

AMENDMENTS TO LB866

Introduced by Urban Affairs.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 6 of this act shall be known and may be
4 cited as the Municipal Density and Missing Middle Housing Act.

5 Sec. 2. The Legislature finds and declares that:

6 (1) Residential density is beneficial in making better and more
7 cost-effective use of municipal resources and services;

8 (2) There is a need for affordable housing in municipalities of all
9 sizes in Nebraska. Affordable housing contributes to economic growth by
10 providing housing options for workers of all levels;

11 (3) Following World War II, municipal zoning codes, ordinances, and
12 regulations in Nebraska and throughout the United States prioritized
13 detached single-family homes and mid-rise to high-rise apartment
14 buildings over other forms of housing stock;

15 (4) In addition to zoning restrictions, the historic practice of
16 redlining in Nebraska communities has contributed to a lack of affordable
17 housing in many Nebraska municipalities;

18 (5) Housing stock known as middle housing, while prominent in the
19 early 1900s, has been largely missing in the construction of new housing
20 in the United States since the mid-1940s; and

21 (6) Examining and updating municipal zoning codes and ordinances to
22 permit varied types of housing stock will provide greater availability of
23 affordable housing, increase residential density, promote more efficient
24 and effective land use, and create conditions for successful mass
25 transit, bikeability, walkability, and affordability in residential
26 neighborhoods.

27 Sec. 3. For purposes of the Municipal Density and Missing Middle

1 Housing Act:

2 (1) Accessory dwelling unit means an interior, attached, or detached
3 residential structure that is used in connection with, or that is an
4 accessory to, a single-family dwelling and is located on the same lot or
5 parcel as such single-family dwelling;

6 (2) Affordable housing means residential dwelling units affordable
7 to a household earning not more than eighty percent of the income limit
8 as set forth by the United States Department of Housing and Urban
9 Development under its Income Limits Documentation System, as such limits
10 existed on January 1, 2020, for the county in which the units are located
11 and for a particular household size;

12 (3) City means any city of the metropolitan class, city of the
13 primary class, or city of the first class in the State of Nebraska with a
14 population of at least twenty thousand inhabitants as determined by the
15 most recent federal decennial census or the most recent revised certified
16 count by the United States Bureau of the Census;

17 (4) Cottage cluster means a grouping of no fewer than four detached
18 housing units per acre with a footprint of less than nine hundred square
19 feet each and that includes a common courtyard;

20 (5) Density bonus means a density increase over the otherwise
21 maximum allowable residential density under a city's zoning codes,
22 ordinances, and regulations;

23 (6) Middle housing means:

24 (a) Duplexes;

25 (b) Triplexes;

26 (c) Quadplexes;

27 (d) Cottage clusters; or

28 (e) Townhouses;

29 (7) Townhouse means a dwelling unit constructed in a row of two or
30 more attached units where each dwelling unit is located on an individual
31 lot or parcel and shares at least one common wall with an adjacent unit;

1 and

2 (8) Workforce housing means:

3 (a) Housing that meets the needs of working families;

4 (b) Owner-occupied housing units that cost at least one hundred
5 fifty thousand dollars but not more than two hundred fifty thousand
6 dollars to construct;

7 (c) Owner-occupied housing units for which the cost to substantially
8 rehabilitate exceeds fifty percent of a unit's assessed value;

9 (d) Upper-story housing for occupation by a homeowner; and

10 (e) Housing that does not receive federal or state low-income
11 housing tax credits, community development block grants, HOME funds as
12 defined in section 81-1228, or funds from the Affordable Housing Trust
13 Fund.

14 Sec. 4. (1) On or before July 1, 2021, and by each July 1 every two
15 years thereafter, each city shall electronically submit a report to the
16 Urban Affairs Committee of the Legislature detailing its efforts to
17 address the availability of and incentives for affordable housing through
18 its zoning codes, ordinances, and regulations. Such report shall include,
19 but not be limited to:

20 (a) An overview of the city's current residential zoning
21 requirements;

22 (b) The percentage of areas in the city zoned for residential use
23 which permit the construction of multi-family housing and middle housing;

24 (c) A breakdown of new residential construction in the city over the
25 previous five years, including the percentage of such construction that
26 was single-family housing, multi-family housing, and middle housing;

27 (d) A breakdown of residential units annexed by the city over the
28 previous five years, including the percentage of such units that were
29 single-family housing, multi-family housing, and middle housing;

30 (e) An estimate of the per unit cost of housing in the city;

31 (f) Whether such zoning codes, ordinances, and regulations provide

1 for density bonuses or other concessions or incentives which encourage
2 residential density, and the frequency with which such bonuses,
3 concessions, or incentives are utilized;

4 (g) Whether such zoning codes, ordinances, and regulations allow the
5 construction of accessory dwelling units;

6 (h) What incentives the city applies to encourage the development of
7 affordable housing, including both direct incentives and regulatory
8 relief;

9 (i) A demographic analysis of the city with trends and estimates of
10 the housing need classified by housing type and price range; and

11 (j) Efforts to adopt an affordable housing action plan as required
12 under section 5 of this act.

13 (2) The Urban Affairs Committee of the Legislature may require any
14 city to present its report to the committee at a public hearing.

15 Sec. 5. (1) On or before January 1, 2023, each city with a
16 population of fifty thousand or more inhabitants shall adopt an
17 affordable housing action plan. On or before January 1, 2024, each city
18 with a population of less than fifty thousand inhabitants shall adopt an
19 affordable housing action plan. Such action plan shall include, but not
20 be limited to:

21 (a) Goals for the construction of new affordable housing units,
22 including multi-family housing and middle housing, with specific types
23 and numbers of units, geographic locations, and specific actions to
24 encourage the development of affordable housing, middle housing, and
25 workforce housing;

26 (b) Goals for a percentage of areas in the city zoned for
27 residential use which permit the construction of multi-family housing and
28 middle housing;

29 (c) Plans for the use of federal, state, and local incentives to
30 encourage affordable housing, middle housing, and workforce housing,
31 including the Affordable Housing Trust Fund, the Local Option Municipal

1 Economic Development Act, tax-increment financing, federal community
2 development block grants, density bonuses, and other nonmonetary
3 regulatory relief; and

4 (d) Updates to the city's zoning codes, ordinances, and regulations
5 to incentivize affordable housing.

6 (2) Any city which fails to adopt an affordable housing action plan
7 as required under subsection (1) of this section shall be required to
8 allow the development of:

9 (a) Middle housing in all areas in the city zoned for residential
10 use that allow for the development of detached single-family dwellings;
11 and

12 (b) A duplex on each lot or parcel zoned for residential use that
13 allows for the development of detached single-family dwellings.

14 (3) A city shall amend any building zoning ordinances or regulations
15 as needed to comply with subsection (2) of this section.

16 Sec. 6. Nothing in the Municipal Density and Missing Middle Housing
17 Act shall be construed to prohibit any city from:

18 (1) Regulating the siting and design of middle housing provided for
19 under section 5 of this act, except that such regulation shall not
20 prohibit or have the effect of physically precluding the development of
21 middle housing in any residential area; or

22 (2) Allowing single-family dwellings in areas zoned to allow for
23 single-family dwellings.

24 Sec. 7. Section 14-403, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 14-403 Such regulations shall comply with the Municipal Density and
27 Missing Middle Housing Act and be made in accordance with a comprehensive
28 plan and designed to lessen congestion in the streets; to secure safety
29 from fire, panic, and other dangers; to promote health and the general
30 welfare; to provide adequate light and air; to prevent the overcrowding
31 of land; to secure safety from flood; to avoid undue concentration of

1 population; to facilitate the adequate provision of transportation,
2 water, sewerage, schools, parks and other public requirements, and to
3 promote convenience of access. Such regulations shall be made with
4 reasonable consideration, among other things, as to the character of the
5 district and its peculiar suitability for particular uses, and with a
6 view to conserving the value of buildings and encouraging the most
7 appropriate use of land throughout such municipality. Whenever the city
8 council shall determine that the use or contemplated use of any building,
9 structure, or land will cause congestion in the streets, increase the
10 danger from fire or panic, imperil public safety, cause undue
11 concentration or congregation of people, or impede transportation, the
12 council may include in such regulations requirements for alleviating or
13 preventing such conditions when any change in use or zoning
14 classification is requested by the owner.

15 Sec. 8. Section 15-902, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 15-902 (1) Every city of the primary class shall have power in the
18 area which is within the city or within three miles of the corporate
19 limits of the city and outside of any organized city or village to
20 regulate and restrict: (a) The location, height, bulk, and size of
21 buildings and other structures; (b) the percentage of a lot that may be
22 occupied; (c) the size of yards, courts, and other open spaces; (d) the
23 density of population; and (e) the locations and uses of buildings,
24 structures, and land for trade, industry, business, residences, and other
25 purposes. Such city shall have power to divide the area zoned into
26 districts of such number, shape, and area as may be best suited to carry
27 out the purposes of this section and to regulate, restrict, or prohibit
28 the erection, construction, reconstruction, alteration, or use of
29 buildings, structures, or land within the total area zoned or within
30 districts. All such regulations shall be uniform for each class or kind
31 of buildings throughout each district, but regulations applicable to one

1 district may differ from those applicable to other districts. Such zoning
2 regulations shall be designed to secure safety from fire, flood, and
3 other dangers and to promote the public health, safety, and general
4 welfare and shall comply with the Municipal Density and Missing Middle
5 Housing Act and be made with consideration having been given to the
6 character of the various parts of the area zoned and their peculiar
7 suitability for particular uses and types of development and with a view
8 to conserving property values and encouraging the most appropriate use of
9 land throughout the area zoned, in accordance with a comprehensive plan.
10 Such zoning regulations may include reasonable provisions regarding
11 nonconforming uses and their gradual elimination.

12 (2)(a) The city shall not adopt or enforce any zoning ordinance or
13 regulation which prohibits the use of land for a proposed residential
14 structure for the sole reason that the proposed structure is a
15 manufactured home if such manufactured home bears an appropriate seal
16 which indicates that it was constructed in accordance with the standards
17 of the Uniform Standard Code for Manufactured Homes and Recreational
18 Vehicles, the Nebraska Uniform Standards for Modular Housing Units Act,
19 or the United States Department of Housing and Urban Development. The
20 city may require that a manufactured home be located and installed
21 according to the same standards for foundation system, permanent utility
22 connections, setback, and minimum square footage which would apply to a
23 site-built, single-family dwelling on the same lot. The city may also
24 require that manufactured homes meet the following standards:

25 (i) The home shall have no less than nine hundred square feet of
26 floor area;

27 (ii) The home shall have no less than an eighteen-foot exterior
28 width;

29 (iii) The roof shall be pitched with a minimum vertical rise of two
30 and one-half inches for each twelve inches of horizontal run;

31 (iv) The exterior material shall be of a color, material, and scale

1 comparable with those existing in residential site-built, single-family
2 construction;

3 (v) The home shall have a nonreflective roof material which is or
4 simulates asphalt or wood shingles, tile, or rock; and

5 (vi) The home shall have wheels, axles, transporting lights, and
6 removable towing apparatus removed.

7 (b) The city may not require additional standards unless such
8 standards are uniformly applied to all single-family dwellings in the
9 zoning district.

10 (c) Nothing in this subsection shall be deemed to supersede any
11 valid restrictive covenants of record.

12 (3) For purposes of this section, manufactured home shall mean (a) a
13 factory-built structure which is to be used as a place for human
14 habitation, which is not constructed or equipped with a permanent hitch
15 or other device allowing it to be moved other than to a permanent site,
16 which does not have permanently attached to its body or frame any wheels
17 or axles, and which bears a label certifying that it was built in
18 compliance with National Manufactured Home Construction and Safety
19 Standards, 24 C.F.R. 3280 et seq., promulgated by the United States
20 Department of Housing and Urban Development, or (b) a modular housing
21 unit as defined in section 71-1557 bearing a seal in accordance with the
22 Nebraska Uniform Standards for Modular Housing Units Act.

23 Sec. 9. Section 19-901, Revised Statutes Supplement, 2019, is
24 amended to read:

25 19-901 (1) For the purpose of promoting health, safety, morals, or
26 the general welfare of the community, the city council of a city of the
27 first class or city of the second class or the village board of trustees
28 of a village may adopt zoning regulations which regulate and restrict the
29 height, number of stories, and size of buildings and other structures,
30 the percentage of lots that may be occupied, the size of yards, courts,
31 and other open spaces, the density of population, and the location and

1 use of buildings, structures, and land for trade, industry, residence, or
2 other purposes. For a city of the first class as described in subdivision
3 (3) of section 3 of this act, such regulations shall comply with the
4 Municipal Density and Missing Middle Housing Act.

5 (2) Such powers shall be exercised only after the city council or
6 village board of trustees has established a planning commission, received
7 from its planning commission a recommended comprehensive development plan
8 as defined in section 19-903, adopted such comprehensive development
9 plan, and received the specific recommendation of the planning commission
10 on the adoption or amendment of zoning regulations. The planning
11 commission shall make a preliminary report and hold public hearings on
12 its recommendations regarding the adoption or repeal of the comprehensive
13 development plan and zoning regulations and shall hold public hearings
14 thereon before submitting its final report to the city council or village
15 board of trustees. Amendments to the comprehensive plan or zoning
16 regulations shall be considered at public hearings before submitting
17 recommendations to the city council or village board of trustees.

18 (3) A comprehensive development plan as defined in section 19-903
19 which has been adopted and not rescinded by a city council or village
20 board of trustees prior to May 17, 1967, shall be deemed to have been
21 recommended and adopted in compliance with the procedural requirements of
22 this section when, prior to the adoption of the plan by the city council
23 or village board of trustees, a recommendation thereon had been made to
24 the city council or village board of trustees by a zoning commission in
25 compliance with the provisions of section 19-906, as such section existed
26 prior to its repeal by Laws 1967, c. 92, section 7, or by a planning
27 commission appointed under the provisions of Chapter 19, article 9,
28 regardless of whether the planning commission had been appointed as a
29 zoning commission.

30 (4) The requirement that a planning commission be appointed and a
31 comprehensive development plan be adopted shall not apply to cities of

1 the first class, cities of the second class, and villages which have
2 legally adopted a zoning ordinance prior to May 17, 1967, and which have
3 not amended the zoning ordinance or zoning map since May 17, 1967. Such
4 city or village shall appoint a planning commission and adopt the
5 comprehensive plan prior to amending the zoning ordinance or zoning map.

6 Sec. 10. Section 19-902, Revised Statutes Supplement, 2019, is
7 amended to read:

8 19-902 (1) For any or all of the purposes designated in section
9 19-901, the city council or village board of trustees may divide the
10 municipality into districts of such number, shape, and area as may be
11 deemed best suited to carry out the purposes of sections 19-901 to 19-915
12 ~~19-914~~ and may regulate and restrict the erection, construction,
13 reconstruction, alteration, repair, or use of buildings, structures, or
14 land within such districts. All such regulations shall be uniform for
15 each class or kind of buildings throughout each district, but the
16 regulations applicable to one district may differ from those applicable
17 to other districts. For a city of the first class as described in
18 subdivision (3) of section 3 of this act, such regulations shall comply
19 with the Municipal Density and Missing Middle Housing Act. If a
20 regulation affects the Niobrara scenic river corridor as defined in
21 section 72-2006 and is not incorporated within the boundaries of the
22 municipality, the Niobrara Council shall act on the regulation as
23 provided in section 72-2010.

24 (2)(a) The city council or village board of trustees shall not adopt
25 or enforce any zoning ordinance or regulation which prohibits the use of
26 land for a proposed residential structure for the sole reason that the
27 proposed structure is a manufactured home if such manufactured home bears
28 an appropriate seal which indicates that it was constructed in accordance
29 with the standards of the Uniform Standard Code for Manufactured Homes
30 and Recreational Vehicles, the Nebraska Uniform Standards for Modular
31 Housing Units Act, or the United States Department of Housing and Urban

1 Development. The city council or village board of trustees may require
2 that a manufactured home be located and installed according to the same
3 standards for foundation system, permanent utility connections, setback,
4 and minimum square footage which would apply to a site-built, single-
5 family dwelling on the same lot. The city council or village board of
6 trustees may also require that manufactured homes meet the following
7 standards:

8 (i) The home shall have no less than nine hundred square feet of
9 floor area;

10 (ii) The home shall have no less than an eighteen-foot exterior
11 width;

12 (iii) The roof shall be pitched with a minimum vertical rise of two
13 and one-half inches for each twelve inches of horizontal run;

14 (iv) The exterior material shall be of a color, material, and scale
15 comparable with those existing in residential site-built, single-family
16 construction;

17 (v) The home shall have a nonreflective roof material which is or
18 simulates asphalt or wood shingles, tile, or rock; and

19 (vi) The home shall have wheels, axles, transporting lights, and
20 removable towing apparatus removed.

21 (b) The city council or village board of trustees may not require
22 additional standards unless such standards are uniformly applied to all
23 single-family dwellings in the zoning district.

24 (c) Nothing in this subsection shall be deemed to supersede any
25 valid restrictive covenants of record.

26 (3) For purposes of this section, manufactured home shall mean (a) a
27 factory-built structure which is to be used as a place for human
28 habitation, which is not constructed or equipped with a permanent hitch
29 or other device allowing it to be moved other than to a permanent site,
30 which does not have permanently attached to its body or frame any wheels
31 or axles, and which bears a label certifying that it was built in

1 compliance with national Manufactured Home Construction and Safety
2 Standards, 24 C.F.R. 3280 et seq., promulgated by the United States
3 Department of Housing and Urban Development, or (b) a modular housing
4 unit as defined in section 71-1557 bearing a seal in accordance with the
5 Nebraska Uniform Standards for Modular Housing Units Act.

6 (4) Subdivision regulations and building, plumbing, electrical,
7 housing, fire, or health codes or similar regulations and the adoption
8 thereof shall not be subject to sections 19-901 to 19-915.

9 Sec. 11. The Revisor of Statutes shall assign sections 1 to 6 of
10 this act to a new article in Chapter 19.

11 Sec. 12. Original sections 14-403 and 15-902, Reissue Revised
12 Statutes of Nebraska, and sections 19-901 and 19-902, Revised Statutes
13 Supplement, 2019, are repealed.