From: Jim Nugent
To: Mike Nugent
Cc: Daniel Carlino; Grp. City Council and City Web Site; Dept. Mayors Office; Dept. City Clerk; Aaron Bowman; Eran Pehan; Mary McCrea; Alex Eidam; Gordy Hughes; Brad Davis; Dept. Attorney
Subject: RE: Short Term Rentals Legal Question
Date: Friday, January 28, 2022 2:25:45 PM
Attachments: image001.png

MIKE:

While several of our office staff attorneys have also heard reference to the 30 day time period you inquire about; no one has ever read/seen it actually stated in writing in any Montana state law that our office works with. Thus, we are not able to confirm the accuracy of the time period you reference.

There is no 30 day provision in the Montana Residential L:andlord Tenant Act of 1977. The statutory definition of the term "landlord" in that state law merely references "rental agreement" without referencing any time period. Further, the statutory definition of the term "rental agreement" in that law does not establish any minimum time period for the factual circumstances to constitute a rental agreement. Also, noteworthy is that the definition of "tourist home" in Montana's HOTELS, MOTELS AND BOARDING HOUSES laws in title 50, chapter 51; does not include any time period in the definition of "tourist home"..

Black's Law Dictionary Eighth Edition does not include any time period in the definition of the term "landlord"; including reference to common law, feudal law in the definition it does set forth.

Possibly it could be a landlord association business industry reference point or policy as part of their trade or business industry; language and/or or a guiding rule used by a Montana state agency. However, if such a time period exists; it is not prominently set forth in common parlance.

The City of Missoula has lengthy "TOURIST HOME" zoning regulation provisions set forth in section 20.40.135, et. seq.; Missoula Municipal Code provide that for city zoning regulation purposes short term rentals are not a residency governed by the Montana Residential Landlord Tenant Act. However, the City of Missoula zoning regulation language of that provision must be limited to the administration of the City of Missoula's lengthy "TOURIST HOMES" provisions set forth in Missoula Municipal Code. A local government such as the City of Missoula does not have authority or jurisdiction to declare whether short term rentals are or are not a residency governed by the Montana Residential Landlord Tenant Act for purposes of the administration or applicability of Montana state law.

Our office staff attorneys will keep a look out for some source for the 30 day refence; if such source exists.

JIM NUGENT

From: Mike Nugent <NugentM@ci.missoula.mt.us>
Sent: Thursday, January 27, 2022 6:21 PM

To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Cc: Daniel Carlino <CarlinoD@ci.missoula.mt.us>
Subject: Re: Short Term Rentals Legal Question

Counselor,

I have previously heard that 30 days is the threshold for landlord tenant laws to be applicable. I am curious if you know the answer to that or if there is a good resource on the subject? I know the city has short term rental regulations currently in place, and my understanding was we were able to regulate short term rentals because they were less than thirty days and not covered under landlord tenant. That is also why when I heard about the Whitefish ordinance my reaction was that it would not be legal under state law because it is dealing with longer rental agreements than thirty days.

Mike

From: Jim Nugent <NugentJ@ci.missoula.mt.us>
Sent: Thursday, January 27, 2022 12:09 PM
To: Daniel Carlino <CarlinoD@ci.missoula.mt.us>
Cc: Grp. City Council and City Web Site <Council@ci.missoula.mt.us>; Dept. Mayors Office <DeptMayor@ci.missoula.mt.us>; Eran Pehan <PehanE@ci.missoula.mt.us>; Montana James <jamesm@ci.missoula.mt.us>; Mary McCrea <McCreaM@ci.missoula.mt.us>; Alex Eidam <EidamA@ci.missoula.mt.us>; Dept. City Clerk <CLERK@ci.missoula.mt.us>; Dept. Attorney <Atty@ci.missoula.mt.us>; Dept. MRA <MRA3@ci.missoula.mt.us>; Leigh Griffing <GriffingL@ci.missoula.mt.us>
Subject: RE: Short Term Rentals Legal Question

DANIEL:

Since there is no statutory or court ruling exemption; it could be argued that short term residential rentals re subject to Montana's Residential Landlord and Tenant Act of 1977.

Thee is no court ruling holding that the whitefish zoning regulation is legal. In fact according to news media coverage it is not even in effect for a year. Merely because a local government anywhere has adopted an ordinance on any topic; does not equate to the ordinance being legal. Courts determine the legality of local government ordinances'.

In fact the news media coverage indicates that the Whitefish city attorney has legal concerns about Montana state law curtaining the City of Whitefish's ability to regulate landlords. The Whitefish city attorney has ample legal grounds in Montana state law to be concerned about the legality of the Whitefish ordinance.

Montana state law pursuant to POWERS DENIED to local governments with self-government powers pursuant to subsection 7-1-111(13) MCA statutorily denies local governments "any power that

applies to or affects landlords when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided for in the Montana Residential Landlord Tenant Act."

Missoula City Council ordinance adoption is what led to the state preemption language quoted above pertaining to preemption of local government either licensing or regulating landlords activities with respect to tenants. A couple of decades ago primarily at the urging of university area homeowners, the Missoula City council adopted a rather lengthy ordinance that had as its primary purpose to require that the owner of each and every residential dwelling unit must purchase license from the City of Missoula. The mayor line item vetoed several provisions of the city council ordinance. The city council was only able to override some of the mayor's line item vetoes.

The Missoula Landlords Association then sued the Missoula City Council challenging the legality of the city licensing of every dwelling unit requirement. The District Court judge ruled the City of Missoula ordinance invalid on nine (9) different legal grounds s I recall.

The landlords association also successfully went to the 2001 Montana State Legislature seeking state preemption of local government powers with respect to what had occurred with respect to residential rental licensing pursuant to the City of Missoula ordinance. The 2001 Montana State Legislature in the Montana state local government law entitled POWERS DENIED, pursuant to subsection 7-1-111(13) MCA amended the subsection to prohibit self-governing local government units from licensing or regulating certain activities of landlords.

While there are numerous historical examples of the State of Montana preempting the powers of the City of Missoula and other local governments; in recent years it has been an ever increasing nationwide trend that state governments are preempting even more local government powers with respect to local government's ability to address local issues of concern to some local governments and/or their constituents Pursuant to the ever increasing state preemption by the states, I can likely identify about a dozen instances where The 2021 Montana State Legislature likely adopted state laws preempting local government powers.

There is no court legal determination that the Whitefish rental housing zoning regulation is legal. The Whitefish zoning ordinance is not even in effect for about one year. The fact that an ordinance from elsewhere exists does not equate to the ordinance being legal. The Whitefish ordinance could be state preempted by the State of Montana before there ever is a court ruling on the legality of the Whitefish ordinance.

JIM NUGENT

From: Daniel Carlino <CarlinoD@ci.missoula.mt.us>
Sent: Thursday, January 27, 2022 8:55 AM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Subject: Short Term Rentals Legal Question

Hey Jim, do you have an answer for this question: **Does the Landlord Tenant Act**

apply to Short Term Rental Unit owners?

If so, why is Whitefish's zoning regulations and permitting requirements for STRUs are legal?

Daniel Carlino
City Councilman | Ward 3
(406) 552-6659