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April 11, 2016

Via Electronic and U.S. Mail

Shawn Mason, City Attorney
City of San Mateo
330 West 20th Avenue
San Mateo, California 94403

Re: Legality of Proposed Emergency Ordinance on Relocation Assistance

Dear Mr. Mason:

As you are aware, the California Apartment Association ("CAA") represents owners and operators of multi-family housing within the City of San Mateo and throughout California. We are writing to you today regarding the significant concerns we have with respect to the emergency ordinance the City Council is considering tonight which imposes a temporary (90 day) obligation on landlords to pay substantial tenant relocation assistance, *regardless of need*, when implementing no cause evictions or issuing certain rent increases. While CAA appreciates that the Council is attempting to balance significant, conflicting policy concerns, the proposed emergency ordinance violates California law, is unconstitutionally vague, and is not structured to achieve its stated goals. We are confident that a more tailored approach which addresses the issues below can be reached if all concerned continue to work together towards a solution.

Proposed Ordinance is Preempted by State Law

In 1995, the Costa-Hawkins Act ("Act" or "Costa-Hawkins") was approved and signed into law. Cal. Civ. Code §§ 1954.50 – 1954.535. The Act is a general state law that governs a landlord's ability to set the rent for his, her or its property both prior to and during tenancy, with certain exceptions. The Act permits all landlords to set rents at any rate the market will bear at the initial occupancy of a rental unit. Cal. Civ. Code. §§ 1954.52, 1954.53. For units first occupied as a residence after February 1, 1995, and those already exempt from residential rent control ordinances pursuant to a local exemption for newly constructed units, landlords may set all subsequent rental rates as well. Cal. Civ. Code § 1954.52(a) (emphasis added).

The proposed emergency ordinance applies to all rental units, including those that were first occupied as a residence after February 1, 1995. As applied to such units, Sections 2(c) and 2(d) of the proposed emergency ordinance violate Costa-Hawkins. These proposed provisions prevent all landlords from setting rents at ten percent or more unless (1) the landlord receives tenant consent; or (2) the landlord pays six times the amount of the monthly fair market rent as established by HUD for a unit of similar size to that being vacated in San Mateo County during the year the unit is vacated. Neither of these conditions is contemplated by Costa-Hawkins and imposing such significant penalties on landlords who are unable to secure tenant consent effectively precludes those landlords from setting their rental rates as allowed by Costa-Hawkins. As set forth below, the proposed emergency ordinance effectively imposes significant charges on landlords simply because of the rental rates the landlords set.

Unit Size	HUD FMR	Proposed Payment
Studio	$1,412	$ 8,472
One Bedroom	$1,814	$10,884
Two Bedroom	$2,289	$13,734
Three Bedroom	$2,987	$17,922
Four Bedroom	$3,556	$21,336

The imposition of these amounts because of the rents the landlords will be charging is a violation of Costa-Hawkins and, if challenged, will be found to be preempted by State law.

The Supreme Court of California set out the general principles governing preemption under California law in Sherwin-Williams Co. v. City of Los Angeles, 4 Cal. 4th 893, 897-98 (1993). Citing extensive authority, the Court found that:

> If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. [*Citations*]. A conflict exists if the local legislation duplicates, contradicts, **or enters an area fully occupied by general law, either expressly or by legislative implication**. [*Citations*]. Local legislation is "duplicative" of general law when it is coextensive therewith. [*Citations*]. Similarly, local legislation is "contradictory" to general law when it is inimical thereto. [*Citations*].

Id. (emphasis added). The Court further stated that the Legislature has impliedly "fully occupied" an area of law when:

> (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;
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> (2) The subject matter has been partially covered by general law couched in such terms as to indicate that a paramount state concern will not tolerate further or additional local action; or
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> (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 locality. [*Citations*].

Id. There were two stated primary purposes of Costa-Hawkins. The first was to exempt newly constructed units from rent control. Civil Code § 1954.52(a)(1). The second was to allow owners to establish the initial rental rate for any residential unit, unless certain delineated exceptions specifically set out in the statute were met. Civil Code § 1954.53(a). According to the express language of the statute, both statutory provisions are effective "notwithstanding any other provision of law."

In addition to this express language effectuating the statute regardless of other existing legal provisions, the statute embodies a comprehensive treatment of the field of decontrol of rental rates for residential units. The statute (1) specifically states when owners have the right to establish rental rates, (2) establishes exceptions to those rights, and (3) regulates when the new rates take effect with a detailed phase-in provision. This comprehensive approach to the issue clearly indicates that the "the subject matter has been partially covered by general law couched in such terms as to indicate that a paramount state concern will not tolerate further or additional local action." Sherwin-Williams Co. v. City of Los Angeles, 4 Cal. 4th 893, 897-98 (1993). As such, the City's imposition of additional conditions on the setting of rental rates is void.

Proposed Ordinance is Unconstitutionally Vague

The proposed emergency ordinance is impermissibly vague with respect to who is entitled to receive the benefits. Section 3(b) provides:

> If multiple households or individuals occupy a rental unit, relocation assistance *shall be paid to the household or individual entitled to occupy the rental unit under the rental agreement* in place at the time the tenancy terminates.

Most landlords require all adult household members to sign the written rental agreement. Section 3(b), as written, is unclear whether the Council intends landlords to pay one relocation payment jointly to all signatories to the lease or whether each person signing the rental agreement is entitled to their own penalty payment. The U.S. Supreme Court has held:

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. . . . Vague laws offend several important values. A vague law impermissibly delegates basic policy matter to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications.

Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972) (citations omitted). If landlords cannot determine who is to be paid or how much, the proposed emergency ordinance is void for vagueness.

Additional Ambiguities and Inequities

While not a constitutional concern, there are other internal inconsistencies and inequities which should be resolved prior to the enactment of the proposed emergency ordinance.

First, Section 2(c) requires relocation payments if a landlord fails to offer to renew a tenancy at less than a ten percent increase, yet relocation payments would not be required under 2(d) if a notice of rent increase is issued at ten percent. Why is the triggering point under 2(c) less than the triggering point under 2(d)? Both landlords and tenants are likely to be confused by the different triggers.

Second, requiring relocation payments to be paid before a tenant surrenders possession is fraught with peril for the landlord. Under the proposed ordinance, relocation payments are triggered by the tenant's election to terminate their tenancy, not the actual termination of the tenancy. Under proposed section 3(c), if the tenant has elected to terminate, then the landlord must pay "on or before the date when the termination of tenant's right to possession becomes effective." The payment date, however, is not tied to the actual surrender of possession. An owner of a four-bedroom rental is required to pay at least $21,336 to the household depending on the interpretation of 3(b) on the date the tenant is supposed to vacate and yet, if they do not vacate, they still get the relocation payments and the landlord will need to file an unlawful detainer action in order to regain possession. Under such a scenario, the tenant will have the relocation payments and the unit for which they were paid to vacate, until the landlord can obtain possession through the courts. The Council should not pass an ordinance that may so easily be abused.

Third, the proposed emergency ordinance seems to have at its core a desire to address affordable housing issues for residents of the City and, yet, there is nothing in the proposed ordinance that is tied to need, the income of tenants, the length of time someone has resided within the City or a particular unit, or the current rent being paid. Under the proposed ordinance, even the wealthiest residents of the City will be entitled to six months of free rent if a landlord decides not to continue their tenancies or raise the rents in excess of the triggering points in the proposed ordinance. Surely, it is not the intention of the Council to require landlords to subsidize rents and relocation costs of all tenants within the City, regardless of their need.

Conclusion

Again, we at CAA continue to recognize the various policy concerns the Council is trying to balance and we are confident that, if all stakeholders continue to work together, we can find a reasonable and lawful solution that more fairly resolves the City's concerns. The proposed emergency ordinance, however, is not that solution and we urge you to vote no until such time a clear ordinance that is not preempted by State law can be drafted which equitably addresses the concerns of the City.

Sincerely,

Anil Babbar
Executive Director
CAA Tri-County

Rhovy Lyn Antonio
Government Affairs Director
CAA Tri-County