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To: Kelly Lynch, Montana League of Cities and Towns Executive Director
Thomas Jodoin, MTLCT Deputy Director and Legal Counsel

RE: City of Helena Community Development Department Response Letter to the Governor's
Affordable Housing Task Force Local Regulation Meeting of August 2, 2022

The City of Helena is excited to engage with the state on ways to create more affordable housing. The development of affordable housing is an expressed top priority of the Mayor, City Commission, and the Growth Policy of the City of Helena. Behind that prioritization, an immense amount of resources, time, and energy has been spent by the City to create an environment that fosters the development of housing. We hope that the task force further engages the City of Helena and municipalities across the state to help us better house our residents.

Please find below a line-by-line response to the affordable housing subgroup's "starting ideas." Following that, there is a listing of the City's accomplishments in promoting affordable housing development as well as suggestions on ideas that the City believes would help it accomplish its stated goal of creating more affordable housing.

"Starting Ideas for Subgroup Consideration"

1. Tie state affordable housing tax credit to local zoning reform
 - a. The City of Helena would like to see more information about how this would work. The issue/disconnect that the City sees here is that cities are not applying for those tax credits—the actual affordable housing developers are. As such, a penalty should not fall to them.
2. Create state matching funds for 4% projects
 - a. The City of Helena would support efforts to bolster the LIHTC program.
3. Allow ADUs at single-family houses across the state
 - a. The City of Helena allows an additional dwelling-unit in all residential zoning districts by right, irrespective of the size, type, or location of the second unit. Many ADU regulations necessitate the units being subordinate to the primary dwelling unit. The City of Helena has not defined an "ADU" within its zoning code, and arguably does not need to do so owing to the lack of single-family zoning and the allowance for multiple dwelling units by right. Additionally, the City does not contend that protections for ADUs will necessarily address an affordability problem. Rather, such protections could reasonably exacerbate affordability issues communities face as many such rentals are not meant for

long-term rental- use by local residents in some jurisdictions, absent also balancing allowance by-right with short-term rental regulations.

4. Allow 2-4 units in all residential zones across the state
 - a. While the City of Helena might be able to accommodate this due to its lack of singlefamily zoning, this is very problematic as a statewide rule. Rules like this must take into account the geography of Montana, its limited water resources, and jurisdictions' abilities to develop out infrastructure (and pay for the maintenance of the infrastructure) to less developed regions.
5. Statutory time limits for all subdivision exemptions
 - a. Such legislation has already been passed, in a broader sense, for subdivision review requirements. The issue is compounded through the application of penalties if timelines are not met. The City of Helena would support initiatives that reduce redundant reviews by municipalities and DEQ for subdivisions and amended plats/boundary line relocations/ retracements/family transfers. The concept of local review instead of DEQ approval will help expedite this process.
6. Statutory time limits for city county building permit review
 - a. The City of Helena believes the state could encourage cities to adopt such timelines into their own codes, but adoption of a statewide timeline would be a concern. Cities have differing levels of intensity in their reviews with the main concern being maintaining consistency in response. When a longer part of a process is shortened, there is the potential for more variability where consistency is the goal. That variability could make cities vulnerable to legal action. Legal action is not known for speeding up processes. The City of Helena has a process whereby, when a developer submits a set of plans that will be used for more than one building, the review for the subsequent building built under that set of plans gets an expedited review. In addition, staffing will always be the key to more expedited review. If you lack sufficient staffing, it will inherently take longer for plans to be reviewed. This is a notable area of concern when workforce shortages affect staff hiring statewide, and the issue is particularly pronounced for smaller jurisdictions with less capacity.
7. Additional funding from coal trust fund for affordable multifamily loan program tied to local zoning requirements
 - a. The City of Helena will enthusiastically support state discussions over new revenue streams. Applicants seeking Coal Trust Fund money typically are affordable housing developers rather than jurisdictions themselves, and the proposed tie for the funding source to local zoning requirements may disincentivize developers from seeking such funds for their capital stacking needs in places that need affordable housing because smaller jurisdictions are more likely to lack "adequate" zoning codes.
8. Remove zoning map amendment protest provisions in state law
 - a. This occurs very rarely. When it does occur, government at any level should not treat the protest as spurious or without merit. The City hopes the state would tread carefully

when considering removing any of the public's remedies and the public's Constitutional right to participate in local government activities that affect them and their surrounding community.

9. Subdivision exemption for community land trusts
 - a. The City of Helena would be willing to consider any mechanisms to ease the establishment of Community Land Trust (CLT) creation in our community and would support state-level subdivision review exemptions.
10. Tie infrastructure grants to local zoning and/or local housing market outcomes
 - a. This proposal needs to be more clearly explained. It reads as though housing markets that are already successful in attracting new housing development would receive assistance from the state. The state may find it difficult to parse the causes from the effects of zoning reform.
11. Bring all wet utilities and main extensions under the municipal facilities exclusion process
 - a. The City of Helena would support initiatives that reduce redundant reviews by municipalities and DEQ for subdivisions, amended plats, boundary line relocations, retracements, family transfers, etc. The concept of local review instead of DEQ approval will help expedite this process.
12. Limit local parking requirements
 - a. The City of Helena eliminated parking requirements in our DT (Downtown) and TR (Transitional Residential) zoning districts, instead requiring adherence to parking maximums in these densely developed urban districts. An emphasis on maximums rather than minimums could be considered for other City zoning districts in the future. That said, the City would expect a spirited response to any plan that reduces or eliminates parking requirements citywide. It is a possible outcome that businesses and residents would ask that municipalities invest further into parking infrastructure if this happens.
13. Limit local minimum lot size requirements
 - a. The City of Helena does not have minimum lot size requirements, having removed any such remaining requirements from city code in January 2020. Prior to the code change, staff are not aware of specific issues caused by the lot area requirements that existed. While such zoning changes may work in urban areas, placing limits on minimum lot area requirements in rural areas that lack municipal infrastructure poses issues for parcels that may struggle with water scarcity and septic system failures in the long-term.
14. Require the state and local governments to compensate property owners when new land use restrictions reduce their property values
 - a. The City of Helena would not be inclined to support such a proposal as it has been shown to be an unsuccessful and/or problematic endeavor in other states.
15. Block zoning that makes existing conditions illegal
 - a. A zoning change can make a structure and/or a use legally non-conforming, but it does not inherently make existing conditions "illegal." Within the City of Helena, a use would be grandfathered in with all its existing non-conformities. Further, the City of Helena does not have zoning codes adopted with sunset provisions that would phase out nonconformities and necessitate adherence with the codes by a date certain.
16. Protect "Build to Rent"
 - a. The City of Helena does not currently have legislation limiting "build to rent" because, in Montana, it is generally consigned to unincorporated areas.
17. Allow HUD Code Manufactured Housing without Redundant Local Inspections

- a. The City of Helena does not require HUD-certified manufactured housing to receive a Certificate of Occupancy. The City of Helena does require utility inspections and foundation inspections of manufactured housing, which are not redundant local inspections on top of other manufacturer or state requirements.
 - b. While the city does regulate site and development standards for mobile home parks in city code, it is worth noting that mobile and manufactured homes are permitted anywhere that single-family homes are permitted by right. There is no differentiation between stick-built and manufactured housing so long as the dwelling unit meets the adopted definition of a “dwelling unit” and also is on a permanent foundation, tied to city water and sewer services.
- 18. Eliminate aesthetic mandates and materials bans
 - a. Building codes generally dictate the type of materials that may be used. The Montana Supreme Court has ruled that regulations dictating building material requirements outside the current building codes are not enforceable (*Svee v. the City of Helena*). This precedent was strongly considered when the City of Helena adopted design standards pertaining to the massing and articulation of a structure in the DT (Downtown) and TR (Transitional Residential) Zoning Districts in 2019.
- 19. Allow single-stair multifamily with other fire safety features
 - a. The City of Helena’s fire, building, and life safety codes are wholly adopted without alteration, per state law.
- 20. Rewrite state zoning enabling act to include limits on local authority
 - a. The City of Helena is opposed to legislation that limits its authority to carry out the will of its residents. Our zoning regulations have developed thoughtfully and deliberately over the course of many generations, as afforded by the city’s police powers, with open public hearing processes that allow citizen input at all stages of the drafting and code adoption process.
- 21. Opportunity for task force to provide a best-practices guideline for a by-right approval process
 - a. The City of Helena would be happy to collaborate with the task force and other subject matter experts in the field of land use on the creation of these guidelines.
- 22. Eliminate “tiered zoning”
 - a. As it was explained in the course of the subtask force meeting on August 2, 2022, the City of Helena has already eliminated this practice because we no longer require minimum lot sizes for any level of density for dwelling unit construction.
- 23. Upzone “job rich” Census Tracts
 - a. Please define further. The City of Helena promotes mixed-use development throughout job-rich, commercial/business districts in the city through existing zoning regulations.
- 24. Requirements for side-load garages, curbs and gutters where not needed
 - a. This is a narrowly-focused issue and does not read as something that needs to be applied on a statewide level. Side-load garages are not regulated for design purposes within the City of Helena. The City’s Engineering & Design Standards require curbs and gutters as necessary Complete Streets right-of-way components.

It is a top priority of the Mayor, City Commission, and the Growth Policy of the City of Helena to develop more affordable housing. This is an issue the City has been working on for many years and has a great deal of knowledge on. Below is a consolidated list of affordable housing successes the City has had in recent years:

1. Establishment of the Affordable Housing Trust Fund, which currently has over \$2 million for the purpose of creating, improving, and supporting affordable housing development and redevelopment in City limits.
2. Establishment of a 10% set-aside for affordable housing projects within each of the City's three TIF districts in accordance with the resolution establishing the Affordable Housing Trust Fund.
3. Establishment of an Affordable Housing Fee Waiver Program whereby applicants providing housing for community members within 60% of the area median income may request a full or partial waiver of permitting fees from the City Commission. Two projects have successfully applied, totaling over \$260,000 in fee waivers.
4. Staffing of the regional Housing Task Force and furthering the 2019 City of Helena Housing Strategy (currently being updated and provided as an attachment to this letter), which are continuations of planning efforts that began with the drafting of the 2018 Tri-County Housing Needs Assessment.
5. Implementation of the Home Renewal Program (funded through a Small-Scale Single-Family Housing Rehabilitation CDBG program), which provides funding for income-eligible homeowners to address health and safety related issues in their home. The first project is being inspected this month.
6. Jointly funding the Housing Navigator position with Lewis and Clark County, which is staffed through Good Samaritan Ministries. The Housing Navigator is responsible for connecting county residents in the workforce with resources and assistance in procuring housing.
7. Creation of a Solar Loan Program and fee reduction for installation of solar panels.
8. Creation of a sidewalk replacement program, which offers low/no interest loans for homeowners to replace sidewalks.
9. Creation of a Service Line Replacement Loan Program to lighten the immediate financial burden to homeowners needing to repair a water service line or sewer service line on an emergency basis.
10. Working with three local affordable housing providers to request ARPA funding from the City Commission for property acquisition and infrastructure installation, following the City's CDBG grant sponsorship for a Preliminary Architectural Report to develop 113 affordable housing units on an approximately 10-acre incorporated infill parcel.
11. Donating land to Habitat for Humanity in 2004/2005 for affordable homeownership unit development.
12. Making significant changes to adopted zoning ordinances to better accommodate denser housing. These changes include eliminating minimum lot size, allowing second dwelling units in single-family zoning districts by right, increasing maximum lot coverage allowances, and increasing maximum building height allowances. The Helena Area Habitat for Humanity is now taking advantage of the updates with a two-dwelling project that will guarantee permanent affordability through use of a community land trust, and private landowners have increasingly considered second unit development in recent years.
13. Creating the RU (Residential Urban) Zoning District to allow denser one- and two-dwelling unit developments.
14. Eliminating parking requirements in our DT (Downtown) and TR (Transitional Residential) zoning districts instead of requiring adherence to parking maximums in the City's densely developed urban core.
15. Working to hire a Development Review Engineer to assist in departmental coordination and expeditious building plan review.

16. Requiring the construction of at least one affordable dwelling unit for a family making within 120% area median income through deed restrictions as part of the surplus and subsequent mixed-use redevelopment of a city parcel in 2019.
17. Continuation of the work with Lewis and Clark County on joint standards and any potential partnerships for developing/financing infrastructure improvements within the Urban Services boundary.

In light of the immense amount of time and resources the City of Helena has focused on addressing affordable housing, the City of Helena Community Development Department would ask that the state also consider the below suggestions:

1. State funding to analyze the housing affordability problem
 - a. Define the problem as it uniquely expresses itself in different regions, municipalities, and counties across the state.
 - b. Create a metric for what success would look like for those places.
 - c. Provide specific tools, such as infrastructure funding, for projects that directly lead to success.
2. The number one goal any time government is asked to “reform” something is to garner public support for the proposed solutions. The City of Helena would like to see state funds made available in this effort for public relations (for instance, public engagement tools and presenters).
3. An understanding from the State of Montana that municipalities are working on these issues and have expertise on the issue of affordable housing.
 - a. The City of Helena hopes that the state will more directly engage with us and every municipality in the state in tackling the problem of affordable housing.
4. Allow jurisdictions to establish inclusionary zoning policies through legislative reform in the 2023 session, which the City could leverage cash-in-lieu funds as a revenue source for the Affordable Housing Trust Fund.

We thank you for the time taken to consider the comments provided in this letter. The City of Helena welcomes any future engagement in addressing affordable housing development and improvements to land use processes and funding opportunities.

Sincerely,



Christopher J. Brink
City of Helena Community Development Director