From:	Jim Nugent
To:	Daniel Carlino
Cc:	Grp. City Council and City Web Site; Dept. Mayors Office; Eran Pehan; Montana James; Mary McCrea; Alex Eidam; Dept. City Clerk; Dept. Attorney; Dept. MRA; Leigh Griffing
Subject:	RE: Short Term Rentals Legal Question
Date:	Thursday, January 27, 2022 12:09:41 PM
Attachments:	image001.png

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