

Case No. B336071

**IN THE COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 7**

**APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC. dba
APARTMENT ASSOCIATION OF GREATER LOS ANGELES,**
Plaintiff and Appellant,

v.

**CITY OF LOS ANGELES; COUNCIL OF THE CITY OF LOS
ANGELES,**
Defendants and Respondents.

Appeal from the Los Angeles County Superior Court
Case No. 23STCP00720
Hon. Michell L. Beckloff

RESPONDENT'S BRIEF

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CERTIFICATE OF INTERESTED PARTIES

Case Name: *AAGLA v. City of Los Angeles, et al.*

Please check the applicable box:

There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.

Interested entities or parties are listed below:

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

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INTRODUCTION

When the COVID-19 pandemic hit in 2020, the City of Los Angeles instituted temporary tenant protections to prevent impacted residents from falling into homelessness. As those protections approached their end-date, the City passed two additional ordinances designed to help tenants stay housed: the Eviction Threshold Ordinance and Relocation Assistance Ordinance. The former creates a threshold for the amount of unpaid rent that can serve as a ground for eviction. The latter requires landlords to pay relocation assistance when a tenant relinquishes their tenancy due to a rent increase greater than 10 percent. Apartment Association of Los Angeles County, Inc. (AAGLA) sued the City, arguing state law preempts these ordinances. The trial court denied AAGLA's petition for writ of mandate, and the association appealed.

On appeal, as below, AAGLA has not met its burden of showing that either ordinance is preempted. Although AAGLA raises a facial challenge to the Eviction Threshold Ordinance, AAGLA argues the ordinance only conflicts with state law as applied to tenants who pay below fair market rent. Moreover, AAGLA has not shown that the Eviction Threshold Ordinance's incidental procedural impact—establishing a minimum damages requirement before a landlord can initiate an unlawful detainer proceeding—conflicts with state law governing the procedure for

evictions. Case law establishes that substantive limits on evictions, like a threshold for unpaid rent sufficient to trigger an eviction, do not conflict with state procedural rules.

AAGLA has also not overcome the presumption against preemption for the Relocation Assistance Ordinance. This ordinance does not prohibit rent increases but mitigates the harm caused by constructive evictions when a landlord raises the rent over 10 percent. And while AAGLA argues the Costa-Hawkins Rental Housing Act's vacancy decontrol provisions—authorizing landlords to establish the rent for units built after 1995—preempt the law, the Act expressly allows local governments to regulate evictions. Mitigating the harm of acute rent increases does not qualify as rent control such that this ordinance presents any conflict with the Costa-Hawkins Act.

For these reasons, the City respectfully requests that this Court affirm the trial court's denial of AAGLA's petition for writ of mandate.

FACTUAL AND PROCEDURAL BACKGROUND

A. The COVID-19 health crisis prompted the City and State to adopt laws addressing housing displacement.

The City has regulated residential rents and evictions for decades through the Rent Stabilization Ordinance (RSO; LAMC §§ 151.00 through 151.34). The RSO protects tenants from

excessive rent increases and requires evictions to be based on “just cause.” (LAMC §§ 151.04, 151.06 [rent increases], 151.09.A. [evictions].) If a landlord seeks to evict a tenant for a “no-fault” reason, the RSO requires the payment of relocation assistance. (*Id.*, § 151.09.G.) The RSO typically does not apply to rental units built after 1978. (*Id.*, § 151.02 [Rental Units (6)].)

In 2020, faced with the COVID-19 public health crisis, the City adopted ordinances suspending residential evictions when the tenant was not “at fault” or when a tenant affected by COVID-19 failed to pay rent. (Administrative Record (AR) 16.) These emergency regulations “were designed to prevent unnecessary housing displacement and to prevent individuals from falling into homelessness due to COVID-19 causing serious impact on City renters’ ability to pay rent due to loss of income due to illness, school/child care closures, loss of employment, or reduced hours.” (AR 13.)

In 2019, California enacted its first comprehensive anti-rent gouging and eviction control law—the Tenant Protection Act of 2019—adding sections 1947.12 and 1946.2 to the Civil Code. (*2710 Sutter Ventures, LLC v. Millis* (2022) 82 Cal.App.5th 842, 864.) Section 1947.12 prohibits increases over 10 percent, referred to as “rent gouging.” (Civ. Code § 1947.12 subd. (m)(1).) Section 1946.2, subdivision (a) requires just cause for evictions. These provisions apply to units older than 15 years, in effect

extending the RSO's just cause eviction protections to City rental units built after 1978 and before 15 years ago. (Civ. Code, §§ 1946.2, subd. (e)(7), 1947.12, subd. (d)(4).)

In 2022, as the City's temporary eviction control measures approached their end-date, the Los Angeles Housing Department (LAHD) reported that "[t]he emergency measures adopted during the pandemic dramatically reduced the number of evictions filed and provided a safety net from displacement and homelessness for thousands of renters." (AR 2221.) Due to concern that the end of these regulations would cause a sharp increase in evictions, the City considered enacting additional tenant protections. (Appellant's Appendix (AA) 925.)

In January 2023, the City adopted the "Just Cause for Eviction Ordinance" extending "just cause eviction protections" to rental housing units not subject to the RSO and providing for relocation assistance for no-fault evictions. (AA 925; AR 303-316.) The LAHD also recommended the City review two new protections creating "limitations on evictions for failure to pay rent" and providing "relocation assistance for economic displacement." (AR 30.)

B. When the COVID-19 tenant protections ended, the City adopted Ordinance 187763 establishing a threshold of unpaid rent sufficient to trigger an eviction.

On February 3, 2023, the City Council adopted the Eviction Threshold Ordinance (Ordinance No. 187763) amending the RSO and the Just Cause Ordinance by limiting evictions for failure to pay rent to cases where the amount of rent owed is more than “one month of fair market rent.”¹ (AR 470.) The LAHD reasoned that eviction is “an extraordinary legal remedy that should not be used as a debt collection tool to recover relatively small sums.” (AA 519.) LAHD attached to its staff report a letter from a coalition of housing advocates recognizing that many tenants who experience sudden losses in income are displaced while waiting for government assistance that would cure the rent default. (AA 610 [“Over a third of adults . . . report that they would need to borrow money or sell something in order to cover an unexpected \$400 expense.”].) “Reasonable limits on eviction for failure to pay will dramatically increase housing stability for low-income tenants” as “[c]ommon situations that can lead to eviction can often be remedied by allowing tenants time to get back on their feet.” (AA 610.) “By establishing a monetary threshold for

¹ The ordinance ties this amount to the fair market rent “for the Los Angeles metro area set annually by the U.S. Department of Housing and urban Development for an equivalent sized rental unit as that occupied by the tenant.” (AR 472.)

eviction for nonpayment, tenants that experience a temporary loss of income or unexpected expense will be far less likely to lose their housing and landlords will ultimately be made whole through voluntary repayment or small claims court judgment.” (AA 610.)

C. The City also passed Ordinance 187764 providing relocation assistance for economic displacement.

On February 7, 2023, the City adopted the Relocation Assistance Ordinance (Ordinance No. 187764) requiring payment of relocation assistance when a tenant “elects to relinquish their tenancy” following a proposed rental increase “that exceeds the lesser of (1) the Consumer Price Index – All Urban Consumers, plus five percent, or (2) ten percent.”² (AR 623.) “[T]he relocation assistance amount due under [the ordinance] shall be three times the fair market rent in the Los Angeles metro area for a rental unit of a similar size as established by the United States Department of Housing and Urban Development plus \$1,411 in moving costs.” (AR 623.) The LAHD estimated that this amount

² For ease of reference, we hereinafter refer to the rental increase addressed by this ordinance as one in excess of ten percent, while acknowledging that, in practice, some calculation is required to determine whether a proposed rental increase exceeds the lesser of the Consumer Price Index – All Urban Consumers, plus five percent, or ten percent.

would cover a displaced tenant’s first and last month’s rent plus a security deposit and moving expenses. (AA 518–519.)

In preparing this ordinance, LAHD reasoned that while the Tenant Protection Act already “limits annual allowable rent increase to 10% [,] this does not apply for rentals built less than 15 years ago. These tenants can be economically displaced by large rent increases without any relocation assistance.” (AR 30; AA 517.) “Additional protections are needed to close a loophole that allows tenants in non-RSO units to be forced out through large rent increases amounting to a constructive eviction of the tenant, with no allowance for relocation.” (AA 518.) LAHD attached to its staff report a letter from a coalition of housing advocates asserting that, “Requiring landlords to provide tenants financial assistance if the tenant is displaced due to a large rent increase will greatly increase the likelihood that displaced tenants find adequate housing and can avoid homelessness” (AA 613.)

D. AAGLA petitioned for writ of mandate challenging the Eviction Threshold and Relocation Assistance ordinances.

On March 3, 2023, AAGLA filed a verified petition for writ of mandate and complaint for declaratory relief facially challenging the two ordinances. (AA 24.) The petition alleged the Eviction Threshold Ordinance conflicts with the Code of Civil

Procedure section 1161’s procedure providing that a landlord may serve a three-day notice to pay rent or quit after rent becomes due. (AA 28:6-7.) AAGLA asserted that by “regulat[ing] the timing of such notices, [the ordinance] directly conflicts with state law by prohibiting landlords, under many if not most circumstances, from serving the notice authorized by state law immediately after rent becomes due.” (AA 28:7-11.) As for the Relocation Assistance Ordinance, the petition alleged that the Costa-Hawkins Rental Housing Act—authorizing landlords to establish the rent for units built after 1995—preempts the ordinance. (AA 29.) According to AAGLA, “while the ordinance does not directly impose a hard limitation or ‘cap’ on the amount rent can be increased, it accomplishes the same purpose by financially penalizing rental housing providers who attempt to raise rents above the specified limits.” (AA 29:6-8.) AAGLA’s Petition sought to rescind or bar enforcement of these statutes for all purposes. (AA 30-31.)

E. The trial court denied AAGLA’s petition.

The trial court denied the petition, finding no preemption. The court concluded the Eviction Threshold Ordinance established a substantive defense to eviction and, therefore, did not conflict with Code of Civil Procedure section 1161’s unlawful detainer procedures:

The ordinance regulates the trigger for a landlord’s right to initiate the summary unlawful detainer procedure. Once the substantive grounds for eviction have been established – the nonpayment of a threshold amount of rent – the landlord may initiate the procedural remedy of the eviction process. (AA 940.)

The trial court further found the Relocation Assistance Ordinance “serves as effective regulation of eviction”: “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.” (AA 937.) Citing to the Costa-Hawkins Act’s express authorization allowing local authorities to “regulate or monitor the basis for eviction,” the trial court held, “Petitioner has not met its burden of demonstrating [the ordinance] is preempted by Costa-Hawkins.” (AA 937–938.)

AAGLA timely appealed. (AA 947.)

ARGUMENT

I. General Principles of Preemption

“State preemption of local legislation is established by article XI, section 7 of the California Constitution, which provides that ‘[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.’ ” (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1242 (*Action Apartment*)). “Well-established under the California Constitution

is the principle that ‘a municipality has broad authority, under its general police power, to regulate the development and use of real property within its jurisdiction to promote the public welfare.’ [Citation.] Exercising these police powers, local governments can interfere in the private housing market” (*City & Cnty. of San Francisco v. Post* (2018) 22 Cal.App.5th 121, 133–134 (*Post*).)

“The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption. [Citation.]” (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 (*Big Creek*).) When “local government regulates in an area over which it traditionally has exercised control, such as land use legislation, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute.” (*Post, supra*, 22 Cal.App.5th at pp. 129–130 [emphasis original] [cleaned up]; see also *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 Cal.4th 729, 755 (*Riverside*) [“The presumption against preemption is additionally supported by the existence of significant local interests that may vary from jurisdiction to jurisdiction.”].)

California recognizes three types of state law preemption: duplicative, contradictory, and field preemption. (*Sherwin–Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897

(*Sherwin-Williams*); cf. *Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935 [“There are four species of federal preemption: express, conflict, obstacle, and field.”].) As explained by our Supreme Court, a conflict exists with state law “if the local legislation ‘duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.’” (*Sherwin-Williams*, p. 897 [cleaned up].) Duplication exists when local legislation “is coextensive therewith...” (*Big Creek, supra*, 38 Cal.4th at p. 1150.) The “‘contradictory and inimical’ form of preemption” applies when “the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands. [Citations.] Thus, no inimical conflict will be found where it is reasonably possible to comply with both the state and local laws.” (*Riverside, supra*, 56 Cal.4th at p. 743 [emphasis added].) Lastly, a “local ordinance *enters a field fully occupied* by state law in either of two situations—when the Legislature ‘expressly manifest[s]’ its intent to occupy the legal area or when the Legislature ‘impliedly’ occupies the field...” (*O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068 [emphasis original].)

“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* (2006) 136 Cal.App.4th 119, 129 (AAGLA).)

II. The Code of Civil Procedure does not preempt the Eviction Threshold Ordinance.

AAGLA raises a facial preemption challenge to the Eviction Threshold Ordinance, arguing that the ordinance conflicts with Code of Civil Procedure section 1161's unlawful detainer procedures. (See AA 27-28.) In particular, subdivision (2) of the statute provides that a landlord may serve a tenant with a three-day notice to pay rent or quit the premises after default on the payment of rent. AAGLA asserts this state procedure preempts the Threshold Eviction Ordinance because the ordinance indirectly "regulates the timing of" a notice to pay rent or quit "by requiring past due rent to exceed a threshold amount before a landlord may serve" such a notice. (AA 28:8.) In AAGLA's view, the ordinance, thus, "directly conflicts" with the Code of Civil Procedure section 1161(2). (*Ibid.*; App. Op. Brief (AOB) 19.) AAGLA's challenge fails for two reasons: (1) a facial constitutional challenge requires AAGLA to show that a conflict exists as to all cases (or at least the great majority of cases), and here, AAGLA only attacks the ordinance as applied to tenants whose rent is less than the fair market rent; and (2) AAGLA has not shown that the ordinance "contradicts" or is "inimical" to the Code of Civil Procedure such that the statute preempts the ordinance.

A. *AAGLA has not shown the ordinance is facially invalid because AAGLA challenges the Eviction Threshold Ordinance only as applied to tenants who pay less than fair-market rent.*

AAGLA’s petition asserts the Eviction Threshold Ordinance on its face conflicts with Code of Civil Procedure section 1161, not that the ordinance is invalid “as applied” to the particular circumstances of its members. (See, *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 (*Tobe*) [an “as applied challenge” seeks relief for the provision’s application to a particular class of persons].) Yet AAGLA’s opening brief does not argue that the text of the ordinance conflicts with Section 1161, but rather that the ordinance presents a conflict as to tenants who pay below fair market rent. This argument does not show the ordinance is facially invalid.

A plaintiff bears a “heavy burden” in a facial challenge based on state law preemption. (See *Browne v. Cnty. of Tehama* (2013) 213 Cal.App.4th 704, 722 [plaintiffs failed to meet “their ‘heavy burden’ in a facial challenge to the Ordinance” based on state law preemption].) The standard for a facial challenge to statutes and local ordinances is unsettled. As our Supreme Court in *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107 (*T-Mobile*) explained while addressing a claim of state law preemption:

“Ruling on a facial challenge to a local ordinance, the court considers the text of the measure itself, not its application

to any particular circumstances or individual. ... There is some uncertainty regarding the standard for facial ... challenges to statutes and local ordinances. [Citation.] Some cases have held that legislation is invalid if it conflicts in the generality or great majority of cases. [Citation.] Others have articulated a stricter standard, holding that legislation is invalid only if it presents a total and fatal conflict with applicable...prohibitions. [Citations.]” (*T-Mobile, supra*, 6 Cal.5th at p. 1117, fn. 6; see also *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1126 [stating that the strictest requirement for establishing facial unconstitutionality – that the statute “inevitably pose[s] a present total and fatal conflict with applicable constitutional prohibitions” – contrasts with “the more lenient standard sometimes applied,” a conflict “in the *generality or great majority* of cases.”].) (*Id.*, p. 1117, fn. 6.)

T-Mobile declined to resolve this uncertainty, reasoning that the plaintiffs’ claim failed under either standard. So, too, does AAGLA’s claim.

AAGLA’s challenge amounts to a complaint that the Eviction Threshold Ordinance will improperly delay “the eviction process” “except for units that are above the fair-market rent.” (AOB 23.) For those tenants who pay more than the fair-market rent, a failure to pay one-month’s rent will exceed the ordinance’s threshold, immediately triggering a landlord’s right to serve a three-day notice. In essence, AAGLA argues that if a tenant leases a unit for at or below fair-market rent, then fails to pay their rent, *and* during the subsequent month the tenant still fails to pay the overdue rent, *then* the landlord will have suffered a

delay in its right to initiate eviction proceedings. As for those tenants for whom the additional month enabled them to obtain the help needed to pay their rent (e.g., due to the arrival of unemployment benefits), the ordinance will not delay the initiation of eviction proceedings because, as the City intended, the tenant will have “avoided” eviction altogether by making payments to the landlord. AAGLA does not challenge the elimination of an unlawful detainer proceeding remedy as to those tenants, but rather, only targets the “delay” of the initiation of the unlawful detainer remedy as to below-fair-market-rent tenants who still do not pay their rent even after a second month of rent due accrues.

AAGLA’s argument that the Threshold Eviction Ordinance will cause delay under these circumstances is insufficient to prove facial unconstitutionality. To prevail in a facial challenge, “it is not enough to show that the statute ‘might operate unconstitutionally under some conceivable set of circumstances.’ [Citation.]” *AIDS Healthcare v. Bonta* (2024) 101 Cal.App.5th 73, 81 (*AIDS Healthcare*); citing *U.S. v. Salerno* (1987) 481 U.S. 739, 745; see also *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 264 [a plaintiff must do more than argue “that in some future hypothetical situation...problems may possibly arise as to the particular application of the [law]”].) Instead, the plaintiff must show that the ordinance “inevitably

pose[s] a present total and fatal conflict with applicable...prohibitions,” or at least, “in the generality or great majority of cases.” (*Guardianship of Ann S.*, *supra*, 45 Cal.4th at p. 1126.) Here, AAGLA has not tried to show such a blanket conflict exists.

As AAGLA asserts that the Threshold Eviction Ordinance will only delay eviction proceedings brought against units rented out for less than fair-market rent when those tenants remain in arrears once the ordinance’s threshold is reached, AAGLA has not shown that the Threshold Eviction Ordinance conflicts with Code of Civil Procedure section 1161 in the “great majority of cases”—let alone in all cases—such that the ordinance is facially unconstitutional. (*T-Mobile*, *supra*, 6 Cal.5th at p. 1117, fn. 6.)

B. *AAGLA has not shown the Eviction Threshold Ordinance conflicts with Code of Civil Procedure section 1161.*

AAGLA argues that state law’s summary procedure for unlawful detainer proceedings preempts the Threshold Eviction Ordinance. In AAGLA’s view, the monetary threshold for evictions based on nonpayment of rent “delays the commencement” of an unlawful detainer proceeding, and therefore, impermissibly “interfer[es] with the timeline established by the state unlawful detainer law.” (AOB 8.) AAGLA is incorrect. The Threshold Eviction Ordinance’s incidental and

occasional procedural impact on unlawful detainer proceedings as to units with below fair-market rent does not pose a conflict with Code of Civil Procedure section 1161 (Section 1161).

1. Cities may regulate substantive grounds for eviction.

Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129 (*Birkenfeld*) sets forth the legal framework for analyzing a preemption challenge based on the state’s unlawful detainer statutes. *Birkenfeld* explained that unlawful detainer law and local eviction regulations serve different purposes: “The purpose of the unlawful detainer statutes is procedural,” providing a “statutory remed[y] for recovery of possession and unpaid rent,” while eviction regulations limit “the landlord’s property rights under the police power[.]” (*Id.* at p. 149.) Thus, while local governments may eliminate particular grounds for eviction “giving rise to a substantive ground of defense in unlawful detainer proceedings,” governments may not “procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes.” (*Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 753–754 (*Rental Housing*) citing *Birkenfeld*, p. 149.)

Birkenfeld applied this framework to a local ordinance limiting the grounds upon which a landlord may bring an unlawful detainer action. (*Birkenfeld, supra*, 17 Cal.3d at p. 147.)

The landlord plaintiffs asserted the regulation conflicted with the portion of Code of Civil Procedure section 1161 providing that a tenant's continued possession after the tenancy expires qualifies as an unlawful detainer. (*Ibid.*) The local ordinance prohibited the eviction of a tenant in good standing at the tenancy's expiration absent specified circumstances. (*Ibid.*) *Birkenfeld* found no conflict, reasoning that the city's limitation of the substantive grounds for eviction was distinct from the state's procedural scheme for unlawful detainers. (*Id.* at p. 148.)

Likewise, *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644 (*Fisher*) held that Code of Civil Procedure section 1161 did not preempt a local ordinance allowing tenants to withhold rent when a landlord violated the local rent ceiling or failed to register rental units. (*Id.* at p. 705.) Even though the statute provides that a landlord may evict for nonpayment of rent, the local law's elimination of "one ground for eviction" did not "directly conflict with" the statute. (*Id.* at p. 707.) Citing *Birkenfeld*, the Court held the municipality's creation of a substantive defense to eviction does not conflict with state law's procedural mechanism for recovering possession of property. (*Ibid.*)

Courts have applied *Birkenfeld* and *Fisher* to uphold local regulations that place "substantive limits on otherwise available grounds for eviction under section 1161," including those that impact when a landlord may initiate an unlawful detainer action.

(*Rental Housing, supra*, 17 Cal.App.4th at p. 765.) For example, *Rental Housing* held that Section 1161 did not preempt an ordinance requiring landlords to provide “notice and an opportunity to cure any offending conduct” before they can initiate an unlawful detainer action. (*Id.* at p. 762.) The Court reasoned that,

These notice requirements [] regulate the substantive grounds for eviction, rather than the procedural remedy available to the landlord once grounds for eviction have been established. If the tenant ceases the offending conduct once notified by the landlord, there is no good cause to evict. The requirements for a warning notice are therefore not preempted by the unlawful detainer statutes. As the court stated in *Birkenfeld*, a city, pursuant to its police power, may place substantive limitations on otherwise available grounds for eviction, but not procedural ones. (*Rental Housing, supra*, 17 Cal.App.4th at p. 763.)

Likewise, *San Francisco Apartment Association v. City & County of San Francisco* (2018) 20 Cal.App.5th 510 (*SFAA I*) upheld a regulation prohibiting no-fault evictions of tenant households with a child or “educator” during the school year. (*Id.* at p. 513.) Although the law “restrict[s] the timing of evictions of children and educators,” the ordinance did not conflict with Section 1161. (*Id.* at p. 517.) The Court noted that, as in *Rental Housing*, the requirement “imposed an inherent delay on a landlord’s unlawful detainer remedy.” (*Id.* at p. 518.) But because “this procedural requirement was imposed in order to ‘regulate

the substantive grounds’ for certain evictions ... rather than the procedural remedy available to the landlord once grounds for eviction have been established,” there was no conflict with Section 1161. (*Ibid.*) In conclusion, the ordinance did not “impose any procedural requirements,” but “simply has a procedural *impact*” which, “like the procedural requirement in *Rental Housing*, is necessary to ‘regulate the substantive grounds’ of the defense it creates.” (*Ibid.* [emphasis original.])

2. The Eviction Threshold Ordinance is a proper substantive regulation of evictions.

As in *Rental Housing* and *SFAA I*, the Threshold Eviction Ordinance is a permissible substantive limit on the otherwise available grounds for eviction under Section 1161. The ordinance’s procedural impact—delay of the initiation of some unlawful detainer actions—is necessary to regulate the substantive grounds of the defense it creates—that a “just cause” for eviction does not exist before reaching a monetary threshold of nonpayment of rent. If a tenant owes less than the monetary threshold of rent, they belong “to this protected group” that has “a substantive defense to eviction”; if they owe more than the threshold, they “no longer belong to the group” and “no longer have a substantive defense.” (*SFAA I, supra*, 20 Cal.App.5th at p. 518.) And, “[i]f the tenant ceases the offending conduct” by paying

the rent due, “there is no good cause to evict.” (*Rental Housing, supra*, 17 Cal.App.4th at p. 763.)

AAGLA argues that the purpose of the Threshold Eviction Ordinance *is* procedural, claiming the City intended “to delay evictions.” (AOB 8.) In support, AAGLA cites to the trial court’s conclusion that there is no “dispute that a significant purpose of the ordinance as to provide tenants with more time to pay rental arrearages to *avoid* eviction.” (AA 942 (emphasis added).) But “avoid” is not equivalent to “delay.” The City enacted the Threshold Eviction Ordinance in response to evidence that tenants who experience sudden losses in income could *avoid* eviction if given more time to seek help. (See AR 2221 [“if a renter loses their employment and applies for unemployment benefits, on average it takes six weeks to receive the assistance [when] the eviction process may [already be] underway.”].) In other words, the point is to eliminate the basis for evictions, not delay them.

As stated by the trial court, the Eviction Threshold Ordinance “regulates the trigger for a landlord’s right to initiate the summary unlawful detainer procedure”: when unpaid rent falls below the threshold, a tenant has a substantive defense to eviction. (AA 940.) And as illustrated in *SFAA I* and *Rental Housing*, any substantive defense will have a procedural impact: it will change whether a landlord may initiate unlawful detainer

proceedings at all. But a procedural impact is not a “procedural requirement” that conflicts with Section 1161. (*SFAA I, supra*, 20 Cal.App.5th at p. 518.) Although Section 1161 “generally requires a landlord to provide three days’ notice with an opportunity to cure before terminating a tenancy for nonpayment of rent[,] ... it does not preclude a longer notice period, and our courts have long recognized a tenancy may be subject to a longer notice period or multiple notice requirements that do not conflict. [Citations.]” (*Campbell v. FPI Mgmt., Inc.* (2024) 98 Cal.App.5th 1151, 1165 [rejecting the argument that an overlapping federal requirement of 30-days notice preempted Section 1161’s 3-day notice requirement because property owners could comply with both requirements].)

The case on which AAGLA primarily relies, *Tri County Apartment Ass’n v. City of Mountain View* (1987) 196 Cal.App.3d 1283 (*Tri County*), is distinguishable. *Tri County* held that state law providing 30-days’ notice for a rent increase preempted a city ordinance requiring 60-days’ notice. (*Id.* at p. 1293.) The Court rejected the city’s argument that the 60-day notice requirement should be viewed as rent control because it had the impact of temporarily stabilizing rent, concluding the ordinance’s focus was “notification, not rent control.” (*Ibid.*) According to AAGLA, *Tri County* shows the Eviction Threshold Ordinance should be viewed as “interfering with the summary procedures set forth in

the unlawful detainer statute” instead of “a substantive limit on the grounds for eviction.” (AOB 21.) But here, unlike in *Tri County*, the Threshold Eviction Ordinance’s focus is eviction control, not a procedural limitation: the ordinance sets a substantive trigger for unlawful detainer proceedings that, in some cases, will have a procedural impact, temporarily delaying the filing of an unlawful detainer action until the trigger is met.

As stated in *Roble Vista Asscs. v. Bacon* (2002) 97 Cal.App.4th 335 (*Roble Vista*), where the court considered an ordinance that established a substantive defense to eviction, *Tri County* is “readily distinguishable” when an ordinance “does not specify the amount of notice that must be given to terminate a tenancy.” (*Id.* at p. 338.) An ordinance that has “an *impact* on the timing of landlord-tenant transactions” does not conflict with Section 1161 when that impact “is incidental to the regulation of lease terms, an area ... within the municipality’s police powers.” (*SFAA I, supra*, 20 Cal.App.5th at p. 521 citing *Roble Vista, supra*, 97 Cal.App.4th at p. 341 (emphasis original).)

Furthermore, as the trial court here found, *Tri County* is also distinguishable because it “primarily involve[d] state statutes other than the unlawful detainer statutes, and therefore [does] not employ the procedural-substantive framework established in *Birkenfeld*. Instead [it] stand[s] for the general proposition that

various state laws preempt the field of the timing of landlord-tenant transactions.” (AA 945.)

Finally, AAGLA argues that, if the Eviction Threshold Ordinance is upheld, the City could “decide to prohibit evictions for non-payment altogether.” (AOB 25.) This hypothetical situation is not before the Court. (See *Fisher, supra*, 37 Cal.3d at p. 691, fn. 52 [declining to address a question that “is not before us at this time”]; see also *AIDS Healthcare, supra*, 101 Cal.App.5th at p. 94 [“the possibility that a local legislative body might [take some action] in the future is not a ripe challenge *today* and also provides no basis for striking down [a current ordinance] on its face”].) In any case, if a city attempted to outright bar nonpayment of rent as a basis for eviction, landlords could invoke their constitutional guarantee of a “just and reasonable return on their property.” (*Birkenfeld, supra*, 17 Cal.3d 129 citing *Federal Power Comm'n v. Natural Gas Pipeline Co.* (1942) 315 U.S. 575, 585–586.)

III. The Costa-Hawkins Act does not preempt the Relocation Assistance Ordinance.

AAGLA argues that the Relocation Assistance Ordinance financially penalizes landlords who raise rent over 10%. In AAGLA’s view, this financial disincentive conflicts with the Costa-Hawkins Act’s provision authorizing landlords to set rental rates. AAGLA is incorrect. The Relocation Assistance Ordinance

mitigates the harms of constructive evictions caused by rent-gouging. While the provision of relocation assistance reduces short-term rental income for landlords in this scenario, this does not conflict with the Costa-Hawkins Act’s prohibition on rent control for units built after 1995.

A. *The Relocation Assistance Ordinance only reduces a landlord’s short-term rental income when a rent increase over 10% causes a constructive eviction.*

AAGLA asserts that the Relocation Assistance Ordinance eliminates the “economic incentive to evict existing tenants” because any landlord who “raise[s] rent beyond the maximum amount ... would very obviously *lose* money by doing so.” (AOB 37, 31 (emphasis original).) This argument is based on two inaccurate assumptions: First, AAGLA assumes that every tenant who faces rent-gouging will vacate their unit. In fact, some, if not most, tenants will choose to remain in their home and avoid the disruption of moving if they can afford to do so. Any tenant considering moving will face L.A.’s notoriously difficult rental market, which may incentivize a tenant to remain in their current home. (See LAMC, § 151.01; Gov’t Code, § 65009, subd. (a)(1).)

Second, AAGLA asserts that the payment of relocation benefits *eliminates* a landlord’s profit. In fact, the payment of relocation benefits only *reduces* a landlord’s rental income in the

short-term.³ If a landlord can find another tenant willing to pay the increased rent, the landlord can recover the cost of the relocation payment through the increased rental income, and then continue to receive higher rents thereafter.

The relevant comparison is the amount of relocation assistance paid compared with the increase in rent a landlord can obtain from their new tenant. AAGLA posits a scenario under which a landlord charging below-market rent—\$2,000 for a two-bedroom unit—raises the rent by 15% (or \$300), causing a constructive eviction. (AOB 30-31.) AAGLA claims the payment of relocation costs (\$8,077) is “nearly 7 times the \$1,200 in incremental increased rent the [landlord] could hope to obtain over the course of year....” (AOB 31.) But there are alternative ways to analyze this issue. The above scenario assumes the landlord raises the rent by 15% the first year, and then does not impose a rent increase the next seven years. Such a landlord would receive the same amount of rent each year for seven years, which would be 5% higher than the maximum of what the landlord could have received from the former tenant (assuming

³ A landlord’s profit can only be calculated after considering the property costs, which will vary depending on each property. (See Black’s Law Dictionary (12th ed. 2024) [defining “profit” as “[t]he excess of revenues over expenditures in a business transaction;”].) For this reason, we refer to a landlord’s rental income, not profits.

the landlord could obtain a rent increase of 10% for that tenant). That 5% difference (\$100/month), over seven years, would eventually allow the landlord to recoup the relocation costs of \$8,077.

In the alternative, compare (1) the increased rent revenue of a landlord who raised rent 15% the first year and then again 10% every year thereafter, with (2) the rent received by a landlord who only imposed 10% increases every year. By year five, the landlord who imposed a 15% increase the first year will be earning \$2,040 more annually than the landlord who stayed with 10% increases. Under these facts, it will take a landlord five years to recoup the relocation benefits, after which that landlord will continue to reap the benefits of its 15% rent increase, which every year will continue to grow due to compound interest.

Consider yet a different example: a landlord who rents a two-bedroom for above the fair-market rent at \$3,400 and raises the rent by 20% to \$4,080, and so receives an additional \$340 more per month compared with only a 10% increase.⁴ Should that tenant elect to relinquish their tenancy following the proposed

⁴ See, e.g., *Los Angeles, CA Rental Market Trends* reporting the average rent price for a two-bedroom apartment in LA in May 2023 was \$3,391 and the average annual rent increase since May 2022 for a two-bedroom to be 19%. (<https://www.rentometer.com/los-angeles-ca-rental-market-trends> as of August 22, 2024.)

20% rent increase, and should the landlord obtain a new tenant willing to pay the increased rent, the landlord will earn an additional 10% (or \$4,080 which is \$340 x 12) per year. Under this new tenancy, the landlord will recoup the relocation benefits (\$8,077) in two years—assuming the landlord foregoes a rent increase after the first year—after which the landlord will continue to receive all the benefits of the rent increase.

And if we posit that after the landlord raises the rent by 20%, the landlord then continues to raise the rent by 10% each year, the landlord will recoup the relocation assistance payment even faster: \$4,080 in the first year, and an additional \$374 monthly for the following year. Such a landlord will fully recoup their payment of relocation benefits in less than two years, after which they will continually receive increased rent from their 20% increase two years prior.

Under any of these scenarios, one constant remains: as the trial court found, a landlord who pays relocation assistance “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.) Contrary to AAGLA’s claim—that any landlord that raises rent beyond 10% will “lose” money—the Relocation Assistance Ordinance only impacts landlords when a rent increase over 10% causes a constructive eviction, after which a landlord may fully recoup the relocation benefits through a new

tenancy. That the Relocation Assistance Ordinance *reduces* a landlord’s rental income in the short-term, does not, as AAGLA claims, “ensur[e] [that] rental increases above the threshold are not profitable.” (AOB 31.)

B. *The Costa-Hawkins Act does not conflict with the Relocation Assistance Ordinance.*

AAGLA contends that the Relocation Assistance Ordinance “interferes with” and is “clearly hostile to” AAGLA’s “right to establish ‘all subsequent rental rates for a dwelling or unit’ ” under the Costa-Hawkins Act, and “is thus preempted.” (AOB 30 & 33.) AAGLA is, in essence, challenging the ordinance under the theory of contradictory preemption. This is the only option, as AAGLA has not argued field preemption or preemption based on duplicative legislation. (See *ante* at 8.)

Our Supreme Court articulated the standard for showing contradictory preemption as follows: the plaintiff must show “the ordinance *directly requires* what the state statute forbids or prohibits what the state enactment demands. [Citations.]” (*Big Creek, supra*, 38 Cal.4th at pp. 827–828 (emphasis added); *Riverside, supra*, 56 Cal.4th at p. 743.) But AAGLA has not shown that the Costa-Hawkins Act forbids the payment of relocation benefits required by the Relocation Assistance Ordinance. Therefore, AAGLA has not met its burden of “‘clearly, positively, and unmistakably’ demonstrating the

invalidity” of the ordinance. (*AIDS Healthcare, supra*, 101 Cal.App.5th at p. 81.)

The Costa Hawkins Act provides: “Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or unit” (Civ. Code, §§ 1954.52, subd. (a) & 1954.53, subd. (a).) In enacting this statute, “the Legislature was well aware of the incentive for eviction created by vacancy decontrol.”⁵ (*Bullard v. San Francisco Res. Rent Stab. Bd.* (2003) 106 Cal.App.4th 488, 492 (*Bullard*)). Thus, the Legislature included the following exception to the general rule: “Nothing in this section shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction.” (Civ. Code, § 1954.52, subd. (c); *San Francisco Apartment Ass’n v. City & Cnty. of San Francisco* (2022) 74 Cal.App.5th 288, 290 (*SFAA II*) [“Costa Hawkins expressly preserves, however, local authority to ‘regulate or monitor the grounds for eviction’ on all residential rental properties, including properties exempt from local rent control.”]; and see Civ. Code, § 1954.53, subd. (e).) Thus, while the Costa-Hawkins Act “preempts local rent control by permitting landlords to set the initial rent for vacant units,” it also

⁵ “Vacancy decontrol” means a system of controls “which permits the rent to be increased to its market level, without restriction, each time a vacancy occurs.” (Civ. Code, § 1947.15, subd. (i)(1).)

“expressly preserves local authority to ‘regulate or monitor the grounds for eviction.’ (Civ. Code, § 1954.53, subd. (e); [citation].)” (*SFAA II*, p. 290.)

The standard for showing contradictory preemption is not met here where the Relocation Assistance Ordinance does not directly require a rental rate in contradiction to the Costa-Hawkins Act’s prohibition on rent restrictions. Our Supreme Court has further explained that, “no inimical conflict will be found where it is reasonably possible to comply with both the state and local laws.” (*Riverside, supra*, 56 Cal.4th at p. 743.) Here, it is reasonably possible for landlords to both pay relocation benefits and establish the rental rate. To the extent AAGLA’s example—based on below-market rent and a 15% rent increase—conjures a scenario where it would take a landlord five to seven years to recoup the relocation payment after which the landlord will benefit from higher rent payments, even this particular set of facts still does not show a landlord would not reasonably choose this course of action. Moreover, AAGLA’s analysis of this one set of factual circumstances does not show that in the “great majority of cases” the Relocation Assistance Ordinance makes it impossible for landlords to raise rent more than 10%. (*T-Mobile, supra*, 6 Cal.5th at p. 1117.)

AAGLA relies on three cases where the courts found contradictory preemption with the Costa-Hawkins Act. First,

AAGLA cites to *Bullard* where an ordinance set the rental rates for units offered to tenants displaced by owner move-in evictions. (*Bullard, supra*, 106 Cal.App.4th at p. 490.) *Bullard* held that the “ordinance, by purporting to limit the amount of rent a landlord may charge for a replacement unit following an owner move-in eviction, *directly contradicts*” the Costa-Hawkins Act’s provision authorizing “ ‘an owner of residential real property [to] establish the initial rental rate for a dwelling or unit....’ [Citation.] Therefore, the challenged provision is preempted.” (*Id.* at p. 492 [emphasis added].)

Likewise, the second case AAGLA relies on, *Palmer/Sixth Street Prop., L.P. v. City of L.A.* (2009) 175 Cal.App.4th 1396 (*Palmer*), also found the Costa-Hawkins Act preempted a rent control provision. The *Palmer* plaintiffs challenged an ordinance requiring certain housing projects to include affordable housing units or pay an “in lieu fee.” (*Id.*, p. 1400.) The Court found that these “rent restrictions [] *conflict with and are inimical to* the Costa-Hawkins Act, even if those restrictions ... [do] not control the rents for the entire project.” (*Id.* at p. 1411 [emphasis added].) “Forcing [the 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.” (*Ibid.*)

Unlike *Bullard* and *Palmer*, here, the Relocation Assistance Ordinance does not “limit the amount of rent a landlord may charge” (*Bullard, supra*, 106 Cal.App.4th at p. 492), or “force” landlords to provide units “at regulated rents” (*Palmer, supra*, 175 Cal.App.4th at p. 1411). Instead, as AAGLA phrases it, the ordinance “deter[s] property owners from raising rents above the trigger for benefits” (AOB 30), given that should a tenant elect to relinquish the tenancy, the payment of benefits will temporarily reduce a landlord’s rental income. This indirect financial impact on a landlord’s bottom line is not a rent restriction and, thus, not “hostile or inimical to” the Costa-Hawkins Act. Stated otherwise, the ordinance does not compel or bar any particular rental rate.

Finally, AAGLA relies on *AAGLA, supra*, 136 Cal.App.4th 119 addressing an ordinance that restricted the amount of rent a landlord could charge after terminating a Section 8 housing contract. (*Id.* at p. 122.) *AAGLA* found this provision conflicted with Civil Code section 1954.535 of the Costa-Hawkins Act which provides that when a landlord terminates a contract with the government, the tenant is entitled to 90-days notice during which the landlord may not raise the rent. AAGLA now cites to *AAGLA*’s finding that the ordinance conflicted with the landlord’s “recognized right to terminate or to refuse to renew a Section 8 contract.” (AOB 30 citing to *AAGLA* at pp. 132-133 [the ordinance

“imposes a prohibitive burden on the exercise of that right”].) This holding is inapposite to the question before this Court: whether the Relocation Assistance Ordinance conflicts with sections 1954.52 and 1954.53 of the Act which allow a landlord to set rental rates. Moreover, *AAGLA* perfectly illustrates the direct conflict required to show preemption: the *AAGLA* ordinance directly contradicted the timing set out by the state statute.

C. *The Relocation Eviction Ordinance does not conflict with the purpose of the Costa-Hawkins Act.*

AAGLA also argues the Relocation Assistance Ordinance “undermines the very purpose of Costa-Hawkins’ restriction on rent control” by “creating a powerful economic incentive not to raise rents beyond the specified cap....” (AOB 31 & 33 [“undercuts the core purpose of the Costa-Hawkins Act”].) In support, *AAGLA* cites to *Bullard* which held that an ordinance’s “vacancy control would subvert the purpose of the Costa-Hawkins Act.” (*Bullard, supra*, 106 Cal.App.4th at p. 492.) However, as the Relocation Assistance Ordinance does not impose vacancy control but merely reduces the economic benefit to landlords of raising rent above 10%, the ordinance does not undermine the purpose of the Costa-Hawkins Act.

Cases that find conflict preemption sometimes analyze direct conflicts by examining the purpose of the state law at

issue. (See, e.g., *Birkenfeld, supra*, 17 Cal.3d at p. 149 [addressing the purpose of the unlawful detainer statutes]; *Bullard, supra*, 16 Cal.App.4th at p. 492 [holding that an ordinance “would subvert the purpose of the Costa-Hawkins Act.”]; *Action Apt. Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1243 [holding an ordinance “is inimical to the important purposes of” a state law].) Our Supreme Court has also examined the question of conflicting state and local legislative purposes through the lens of the federal theory of “obstacle preemption,” under which “a local law would be displaced if it hinders the accomplishment of the purposes behind a state law.” (*T-Mobile, supra*, 6 Cal.5th at p. 1123 [declining to decide whether the federal theory of obstacle preemption applies to state preemption principles].)

Here, AAGLA focuses on the City’s purpose in enacting the Relocation Assistance Ordinance, arguing the ordinance “is designed to ensure that landlords do not raise rent above the threshold.” (AOB 9.) Yet the record establishes that the City was focused on regulating constructive evictions, not rent control, as LAHD’s report on the ordinance to City Council stated:

Tenants in unregulated units (not subject to the RSO nor the Tenant Protections Act of 2019) may be economically displaced when their landlords impose high rent increases that the tenants cannot afford. In these cases, tenants who cannot afford the rent increase have no choice but to vacate their homes... . Additional protections are needed to close a

loophole that allows tenants in non-RSO units to be forced out through large rent increases amounting to a constructive eviction of the tenant, with no allowance for relocation. (AR 2219-2220.)

Although AAGLA claims the City intended the ordinance to deter rent increases, this report plainly shows the City was focused on mitigating the harms of economic displacement. Although AAGLA equates the City's intent to assist tenants "forced out through large rent increases" with an intent to create an "incentive not to raise rents," there is a distinction: the former is concerned with the consequences of a "constructive eviction of the tenant, with no allowance for relocation," and the later with controlling rent. (AOB 33.)

AAGLA next argues that the Relocation Assistance Ordinance "disregards the careful balance struck by the Legislature, [thereby] undercut[ing] the core purpose of the Costa-Hawkins Act." (AOB at 33.) In fact, the balance the Costa-Hawkins Act struck was to allow property owners to set rental rates subject to municipalities' power to regulate the permissible reasons for and timing of evictions. To this end, the Costa-Hawkins Act contains an exception expressly allowing municipalities "to regulate or monitor the grounds for eviction." (Civ. Code, §§ 1954.52, subd. (c); 1954.53, subd. (e).) The Relocation Eviction Ordinance exemplifies this balance: it does

not restrict rents but mitigates the harm of constructive evictions.

AAGLA asserts that the ordinance does *not* regulate evictions, because a constructive eviction only exists when there is bad faith, and the Relocation Assistance Ordinance regulates a tenant's election to relinquish their tenancy without requiring a showing of bad faith. But, as the trial court found, case law establishes that a constructive eviction can occur whether or not a landlord intends to eject a tenant in bad faith. (See *Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 895 ["If the landlord's acts or omissions affect the tenant's use of the property and compel tenant to vacate, there is a constructive eviction."]; *Freeman v. Vista de Santa Barbara Associates, LP* (2012) 207 Cal.App.4th 791, 798 ["There is nothing more likely to lead to an actual or constructive eviction than an increase in rent."]; and see AA 909-910.) In the same vein, while AAGLA acknowledges that case law holds the Costa-Hawkins Act does not "affect" a city's authority "to enact ordinances that discourage landlords from evicting tenants," AAGLA mistakenly argues that the Costa-Hawkins *only* extends to municipal efforts to discourage *pretextual* evictions. (AOB 35 citing *Apt. Ass'n of L.A. County, Inc. v. City of L.A.* (2009) 173 Cal.App.4th 13, 18 ("*Apt. Assn.*") and *Mak v. City of Berk. Rent. Stab. Bd.* (2015) 240 Cal.App.4th 60 (*Mak*).)

Both cases AAGLA relies on found that the Costa-Hawkins Act did not preempt local eviction controls that regulated bad faith evictions. (*Apt. Ass'n, supra*, 173 Cal.App.4th at p. 18; *Mak, supra*, 240 Cal.App.4th 60.) These cases also did not interpret the Costa-Hawkins Act to limit municipal authority to regulating bad faith evictions. Nor could they as the Costa-Hawkins statutory language itself does not incorporate such a limit. Civil Code section 1954.53, subd. (e) provides that “nothing in this section shall be construed to affect any authority of a public entity that may otherwise exist to regulate or monitor the grounds for eviction.” (See also Civ. Code, § 1954.52, subd. (c).) Nowhere does the statute restrict this exception to *pretextual* evictions. Our Supreme Court has observed that this clause does not “expand the authority of local governments, but instead [is] intended only to preserve their existing authority.” (*Action Apartment, supra*, 41 Cal.4th at p. 1245.) The Costa-Hawkins Act’s express reservation of municipal power to regulate evictions is far from the “clear indication of preemptive intent” required to overthrow cities’ power to regulate evictions. (*Big Creek, supra*, 38 Cal.4th at p. 1149.) Therefore, municipal authority to regulate evictions remains unchanged by the Costa-Hawkins Act, which does not reduce this authority to regulating only bad faith evictions.

For all these reasons, AAGLA has not shown that the Relocation Assistance Ordinance hinders the purpose of the

Costa-Hawkins Act which is vacancy decontrol. The statute expressly preserves cities' power to regulate evictions, and the ordinance's provision of relocation assistance to tenants is just that: mitigation of the harms caused by constructive evictions.

CONCLUSION

AAGLA has not overcome the presumption against preemption by “ ‘clearly, positively, and unmistakably’ demonstrating the invalidity” of the City ordinances. (*AIDS Healthcare, supra*, 101 Cal.App.5th at p. 81.) AAGLA has not shown that the Eviction Threshold Ordinance is facially invalid because AAGLA acknowledges the ordinance only causes delay to a subset of tenant-landlord relationships the ordinance regulates. Furthermore, the ordinance permissibly regulates evictions by creating a substantive defense that only incidentally impacts the procedure set forth by the unlawful detainer statutes.

As for the Relocation Assistance Ordinance, AAGLA has not met its burden of showing the ordinance requires what the Costa-Hawkins Act prohibits—the required preemption standard. A landlord may reasonably comply with both the ordinance—requiring the payment of benefits when there is a constructive eviction—while exercising rights under the Costa-Hawkins Act—authorizing the landlord to set rents. Thus, there is no contradictory preemption. Nor is the purpose of the Costa-Hawkins Act hindered by the City's exercise of authority to

regulate evictions while the ability to raise rents remains within the landlord's discretion.

As AAGLA has not met its burden of showing preemption, this Court should affirm the trial court's November 8, 2023 order denying AAGLA's Petition for Writ of Mandate.

Dated: August 23, 2024

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this RESPONDENTS' BRIEF contains 8,677 words, not including the tables of contents and authorities, the caption page, the signature blocks, or this certification page.

Date: August 23, 2024

Merete Rietveld

MERETE RIETVELD

PROOF OF SERVICE
(By TrueFiling and U.S. Mail)

I, the undersigned, declare that I am over the age of 18 years and not a party to the within action or proceeding. My business address is 200 No. Spring Street, 14th Floor, Los Angeles, California 90012.

I am familiar with the business practice at the Office of the City attorney for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the City Attorney is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On August 23, 2024, I electronically served “**RESPONDENTS’ BRIEF**” by transmitting a true copy via this Court’s True Filing system.

On August 26, 2024, the City Attorney’s in-house messengers will serve the party(ies) listed below who have not registered with the Court’s TrueFiling system or are unable to receive electronic correspondence, a true copy thereof enclosed in a sealed envelope, addressed as follows:

Hon. Michell L. Beckloff
Los Angeles Superior Court
Stanley Mosk Courthouse, Dept. 86
111 North Hill Street
Los Angeles, CA 90012

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

Executed August 23, 2024, at Los Angeles, California.



BRENDA PEREZ