

Case No. B336071

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

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

Plaintiff and Appellant,

vs.

CITY OF LOS ANGELES; COUNCIL OF THE CITY OF LOS
ANGELES,

Defendants and Appellees.

APPELLANT'S OPENING BRIEF

Appeal From the Superior Court of the State of California
for the County of Los Angeles
Honorable Mitchell L. Beckloff, Judge Presiding
Case No. 23STCP00720

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APPELLANT/ PLAINTIFF: APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC. dba APARTMENT ASSOCIATION OF GREATER LOS ANGELES RESPONDENT/ REAL PARTY IN INTEREST: CITY OF LOS ANGELES; COUNCIL OF THE CITY OF LOS ANGELES		
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS		
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 GREATER LOS ANGELES

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Date: May 24, 2024

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I. INTRODUCTION

The question presented in this case is whether a city may override policy decisions made by the State Legislature, on issues of statewide concern, by creatively framing ordinances in ways designed to evade the preemptive effects of state law.

There is no real dispute regarding the purpose and effect of the two ordinances at issue in this case. Because Respondent City of Los Angeles (“City”) is preempted 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 purpose of the ordinance was to delay evictions. As the trial court concluded, there is no “dispute that a significant purpose of the ordinance was to provide tenants with more time to pay rental arrearages to avoid eviction.” (Appellant’s Appendix (“AA”) 942 [“Respondents and Intervenors have not persuasively challenged Petitioner’s interpretation of this legislative history”]; *see also* AR 65, 110, 2221.)¹

Similarly, because the Costa–Hawkins Rental Housing Act (“Costa–Hawkins” or “Act”) expressly preempts municipalities from enforcing rent control laws against certain types of dwellings, the City framed Ordinance No. 187764—which is deliberately targeted at those same dwellings—as an attempt to

¹ Citations to “AR” are to the administrative record (“Record”).

regulate “constructive evictions.” (See 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, by punishing those that do so. Indeed, the trial court found that the City had admitted that the ordinance was intended to deter landlords of “exempt residential units” from imposing rent increases above the threshold and further that “[t]he deterrent effect is clear from the plain language of the ordinance.” (AA 932.)

In the context of federal preemption, the U.S. Supreme Court has roundly rejected legislative attempts to circumvent preemption through clever legal drafting. For instance, in *National Meat Ass’n v. Harris* (2012) 565 U.S. 452, a case involving analogous issues of federal preemption, a trade association representing meatpackers and processors challenged a state law that, among other things, prohibited the sale of “meat or products of nonambulatory animals for human consumption,” contending it was preempted by the Federal Meat Inspection Act (“FMIA”). (*Id.* at 455-465.) The Ninth Circuit concluded there was no preemption, reasoning that the state law did not regulate “the inspection or slaughtering process itself.” (*Id.* at 459.) Writing for a unanimous Supreme Court, Justice Kagan explained why making such a distinction was error:

The idea—and the inevitable effect—of the provision [prohibiting sales] is to make sure that slaughterhouses remove nonambulatory pigs from the production process (or keep them out of the process from the beginning) by criminalizing the sale of their meat. . . . And indeed, ***if the sales ban were to avoid the FMIA’s preemption clause, then any State could impose any regulation on slaughterhouses just by framing it as a ban on the sale of meat produced in whatever way the State disapproved. That would make a mockery of the FMIA’s preemption provision.***

(*Id.* at 464, *emph. added*; *see also Engine Mfrs. Ass’n v. South Coast Air Quality Mgmt. Dist.* (2004) 541 U.S. 246, 255 [“treating sales restrictions and purchase restrictions differently for preemption purposes would make no sense”].)

The same reasoning applies here.² Allowing the City to deliberately circumvent state laws it does not like through creatively framed local legislation would make a mockery of preemption principles. Accordingly, Appellant Apartment Association of Los Angeles County, Inc., d.b.a. Apartment Association of Greater Los Angeles (“AAGLA” or “Appellant”) respectfully requests that this Court reverse the trial court judgment and instruct the trial court to enter a judgment granting AAGLA’s petition for writ of mandate.

² While the Supreme Court’s analysis arose in the context of federal preemption, it is equally relevant to state preemption. (*See, e.g., Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1150, fn. 7 [discussing “analogous” federal law in analyzing issue of state law preemption].)

II. STATEMENT OF FACTS

A. Prior City Ordinances

The City has had an extensive rent control ordinance, known as the “Rent Stabilization Ordinance” (“RSO”), in place for many years. (*See* AA 781-803.) 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 AAGLA 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. Adoption of Ordinance No. 187763 – 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 restrict evictions for failure to pay rent, in order to 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, *emph. added.*) 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 “Eviction Threshold Ordinance”). The ordinance amended both the City’s RSO and its newly adopted Just Cause For Eviction Ordinance to provide that a landlord may only initiate an unlawful detainer action based on a tenant’s failure to pay rent “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 two months behind on their 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. Adoption of Ordinance No. 187764 – the Relocation Assistance Ordinance

On February 7, 2023, the City Council adopted Ordinance No. 187764 (the “Relocation Assistance Ordinance”), 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 “relocation assistance” 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 [was] \$8,077.00 (3 x \$2,222.00 + \$1,411.00.)” (AR 2221.)

Not coincidentally, the rent threshold set by the ordinance is equivalent to the maximum increase allowed for most residential properties under 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). (*See* Civil Code §§ 1947.12(a), (d).) As the LAHD explained in recommending such ordinance, the Relocation Assistance Ordinance is directed specifically at properties that are exempt from both the RSO and statewide rent control. (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.)

D. Procedural History

AAGLA filed this action on March 3, 2023, prior to the effective date of either of the ordinances at issue. (AA 24-32.) Intervenor Community Power Collective and InnerCity Struggle (collectively, “Intervenor”) thereafter sought to intervene, and

the parties entered into a stipulation to permit such intervention. (AA 209, 665.)

On November 8, 2023, the trial court issued a tentative ruling, indicating it intended to grant the writ as to the Eviction Threshold Ordinance, but deny it as to the Relocation Assistance Ordinance. (Reporter’s Transcript (“RT”), pp. 1-2.) On the same day, the trial court conducted a hearing on the petition for writ of mandate and took the matter under submission. (AA 896.) On January 17, 2024, the trial court issued an order denying the writ as to both ordinances. Notably, the trial court reached that decision despite its implicit acknowledgment that the City had enacted the ordinances at issue in order to sidestep State law restrictions.

With respect to the Eviction Threshold Ordinance, the trial court found the City had enacted the ordinance with the intent of extending the timeline for commencing evictions based on nonpayment of rent:

Respondents and Intervenors have not persuasively challenged Petitioner’s interpretation of this legislative history. That legislative history demonstrates the City expressed concerns about providing defaulting tenants more time to pay rent arrearages. LAHD reasoned additional time to trigger default in the payment of rent would allow defaulting tenants to perhaps obtain funds to avoid eviction.

(AA 942 [“Respondents and Intervenors do not dispute that a significant purpose of the ordinance was to provide tenants with more time to pay rental arrearages to avoid eviction.”].) It also agreed there was “no question the Eviction Threshold Ordinance

has a procedural impact.” (AA 945.) Nonetheless, the court ultimately concluded that because the ordinance was structured as a substantive limitation on the grounds for eviction, it was not preempted. (AR 946.)

Regarding the Relocation Assistance Ordinance, the trial court found that it was “Intended to Deter ‘Large Rent Increases’ in Units Exempt from Rent Control,” noting the “deterrent effect is clear from the plain language of the ordinance.” (AA 932.) The court further explained that the “legislative history for the Relocation Assistance Ordinance confirms the City *purposefully acted to deter* ‘high rent increases’ for ‘unregulated units’” and went as far as to observe that considered in “the abstract, the deterrent effect of the Relocation Assistance Ordinance *seemingly conflicts* with the Costa-Hawkins provisions permitting landlords to ‘establish the initial and all subsequent rental rates for a dwelling or a unit.’” (AA 933, *emph. added.*) Nevertheless, the trial court ultimately found the ordinance was not preempted because Costa-Hawkins allows cities to regulate evictions. (AA 937 [“the ordinance will have the intended effect of either deterring large rent increases that could result in a constructive eviction or, alternatively, mitigating the harms of the constructive eviction from a large rent increase. In either case, the ordinance serves as effective regulation of eviction.”].)

III. STATEMENT OF APPEALABILITY

The trial court entered a final judgment in favor of Respondents on February 21, 2024. (AA 921-922.) That final judgment is appealable pursuant to Code of Civil Procedure

section 904.1(a)(1). Appellants timely filed an appeal on February 27, 2024. (AA 947-948.)

IV. 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 Ass’n 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.” (*Johnson v. City & County 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.*, internal quotations omitted.) 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”].)

“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; *San Francisco Apartment Ass’n v. City & County of San Francisco* (2016) 3 Cal.App.5th 463, 477; *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (“Palmer”) (2009) 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*, 136 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].).)

Even if 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”].)

V. ARGUMENT

A. **The Eviction Threshold Ordinance is Preempted by the Unlawful Detainer Statutes.**

1. The Ordinance is an Improper Limitation on the Timing of Evictions.

“Unlawful detainer actions are authorized and governed by state statute.” (*Larson v. City & County of San Francisco* (2011) 192 Cal.App.4th 1263, 1297.) “The summary repossession procedure (Code Civ. Proc., §§ 1159–1179a) is intended to be a relatively simple and speedy remedy that obviates any need for self-help by landlords.” (*Birkenfeld v. City of Berkeley* (“*Birkenfeld*”) (1976) 17 Cal.3d 129, 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.” (Code Civ. Proc. § 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”].)

In *Birkenfeld*, the California Supreme Court explained that “[t]he purpose of the unlawful detainer statutes is procedural.” (*Birkenfeld, supra*, 17 Cal.3d 129, 149 [“The statutes implement the landlord’s property rights by permitting him to recover possession once the consensual basis for the tenant’s occupancy is at an end.”].) Thus, while the Court found that municipalities may generally impose limits on the substantive “grounds for eviction,” it held they may not modify the procedure established by the unlawful detainer statutes. (*Id.* at 149-151.) Accordingly, an ordinance requiring that a landlord obtain a “certificate of eviction” from the city’s rent control board before commencing the statutory proceeding was preempted. (*Id.* at 151 [noting that such requirement “would nullify the intended summary nature of the remedy”].)

Subsequent decisions have reiterated that local agencies may not alter the statutory timetables that apply to the landlord-tenant relationship. For example, in *Tri County Apartment Ass’n v. City of Mountain View* (“*Tri County*”) (1987) 196 Cal.App.3d 1283, the Court of Appeal considered whether a city ordinance that required a landlord provide a 60-day notice prior to increasing a tenant’s rent was preempted by a state law requiring at least 30 days’ notice before such a change. (*Id.* at 1289.) The respondent city argued that the ordinance was properly viewed as a form of rent control, since it had the effect of

temporarily stabilizing rent. (*Id.* at 1290-1291 [“the Ordinance stabilizes rent, with notice a way of implementing that purpose”].) The court disagreed, explaining it was appropriate to examine the legislative history to determine the city’s purpose in enacting the ordinance. (*Id.* at 1292 [“the setting in which legislation was adopted well may be helpful in interpreting the language used in the enactment”].) Based on such history, and the language of the ordinance, the court concluded the focus of the ordinance was “notification, not rent control.” (*Id.* at 1293.) Turning to state law, the court observed that “[l]andlord-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.” (*Id.* at 1296-1297 [citing Code of Civil Procedure section 1161 among other statutes].) The court thus concluded the city’s attempt to intrude upon those timetables was preempted: “the extensive scheduling provided by the Legislature reveals that ***the timing of landlord-tenant transactions is a matter of statewide concern not amenable to local variations.***” (*Id.* at 1298, *emph. added.*)

Similar to the city in *Tri County*, the City has argued that the Eviction Threshold Ordinance should not be viewed as interfering with the summary procedure set forth in the unlawful detainer statute, but rather as a substantive limit on the grounds for eviction. (AA 768-770.) The legislative history, however, tells another story. 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.) 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 nominally framed as a substantive limit on evictions, it was clearly intended to have a procedural effect. (*See 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”].)³

³ Examining the intent and effect of the ordinance is critical, because it is possible to characterize virtually *any* procedural regulation as substantive. (*See San Francisco Apartment Ass’n v. City and County of San Francisco* (2018) 20 Cal.App.5th 510, 516 [“the distinction between procedure and substantive law can be shadowy and difficult to draw in practice.”], internal quotations removed; *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].)

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. The ordinance does not eliminate nonpayment of rent as a ground for eviction, but merely delays the commencement of any such eviction. Because the City cannot require a landlord delay one month before commencing an eviction based on nonpayment (since that would be plainly preempted), it instead prohibits 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.⁴

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,

⁴ 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.)

and render them virtually meaningless. (*See National Meat Ass'n v. Harris, supra*, 565 U.S. at 464.) Because the purpose and effect of the ordinance is to delay evictions based on nonpayment it is properly viewed as a procedural limitation and is preempted.

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

“Although municipalities have power to enact ordinances creating substantive defenses to eviction [cite], such legislation is invalid to the extent it conflicts with general state law.”

(*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 697.) 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.* (“*Action Apartment*”) (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, “[u]nless 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, 853, n. 10, also quoting *Lindsey* [“Many expenses of the 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, the Eviction Threshold Ordinance 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 less 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 the Eviction Threshold Ordinance 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.

B. The Relocation Assistance Ordinance is Preempted by the Costa-Hawkins Act.

1. The Ordinance Improperly Restricts 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.” (AA 729 [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), *emph. added.*)⁵

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 Rent 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....

⁵ It is important to note that this right is distinct from the right to set the initial rental rate for nearly all dwelling units. That right, set forth in Civil Code section 1954.53, is commonly referred to as “vacancy decontrol.” (*Action Apartment Ass’n., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1237.)

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 [reversing trial court decision], *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.)⁶

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

⁶ Some years later, in 2017, the Legislature adopted legislation authorizing cities and counties to 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).)

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 [finding the ordinance “[c]learly” 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—the Relocation Assistance Ordinance 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. As the trial court found, “[t]he deterrent effect is clear from the plain language of the ordinance.” (AA 932.)

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 could be increased without triggering relocation assistance was 10%. The “fair market rent” for a two-bedroom unit was \$2,222, meaning the relocation assistance for a two-bedroom unit was \$8,077 (3 x \$2,222 + \$1,411). (AR 2221.) Thus, if the existing rent for a two-bedroom unit was \$2,000, the property owner could raise it to \$2,200 without risk; if they attempted to

instead raise it by 15% to \$2,300, however, they could 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.⁷ 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.

By ensuring rental increases above the threshold are not profitable, the ordinance undermines the very 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

⁷ While acknowledging the ordinance’s clear deterrent effect, the trial court suggested that a landlord forced to pay relocation benefits “would be free to reset the monthly rent for a new tenant” at a rate that “would offset the relocation assistance payment.” (AA 933, fn. 4.) That assumption ignores the reality that the amount a landlord can charge is constrained by the rental market. Expanding on the above hypothetical, if the going rate for a similar apartment is \$2,300 per month, a property owner cannot simply tack on another \$673 per month to offset \$8,077 in “relocation assistance” to a former tenant. For that reason it is nearly impossible to imagine a situation in which it would make economic sense for a landlord acting in their own best interest to raise rent above the threshold.

discouraging the construction of new rental housing and by encouraging property owners to take their units off the market. (See AA 729 [legislative history explaining “Proponents contend that a statewide new construction exemption is necessary to encourage construction of much needed housing units, which is discouraged by strict local rent controls.”].)

Some two decades later, in connection with the enactment of the Tenant Protection Act of 2019, the Legislature again recognized the unintended consequences that could follow from new rent restrictions, and thus again deliberately exempted certain categories of housing, like new construction, single family homes, and condominiums. (Civil Code § 1947.12(d).) As a floor analysis of the bill explained after addressing the arguments both for and against statewide rent control:

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.

(AA 747.)⁸ Thus, even in expanding rent control, the Legislature has been cautious to protect economic incentives to provide housing. (See also *San Francisco Apartment Ass’n v. City and*

⁸ Notably, the legislative history also shows the Legislature also deliberately avoided the City’s model in crafting statewide rent control. (See AA 747 [“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.”].)

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”].) What the City characterizes as a “loophole” in the law (AR 2220) is actually a carefully considered policy choice.

In creating a powerful economic incentive not to raise rents beyond the specified cap, ***the Relocation Assistance Ordinance disregards the careful balance struck by the Legislature and undercuts the core purpose of the Costa-Hawkins Act.*** In short, in deterring the very behavior the Legislature sought to protect, the ordinance 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.) It is thus preempted.

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

Despite its finding that “the deterrent effect of the Relocation Assistance Ordinance seemingly conflicts with the Costa-Hawkins provisions permitting landlords” to set rental rates, the trial court ultimately concluded it was saved by the fact that the Act (specifically Civil Code section 1954.52(c)) preserves local authority to “regulate or monitor the basis for eviction.” (AA 933, 937 [characterizing the ordinance as regulating “constructive evictions”].) In doing so, the trial court misconstrued the Act.

As explained by the California Supreme Court, in construing the nearly identical savings clause set forth in Civil

Code section 1954.53(e), the reason for such clauses is to ensure that local governments have the authority to prevent “pretextual” evictions that might otherwise be incentivized by Costa-Hawkins:

In August 1995, California enacted the Costa-Hawkins Rental Housing Act ([cite]; Costa-Hawkins), which established “what is known among landlord-tenant specialists as ‘vacancy decontrol,’ declaring that ‘[n]otwithstanding any other provision of law,’ all residential landlords may, except in specified situations, ‘establish the initial rental rate for a dwelling or unit.’ [Cites.] The effect of this provision was to permit landlords “to impose whatever rent they choose at the commencement of a tenancy.” [Cite.] The Legislature was well aware, however, that such vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates. [Cite.] Accordingly, the statute expressly preserves the authority of local governments “to regulate or monitor the grounds for eviction.” (Civ. Code, § 1954.53, subd. (e).)

(*Action Apartment, supra*, 41 Cal.4th 1232, 1237–1238.)

Accordingly, the savings clause was “not intended to give local ordinances additional force or to expand the authority of local governments,” but rather serves as “a strong statement that the state law establishing vacancy decontrol is not meant to affect the authority of local governments to monitor and regulate the grounds for eviction, ***in order to prevent pretextual evictions.***” (*Id.* at 1245, emph. changed, quoting *Bullard, supra*, 106 Cal.App.4th at 492.)

Similarly, in *Apartment Ass’n of Los Angeles County, Inc. v. City of Los Angeles* (2009) 173 Cal.App.4th 13, the Court of Appeal relied on the savings clause in section 1954.52(c) in holding Costa-Hawkins was not intended to override “a statute

that allows local entities to enact ordinances that discourage landlords from evicting tenants under the *false pretense* that they are going out of business....” (*Id.* at 18 [explaining statute was “designed to thwart efforts by landlords to circumvent rent control”], *emph. added, see also id.* at 24-25 [discussing *Action Apartment*].)

Here, the Relocation Assistance Ordinance is not needed to prevent pretextual evictions intended to circumvent rent control; to the contrary, the ordinance is specifically directed at housing units that are already entirely exempt from rent control. Rather than regulate the basis for evictions to ensure that landlords cannot circumvent rent control, consistent with the intent of the savings clause, the City is attempting to apply rent control to the very units the Legislature has exempted from rent restrictions.

Moreover, on its face, the ordinance does not regulate evictions, but rather applies only where a tenant “elects to relinquish their tenancy” following a rent increase. (AR 623 [Section 165.09.A].) In contrast, the ordinance clearly regulates 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].)

The trial court apparently assumed a “constructive eviction” occurs whenever a tenant elects to move out following a proposed rent increase, but a constructive eviction requires some degree of intent and/or wrongful action on the part of the landlord. (*See Kulawitz v. Pacific Woodenware & Paper Co.* (1944) 25 Cal.2d 664, 670 [“Any interference by the landlord by which the tenant is deprived of the beneficial enjoyment of the premises amounts to a constructive eviction if the tenant so elects and surrenders possession.”]; *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 925-926 [“Abandonment of premises by the tenant within a reasonable time after the wrongful act of the landlord is essential to enable the tenant to claim a constructive eviction.”]; *Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261, 292 [similarly defining “constructive eviction”].)⁹ A landlord who merely seeks to charge market rent

⁹ Other jurisdictions have similarly defined “constructive eviction” to require a wrongful act done with the express or implied intention of interfering with the tenant’s enjoyment of the premises. (*See, e.g., Stinson, Lyons, Gerlin & Bustamante, P.A. v. Brickell Bldg. 1 Holding Co.* (11th Cir. 1991) 923 F.2d 810, 815 [“the Florida Supreme Court defined a constructive eviction as a wrongful act by the landlord which, though not amounting to an actual eviction, is done with the express or implied intention of interfering with the tenant’s beneficial enjoyment of the leased property”]; *Barash v. Pennsylvania Terminal Real Estate Corp.* (1970) 26 N.Y.2d 77, 83 [“constructive eviction exists where, although there has been no physical expulsion or exclusion of the tenant, the landlord’s wrongful acts substantially and materially deprive the tenant of the beneficial use and enjoyment of the premise”].)

for an exempt unit—as expressly permitted by Costa-Hawkins—is not engaged in eviction, constructive or otherwise.

Moreover, even assuming *arguendo* a tenant who elects to leave as a result of a legal, good-faith rent increase could be fairly described as having been constructively evicted, the ordinance still would not be a permissible way to regulate the “basis for eviction” under Civil Code section 1954.52(c), because the ordinance is designed to deter the very behavior protected by the Act, and thus “would subvert the purpose of the Costa-Hawkins Act” if not invalidated. (*See Bullard*, 106 Cal.App.4th at 491–492.) Indeed, the ordinance is even more counter to the Act than that invalidated in *Bullard*, where the city had a legitimate reason to be concerned about pretextual evictions but adopted an ordinance that was not tailored to that purpose. (*Id.* [noting the ordinance would apply “to landlords acting in good faith as well as unscrupulous landlords”].) Here, as discussed above, there is no economic incentive to evict existing tenants, and thus, the deterrent effect of the ordinance is not merely overly broad, but entirely directed at behavior the City does not have a legitimate interest in regulating. (*Cf. Mak v. City of Berkeley Rent Stabilization Bd.* (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”]; *SFAA 2022, supra*, 74 Cal.App.5th at 291 [upholding ordinance that barred landlords from seeking “to recover possession” of units exempt 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”].)

In summary, the Relocation Assistance Ordinance is rent control under another name. (*See Tri County Apartment Ass’n, supra*, 196 Cal.App.3d at 1292 [noting that rent control may take many different forms].) 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.) The ordinance is no less hostile to the right to raise rent afforded by the Act merely because it purports to regulate the foreseeable effect of permissible increases (*i.e.* that some tenants will choose to leave rather than pay higher rent), 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].)

Moreover, 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 purported “constructive evictions” that are the result of good-faith rent increases that the City is statutorily prohibited from restricting.¹⁰ Therefore, Ordinance No. 187764 is

¹⁰ If the City believes there is a need to regulate actual constructive evictions caused by bad-faith rent increases, *i.e.*,

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.)


VI. CONCLUSION

AAGLA respectfully requests that this Court reverse the trial court decision and grant the petition for writ of mandate as to each of the two ordinances in question.

Dated: May 24, 2024

Respectfully submitted

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artificially high rents intended to coerce 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.)

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed brief of Appellant APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC. dba APARTMENT ASSOCIATION OF GREATER LOS ANGELES is produced using 13-point Roman type including footnotes and contains approximately 8,131 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: May 24, 2024

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PROOF OF SERVICE

*(Apartment Association of Los Angeles, et al v. City of Los Angeles
LASC, Case No. 23STCP00720
Court of Appeal, Second Appellate District, Case No. B336701)*

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 May 24, 2024, I served on the interested parties in said action the within:

APPELLANT’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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(BY E-MAIL) On the date stated above, I caused the document(s) described above to be served electronically via **True Filing** on the recipients listed on the attached service list.

Executed on May 24, 2024, 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
(Type or print name)

Pamela J. Carvalho
(Signature)

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*Appellate Court
Designation: Resondent*
Trial Designation:
Intervenors
**COMMUNITY POWER
COLLECTIVE
and INNERCITY
STRUGGLE**

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Appellate Court Designation:
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Trial Court Designation:
Defendants
**THE CITY OF LOS ANGELES
AND CITY COUNCIL FOR
THE CITY OF LOS ANGELES**

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Dept. 86
Los Angeles Superior
Court
Stanley Mosk Courthouse
111 N. Hill Street –
Dept. 86 , Room 836
Los Angeles, CA 90012

Case No. 23STCP00720

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350 McAllister Street
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Tel: 415.865.7000

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