

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 REPLY 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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I. INTRODUCTION

As explained in Appellant’s opening brief, the question presented in this case is whether a city may override policy decisions made by the State Legislature by creatively framing ordinances in ways designed to evade the preemptive effects of state law. (See Appellant’s Opening Brief (“AOB”), pp. 8-10.) Since the filing of that brief, the First District, Division 2 has ruled in a case involving overlapping issues, and emphasized the need to consider an ordinance’s purpose and effect when evaluating a preemption claim. (*San Francisco Apartment Association v. City and County of San Francisco* (“SFAA 2024”) (2024) 104 Cal.App.5th 1218, 1231 [“An ordinance’s *purpose* may be relevant to whether it is preempted by state law, but such consideration must be done “in the context of a nuanced inquiry” into ‘whether the *effect* of the local ordinance is in fact to regulate in the very field the state has reserved to itself.’”], italics in original.)

Remarkably, the ordinance at issue in that case was adopted for precisely the same purpose as Ordinance No. 187763 (the “Eviction Threshold Ordinance”) at issue here, *i.e.*, to give tenants additional time to seek resources to avoid eviction. (*Compare* City’s Respondent’s Brief (“CRB”), p. 28 [“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.”], emphasis in original; *SFAA 2024, supra*, 104 Cal.App.5th at 1233 [ordinance was motivated by concern that tenants “simply don’t

have enough time to access the resources and help they need” to avoid eviction].) In light of that purpose, the *SFAA 2024* court held the ordinance in that case was procedural in nature and thus preempted by the unlawful detainer statute. (*Id.* at 1230, 1233.) The same is true of the Eviction Threshold Ordinance.

Examining the purpose and effect of Ordinance No. 187764 (the “Relocation Assistance Ordinance”) likewise demonstrates that it was deliberately crafted to circumvent the Costa-Hawkins Rental Housing Act’s (“Costa-Hawkins”) prohibition on interfering with landlords’ right to set subsequent rental rates for certain types of units (*i.e.*, newer housing, single family homes, and condominiums). (*See* AR 2219-2220 [City staff report indicating the ordinance was directed at units that are “not protected by the [City’s Rent Stabilization Ordinance] or state law” and necessary to “close a loophole” created by state law]; AA 749 [City conceding it is “seeking to deter” rent increases it considers excessive].)

The City should not be permitted to undermine carefully considered policy decisions made by the State Legislature via creatively-framed ordinances. (*See SFAA 2024, supra*, 104 Cal.App.5th at 1230 [the “form” of an ordinance is not determinative in deciding whether it is preempted]; *see also National Meat Ass’n v. Harris* (2012) 565 U.S. 452, 464 [allowing a state to avoid federal preemption by clever “framing” would “make a mockery” of preemption].) Accordingly, Appellant 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 as to both ordinances.

II. THE EVICTION THRESHOLD ORDINANCE IS PREEMPTED BY THE UNLAWFUL DETAINER STATUTES

A. AAGLA Has Properly Stated a Facial Challenge.

The City mischaracterizes AAGLA’s position as asserting the Eviction Threshold Ordinance “presents a conflict [only] as to tenants who pay below fair market rent,” and argues that a facial challenge to the ordinance cannot succeed, because AAGLA cannot show the ordinance presents a “total and fatal conflict” or a conflict “in the generality or great majority of cases.” (CRB, pp. 20, 22-23.)¹

In determining the existence of such a conflict, however the “proper focus of the . . . inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.” (*San Francisco Apartment Assn. v. City and County of San Francisco* (“SFAA 2016”) (2016) 3 Cal.App.5th 463, 487, quoting *Planned*

¹ While the City is wrong that that AAGLA must show the Eviction Threshold Ordinance presents a conflict as to all categories of renters to state a facial challenge, AAGLA has never argued the ordinance presents a conflict only as to tenants who pay below fair market rent. Rather, AAGLA simply noted that for units where rent is less than the threshold (which is most units, given the City’s Rent Stabilization Ordinance), the ordinance delays the eviction process by at least a month, even if no payment is made, while for units above the threshold, the ordinance would not come into play unless a partial payment is made. (See AOB, p. 23.)

Parenthood v. Casey (1992) 505 U.S. 833, 894.) In *SFAA 2016*, the plaintiff association challenged an ordinance requiring “a landlord effectuating a no-fault eviction to wait 10 years before applying for a permit to undertake a residential merger on the property, on the basis it was facially inconsistent with the Ellis Act. (*Id.* at 469.) The city/county argued that a facial challenge was improper, because: (1) the ordinance applied to all no-fault evictions, not just Ellis Act evictions; and (2) plaintiffs could not show all landlords effectuating Ellis Act evictions would seek a merger approval within 10 years of such evictions. (*Id.* at 487.) The court rejected that argument, explaining that a facial challenge was appropriate, because the ordinance imposed a restriction “in every case where a San Francisco property owner exercises his or her right under the Ellis Act to withdraw a rental unit from the residential rental market in order to merge the unit with another.” (*Id.* at 487; see also *Small Property Owners of San Francisco Institute v. City and County of San Francisco* (2018) 22 Cal.App.5th 77, 88 [applying rationale of *SFAA 2016* to analogous situation].)

Similarly, here, it does not matter that the Eviction Threshold Ordinance does not delay every eviction, because in every situation ***where it applies*** (*i.e.*, where it restricts evictions), it interferes with the timeline established by the State Legislature and prevents landlords from exercising their rights under the unlawful detainer statute. Accordingly, AAGLA has properly stated a facial challenge.

B. The City’s Admitted Purpose in Enacting the Ordinance Was Procedural.

The City’s Respondent’s Brief could hardly be more clear regarding the purpose of the Eviction Threshold Ordinance:

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.”].)

(CRB, p. 28, italics in original, bold added.)² While the City labors to characterize that purpose as “substantive” in nature, it is indistinguishable from that recently held to be procedural in *SFAA 2024, supra*, 104 Cal.App5th 1218.

In *SFAA 2024*, the court considered whether an ordinance requiring that landlords provide a 10-day written warning before initiating an eviction was preempted by the unlawful detainer statutes. (*Id.* at 1228.) Recognizing the difficulty of determining whether a law is substantive or procedural in nature, the court emphasized the need to examine the purpose and effect of the law. (*Id.* at 1230-1231.) The court found the effect of the ordinance was procedural, because the notice requirement

² The City’s admission that the ordinance was intended to give tenants more time to avoid eviction refutes Intervenor’s argument that the ordinance was not directed at timing concerns, but merely intended to prevent evictions over a small amount of money. (See IOB, p. 20.)

“creates a barrier that precludes relief altogether without demonstrated compliance.” (*Id.* at 1230.) With regard to the purpose of the law, the court noted the legislative history included statements indicating the ordinance was necessary because of concern that the three-day period provided by the unlawful detainer statutes did not provide tenants **“enough time to access the resources and help they need”** to “come up with rent money” or otherwise resolve a dispute with a landlord. (*Id.* at 1232-1233, emphasis added.) It thus concluded that the purpose of the ordinance was procedural. (*Id.* at 1233 [“These statements evidence the procedural purpose of Ordinance No. 18-22.... [T]hey explain that Ordinance No. 18-22 extends the section 1161 timeline to create a ‘warning period’ to ‘keep people in their homes and resolve a pending dispute without litigation’”].)

Accordingly, the court found that the ordinance was directly preempted, explaining it “plainly prohibits a landlord from proceeding under the state statutory timeline by requiring the additional 10-day warning and cure period.” (*Id.* at 237-238 [the ordinance “interferes with the notice procedure set forth in Code of Civil Procedure section 1161 and is antithetical to the ‘relatively simple and speedy remedy’ the state unlawful detainer statutes provide”].) The court also found the ordinance was “impliedly preempted as state statutory law has fully occupied the field of landlord-tenant notification timelines.” (*Id.* at 238; *see also id.* at 1239-1240 [discussing *Tri County Apartment Ass’n v. City of Mountain View* (1987) 196 Cal.App.3d 1283 (*Tri*

County) and *Channing Properties v. City of Berkeley*].)

Here, the City’s purpose in enacting the Eviction Threshold Ordinance was identical to that of San Francisco in *SFAA 2024*. The legislative history shows that the City did not believe the 3-day notice required by state law was sufficient time for tenants to seek resources that might help them avoid eviction and thus, wanted to provide tenants additional “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.”]³; *compare SFAA 2024* at 1233 [“These statements ... criticize the ‘system’ under Code of Civil Procedure section 1161 that ‘accepts three days’ as sufficient notice to pay rent or perform and raise concern that three days ‘really flies by’ and tenants ‘don’t have enough time’ under the law.].) The City does not contend otherwise. (CRB, p. 28 [“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.”],

³ Intervenors argue there is “nothing ambiguous” about the Eviction Threshold Ordinance “that requires peering into the legislative history.” (IOB, p. 22.) On its face, however, the statute is somewhat ambiguous as to the extent it is aimed at the timing of evictions. As noted in Appellant’s Opening Brief, the fact that the threshold set by the ordinance is tied to a period of time, *i.e.*, “one month’s fair-market rent,” indicates that the financial threshold is a proxy for an extension of the time, but Intervenors have argued otherwise. Accordingly, it is appropriate for the Court to consider the legislative history, which removes any doubt about the purpose of the ordinance. (*See SFAA 2024* at 1231.)

emphasis in original.)⁴

The City likewise concedes that the ordinance has a “procedural impact.” (AOB, p. 29.) As intended by the City—and like the ordinance at issue in *SFAA 2024*—the Eviction Threshold Ordinance “interferes with the notice procedure set forth in Code of Civil Procedure section 1161” by significantly delaying the commencement of the eviction process in most cases, and thus, is “antithetical to the ‘relatively simple and speedy remedy’ the state unlawful detainer statutes provide.” (*SFAA 2024* at 237-238.)⁵ Indeed, the ordinance interferes with the timeline even more than that at issue in *SFAA 2024*, since it delays the process by at least a month (rather than just 10 days). Accordingly, it is directly preempted.

As discussed in Appellant’s Opening Brief, the ordinance is also impliedly preempted, because “the timing of landlord-tenant transactions is a matter of statewide concern not amenable to local variations.” (See ARB, p. 21, quoting *Tri-County* at 1298.)

⁴ *SFAA 2024* demonstrates there is no merit to the City’s convoluted argument that providing tenants more time in order to “avoid” an eviction is not a procedural purpose, because “‘avoid’ is not equivalent to ‘delay.’” (See CRB, p. 28.)

⁵ The City cites *Campbell v. FPI Management, Inc.* (2024) 98 Cal.App.5th 1151, 1165—which held that there was no conflict between Section 1161 and a federal statute that requires that landlords receiving certain federal subsidies provide 30 days’ notice prior to terminating a tenancy—for the proposition that Section 1161 “does not preclude a longer notice period.” (AOB, p. 29.) But while it may be true that Section 1161 does not preclude landlords from providing more than 3 days’ notice, *SFAA 2024* makes crystal clear that state law prevents local agencies from requiring that they do so.

The City notes that the trial court distinguished *Tri-County* on the basis that it “primarily involve[d] state statutes other than the unlawful detainer statutes” and urges this Court to do the same. (CRB, p. 30.) However, the *SFAA 2024* court expressly rejected that distinction, explaining that “as in *Tri County*,” the ordinance at issue had changed “the three-day statewide chronology to ‘suit its own agenda,’ namely to provide tenants with an additional 10 days of notice and opportunity to cure.” (*SFAA 2024* at 1239; *see also id.* at 1240 [expressly rejecting attempt to distinguish *Tri-County* on the basis that it dealt “with other types of landlord-tenant notification”].) The same is true here, since the City has acted to deliberately extend the unlawful detainer timeline for most instances of a default in the payment of rent.

Like the City and Intervenors, San Francisco relied heavily on *Rental Housing Assn. of Northern Alameda County v. City of Oakland* (“*Rental Housing*”) (2009) 171 Cal.App.4th 741 and *San Francisco Apartment Association v. City & County of San Francisco* (“*SFAA 2018*”) (2018) 20 Cal.App.5th 510 in arguing that the ordinance was substantive, rather than procedural. With respect to *SFAA 2018*, the court explained that the ordinance at issue there “created a defense to certain *no-fault* grounds for eviction” where children or educators lived in the unit and the effective date of the eviction fell during the school year. (*SFAA 2024* at 1233-1234, emphasis in original.) In contrast, the *SFAA 2024* ordinance did “not establish a substantive defense to eviction for a protected group.” (*Id.* at 1234 [also noting the *SFAA 2018* ordinance provided “a substantive defense with only

an ‘impact’ on timing”].) Since the Eviction Threshold Ordinance does not establish a substantive defense to no-fault eviction for a protected group, *SFAA 2018* is distinguishable for the same reasons as in *SFAA 2024*.

With regard to *Rental Housing*, the *SFAA 2024* court explained that the *Rental Housing* court “was clear that it considered ‘only the text of the measure’” and was presented with new arguments for the first time on appeal. (*Id.* at 1236.) Thus, there was no indication that the *Rental Housing* ordinance was proposed because the city “took issue with the three-day notice standard of section 1161.” (*Id.* at 1237.) To the contrary, **“*Rental Housing* had no occasion to factor timing—or explicitly procedural motivations—into its *Birkenfeld* analysis.”** (*Id.* at 1237, emphasis added.) The *SFAA 2024* court also emphasized that the main purpose of the ordinance at issue there was to add (for the first time) “good cause” requirements for eviction into the city’s rent control ordinance, and that the extended notice requirement did not apply to all grounds for eviction, including nonpayment of rent. (*SFAA 2024* at 1235-1236, citing *Rental Housing* at 750, 759, 762.) Thus, again, *Rental Housing* is distinguishable for the same reasons as in *SFAA 2024*.

Roble Vista Associates v. Bacon (2002) 97 Cal.App.4th 335, cited by Respondents (CRB, p. 30, IOB, p. 17), is likewise easily distinguishable. The ordinance at issue there required landlords to offer tenants a one-year lease, and provided an affirmative defense where a landlord failed to do so. (*Id.* at 337.) Thus, it

was not directed at altering the timeline established by Section 1161, but at regulating lease terms. (*Id.* at 341.)

In short, contrary to Respondents’ characterizations, the Eviction Threshold Ordinance is not a substantive ordinance that merely has an incidental impact on procedure, but rather was adopted for an explicitly procedural purpose: to give tenants more time to avoid eviction than the three days provided by state law. (AR 65; CRB, p. 28.) It is thus preempted by the unlawful detainer statutes. (*SFAA 2024* at 1237-1238.)⁶ To hold otherwise would allow the City and other municipalities to circumvent the holding of *SFAA 2024* and deliberately interfere with the speedy timeline provided by state law.

III. THE RELOCATION ASSISTANCE ORDINANCE IS PREEMPTED BY COSTA HAWKINS

A. The Relocation Assistance Ordinance Thwarts the Purpose of Costa-Hawkins.

The City fails to focus on the relevant provision of Costa-Hawkins, asserting that “AAGLA has not shown that the Relocation Assistance Ordinance hinders the purpose of the Costa-Hawkins Act which is vacancy decontrol.” (CRB, pp. 45-46.) But as explained in AAGLA’s opening brief, Costa-Hawkins is not limited to vacancy decontrol, *i.e.* the right to set the initial rental rate for a vacant unit. (*See* AOB, p. 27, fn. 5.) To the

⁶ While *SFAA 2024* removes any doubt regarding the procedural nature of the ordinance, the ordinance is invalid even if viewed as a substantive limitation for the reasons stated in Appellant’s Opening Brief. (*See* AOB, pp. 24-26.)

contrary, the right at issue in this case is the right to set ***subsequent rental rates for nonvacant units***, which, compared to vacancy decontrol, applies to a much narrower subset of rental units, *i.e.*, newer units, single family homes, and condominiums. (Civ. Code § 1954.52(a); *compare* Civ. Code § 1954.53(a).)

Respondents try to obscure this important distinction because it undermines their characterization of the Relocation Assistance Ordinance as an “eviction ordinance.” As stressed by both Respondents, Costa-Hawkins expressly preserved local authorities’ right to regulate evictions because “the Legislature was well aware of the incentive for eviction ***created by vacancy decontrol.***” (CRB, p. 37, emphasis added; IOB, p. 24 [“vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates”].) Where landlords cannot raise rent unless a unit becomes vacant, they have an obvious incentive to create or encourage vacancies. In contrast, where landlords are free to set subsequent rental rates—as is the case for all units affected by the Relocation Assistance Ordinance—there is no similar financial incentive to evict existing tenants. To the contrary, in a normal market without rent control, landlords have every reason to seek to retain tenants, in order to avoid vacancies and reduce marketing costs. Thus, the Relocation Assistance Ordinance is not necessary to counter some unintended consequence of Costa-Hawkins.

Quite the opposite, the ordinance has the purpose and effect of thwarting the express intent of Civil Code section

1954.52(a), *i.e.*, that the owners of certain types of property “may establish the initial and all subsequent rental rates.”⁷ While the City asserts the ordinance does not regulate rent, the ordinance applies only when rent is increased above the threshold, and the City makes no attempt to hide its hostility to the right to set subsequent rental rates, characterizing any increase that would trigger the ordinance as “rent-gouging.” (CRB, p. 32.) Moreover, in its previous briefing, the City freely admitted the ordinance was intended to have a deterrent effect, arguing: “state law wants to deter *the ‘very behavior’ the City is seeking to deter here.*”⁸ (AA 749, *emph. added*; *see also* AA 932 [trial court noting “Respondents acknowledge the Relocation Assistance is intended, in part, to deter landlords of exempt residential units from ‘forcing tenants out with large rent increases’”].) Thus, there is no real dispute that the ordinance is intended to prevent

⁷ Intervenors wrongly claim AAGLA “conceded during oral argument before the trial court” that the ordinance does not regulate rents. (IOB, p. 27.) In fact, Intervenors’ own cite shows that AAGLA merely acknowledged—as it did in Appellant’s Opening Brief—that the ordinance does not “impose a hard limit on the amount rent can be increased.” (AA 931; *see* AOB, p. 30.)

⁸ The City’s reference to state law was a mischaracterization of the Tenant Protection Act of 2019, which, as explained in Appellant’s Opening Brief, deliberately excluded the type of housing units at issue in this case due to concerns about unintended consequences (*i.e.*, that restricting rent increases would reduce the housing supply and exacerbate the housing crisis). (*See* AOB, p. 32; AA 747 [“This bill cuts something of a middle ground on all these issues.”].) The City concedes that law applies only “to units older than 15 years.” (CRB, p. 10.)

landlords from exercising the statutory right to set subsequent rental rates protected by Section 1954.52(a).

Respondents claim that there is no “direct conflict,” because the Ordinance does not “bar” landlords from setting any particular rent, and argue an “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.’” (CRB, p. 40.) But that argument ignores the fact that the *only* reason to raise rent is to increase a landlord’s bottom line. Since the ordinance is designed to deprive landlords of the benefit of raising rent above the threshold, that right is illusory.

Respondents attempt to narrowly distinguish the authority discussed in Appellant’s Opening Brief, but while there is no case involving a municipality’s attempt to circumvent the Costa-Hawkins Act in precisely the same manner the City has done here, such cases make clear that that municipalities may not “subvert the purpose of the Costa-Hawkins Act.” (*See Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal.App.4th 488, 492; *see also Palmer / Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, 1411 [ordinance “hostile” to rights granted by Costa-Hawkins Act was preempted]; *Apartment Ass’n of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 132-133 [ordinance that imposed “a prohibitive burden on the right to exercise” rights provided by Costa-Hawkins was preempted].) Moreover, the *Bullard* court rejected the same argument that Respondents make here, *i.e.*, that the ordinance in

question was a lawful attempt to regulate eviction. (*Bullard, supra*, 106 Cal.App.4th at 492; *see* AOB, pp. 27-28.) Because the ordinance is an attempt to regulate the rents of units the State has deliberately exempted from rent control, it is preempted. (*See SFAA 2024*, 104 Cal.App.5th at 1231 [court should consider “whether the *effect* of the local ordinance is in fact to regulate in the very field the state has reserved to itself”], emphasis in original; *see also Chevron U.S.A. Inc. v. County of Monterey* (2023) 15 Cal.5th 135, 149 [“state law may preempt local law when local law prohibits not only what a state statute ‘demands’ but also what the statute permits or authorizes”].)

B. Respondents’ Own Calculations Demonstrate the Deterrent Impact of the Ordinance.

As Appellant explained in its opening brief, simple arithmetic demonstrates the powerful deterrent effect of the Relocation Assistance Ordinance; the amount of the payment required under the ordinance ensures that there is an economic disincentive to raise rent above the threshold under virtually all realistic scenarios. (AOB, pp. 30-31.) Respondents’ attempts to argue the point merely reinforce that it is true.

AAGLA’s opening brief explained why a reasonable landlord would not raise rent in excess of the threshold under realistic scenarios. For example, in 2023, a landlord who wished to raise rent for a two-bedroom unit from \$2,000 to \$2,300 (a 15% increase) would risk triggering a relocation benefit of \$8,077 by doing so, but could raise rent to \$2,200 without risk. Given that the relocation benefit would be nearly 7 times the incremental

increased rent (\$1,200) they could hope to obtain over the course of a year, a landlord acting in their own economic self-interest would not raise rent beyond \$2,200.

The City argues that such scenario fails to account for increased revenue the landlord might receive after the first year, noting that if the property owner in AAGLA’s scenario were to raise rent by “15% in the first year and then again 10% every year thereafter [instead of 10% every year] . . . it will take a landlord five years to recoup the relocation benefits.” (CRB, p. 34.) The City thus asserts that a landlord might “reasonably choose” to raise rent in excess of the threshold, even where doing so would require a relocation payment “five to seven” times the amount of extra rent they would receive over the course of a year. (CRB, p. 38.)

The fact that even under the City’s math, it would take five years for a landlord to break even—without accounting for the time value of money—is notable, and demonstrates the high cost of the relocation benefits. Further, the City’s calculations are based on the unreasonable assumption that rent can be increased by 10% year after year. The premise that a property owner could raise rent by 10% five years in a row is not realistic, because the market constrains the amount of rent that can be charged for a unit and will not bear the maximum rent increase permitted under the ordinance every year.⁹

⁹ Additionally, the City’s hypothetical wrongly assumes that 10% annual raises will not trigger additional relocation assistance payments. The trigger for the ordinance is only 5%

The City’s suggestion that “a landlord who rents a two-bedroom for above the fair-market rent at \$3,400 and raises the rent by 20%” could recoup the cost of relocation benefits in only two years (CRB, pp. 34-35) is similarly flawed.¹⁰ Again, property owners cannot charge more than tenants are willing to pay; thus a 20% increase—particularly for a unit that is already above the fair-market rent—is not a realistic scenario.¹¹

In reality, the effect of the Relocation Assistance Ordinance will be to coerce property owners to raise rent gradually, rather than making more immediate adjustments to bring below-market rents up to the market rate. For example, in the scenario set

plus inflation (or a maximum of 10%), so it is unlikely rents could be raised by 10% several years in a row without repeatedly triggering the ordinance. Moreover, given that the City’s hypothetical implicitly assumes a sustained high-inflationary environment, the time value of money would also become a significant factor.

¹⁰ The City cites a website purporting to show average rent prices and increases between May 2022 and May 2023, but fails to offer any explanation as to why the Court should consider evidence that was not before the trial court, let alone establish the reliability of such evidence. (See CRB, p. 34, fn. 4.) The contents of websites are “plainly subject to interpretation and for that reason not subject to judicial notice.” (*Al Shikha v. Lyft, Inc.* (2024) 102 Cal.App.5th 14, 21.) Further, “[r]eviewing courts generally do not take judicial notice of evidence not presented to the trial court.” (*Id.*) The Court should thus decline to consider the information presented on such website.

¹¹ Indeed, the 15% increase scenario in AAGLA’s opening brief was intended to demonstrate that even a relatively aggressive rent increase that is well above the threshold would not pencil out. Where a landlord desires to increase rent slightly above the threshold, *e.g.*, by 12% instead of 10%, the deterrent effect is even more clear.

forth in AAGLA’s opening brief, a landlord who wishes to charge market rent of \$2,300 for a two-bedroom unit currently renting for \$2,000 would forgo \$1,200 in extra rent (but avoid a possible relocation benefit of \$8,077) if they instead raise rent to \$2,200. The following year, however, they would be able to raise rent again from \$2,200 to \$2,310-\$2,420 (depending on the underlying rate of inflation), without triggering the ordinance. Thus, it is entirely possible that they could bring the unit up to the market rate in year 2 without the risk of paying relocation assistance, and extremely likely that they would be able so within 2-3 years, since increases in rent are unlikely to significantly outpace inflation for an extended period of time. Given that reality (and particularly given the time value of money), it makes absolutely no sense for a landlord to risk \$8,077 to capture an extra \$1,200 in rent in the first year.

Intervenors similarly attack AAGLA’s example, but fail even to get the math right. After correctly restating the hypothetical, in which a landlord may raise rent by \$200 to \$2,200 without triggering the ordinance, or by \$300 to \$2,300, thus triggering an \$8,077 “relocation assistance” payment, Intervenors wrongly claim “a landlord who increases the rent to \$2,300 will make an additional \$3,600 per year,” surpassing the amount paid out in relocation benefits after only three years. (IOB, p. 32.) The actual difference between the two scenarios is obviously only \$1,200 per year (as even the City acknowledges), so Intervenors’ argument is baseless.

In sum, the deterrent effect of the Relocation Assistance

Ordinance is demonstrable and undeniable. (*See also* AA 749 [City’s trial court briefing conceding the ordinance’s deterrent effect]; AA 932 [trial court noting that acknowledgement].)

C. The Relocation Assistance Ordinance Is Not an Eviction Regulation.

Notwithstanding its clear purpose and effect, both the City and Intervenors argue the Relocation Assistance Ordinance is nonetheless an “eviction regulation” that should be upheld under a Costa-Hawkins “exception expressly allowing municipalities ‘to regulate or monitor the grounds for eviction.’” (CRB, p. 43, citing Civil Code §§ 1554.52(c), 1554.53(d); *see* IOB, pp. 24-27.) The argument is rooted in Respondents’ insistence that a “constructive eviction” occurs if a tenant chooses to leave due to a rent increase, even if their landlord did not intend for them to leave. (CRB, p. 44; IOB, p. 25.) Notably, however, none of the authority cited by Respondents actually characterizes such an event as a “constructive eviction,” much less suggests that it is an appropriate target for regulation.

Freeman v. Vista de Santa Barbara Associates LP (2012) 207 Cal.App.4th 791, which both City and Intervenors quote as stating “[t]here is nothing more likely to lead to an actual or constructive eviction than an increase in rent” (CRB, p. 44; IOB, p. 25), did not involve an eviction of any sort. Indeed, the tenant in that case—which considered whether a mobilehome space was exempt from rent control under the Mobilehome Residency Law—did not live in the mobilehome and paid the disputed rent increase under protest. (*Id.* at 793-96.)

Both opposition briefs likewise cite *Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 897 for what they characterize as a broad definition of constructive eviction: “If the landlord’s acts or omissions affect the tenant’s use of the property and compel the tenant to vacate, there is a constructive eviction.” (CRB, p. 44, IOB, p. 25.) But that case, which involved a dispute regarding a commercial lease, did not consider whether a good faith increase in rent can constitute a constructive eviction, but rather involved claims that the landlord “had engaged in a scheme to improperly terminate the lease” by doing things like failing to make necessary repairs to the leased premises. (*Ginsberg v. Gamson* at 881.) Thus, the snippets pulled from these cases are irrelevant dicta.

Moreover, the one case Respondents cite that actually involved a tenant forced out through a rent increase—*Aweeka v. Bonds* (1971) 20 Cal.App.3d 278—confirms that a constructive eviction requires some degree of intent and/or wrongful action on the part of the landlord. While Intervenors characterize that case as “holding that an excessive rent increase ‘constituted an actual eviction’” (IOB, p. 25), the actual holding was that the plaintiff tenants had stated a cause of action for retaliatory eviction where they alleged their landlord ***deliberately forced them out*** by nearly doubling the rent after they complained about necessary repairs. (*Id.* at 280-281 [“when the landlord’s motive is retaliation for the exercise of statutory rights” a tenant may state a cause of action for retaliatory eviction].) Thus, Respondents have failed to identify any authority that supports their

contention that a constructive eviction occurs when a tenant elects to relinquish their tenancy following a lawful, good-faith increase in the rent.

The City argues that AAGLA has not cited any authority that interprets Costa-Hawkins “to limit municipal authority to regulating bad faith evictions.” (CRB, p. 45.) But that misses the point. A landlord who exercises their statutory right to raise the rent of a unit that Costa-Hawkins expressly exempts from rent control in order to collect additional rent is not engaged in constructive eviction. Thus, the Relocation Assistance Ordinance does not regulate evictions of any kind.

Moreover, even if the Relocation Assistance Ordinance could somehow be considered a regulation on “eviction,” the plain language of the Costa-Hawkins Act does not suggest all such regulations are permissible, but merely that municipalities may regulate “the basis for eviction” or “grounds for eviction.” (Civ. Code, § 1954.52(c); 1554.53(d); see *Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal.App.4th 488, 492 [“Had the Legislature intended to preserve local authority to control rent following evictions, we do not believe it would have spoken in terms of the ‘grounds for eviction,’ which simply do not include the amount of rent a landlord may charge after evicting a tenant.”]; see also *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1245 [explaining such provision was intended to make clear that Costa-Hawkins was “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.) Notwithstanding their repeated characterization of the ordinance as an eviction regulation, Respondents make no attempt to argue that it regulates the *grounds* for eviction, and the plain language of the ordinance would not support such an argument. Accordingly, Respondents’ attempt to save the Relocation Assistance Ordinance by characterizing it as a lawful “eviction regulation” is meritless.

Finally, Intervenors argue that courts have “upheld reasonable, tailored relocation assistance requirements in other contexts,” and argue the City has a policy “interest in offsetting the financial impacts of rent hikes.” (IOB, p. 32.) But any interest the City has is subordinate to the policy judgments made by the State Legislature, which concluded that restricting rent on new construction and single-family homes and condominiums is counterproductive to the State’s housing goals. (*See, e.g.*, AA 729; *see also* AA 747.) The difference between the case at hand and those in which relocation benefits have been upheld is that here the required payments would deprive landlords of the benefit of their right to raise rent under the Costa-Hawkins Act. While paying similar relocation benefits might not be an undue burden on a landlord’s right to go out of business or to convert apartments to condominiums, the right to raise rent above the threshold is valuable *only* to the extent it financially benefits landlords. (*C.f. Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886, 894 [ordinance that required relocation benefits where a landlord withdraws all the rental units in a building from the rental market did not, on its face, violate the

Ellis Act, which expressly allows public entities to “mitigate any adverse impact on persons displaced by reason of [such a] withdrawal”]; *People v. H & H Properties* (1984) 154 Cal.App.3d 894, 902 [involving condominium conversion]; *compare Coyne v. City and County of San Francisco* (2017) 9 Cal.App.5th 1215, 1231 [“A local government’s powers to mitigate are not without limits and cannot be enlarged in such a way to prevent a property owner from exercising her Ellis Act rights.”].) If raising rent above the threshold instead costs landlords money—as it plainly will under the ordinance at issue here—then such right is illusory. Respondents fail to cite any authority upholding an ordinance that requires payment of relocation benefits where a tenant voluntarily vacates a unit following a lawful proposed rent increase.

IV. CONCLUSION

For the reasons set forth above and in Appellant’s Opening Brief, Appellants respectfully request that the Court reverse the trial court judgment and direct the trial court to grant the requested petition for writ of mandate as to both ordinances.

Dated: November 12, 2024

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

Counsel of Record for Plaintiff and Appellant,
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INC. dba APARTMENT ASSOCIATION OF GREATER LOS
ANGELES hereby certifies that pursuant to Rule 8.204(c)(1) or
8.360(b)(1) of the California Rules of Court, the enclosed
Appellants' Reply Brief is produced using 13-point Century
Schoolbook type including footnotes and contains approximately
5,991 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: November 12, 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. B336071)*

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.

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