

Case No. B336071

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

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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.*

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**ANSWER TO AMICUS CURIAE BRIEF BY CITY AND  
COUNTY OF SAN FRANCISCO AND THE CITY OF  
SANTA MONICA**

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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

The interest of Amicus Curiae City and County of San Francisco (“San Francisco”) in this case is telling. As explained in Appellant’s reply brief, San Francisco’s attempt to extend the eviction timeline provided by state law via an ordinance it insisted was a permissible “substantive” limitation on evictions was recently rebuffed by the First District, Division 2. (*See San Francisco Apartment Association v. City and County of San Francisco* (“*SFAA 2024*”) (2024) 104 Cal.App.5th 1218.) Should this Court allow Respondent City of Los Angeles (“City”) to accomplish the same result via a different mechanism, *SFAA 2024* would be reduced to a mere inconvenience, rather than a meaningful limitation on municipalities’ ability to circumvent state law. Neither San Francisco nor Amicus Curiae City of Santa Monica (“Santa Monica”) offer a convincing reason not to follow the well-reasoned decision of the *SFAA 2024* court. While the form of Ordinance No. 187763 (the “Eviction Threshold Ordinance”) is different than that at issue in *SFAA 2024*, its purpose and effect is substantively the same. Accordingly, this Court should hold that the Eviction Threshold Ordinance is preempted by the unlawful detainer statute for the same reasons as the ordinance at issue in *SFAA 2024*.

Santa Monica also asks the Court to uphold Ordinance No. 187764 (the “Relocation Assistance Ordinance”), urging the Court to apply the “prohibitive price” standard set forth in cases involving evictions under the Ellis Act. (Santa Monica’s Amicus Brief (“SMAB”), p. 14.) As explained below and in Appellant’s

prior briefing, however, proper application of that standard demonstrates that the Relocation Assistance Ordinance is preempted by the Costa-Hawkins Rental Housing Act (“Costa-Hawkins”), since the price imposed by such ordinance will prevent property owners’ from exercising their statutory rights. (See Appellants’ Opening Brief (“AOB”), pp. 30-31; Appellant’s Reply Brief (“ARB”), pp. 20-24.) Indeed, the deterrent effect of the ordinance is largely undisputed. (See AA 932 [trial court finding the “deterrent effect is clear from the plain language of the ordinance” and noting the City had acknowledged the ordinance was intended to have such effect].)

## **II. THE EVICTION THRESHOLD ORDINANCE IS PREEMPTED UNDER SFAA 2024**

### **A. San Francisco’s Attempts to Reargue SFAA 2024 Are Unpersuasive.**

San Francisco spends much of its brief attempting to reargue the merits of *SFAA 2024*, 104 Cal.App.5th 1218, asserting that *SFAA 2024* is inconsistent with prior case law and urging the Court to “decline ... to follow the *SFAA 2024* approach.” (San Francisco Amicus Brief (“SFAB”), p. 17.) San Francisco attacks the *SFAA 2024* court’s rationale for distinguishing *San Francisco Apartment Association v. City and County of San Francisco* (“*SFAA 2018*”) (2018) 20 Cal.App.5th 510 and *Rental Housing Assn. of Northern Alameda County v. City of Oakland* (“*Rental Housing*”) (2009) 171 Cal.App.4th 741, but each of those cases was carefully considered and discussed in detail in *SFAA 2024*.

With respect to *SFAA 2018*, the *SFAA 2024* court explained, among other things, 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 [also noting the *SFAA 2018* ordinance provided “a substantive defense with only an ‘impact’ on timing”].) The *SFAA 2018* court further emphasized that it impacted the timing of only a narrow subset of evictions, suggesting “an ordinance limiting the timing of *all* evictions would appear to be preempted by the unlawful detainer statutes.” (*SFAA 2024* at 1235, quoting *SFAA 2018* at 519, emphasis in original.) In contrast, the ordinance at issue in *SFAA 2024* did “not establish a substantive defense to eviction for a protected group.” (*SFAA 2024* at 1234.) To the contrary, the court found “its extension of the timeline for notice and an opportunity to cure [was] entirely procedural.” (*Id.* at 1234-1235.)

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.’” (*Id.* at 1236.) There was no indication that the ordinance at issue in that case was designed to extend the notice period provided by state law, *i.e.*, that the city “took issue with the three-day notice standard of [Code of Civil Procedure] section 1161.” (*Id.* at 1237.) Accordingly, “*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.) The court concluded that the ordinance at issue in *SFAA 2024* was different, because it “created a procedural barrier across all ground for at-fault evictions ... *with the explicit purpose of adding more days to the three-day timeline under section 1161.*” (*SFAA 2024* at 1137, emphasis added.)

Thus, *SFAA 2024* is not inconsistent with *SFAA 2018* or *Rental Housing*, and this Court does not need to choose between them.<sup>1</sup> As discussed below (and in Appellant’s Reply Brief), the key facts of the case at hand are remarkably similar to those in *SFAA 2024*; the Eviction Threshold Ordinance is thus preempted for the same reasons as the ordinance at issue in *SFAA 2024*.

San Francisco also claims the *SFAA 2024* court erred in focusing on the intent of the Board of Supervisors in adopting the ordinance at issue, “rather than the intent of the state Legislature,” arguing “what matters in preemption analysis is

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<sup>1</sup> Assuming arguendo that that San Francisco is correct that such cases cannot be reconciled (notwithstanding the First District’s determination otherwise), San Francisco offers no good reason why this Court should not nonetheless follow the well-reasoned decision in *SFAA 2024*, which is both more recent and more analogous to the facts at hand than the authority that San Francisco argues is inconsistent.

the *state Legislature's* intent.” (SFAB, p. 17, italics in original.) But that argument conflates two separate issues. While the Legislature’s intent is relevant to determining whether state law occupies a field and precludes local regulation, there is no dispute here that municipalities “may not interfere with the procedures set forth in the unlawful detainer statutes.” (SFAB, p. 9; *see also* City’s Respondent’s Brief, p. 24 [conceding “governments may not ‘procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes’”].) As to the issue of determining whether a city regulation is substantive or procedural in nature, it is obviously the intent of the city council that matters. (*See, e.g., Tri County Apartment Ass’n v. City of Mountain View* (“*Tri County*”) (1987) 196 Cal.App.3d 1283, 1292 [explaining history of ordinance was relevant to understanding its “nature and purpose,” and rejecting city’s argument that the ordinance, which restricted the effective date of proposed rental increases, was a substantive “rent control measure,” rather than a procedural requirement].)

San Francisco argues that *SFAA 2024* “flips *California Grocers* on its head” by considering the purpose of the ordinance in analyzing preemption. (SFAB, p. 17.) But *SFAA 2024* accurately described *California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177 as cautioning against finding preemption based *solely* on purpose, while recognizing an ordinance’s purpose may be relevant to state preemption analysis “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.” (*SFAA 2024* at 1231; *California Grocers Assn.* at 190.) Nor does any other authority cited by San Francisco suggest that it is inappropriate to consider an ordinance’s purpose in the context of such an inquiry. (See, e.g., *City and County of San Francisco v. Post* (2018) 22 Cal.App.5th 121, 135–136 [noting “case law provides authority for the proposition that ‘local laws are not preempted by state statutes when they serve different purposes’” and proceeding to discuss purpose]; *San Francisco Apartment Assn. v. City and County of San Francisco* (2016) 3 Cal.App.5th 463, 476 [citing *California Grocers Assn.* for proposition that purpose “alone” is not a basis for concluding a local measure is preempted].)

San Francisco asserts that “[u]nder the *SFAA 2024* approach, the analysis turns less on the effect of the local law, but instead on the subjective motivations of individual legislators,” and claims such approach creates difficult questions about how to determine the legislature’s intent. (SFAB, p. 18.) But those contentions misrepresent what the *SFAA 2024* court actually did. *SFAA 2024* did not elevate inquiries into an ordinance’s purpose over examinations of its effect, but merely confirmed that in undertaking the difficult task of determining whether an ordinance is procedural or substantive in nature, the courts should not ignore clear evidence of what it was intended to accomplish. (*SFAA 2024* at 1230-1231; see also *Tri County* at 1293 [preemption analysis “cannot ignore the history of the Ordinance”].) In other words, where an ordinance has a procedural impact, evidence of the purpose for which it was

adopted can shed light on whether the ordinance is properly classified as procedural or substantive in nature. (*SFAA 2024* at 1230-1231 [noting “the well-recognized principle that the distinction between procedure and substantive law can be shadowy and difficult to draw in practice”], internal quotations removed.)

**B. *SFAA 2024 Is Directly Applicable to the Case at Hand.***

Both San Francisco and Santa Monica further argue that *SFAA 2024* is not controlling or persuasive here. (SFAB, pp. 10-11; SMAB, pp. 9-10.) But, as detailed in Appellant’s Reply Brief, the ordinance at issue in *SFAA 2024* and that at issue in this case were directed at precisely the same perceived problem, and designed to achieve exactly the same procedural purpose. (ARB, pp. 10-13.) Like the ordinance at issue in *SFAA 2024*, the Eviction Threshold Ordinance was adopted because the City wanted to extend the eviction timeline provided by state law, to give “tenants time to get back on their feet” in the event of a financial hardship. (*See* AR 65.) Indeed, while the City used a slightly different mechanism than San Francisco to achieve that result, the record indicates that the City considered the possibility of imposing a “timeliness threshold,” prior to settling on the financial threshold contained within the ordinance. (AR 110.)

In fact, perhaps the most notable difference between the two cases is that here there is no dispute regarding the purpose of the Eviction Threshold Ordinance. San Francisco urges the

Court not to “delve into statements made by individual legislators,” as the *SFAA 2024* court did (SFAB, p. 18), but such an inquiry is not necessary, because the City admits that “[t]he 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.” (City’s Respondent’s Brief, p. 28, emphasis removed.) The only dispute—resolved by *SFAA 2024*—is whether an ordinance designed to give tenants more time than provided by state law to avoid eviction for nonpayment of rent is procedural or substantive in nature.

Santa Monica argues *SFAA 2024* is distinguishable because the Eviction Threshold Ordinance “does not require a landlord to provide any additional notice to commence an unlawful detainer action.” (SMAB, p. 10.) But while it is true that the ordinance does not include a separate notice requirement, it was adopted for precisely the same purpose and achieves the same result of extending the eviction timeline provided by state law. Like the ordinance at issue in *SFAA 2024*, it prevents landlords from immediately serving the 3-day notice provided by state law where a tenant fails to pay rent. Accordingly, accepting amicus’ arguments would render *SFAA 2024* largely meaningless; its only effect would be to ensure that municipalities seeking to skirt state law are more crafty in doing so. San Francisco itself could achieve its goal of extending the eviction timeline by copying the Eviction Threshold Ordinance or simply adopting a new ordinance that provides there is no just cause for eviction unless

a rent payment is more than 10 days late (without providing for a notice at the outset of such period). Such a result would “make a mockery” of preemption principles. (*See National Meat Ass’n v. Harris* (2012) 565 U.S. 452, 464 [state preempted from directly regulating meat production could not do so indirectly by “framing [law] as a ban on the sale of meat produced in whatever way the State disapproved”].)

*SFAA 2024* also expressly held that “state statutory law has fully occupied the field of landlord-tenant notification timelines,” thus preventing municipalities from interfering with the “relatively simple and speedy remedy” provided by Code of Civil Procedure section 1161. (*SFAA 2024* at 1238.) Thus, the key takeaway of *SFAA 2024* is that a municipality may not deliberately change the timeline provided by the unlawful detainer statute “to suit its own agenda,” even if it frames its attempt to do so as a “substantive” limitation on eviction. (*SFAA* 1239.) That is what the City did here, and thus, the Eviction Threshold Ordinance is preempted.

### **III. THE RELOCATION ASSISTANCE ORDINANCE CONFLICTS WITH THE COSTA-HAWKINS ACT**

Like the City and Respondent Intervenors, Santa Monica fails to identify any authority upholding an ordinance that requires payment of relocation benefits when a tenant chooses to vacate a unit following a lawful proposed rent increase, as opposed to where a tenant is actually evicted from a rental unit. The cases cited by Santa Monica primarily involve ordinances that required payment of relocation benefits to tenants evicted

under the Ellis Act, which provides that an owner of residential property may not be compelled to continue to offer the property for rent, but expressly preserves municipalities' power "to mitigate any adverse impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations." (Gov Code § 7060.1(c).) Such cases are thus factually distinguishable from the case at hand, which requires that landlords pay relocation assistance to tenants that have *not* been evicted.

Nonetheless, Santa Monica is correct that the "prohibitive price" standard set forth in such cases is applicable here, *i.e.*, the Relocation Assistance Ordinance is preempted if it imposes "a prohibitive price on a landlord's right to set initial and subsequent rents." (SMAB, p. 14; *see also* AOB, p. 18; ARB, p. 19.) *Coyne v. City and County of San Francisco* (2017) 9 Cal.App.5th 1215, for example, involved an ordinance requiring landlords to pay tenants evicted under the Ellis Act "the difference between the tenant's current rent and the prevailing rent for a comparable apartment" over a two year period. (*Id.* at 1220.) The court held that the relevant standard for evaluating whether the ordinance was preempted by the Ellis Act was whether it imposed a "*prohibitive price* on the landlord exercising their rights under the Ellis Act to withdraw from the residential rental business." (*Id.* at 1226, italics in original [noting the respondent city's agreement that under such test it was not allowed to indirectly compel landlords to remain in business "by exacting a price that is so high that landlords can't in practice pay it or even that will materially deter them from evicting under

the Ellis Act”].) Applying that standard, the *Coyne* court held the challenged ordinance was preempted, noting that the “Ellis Act contains no requirement that obliges a landlord to pay their former tenants future rental subsidies” and concluding that such requirement imposed a “prohibitive price on the ability of landlords to exercise their rights under the Ellis Act.” (*Id.* at 1230; *see also id.* at 1231 [“A property owner's lawful decision to withdraw from the rental market may not be frustrated by burdensome monetary exactions from the owners to fund the City's policy goals.”].)

Santa Monica conclusorily asserts that the ordinance does not impose an “undue burden” on “raising the rent above the threshold amount” (SMAB, p. 13), but, as set forth in detail in Appellant’s prior briefing, simple arithmetic demonstrates the powerful deterrent effect of the Relocation Assistance Ordinance. (AOB, pp. 30-31; ARB, pp. 20-24.)<sup>2</sup> Indeed, the trial court found the “deterrent effect is clear from the plain language of the ordinance.” (AA 932.) And the City’s trial court briefing conceded that the ordinance was intended to deter rent increases above the threshold. (AA 773-774 [City acknowledging that the ordinance was intended to deter rent increases above the threshold]; *see also* AA 932 [trial court noting that acknowledgement].) Thus, there is no legitimate dispute that the

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<sup>2</sup> Notably, a financial price that would not be prohibitive in the context of an Ellis Act eviction, where a property owner is seeking to put a rental property to another (likely more lucrative) use, may nonetheless be prohibitive in the context of a potential rent adjustment.

ordinance imposes a prohibitive price on landlords' right to establish subsequent rents.

Moreover, unlike requiring reasonable relocation benefits for tenants evicted under the Ellis Act, requiring such payments to tenants who *choose* to vacate a rental unit after a lawful proposed rent increase is inherently inconsistent with the right to set subsequent rent enshrined in the Costa-Hawkins Act. The purpose of the Act is to prevent municipalities from unduly interfering with the free market, in order to avoid unintentionally decreasing the housing supply. (See AOB, pp. 26-27; *NCR Properties, LLC v. City of Berkeley* (2023) 89 Cal.App.5th 39, 47 [“The Legislature enacted Costa-Hawkins in 1995 to moderate what it considered the excesses of local rent control.”]; AA 729 [legislative history explaining the legislature’s concern about the unintended consequence of excessive rent control].) Thus, imposing a significant financial cost on landlords who seek to lawfully raise rent, such that landlords will be deterred from raising rent in excess of the threshold established by the ordinance, clearly imposes a prohibitive price on the exercise of the right to establish subsequent rent. (See *Coyne, supra*, 9 Cal.App.5th at 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 [statutory] rights.”]; see also *San Francisco Apartment Association v. City and County of San Francisco* (2022) 74 Cal.App.5th 288, 292 [the Costa-Hawkins Act intended to authorize rent increases “for the purpose of collecting additional rent”].) Accordingly, the

Relocation Assistance Ordinance is preempted by the Costa-Hawkins Act.


**IV. CONCLUSION**

For the above reasons, Appellant respectfully submits that the amicus briefs submitted by San Francisco and Santa Monica offer no basis to affirm the judgment and Appellant asks this Court to reverse and direct the trial court to grant the requested petition for writ of mandate as to both ordinances and enter judgment in Appellant's favor.

Dated: December 20, 2024

Respectfully submitted

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**CERTIFICATE OF COMPLIANCE**

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed brief of Appellant Apartment Association of Los Angeles County, Inc. dba Apartment Association of Greater Los Angeles is produced using 13-point Roman type including footnotes and contains approximately 3,131 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: December 20, 2024

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*(Apartment Association of Los Angeles, et al v. City of Los Angeles  
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**STATE OF CALIFORNIA, COUNTY OF ORANGE**

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On December 20, 2024, I served on the interested parties in said action the within:

**ANSWER TO AMICUS CURIAE BRIEF BY CITY AND COUNTY OF SAN FRANCISCO AND THE CITY OF SANTA MONICA**

as stated below:

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

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Case No. 23STCP00720

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**VIA U.S. MAIL DELIVERY  
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SUPREME COURT OF  
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**Service on the Supreme  
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