

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2021-021

TO: Mayor John Engen, City Council, Dale Bickell, Eran Pehan, Montana James, Marty Rehbein, Leigh Griffing Ellen Buchanan

CC: Department Mayor's Office, Department City Clerk, Department Attorney

FROM: Jim Nugent, City Attorney

DATE: November 19, 2021

RE: Montana state law prohibits Montana local governments exercising powers affecting any private or civil relationship or landlord activities with regard to tenants. City cannot attempt to monetarily cap amount charged for rental application fees.

FACTS:

Multiple city officials/staff members have received inquiries this calendar year inquiring about the City's ability to monetarily cap the amount charged for tenant rental application fees. Reportedly the tenant rental application fees are utilized at least in part to determine the rental applicant's credit rating.

ISSUE(S):

May a Montana local government attempt to place a monetary cap on the amount landlords charge for tenant rental application fees?

CONCLUSION(S):

No. Montana local governments are prohibited the exercise of any power that applies to or affects any private or civil relationship or landlord activities with respect to tenants.

LEGAL DISCUSSION:

Montana local government law; pursuant to section 7-1-111 MCA entitled POWERS DENIED; prohibits a Montana local government with self-government powers from exercising any power that applies to or affects any private or civil relationship; or that regulates landlord activities with respect to tenants.

Subsections 7-1-111(1) and (13) POWERS DENIED provide as follows:

“7-1-111. POWERS DENIED. A local government unit with self-government powers is prohibited from exercising the following:

- (1) Any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

.....

- (13) Any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government’s ability to require landlords to comply with ordinances or provisions that are applicable to all other business or residences within the local government’s jurisdiction.

Title 70, chapter 24 MCA is entitled RESIDENTIAL LANDLORD AND TENANT ACT and Title 70, chapter 25 MCA is entitled RESIDENTIAL TENANTS’ SECURITY DEPOSITS. The final sentence of subsection 7-1-111(13) MCA means that landlords may be subject to ordinances pertaining to regulations such as building, fire, health codes; etc..

CONCLUSION(S):

No. Montana local governments are prohibited the exercise of any power that applies to or affects any private or civil relationship or landlord activities with respect to tenants.

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/s/ Jim Nugent

Jim Nugent, City Attorney

JN:jb