APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC. v. CITY OF LOS ANGELE
Case Number: 23STCP00720
Hearing Date: November 8, 2023

ORDER DENYING PETITION FOR WRIT OF MANDATE

Petitioner, Apartment Association of Los Angeles County, Inc., seeks a writ of mandate directing Respondents, City of Los Angeles and Council of the City of Los Angeles (City Council), to rescind Ordinance Nos. 187763 and 187764 as preempted by state law. Respondents and Intervenors, Community Power Collective and Inner City Struggle, separately oppose the petition.

Petitioner's Request for Judicial Notice (RJN) of Exhibits A through D is granted.

Respondent's RJN of Exhibits A through G is granted.

The petition is denied.

BACKGROUND AND PROCEDURAL HISTORY

The City's Rent Stabilization Ordinance (RSO) and Just Cause for Eviction Ordinance

The City regulates residential rents and evictions through its RSO as set forth in the City of Los Angeles Municipal Code (LAMC), sections 151.00 through 151.34. (See City RJN, Exh. A.) The RSO regulates rent increases for "rental units," as defined in the RSO, and requires evictions be based on one of fourteen "grounds," which include both at-fault reasons like causing a nuisance as well as other no-fault reasons like a landlord's exit from the rental business. (LAMC, §§ 151.04, 151.06, 151.09.A.) If a landlord wishes to evict a tenant for grounds unrelated to acts of the tenant, the RSO requires a landlord to pay relocation assistance. (*Id.*, § 151.09.G). The RSO applies to all "rental units" in the City, unless expressly exempt. Generally, the RSO does not regulate dwellings for which the City issued a Certificate of Occupancy after October 1, 1978. (*Id.*, § 151.02.)

In 2022, the City began to consider enacting additional tenant protections due to a concern the end of COVID-19-related landlord/tenant restrictions could lead to a sharp increase in evictions. In January 2023, the City adopted a "Just Cause For Eviction Ordinance" (Just Cause Ordinance) extending "just cause eviction protections" to rental housing units not subject to the RSO. (AR 303-316 [Ordinance No. 187737].) The Just Cause Ordinance "provide[s] just cause eviction protection to renters city-wide." (AR 304.) Consistent with the RSO, the Just Cause Ordinance permits a landlord to commence the tenant-eviction process where a "tenant has defaulted in the payment of rent." (AR 305.)

In adopting the Just Cause Ordinance, the City's recitals report "the California legislature passed the Tenant Protection Act of 2019, Assembly Bill 1482 ('TPA'),[1] which prohibits evictions without 'just cause' and owners of residential rental property from increasing rents more than 5 percent plus the percentage change in the cost of living or 10 percent, whichever is lower, per year." (AR 303.) The City Council noted the TPA does not apply to rental units built within the last 15 years and "does not protect all residential tenants." (*Ibid.*; see Civ. Code, § 1947.12, subd. (d)(4).) The City Council also made the following legislative finding:

> The TPA provides that municipalities may adopt protections after September 1, 2019, that are consistent and more protective than those provided under California Civil Code Section 1946.2. The local municipality must also make a binding finding that its ordinance is more protective than the provisions of Civil Code Section 1946.2. The City finds that this Ordinance is consistent with Civil Code Section 1946.2 and is more protective than Civil Code Section 1946.2 by further limiting the reasons for termination of a residential tenancy, providing for higher relocation assistance amounts, and providing additional tenant protections that are not prohibited by any other provision of law. (AR 304.)

Shortly after adopting the Just Cause Ordinance in early 2023, the City Council adopted the two ordinances at issue here. The ordinances have been in effect since March 27, 2023. (City Opposition 3:3-4.)

Ordinance No. 187763 (Eviction Threshold Ordinance)

On February 3, 2023, the City Council adopted Ordinance No. 187763. (AR 472.) The ordinance amended the RSO and the Just Cause Ordinance by restricting a landlord's ability to bring an unlawful detainer action until the tenant surpasses a threshold amount of unpaid rent—"one month of 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 470-472.)

The City's Renter Protections Notice for 2023 issued by the Los Angeles Housing Department (LAHD) specifies the 2023 economic threshold fair market rent (FMR) per bedroom size for Ordinance No. 187763. For 2023, the FMR is $1,747 for a one-bedroom unit; $2,222 for a two-bedroom unit; and $2,888 for a three-bedroom unit. (City RJN, Exh. E at 2.) Thus, "if a tenant rents a 1- bedroom unit and the rent is $1,500, the landlord cannot evict the tenant since the rent owed is less than the FMR for a 1-bedroom unit." (*Ibid.*)

Ordinance No. 187764 (Relocation Assistance Ordinance)

On February 7, 2023, the City adopted Ordinance No. 187764. (AR 625.) The ordinance amended the Just Cause Ordinance to require payment of relocation assistance when a tenant

[1] The TPA is codified at Civil Code sections 1946.2, 1947.12 and 1947.13. (AR 304.)

"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." (AR 623.) "For purposes of [the ordinance], the proposed rental increase, whether imposed as a single increase or payable periodically over a 12-month period, shall be calculated based on the highest legal monthly rate of rent established as of the date of the notice of rent increase." (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.) "A landlord may offset a tenant's accumulated rent or other amounts due to the landlord against any relocation assistance payable under this section." (AR 623.)

In describing the ordinance, the City's Renter Protections Notice for 2023 states "[e]ffective March 27, 2023, tenants who receive a rent increase of more than 10% within 12 months and are unable to afford the rent increase have the option to receive relocation assistance to move out of their rental unit instead." The notice includes a chart specifying the Economic Displacement Relocation Assistance Per Bedroom Size for tenants. For 2023, total relocation assistance is $6,652 for a one-bedroom unit; $8,077 for a two-bedroom unit; and $10,075 for a three-bedroom unit. (City RJN Exh. E at 2.)

Writ Proceedings

On March 3, 2023, Petitioner filed its verified petition for writ of mandate and complaint for declaratory relief.

On May 17, 2023, the court granted the motion of Intervenors Community Power Collective and Inner City Struggle ("Intervenors") to intervene.

On May 18, 2023, the court denied Petitioner's motion for preliminary injunction. While the court found Petitioner had shown some likelihood of success on the merits of their claims, the balance of harms weighed against granting preliminary injunctive relief.

STANDARD OF REVIEW

Petitioner seeks relief from the court pursuant to Code of Civil Procedure section 1085.

Ordinary mandate under Code of Civil Procedure section 1085 is generally used to review an agency's ministerial acts, quasi-legislative acts and quasi-judicial decisions which do not meet the requirements for review under Code of Civil Procedure section 1094.5. (*Bunnett v. Regents of University of California* (1995) 35 Cal.App.4th 843, 848; *Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1264-1265.)

As relevant here, under Code of Civil Procedure section 1085, a writ:

> may be issued by any court to any . . . board . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, ... (Code Civ. Proc., § 1085, subd. (a).)

"To obtain a writ of mandate under Code of Civil Procedure section 1085, the petitioner has the burden of proving a clear, present, and usually ministerial duty on the part of the respondent, and a clear, present, and beneficial right in the petitioner for the performance of that duty." (*Marquez v. State Dept. of Health Care Services* (2015) 240 Cal.App.4th 87, 103.)

Traditional mandate under Code of Civil Procedure section 1085 is the appropriate vehicle to challenge the constitutionality or validity of statutes or other official acts. (See *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, fn. 2 [noting mandate is appropriate remedy for compelling public official to act in accordance with law and challenging constitutionality or validity of statute].)

"The constitutionality of a statute is a question of law . . . ." (*Vergara v. State of California* (2016) 246 Cal.App.4th 619, 642.) However, "[i]t is well established . . . . that as a general rule statutes are presumed to be constitutional." (*Property Reserve, Inc. v. Superior Court* (2016) 1 Cal.5th 151, 192.) "When the Legislature has enacted a statute with constitutional constraints in mind there is a strong presumption in favor of the Legislature's interpretation of a provision of the Constitution." (*Ibid.* [*Cleaned up.*])

" '[A]ll presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.' [Citations.] If the validity of the measure is 'fairly debatable,' it must be sustained. [Citations.]" (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814-815; *Hellinger v. Farmers Group, Inc.* (2001) 91 Cal.App.4th 1049, 1061-1062.)

"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. See *Coyne v. City and County of San Francisco* (2017) 9 Cal.App.5th 1215, 1224.)

ANALYSIS

Petitioner's challenge to both ordinances is based solely on state law preemption.

Rules of Preemption

"Under article XI, section 7 of the California Constitution, 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. If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. . . . Local legislation is 'duplicative' of general law when it is coextensive therewith . . . Similarly, local legislation is 'contradictory' to general law when it is inimical thereto." (*San Diego Gas & Electric Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785, 792-793 [*cleaned up*].)

"The first step in a preemption analysis is to determine whether the local regulation explicitly conflicts with any provision of state law. [¶] If the local legislation does not expressly contradict or duplicate state law, its validity must be evaluated under implied preemption principles. In determining whether the Legislature has preempted by implication to the exclusion of local regulation we must look to the whole purpose and scope of the legislative scheme. There are three tests [for implied preemption]: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality." (*Johnson v. City and County of San Francisco* (2006) 137 Cal.App.4th 7, 13-14 [*cleaned up*].)

"The question whether an actual conflict exists between state law and charter city law presents a matter of statutory construction." (*City of El Centro v. Lanier* (2016) 245 Cal.App.4th 1494, 1505.) "To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.)

Courts "have been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.' " (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) " '[A]bsent a clear indication of preemptive intent from the Legislature,' we presume that local regulation 'in an area over which [the local government] traditionally has exercised control' is not preempted by state law. [Citation.] 'The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption.' " (*Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 752 [*Rental Housing*].)

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State Law Preemption of Ordinance No. 187764 (Relocation Assistance Ordinance)

Petitioner contends the Relocation Assistance Ordinance is preempted by state law because it "interferes with the exercise of a right expressly granted under the Costa-Hawkins Act, i.e., the right to establish 'all subsequent rental rates for a dwelling or unit.' (Civ. Code § 1954.52(a).)" (Opening Brief 13:15-17.)

Respondents argue the Relocation Assistance Ordinance does not conflict with the Costa-Hawkins Rental Housing Act (Costa-Hawkins), Civil Code section 1954.50 *et seq.*, because: (1) it "does not set any limit to rent increases"; (2) it is permissible "eviction regulation" that "prevent[s] landlords from circumventing the Just Cause Ordinance, which regulates evictions and requires relocation assistance for no-fault evictions"; and (3) "reasonable relocation fees" are a "standard feature in any eviction regulation to help tenants who are displaced." (City Opposition 10:12-15:12.) Intervenors develop similar arguments and also assert the Relocation Assistance Ordinance does not eliminate economic benefit to landlords. (Int. Opposition 12:17-18.)

Summary of Costa-Hawkins Rental Housing Act (Costa-Hawkins)[2]

"In August 1995, California enacted [Costa–Hawkins], which established 'what is known among landlord-tenant specialists as 'vacancy decontrol,' declaring that '[n]otwithstanding any other provision of law,' all residential landlords may, except in specified situations, 'establish the initial rental rate for a dwelling or unit.' (Civ. Code, § 1954.53, subd. (a).)' (*DeZerega v. Meggs* (2000) 83 Cal.App.4th 28, 41, 99 Cal.Rptr.2d 366.) The effect of this provision was to permit landlords 'to impose whatever rent they choose at the commencement of a tenancy.' (*Cobb v. San Francisco Residential Rent Stabilization and Arbitration Bd.* (2002) 98 Cal.App.4th 345, 351, 119 Cal.Rptr.2d 741.) The Legislature was well aware, however, that such vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates. (*Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal.App.4th 488, 492, 130 Cal.Rptr.2d 819 [*Bullard*].) Accordingly, the statute expressly preserves the authority of local governments 'to regulate or monitor the grounds for eviction.' (Civ. Code, § 1954.53, subd. (e).)" (*Action Apartment Assn. Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1237-38.)

Petitioner contends the Relocation Assistance Ordinance conflicts with Civil Code section 1954.52, subdivision (a), a provision of Costa-Hawkins, which provides in pertinent part:

> (a) 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 a unit about which any of the following is true:
> (1) It has a certificate of occupancy issued after February 1, 1995.

[2] Costa-Hawkins is codified at Civil Code section 1954.50 *et seq.*

(2) It has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units.
(3)(A) It is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision, as specified in subdivision (b), (d), or (f) of Section 11004.5 of the Business and Professions Code.

This provision of Costa-Hawkins "generally prohibits public entities from applying rent control laws to certain categories of dwellings, including newly constructed rental units." (*Hirschfield v. Cohen* (2022) 82 Cal.App.5th 648, 663.)

The Relocation Assistance Ordinance Does Not Directly Regulate Rents

The Relocation Assistance Ordinance does not directly regulate the rental rates landlords may charge for any rental units. As argued by Respondents, "[t]he Ordinance does not set any limit to rent increases, and tenants are free to accept any rent increase." (City Opposition 10:26-27.) In fact, the issue is undisputed. Petitioner concedes the ordinance does not "impose a hard limit on the amount rent can be increased." (Opening Brief 13:18.)

Because the Relocation Assistance Ordinance does not directly regulate rents, authorities relied upon by Petitioner are distinguishable. (*Bullard v. San Francisco Rent Stabilization Bd.* (2003) 106 Cal.App.4th 488 [*Bullard*]; *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 [*Palmer/Sixth Street*]; and *AAGLA, supra*, 136 Cal.App.4th at 119.) In *Bullard*, the Court invalidated a local ordinance requiring landlords to offer replacement units at regulated rates after evicting a tenant for the landlord's personal occupancy. The ordinance directly conflicted with Costa-Hawkins because it prevented the landlord from establishing the initial rental rate for the replacement unit. (*Bullard, supra,* 106 Cal.App.4th at 491-493.) In *Palmer/Sixth Street,* the Court concluded that, as applied to a specific project, a local planning condition was preempted by Costa-Hawkins because it denied the developer the right to establish the initial rental rates for the affordable housing units required by the ordinance. (*Palmer/Sixth Street, supra,* 175 Cal.App.4h at 1410.) In *AAGLA*, the Court held Costa-Hawkins preempted an ordinance prohibiting landlords, after terminating a Section 8 contract with the local housing authority, from charging tenants more than their portion of the rent under the former contract, "without any limitation as to time." (*AAGLA, supra,* 136 Cal.App.4th at 122.)

In all three cases relied upon by Petitioner, the preempted ordinance **directly** regulated the initial rental rate of housing units in a manner that conflicted and expressly contradicted Costa-Hawkins. The cases do not address whether relocation assistance or some other cost imposed on the landlord, on a one-time basis, conflicts with Costa-Hawkins.

Moreover, Petitioner has not identified any provision of Costa-Hawkins expressly prohibiting the kind of relocation assistance required by the Relocation Assistance Ordinance. The court therefore finds the local law (Ordinance No. 187764) does not expressly contradict state law (Costa-Hawkins).

The Relocation Assistance Ordinance is Intended to Deter "Large Rent Increases" in Units Exempt from Rent Control

Petitioner argues the Relocation Assistance Ordinance conflicts with Costa-Hawkins "by requiring property owners who increase rent ***over a specified limit*** to pay substantial so-called 'relocation benefits' in such an amount that owners would nearly always lose money if they choose to exceed the limit and are required to pay the benefits." (Opening Brief 13:19-22.) Petitioner asserts "by deterring rent increases, the ordinance undermines the purpose of Costa-Hawkins' restriction on rent control." (Opening Brief 14:9-10.)

Respondents acknowledge the Relocation Assistance Ordinance is intended, in part, to deter landlords of exempt residential units from "forcing tenants out with large rent increases." (City Opposition 13:13.) The deterrent effect is clear from the plain language of the ordinance. The ordinance requires 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." (AR 623.) "[T]he relocation assistance amount due under this section 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.) "In 2023, no payment is necessary for rent increases of up to 10 percent." (City Opposition 4:2; City RJN, Exh. E at 2.) While some landlords may decide to impose rent increases of more than 10 percent and pay the required relocation assistance, the reasonably presumption is that landlords would limit any rent increases to 10 percent or less given the economic disincentive (three months FMR plus $1,411) otherwise.[3]

Petitioner also provides the following hypothetical as an example of the Relocation Assistance Ordinance:

> Thus, if the current rent for a two-bedroom unit is $2,000, the property owner can raise it to $2,200 without risk; if they attempt to instead raise it by 15% to $2,300, however, they may be forced to pay $8,077—nearly 7 times the $1,200 in incremental increased rent they could hope to obtain over the course of a year by raising rent by $300 instead of $200. Given that math, no rational property owner would raise rent beyond the maximum amount that does not trigger the benefits, because they would very obviously lose money by doing so. (Opening Brief 14:1-7.)

[3] By way of example, in 2023, total relocation assistance for a two-bedroom unit is $8,077. (City RJN, Exh. E at 2.) If a landlord raised the rent in an unregulated unit to anything about 10 percent, the landlord would incur an $8,077 relocation cost payable to the tenant. Payment to a tenant of $8,077 as relocation assistance thereby serves as an incentive to a landlord to limit any rent increases to 10 percent or less.

As discussed *infra*, Petitioner's argument "no rational property owner would raise" the rents beyond the 10 percent threshold depends on a variety of factors that may differ for each rental unit—factors that are not in evidence here.[4] Nonetheless, the court acknowledges Petitioner's hypothetical demonstrates the Relocation Assistance Ordinance may economically discourage landlords from raising rents above the 10 percent threshold under some circumstances.[5]

The City's legislative history for the Relocation Assistance Ordinance confirms the City purposefully acted to deter "high rent increases" for "unregulated units." (See City Opposition 4:11-25.) In its report to the City Council, LAHD explained "[w]hile the adoption of a Just Cause ordinance will extend protections from arbitrary eviction to all tenants citywide, 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. . . . [T]enants who cannot afford the rent increases have no choice but to vacate their homes." (AR 2219.) Therefore, "[a]dditional 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 2220.)[6]

Considered in isolation and the abstract, the deterrent effect of the Relocation Assistance Ordinance seemingly conflicts with the Costa-Hawkins provisions permitting landlords to "establish the initial and all subsequent rental rates for a dwelling or a unit." (Civ. Code, §§ 1954.52, subd. (a), 1954.53, subd. (a).) Depending on the specific factual circumstances, the Relocation Assistance Ordinance may be inconsistent with notions of vacancy decontrol and the free market. (See Pet. RJN, Exh. B. ["Proponents view this bill as a moderate approach to overturn extreme vacancy control ordinances which unduly and unfairly interfere into the free market."])

Of course, Civil Code sections 1954.52, subdivision (a) and 1954.53, subdivision (a) cannot be read in insolation. The provisions are part of a larger complex legislative scheme.

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[4] For example, if a tenant voluntarily elected to terminate his/her tenancy after a 15 percent increase, the landlord would be free to reset the monthly rent for a new tenant at any amount under Costa-Hawkins. The new and presumably higher rental rate would offset the relocation assistance payment made to the former tenant. Petitioner's hypothetical ignores the future and higher rent that would be paid by a new tenant.

[5] A "real-world" example of a 15 percent increase necessitating relocation assistance is provided by Intervenors through the Declaration of Silvia Anguiano submitted by Intervenors. (See also Reply 11:10-19.)

[6] As Respondents and Intervenors point out, the legislative history also shows another purpose of Ordinance No. 187764 is mitigation of the harms to tenants of unregulated units caused by economic displacement due to rent increases the tenants cannot afford. (See AR 2220. ["Relocation assistance based on economic displacement would provide renters who are not protected by the RSO or State law with the financial means to secure alternative housing when forced to relocate due to high rent increases. . . ."])

Is the Ordinance a Permissible Eviction Regulation?

"Costa Hawkins expressly preserves . . . local authority to 'regulate or monitor the grounds for eviction' on all residential rental properties, including properties exempt from local rent control. (Civ. Code, § 1954.52, subd. (c) ['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.'].)" (*San Francisco Apartment Association v. City and County of San Francisco* (2022) 74 Cal.App.5th 288, 290 [*SFAA II*].)

SFAA II is instructive. There the Court addressed a challenge to an ordinance prohibiting landlords from using bad faith, pretextual rent increases to coerce tenants to vacate units exempt from rent control. The Court determined the ordinance was a valid exercise of local authority to regulate grounds for evictions. The Court rejected the landlord's argument the ordinance indirectly limited the amount of rent a landlord could charge in contravention of state law. The Court explained the ordinance in issue:

> "do[es] not prevent landlords from earning rent as determined by the free market, and it imposes no caps to ensure the availability of affordable rental housing." Rather, the measures prohibit a landlord from designating as rent an artificial sky-high amount that the landlord does not intend to collect but intends to cause the tenant to vacate the unit voluntarily or by eviction for nonpayment of the unrealistic figure. Section 37.10(A)(i) requires a finding that the rent increase was intended to coerce the tenant to leave the premises. Costa Hawkins does not protect a landlord's right to use a pretextual rent increase to avoid lawfully imposed local eviction regulations. (*SFAA II, supra,* 74 Cal.App.5th at 292.)

In *SFAA II,* the Court found persuasive *Mak v. Berkeley Rent Stabilization Bd.* (2015) 240 Cal. App. 4th 60, 63 [*Mak*]. As summarized in *SFAA* II:

> [*Mak*] upheld a regulation promulgated by the local rent board that created a rebuttable presumption that a tenancy which is terminated voluntarily but within one-year of service of notice of owner move-in " 'is presumed to have been terminated by the owner as a result of the notice' " and provided that " '[t]he rental rate for the next tenancy established in the vacated unit shall be no more than the maximum allowed under the Rent Ordinance for the tenant who vacated, plus any subsequent increases authorized by the Rent Board.' " [Citation.] The court rejected plaintiffs' argument that the rent restriction was preempted by the "vacancy decontrol" provisions of Costa Hawkins which protect the landlord's right to "establish the initial rental rate for a dwelling or unit." [Citations.] The court explained that the regulation " 'create[s] an administrative deterrent to discourage landlords from serving less than good faith owner move-in notices' " and that " '[v]iewed as a sanction for the misuse of owner move-in notices, [the regulation] does not regulate "the initial rate for a dwelling unit" [citation] and is

> a permissible regulation of "the grounds for eviction" [citation].' " (*Mak, supra,* 240 Cal.App.4th at p. 69, [].) (*SFAA II, supra,* 74 Cal.App.5th at 294.)

In contrast to *SFAA II* and *Mak*, the Court in *Bullard, supra,* 106 Cal. App. 4th at 488 invalidated a local ordinance requiring landlords to offer replacement units at regulated rates when landlords evict tenants for personal occupancy. The respondent rental board noted Costa-Hawkins expressly preserves public entities' authority to regulate the "grounds for eviction," and argued the ordinance merely established such grounds. (*Id.* at 491.) The Court of Appeal disagreed, finding the ordinance was a "rent regulation":

> [T]he Rent Board's reading of the statute would substantially weaken the statewide vacancy decontrol contemplated by the Costa–Hawkins Act. A local government might require a landlord who evicts a tenant for any reason to offer the unit at a controlled rent. . . .
>
> The Rent Board claims the rent restriction at issue serves a legitimate regulatory purpose by helping ensure that landlords do not undertake owner move-in evictions for the improper purpose of avoiding controlled rents. But the extension of rent control for a replacement unit is a remarkably blunt instrument for that purpose. It applies to landlords acting in good faith as well as unscrupulous landlords. Because it is contingent on the availability of another unit, it provides only an occasional, weak deterrent. When another unit is not available, tenants are not protected and landlords are not forced to accept a regulated rent. Permitting local governments to maintain such a haphazard form of vacancy control would subvert the purpose of the Costa-Hawkins Act.
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> . . . .
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> There can be no doubt the Legislature was well aware of the incentive for eviction created by vacancy decontrol. Civil Code section 1954.53, subdivision (e) is a strong statement that the state law establishing vacancy decontrol is not meant to affect the authority of local governments to monitor and regulate the grounds for eviction, in order to prevent pretextual evictions. 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. The San Francisco rent control 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 state law providing: "Notwithstanding any other provision of law, an owner of residential real property may establish the initial rental rate for a dwelling or unit. . . . (*Bullard, supra,* 106 Cal.App.4th at 492.)

The court finds the Relocation Assistance Ordinance more analogous to those ordinances analyzed in *SFAA II* and *Mak*, than the ordinance in *Bullard.* Like in *SFAA II* and *Mak*, and distinct from *Bullard*, Ordinance No. 187764 does not directly regulate rents. In contrast, the ordinance

in *Bullard* "limit[ed] the amount of rent a landlord may charge for a replacement unit following an owner move-in eviction . . . ." (*Bullard, supra,* 106 Cal.App.4th at 492.)

The Relocation Assistance Ordinance is reasonably expected to have a generalized deterrent effect on large rent increases—those that exceed the lesser of inflation plus five percent or 10 percent. The ordinance's legislative history as well as related state laws, other California statutes, and common experience all demonstrate rent increases exceeding the lesser of inflation plus five percent or 10 percent could cause tenants to vacate the unit as no longer affordable. (See Civ. Code, § 827, subd. (b)(3) [landlords required to provide tenants 90-day notice of rent increases greater than 10 percent]; Civ. Code, § 1947.12, subds. (a), (m) [prohibiting rent increases over 10 percent to "address rent gouging"]; Pet. RJN, Exh. D at 27 [legislative history for AB 1482: "This bill limits rent-gouging in California by placing an upper limit on annual rent increases: 5 percent plus inflation"]; AR 2220-2222 [LAHD report in support of Ordinance No. 187764].) The Relocation Assistance Ordinance thereby regulates evictions in a way similar to *SFAA II* and *Mak.*

Petitioner asserts "[t]he ordinance does not regulate evictions, [and] applies only where a tenant 'elects to relinquish their tenancy' following a rent increase." (Opening Brief 15:8-9.) The argument is unpersuasive and assumes all tenants have the financial wherewithal to pay a large (as defined by the ordinance) rent increase. "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." (*Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 897.) Accordingly, if acts of the landlord compel the tenant to vacate, a constructive eviction occurs even if the tenant "elects to [voluntarily] relinquish their tenancy . . . . (Opening Brief 15:8-9.)

Relatedly, Petitioner contends the ordinance does not regulate evictions because the term "constructive eviction" "ordinarily" refers to "***wrongful*** behavior that forces a tenant to vacate a property." (Reply 6:18-19.) Although a constructive eviction often implies wrongful behavior of the landlord, such as failure to maintain habitability or bad faith rent increases intended to oust a tenant, Petitioner fails to explain why a large rent increase, even if imposed in good faith, could not result in a constructive eviction. "There is nothing more likely to lead to an actual or constructive eviction than an increase in rent." (*Freeman v. Vista de Santa Barbara Associates, LP* (2012) 207 Cal.App.4th 791, 798.)

Petitioner argues, like the ordinance in *Bullard*, Ordinance No. 187764 is both "under- and over-inclusive" as an attempt to regulate constructive evictions. (Opening Brief 15:17.) Petitioner explains:

> It does not apply to a tenant who chooses to leave because they cannot afford an increase below the cap, yet does apply where a tenant can afford an increase above the cap, but chooses to leave in order to receive the [Relocation Assistance Ordinance] benefits (or for some other unrelated reason). Thus, like the ordinance determined invalid in *Bullard*, it is a 'remarkably blunt instrument' for its asserted purpose. (Opening Brief 15:17-21.)

Petitioner's argument is neither persuasive nor dispositive. The legislative history demonstrates concern for renters—who are not otherwise protected by the RSO or TPA—from becoming "economically displaced when their landlords impose high rent increases that the tenants cannot afford" leaving those tenants with "no choice but to vacate their homes." (AR 2219.) Where a landlord has raised rents beyond the ordinance's threshold—as the landlord is permitted to do—the landlord is only liable for relocation assistance where the tenant relinquishes his/her tenancy "following" the large rent increase. (AR 623.) The relocation assistance is mitigation for economic displacement and designed to cover the tenant's moving costs, first and last months' rents, and a security deposit. (AR 2220.)

Bullard is distinguishable. There the alleged eviction regulation was "contingent on the availability of another unit [and] provide[d] only an occasional, weak deterrent" against wrongful evictions. "When another unit is not available, tenants are not protected and landlords are not forced to accept a regulated rent." (*Bullard, supra,* 106 Cal.App.4th at 491-492.)

Here, the Relocation Assistance Ordinance requires economic displacement mitigation only where a tenant has vacated the unit after a large rent increase. Thus, the ordinance will have the intended effect of either deterring large rent increases that could result in a constructive eviction or, alternatively, mitigating the harms of the constructive eviction from a large rent increase. In either case, the ordinance serves as effective regulation of eviction. (See Civ. Code, § 1954.52, subdivision (c); see also *Pieri v. City & County of San Francisco* (2006) 137 Cal.App.4th 886 [rejecting facial challenge under Ellis Act to relocation assistance ordinance requiring landlords to pay up to $13,500 per rental unit being withdrawn from the rental market].) While the ordinance may not deter or mitigate all constructive evictions from rent increases, *Bullard* does not stand for the proposition that eviction regulation must work "perfectly" to fall within the statutory authorization in Costa-Hawkins allowing local authorities to "regulate or monitor the basis for eviction."

Finally, as argued by Respondents, "it is possible that excessive relocation assistance could effectively prohibit any rent increase." (City Opposition 15:7-8.) In this challenge to the ordinance, however, Petitioner does not demonstrate, with evidence and analysis, the relocation fees required by Ordinance No. 187764 place a "prohibitive price" on landlords exercising their rights under Costa-Hawkins.[7]

Implied Preemption

Petitioner has not argued the Relocation Assistance Ordinance is impliedly preempted. Given that Costa-Hawkins expressly authorizes local authorities "to regulate or monitor the basis for

[7] Cf. *Coyne v. City & County of San Francisco* (2017) 9 Cal. App. 5th at 1215, 1226-27 [Ellis Act relocation assistance must be reasonable and cannot place a "prohibitive price" on landlord's right to go out of rental business].)

eviction" (Civ. Code, § 1954.52, subd. (c)), such an argument would be unavailing. (See *Johnson v. City and County of San Francisco, supra,* 137 Cal.App.4hh at 13-14 [implied preemption can occur in three ways].)

Based on the foregoing, the court finds Petitioner has not met its burden of demonstrating Ordinance No. 187764 is preempted by Costa-Hawkins. Therefore, Petitioner is not entitled to relief based on its second cause of action.

State Law Preemption of Ordinance No. 187763 (Eviction Threshold Ordinance)

Petitioner's challenge here is solely one of preemption. (Pet., ¶¶ 18, 20.) Petitioner contends the Eviction Threshold Ordinance (Ordinance No. 187763) is preempted by California's unlawful detainer statutes, specifically Code of Civil Procedure section 1161, paragraph 2 (Section 1161). Petitioner argues: (1) the ordinance is procedural in nature and places a limitation on the timing of evictions thereby conflicting with Section 1161; and (2) exceeds the City's authority even if viewed as a substantive limitation on a landlord's ability to pursue eviction for a default in payment of rent.

The court disagrees. The court finds the Eviction Threshold Ordinance is a valid exercise of Respondents' police powers to regulate the substantive ground for eviction. The court finds Section 1161 does not preempt the Eviction Threshold Ordinance.

Legal Framework

The relevant framework for determining whether the ordinance is preempted by the state's unlawful detainer statutes is set forth in *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129 [*Birkenfeld*].

In *Birkenfeld*, the plaintiff argued a local law limiting the grounds for eviction of tenants in rent-controlled apartments was preempted by the state's unlawful detainer statutes. The Supreme Court rejected the argument reasoning:

> The purpose of the unlawful detainer statutes is procedural. The statutes implement the landlord's property rights by permitting him to recover possession once the consensual basis for the tenant's occupancy is at an end. In contrast the charter amendment's elimination of particular grounds for eviction is a limitation upon the landlord's property rights under the police power, giving rise to a substantive ground of defense in unlawful detainer proceedings. The mere fact that a city's exercise of the police power creates such a defense does not bring it into conflict with the state's statutory scheme. Thus, a landlord's violations of a city's housing code may be the basis for the defense of breach of warranty of habitability in a summary proceeding instituted by the landlord to recover possession for nonpayment of rent. [Citations.] Similarly, the statutory remedies for recovery of possession and of unpaid rent (see Code Civ. Proc., §§ 1159-

1179a; Civ. Code, § 1951 et seq.) do not preclude a defense based on municipal rent control legislation enacted pursuant to the police power imposing rent ceilings and limiting the grounds for eviction for the purpose of enforcing those rent ceilings. (*Id.* at 149.)

Under *Birkenfeld*, "municipalities may by ordinance limit the substantive grounds for eviction by specifying that a landlord may gain possession of a rental unit only on certain limited grounds. [Citations.] But they 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, 754.)

As this court noted in its ruling on the motion for preliminary injunction, there is no bright line between substantive and procedural rules in this context. (Ruling at 9, fn. 3; see also *San Francisco Apartment Assn. v. City and County of San Francisco* (2018) 20 Cal.App.5th 510, 516. ["As this case illustrates, the distinction between procedure and substantive law can be shadowy and difficult to draw in practice."])

The Ordinance Imposes a Substantive Limitation on Evictions

Petitioner contends the Eviction Threshold Ordinance conflicts with Section 1161, which provides in pertinent:

> A tenant of real property, for a term less than life, or the executor or administrator of the tenant's estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:
>
> 2. When the tenant continues in possession, in person or by subtenant, without the permission of the landlord, or the successor in estate of the landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice . . . in writing, requiring its payment, stating the amount that is due . . . shall have been served upon the tenant and if there is a subtenant in actual occupation of the premises, also upon the subtenant.
>
> The notice may be served at any time within one year after the rent becomes due. (§ 1161.)

Section 1161 has remained unchanged since 1905. (See *Levitz Furniture Co. v. Wingtip Comm., Inc.* (2001) 86 Cal.App.4th 1035, 1037, fn. 3.) The Court of Appeal has described the operation of the statute:

> Due to the summary nature of such an action, a three-day notice is valid only if the landlord strictly complies with the provisions of section 1161, subdivision 2 (section 1161(2)). [Citation.] As set forth above, a three-day notice must include

> "the amount which is due." (§ 1161(2).) A notice that seeks rent in excess of the amount due is invalid and will not support an unlawful detainer action. [Citation.] In addition, a three-day notice must be served within one year after the rent "becomes due." (§ 1161(2).) If the landlord waits over a year to sue for unpaid rent, he or she is limited to collecting such rent in a standard breach of contract action, "which results only in a money judgment without restitution of the demised property." (*Id.* at 1038.)

Petitioner couches the ordinance as one of procedure—"the very structure [of Ordinance No. 187763] makes clear that **the financial threshold is a proxy for an extension of the time** provided by the unlawful detainer statute." (Opening Brief 18:22-23.) While the court understands the argument, the court disagrees with Petitioner's characterization of the ordinance. 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.

The Eviction Threshold Ordinance amended the RSO (at LAMC section 151.09) to state provide:

> A. A landlord may bring an action to recover possession of a rental unit only upon one of the following grounds:
>
> 1. The tenant has failed to pay rent to which the landlord is entitled, including amounts due under Subsection F. of Section 151.05; **provided, however, that the landlord's right to evict a tenant lawfully in possession of residential housing under this subdivision is limited to defaults in payment where the amount due exceeds <u>one month of fair market rent</u> 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 470; Resp. RJN, Exh. A [emphasis added].)

Petitioner focuses on the "purpose that the City sought to achieve in enacting" the Eviction Threshold Ordinance to demonstrate the ordinance is procedural and in conflict with Section 1161. Petitioner notes the City's Renter Protections Notice for 2023 focuses on monthly rental payments. To the extent the FMR for the rental unit exceeds the contractual monthly rent due, the Threshold Eviction Ordinance will always result in an extension of the 3-day notice period in Section 1161 by at least a month, even where the tenant has defaulted as to the entire contractual rent due.

To support its claim the ordinance is procedural, Petitioner argues the practical effects of the ordinance. Petitioner notes the three-day notice period of Section 1161 could be extended beyond a month, and even indefinitely, for a defaulting tenant depending upon the rental

payments made by the defaulting tenant. (Opening Brief 18:26-19:1.) For example, in the one-bedroom example given in the City's Renter Protections Notice for 2023,[8] a tenant could fail to pay the $1,500 monthly rent for the first month; pay the regular rent and $10 payments each month thereafter; and **still** be exempt from eviction pursuant to the Threshold Eviction Ordinance more than a year after the first-monthly payment became due.

Further, if the FMR for the rental unit is less than the contractual monthly rent, the landlord would be permitted to serve Section 1161's three-day notice only if the tenant makes a partial payment of rent that is less than the FMR. As long as the tenant pays the FMR—without regard to the contractual rate of monthly interest—the landlord could not serve a 3-day notice.

Petitioner also argues the legislative history and context of Ordinance No. 187763 supports a finding the ordinance is about "**delay[ing]** the commencement of evictions based on nonpayment, in order to give tenants more time to avoid eviction." (Opening Brief 18:7-9.) (See *Tri County Apartment Assn. v. City of Mountain View* (1987) 196 Cal.App.3d 1283, 1292 ["the setting in which legislation was adopted well may be helpful in interpreting the language used in the enactment"].)

A report by LAHD provides the circumstances under which the City Council enacted Ordinance No. 187763. "The 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. When the eviction moratorium is lifted, City renters still have an extended timeframe to pay COVID-19 accrued rental debt. COVID-19 rental arrears for rent accrued from March 1, 2020, to September 30, 2021, must be paid by August 1, 2023. COVID-19 rental arrears for rent accrued from October 1, 2021, to January 31, 2023, will be due by February 1, 2024." (AR 2221; see also AR 16-22 [summarizing COVID-19 rental protections].)

In that context, the City sought input from stakeholders regarding potential additional tenant protections that might replace the COVID-19 protections. (See AR 22.) As explained in LAHD's report, "[t]he primary tenant recommendations were presented in a report issued by a consortium of tenant advocates under the Keep LA Housed (KLAH) umbrella." (AR 22.) That report urged the City to enact "reasonable limits on evictions for failure to pay," arguing such limits would allow "tenants time to get back on their feet" in the event of a financial hardship. (AR 65.) According to the report, "existing social safety nets that would help tenants cover unpaid rent do not provide relief within the 3 day window state law requires to avoid eviction. For example, if a tenant unexpectedly loses their job, it may take several weeks to receive unemployment insurance . . . ." (AR 65.)

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[8] The City's Renter Protections Notice for 2023 specifies the 2023 FMR per bedroom size for Ordinance No. 187763. For 2023, the FMR is $1,747 for a one-bedroom unit; $2,222 for a two-bedroom unit; and $2,888 for a three-bedroom unit. (City RJN Exh. E at 2.) Thus, "if a tenant rents a 1- bedroom unit and the rent is $1,500, the landlord cannot evict the tenant since the rent owed is less than the FMR for a 1-bedroom unit." (*Ibid.*)

In response to such requests, the City indicated it would investigate "[s]etting a reasonable financial and/or timeliness threshold for rental arrearages as the basis for eviction due to non-payment of rent." (AR 110.)

The LAHD thereafter recommended the City Council adopt the financial threshold for rental arrearages as a basis for eviction:

> Under current law, evictions for non-payment of rent can take place for minor amounts of past due rent, even as little as one dollar. Evictions are extremely painful and disruptive to an individual, family, and community and can be viewed as an extraordinary legal remedy that should not be used as a debt collection tool to recover relatively small sums. If a renter loses their employment and applies for unemployment benefits, on average it takes six weeks to receive the assistance, by which time the eviction process may be underway. If the City establishes a minimum threshold for rental arrearages before a landlord may proceed with an eviction action, tenants would still owe this money, but failing to pay relatively small amounts would not be grounds for eviction. (AR 2221.)

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

Nonetheless, Respondents and Intervenors contend the ordinance does not conflict with the unlawful detainer statutes because it merely creates a "substantive" defense to eviction. Respondents argue:

> A "just cause" does not exist to evict a tenant for nonpayment of rent until a monetary threshold is met. If a landlord attempts to evict a tenant for nonpayment of rent before the monetary threshold is met, then the ordinance provides the tenant with a substantive defense to that attempted eviction. If the tenant owes more than the applicable monetary threshold, then the defense fails. Here, once a tenant accrues [a default in] more than one month of fair-market rent, and a landlord elects to evict, the landlord would serve a notice to pay rent or quit as required by the unlawful detainer statute, which begins the unlawful detainer process." (City Opposition 8:8-14.)

Intervenors make a similar argument.

Respondents and Intervenors acknowledge the FMR limitation in the ordinance has the effect of giving tenants more time to pay rent that is due before an eviction may occur—a procedural impact. Respondents and Intervenors do not dispute that a significant purpose of the ordinance was to provide tenants with more time to pay rental arrearages to avoid eviction.

Both Respondents and Intervenors rely on case authority upholding local regulations placing substantive limitations on the unlawful detainer statutes.

In *Birkenfeld, supra,* 17 Cal.3d at 129, the Court upheld local regulations requiring "good cause" to terminate a tenancy. Specifically, "the permitted grounds for eviction [could] be grouped into three categories":

> One category consists of breaches of the tenant's duties to the landlord: failure to pay rent or to perform an obligation of the tenancy after notice, commission of a nuisance on or of substantial damage to the rented premises, conviction of using the premises for an illegal purpose, refusal of reasonable landlord access for repairs, inspection, or showing to a prospective purchaser, or transferring possession to an unauthorized subtenant. [Citations.] A second category consists of the landlord's good faith intention to withdraw the unit from the rental housing market for occupancy by the landlord or specified relatives of the landlord [citations], or for demolition or conversion to nonhousing use [citation]. The remaining category is the refusal of the tenant holding at the expiration of a lease . . . to execute a written renewal or extension for the same duration as the original lease and on terms that are materially the same. [Citation.] (*Id.* at 147-148.)

Our Supreme Court summarized the restrictions:

> These permitted grounds for eviction appear to cover most if not all of the grounds that would otherwise be available except that of termination of the tenancy. No other omitted grounds have been called to our attention and we assume for present purposes that the effect of the provision is simply to prohibit the eviction of a tenant who is in good standing at the expiration of the tenancy unless the premises are to be withdrawn from the rental housing market or the landlord's offer of a renewal lease has been refused. This prohibition is a reasonable means of enforcing rent ceilings by preventing landlords from putting out tenants because of their unwillingness to pay illegal amounts of rent or their opposition to applications for increases in rent ceilings. (*Id.* at 148.)

In *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, the Supreme Court upheld local legislation allowing tenants to withhold rent when landlords violate local rent ceilings or fail to register rental units with the local rent board. (*Id.* at 705-707.) The Court relied on its analysis from *Birkenfeld* and quoted from it:

> elimination of particular grounds for eviction is a limitation upon the landlord's property rights under the police power; giving rise to a substantive defense in unlawful detainer proceedings. The mere fact that a city's exercise of the police power creates such a defense does not bring it into conflict with the state's statutory scheme. Thus . . . the statutory remedies for recovery of possession and

> of unpaid rent [citations] do not preclude a defense based on municipal rent control legislation enacted pursuant to the police power imposing rent ceilings and limiting the grounds for eviction for the purpose of enforcing those rent ceilings. (*Id.* at 706-707 [quoting *Birkenfeld, supra,* 17 Cal.3d at 148-149.)

Fisher v. City of Berkeley, supra, 37 Cal.3d at 707 therefore concluded "the statutory remedy for recovery of possession does not preclude limitations on grounds for eviction for the purpose of enforcing a local rent control regulation."

In *Rental Housing, supra,* 171 Cal.App.4th at 751, the Court of Appeal held the unlawful detainer statute does not preempt an ordinance requiring landlords to provide "notice and an opportunity to cure any offending conduct" before resorting to an unlawful detainer action. (*Id.* at 762.) The Court reasoned:

> The warning notice requirements in Measure EE limit a landlord's right to initiate an eviction due to certain tenant conduct by requiring that the specified conduct continue after the landlord provides the tenant written notice to cease. These notice requirements thus 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. (*Id.* at 762-763.)

Finally, in *San Francisco Apartment Assn. v. City and County of San Francisco, supra,* 20 Cal.App.5th at 510, the Court of Appeal upheld a San Francisco law that prohibits no-fault evictions of tenant households with a child or an "educator" during the school year against a preemption challenge. As relevant here, the Court reasoned:

> The purpose of the Ordinance is to protect children from the disruptive impact of moving during the school year or losing a relationship with a school employee who moves during the school year. When tenants belong to this protected group (or have a custodial or familial relationship with a resident protected group member), they have a substantive defense to eviction; when they no longer belong to the group—because the regular school year has ended or will have ended by the effective date of the notice of termination—they no longer have a substantive defense. At this time, landlords may avail themselves of the unlawful detainer procedures, which are not altered by the Ordinance. (*Id.* at 518.)

Importantly, the Court of Appeal in *San Francisco Apartment Assn. v. City and County of San Francisco* recognized the ordinance at issue "did not impose any procedural requirements"[9] but instead "simply has a procedural *impact*, limiting the timing of certain evictions." (*Id.* at 518.)

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[9] The court provided "written notice" or some other "affirmative act" by the landlord as examples of procedural requirements. (*Ibid.*)

The Court thereafter noted: "this procedural impact—like the procedural requirement in *Rental Housing*—is necessary to 'regulate the substantive grounds' of the defense it creates." (*Ibid.*)

There can be no question the Eviction Threshold Ordinance has a procedural impact. But, like the ordinances in *San Francisco Apartment Assn. v. City and County of San Francisco* and *Rental Housing*, the procedural impact is necessary to regulate the substantive grounds for eviction properly authorized through the ordinance under the City's police powers. Once the substantive grounds for eviction have been established (a default in rent above FMV), a landlord is free to resort to the summary procedure set forth in Section 1161. The Eviction Threshold Ordinance does not impede the procedural nature of Section 1161; it merely dictates when a landlord has substantive grounds to invoke that summary proceeding.

The court is not persuaded *Tri County Apartment Assn. v. City of Mountain View, supra,* 196 Cal.App.3d at 1283 is persuasive on the procedural/substantive preemption issue. As noted by *San Francisco Apartment Assn. v. City and County of San Francisco*, the case "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." (*San Francisco Apartment Assn. v. City and County of San Francisco, supra,* 20 Cal.App.5th at 519.) Further, in *Tri County Apartment Assn. v. City of Mountain View*, the Court acknowledged the city did not adopt its ordinance as a substantive rent control measure. (*Tri County Apartment Assn. v. City of Mountain View, supra,* 196 Cal.App.3d at 1293-1294, 1296.)

Petitioner also argues even assuming the Eviction Threshold Ordinance is not preempted by Section 1161, the City exceeded its authority when it adopted this substantive limitation on the grounds for eviction. (Opening Brief 19:10-12.) Petitioner explains the ordinance "**eliminate[s]** a default in the payment of rent as a basis for eviction." (Opening Brief 19:11.) Petitioner asserts "the City's position that the ordinance is a valid 'substantive' limitation on evictions appears to be based on the premise that it has the power to completely ban evictions based on nonpayment." (Opening Brief 20:8-9.) Finally, Petitioner prophesizes the City might "decide to prohibit evictions for non-payment of rent altogether." (Opening Brief 20:11-12.)

As ultimately conceded by Petitioner, "Ordinance No. 187763 does not eliminate nonpayment of rent as a basis for eviction, ..." (Opening Brief 20:6-7.) Thus, the ordinance does not eliminate a default in the payment of rent as a basis for eviction. Instead, the ordinance creates a threshold amount that must be surpassed to act as a substantive trigger as grounds for eviction.

The issue here—as raised by Petitioner—is whether the ordinance is preempted by Section 1161. Pursuant to *Birkenfeld,* as discussed earlier, resolution of the preemption issue requires the court to determine whether the ordinance is procedural or substantive. Petitioner's claim the ordinance is in excess of the City's authority is not raised in the petition and beyond a preemption analysis.

Based on the foregoing, the court finds Petitioner has not met its burden of demonstrating Ordinance No. 187763 is preempted by Section 1161. The court finds the ordinance regulates the substantive grounds for eviction. That is, it dictates when grounds for eviction have been established. While the ordinance has a procedural impact, that procedural impact merely regulates the substantive grounds for eviction. Therefore, Petitioner is not entitled to relief based on its first cause of action.

Third Cause of Action – Declaratory Relief

Petitioner's third cause of action for declaratory relief is derivative of its writ causes of action. Accordingly, Petitioner is not entitled to a judicial declaration. (See *Hannon v. Western Title Ins. Co.* (1989) 211 Cal.App.3d 1122, 1128. ["The object of the statute [Code Civ. Proc., § 1060] is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues."])

CONCLUSION

The petition is denied.

IT IS SO ORDERED.

January 17, 2024

Hon. Mitchell Beckloff
Judge of the Superior Court

01/18/2024