From: J. Kevin Hunt
To: Heidi West
Cc: Grp. City Council and City Web Site
Subject: Re: Claimed local rent control ban is BOGUS
Date: Thursday, May 20, 2021 3:00:42 PM

Thanks much, Alderwoman West, I very much appreciate your identification of the provision to which you alluded during the May 17, 2021 City Council meeting, which is not codified as part of the MRLTA. I'll analyze that and get back to you.

Just a few questions:

(1) (a) Could you comment on subsection (14) of said MCA (2019) 7-1-11 that appears to render absolutely void the "no sleep, no lie, no loitering" ordinance?

(b) Are there not still 'NO LOITERING' signs posted downtown, citing to that ordinance? (I have seen one on N. Higgins since the effective date of this statutory blow to home rule powers).

(c) Did you folks ever repeal that ordinance?

(d) Are police accosting, citing, arresting, or detaining non-disorderly, non-aggressively-soliciting persons engaged in conduct prohibited by the pre-empted ordinance?

(2) Assume, hypothetically, that no statutory bar existed. What then would be your position on any form of rent control?

Regards,

/s/ J. Kevin Hunt

On Thu, May 20, 2021, 1:53 PM Heidi West <WestH@ci.missoula.mt.us> wrote:

https://leg.mt.gov/bills/mca/title_0070/chapter_0010/part_0010/section_0110/0070-0010-0010-0110.html

Montana Code Annotated 2019

TITLE 7. LOCAL GOVERNMENT

CHAPTER 1. GENERAL PROVISIONS

Part 1. Nature of Self-Government Local Governments

Powers Denied

7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.

(16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.

(17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;

(19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;

(20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire.

History: En. 47A-7-201 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-201; amd. Sec. 3, Ch. 375, L. 1983; amd. Sec. 22, Ch. 418, L. 1995; amd. Sec. 1, Ch. 446, L. 2001; amd. Sec. 1, Ch. 217, L. 2003; amd. Sec. 2, Ch. 466, L. 2003; amd. Sec. 1, Ch. 561, L. 2003; amd. Sec. 2, Ch. 395, L. 2009; amd. Sec. 1, Ch. 56, L. 2013; amd. Sec. 1, Ch. 173, L. 2015; amd. Sec. 7, Ch. 456, L. 2015; amd. Sec. 2, Ch. 274, L. 2017; amd. Sec. 1, Ch. 420, L. 2017.

Heidi West

City Council Ward 1 Representative

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From: J. Kevin Hunt <jkhesq23@gmail.com>
Sent: Monday, May 17, 2021 11:26:59 PM
To: Grp. City Council and City Web Site
Subject: Claimed local rent control ban is BOGUS

OPEN EMAIL to Missoula Mayor and City Council from J. Kevin Hunt, Ward 1 resident.

May 17, 2021

Re: Statutory Pre-emption of Home Rule City Rent Control Powers, and other Fairy Tales

Your Honor Mayor Engen and Honorable Alderpersons:

Alderpersons Harp, West, von Lossberg and others responded to public comments at tonight's May 17, 2021 City Council meeting, in which several commenters implored the Council for rent control, by once again making inaccurate assertions that initiating rent controls is beyond the powers of a home rule city such as Missoula.

It has yet to be explained what precludes the city from "placing ceilings on peoples' rents" as it was put by Alderwoman Harp.

I have been unable to locate a state statute that pre-empts or prohibits home-rule cities such as Missoula from instituting rent control.

Have I overlooked such a statute? Was such a measure enacted by the 2021 Legislature? NO.

Alderwoman West vaguely alluded to an unidentified provision of the Montana Residential Landlord and Tenant Act of 1977 (MRLTA) she claimed prevented any ordinances in home rule cities pertaining to rent control because it prohibited local ordinances regulating rental agreements.

That syllogism is invalid, so Ms. West's conclusion is not accurate. The only MRLTA provision remotely resembling her claim (endorsed by several other Alderpersons) is the following:

"Territorial Application
70-24-107. Territorial application. This chapter [the MRLTA] applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state."

That section IN NO MANNER prohibits a home rule city from initiating rent control. It specifies statewide, universally-prohibited rental agreement provisions, accordingly imposing as statewide, universally-applicable law the MRLTA's notice requirements for rent increases, as well as the MRLTA's prohibition against retaliatory rent increases, along with other "rights, obligations and remedies under a rental agreement" that are "regulate[d] " or "determine[d]" by the MRLTA.

The MRLTA does NOT in any manner "regulate" or "determine" rental ceilings that are permissible or prohibited terms of a rental agreement. Parties to a rental agreement are free to agree to such ceilings in rental agreements without implicating the MRLTA.

More to the point, an indisputable consequence and corollary of the MRLTA's irrelevance to rental ceilings in rental agreements, is its utter irrelevance to local rent ceilings enacted by home rule cities. Again, rent ceilings are not in any manner "regulat[ed] or "determin[ed] by any MRLTA provision, and no such ordinance would affect the statutory pre-emption of those matters which the MRLTA does "regulate" or "determine" as "rights," "obligations" and "remedies" "under a rental agreement."

Additionally, there are many forms of local rent control, and a blanket statement that all forms violate a statewide pre-emption that at best is dubious, is not seductive enough to rise to the level of speciousness.
The bottom line is that MCA 70-24-107 does NOT tie City Councilors' hands in this regard.

Perhaps that explains why every secondary source produced by a search engine query "Montana rent control" or "states with rent control"
lists Montana as a state with no prohibition of statewide or local rent controls.

This passing of the buck is unacceptable. Rent control is a very controversial issue, with extensive literature both deriding it as counterproductive and hailing it as a successful emergency measure or long-term policy.

Taking substantive positions on various permutations of rent control therefore requires courage. The Council exhibited such courage when attempting to close the "gun-show loophole" within city boundaries. That same courage is required now. If, during a housing emergency, the Mayor and Council are unwilling to test a rent control ordinance with the same zeal and tenacity as they exhibited in pursuing local firearm regulation, the reason is certainly a mystery.

Neither the Mayor nor any Alderperson, nor City Attorney Jim Nugent, even ventured an attempt at producing statutory authority for the claim that a local ordinance banning discrimination in housing based on basis of prior criminal conviction, current or former houseless status, or prior eviction is beyond your powers.

Nor should we accept the very weak defenses of the city's uses of TIF that subsidize wealthy banks and individuals while housing no one. In his remarks, Mayor Engen did not explain how going into interest-bearing bonded indebtedness to subsidize a bank building reaped returns usable for affordable housing.

I'm sure councilpersons parroting the Mayor are sincere, well-meaning individuals genuinely disturbed, frustrated, incensed and insomnia-ridden by the housing emergency, but I submit that they have bought into the sophistry eloquently enunciated by the Mayor.

The undeniable truth is that it would be a tremendous savings of public funds, yielding immensely more truly affordable housing, for the city to stop reselling banked land at multi-million dollar losses to multi-state development consortia, and to instead expend a fraction of loss-equivalent funds EMPLOYING our local workforce to construct housing units on banked land. If done alongside Habitat for Humanity, the positive remedial effect for our housing emergency would be truly "game changing."

Some might object to this as "socialist," but what we have now with our city government's "be nice to the ruling class and give it millions of dollars in subsidies and sweetheart land deals in exchange for crumbs of housing affordable only by $94,000 per year households" approach is socialism for the rich and powerful. This coddling of predatory capitalism is the same approach Mayor Engen and City Attorney Nugent employed when they chose not to irritate Carlyle Group with a PSC challenge to its acquisition of the water system (as if that notoriously amoral private equity firm represented by James Baker III which bilked taxpayers out of tens of billions of dollars could possibly care less), instead entering into a worthless "agreement" under which Carlyle was to "consider" the city's offer for the system before selling it to another interested entity. When the time came, Mayor Engen made an offer, Carlyle said "screw you," and lengthy, very costly eminent domain proceedings were thereby assured. I commend the Mayor for pursuing eminent domain once it became the sole means of making the water system city-owned, but strongly disapprove of failing to challenge before the PSC, Carlyle's acquisition as being against the public interest, years earlier.

Finally, as several Alderpersons noted, we should keep in mind that the same paradigm re housing is playing out in cities nationwide. Along those lines, if one does the web search "housing crisis," one will be inundated with newspaper stories from all over America lamenting "out of state speculators" who drive up the prices of houses — the same problem often cited by experts quoted by our local press with regard to Missoula's housing emergency. The ubiquity of this observation reminds us to lift our perspective above the confines of Missoula, and not lose sight of the reality of a ruling class without state boundaries that exploits the plight of the working class and poverty-afflicted with the same disregard for state boundaries.

The scapegoating of the pandemic, a right-wing state legislature, non-existent statutory restrictions on local authority, and so on, evades identification of the real problem, as does the highly wasteful policies of relying on purely-voluntary agreements with big landlords and property management firms, and relying on extremely dedicated and uncompensated professionals with other full-time jobs to sustain long-term efforts to mitigate houselessness.

Either the Mayor and City Council are on the side of the oligarchs, or on the side of the People.

It's time to make the just choice of allegiance.

Respectfully,

/s/ J. Kevin Hunt
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