements of state law and to allow Lake County and landowners consider and mitigate potential impacts that may result from buildings for lease or rent, ensuring protection of the public's health, safety and general welfare.

2. Authority

These regulations are adopted under the authority of Title 76, Chapter 8, Montana Code Annotated (MCA).

3. Applicability

- A. These regulations apply to all lands under the jurisdiction of Lake County.
- 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 requirements to obtain Zoning Conformance Permits, Building Notification Permits, state building permits, subdivision approvals, certificates of occupancy, variances, or other lawful permits or approvals 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.
- E. Where zoning regulations are stricter than these regulations, the stricter provisions take precedent and supersede the provision of these regulations.
- F. The Lake County Density Map & Regulations and other local zoning regulations include reference to "rent or lease" based on the Montana Subdivision and Platting Act at the times the local zoning regulations were created. The 2013 legislature modified that Act and required local governments to adopt Buildings for Lease or Rent Regulations. These regulations are adopted in accordance with Title 76, Chapter 8, MCA, and buildings for lease or rent as defined by these regulations are subject to the Density Map & Regulations and/or other local zoning regulations, and where said zoning regulations refer to rent or lease of property, these regulations will be administered in a manner to accord to the zoning and these regulations in the most complimentary and efficient manner.

4. Definitions

- A. *Administrator* – The individual designated by the governing body to carry out the terms of these regulations. In Lake County, the Administrator is the Lake County Planning Director or designee.
- B. *Applicant* – The person or entity who submits an application for the creation of a building for lease or rent. An applicant may either be a landowner, or a person or entity authorized by the landowner to apply.
- C. *Building* – As defined in 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 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 76-8-101(2), MCA, the department of environmental quality provided for in 2-15-3501.
- E. *Governing body* – As defined in 76-8-101(3), MCA, the legislative authority for a city, town, county, or consolidated city-county government. The governing body of Lake County is the Board of Lake County Commissioners.
- F. *Human occupancy* – Use of a building by people for sleeping, cooking, bathing, using sanitary facilities, and similar dwelling purposes; for carrying out a trade, profession, industry, or business, but not including personal or commercial storage, or where there is no common human presence. Examples of buildings or parts of a building not used for human occupancy include mini-storage facilities, barns and similar agricultural structures without components of typical dwellings, storage sheds, antennae/wireless facilities, solar panels, and areas for ATM and vending machines.
- G. *Landowner* – As defined in 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.
- H. *Lease or rent* – The act of a landowner providing for or otherwise allowing another party to use a portion of a building in exchange for financial or other consideration.
- I. *Local reviewing authority* – As defined in 76-8-101(5), MCA, a local department or board of health that is approved to conduct reviews under Title 76, chapter 4.
- J. *Supermajority* – As defined in 76-8-101(6), MCA, a unanimous affirmative vote of the present and voting county commissioners in Lake County.
- K. *Tract* – As defined in 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 not subject to full review

- A. In areas where zoning regulations are in effect that the governing body has determined contain the elements of 76-8-107, MCA, the construction of all buildings must meet the

requirements of the applicable zoning regulations and are exempt from these regulations. As of the date of adoption (December ____, 2016) and effectiveness (January ____, 2017) of these regulations, no county zoning regulations have been determined to contain all of the elements of 76-8-107, MCA.

- B. Because at the time of adoption and effectiveness of these regulations, no zoning regulations contain all of the elements of 76-8-107, MCA, and therefore no applicable zoning regulations are in effect to address those items, the following are exempt from these regulations:
- i. Building(s) was/were legally in existence or under construction before September 1, 2013. This exemption is limited to the first three buildings created for lease or rent on a single tract.
 - ii. Building(s) that is/are a facility as defined in 15-65-101, MCA that is/are subject to the lodging facility use tax under Title 15, chapter 65, except for recreational camping vehicles or mobile home parks.
 - iii. Building(s) that is/are created for lease or rent for farming or agricultural purposes.
 - iv. Building(s) that is/are not served by water and wastewater and will not be leased or rented.
 - v. Building(s) that is/are served by water and wastewater and the landowner records a notarized declaration with the Lake County Clerk & Recorder's Office stating that the proposed building will not be leased or rented. The declaration recorded pursuant to this subsection 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 but is not limited to:
 - 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. Specific description of the building on the tract of record.
- C. Any building that is exempt from the provisions of these regulations under subsection 5.B above or not subject to review pursuant to subsection 6.A below must comply with the following:
- i. A landowner shall submit an application to the Department of Environmental Quality or Lake County Environmental Health Department for sanitation review if review is required by Title 76, chapter 4, or to the Lake County Board of Health or Lake County Health Department if review is required by Title 50.
 - ii. If the Department of Environmental Quality, Lake County Environmental Health Department, and/or Lake County Health Department approve(s) the application, the landowner shall record the certificate of approval and any conditions for the approval of the application with the Lake County Clerk and Recorder's Office.
 - iii. If a building for lease or rent is created on a single tract on or after September 1,

2013, and the tract is later subdivided or an exemption from subdivision review is used pursuant to Title 76, Chapter 3, any building for lease or rent on the new tract is subject to the provisions of 76-8-102, 76-8-107, and 76-8-108, MCA.

- 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 Section 6 of these regulations.
- E. 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 Lake County Clerk and Recorder's Office.

6. Application & Review of Buildings for Lease or Rent subject to full review

- A. Buildings for lease or rent that are subject to full review under this section include the following:
 - i. Projects providing four or more buildings for lease or rent (see definition), any of which are for human occupancy (see definition); or
 - ii. Projects providing 30 or more buildings, all of which are not for human occupancy (excluding the initial building for human occupancy).
- B. Application Submittal
 - i. An application for the creation of buildings for lease or rent subject to full review pursuant to 6.A above shall be submitted to the Lake County Planning Department accompanied by the payment of fees established on an adopted fee schedule.
 - 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 with dimensions noted;
 - 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;
 - VIII. Existing and proposed outdoor lighting;
 - IX. Existing and proposed stormwater management infrastructure and drainage features; and
 - X. Existing and proposed utilities, including an indication of whether utility lines are above- or below-ground.
- 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;
 - i. Comments on the proposal from:
 - I. Lake County Road Department if access is off of a county road;
 - II. Montana Department of Transportation if access is off of a state highway;
 - III. City or town public works or street department (as applicable) if access is off of a city or town street;
 - IV. Emergency medical services provider;
 - V. Local fire protection authority;
 - VI. Law enforcement service provider;
 - VII. Local school district if the proposed buildings for lease or rent will provide new buildings for residential use;
 - VIII. Lake County Environmental Health Department; and
 - IX. State Historic Preservation Office or Tribal Preservation Office of the Confederated Salish & Kootenai Tribes, as appropriate.

Each entity above shall have 30 days to review the proposal. If no comments are received within 30 days, the application materials may be submitted.

- j. Any other information necessary to demonstrate compliance with subsection 6.D below, including the following, as determined applicable by the Administrator:
 - I. Stormwater management plans;
 - II. Landscaping, buffers, and/or fence plans;
 - III. Dust control plan;
 - IV. Plans for maintenance of infrastructure used by more than one renter or lessee; and
 - V. Elevation views of all four sides of each structure demonstrating average building height.

C. 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's action on the application shall be conducted at a noticed public hearing. Notice of the time and date of the public hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. At least 15 days prior to the date of the public hearing, notice of the hearing shall be mailed to the landowner, the applicant if different from the landowner, and each landowner of record whose property is immediately adjoining the subject tract. At a minimum all notices shall include a general description of the property location, the legal description of the property, the number of buildings proposed, the type of land use(s) proposed, a description of any variances requested, notification of where more information may be obtained, and the time, date and location of the hearing.
- 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 determination that the application was complete.

D. Governing Body Decision/Standards

- 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 lease or rent;
 - c. Adequate access to the site is provided to serve the buildings for lease or rent; where questions arise as to the adequacy of access, Lake County may look to the road standards in the Lake County Subdivision Regulations for guidance;
 - d. Adequate emergency medical, fire protection, and law enforcement services are available to serve the buildings for lease or rent;
 - e. The buildings for lease or rent and associated development provide for containment of stormwater without causing damage or harm to the natural environment, water quality, or adjacent property; all stormwater management plans shall be reviewed for substantial compliance with any existing approval or the adopted standards of the Montana Department of Environmental Quality;
 - f. Albedo effects from building rooftops, driving and parking surfaces, and other appurtenances, such as solar panels will be minimized or substantially mitigated; and
 - g. The buildings for lease or rent comply with the Lake County Floodplain Management Regulations.
- ii. The governing body may impose conditions on the proposed buildings for lease or rent to secure the above-referenced findings and compliance with these regulations.
 - iii. Any modifications to an approved buildings for lease or rent project or its conditions of approval are subject to additional review by Lake County.
 - iv. Standards: In addition to the above, buildings for lease or rent that are subject to review under this Section 6 are subject to the following standards:
 - a. All new and replacement nighttime outdoor lighting must direct its light downward and be side-shielded to prevent glare beyond the boundaries of the subject property;
 - b. Electrical and telecommunications utility lines must be placed underground where practical;
 - c. Landscaping and/or fencing shall be installed to serve as a buffer between the development and adjacent properties and roads when deemed necessary by the governing body to prevent significant visual impacts;
 - d. Buildings, including all above-grade attachments shall have setbacks of 10-feet or more from property lines and rights-of-ways, or as specifically required by the local zoning regulations; and

- e. For buildings not limited in height by local zoning regulations, buildings shall not exceed 50 feet in average height.

E. Appeals

- i. Appeal of Sanitation Decision: An applicant who is aggrieved by a final decision of the Department of Environmental Quality or the Lake County Environmental Health Department 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 Lake County.
- iii. For purposes of this section, "aggrieved" has the meaning provided in Section 76-3-625, MCA.

7. Variances

- A. The governing body may grant variances to the standards of subsection 6.D.ii of these regulations when, due to the characteristics of land, strict compliance with the standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.
- B. Variance Procedure: The landowner or landowner's designated agent shall include with the application for the creation of buildings for lease or rent a written statement and supporting evidence describing and justifying the requested variance in consideration of the criteria listed in subsection 7.C below. The requested variance will be reviewed at the public hearing on the application, and the variance request will be included in the hearing notice outlined in subsection 6.C.iv above. Approval or denial of the variance will occur as a separate action prior to a motion for approval, approval with conditions or denial of the application. The motion on the variance must describe the variance and the facts and conditions upon which the action on the variance is based.
- C. Variance Statement of Facts: The governing body will not approve a variance unless it finds that the following criteria are met:
 - i. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
 - ii. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the landowner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;
 - iii. The variance will not cause a substantial increase in public costs; and

iv. The variance will not place the property in nonconformance with any adopted zoning regulations.

D. Variance Conditions: In granting variances, the governing body may impose reasonable conditions to secure the objectives of these and other applicable regulations.

8. Enforcement and Penalties

- A. If any building is created in violation of these regulations that the Administrator becomes aware of, the Administrator may begin enforcement actions. 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 or other reasonable timeframe beyond 30 days as determined by the Administrator and/or governing body.
- B. Any person who receives a notice of violation may, within the 30 days or other timeframe 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 or other timeframe required for voluntary compliance has lapsed, compliance has not been attained or an appeal has not been filed, the Administrator shall request the Lake County Attorney's Office begin legal action against the landowner or any other responsible party.
- D. Upon request by the Administrator, the Lake County Attorney's Office may immediately commence any actions and proceedings available in law or equity to prevent the 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.