

City Clerk Staff

From: Jim Nugent
Sent: Friday, January 27, 2023 1:47 PM
To: Jordan Hess; Grp. City Council and City Web Site; Dale Bickell; Jessica Miller
Cc: Gordy Hughes; Brad Davis; Philip Keating; Angela Simonson; Leigh Griffing; Ellen Buchanan; Jeremy Keene; Eran Pehan; Jaeson White; Scott Hoffman; Dept. Attorney
Subject: 2023 Montana State Legislative proposals that propose to add/insert a new additional state pre-emption powers denied to local government

TO WHOM IT MAY CONCERN:

Thus far amongst the state legislative proposals that Jessica has requested that I review there have been numerous 2023 state legislative proposals that attempt to pre-empt local government exercise of powers with respect to certain topics primarily by amending and adding subsections to section 7-1-111 MCA entitled POWERS DENIED. The following are some of the state legislative proposals that I have noticed in the 2023 legislative proposals that Jessica has requested that I review and explaining/informing as to what the proposed state legislation does:

- (1) SB-105 prohibit local government rent control of private residential and commercial properties
- (2) HB-283 generally revising rental laws subsection 7-1-111(13) MCA to prohibit local government any power to deviate from or add to the exclusive application of the Montana Residential Landlord and Tenant Act of 1977; evidential tenant security deposit law as well as Montana Residential Mobile Home Lot Rental Act;
- (3) LC-0300 revising short term rental laws by prohibiting local government exercise of any power to prohibit short-term rentals of residential property with some statutory exceptions identified elsewhere in the proposed state legislation;
- (4) LC-1075 GENERALLY REVISING ;AWS ALTERNATIVE NICOTINE AND VAPOR PRODUCTS by prohibiting local government exercise of any power to prohibit the sale of alternative nicotine products or vapor products
- (5) LC-1111 proposes to allow local government laws by allowing local government power to regulate alternative nicotine and vapor products and repealing the powers denied provision on the topic
- (6) LC-1083 proposes three (3) separate and independent new power denied subsections relating to CRYPTO CURRENCY LAW enactment proposes to adopt/insert three (3) new powers denied subsection provisions that would PROHIBIT LOCAL GOVERNMENT POWER TO IMPOSE REQUIREMENTS ON A DIGITAL MINING BUSINESS THAT ARE NOT ALSO REQUIREMENTS FOR DATA CENTERS IN THE AREA OF JURISDICTION; ALSO ANY POWER TO PREVENT HOME DIGITAL ASSET MINING AT A PRIVATE RESIDENCE EXCEPT AS RELATED TO EXISTING NOISE ORDINANCES AND THIRDLY ANY POWER TO CHANGE THE ZONING OF AN AREA THAT CONTAINS AN ACTIVE ASSET MINING BUSINESS AS DEFINED IN THE LEGISLATION OR TO PREVENT A DIGITAL ASSET MINING BUSINESS FROM OPERATING IN AN AREA ZONED FOR INDUSTRIAL USE.
- (7) LC-1083 CRYPTO CURRENCY, elsewhere in LC- 1083 there is a provision that provides that a local government entity may not charge as additional tax, withholding assessment or charge on the value of digital assets when used as a method of payment;
- (8) OR regulation that prohibits the use of a mobile electronic communication device while operating a motor vehicle unless any statutorily identified exception if applicable.

- (9) HB-241 proposes to deny any local government any power to require that buildings be constructed to have solar panels or wiring, batteries, or other equipment for solar panels or electric vehicles.
- (10)LC-0339 entitled in part as an act removing the authority to exercise eminent domain by counties for public recreational or cultural purposes appears to be broader than its title limiting counties for the reason that the new section language does not limit the section to counties. The title to the new section is EMINENT DOMAIN NOT TO BE USED FOR CERTAIN RECREATIONAL PROPERTIES and the text of the new section does not limit the provision to counties when it states eminent domain may not be exercised for trails, paths, or other ways for walking, hiking, bicycling or equestrian use; a public park, to connect other trails, paths, or other ways for walking, hiking, bicycling or equestrian use. There is no proposed language in the new section limiting the eminent domain prohibition to counties.
- (11)SB-98 revises the jurisdictional area for a city or town board of health by deleting the provision allowing jurisdiction within 3 miles of the city limits. Does not affect City of Missoula at this point in time
- (12)LC-0065 prohibits local government s from banning or limiting energy choices by prohibiting any local government power to control or impede the connection or reconnection of an electric, natural gas, propane or other energy or utility service provided by a public utility, cooperative utility or other energy or fuel provider.
- (13)LC-0584 prohibiting the ban of petroleum fuel powered machinery, vehicles, vessels, tools facilities, appliance or equipment by inserting a new powers denied provision denying local governments any power to prohibit the purchase or use of petroleum fuels or the installation of any machinery, vehicles, vessels, tools, facilities, appliances or equipment that burn or transport petroleum fuels

There likely are other proposed laws pre-empting local government powers that I have not an opportunity to review. However, this itemization list is instructive to local officials that the 2023 Montana State Legislature is clearly proposing to prohibit numerous local government self-government powers. .

JIM NUGENT