

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 794

Introduced by Hansen, M., 26.

Read first time January 08, 2020

Committee: Urban Affairs

1 A BILL FOR AN ACT relating to cities; to amend sections 14-403 and
2 15-902, Reissue Revised Statutes of Nebraska, and sections 19-901
3 and 19-902, Revised Statutes Supplement, 2019; to adopt the Missing
4 Middle Housing Act; to provide zoning regulation requirements for
5 certain cities; to provide a duty for the Revisor of Statutes; and
6 to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 5 of this act shall be known and may be
2 cited as the Missing Middle Housing Act.

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

4 (1) Following World War II, municipal zoning codes, ordinances, and
5 regulations in Nebraska and throughout the United States have prioritized
6 detached single-family homes and mid-rise to high-rise apartment
7 buildings over other forms of housing stock;

8 (2) In addition to zoning restrictions, the historic practice of
9 redlining in Nebraska communities has contributed to a lack of affordable
10 housing in many Nebraska municipalities;

11 (3) Types of housing stock known as middle housing, while prominent
12 in the early 1900s, have largely been missing in the construction of new
13 housing in the United States since the mid-1940s;

14 (4) There is a need for affordable housing in municipalities of all
15 sizes in Nebraska, and affordable housing contributes to economic growth
16 by providing housing options for workers of all levels; and

17 (5) Amending municipal zoning codes and ordinances to permit varied
18 types of housing stock will provide greater availability of affordable
19 housing, increase residential density, promote more efficient and
20 effective land use, and create conditions for successful mass transit,
21 bikeability, walkability, and affordability in residential neighborhoods.

22 Sec. 3. For purposes of the Missing Middle Housing Act:

23 (1) City means any city of the metropolitan class, city of the
24 primary class, or city of the first class in the State of Nebraska;

25 (2) Cottage cluster means a grouping of no fewer than four detached
26 housing units per acre with a footprint of less than nine hundred square
27 feet each and that includes a common courtyard;

28 (3) Middle housing means:

29 (a) Duplexes;

30 (b) Triplexes;

31 (c) Quadplexes;

1 (d) Cottage clusters; or

2 (e) Townhouses; and

3 (4) Townhouse means a dwelling unit constructed in a row of two or
4 more attached units, where each dwelling unit is located on an individual
5 lot or parcel and shares at least one common wall with an adjacent unit.

6 Sec. 4. On or before January 1, 2022, each city shall:

7 (1) Allow the development of:

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

10 (b) A duplex on each lot or parcel zoned for residential use that
11 allows for the development of detached single-family dwellings; and

12 (2) Amend any building zoning ordinances or regulations to comply
13 with subdivision (1) of this section.

14 Sec. 5. Nothing in the Missing Middle Housing Act shall be
15 construed to prohibit any city from:

16 (1) Regulating the siting and design of middle housing provided for
17 under section 4 of this act, except that such regulation shall not
18 discourage the development of middle housing in the area through
19 unreasonable costs or delay; or

20 (2) Allowing single-family dwellings in areas zoned to allow for
21 single-family dwellings.

22 Sec. 6. Section 14-403, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 14-403 Such regulations shall comply with the Missing Middle Housing
25 Act and be made in accordance with a comprehensive plan and designed to
26 lessen congestion in the streets; to secure safety from fire, panic, and
27 other dangers; to promote health and the general welfare; to provide
28 adequate light and air; to prevent the overcrowding of land; to secure
29 safety from flood; to avoid undue concentration of population; to
30 facilitate the adequate provision of transportation, water, sewerage,
31 schools, parks and other public requirements, and to promote convenience

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

13 Sec. 7. Section 15-902, Reissue Revised Statutes of Nebraska, is
14 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

21 Sec. 8. Section 19-901, Revised Statutes Supplement, 2019, is
22 amended to read:

23 19-901 (1) For the purpose of promoting health, safety, morals, or
24 the general welfare of the community, the city council of a city of the
25 first class or city of the second class or the village board of trustees
26 of a village may adopt zoning regulations which regulate and restrict the
27 height, number of stories, and size of buildings and other structures,
28 the percentage of lots that may be occupied, the size of yards, courts,
29 and other open spaces, the density of population, and the location and
30 use of buildings, structures, and land for trade, industry, residence, or
31 other purposes. For a city of the first class, such regulations shall

1 comply with the Missing Middle Housing Act.

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

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

27 (4) The requirement that a planning commission be appointed and a
28 comprehensive development plan be adopted shall not apply to cities of
29 the first class, cities of the second class, and villages which have
30 legally adopted a zoning ordinance prior to May 17, 1967, and which have
31 not amended the zoning ordinance or zoning map since May 17, 1967. Such

1 city or village shall appoint a planning commission and adopt the
2 comprehensive plan prior to amending the zoning ordinance or zoning map.

3 Sec. 9. Section 19-902, Revised Statutes Supplement, 2019, is
4 amended to read:

5 19-902 (1) For any or all of the purposes designated in section
6 19-901, the city council or village board of trustees may divide the
7 municipality into districts of such number, shape, and area as may be
8 deemed best suited to carry out the purposes of sections 19-901 to 19-915
9 ~~19-914~~ and may regulate and restrict the erection, construction,
10 reconstruction, alteration, repair, or use of buildings, structures, or
11 land within such districts. All such regulations shall be uniform for
12 each class or kind of buildings throughout each district, but the
13 regulations applicable to one district may differ from those applicable
14 to other districts. For a city of the first class, such regulations shall
15 comply with the Missing Middle Housing Act. If a regulation affects the
16 Niobrara scenic river corridor as defined in section 72-2006 and is not
17 incorporated within the boundaries of the municipality, the Niobrara
18 Council shall act on the regulation as provided in section 72-2010.

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

1 trustees may also require that manufactured homes meet the following
2 standards:

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

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

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

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

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

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

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

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

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

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

4 Sec. 10. The Revisor of Statutes shall assign sections 1 to 5 of
5 this act to a new article in Chapter 19.

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