

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

May 5, 2023

The Honorable Jason Ellsworth
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Matt Regier
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Ellsworth and Speaker Regier:

Like you and members of the Legislature, I am committed to increasing Montanans' access to affordable, attainable housing, including through zoning reform. Zoning regulations constrict housing supply and make affordable housing less accessible for Montanans. I thank the Legislature for advancing several bills to my desk to remove these roadblocks to homeownership.

House Bill 748, however, inserts vagueness, uncertainty, and unpredictability into the land use planning regulatory process.

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill 748: "AN ACT REVISING LAWS FOR COUNTY AND MUNICIPAL ZONING PURPOSES TO ALLOW FOR SEPARATION OF INCOMPATIBLE USES OF PROPERTY; AND AMENDING SECTIONS 761-106, 76-2-201, 76-2-206, AND 76-2-301, MCA."

The legal foundation to regulate land use is based on the powers reserved to states under the Tenth Amendment of the U.S. Constitution. Most states, including Montana, have delegated authority to regulate land use to local governments.

In the landmark decision of *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), the U.S. Supreme Court famously ruled that land use laws enacted by local governments are a constitutional exercise of authority if such laws promote the "public health, safety, morals, or general welfare" of its citizens.

President Ellsworth and Speaker Regier
May 5, 2023
Page 2

In 1934, the Montana Supreme Court adopted the *Euclid* analysis, ruling that a zoning ordinance enacted by a local government is constitutional if the regulation has a substantial bearing upon “the public health, safety, morals or general welfare of the community.” *Freeman v. Board of Adjustment*, 97 Mont. 342.

The precept of “public health, safety, morals or general welfare” has been faithfully applied by Montana and federal courts for decades in determining the constitutionality of local land use regulations. An important body of case law has developed defining each of these terms and providing a predictable and consistent standard that local governments consider when adopting land use ordinances. Many cities throughout Montana have incorporated the “public health, safety, morals or general welfare” standard in their land use regulations, such as Billings Code Sec. 27-1623 and Great Falls Code 17.16.29.050.

House Bill 748 deviates from the long-standing and well-developed principles of “public health, safety, morals and general welfare” and replaces “morals” with the new standard of “separation of incompatible uses of property,” inserting vagueness, uncertainty, and unpredictability into the land use planning regulatory process.

For these reasons, I veto House Bill 748.

Sincerely,



Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State