From:	Jim Nugent
To:	Daniel Carlino
Cc:	Grp. City Council and City Web Site; Dept. Mayors Office; Eran Pehan; Mary McCrea; Alex Eidam; Dept. City Clerk; Dept. Attorney; Aaron Bowman; Gordy Hughes; Brad Davis
Subject:	RE: Short Term Rentals Legal Question
Date:	Friday, January 28, 2022 10:49:59 AM
Attachments:	image001.png

DANIEL:

Pursuant to 76-2-306 MCA of State of Montana municipal zoning laws in certain specific land use instances in order "TO PROTECT THE PUBLIC SAFETY, HEALTH AND WELFARE" a six (6) month interim zoning ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body (city council) is considering or studying or intends to study within a reasonable time, may be adopted by the city council. Two one year extensions may be adopted by the city council pursuant to an extraordinary vote of approval of 2/3 rds of the city council. (emphasis added).

The section 76-2-306 MCA statutory interim zoning ordinance provisions that must be in existence/present include:

1. The purpose of any interim zoning ordinance adopted by the legislative body of the city must be "TO PROTECT THE PUBLIC SAFETY, HEALTH AND WELFARE". (emphasis added)
2. The interim zoning measure ordinance must be adopted "AS AN URGENCY MEASURE" (emphasis added).
3. The interim zoning urgency measure ordinance is to prohibit any uses that may be in conflict with a contemplated zoning proposal that the legislative body (city council) is considering or studying or intends to study within a reasonable time period.
4. A city council public hearing must be held prior to city council adoption of an interim zoning ordinance.
5. Prior to the city council required public hearing, Notice reasonably designed "to inform all affected parties" must be provided.
6. A notice must be published in a newspaper of general circulation at least 7 days prior to the public hearing.

There is one Montana state law statutory preemption adopted in 2013 that is referenced in section 76-2-306 MCA. After there was news media publicity and zoning concerns expressed to the Missoula City Council about ham radio antennas in residential neighborhoods, the Montana State Legislature subsequently statutorily preempted Montana local governments from regulating amateur radio antennas by statutorily denying any such power to Montana local governments. See subsections 7-1-111(17) and (18) MCA; subsection 76-2-306(1) MCA and 76-2-340 MCA all adopted in 2013 after the news media pudicity pertaining to residents expressing concerns about amateur radio antenna in their residential neighborhood(s).

While the Missoula City Council never adopted a zoning ordinance prohibiting or regulating the height of amateur radio antennas in response to the concerns expressed to city officials; the Montana State Legislature subsequently preempted the City of Missoula from regulating amateur

radio antennas in any manner.

JIM NUGENT

From: Daniel Carlino <CarlinoD@ci.missoula.mt.us>
Sent: Thursday, January 27, 2022 3:41 PM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Subject: Re: Short Term Rentals Legal Question

Hey Jim, do you know if a temporary moratorium on new short term rentals would be legal?

From: Jim Nugent <NugentJ@ci.missoula.mt.us>
Sent: Thursday, January 27, 2022 12:34 PM
To: Daniel Carlino <CarlinoD@ci.missoula.mt.us>
Subject: RE: Short Term Rentals Legal Question

DANIEL:

You are welcome. Glad to be able to help provide legal information.

JIM NUGENT

From: Daniel Carlino <CarlinoD@ci.missoula.mt.us>
Sent: Thursday, January 27, 2022 12:12 PM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Subject: Re: Short Term Rentals Legal Question

Thank you so much for this info Jim.

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

From: Jim Nugent <NugentJ@ci.missoula.mt.us>
Sent: Thursday, January 27, 2022 12:09:37 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