

1 OFFICE OF THE LOS ANGELES CITY ATTORNEY  
2 HYDEE FELDSTEIN SOTO, City Attorney  
3 DENISE C. MILLS, Chief Deputy City Attorney (SBN 191992)  
4 JOHN W. HEATH, Sr. Assistant City Attorney (SBN 194215)  
5 MEI-MEI CHENG, Assistant City Attorney (SBN 210723)  
6 ELAINE ZHONG, Deputy City Attorney (SBN 286394)  
7 City Hall, 200 North Spring Street, 21st Floor  
8 Los Angeles, California 90012  
9 Tel.: (213) 922-7715 // Fax: (213) 978-7957  
10 Elaine.Zhong@lacity.org

11 Attorneys for Respondent CITY OF LOS ANGELES  
12 (sued as “CITY OF LOS ANGELES; COUNCIL OF THE CITY  
13 OF LOS ANGELES”)

14 *No Fee – Gov’t Code § 6103*

15 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

17 APARTMENT ASSOCIATION OF LOS ) Case No. 23STCP00720  
18 ANGELES COUNTY, INC. dba APARTMENT ) Hon. Mitchell L. Beckloff, Department 86  
19 ASSOCIATION OF GREATER LOS )  
20 ANGELES, )  
21 ) **RESPONDENT CITY OF LOS ANGELES’S**  
22 ) **OPPOSITION/RESPONSE TO**  
23 ) **PETITIONER’S OPENING BRIEF**  
24 )  
25 ) *Filed concurrently with Request for Judicial*  
26 ) *Notice*  
27 )  
28 ) Trial date: November 8, 2023  
29 ) Time: 9:30 am  
30 ) Dep’t: 86  
31 )  
32 )  
33 ) Action filed: March 3, 2023

---

34  
35  
36  
37  
38

**TABLE OF CONTENTS**

1

2 I. INTRODUCTION ..... 1

3 II. BACKGROUND ..... 1

4 A. The City’s Rent Stabilization Ordinance and Existing Renter Protections ..... 1

5 B. The City’s New Renter Protections and the Ordinances Challenged in this Suit..... 2

6 1. Ordinance No. 187763 (Unpaid Rent Threshold)..... 3

7 2. Ordinance No. 187764 (Relocation Expenses)..... 3

8 C. Petitioner’s Lawsuit and Procedural History ..... 4

9 III. LEGAL STANDARD..... 5

10 IV. ARGUMENT ..... 6

11 A. State Law Does Not Preempt Ordinance No. 187763 (Unpaid Rent Threshold) Because

12 It Regulates the Substantive Basis for Non-Payment of Rent Evictions ..... 6

13 1. California Cities May Regulate the Substantive Grounds for Evictions ..... 6

14 2. Ordinance No. 187763 Is a Substantive Regulation of Evictions..... 8

15 B. The Costa-Hawkins Act Does Not Preempt Ordinance No. 187764 (Relocation

16 Assistance) ..... 10

17 1. Ordinance No. 187764 Does Not Set Rents..... 10

18 2. Ordinance No. 187764 Is a Permissible Eviction Regulation..... 11

19 3. Ordinance No. 187764’s Relocation Assistance Mitigates Eviction’s Harms on

20 Tenants ..... 14

21 C. Petitioner’s Declaratory Relief Cause of Action Should Be Dismissed ..... 15

22 V. CONCLUSION..... 15

23

24

25

26

27

28

**TABLE OF AUTHORITIES**

**Cases**

*Apt. Ass'n of L.A. Cty., Inc. v. City of L.A.*,  
136 Cal. App. 4th 119 (2006) ..... 11

*Big Creek Lumber Co. v. Cty. of Santa Cruz*,  
38 Cal. 4th 1139 (2006) ..... 5

*Birkenfeld v. City of Berkeley*,  
17 Cal. 3d 129 (1976) .....*passim*

*Bohbot v. Santa Monica Rent Control Bd.*,  
133 Cal. App. 4th 456 (2005) ..... 8

*Bullard v. S.F. Rent Stabilization Bd.*,  
106 Cal. App. 4th 488 (2003) ..... 11

*Candid Enters., Inc. v. Grossmont Union H.S. Dist.*,  
39 Cal. 3d 878 (1985) ..... 5

*Coyne v. City & Cty. of S.F.*,  
9 Cal. App. 5th 1215 (2017) ..... 15

*Fisher v. City of Berkeley*,  
37 Cal. 3d 644 (1984) ..... 1, 6, 7, 9

*Hannon v. Western Title Ins. Co.*,  
211 Cal. App. 3d 1122 (1989)..... 15

*Mak v. Berkeley Rent Stabilization Bd.*,  
240 Cal. App. 4th 60 (2015) ..... 10, 12, 13, 14

*Martin-Bragg v. Moore*,  
219 Cal. App. 4th 367 (2013) ..... 9

*Palmer/Sixth Street Props. v. City of Los Angeles*,  
175 Cal. App. 4th 1396 (2009) ..... 11

*S.F. Apt. Ass'n v. City & Cty. of S.F.*,  
20 Cal. App. 5th 510 (2018) ..... 7, 9

*S.F. Apt. Ass'n v. City & Cty. of S.F.*,  
74 Cal. App. 5th 288 (2022) ..... 12, 13, 14

*Spinks v. Equity Residential Briarwood Apts.*,  
171 Cal. App. 4th 1004 (2009) ..... 10

*Tobe v. City of Santa Ana*,  
9 Cal. 4th 1069 (1995) ..... 11

1	<i>WDT-Winchester v. Nilsson,</i>	
2	27 Cal. App. 4th 516 (1994) .....	9, 10
3	<b>Constitutional Provisions</b>	
4	Cal. Const. art. XI, § 7 .....	5
5	<b>Statutes</b>	
6	Beverly Hills Mun. Code § 4-5-601 .....	2
7	Beverly Hills Mun. Code § 4-5-605 .....	2
8	Cal. Civ. Code § 1946.2.....	2, 14
9	Cal. Civ. Code § 1947.12.....	13
10	Cal. Civ. Code § 1954.52.....	10, 11
11	Cal. Civ. Code § 1954.53.....	10, 11
12	Cal. Civ. Code Proc. § 1161 .....	9
13	Cal. Civ. Code Proc. § 1161.5 .....	9
14	Cal. Civ. Code Proc. § 1162 .....	9
15	Cal. Pen. Code § 396.....	13
16	L.A. Mun. Code § 151.00 <i>et seq</i> .....	1, 2, 9
17	L.A. Mun. Code § 165.00 <i>et seq</i> .....	<i>passim</i>
18	Santa Monica Mun. Code § 4.36.020 .....	2
19	West Hollywood Mun. Code § 17.52.020 .....	2
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Based on their police powers under the California Constitution, cities like Los Angeles have long  
3 regulated evictions. Courts have repeatedly upheld their authority to do so. *E.g.*, *Birkenfeld v. City of*  
4 *Berkeley*, 17 Cal. 3d 129, 149 (1976) (prohibitions on evictions place “limitation[s] upon the landlord’s  
5 property rights under the police power”); *see also Fisher v. City of Berkeley*, 37 Cal. 3d 644, 707 (1984)  
6 (“the police power is vested in local government”; the “right of property may be restrained when it  
7 ought to be because of a sufficient local need”).

8 When the City emerged from the COVID-19 pandemic, it determined that it needed to do more  
9 to protect its residents from displacement and homelessness. Because evictions can cause profound  
10 damage to its communities, the City exercised its police power to regulate them. The two ordinances  
11 challenged here are expressly intended to prevent and mitigate that harm: Ordinance No. 187763 makes  
12 unpaid rent not a ground for eviction until the tenant accrues at least one month of overdue fair-market  
13 rent. Ordinance No. 187764 requires payment of relocation assistance when tenants forfeit their  
14 tenancies because of large rent increases.

15 Both laws coexist, not “interfere” with state law. Pet’r’s Br. at 11. A long line of cases  
16 beginning with *Birkenfeld* allows cities like Los Angeles to limit the substantive grounds for eviction.  
17 Ordinance No. 187763 determines the “substantive grounds” for nonpayment of rent evictions: Once  
18 tenants owe at least one month of fair-market rent, landlords may use state law—the unlawful detainer  
19 procedure—to evict. Petitioner argues that Ordinance No. 187764 interferes with the Costa-Hawkins  
20 Act, which allows landlords to set rents for certain non-rent controlled properties and allows local  
21 governments to regulate evictions. Yet, Ordinance No. 187764 explicitly does not prohibit rent  
22 increases; rather, it gives relocation assistance to displaced tenants to help them move, as is already  
23 similarly required for no-fault evictions. No conflict with the Costa-Hawkins Act exists.

24 For these reasons, the City respectfully requests that the writ petition be denied.

25 **II. BACKGROUND**

26 **A. The City’s Rent Stabilization Ordinance and Existing Renter Protections**

27 For decades, the City has regulated residential rents and evictions through its Rent Stabilization  
28 Ordinance (“RSO”), Los Angeles Municipal Code (“LAMC”), §§ 151.00–151.34. The RSO protects

1 tenants from excessive rent increases while simultaneously providing landlords with “just and  
2 reasonable” returns on their property. LAMC § 151.01, Request for Judicial Notice (“RJN”) Ex. A.  
3 The RSO has two basic features: it regulates rent increases and requires evictions to be based on one of  
4 fourteen “just cause” reasons, which include “at-fault” reasons like causing a nuisance and “no-fault  
5 reasons” like a landlord’s exit from the rental business. LAMC §§ 151.04, 151.06 (rent increases);  
6 151.09.A (evictions). If a landlord wishes to evict a tenant for a “no-fault” reason, the RSO requires it to  
7 pay relocation assistance. *Id.* § 151.09.G. The RSO applies to all “rental units” in the City, unless  
8 expressly exempt; the RSO typically does not regulate dwellings built after 1978. *Id.* § 151.02.

9 The City’s “just cause” eviction protections are not unique: at least twenty California cities have  
10 similar renter protections. The Rutter Group, *Cal. Prac. Guide Landlord-Tenant*, Ch. 5-A, at 1. The  
11 City’s neighbors also require landlords to pay relocation assistance when they wish to evict for a “no-  
12 fault” reason. *E.g.*, Beverly Hills Mun. Code §§ 4-5-601, 4-5-605 (RJN Ex. B); Santa Monica Mun.  
13 Code § 4.36.020 (RJN Ex. C); West Hollywood Mun. Code § 17.52.020 (RJN Ex. D). The California  
14 Legislature also enacted statewide eviction protections, which do not preempt stricter local regulations,  
15 requiring relocation assistance for “no-fault” evictions. Cal. Civ. Code § 1946.2(a), (b), (d), (g)(1).

16 **B. The City’s New Renter Protections and the Ordinances Challenged in this Suit**

17 In early 2023, the City Council adopted local ordinances intended to expand existing renter  
18 protections based in part on lessons learned from the COVID-19 pandemic and to prevent a surge of  
19 evictions after the City’s pandemic tenant protections end. AR00009, 14, 30 (report recommending  
20 further study of eviction protections), 63–68 (attachment to staff report recommending additional  
21 protections). The City Council found that “[d]isplacement through arbitrary evictions affects the public  
22 health, safety and welfare of Los Angeles residents. Evictions destabilize communities by disrupting  
23 longstanding community networks, uprooting children from their schools, forcing low-income residents  
24 to pay unaffordable relocation costs, and pushing City residents away from important public services.  
25 Additionally, arbitrary evictions are a key driver of homelessness.” AR00304. On January 20, 2023,  
26 the City Council passed the “Just Cause for Evictions Ordinance of the City of Los Angeles” (“Just  
27 Cause Ordinance”) to prohibit evictions without a just-cause reason. AR00303–16. These protections  
28

1 are similar to those provided by the RSO, but apply to a wider range of rental units in the City.  
2 AR00305–309 (codified at LAMC §§ 165.03, 165.04).

3 The City Council followed the Just Cause Ordinance in early February 2023 with the two  
4 ordinances at issue here. They have been effective since March 27, 2023.

5 **1. Ordinance No. 187763 (Unpaid Rent Threshold)**

6 Ordinance No. 187763 amended the RSO and the Just Cause Ordinance to make owing rent not a  
7 ground for eviction until the tenant owes more than “one month of fair market rent for the Los Angeles  
8 metro area . . . for an equivalent sized rental unit as that occupied by the tenant.” AR00470.

9 The City’s Housing Department (“LAHD”) recommended Ordinance No. 187763 because  
10 evictions cause significant harm to the City. According to its staff report, “[E]victions for non-payment  
11 of rent can take place for minor amounts of past due rent, even as little as one dollar. Evictions are  
12 extremely painful and disruptive to an individual, family, and community.” AR02221. They are “an  
13 extraordinary legal remedy that should not be used as a debt collection tool to recover relatively small  
14 sums.” *Id.* LAHD also recognized that tenants sometimes experience sudden losses in income and  
15 should not be displaced for owing a small amount of rent while seeking help: for example, “[i]f a renter  
16 loses their employment and applies for unemployment benefits, on average it takes six weeks to receive  
17 the assistance [when] the eviction process may [already be] underway.” *Id.*; *see also* AR02162 (“[o]ver  
18 a third of adults . . . report that they would need to borrow money or sell something” “to cover an  
19 unexpected \$400 expense.”). Tenants still owe rent, collectible in a civil action, but the policy would  
20 prevent the failure to “pay relatively small amounts” from resulting in those tenants losing their homes.  
21 AR02221. LAHD’s recommendation responded to numerous public calls to strengthen eviction  
22 protections after the pandemic. *E.g.*, AR01064 (“We need permanent protections for nonpayment of  
23 rent, with a reasonable minimum threshold that protects tenants from eviction when they suffer  
24 disruptions in their income[.] . . . Temporary loss of income shouldn’t mean homelessness for those  
25 families.”); 1144, 1234, 1461.

26 **2. Ordinance No. 187764 (Relocation Expenses)**

27 Ordinance No. 187764 amended the Just Cause Ordinance to require payment of relocation  
28 assistance when a tenant “elects to relinquish their tenancy” following a proposed rental increase “that

1 exceeds the lesser of (1) the Consumer Price Index – All Urban Consumers, plus five percent, or (2) ten  
2 percent.” AR00623. In 2023, no payment is necessary for rent increases of up to 10 percent. RJN Ex.  
3 E at 2. The relocation assistance owed is “three times the fair market rent in the Los Angeles Metro area  
4 for a rental unit of a similar size . . . plus \$1,411 in moving costs,” LAMC § 165.09.C (AR00623), or  
5 one month of rent when (a) the rental unit is a single-family residence, and the landlord (b) is a natural  
6 person or owns property through a legal entity controlled by the landlord, and (c) owns no more than  
7 five dwellings in the City, *id.* § 165.09.D. For 2023, depending on various factors, relocation amounts  
8 range from one month of rent up to \$10,921. RJN E, at 2. The Ordinance does not apply to properties  
9 already covered by the RSO (LAMC § 165.04.A (AR00309)), and says nothing about what the landlord  
10 may charge when a vacancy exists.

11 LAHD recommended Ordinance No. 187764 to ameliorate the impact of “economic  
12 displacement.” AR02219. In its report to City Council, LAHD explained that “[w]hile the adoption of a  
13 Just Cause ordinance will extend protections from arbitrary eviction to all tenants citywide, tenants in  
14 unregulated units . . . may be economically displaced when their landlords impose high rent increases  
15 that the tenants cannot afford . . . [T]enants who cannot afford the rent increases have no choice but to  
16 vacate their homes.” *Id.* Therefore, “[a]dditional protections are needed to close a loophole that allows  
17 tenants in non-RSO units to be forced out through large rent increases amounting to a constructive  
18 eviction of the tenant, with no allowance for relocation.” AR02220; *see also* AR00030 (tenants “can be  
19 economically displaced by large rent increases without any relocation assistance.”). The policy “would  
20 provide renters who are not protected by the RSO or State law with the financial means to secure  
21 alternative housing when forced to relocate due to high rent increases[.]” AR02220. Relocation  
22 assistance will help tenants “pay for moving expenses and move-in costs such as the first and last  
23 months’ rent and a security deposit.” *Id.*; *see also* AR00068 (assistance “will greatly increase”  
24 likelihood that displaced tenants will “find adequate housing” and “would mitigate the harm” “from  
25 having to incur unexpected moving expenses due to large rent increases”).

26 **C. Petitioner’s Lawsuit and Procedural History**

27 On or about March 3, 2023, Petitioner Apartment Association of Los Angeles County  
28 (“AAGLA”) sued to challenge these two ordinances as preempted on their face. It asserts that



1 Ordinance No. 187763 is preempted by the state’s unlawful detainer statute (Cal. Code Civ. Proc. §§  
2 1159–1179a) (Pet. ¶ 20), and Ordinance No. 187764 by the Costa-Hawkins Rental Housing Act (Cal.  
3 Civ. Code §§ 1954.50–1954.535) (Pet. ¶ 28). AAGLA’s Petition seeks a writ “directing Respondents to  
4 rescind” the ordinances and an injunction prohibiting their enforcement. Pet., Prayer. AAGLA moved  
5 to preliminary enjoin the laws pending this lawsuit. The Court denied the motion on May 18, 2023.

### 6 **III. LEGAL STANDARD**

7 Under the California Constitution, every city “may make and enforce within its limits all local,  
8 police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. art.  
9 XI, § 7. Cities have “plenary authority to govern, subject only to the limitation that they exercise this  
10 power within their territorial limits and subordinate to state law.” *Candid Enters., Inc. v. Grossmont*  
11 *Union H.S. Dist.*, 39 Cal. 3d 878, 885 (1985). Otherwise, local police power is “as broad as the police  
12 power exercisable by the Legislature itself.” *Birkenfeld*, 17 Cal.3d at 140.

13 Local legislation is preempted and void if it “conflicts” with state law. *Rental Housing Ass’n of*  
14 *N. Alameda Cty. v. City of Oakland*, 171 Cal. App. 4th 741, 752 (2009). A conflict exists if local  
15 legislation “duplicates, contradicts, or enters an area fully occupied by general law, either expressly or  
16 by legislative implication.” *Id.* Local legislation duplicates state law when “it is coextensive therewith”  
17 and contradicts state law “when it is inimical thereto.” *Big Creek Lumber Co. v. Cty. of Santa Cruz*, 38  
18 Cal. 4th 1139, 1150 (2006). When a local ordinance “does not prohibit what [state law] commands or  
19 command what [the state] prohibits,” it is not “inimical to” state law. *Id.* at 1161. No conflict exists if it  
20 is “reasonably possible” to comply with both laws. *See id.* Local legislation “enters an area fully  
21 occupied” by state law “when the Legislature has expressly manifested its intent to fully occupy the area  
22 or when it has impliedly done so in light of recognized indicia of intent.” *Id.* at 1150. State law does  
23 not preempt local law when they serve different purposes. *Birkenfeld*, 17 Cal.3d at 148.

24 Courts apply a “presumption against preemption.” *Big Creek Lumber*, 38 Cal. 4th at 1149. “The  
25 party claiming . . . state law preempts a local ordinance has the burden of demonstrating preemption.”  
26 *Id.* Absent a “clear indication of preemptive intent,” courts presume that local regulation “in an area  
27 over which [the local government] traditionally has exercised control” is not preempted by state law.  
28 *Rental Housing*, 171 Cal. App. 4th at 752.

1 **IV. ARGUMENT**

2 **A. State Law Does Not Preempt Ordinance No. 187763 (Unpaid Rent Threshold)**  
3 **Because It Regulates the Substantive Basis for Non-Payment of Rent Evictions**

4 **1. *California Cities May Regulate the Substantive Grounds for Evictions***

5 As this Court recognized, “the relevant framework” for determining whether Ordinance No.  
6 187763 is preempted by the state’s unlawful detainer statute, Code of Civil Procedure (CCP) §§ 1159-  
7 1179a, is set forth in *Birkenfeld*, 17 Cal.3d 129 (1976). May 18, 2023, Order at 8. Under *Birkenfeld*,  
8 “municipalities may . . . limit the substantive grounds for eviction by specifying that a landlord may gain  
9 possession of a rental unit only on certain limited grounds,” but may not “procedurally impair the  
10 summary eviction scheme set forth in the unlawful detainer statutes[.]” *Rental Hous.*, 171 Cal. App. 4th  
11 at 754 (emphasis added). Unlawful detainer law and local eviction regulations serve different purposes:  
12 “The purpose of the unlawful detainer statutes is procedural,” providing a “statutory remed[y] for  
13 recovery of possession and of unpaid rent,” while eviction regulations limit “the landlord’s property  
14 rights under the police power[.]” *Birkenfeld*, 17 Cal.3d at 149. A local government’s “elimination of  
15 particular grounds for eviction . . . giv[es] rise to a substantive ground of defense in unlawful detainer  
16 proceedings.” *Id.* “The mere fact that a city’s exercise of the police power creates such a defense does  
17 not bring it into conflict with the state’s statutory scheme” for unlawful detainer. *Id.*

18 Therefore, under *Birkenfeld*, local regulations requiring “good cause” to terminate a tenancy are  
19 not preempted, even though they may restrict evictions that the unlawful detainer statute allows. In  
20 *Birkenfeld*, a local law limited the grounds upon which a landlord may bring an action to repossess rent-  
21 controlled units. 17 Cal.3d at 147. Landlords asserted that it conflicted with CCP section 1161, which  
22 specifies that a tenant’s continued possession after the tenancy expires is an “unlawful detainer,” while  
23 the local law does not. *Id.* at 148. No conflict existed because substantive limitations on evictions are  
24 “distinct” from the unlawful detainer process, which allows landlords to recover possession of property  
25 through court process. *Id.* at 149. The Court analogized the local law to other eviction defenses, like the  
26 breach of warranty of habitability, that bar summary evictions for nonpayment of rent. *Id.*

27 Likewise, in *Fisher*, the Court upheld local legislation allowing tenants to withhold rent when  
28 landlords violate local rent ceilings or fail to register rental units with the local rent board. 37 Cal. 3d at

1 705. Even though CCP Section 1161 expressly allows a landlord to evict for nonpayment of rent, and  
2 the local law thus “*effectively eliminates one ground for eviction*” provided by state law, the local law  
3 does not “directly conflict with” the state statute. *Id.* at 707 (emphasis added). Reiterating its reasoning  
4 in *Birkenfeld*, the Court explained that these local exercises of police power do not conflict with the  
5 unlawful detainer law, which provides a procedural mechanism to recover possession of property, while  
6 the creation of substantive defenses to evictions is an assertion of local police power. *Id.*

7 Courts have applied *Birkenfeld* and *Fisher* to uphold, against preemption challenges, local  
8 regulations that place “substantive limits *on otherwise available grounds for eviction under section*  
9 *1161*,” including those that impact when a landlord may pursue an unlawful detainer action and  
10 eliminate certain evictions for periods of time. *E.g., Rental Housing*, 171 Cal. App. 4th at 765  
11 (emphasis added). One of those regulations is a San Francisco law that prohibits no-fault evictions of  
12 tenant households with a child or an “educator” during the school year. *S.F. Apt. Ass’n v. City & Cty. of*  
13 *S.F.*, 20 Cal. App. 5th 510, 513 (2018) (“*SFAA P*”). Its purpose “is to protect children from the  
14 disruptive impact of moving during the school year or losing a relationship with a school employee who  
15 moves during the school year.” *Id.* at 518. Although the law “restrict[s] the timing of evictions of  
16 children and educators,” when tenants “belong to this protected group . . . they have a substantive  
17 defense to eviction.” *Id.* at 517, 518. When tenants “no longer belong to the group,” for example  
18 because the regular school year has ended, “they no longer have a substantive defense.” *Id.* at 518.  
19 Then landlords “may avail themselves of the unlawful detainer procedures.” *Id.* The San Francisco law  
20 is a “permissible limitation upon the landlord’s property rights under the police power,” rather than an  
21 “impermissible infringement on the landlord’s unlawful detainer remedy.” *Id.*

22 For similar reasons, the unlawful detainer statute also does not preempt an Oakland ordinance  
23 requiring landlords to provide “notice and an opportunity to cure any offending conduct” before  
24 resorting to an unlawful detainer action. *Rental Housing*, 171 Cal. App. 4th at 762. Under the local law,  
25 when an eviction is based on the tenant’s fault, the landlord must provide the tenant a “written notice to  
26 cease the offending behavior.” *Id.* The landlord must serve the notice before serving any “notice to  
27 terminate tenancy” required to initiate an unlawful detainer proceeding. *Id.* *Rental Housing* rejected the  
28 argument that the law raised “procedural barriers” to an eviction; rather, the “warning notice

1 requirements” limit “a landlord’s right to initiate an eviction due to certain tenant conduct by requiring  
2 that the specified conduct continue after the landlord provides the tenant written notice to cease.” *Id.* at  
3 762–63. If the tenant ceases the offending conduct, there is no good cause to evict. *Id.* at 763.

## 4 **2. Ordinance No. 187763 Is a Substantive Regulation of Evictions**

5 Ordinance No. 187763 creates a substantive limit on evictions for nonpayment of rent, so it does  
6 not conflict with the state unlawful detainer statute. The Ordinance does not alter the unlawful detainer  
7 statute’s procedures, but rather defines the substantive conditions that must exist for the unlawful  
8 detainer remedy to be available. A “just cause” does not exist to evict a tenant for nonpayment of rent  
9 until a monetary threshold is met. If a landlord attempts to evict a tenant for nonpayment of rent before  
10 the monetary threshold is met, then the ordinance provides the tenant with a substantive defense to that  
11 attempted eviction. If the tenant owes more than the applicable monetary threshold, then the defense  
12 fails. Here, once a tenant accrues more than one month of fair-market rent, and a landlord elects to  
13 evict, the landlord would serve a notice to pay rent or quit as required by the unlawful detainer statute,  
14 which begins the unlawful detainer process.

15 As the Court recognized, the unlawful detainer process and the “substantive trigger” for a non-  
16 payment of rent eviction are “distinct.” May 18, 2023, Order at 8. The Ordinance does not specify the  
17 *amount of notice* required or establish other *procedural* prerequisites to pursuing an unlawful detainer  
18 action. Because the Ordinance does not alter the procedural rules involved with litigating an eviction  
19 case, it is distinguishable from preempted regulations that contradict procedural rules that the unlawful  
20 detainer statute provides. *Compare Bohbot v. Santa Monica Rent Control Bd.*, 133 Cal. App. 4th 456,  
21 471–72 (2005) (unlawful detainer statute preempted local legislation precluding landlords from  
22 terminating tenancies for owner occupancy four years after dismissal of unlawful detainer actions; state  
23 law explicitly allows plaintiffs to obtain voluntary dismissals without prejudice).

24 AAGLA does not dispute that the City may regulate the substantive grounds for evictions.  
25 Instead it alleges that the City may not “alter the comprehensive timeline set forth in the [state] law,”  
26 which allows a three-day notice to be served on a defaulting tenant “at any time within one year” after  
27 rent becomes due. Pet’r’s Br. at 17–18 (emphasis removed). The City’s ordinance does not interfere  
28 with that timeline or process because, as discussed above, when unpaid rent reaches the threshold

1 specified in the City’s law, the landlord may issue a three-day notice to pay rent or quit under CCP  
2 sections 1161 and 1162. The tenant commits an “unlawful detainer” *only* if the tenant fails to cure the  
3 default within that notice period. CCP §§ 1161(2), 1161.5. Following any required notice period, if the  
4 tenant does not vacate, the landlord may file a complaint in state court for unlawful detainer. This  
5 process remains intact. To the extent that AAGLA suggests otherwise, *Fisher* also did not find that state  
6 law “occupied the field” of when “rent is due.” 37 Cal.3d at 705, 707.

7 AAGLA’s assertion that substantive eviction regulations are preempted when they have some  
8 effect on the *timing* of an unlawful detainer lawsuit (Br. at 17) has been rejected in multiple cases,  
9 including *Birkenfeld* and *Fisher*. The Court should also reject AAGLA’s assertion that “no authority  
10 suggests that a city may go so far as actually *eliminate* a default in the payment of rent as a basis for  
11 eviction.” *Id.* at 19. Setting aside that the Ordinance plainly does not eliminate evictions for  
12 nonpayment of rent, AAGLA ignores *Fisher*’s key teaching: cities *may* provide substantive defenses to  
13 nonpayment of rent evictions in *some* circumstances under their police power, thereby eliminating that  
14 as a ground for eviction in *some cases*. *Fisher* specifically upheld locally-created defenses to  
15 ***nonpayment-of-rent evictions*** that impact the timing of those evictions. Likewise, the local legislation  
16 in *SFAA I* eliminated entire categories of evictions during the school year that the unlawful detainer  
17 statute allows; that equally impacts the timing of unlawful detainer proceedings. If accepted, AAGLA’s  
18 reasoning would undermine other just-cause protections, unchallenged here, that equally impact the  
19 timing of evictions. For example, landlords are precluded from evicting tenants *before* paying relocation  
20 assistance (LAMC § 151.09.G), *when* the landlord owns another available comparable unit (*id.* §  
21 151.30.C), or *when* the tenant is terminally ill (*id.* § 151.30.D).

22 Fundamentally, AAGLA asks the Court to create an exception to *Birkenfeld*’s framework for  
23 nonpayment of rent only but offers no principled basis for doing so. Contrary to AAGLA’s portrayal  
24 (Br. at 19), unlawful detainers are not landlords’ only remedy when tenants do not pay rent. In fact,  
25 because of their summary nature, unlawful detainers only decide “the right to possession of the disputed  
26 premises, along with incidental damages resulting from the unlawful detention.” *Martin-Bragg v.*  
27 *Moore*, 219 Cal. App. 4th 367, 385 (2013). The unlawful detainer cause of action may be forfeited if the  
28 landlord fails to adhere to the statute’s strict requirements. *WDT-Winchester v. Nilsson*, 27 Cal. App.

1 4th 516, 526 (1994). Even if the landlord prevails, the statute contains anti-forfeiture provisions that  
2 relieve tenants from the harshness of eviction. *See* CCP § 1179 (court “may relieve a tenant against a  
3 forfeiture of a lease” and restore the former tenancy “in case of hardship”). When tenants breach lease  
4 obligations, contractual remedies may be pursued, and in some instances, those may be the landlords’  
5 only remedy. *See Spinks v. Equity Residential Briarwood Apts.*, 171 Cal. App. 4th 1004, 1031–32  
6 (2009). Those contractual remedies remain with the City’s law. For 2023, the rent thresholds are below  
7 the jurisdictional amount for small claims court, which provides an expeditious remedy outside of  
8 eviction. CCP § 116.220(a)(1).

9 Given the unacceptable consequences of evictions, the City established a substantive trigger—  
10 accrual of one month of fair market rent—before landlords may evict to dispossess their tenants. That is  
11 an assertion of the City’s police powers, not an interference with state law.

12 **B. The Costa-Hawkins Act Does Not Preempt Ordinance No. 187764 (Relocation**  
13 **Assistance)**

14 As relevant here, the Costa-Hawkins Act permits landlords “notwithstanding any other provision  
15 of law” to “establish the initial and all subsequent rental rates” of any dwelling that (1) “has a certificate  
16 of occupancy issued after February 1, 1995,” (2) is “already exempt from the residential rent control  
17 ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly  
18 constructed units,” or (3) is “alienable separate from the title to any other dwelling unit or is a  
19 subdivided interest in a subdivision as specified [in state law].” Civ. Code § 1954.52(a). Separately, the  
20 Act provides that landlords may set the “initial rental rate,” *id.* § 1954.53(a), following a vacancy, with  
21 some exceptions, “what is known among landlord-tenant specialists as ‘vacancy decontrol.’” *Mak v.*  
22 *Berkeley Rent Stabilization Bd.*, 240 Cal. App. 4th 60, 63 (2015). The Act expressly preserves local  
23 authority to “regulate or monitor the grounds for eviction.” Civ. Code §§ 1954.52(c), 1954.53(e).

24 **1. *Ordinance No. 187764 Does Not Set Rents***

25 As the Court has recognized, Ordinance No. 187764 does not on its face regulate “the initial and  
26 all subsequent rental rates” that landlords may charge. Order at 5. The Ordinance does not set any limit  
27 to rent increases, and tenants are free to accept any rent increase. It requires payment of relocation  
28 assistance only when the “tenant elects to relinquish their tenancy” following a large rent increase. And

1 if the tenant leaves, the landlord may establish the next tenant’s rent. Because landlords can comply  
2 with the City’s regulation, and still exercise their rights under the Act, there is no “total” and “fatal”  
3 conflict, as is required for AAGLA’s facial challenge to the City’s ordinance. *Tobe v. City of Santa Ana*,  
4 9 Cal. 4th 1069, 1084 (1995) (facial challenge to a regulation considers its text, not some “future  
5 hypothetical situation”).

6 Because Ordinance No. 187764 does not regulate rents, the Court should reject AAGLA’s  
7 inapposite cases involving local ordinances that *directly conflicted* with the Costa-Hawkins Act’s  
8 provisions allowing landlords to set rent. Br. at 11–13. Starting with *Bullard v. S.F. Rent Stabilization*  
9 *Bd.*, 106 Cal. App. 4th 488, 491–93 (2003), that decision invalidated a local ordinance requiring  
10 landlords to offer replacement units at regulated rates when they evict tenants for personal occupancy.  
11 The ordinance directly conflicted with the Costa-Hawkins Act because it prevented the landlord from  
12 establishing the initial rental rate for the replacement unit. *Id.*

13 Next, *Palmer/Sixth Street Props. v. City of Los Angeles*, 175 Cal. App. 4th 1396, 1410 (2009),  
14 invalidated a local planning condition that required a developer to provide apartments at affordable rents  
15 for a period of 30 years, when the developer’s project otherwise complied with the City’s zoning laws.  
16 Thus, the condition denied the developer “the right to establish the initial rental rates” of the project in  
17 conflict with the vacancy decontrol provisions of the Act. *Id.*

18 Finally, in *Apartment Ass’n of L.A. County, Inc. v. City of L.A.*, 136 Cal. App. 4th 119, 122  
19 (2006), the Act preempted an ordinance prohibiting landlords, after terminating a Section 8 contract with  
20 the local housing authority, from charging tenants more than their portion of the rent under the former  
21 contract, “without any limitation as to time.” The ordinance directly conflicted with Section 1954.535 in  
22 the Act specifying that for *90 days* after receiving notice of the contract termination, the tenant “shall not  
23 be obligated to pay more than the tenant’s portion of the rent under the former contract.” *Id.* The Act  
24 “specifie[s] the period of time a tenant’s rent payment is frozen” after a Section 8 agreement’s end: “90  
25 days.” *Id.* at 132. The City’s law directly contradicted that timing. *Id.*

## 26 **2. Ordinance No. 187764 Is a Permissible Eviction Regulation**

27 The Ordinance also does not conflict with the Costa-Hawkins Act because it is a lawful eviction  
28 regulation, which the Act expressly allows. Civ. Code §§ 1954.52(c), 1954.53(e). As the Ordinance’s

1 legislative history explains, the City wanted to provide relocation assistance to tenants who cannot  
2 afford large rent increases and are displaced from their homes. The relocation assistance requirement  
3 protects tenants from “economic displacement.” The City also passed the law to prevent landlords from  
4 circumventing the Just Cause Ordinance, which regulates evictions and requires relocation assistance for  
5 no-fault evictions. As this Court recognized, a landlord that could “raise rents to any level may displace  
6 a tenant through a substantial rent increase—a constructive eviction that avoids the Just Cause  
7 Ordinance.” While the City’s law does not “preclude the landlord from raising the rent,” it does require,  
8 like the RSO and the Just Cause Ordinance, the landlord to pay relocation fees “as if the tenant vacated  
9 the unit through a no-fault eviction.” May 18, 2023 Order at 7.

10 Courts have upheld eviction regulations when they “deter” rent increases that would otherwise  
11 “vitiate” local authority to “regulate the grounds for eviction.” *S.F. Apt. Ass’n v. City & Cty. of S.F.*, 74  
12 Cal. App. 5th 288, 292, 294 (2022) (“*SFAA I*”). For example, *SFAA II* upheld a city ordinance making  
13 it unlawful to evict a tenant residing in a non-rent-controlled unit “by means of a rent increase”  
14 “imposed in bad faith” or designed to “coerce the tenant into vacating the unit.” *Id.* at 291. The  
15 landlord association argued the Costa-Hawkins Act preempted the ordinance because it “regulates the  
16 rent a landlord may charge on exempt property.” *Id.* at 292. Although the association conceded that the  
17 ordinance does not “directly limit the amount of rent a landlord may charge,” it argued that the city  
18 cannot “do indirectly what it is prohibited from doing directly.” *Id.* The court disagreed; the ordinance  
19 “do[es] not prevent landlords from earning rent as determined by the free market, and it imposes no caps  
20 to ensure the availability of affordable rental housing.” *Id.* Rather, the ordinance “prohibit[s] a landlord  
21 from designating as rent an artificial sky-high amount that the landlord does not intend to collect but  
22 intends to cause the tenant to vacate the unit voluntarily or by eviction for nonpayment of the unrealistic  
23 figure.” *Id.* “Costa Hawkins does not protect a landlord’s right to use a pretextual rent increase to avoid  
24 lawfully imposed local eviction regulations.” *Id.* (citation omitted).

25 *Mak* similarly ruled that the Costa-Hawkins Act does not preempt local legislation adopted to  
26 prevent evasion of eviction controls. 240 Cal. App. 4th at 68–69. The Act allows local governments to  
27 regulate the initial rent charged to new tenants when the prior tenancy was terminated under Code of  
28 Civil Procedure section 1946.1. *Id.* In *Mak*, landlords challenged a Berkeley regulation creating a



1 rebuttable presumption that a prior tenancy terminated under Section 1946.1 when the tenant moved out  
2 within a year of an attempted eviction for the landlord’s personal occupancy. *Id.* at 63. The rental rate  
3 for the next tenancy is then regulated. *Id.* at 64. The rent restriction is not preempted by the Costa-  
4 Hawkins Act’s “vacancy decontrol” provisions because it “created an administrative deterrent to  
5 discourage landlords from serving less than good faith owner move-in notices.” *Id.* at 68, 69. It is a  
6 permissible regulation of “the grounds for eviction.” *Id.* at 69.

7         Accordingly, the Court should reject AAGLA’s assertion that the state law prohibits local laws  
8 that achieve “essentially the same result” as hard limits on rent increases—which traditional rent control  
9 schemes use—by “deter[ing]” landlords from raising rents above “the trigger for benefits.” Br. at 13.  
10 The Ordinance is analogous to the eviction regulations in *SFAA II* and *Mak*: As in *SFAA II*, Ordinance  
11 No. 187764 does not prevent landlords from earning “rent as determined by the free market;” it is at  
12 most *Mak*’s “administrative deterrent” of constructive evictions. Without the City’s law, landlords  
13 could eviscerate the City’s Just Cause Ordinance by forcing tenants out with large rent increases. Large  
14 rent increases could displace tenants involuntarily in the same way that other no-fault evictions do. So  
15 the City’s ordinance helps tenants pay for relocation costs that they would otherwise not have to incur  
16 without the eviction, as with a no-fault eviction.

17         AAGLA’s complaint that the Ordinance does not allegedly target only “bad faith” evictions (Br.  
18 at 15) ignores the reality that the rent increases that may trigger relocation assistance in the Ordinance—  
19 inflation plus five percent, up to ten percent—are materially different from smaller increases, without  
20 even considering the landlord’s actual motivation for imposing the increase. State law acknowledges  
21 this, too. For example, landlords are required to provide their tenants ninety-days’ notice of any  
22 proposed rent increase *greater than ten percent*. Civ. Code § 827(b)(3). Under state law, those rent  
23 increases are also considered “excessive” and “unjustified” price gouging. *E.g.*, Civ. Code § 1947.12  
24 (a), (m) (prohibiting rent increases over ten percent to “address rent gouging”); Pen. Code § 396(e)  
25 (prohibiting rent increases over ten percent to “protect citizens” from price increases during a declared  
26 emergency). In fact, in 2019, after reports that “some landlords are taking advantage” of the State’s  
27 housing crisis, the Legislature passed a law, Civil Code Section 1947.12, to prevent “rent-gouging”—a  
28 practice of “dramatically increasing” “rent with the knowledge that, due to the present crisis, tenants are

1 unlikely to have affordable alternatives.” Pet’r’s RJN, Ex. D, at 27. State law now prohibits rent  
2 increases of five percent plus inflation, with a “hard cap” of ten percent for certain rental properties.  
3 The state bill’s legislative history also recognized that “a California tenant’s only remedy for dealing  
4 with a rent increase that is too large to afford, or that the tenant is unwilling to pay, is to try to move  
5 elsewhere”; “[d]ramatic rent increases like these can act as the final straw, pushing people into  
6 homelessness.” Pet’r’s RJN, Ex. D, at 27. AAGLA cites this history to support its argument that the  
7 State was attempting to “protect economic incentives to provide housing.” Br. at 14. But the history  
8 also proves another point: state law wants to *deter* the “very behavior” the City is seeking to deter here.  
9 As a result, the Court should also reject AAGLA’s attempts to distinguish *SFAA II* and *Mak* by  
10 suggesting their underlying rationale only applies to “bad faith” evictions. Br. at 15.

11 **3. Ordinance No. 187764’s Relocation Assistance Mitigates Eviction’s Harms on**  
12 **Tenants**

13 The Ordinance’s relocation assistance is intended to help tenants move. Despite AAGLA’s  
14 assertions to the contrary (Br. at 10), the Ordinance is not intended to penalize landlords who seek to  
15 increase rents under the Costa-Hawkins Act. As the Ordinance’s legislative history demonstrates,  
16 relocation assistance will help tenants “pay for moving expenses and move-in costs such as the first and  
17 last months’ rent and a security deposit.” AR02220. It requires relocation assistance when tenants are  
18 displaced, much like under the RSO and Just Cause Ordinance when tenants are evicted for a no-fault  
19 reason. AR00304, LAMC § 165.01 (evictions “forc[e] low-income residents to pay unaffordable  
20 relocation costs”). AAGLA does not argue that relocation assistance is a “penalty” on landlords for  
21 exercising no-fault evictions, yet Ordinance No. 187764 provides the same type of relocation assistance.

22 Relocation assistance is a standard feature in any eviction regulation to help tenants who are  
23 displaced. *Supra* Section II.A. The assistance required by the Ordinance is demonstrably tied to the  
24 cost of moving. For 2023, relocation assistance ranges from one month of rent up to \$10,921—  
25 comparable to that required by other cities in Los Angeles County and state law. RJN Exs. B (Beverly  
26 Hills, \$6,193 to \$12,394); Ex. F (Santa Monica, \$18,250 to \$34,950); Ex. G (West Hollywood, \$8,680 to  
27 \$21,790); Civ. Code. § 1946.2(d)(3)(A) (one month of rent). Relocation assistance is a cost of doing  
28 business, which may even be deductible as a “trade or business expense” under the federal tax code. 26

1 U.S.C. § 162. (The Ordinance also provides that a landlord may also offset a tenant’s accumulated rent  
2 or other amounts due against the relocation assistance. AR00623 (LAMC § 165.09.B.)) Ultimately,  
3 relocation assistance is one of many costs that landlords need to consider when deciding what rent to  
4 charge and how much to raise rents. In individual cases, the City’s law could have no meaningful  
5 impact on the landlord’s profits or incentives to raise rents at all, which is based on a variety of factors  
6 including whether the tenant can pay the rent increase.

7 To be sure, it is possible that excessive relocation assistance could effectively prohibit any rent  
8 increase. But the City has not required the payment of a “ransom” divorced from the cost of moving.  
9 *See Coyne v. City & Cty. of S.F.*, 9 Cal. App. 5th 1215, 1219 (2017) (“relocation assistance payment”  
10 consisting of two-year rent subsidy, up to \$50,000, was a “prohibitive price” “on the exercise of [the  
11 right to go out of business].”). AAGLA has not shown that the reasonable relocation fees under the  
12 Ordinance is anything like that.

13 **C. Petitioner’s Declaratory Relief Cause of Action Should Be Dismissed**

14 AAGLA’s third cause of action for declaratory relief is derivative of the writ causes of action.  
15 Therefore, it should be dismissed for the same reasons as those discussed above. *Hannon v. Western*  
16 *Title Ins. Co.*, 211 Cal. App. 3d 1122, 1128 (1989).

17 **V. CONCLUSION**

18 In sum, the Court should deny AAGLA’s Petition for Writ of Mandate and dismiss its request for  
19 declaratory relief.

20  
21 Respectfully submitted,

22 OFFICE OF THE LOS ANGELES CITY ATTORNEY  
23 ELAINE ZHONG, Deputy City Attorney

24 Dated: October 9, 2023

24 By: /s/ Elaine Zhong

25 Attorneys for Respondent CITY OF LOS ANGELES  
26  
27  
28

1 **PROOF OF SERVICE**

2 I, Elaine Zhong, declare as follows: At the time of service I was over 18 years of age and not a  
3 party to this action. My business address is City Hall, 200 North Spring Street, 21st Floor, Los  
4 Angeles, CA 90012, which is in the County, City and State where this mailing occurred.

5 On October 9, 2023, I served the document(s) described as on all interested parties in this  
6 action as follows:

7 Douglas J. Dennington (ddennington@rutan.com)  
8 Peter J. Howell (phowell@rutan.com)  
9 Amber Les (ales@rutan.com)  
10 Erik Leggio (eleggio@rutan.com)  
11 **RUTAN & TUCKER, LLP**  
12 18575 Jamboree Road, 9th Floor  
13 Irvine, CA 92612  
14 *Attorneys for Petitioner*

15 CASSIDY BENNETT, Esq.  
16 JONATHAN JAGER, Esq.  
17 **LEGAL AID FOUNDATION OF LOS ANGELES**  
18 7000 South Broadway  
19 Los Angeles, CA 90003  
20 [cbennett@lafla.org](mailto:cbennett@lafla.org)  
21 [jjager@lafla.org](mailto:jjager@lafla.org)

22 ROHIT D. NATH, Esq.  
23 HALLEY W. JOSEPHS, Esq.  
24 ELLIE R. DUPLER, Esq.  
25 **SUSMAN GODFREY L.L.P.**  
26 1900 Avenue of the Stars, Suite 1400  
27 Los Angeles, CA 90067-6029  
28 [math@susmangodfrey.com](mailto:math@susmangodfrey.com)  
[hjosephs@susmangodfrey.com](mailto:hjosephs@susmangodfrey.com)  
[edupler@susmangodfrey.com](mailto:edupler@susmangodfrey.com)

*Attorneys for Intervenors*

STEPHANO MEDINA, Esq.  
FAIZAH MALIK, Esq.  
ALISA RANDELL, Esq.  
KATHRYN EIDMANN, Esq.  
**PUBLIC COUNSEL**  
610 South Ardmore Avenue  
Los Angeles, CA 90005  
[smedina@publiccounsel.org](mailto:smedina@publiccounsel.org)  
[fmalik@publiccounsel.org](mailto:fmalik@publiccounsel.org)  
[arandell@publiccounsel.org](mailto:arandell@publiccounsel.org)  
[keidmann@publiccounsel.org](mailto:keidmann@publiccounsel.org)

JEFFREY WEBB, Esq.  
GIGI LAM, Esq.  
NICHOLAS LAMPROS, Esq.  
MATTHEW A. CALCANAS, Esq.  
**BET TZEDEK LEGAL SERVICES**  
3250 Wilshire Boulevard, 13th Floor  
Los Angeles, CA 90010  
[jwebb@bettzedek.org](mailto:jwebb@bettzedek.org)  
[glam@bettzedek.org](mailto:glam@bettzedek.org)  
[nlampros@bettzedek.org](mailto:nlampros@bettzedek.org)  
[mcalcanas@bettzedek.org](mailto:mcalcanas@bettzedek.org)

*Attorneys for Intervenors*

1 I enclosed true copies of the documents(s) in a sealed envelope or package addressed to the  
2 person(s) address(es) as above and:

3 [X] **BY EMAIL** - I served said document by e-mail or electronic transmission, to the persons at the  
4 e-mail addresses listed above. I did not receive, within a reasonable time after the transmission,  
5 any electronic message or other indication that the transmission was unsuccessful.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
7 true and correct.

8 Dated: October 9, 2023

9 Elaine Zhong

/s/ Elaine Zhong

10 \_\_\_\_\_  
11 Name of Declarant

12 \_\_\_\_\_  
13 Signature of Declarant