

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 Superior Court
Case No. 23STCP00720
Hon. Mitchell L. Beckloff

**Application to File Amicus Brief in Support of the City of Los Angeles
and
Amicus Brief by the City of Santa Monica**

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The City of Santa Monica asks this Court's permission to file the attached amicus brief in support of the City of Los Angeles. We submit this amicus brief to assist the Court in its evaluation of the trial court's decision that the City of Los Angeles' Eviction Threshold Ordinance and Relocation Assistance Ordinance are not preempted by State law.

The City of Santa Monica is a municipal corporation under the laws of the State of California. The Santa Monica City Charter and Municipal Code provide critical tenant protections, including both limitations on the substantive grounds for eviction and requirements for relocation assistance for displaced tenants.

The Santa Monica City Charter limits the substantive grounds for eviction by providing the exclusive grounds for eviction for all non-exempt units. Additionally, Santa Monica Municipal Code section 4.36.020 requires landlords to provide relocation assistance to tenants in certain situations. In February 2024, the Santa Monica City Council amended this section to also require relocation assistance if a tenant relinquishes their tenancy following a proposed rent increase that exceeds the lesser of either the consumer price index plus five percent, or ten percent. Santa Monica Municipal Code section 4.36.020(a)(5). This is the same rent-increase threshold as the Relocation Assistance Ordinance in this case.

Like the Eviction Threshold Ordinance, the Santa Monica City Charter's just-cause protections restrict the substantive grounds for eviction, while preserving the procedural requirements under the State's unlawful detainer statute. And like the Relocation Assistance Ordinance, the Santa Monica Municipal Code's similar requirement has mitigated the negative impact of displacement for tenants without placing a prohibitive price on a landlord's ability to raise the rent as they see fit. The City of Santa Monica thus offers this amicus brief to provide the Court with the

perspective of a local government that has, consistent with State law, adopted both just-cause eviction protections and relocation assistance for economic displacement.

The City of Santa Monica there respectfully requests that the Court grant leave to file the attached amicus brief.

Dated: November 26, 2024

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By: /s/ Andrew Braver

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AMICUS BRIEF BY THE CITY OF SANTA MONICA

INTRODUCTION

For over 40 years, local jurisdictions throughout California have adopted tenant protections to increase housing stability, prevent homelessness, and ensure a fair rental market. In February 2023, the City of Los Angeles adopted two additional tenant protections to do just that. The Eviction Threshold Ordinance prevents a landlord from evicting a tenant for being behind on rent if the tenant is behind on just one month's fair market rent or less. The Relocation Assistance Ordinance requires a landlord to pay relocation assistance to a tenant when the tenant moves out because of a proposed rent increase that is above a threshold amount.

In February 2024, the City of Santa Monica likewise amended its relocation assistance ordinance to require landlords to pay relocation assistance under similar circumstances. While the City of Santa Monica has not adopted a threshold amount for evictions due to nonpayment, the City has adopted other substantive restrictions on a landlord's ability to evict.

Appellants, an association of local landlords, argue that the Eviction Threshold Ordinance and the Relocation Assistance Ordinance are preempted by State law, but there is no such conflict. The Eviction Threshold Ordinance maintains the procedural requirements in the State's unlawful detainer statute, and the Relocation Assistance Ordinance preserves a landlord's right under State law to set initial and subsequent rents for certain units.

ARGUMENT

- I. The Eviction Threshold Ordinance is not preempted by California's unlawful detainer statute.**
 - A. Local governments may restrict the substantive grounds for eviction.**

California’s unlawful detainer statute, Code of Civil Procedure section 1161, *et seq*, regulates the procedural aspects of an eviction action. While these procedural aspects are set by State law, local jurisdictions may regulate the substantive grounds for an eviction pursuant to their police power. *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 149. Accordingly, a local government’s “ordinance may permissibly eliminate a ground for eviction specified in Code of Civil Procedure section 1161 without creating a conflict with the unlawful detainer statutes.” *Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 764 (upholding Oakland’s warning notice and opportunity to cure requirement as “regulat[ing] the substantive grounds for eviction rather than the procedural remedy available to the landlord”).

As the California Courts of Appeal have explained, local jurisdictions may prohibit landlords from evicting a tenant for a particular reason, even if the Code of Civil Procedure specifically provides a procedural mechanism for landlords to evict a tenant for that reason. *Id.* (upholding an ordinance that imposed multiple substantive restrictions on the grounds for eviction, including a requirement for notice and an opportunity to cure); *Gross v. Superior Court* (1985) 171 Cal. App. 3d 265 (upholding an ordinance that prohibited a purchaser at a foreclosure proceeding from evicting a tenant in the foreclosed unit).

B. The Eviction Threshold Ordinance is consistent with the State’s unlawful detainer statute.

Local legislation is preempted if it conflicts with State law because it “duplicates, contradicts, or enters an area fully occupied by general law.” *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 743 (internal quotation marks and citations omitted). Like other just-cause eviction protections, the Eviction Threshold Ordinance does not conflict with State law. Rather, it limits a substantive

ground for eviction based on the amount of unpaid rent that triggers the State law’s unlawful detainer process to commence. The ordinance defines the triggering event as the accrual of rental debt in excess of one month’s fair market rent. As soon as that threshold rent has been exceeded, the landlord may serve a notice pursuant to the Civil Code of Procedure to pay rent or quit the premises. Insofar as Appellant claims that it has a procedural impact, a local jurisdiction may limit the substantive grounds for eviction even if doing so has a procedural impact if, as would be the case here, that impact is “necessary to regulate the substantive grounds of the defense it creates.” *San Francisco Apartment Assn. v. City and County of San Francisco* (“*SFAA I*”) (2018) 20 Cal.App.5th 510, 518 (internal quotation marks and citations omitted) (upholding an ordinance that prohibited no-fault evictions of households with children and educators during the school year although the requirement “imposed an inherent delay on a landlord’s unlawful detainer remedy”). Thus, this ordinance does not conflict with the State’s unlawful detainer statute because the ordinance is a substantive regulation of the ground for eviction, not a procedural requirement for an eviction.

The Eviction Threshold Ordinance here should be distinguished from the ordinance recently addressed in *San Francisco Apartment Association v. City and County of San Francisco* (2024) 104 Cal.App.5th 1218. There, the court held that a San Francisco ordinance that required a landlord to serve an additional 10-day warning and cure period before serving a three-day notice to pay or quit was preempted by Code of Civil Procedure 1161. *Id.* at 1230. The court reasoned that the San Francisco ordinance was entirely procedural because it “plainly prohibits a landlord from proceeding under the state statutory timeline by requiring the additional 10-day warning and cure period,” which imposed an affirmative procedural obligation on landlords. *Id.* at 1237-1238. Unlike the San

Franciso ordinance in that case, the Eviction Threshold Ordinance at issue here does not require a landlord to provide any additional notice to commence an unlawful detainer action. Here, a landlord simply serves a three-day notice under Code of Civil Procedure Section 1161 once the substantive ground for eviction is met—that is, when the amount owed by the tenant exceeds one month’s fair market rent. That the Eviction Threshold Ordinance has an impact on when a landlord has a substantive ground to bring an eviction action does not mean it imposes any procedural requirements. *Id.* at 1234 (distinguishing *SFAA I* as not imposing procedural requirements even when there was an impact on the timing of an eviction).

Like the City of Los Angeles and many other local jurisdictions, the City of Santa Monica has adopted just-cause eviction protections that limit the substantive grounds for eviction. *See* Santa Monica City Charter § 1806, 2304 (just-cause protections, including protection from eviction in certain circumstances if a landlord did not provide a warning notice before serving a separate notice to terminate tenancy); Santa Monica Municipal Code § 4.27.020 (just-cause protections and rent increase limits during the 1984 Summer Olympic Games); Santa Monica Municipal Code § 4.27.050 (substantive eviction defense for educators and students during the school year). Local jurisdictions rely on their police power to enact these tenant protections, while fully respecting the procedural requirements under the Code of Civil Procedure once a ground for eviction has been alleged.

This is the system that the State Legislature intended for the regulation of evictions.

II. The Relocation Assistance Ordinance is not preempted by the Costa-Hawkins Act.

A. Local governments may require relocation assistance due to tenant displacement.

The California Courts have repeatedly recognized that cities may require a landlord to pay relocation assistance, including when the termination of a tenancy results from the landlord's exercise of a legal right. *Pieri v. City and County of S.F.* (2006) 137 Cal.App.4th 886 (upholding relocation assistance to tenants evicted under the Ellis Act); *Kalaydjian v. City of L.A.* (1983) 149 Cal.App.3d 690 (upholding relocation assistance to tenants displaced due to the conversion of rental units to condominiums). As the Court of Appeal explained, "The Rent Ordinance's requirement that landlords pay reasonable relocation assistance benefits is a 'valid and appropriate exercise of a public entity's power to mitigate adverse impacts on displaced tenants under [the Ellis Act].'" *2710 Sutter Ventures, LLC v. Millis* (2022) 82 Cal.App.5th 842, 855, quoting *Coyne v. City and County of San Francisco* (2017) 9 Cal.App.5th 1215, 1228.

Many California cities, including the City of Santa Monica, have adopted ordinances that provide for relocation assistance in many different circumstances. Under Santa Monica Municipal Code section 4.36.020, a landlord is required to pay a relocation fee to a tenant when the tenancy is terminated under certain circumstances that are no fault of the tenant. These circumstances include the withdrawal of the unit from the rental market; owner occupancy; physical displacement due the condition of the units or unlawful actions of the landlord; and, like the ordinance in this case, economic displacement due to an above-threshold rent increase.

In all these situations, relocation assistance mitigates the adverse impact of tenant displacement. The Relocation Assistance Ordinance here does the same. Under this ordinance, a tenant is entitled to relocation

assistance if they terminate their tenancy following a proposed rent increase that exceeds the lesser of either the consumer price index plus five percent, or ten percent. This is the same rent-increase threshold adopted by the Santa Monica City Council. Santa Monica Municipal Code section 4.36.020(a)(5). Landlords therefore benefit from raising the rent on non-rent-controlled units to any amount that the landlord deems appropriate, while tenants are eligible to receive relocation assistance if they are displaced following an above-threshold rent increase.

B. The Relocation Assistance Ordinance is consistent with the Costa-Hawkins Act.

Appellant claims that the Relocation Assistance Ordinance is preempted by the Costa-Hawkins Rental Housing Act, Civ. Code section 1954.50 *et seq.*, because the ordinance sufficiently disincentives a landlord from raising the rent above the threshold amount. Under the Costa-Hawkins Act, a landlord may set the initial and subsequent rent for a unit if the unit has a certificate of occupancy issued after February 1, 1995, was already exempt from rent control by that date, or is a single-family home or condo. Civ. Code section 1954.52(a). The Costa-Hawkins Act does not “affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction.” Civ. Code section 1954.52(c).

The Relocation Assistance Ordinance presents no conflict with the Costa-Hawkins Act for two reasons. First, the relocation assistance amount is reasonably tied to the cost of securing replacement housing at three times fair market rent plus moving costs. To be sure, it is possible to imagine an ordinance that imposes a supposed relocation assistance amount that is so high, and so divorced from the actual cost of relocating, that it places a prohibitive price on a landlord’s ability to raise the rent above the threshold amount. But that is not this ordinance. The California Courts have no difficulty in distinguishing punitive measures from reasonably calculated

relocation assistance. *See Coyne v. City & County of S.F.* (2017) 9 Cal.App.5th 1215, 1219 (finding that a relocation assistance amount of a two-year rent subsidy up to \$50,000 is not a proper mitigation measure). Unlike in *Coyne*, the relocation assistance here is not an ongoing rental subsidy for future rentals, but rather a payment to help mitigate the cost of securing replacement housing.

Second, consistent with the Costa-Hawkins Act, a landlord can still raise the rent above the threshold amount. The Relocation Assistance Ordinance does not prohibit a landlord from raising the rent above the threshold amount, and it does not require the landlord to pay relocation assistance to a tenant who remains in the unit following the rent increase. The requirement to provide relocation assistance is not an “inevitable and undue burden” that “in effect, bar[s]” a landlord from raising the rent above the threshold amount. This is the same standard the Court of Appeal applied when considering whether local ordinances are preempted by the Ellis Act, Gov. Code section 7060, *et seq.* *San Francisco Apartment Assn. v. City and County of San Francisco* (2016) 3 Cal.App.5th 463, 469, 482 (finding that an ordinance imposing a 10-year waiting period between a no-fault eviction, such as under the Ellis Act, and qualifying for a permit to merge the withdrawn unit into another unit, is inconsistent with the right to go out of the rental housing business). There is therefore no contradiction with State law because “it is reasonably possible to comply with both the state and local laws.” *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 743.

Considering these factors, it is clear that the State Legislature could have written Civil Code section 1954.52(a) to guarantee a landlord the right to set initial and subsequent rental rates for certain units, and, in addition, guarantee a landlord the right to do so without the imposition of paying relocation assistance. But the State Legislature did not do so. Instead, they

recognized that it was entirely consistent to prohibit a city from adopting price controls for certain units, while preserving a local government’s authority to require relocation assistance after a tenant is displaced following an above-threshold rent increase. This is what the Relocation Assistance Ordinance has done. The relocation assistance amount is reasonably calculated to mitigate the harms of displacement, without imposing a prohibitive price on a landlord’s right to set initial and subsequent rents. Accordingly, the Relocation Assistance Ordinance is not preempted by the Costa-Hawkins Act.

CONCLUSION

For these reasons, this Court should affirm the trial court’s order denying AAGLA’s Petition for Writ of Mandate.

Dated: November 26, 2024

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City Attorney
ROMY GANSCHOW
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By: /s/ Andrew Braver

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Deputy City Attorney

Attorneys for Amicus
City of Santa Monica

CERTIFICATE OF WORD COMPLIANCE

Pursuant to California Rules of Court 8.486(a)(6) and 8.204(c), I certify that the enclosed petition and memorandum is produced using 13-point or larger type and that it contains 2518 words, not including the table of contents and authorities, the caption page, the signature blocks, or this certification page. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: November 26, 2024

/s/ Andrew Braver

Andrew Braver

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 1685 Main Street, Rm. 310, Santa Monica, California 90401.

I am familiar with the business practice at the City Attorney’s Office for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the City Attorney’s Office 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 November 26, 2024, I electronically served the attached:

Application to File and Amicus Brief in Support of the City of Los Angeles and Amicus Brief by the City of Santa Monica

by transmitting a true copy via this Court’s True Filing system.

On November 26, 2024, I served participants in this case 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 in the internal mail collection service at the Office of the City Attorney, addressed as follows:

Court Clerk, Department 86
Los Angeles Superior Court
Stanley Mosk Courthouse, Dept. 86
111 N. Hill Street, Santa Monica, CA 90012

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the 26th day of November 2024, at Santa Monica, California.

/s/ Andrew Cabello
Andrew Cabello