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9 COUNTY, INC dba APARTMENT ASSOCIATION OF
GREATER LOS ANGELES
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES
13

14 APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC. dba APARTMENT
ASSOCIATION OF GREATER LOS ANGELES,
15 ANGELES,

16 Petitioner/Plaintiff,
17

18 vs.

19 CITY OF LOS ANGELES; COUNCIL OF THE
CITY OF LOS ANGELES and DOES 1 through
20 100, inclusive,

21 Defendants/Respondents.
22
23
24

Case No. 23STCP00720

Judge: Hon. Mitchell L. Beckloff
Dept: 86

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[Filed concurrently with Request for Judicial
Notice; Declaration of Daniel Yukelson; and
[Proposed] Order In Support Thereof]*

DATE: July 5, 2023
TIME: 9:30 a.m.
DEPT.: 86

Date Action Filed: March 3, 2023
Trial Date: N/A

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 5, 2023, at 9:30 a.m., or as soon thereafter as this
3 matter may be heard, in Department 86 of the above-captioned court, located at 111 North Hill
4 Street, Los Angeles, CA 90012, Petitioner and Plaintiff Apartment Association of Los Angeles
5 County, Inc., d.b.a. Apartment Association of Greater Los Angeles (“AAGLA” or “Petitioner”),
6 will move, and hereby moves, for the Court to issue a Preliminary Injunction enjoining Defendants
7 and Respondents City of Los Angeles and Council of the City of Los Angeles (collectively,
8 “Respondents” or “the City”) from enforcing Ordinance No. 187763 and Ordinance No. 187764,
9 pending final adjudication on the merits of this case.

10 This Notice of Motion and Motion is brought pursuant to Code of Civil Procedure §§ 525 *et*
11 *seq.*, and is made on the grounds that (i) irreparable injury will result to Petitioner’s members if such
12 relief is not granted, (ii) the restraint is necessary to preserve the status quo and to prevent
13 Petitioner’s members from suffering substantial rent and income losses attributable to the
14 Ordinances and the infringement of their state rights, and (iii) Petitioner is entitled to the relief
15 demanded.

16 This Motion is based on (1) this Notice of Motion and Motion, (2) the Memorandum of
17 Points and Authorities appended hereto, (3) the concurrently filed Declaration of Daniel Yukelson,
18 (4) Petitioner’s Request for Judicial Notice and attached exhibits filed concurrently herewith, (5) all
19 pleadings and papers on file in this action, and (6) upon such other documents, evidence, exhibits,
20 and oral argument as may be presented to the Court prior to or at the hearing on this Motion.

21 Dated: March 17, 2023

RUTAN & TUCKER, LLP
PETER J. HOWELL

22
23
24 By: 
25 Peter J. Howell
26 Attorneys for Petitioner/Plaintiff
27 APARTMENT ASSOCIATION OF GREATER
28 LOS ANGELES

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 This action, and this motion, are necessary because Defendants City of Los Angeles and
4 Council of the City of Los Angeles (collectively, “Defendants” or “the City”) have severely
5 overstepped their authority in a misguided attempt to further increase already extensive “renter
6 protections” within the City. While Petitioner/Plaintiff Apartment Association of Los Angeles
7 County, Inc., d.b.a. Apartment Association of Greater Los Angeles (“AAGLA” or “Petitioner”)
8 disagrees with many of the prior policy decisions made by the City, the City undoubtedly has
9 authority to regulate certain aspects of the landlord-tenant relationship. It may not, however,
10 second-guess policy decisions made by the California Legislature by adopting local regulations that
11 conflict with State law. That is what it has done here.

12 As explained further below, Ordinance No. 187763, which aims to improperly limit property
13 owners’ right to initiate unlawful detainer actions against tenants who default on their rent, is
14 preempted by the unlawful detainer statutes, set forth at Code of Civil Procedure sections 1161 *et*
15 *seq.* Ordinance No. 187764, which seeks to impose rent control on categories of housing that are
16 expressly exempt from rent control, is preempted by the Costa–Hawkins Rental Housing Act
17 (“Costa–Hawkins Act”), set forth at Civil Code section 1954.50 *et seq.*

18 Both Ordinance No. 187763 and Ordinance No. 187764 (collectively, the “Ordinances”) are
19 scheduled to go into effect on March 27, 2023. If that happens, many of Petitioner’s members, and
20 thousands of other property owners in the City, will be unable to exercise their rights under state
21 law and suffer harm for which they will have no recourse. Accordingly, Petitioner respectfully
22 requests that the Court grant this motion and enjoin enforcement of the Ordinances to preserve the
23 status quo pending a final adjudication in this proceeding.

24 **II. FACTUAL AND LEGAL BACKGROUND.**

25 **A. The Status Quo: Owners of Certain Types of Property Are Free to Set Rental**
26 **Rates and May Do So Without Penalty.**

27 As recently explained by the Court of Appeal, “[t]he Legislature enacted Costa-Hawkins in
28 1995 to moderate what it considered the excesses of local rent control.” (*NCR Properties, LLC v.*

1 *City of Berkeley* (Mar. 9, 2023) __ Cal.App.5th__, 2023 WL 2423352, at *4.) In furtherance of that
2 purpose, the Costa-Hawkins Act expressly and deliberately preempts municipalities, like the City
3 of Los Angeles, from enacting and enforcing municipal rent control laws against certain types of
4 dwellings. (Civ. Code § 1954.52(a); Verified Pet. ¶ 12.) Specifically, as relevant here, the Act
5 provides that landlords of such dwellings, including newer construction, single family homes, and
6 condominiums, “may establish the initial *and all subsequent rental rates.*” (Civ. Code
7 § 1954.52(a), emphasis added.)

8 Thus, while the City has an extensive rent-control ordinance, known as the “Rent
9 Stabilization Ordinance” (*see* Los Angeles Municipal Code Chapter XV), that ordinance does not
10 and cannot apply to dwellings that are exempt from local rent control under the Costa-Hawkins Act.

11 Moreover, when the Legislature adopted statewide restrictions on increasing rent in 2019, it
12 carved out similar exceptions, once again expressly exempting newer construction, single family
13 homes, and condominiums from such restrictions. (*See* Civil Code §§ 1947.12(d)(4) [exempting
14 “[h]ousing that has been issued a certificate of occupancy within the previous 15 years”]; (d)(5)
15 [exempting housing “that is alienable separate from the title to any other dwelling unit”].) Thus, the
16 Legislature has deliberately exempted certain types of residential property from rent control, and
17 owners of such properties are expressly authorized by State law to the set rental rates for such
18 properties.

19 **B. The Status Quo: Landlords May Serve Notices to Pay Rent or Quit on Tenants**
20 **in Default for Nonpayment of Rent.**

21 Under governing California state law, property owners in the City may initiate unlawful
22 detainer actions against nonpaying tenants. (*See* Civ. Proc. Code § 1161, *et seq.*) Specifically, Code
23 of Civil Procedure sections 1161, defines “unlawful detainer” to include the continued possession
24 of a property “after default in the payment of rent,” and provides that in the event of an unlawful
25 detainer, a landlord in California may serve a 3-day notice to pay rent or quit “*at any time within*
26 *one year* after the rent becomes due.” (Civ. Proc. Code § 1161, emphasis added.)

27 Prior to the adoption of Ordinance No. 187763, the City’s Code tracked state law by
28 recognizing that any default in the payment of rent is grounds for eviction. Indeed, even the City’s

1 recently adopted “Just Cause For Eviction Ordinance,” which significantly restricted the grounds
2 upon which a landlord may terminate a tenancy, allowed eviction upon any default in rent, consistent
3 with state law. (*See* Ordinance No. 187737, Request for Judicial Notice (“RJN”), Ex. C.)

4 **C. The City Council Adopts the Ordinances.**

5 Over the objections of AAGLA and affected property owners, the City Council adopted
6 Ordinance No. 187763 on February 3, 2023, and Ordinance No. 187764 on February 7, 2023.
7 (Verified Pet. ¶¶ 13, 14; RJN, Exs. A, B.) Both Ordinances are scheduled to go into effect on March
8 27, 2023. (*Id.*)

9 Ordinance No. 188763 modifies the Los Angeles Municipal Code, specifically amending
10 both the City’s “Rent Stabilization Ordinance” and its “Just Cause For Eviction Ordinance,” to
11 provide that a landlord may initiate an unlawful detainer action based on a tenant’s failure to pay
12 rent only “where the amount due exceeds one month of fair market rent for the Los Angeles metro
13 area” for an equivalent sized rental unit. (Verified Pet. ¶ 13; RJN, Ex. A [indicating the ordinance
14 is intended to “restrict evictions for nonpayment of rent that is not material as specified”].) Thus, if
15 the ordinance is permitted to go into effect, property owners within the City will no longer be able
16 to serve a notice to pay rent or quit, as expressly authorized by state law, in the event of a default in
17 payment of rent, until the amount in default exceeds the threshold amount specified in the ordinance.

18 Ordinance No. 187764 adds a new section to the Just Cause For Eviction Ordinance
19 requiring landlords of rental units *not* covered by the local rent stabilization ordinance to pay
20 substantial “relocation assistance” to tenants that choose to end their tenancy following a proposed
21 rent increase “that exceeds the lesser of (1) the Consumer Price Index – All Urban Consumers, plus
22 five percent, or (2) ten percent.” (Verified Pet. ¶ 14; RJN, Ex. A.) The amount of the required
23 payment is equal to three times the fair market rent in the Los Angeles Metro area for a rental unit
24 of a similar size, plus \$1,411 in moving costs. (*Id.*)

25 Notably, both Ordinances include identical language adding a new severability provision to
26 the Just Cause For Eviction Ordinance, which declares any provision of such ordinance found to be
27 unconstitutional or otherwise invalid to be severable. (Exs. A, B.)

28 Violations of the Rent Stabilization Ordinance and Just Cause For Eviction Ordinance are

1 misdemeanors. (RJN, Ex. C at p. 12 [“Violations of this Article shall be a misdemeanor”].) Thus,
2 property owners that fail to comply with either Ordinance face possible criminal liability, in addition
3 significant administrative fines and civil liability. (*Id.*)

4 **D. Petitioner and Its Members.**

5 AAGLA was founded in 1917 and is comprised of over 10,000 members that own or manage
6 over 200,000 rental housing units throughout the counties of Los Angeles, Ventura, and San
7 Bernardino. (Yukelson Decl., ¶ 3.) AAGLA’s member households are primarily comprised of
8 smaller residential rental property owners and/or landlords, with approximately 46% that own or
9 declare to AAGLA 5 units or less, and 67% that own or declare 10 units or less to AAGLA (*Id.*)
10 For over 100 years, AAGLA has served as an advocate for rental housing providers at the local,
11 county, state, and federal levels of government. (Yukelson Decl., ¶ 4.)

12 AAGLA’s members own and manage over 60,000 rental units within the City of Los
13 Angeles. (Yukelson Decl., ¶ 5.) Many of AAGLA’s members own rental properties within the City
14 that are exempt from rent control, including single family homes, condominium units, and newer
15 construction. (Yukelson Decl., ¶ 7.) The Ordinances, if not enjoined from enforcement, will thus
16 directly impact numerous AAGLA members.

17 **III. A PRELIMINARY INJUNCTION IS NECESSARY TO PRESERVE THE STATUS**
18 **QUO.**

19 The purpose of a preliminary injunction “is the preservation of the status quo until a final
20 determination of the merits of the action.” (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512,
21 528; *see also* Code Civ. Proc. § 526.) Courts consider two interrelated factors in granting
22 preliminary injunctions: the merits and the balance of interim harms. As explained by the California
23 Supreme Court:

24 [T]he more likely it is that plaintiffs will ultimately prevail, the less
25 severe must be the harm that they allege will occur if the injunction
26 does not issue. This is especially true when the requested injunction
maintains, rather than alters, the status quo. ... [I]t is the mix of these
factors that guides the trial court in its exercise of discretion.

27 (*Butt v. State of California* (1992) 4 Cal.4th 668, 677–678.)

28 Plaintiffs “are ‘not required to wait until they have suffered *actual harm* before they apply

1 for an injunction, but may seek injunctive relief against the *threatened infringement* of their rights.”
2 (*Costa Mesa City Emps. Ass’n v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 305, quoting
3 *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292, emphasis in original.)

4 Here, both factors strongly support the issuance of injunctive relief in this case, and easily
5 tip the balance in favor of maintaining the status quo pending a trial. Issuance of a preliminary
6 injunction is appropriate and necessary to restrain the City from otherwise enforcing the Ordinances
7 that will unlawfully revoke, terminate, or otherwise deprive Petitioner’s members (and many others)
8 of their rights under state law.

9 **IV. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.**

10 Petitioner is likely to prevail on merits of its claims against the City for: (1) a writ of mandate
11 prohibiting enforcement of Ordinance No. 187764; (2) a writ of mandate prohibiting enforcement
12 of Ordinance No. 187763; and (3) declaratory relief stating the Ordinances are invalid as a matter
13 of law. Both Ordinances are facially invalid because both are preempted by governing state law.

14 **A. Preemption Standards.**

15 “A city or county may make and enforce within its limits all local, police, sanitary, and other
16 ordinances and regulations that do not conflict with general law.” (Cal. Const., art. XI, § 7.) If local
17 legislation conflicts with state law, it is preempted by the state law and is void.” (*Johnson v. City &*
18 *Cnty. of San Francisco* (2006) 137 Cal.App.4th 7, 13, internal quotations omitted.) “A conflict
19 between local ordinance and state law exists if the local law duplicates, contradicts, or regulates an
20 area fully occupied by general law, either expressly or by legislative implication.” (*Id.*)

21 “The first step in a preemption analysis is to determine whether the local regulation explicitly
22 conflicts with any provision of state law.” (*Id.*) If it does, it is *expressly preempted* and invalid.
23 (*See, e.g., City of Santa Monica v. Yarmark* (1988) 203 Cal.App.3d 153, 164-165 [amendments to
24 city charter prohibiting landlords who could make a fair return on controlled rental units from
25 evicting tenants in order to remove the units from the market were preempted, because they “directly
26 contradict[ed] an area fully occupied by [state] law”].)

27 If the local legislation does not expressly contradict or duplicate state law, it may
28 nevertheless be invalid under implied preemption principles:

1 In determining whether the Legislature has preempted by implication
2 to the exclusion of local regulation we must look to the whole purpose
3 and scope of the legislative scheme. There are three tests: “(1) the
4 subject matter has been so fully and completely covered by general
5 law as to clearly indicate that it has become exclusively a matter of
6 state concern; (2) the subject matter has been partially covered by
7 general law couched in such terms as to indicate clearly that a
8 paramount state concern will not tolerate further or additional local
9 action; or (3) the subject matter has been partially covered by general
10 law, and the subject is of such a nature that the adverse effect of a
11 local ordinance on the transient citizens of the state outweighs the
12 possible benefit to the municipality.”

13 (*Johnson, supra*, 137 Cal.App.4th at pp. 13–14, citation omitted.)

14 “An ordinance contradicts state law if it is inimical to state law; *i.e.*, ***it penalizes conduct***
15 ***that state law expressly authorizes*** or permits conduct which state law forbids.” (*Suter v. City of*
16 *Lafayette* (1997) 57 Cal.App.4th 1109, 1124, emphasis added; *San Francisco Apartment Ass’n. v.*
17 *City & Cnty. of San Francisco* (2016) 3 Cal.App.5th 463, 477; *Palmer/Sixth Street Properties,*
18 *L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, 1411.) Local laws that impose a
19 “prohibitive burden” on the exercise of a right granted by the Costa-Hawkins Act are thus
20 preempted. (*Apartment Ass’n. of Los Angeles Cnty., Inc. v. City of Los Angeles* (2006)
21 136 Cal.App.4th 119, 133 (“AAGLA”).)

22 **B. Ordinance No. 188764 is Expressly Preempted by the Costa-Hawkins Act.**

23 The Costa-Hawkins Act—which, as explained above, was enacted with the specific purpose
24 of moderating “the excesses of local rent control”—deliberately preempts municipalities from
25 applying rent control laws to certain categories of dwellings. (*See* Civ. Code § 1954.53.)
26 Specifically, the Act provides that owners of residential property described in subsection (a) of Civil
27 Code § 1954.52, which includes newer construction, single family homes, and condominiums, “may
28 establish the initial ***and all subsequent rental rates*** for a dwelling or unit[.]” (Civ. Code
§ 1954.52(a), emphasis added.) Perhaps unsurprising given its history, a number of local ordinances
have been determined to interfere with rights granted by the Costa-Hawkins Act and consequently
held to be without effect. (*See, e.g., AAGLA, supra*, 136 Cal.App.4th at pp. 132-133; *Palmer/Sixth*
Street Properties, L.P., supra, 175 Cal.App.4th at p. 1411 [city’s affordable housing ordinance was
invalid where it was “clearly hostile to the right afforded under the Costa–Hawkins Act to establish

1 the initial rental rate for a dwelling”]; *Bullard v. San Francisco Residential Rent Stabilization Bd.*
2 (2003) 106 Cal.App.4th 488, 491-492 (“*Bullard*”).)

3 In *AAGLA*, for example, *AAGLA* challenged a City ordinance that prohibited “a landlord,
4 after termination or nonrenewal of a Section 8 housing contract with the City’s Housing Authority,
5 from charging the tenant more than the tenant’s portion of the rent under the former contract, without
6 any limitation as to time.” (*Id.* at p. 122.) At issue was whether the ordinance was preempted by a
7 provision of the Costa-Hawkins Act that provided a tenant could not be required to pay more than
8 their previous portion of the rent for 90 days in such a situation. (*Id.* at p. 131.) Rejecting the City’s
9 argument that the ordinance could be reconciled with the Act, the Court of Appeal explained that
10 the ordinance imposed “a prohibitive burden on the exercise of” a landlord’s right to terminate or to
11 refuse to renew a Section 8 contract. (*Id.* at pp. 132-133 [finding the ordinance “clearly” conflicted
12 with the Act and was thus preempted].)

13 In *Bullard*, the plaintiff challenged an ordinance requiring a landlord who evicts a tenant in
14 order to move into the tenant’s unit to offer the tenant another unit *at comparable rent* if another
15 unit is available. (*Id.* at p. 489.) While recognizing that the Costa-Hawkins Act allows local public
16 entities to regulate the grounds for eviction, the Court of Appeal rejected the argument that the
17 restriction on rent was a permissible form of local eviction control, finding it directly contradicted
18 the Act’s provision that “an owner of residential real property may establish the initial rental rate
19 for a dwelling or unit” and would thus “subvert the purpose of the Costa–Hawkins Act.” (*Id.* at
20 p. 492.)

21 Here, the City has similarly attempted to prevent property owners from exercising their right
22 under the Act to establish “all subsequent rental rates for a dwelling or unit” by making it
23 prohibitively expensive to do so. Rather than impose a hard limit on the amount rent can be
24 increased—as typical with traditional rent control—Ordinance No. 187764 achieves essentially the
25 same effect by requiring property owners who increase rent over a specified limit to pay substantial
26 so-called “relocation benefits” in such an amount that owners would nearly always lose money if
27 they choose to exceed the limit and are required to pay such benefits.¹ The apparent purpose of the
28

¹ For purposes of illustration, the specified 2023 fair market rent for a two-bedroom unit in

1 ordinance—to protect tenants from an increase in rent over the specified amount—is likewise
2 indistinguishable from traditional rent control.² In short, the ordinance is rent control under another
3 name. It directly and very deliberately interferes with property owners’ statutory right to set
4 subsequent rental rates for dwelling units that are expressly exempt from local rent control, and thus,
5 directly conflicts with the Costa-Hawkins Act. (*See, e.g., AAGLA, supra*, 136 Cal.App.4th at
6 pp. 132-133; *Bullard, supra*, 106 Cal.App.4th at pp. 492-93.) Therefore, Ordinance No. 187764 is
7 preempted and invalid as a matter of law. (*Palmer/Sixth Street Properties, L.P., supra*,
8 175 Cal.App.4th at p. 1411; *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 141; *Sherwin-*
9 *Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897–898.)

10 **C. Ordinance No. 187763 is Expressly Preempted by State Unlawful Detainer**
11 **Law.**

12 “Unlawful detainer actions are authorized and governed by *state* statute.” (*Larson v. City &*
13 *Cnty. of San Francisco* (2011) 192 Cal.App.4th 1263, 1297, emphasis added [citing Code Civ. Proc.,
14 § 1161 *et seq.*]) “The statutory scheme is intended and designed to provide an expeditious remedy
15 for the recovery of possession of real property.” (*Id.*, citing *Birkenfeld v. City of Berkeley* (1976)
16 17 Cal.3d 129, 151.)

17 “The purpose of the unlawful detainer statutes is procedural. The statutes implement the
18 landlord’s property rights by permitting him to recover possession once the consensual basis for the
19 tenant’s occupancy is at an end.” (*Birkenfeld, supra*, 17 Cal.3d at p. 149.) Thus, “locally imposed
20 *procedural* constraints on the state statutory scheme are in excess of a municipality’s police power
21

22 the Los Angeles Metro area is \$2,222. (*See* [https://www.huduser.gov/portal/datasets/fmr/fmrs/
FY2023_code/2023summary.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2023_code/2023summary.odn).) Thus, under Ordinance No. 187764, a property owner that raises
23 rent from \$2,000 to \$2,220 (an 11% increase) would be required to pay relocation benefits of \$8,077
24 (\$2,222x3 + \$1,411). At that cost, no rational property owner would raise rent beyond the maximum
amount that does not trigger the benefits, because they would very obviously lose money by doing
25 so. The extra \$20 per month a property owner might realize by raising rent 11% instead of 10% (or
extra \$100 they might gain by a 15% increase) is obviously not worth the risk a tenant will take the
benefits and rent elsewhere.

26
27 ² While Ordinance No. 187764’s prefatory language states it requires assistance be paid to
tenants that “relinquish their rental unit due to inability to pay rent increases,” the ordinance requires
28 no such showing. Indeed, a tenant that can afford the increase could very reasonably decide to move
in order to obtain the benefits, even if their new rent will be somewhat higher than the proposed
increase.

1 to regulate the substantive contours of private property rights and *an intrusion upon the state*
2 *legislative scheme* to provide a ‘summary repossession procedure ... intended to be a relatively
3 simple and speedy remedy that obviates any need for self-help by landlords.’” (*Larson, supra*,
4 192 Cal.App.4th at pp. 1298-99, *emph. added*, citing *Birkenfeld, supra*, 17 Cal.3d 151.)

5 The “chronology of unlawful detainer actions” is thus governed exclusively by Civil
6 Procedure Code sections 1161, *et seq.* and cannot be modified by a municipality. (*Tri Cnty.*
7 *Apartment Assn. v. City of Mountain View* (1987) 196 Cal.App.3d 1283, 1297–98 [“Landlord-tenant
8 relationships are so much affected by statutory timetables governing the parties’ respective rights
9 and obligations that a ‘patterned approach’ by the Legislature appears clear”].) Code of Civil
10 Procedure section 1161 (“Section 1161”) provides, in pertinent part, that a residential tenant is
11 “guilty of unlawful detainer” where the tenant “continues in possession” of the leased property
12 without permission of the landlord “after default in the payment of rent, pursuant to the lease
13 agreement under which the property is held, and three days’ notice, . . . in writing, requiring its
14 payment. . . . The notice may be served *at any time* within one year after the rent becomes due.”
15 (Civ. Proc. Code § 1161(2), *emphasis added*.)

16 Ordinance No. 187763 seeks to unlawfully regulate the *timing* of unlawful detainer actions
17 based on non-payment of rent by prohibiting a landlord from serving a notice to pay rent or quit
18 until “the amount due exceeds one month of fair market rent for the Los Angeles metro area” for an
19 equivalent sized rental unit. (Verified Pet. ¶ 13; RJN, Ex. A.) By requiring that property owners
20 delay in bringing such an action, the ordinance directly conflicts with the procedure established by
21 Section 1161, which expressly allows a 3-day notice to be served on a defaulting tenant “*at any time*
22 within one year” after rent becomes due. (Civ. Proc. Code § 1161(1), *emphasis added*.) Ordinance
23 No. 188763 thus imposes an unlawful modification on the chronology of Section 1161’s notice
24 procedure, by restricting a landlord’s right to serve a Section 1161 notice *immediately* upon a
25 tenant’s first default for nonpayment of rent. Because the ordinance “impermissibly conflicts with
26 a statutory scheme which occupies the field of notice between landlords and tenants” it is invalid.
27 (*Tri County Apartment Assn. v. City of Mountain View, supra*, 196 Cal.App.3d at pp. 1286–1287
28 [invalidating ordinance that restricted the effective date of proposed rental increases].)

1 Ordinance No. 187763 further directly conflicts with Section 1161 by seeking to redefine
2 the statute’s reference to a “default in the payment of rent” to mean a “material default,” as defined
3 by the City. While municipalities have authority to adopt substantive restrictions on evictions, they
4 may not alter state law by removing non-payment of rent as a substantive basis for eviction, or
5 accomplish the same purpose by redefining what a “default in the payment of rent” means. (*See*
6 *Code Civ. Proc. § 1161(2); Suter v. City of Lafayette, supra, 57 Cal.App.4th at p. 1124.*)

7 **V. AAGLA’S MEMBERS WILL SUFFER IRREPARABLE HARM ABSENT A**
8 **PRELIMINARY INJUNCTION TO MAINTAIN THE STATUS QUO.**

9 A plaintiff is “not required to wait until they have suffered *actual harm* before they apply
10 for an injunction, but may seek injunctive relief against the *threatened infringement* of their rights.”
11 (*Costa Mesa City Employees’ Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 305–06,
12 citation omitted, italics in original; *see also City of Torrance v. Transitional Living Centers for Los*
13 *Angeles, Inc.* (1982) 30 Cal.3d 516, 526 [injunctive relief is available where the injury sought to be
14 avoided is “actual or threatened”]; *7978 Corporation v. Pitchess* (1974) 41 Cal.App.3d 42, 46
15 [same].)

16 Here the City’s enforcement of the Ordinances will irreparably violate the rights of
17 AAGLA’s members under state law. Thus, AAGLA’s members will suffer irreparable harm if a
18 preliminary injunction is not issued to enjoin the City’s enforcement of the Ordinances pending
19 adjudication of this case.

20 **A. Irreparable Harm Will Result Unless the City is Enjoined From Enforcing the**
21 **Ordinances Pending Final Adjudication on the Merits.**

22 As of the filing of this Motion, Petitioner’s members that own rental properties within the
23 City are able to: (1) exercise their right to set subsequent rental rates for residences exempt from
24 rent control (and to do so without financial penalties); and (2) serve a notice to pay rent or quit at
25 any time after a tenant defaults on rent. Allowing either of the Ordinances to go into effect would
26 result in irreparable harm property owners, including Petitioner’s members, who wish to exercise
27 those statutory rights.

28 First, Ordinance No. 187764 would irreparably harm AAGLA’s many members who own

1 residential rental properties that that are exempt from local rent-control under the Costa-Hawkins
2 Act (including recently-constructed dwelling units, single-family homes, and condominium units).
3 (Yukelson Decl., ¶ 7.) Any such members who wish to raise rental rates over the limits specified in
4 Ordinance 187764 will either have to forego such increases or pay thousands of dollars to any tenant
5 that decides to vacate their unit. If they forego the increases—as any reasonable property owner is
6 likely to do—they will lose rent they would otherwise have received, and have no way to recover
7 such lost rent even if the ordinance is ultimately later invalidated. Conversely, in the unlikely event
8 they elect to raise rents over the limits and pay benefits to relocating tenants, they will have no way
9 to recover that money. Thus, Petitioner’s members will suffer irreparable harm if the City is
10 permitted to enforce Ordinance No. 187764 while this action is pending.

11 Second, Petitioner’s members will be irreparably harmed by Ordinance No. 187763’s
12 prohibition on their right to promptly serve a 3-day notice to pay rent or quit on tenants who default
13 on their rent, because the ordinance will prevent property owners from timely collecting overdue
14 rent and/or recovering possession of their property. Because property owners are rarely successful
15 in collecting back rent from tenants once they are more than one month delinquent, that delay will
16 result in additional financial loss that can never be recovered for many of Petitioner’s members.
17 (Yukelson Decl., ¶ 6.) Indeed, due to the way the ordinance is constructed, it could prevent property
18 owners from acting for months or even years in the event a tenant starts short-paying their rent. A
19 tenant in an apartment with a \$2,222 fair market rent, for example, could simply decide to pay \$100
20 less than the agreed-upon rent per month, in which case it would take 23 months to exceed the
21 threshold. During that entire time, the landlord would be deprived of a portion of the rent to which
22 they are entitled and would have no ability to enforce the agreed-upon rent. Such delay imposed in
23 recovering rent income owed to Petitioner’s members will prevent them from using such income
24 for their own expenses and result in irreparable harm. (*See Univ. of Hawaii Pro. Assembly v.*
25 *Cayetano* (9th Cir. 1999) 183 F.3d 1096, 1106–07 [finding a 1-to-3-day paycheck lag six times a
26 year to constitute the requisite “irreparable harm” where such lags could impact the employees’
27 “bills, child support obligations, mortgage payments, insurance premiums, and other
28 responsibilities”].) Moreover, if and when the threshold is finally exceeded, a portion of the overdue

1 rent would not be subject to an unlawful detainer action, since an unlawful detainer action can only
2 be initiated with respect to the past 12 months of past due rent. (*See* Code of Civil Procedure
3 § 1161(1) [unlawful detainer action may be commenced “at any time within one year after the rent
4 becomes due”].)

5 In contrast, the City will not suffer any interim harm if the status quo is preserved by
6 enjoining enforcement of the Ordinances pending adjudication of the merits of this case. Existing
7 laws, including the preemptive state laws discussed above, would continue to apply and govern
8 increase in rent and the unlawful detainer process. Accordingly, a balance of the equities clearly
9 supports enjoining the enforcement of the Ordinances pending final adjudication in this case.

10 **VI. CONCLUSION.**

11 For the reasons discussed above, Petitioner has clearly established the requisite likelihood
12 of prevailing on the merits with respect to the validity of each of the Ordinances. Petitioner has
13 likewise demonstrated that its members (and other rental property owners within the City) will suffer
14 irreparable harm if the Ordinances are permitted to go into effect. Petitioner thus respectfully
15 requests that the Court preserve the status quo during the pendency of these proceedings by granting
16 Petitioner’s motion and issuing a preliminary injunction prohibiting the City from enforcing
17 Ordinance No. 187763 and/or Ordinance No. 187764.

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19 Dated: March 17, 2023

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