

HOUSE BILL NO. 247  
INTRODUCED BY HARRIS

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING LOCAL GOVERNMENTS FROM ENACTING ORDINANCES CONCERNING VAGRANCY; CLARIFYING THAT VAGRANCY DOES NOT INCLUDE AGGRESSIVE SOLICITATION THAT IS INCLUDED IN THE OFFENSE OF DISORDERLY CONDUCT; REMOVING EXISTING STATUTORY PROVISIONS CONCERNING VAGRANCY; AMENDING SECTIONS 7-1-111, 7-21-3322, 7-32-4304, AND 53-21-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 7-1-111, MCA, is amended to read:

**"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;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months'

imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife); ~~and~~

(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 businesses or residences within the local government's jurisdiction.

(14) SUBJECT TO 7-32-4304, any power to enact ordinances concerning PROHIBITING OR PENALIZING vagrancy."

**Section 2.** Section 7-21-3322, MCA, is amended to read:

**"7-21-3322. Role of market master.** (1) ~~Such~~ A county market master shall, under the supervision and approval of the board of county commissioners, make all necessary rules for the establishment, maintenance, operation, and control of the markets established ~~hereunder~~ under this part in the respective counties of the state.

(2) ~~It shall be the duty of such~~ The county market master shall:

(a) ~~to~~ cause the market buildings, grounds, and premises to be kept reasonably clean and in proper sanitary condition;

(b) ~~to~~ arrange for stalls and spaces in ~~such a manner as to~~ that best ~~suit~~ suits the convenience of both buyers and sellers;

(c) ~~to~~ see that the laws of Montana ~~in reference~~ relating to weights and measures are enforced and observed;

(d) ~~to~~ cause order to be preserved during the time ~~such~~ the market ~~shall be~~ is open and in operation;

(e) ~~to~~ prevent and remove obstructions from the marketplace or grounds;

(f) ~~to remove all vagrants, prevent disorderly conduct, and prevent disorderly persons from loitering~~ AND PREVENT DISORDERLY PERSONS FROM LOITERING REMAINING in ~~said~~ market buildings, space, or grounds during the market hours;

(g) ~~to cause all offenses against the laws of Montana in relation to~~ concerning the inspection of foods or the sale of unclean, unwholesome, damaged, or spoiled meats, farm products, vegetables, or provisions of any kind to be prosecuted;

(h) ~~to designate proper means of supervising and accounting for the sales therein made and collecting the commissions hereinafter provided for~~ in this part; and

(i) ~~to generally supervise and control the operations of the public markets established under the provisions of this part.~~"

**Section 3.** Section 7-32-4304, MCA, is amended to read:

**"7-32-4304. Control of vagrancy and disorderly conduct.** The city or town council has power to ~~define vagrancy and to restrain and punish vagrants, mendicants, and persons guilty of disorderly conduct~~ AND AGGRESSIVE SOLICITATION, AS DEFINED BY ORDINANCE, THAT IS INCLUDED IN THE OFFENSE OF DISORDERLY CONDUCT."

**Section 4.** Section 53-21-138, MCA, is amended to read:

**"53-21-138. Diversion of certain persons suffering from mental disorders from detention center.**

(1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may require commitment, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and may require commitment, the sheriff or administrator of the detention center shall:

(a) request services from a crisis intervention program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, ~~vagrancy~~, disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed."

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Retroactive applicability.** [Sections 1 and 3] apply retroactively, within the meaning of 1-2-109, to ordinances enacted prior to [the effective date of this act].

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