From: J. Kevin Hunt
To: Grp. City Council and City Web Site
Subject: Claimed local rent control ban is BOGUS
Date: Monday, May 17, 2021 11:27:19 PM

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
Ward 1, Missoula
Tel. (971) 295-1969
jkhesq23@gmail.com