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SUPERIOR COURT OF THE STATE OF CALIFORNIA

CENTRAL DISTRICT FOR THE COUNTY OF LOS ANGELES

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC. dba APARTMENT ASSOCIATION OF GREATER LOS ANGELES, Petitioner/Plaintiff, vs. CITY OF LOS ANGELES; COUNCIL OF THE CITY OF LOS ANGELES and DOES 1 through 100, inclusive, Defendants and Respondents.	Case No. 23STCP00720 Judge: Hon. Mitchell L. Beckloff Dept: 86 **PETITIONER'S OPENING BRIEF** [Filed concurrently with: Petitioner's Request for Judicial Notice in Support of Opening Brief] Date: November 8, 2023 Time: 9:30 a.m. Dept.: 86 Date Action Filed: March 3, 2023 Trial Date: November 8, 2023

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I. INTRODUCTION

As observed by a unanimous US Supreme Court, allowing legislation to avoid preemption merely because it is "framed" such that it nominally addresses an issue outside the scope of the preempting law would "make a mockery" out of the law. (*National Meat Ass'n v. Harris* (2012) 565 U.S. 452, 464 [state could not avoid federal law preempting regulation of slaughterhouses by "framing it as a ban on the sale of meat produced" in a disapproved way]; *see also Engine Mfrs. Ass'n v. South Coast Air Quality Management Dist.* (2004) 541 U.S. 246, 255 ["treating sales restrictions and purchase restrictions differently for pre-emption purposes would make no sense"].) Thus, a city may not circumvent state law by creatively framing ordinances that have the purpose and effect of undermining such law. (*See, e.g. Tri County Apartment Assn. v. City of Mountain View* ("*Tri County"*) (1987) 196 Cal.App.3d 1283, 1290-93.) Yet that is what the City of Los Angeles ("City") has attempted to do here, with respect to each of the two challenged ordinances.

Because the Costa–Hawkins Rental Housing Act ("Costa–Hawkins Act") expressly preempts municipalities from enforcing rent control laws against certain types of dwellings, the City's frames Ordinance No. 187764—which is deliberately targeted at those same dwellings—as an attempt to regulate "constructive evictions." (AR 2219-2220 [City staff report asserting the ordinance is needed to "close a loophole" created by state law].) But the ordinance, which requires landlords to pay thousands of dollars in "relocation assistance" when a tenant elects to move following a lawful proposed rent increase that exceeds a defined threshold, acts as rent control, because it is designed to ensure that landlords do not raise rent above the threshold. It is thus clearly "hostile" to the right to set rental rates granted by the Costa–Hawkins Act and preempted by such law. (*Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (*"Palmer"*) (2009) 175 Cal.App.4th 1396, 1411.)

Similarly, because the City is indisputably barred from directly interfering with the timeline established by the state unlawful detainer law, Ordinance No. 187763—which prohibits property owners from commencing an eviction based on nonpayment of rent until the amount past due exceeds one month's fair market rent— is framed as a substantive limit on evictions. The

record shows, however, that the ordinance was enacted in response to requests that the City "allow[] tenants time to get back on their feet," and that the City considered directly regulating "timeliness" as an alternative. (AR 65 ["social safety nets that would help tenants cover unpaid rent do not provide relief within the 3 day window state law requires"], 110; *see also* AR 2221.) Moreover, a restriction on commencing evictions until more than one month's rent is past due is the functional equivalent of a restriction on commencing evictions until rent is more than one month past due. The ordinance is thus a procedural regulation that is preempted by the unlawful detainer statute. (*Birkenfeld v. City of Berkeley* ("*Birkenfeld*") (1976) 17 Cal.3d 129, 141.)

In short, each of the challenged ordinances is a transparent attempt by the City to sidestep State laws that the City dislikes by creative framing. Petitioner Apartment Association of Los Angeles County, Inc., d.b.a. Apartment Association of Greater Los Angeles ("AAGLA" or "Petitioner") respectfully requests that the Court reject the City's effort to undermine policy choices made by the State Legislature and issue the requested writ of mandate.

II. FACTUAL BACKGROUND

A. Prior City Ordinances

The City of Los Angeles has had an extensive rent control ordinance, known as the "Rent Stabilization Ordinance" ("RSO"), in place for many years. (*See* Los Angeles Municipal Code Chapter XV.) While state law prevents the City from applying the RSO to certain categories of dwellings, it nonetheless applies to the vast majority of rental units within the City. (AR 14.) In addition to restricting the amount landlords may charge for rent, the RSO limits the grounds upon which a landlord may bring an action to recover possession of a rental unit." (*See* AR 63.) Until the events described herein, however, the RSO had always expressly recognized that any default in the payment of rent was a proper basis for commencing an eviction.

In 2022, the City began to consider enacting additional tenant protections, ostensibly due to concern that the end of covid-related restrictions could lead to a sharp increase in evictions. That effort initially culminated in the City's January 2023 adoption of a "Just Cause For Eviction Ordinance," which extended "just cause eviction protections" to units that are not subject to the RSO. (AR 303-316 [Ordinance 187737].) Consistent with the RSO, however, the new Just Cause

For Eviction Ordinance expressly permitted a landlord to commence the eviction process where a "tenant has defaulted in the payment of rent." (AR 305.) That ordinance was not challenged by Petitioner or other stakeholders and went into effect on January 27, 2023. Unfortunately, the City did not stop there, but proceeded to consider and ultimately adopt the two ordinances that are the subject of this action.

B. The Eviction Threshold Ordinance

As part of the process described above, the City sought input from stakeholders regarding potential additional tenant protections. (*See* AR 22.) As explained in a report from the Los Angeles Housing Department ("LAHD"), "[t]he primary tenant recommendations were presented in a report issued by a consortium of tenant advocates under the Keep LA Housed (KLAH) umbrella." (AR 22.) That report urged the City to enact limits on evictions for failure to pay, arguing such limits would allow "tenants time to get back on their feet" in the event of a financial hardship. (AR 65.) According to the report, "existing social safety nets that would help tenants cover unpaid rent do not provide relief within the 3 day window state law requires to avoid eviction. For example, if a tenant unexpectedly loses their job, it may take several weeks to receive unemployment insurance…." (AR 65.) In response to such requests, the City indicated it would investigate "[s]etting a reasonable financial and/or timeliness threshold for rental arrearages as the basis for eviction due to non-payment of rent." (AR 110.)

The LAHD thereafter recommended the City Council adopt a monetary eviction threshold, echoing the rationale of the KLAH report: "[i]f a renter loses their employment and applies for unemployment benefits, on average it takes six weeks to receive the assistance, by which time the eviction process may be underway." (AR 2221.)

On February 3, 2023, the City Council adopted Ordinance No. 187763. The ordinance amends both the City's Rent Stabilization Ordinance and Just Cause For Eviction Ordinance to provide that a landlord may initiate an unlawful detainer action based on a tenant's failure to pay rent only "where the amount due exceeds one month of fair market rent for the Los Angeles metro area" for an equivalent sized rental unit. (AR 470-472.)

Thus, for most units, the ordinance has the effect of prohibiting a property owner from

serving a notice to pay rent or quit until a tenant is more than one month behind on rent. Where a tenant makes partial payments or where the rent is far below the market rent (as may be the case for a unit subject to the RSO), the delay may be even longer.

C. The "Relocation Assistance" Ordinance

On February 7, 2023, the City Council adopted Ordinance No. 187764, which adds a new section to the Just Cause For Eviction Ordinance requiring landlords of rental units not covered by the RSO to pay "relocation assistance" to tenants that choose to end their tenancy following a proposed rent increase "that exceeds the lesser of (1) the Consumer Price Index – All Urban Consumers, plus five percent, or (2) ten percent." (AR 623-625.) The amount of the required payment is equal to three times the fair market rent in the Los Angeles Metro area for a rental unit of a similar size, plus $1,411 in moving costs. (*Id.*) For example, for 2023, "the relocation assistance for a non-RSO two-bedroom unit [is] $8,077.00 (3 x $2,222.00 + $1,411.00.)" (AR 2221.)

As the LAHD explained in recommending such ordinance, Ordinance No. 187764 is directed specifically at properties that are ***not subject to either the RSO or the California Tenant Protection Act of 2019*** (which imposed statewide rent control, but expressly exempted newer construction, single family homes, and condominiums from such restrictions[1]). (AR 2219 ["tenants in unregulated units (not subject to RSO nor the Tenant Protection Act of 2019) may be economically displaced when their landlords impose high rent increases"].) According to LAHD, because the Legislature has exempted new construction and certain other types of housing from rent control, "[a]dditional protections are needed to close a loophole that allows tenants in non-RSO units to be forced out through large rent increases." (AR 2220.)

III. STANDARD OF REVIEW

"The issue of preemption of a municipal ordinance by state law presents a question of law, subject to de novo review." (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* ("*AAGLA*") (2006) 136 Cal.App.4th 119, 129.)

"If local legislation conflicts with state law, it is preempted by the state law and is void."

[1] *See* Civil Code §§ 1947.12(d).

(*Johnson v. City & Cnty. of San Francisco* (2006) 137 Cal.App.4th 7, 13, internal quotations omitted.) "A conflict between local ordinance and state law exists if the local law duplicates, contradicts, or regulates an area fully occupied by general law, either expressly or by legislative implication." (*Id.*)

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

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

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

(*Johnson, supra*, 137 Cal.App.4th at 13–14, citation omitted, *see also* p. 18 [concluding that local ordinance was preempted by the Ellis Act despite the fact there was "no express contradiction, where it created "a substantive defense in eviction proceedings not contemplated by the Act"].)

"An ordinance contradicts state law if it is inimical to state law; *i.e.*, ***it penalizes conduct that state law expressly authorizes*** or permits conduct which state law forbids." (*Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1124, emphasis added; *San Francisco Apartment Ass'n. v. City & Cnty. of San Francisco* (2016) 3 Cal.App.5th 463, 477; *Palmer, supra*, 175 Cal.App.4th 1396, 1411.) Local laws that impose a "prohibitive burden" on the exercise of a right granted by the Costa-Hawkins Act are therefore preempted. (*AAGLA*, 36 Cal.App.4th at 133; *see also*

Javidzad v. City of Santa Monica (1988) 204 Cal.App.3d 524, 531 [ordinance that imposed "a prohibitive price on the exercise of the right under the [Ellis] Act" was preempted].).)

IV. THE ORDINANCES ARE PREEMPTED BY STATE LAW

A. Ordinance No. 187764 is Preempted by the Costa-Hawkins Act.

1. The Ordinance is an Improper Restriction on Rent.

"The Legislature enacted Costa-Hawkins in 1995 to moderate what it considered the excesses of local rent control." (*NCR Properties, LLC v. City of Berkeley* (2023) 89 Cal.App.5th 39, 47.) As explained during the legislative process, the Act was intended as "a moderate approach to overturn extreme vacancy control ordinances which unduly and unfairly interfere into the free market." (Request for Judicial Notice ("RJN"), Exhibit B, p. 11 [Assembly Concurrence In Senate Amendments].) In particular, the Legislature was concerned that strict rent control laws could ultimately decrease the supply of housing, both by "deter[ring] construction of new rental housing" and encouraging "owners to take their units off the market." (*Id*.)

Among other restrictions, the Costa-Hawkins Act expressly "prohibits public entities from applying rent control laws to certain categories of dwellings." (*Hirschfield v. Cohen* (2022) 82 Cal.App.5th 648, 663; *see* Civ. Code § 1954.52(a).) Specifically, as relevant here, the Act provides that landlords of such dwellings, including newer construction, single family homes, and condominiums, "may establish the initial ***and all subsequent rental rates***." (Civ. Code § 1954.52(a), emphasis added.)

A local ordinance that interferes with the exercise of rights granted by the Costa-Hawkins Act "is preempted by such law and is void." (*Palmer, supra,* 175 Cal.App.4th at 1406; *see also Bullard v. San Francisco Residential Ren Stabilization Bd*. (2003) 106 Cal.App.4th 488, 491-492 ("*Bullard"*); *AAGLA, supra,* 136 Cal.App.4th at 132-133.)

In *Bullard,* for example, the plaintiff challenged an ordinance that required a landlord who evicts a tenant in order to move into the tenant's unit to offer the tenant another unit, if one was available, and regulated the rent that could be charged for such replacement unit. (*Id*. at 489.) The respondent city noted that the Costa-Hawkins Act expressly preserves public entities' authority to regulate the "grounds for eviction," and argued that the ordinance merely established such

grounds. (*Id*. at 491, *citing* Civil Code § 1954.53(e).) The Court of Appeal disagreed, finding that the ordinance was a "rent regulation," and explaining:

> the Rent Board's reading of the statute would substantially weaken the statewide vacancy decontrol contemplated by the Costa-Hawkins Act. A local government might require a landlord who evicts a tenant for any reason to offer the unit at a controlled rent….
>
> The Rent Board claims the rent restriction at issue serves a legitimate regulatory purpose by helping ensure that landlords do not undertake owner move-in evictions for the improper purpose of avoiding controlled rents. ***But the extension of rent control for a replacement unit is a remarkably blunt instrument for that purpose***. ***It applies to landlords acting in good faith as well as unscrupulous landlords.*** Because it is contingent on the availability of another unit, it provides only an occasional, weak deterrent. When another unit is not available, tenants are not protected and landlords are not forced to accept a regulated rent. ***Permitting local governments to maintain such a haphazard form of vacancy control would subvert the purpose of the Costa-Hawkins Act***.

(*Id.* at 491–492, emph. added.)

In *Palmer,* the City adopted a specific plan that required certain housing projects to include some affordable housing units within the project or to pay an "in lieu fee" to be used by the City to build affordable housing units elsewhere. (175 Cal.App.4th at 1400.) The City argued that the affordable housing requirement was not preempted by Costa-Hawkins, since it was "not a rent control statute that governs the entire rental housing market," and because it allowed developers to avoid rent restrictions on any units by electing to pay the fee. (*Id*. at 1411.) The Second District rejected those arguments, concluding: "it is plain that the Plan imposes rent restrictions that conflict with and are inimical to the Costa–Hawkins Act, even if those restrictions apply only to a portion of the residential units within the project and [do] not control the rents for the entire project." (*Id*. at 1411 ["Forcing [developer] to provide affordable housing units at regulated rents in order to obtain project approval is clearly hostile to the right afforded under the Costa–Hawkins Act to establish the initial rental rate for a dwelling or unit."].) The court further found that the in-lieu fee option could not be separated from the rent restriction, finding "the Plan's affordable housing requirements and in lieu fee option [were] inextricably intertwined"; thus, both were preempted. (*Id*. at 1411.)[2]

[2] Some years later, in 2017, the Legislature adopted legislation authorizing cities and counties to

In *AAGLA,* AAGLA challenged a City ordinance that prohibited "a landlord, after termination or nonrenewal of a Section 8 housing contract with the City's Housing Authority, from charging the tenant more than the tenant's portion of the rent under the former contract, without any limitation as to time." (136 Cal.App.4th at 122.) At issue was whether the ordinance was preempted by a provision of the Costa-Hawkins Act that provided a tenant could not be required to pay more than their previous portion of the rent for 90 days in such a situation. (*Id*. at 131.) The City argued there was no conflict, because the ordinance could "coexist" with the Act, asserting "[t]he state statute sets forth notice guidelines for sudden rent increases that could follow a landlord's cancellation of a rental assistance contract whereas the City's Ordinance provides rent stabilized tenants with an affirmative defense [to] illegal rent increases." (*Id*. at 125.) In rejecting that argument, the Court of Appeal explained that the ordinance imposed "a ***prohibitive burden*** on the exercise of" a landlord's right under the Act to terminate or to refuse to renew a Section 8 contract. (*Id*. at pp. 132-133, emphasis added [finding the ordinance "clearly" conflicted with the Act and was thus preempted].)

Here, as in the cases discussed above, the City has adopted an ordinance that interferes with the exercise of a right expressly granted under the Costa-Hawkins Act, *i.e*., the right to establish "all subsequent rental rates for a dwelling or unit." (Civ. Code § 1954.52(a).) Rather than impose a hard limit on the amount rent can be increased—as typical with traditional rent control—Ordinance No. 187764 achieves essentially the same result by requiring property owners who increase rent ***over a specified limit*** to pay substantial so-called "relocation benefits" in such an amount that owners would nearly always lose money if they choose to exceed the limit and are required to pay the benefits.

The fact that the ordinance will effectively deter property owners from raising rents above the trigger for benefits is demonstrated by simple arithmetic. For 2023, the maximum that rent can be increased without triggering relocation assistance is 10%. The "fair market rent" for a two-bedroom unit is $2,222, meaning the relocation assistance for a two-bedroom unit is $8,077 (3 x

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adopt ordinances imposing affordable housing requirements as a condition of the development of residential rental units. (*See* AB 1505 (2017 Cal AB 1505), which added Gov. Code § 65850(g).)

$2,222 + $1,411). (AR 2221.) Thus, if the current rent for a two-bedroom unit is $2,000, the property owner can raise it to $2,200 without risk; if they attempt to instead raise it by 15% to $2,300, however, they may be forced to pay $8,077—nearly 7 times the $1,200 in incremental increased rent they could hope to obtain over the course of a year by raising rent by $300 instead of $200. Given that math, 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 so.[3] Thus, the practical impact of the ordinance is to cap rent increases on the very properties that the State Legislature has purposefully exempted from both local and state rent control measures.

Indeed, by deterring rent increases, the ordinance undermines the purpose of Costa-Hawkins' restriction on rent control. As noted above, the Legislature prohibited municipalities from imposing rent control on new construction and certain other types of housing based on its determination that overzealous rent control laws were having a detrimental impact on the housing supply, including by discouraging the construction of new rental housing. (*See* RJN, Exhibit B, p. 11].) More than 20 years later, the Legislature made analogous findings in exempting similar categories of housing from statewide rent control. (*See* RJN, Exhibit D, p. 29 ["This bill cuts something of a middle ground on all of these issues. In response to the concern that the bill could otherwise discourage new housing development, the author has exempted new construction – buildings up to 15 years old – from the bill."].)[4] Thus, in both instances, the Legislature indicated it was deliberately protecting economic incentives to provide housing. (*See also San Francisco Apartment Association v. City and County of San Francisco* (2022) ("*SFAA 2022*") 74 Cal.App.5th 288, 292 [the Costa-Hawkins Act intended to authorize rent increases "for the purpose of collecting additional rent"].) In creating a powerful economic incentive not to raise rents beyond the specified cap, ***the ordinance disregards the careful balance struck by the***

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[3] The math is even worse for a smaller increase of 11% or 12%. And given the fact that the amount a property owner can raise rent is obviously constrained by market forces, it is difficult to imagine any realistic scenario in which it would make economic sense for a reasonable landlord to raise rent above the threshold.

[4] Notably, the Legislature also deliberately avoided the City's model in crafting statewide rent control. (*See* RJN, Exhibit D, p. 29 ["In response to the argument that strict rent control could dissuade landlords from investing in maintenance and upgrades to their property, the bill steers clear of the sort of rent control model that cities like Oakland, Los Angeles, San Francisco, and Santa Monica have long had."].)

Legislature and undercuts the core purpose of the Costa-Hawkins Act. In short, in deterring the very behavior the Legislature sought to protect, Ordinance No. 187764 is "clearly hostile to the right afforded under the Costa–Hawkins Act to establish the [subsequent] rental rate for a dwelling or unit." (*Palmer*, 175 Cal.App.4th at 1411.)

2. The Ordinance is Not a Permissible Attempt to Regulate "Constructive Evictions."

Like the city in *Bullard,* the City has attempted to portray the ordinance as a permissible eviction regulation. (*See, e.g.*, AR 67-68.) The ordinance does not regulate evictions, however, but applies only where a tenant "elects to relinquish their tenancy" following a rent increase. (AR 623 [Section 165.09.A].) Moreover, on its face, the ordinance is a regulation on rent, since it requires relocation benefits only where a proposed rent increase exceeds a defined amount (defined to match the maximum increase permitted under the state rent control law, where it applies), and serves to deter landlords from exceeding that amount. (*Bullard,* 106 Cal.App.4th at 491-492; *Palmer*, 175 Cal.App.4th at 1411 [affordable housing fee was "inextricably intertwined" with rent restrictions and thus "hostile" to the rights to set rent afforded under the Act].)

Further, even assuming the ordinance could be construed as an attempt to regulate "constructive evictions," as urged by the City, it would be both under- and over-inclusive. It does not apply to a tenant who chooses to leave because they cannot afford an increase below the cap, yet does apply where a tenant can afford an increase above the cap, but chooses to leave in order to receive the benefits (or for some other unrelated reason).[5] Thus, like the ordinance determined invalid in *Bullard*, it is a "remarkably blunt instrument" for its asserted purpose. (*Bullard* at 491.) Also like the ordinance at issue in *Bullard*, it applies not only to unscrupulous landlords, but to those exercising their statutory rights "in good faith," and thus "would subvert the purpose of the Costa-Hawkins Act" if not invalidated. (*Bullard* at 491–492; *c.f. San Francisco Apartment Association v. City and County of San Francisco* (2022) ("*SFAA 2022*") 74 Cal.App.5th 288, 291 [upholding ordinance that barred landlords from seeking "to recover possession" of units exempt

[5] Given the amount of the benefits, a tenant that can afford an increase could very reasonably nonetheless decide to move in order to obtain the benefits, even if their new rent will be higher than the proposed increase.

from rent control "by means of a rent increase that is imposed in ***bad faith*** with an intent to defraud, intimidate, or coerce the tenant into vacating the unit"], emphasis added; *Mak v. City of Berkeley Rent Stabilization Board* (2015) 240 Cal.App.4th 60, 69 [distinguishing *Bullard* in upholding an ordinance that restricted rent only where the prior tenancy was "based on a bad faith assertion"].)

Indeed, while the City may have a legitimate interest in regulating evictions—as it has already done through the Just Cause for Eviction Ordinance—it simply does not have a valid interest in regulating so-called "constructive evictions" that are the result of good-faith rent increases that the City is statutorily prohibited from restricting.[6] It is unavoidable that some tenants will choose to leave in response to a proposed rent increase, rather than pay the increase. Thus, in expressly prohibiting cities from restricting rent increases for certain dwellings, the Legislature necessarily considered that result in striking the balance contained in the Costa-Hawkins Act. The ordinance is no less hostile to the right to raise rent afforded by the Act merely because it purports to regulate the effect of permissible increases, rather than directly prohibit such increases. (*See National Meat Ass'n v. Harris*, *supra*, 565 U.S. at 464 [state could not indirectly regulate slaughterhouses by regulating the sale of meat produced in a disapproved way].)

In sum, Ordinance No. 187764 is rent control under another name. It directly and very deliberately interferes with property owners' statutory right to set subsequent rental rates for dwelling units that are expressly exempt from local rent control, and thus, directly conflicts with the Costa-Hawkins Act. (*See, e.g.*, *AAGLA*, *supra*, 136 Cal.App.4th at pp. 132-133; *Bullard*, *supra*, 106 Cal.App.4th at pp. 492-93.) Therefore, Ordinance No. 187764 is preempted and invalid as a matter of law. (*Palmer*, 175 Cal.App.4th at p. 1411; *Birkenfeld*, *supra*, 17 Cal.3d at 141; *Sherwin–Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897–898.)

B. <u>Ordinance No. 187763 is Preempted by the Unlawful Detainer Statutes.</u>

1. <u>The Ordinance is an Improper Limitation on the Timing of Evictions.</u>

"Unlawful detainer actions are authorized and governed by state statute." (*Larson v. City &*

[6] If the City wishes to prevent actual constructive evictions, *i.e.*, bad-faith rent increases designed to force tenants to move, *SFAA 2022* demonstrates it could easily enact an ordinance tailored to that purpose. (*See SFAA 2022*, 74 Cal.App.5th at 290-291.)

Cnty. of San Francisco (2011) 192 Cal.App.4th 1263, 1297.) "The statutory scheme is intended and designed to provide an expeditious remedy for the recovery of possession of real property." (*Id.*, citing *Birkenfeld, supra*, 17 Cal.3d at 151.) As relevant here, Code of Civil Procedure section 1161 provides that a residential tenant is "guilty of unlawful detainer" where the tenant "continues in possession" of the leased property without permission of the landlord "after default in the payment of rent, pursuant to the lease agreement under which the property is held, and ***three days' notice***, . . . in writing, requiring its payment.... The notice may be served ***at any time*** within one year after the rent becomes due." (Civ. Proc. Code § 1161(2), emphasis added; *Haydell v. Silva* (1962) 201 Cal.App.2d 20, 23 ["One of the evident purposes of this section of the law is to point out specifically to the tenant the amount of rent due, and to give the tenant the opportunity to pay the rent within the time allowed by the statute."]; *Levitz Furniture Co. v. Wingtip Comm., Inc.* (2001) 86 Cal.App.4th 1035, 1037, n.3 [noting the provision providing for three days' notice "has remained unchanged since 1905"].)

It is well-established that a city may not modify the procedure established by the unlawful detainer statutes, and in particular, may not alter the comprehensive timeline set forth in the law. (*Birkenfeld*, 17 Cal.3d at 141; *Tri County Apartment Assn. v. City of Mountain View* ("*Tri County*") (1987) 196 Cal.App.3d 1283, 1297–98 ["Landlord-tenant relationships are so much affected by statutory timetables governing the parties' respective rights and obligations that a 'patterned approach' by the Legislature appears clear"].) Indeed, the City does not contend otherwise, but rather argues that Ordinance No. 187763 is a substantive limit on evictions, not a procedural ordinance. (*See* Opposition to Motion for Preliminary Injunction, p. 11 ["This ordinance does not alter the procedural aspects of the unlawful detainer statute, but rather defines the substantive conditions that must exist for the unlawful detainer remedy to be available."])

The problem with that argument, however, is that there is no bright line between procedural and substantive rules. (*See San Francisco Apartment Assn. v. City and County of San Francisco* (2018) 20 Cal.App.5th 510, 516 ["As this case illustrates, the distinction between procedure and substantive law can be shadowy and difficult to draw in practice.'"], internal quotations removed.) Accordingly, the Court must look beyond the City's characterization of the

ordinance, and determine whether its purpose and nature is primarily substantive or procedural. (*See, e.g., Tri County, supra,* 196 Cal.App.3d at 1290-1293 [rejecting city's argument that an ordinance restricting the effective date of proposed rental increases was a substantive "rent control measure," rather than a procedural requirement]; *see also City of Sausalito v. County of Marin* (1970) 12 Cal.App.3d 550, 557 [whether a statute can be classified as "substantive" or "procedural" "depends upon its effect rather than its form"].)

Here, the record demonstrates that the purpose the City sought to achieve in enacting Ordinance No. 187763 was to ***delay*** the commencement of evictions based on nonpayment, in order to give tenants more time to avoid eviction. (*See Tri County* at 1292 ["the setting in which legislation was adopted well may be helpful in interpreting the language used in the enactment"].) According to a report LAHD described as presenting the "primary tenant recommendations" on potential additional tenant protections, the ordinance was needed because "the 3 day window state law requires to avoid eviction" is not long enough to allow "tenants time to get back on their feet." (AR 65 ["existing social safety nets that would help tenants cover unpaid rent do not provide relief within the 3 day window state law requires to avoid eviction"].) The City thereafter indicated it was considering setting a ***"financial and/or timeliness threshold,"*** implicitly acknowledging the desired delay could be accomplished through either type of threshold. (AR 110, emph. added.) And in eventually recommending that the City Council adopt the ordinance, the LAHD explained that it would give a renter who loses their employment time to seek unemployment benefits. (AR 2221.) Thus, while the ordinance may be framed as a substantive limit on evictions, it was clearly intended to have a procedural effect.

Moreover, the very structure of the ordinance makes clear that ***the financial threshold is a proxy for an extension of the time*** provided by the unlawful detainer statute. Because the City cannot require a landlord delay one month before commencing an eviction based on nonpayment, it instead prohibited such an eviction until the amount due exceeds ***one month's*** fair-market rent. The effect is virtually the same. Except for units that are above the fair-market rent (for a which a partial payment may be necessary to benefit from the ordinance), the eviction process is delayed at least a month, preventing property owners of availing themselves of the expeditious process

established by the Legislature.[7] The ordinance thus conflicts with and alters the timeline set forth in state law, which provides that a ***3-day notice*** to pay rent or quit may be served "***at any time*** within one year after the rent becomes due." (Civ. Proc. Code § 1161(2), emphasis added.) Allowing the City to so easily side-step the timing established by the unlawful detainer statutes would "make a mockery" of them, and render them virtually meaningless. (*See National Meat Ass'n v. Harris*, *supra*, 565 U.S. at 464.) Thus, the ordinance must be viewed as the preempted procedural limitation it is.

2. The Ordinance Exceeds the City's Authority Even If Viewed as a Substantive Limitation.

Although caselaw makes clear that cities may limit the substantive grounds for eviction, no authority suggests a city may go so far as to actually ***eliminate*** a default in the payment of rent as a basis for eviction. Unlike other grounds for eviction, a default in the payment of rent involves a failure of the consideration provided in exchange for the right to occupy a property. (*Action Apartment Ass'n v. Santa Monica Rent Control Bd.* (2001) 94 Cal.App.4th 587, 597–598 ["Rent is the consideration paid by the tenant to the landlord for the use, enjoyment and possession of the leased premises…. It is the means by which landlords make a profit on their property."], internal citations omitted; *Danger Panda, LLC v. Launiu* (2017) 10 Cal.App.5th 502, 513 ["Payment of rent is the consideration for this right to exclusive possession."].) Consequently, as repeatedly explained by the courts, "unless a judicially supervised mechanism is provided for what would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights of income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else.... Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss…." (*Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 387–388, quoting *Lindsey v. Normet* (1972) 405 U.S. 56 at 72-73, alterations in original; *Childs v. Eltinge* (1973) 29 Cal.App.3d 843, 854, n. 10, also quoting *Lindsay v. Normet* ["Many expenses of the

[7] If the City merely wanted to ensure any eviction based on non-payment involved a "material" amount of money, rather than to delay the eviction process, it would have set the threshold at a lower amount not tied to a period of time. The City's own staff report provides an example of such an ordinance, indicating that the "District of Columbia has barred evictions when a tenant owes less than $600.00." (AR 2222.)

landlord continue to accrue whether a tenant pays his rent or not."].) The Legislature thus provided an expedient, judicially-supervised mechanism by enacting the unlawful detainer statutes. (*Nork v. Pacific Coast Medical Enterprises, Inc.* (1977) 73 Cal.App.3d 410, 413 ["the purpose of the unlawful detainer statutes . . . is to provide the landlord with a summary, expeditious way of getting back his property when a tenant fails to pay the rent…"].)

Here, Ordinance No. 187763 does not eliminate nonpayment of rent as a basis for eviction, but rather delays the commencement of eviction until after the threshold is reached. Nonetheless, the City's position that the ordinance is a valid "substantive" limitation on evictions appears to be based on the premise that it has the power to completely ban evictions based on nonpayment. And indeed, if the City has the authority to prohibit evictions where no more than one month's rent is overdue, there is no obvious reason why it could not set a higher threshold or decide to prohibit evictions for non-payment altogether. That, of course, would eviscerate the unlawful detainer statutes and render the summary process established by the Legislature meaningless. Thus, while Ordinance No. 187763 is properly viewed as a procedural regulation that alters the timing established by the Legislature, to the extent it is based on an asserted power to eliminate evictions based on nonpayment, it exceeds the City's authority and is invalid for that reason, as well.

V. CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that the Court issue a writ of mandate prohibiting the City from enforcing Ordinance No. 187763 and/or Ordinance No. 187764 and directing the City to rescind said ordinances.

Dated: September 11, 2023

RUTAN & TUCKER, LLP

By: _____

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PROOF OF SERVICE

Apartment Association of Los Angeles, Inc. v. City of Los Angeles, et al.

LASC – Case No. 23STCP00720

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18575 Jamboree Road, 9th Floor, Irvine, CA 92612. My electronic notification address is pcarvalho@rutan.com.

On September 11, 2023, I served on the interested parties in said action the within:

PETITIONER AND PLAINTIFF'S OPENING BRIEF

as stated below:

☐ (BY MAIL) by placing a true copy thereof in sealed envelope(s) addressed as shown on the attached service list.

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Executed on September 11, 2023, at Irvine, California.

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

Pamela Carvalho	Pamela J. Carvalho
(Type or print name)	(Signature)

SERVICE LIST

Apartment Association of Los Angeles, Inc. v. City of Los Angeles, et al.
LASC – Case No. 23STCP00720

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