



California Apartment Association
Orange County
3349 Michelson, Suite 200
Irvine, CA 92612
(949) 474-1411 ■ caanet.org

June 2, 2020

The Honorable Jennifer Fitzgerald
City of Fullerton
303 W. Commonwealth
Fullerton, CA 92832

Re: OPPOSITION TO PROPOSED RENT FREEZE - ITEM #12

Mayor Fitzgerald and Members of Fullerton City Council:

On behalf of the California Apartment Association (CAA), I would like to direct your attention to several issues with the City of Fullerton's proposed rent freeze and encourage you to seek an alternative course of action. Based on our experience across the state, CAA has identified (1) limits of rent freezes, (2) that an effort to implement a rent freeze would unnecessarily and unfairly antagonize its taxpayers, and (3) how City policy can exacerbate COVID-19 impacts on housing providers. As an organization that represents over 50,000 rental housing professionals, CAA has been at the forefront of COVID-19 housing policy. In a memo to local agencies, the State Business, Consumer Services, and Housing Agency has referred to CAA as resource on COVID-19 housing policy.¹ We recognize that the City is taking swift and bold action to protect its residents from COVID-19, but a proposed rent freeze does not effectively address the specific concerns at Palm Gardens Apartments located at 400 W. Orangethorpe. We remain committed to assisting the City with more constructive solutions.

1. RENT FREEZES ARE LIMITED BY THE COSTA-HAWKINS ACT

The Fullerton City Council can refer to the several legal issues that other cities have experienced with rent freezes. The City is likely to run into legal impairments on enforcing a rent freeze because (1) the Costa-Hawkins Act prohibits local governments from regulating rental rates on specific units and (2) the Governor's executive orders provides no authority to local government to impose a rent freeze (N-28-20, N-37-20, and N-66-20). Costa-Hawkins "permits owners of certain types of property to adjust the rent on such property *at will*, '[n]otwithstanding any other provision of law.' (Civ. Code § 1954.52, subd. (a).)" *DeZerega v. Meggs*, 83 Cal. App. 4th 28, 40-41 (2000). The term *notwithstanding* is emphasized to indicate that the provisions of Costa-Hawkins prevail regardless of any other state or local laws even in a state of emergency.

Nearly all cities in the State comply with the Costa-Hawkins Act. Emergency rent freezes *only* apply to units covered by their local rent stabilization ordinances (i.e. rent-controlled units) and expressly exempt specific units to comply with compliance with the Costa-Hawkins Act. In the case of Los Angeles, the "city attorney's office...that such a sweeping [rent increase] ban would interfere with private contractual rights and was not likely to survive in court."² The Los Angeles City Attorney's office argued that "unless a California law known as Costa-Hawkins was suspended, the city couldn't stop rent increases in apartments that aren't covered by the Rent Stabilization Ordinance. If the city pushed forward anyway, [Assistant City Attorney] Michaelson wrote that the move would likely be enjoined by a court through a

¹ https://www.bcsb.ca.gov/coronavirus19/eviction_eos_guidance.pdf

² Emily Alpert Reyes, "L.A. Council Members Balk at Broader Ban on Evictions amid Coronavirus, Citing Legal Worries," Los Angeles Times, April 22, 2020, <https://www.latimes.com/california/story/2020-04-22/la-city-council-balks-at-broader-ban-on-evictions-amid-coronavirus>

temporary restraining order.” The Los Angeles rent freeze proposal failed. Los Angeles and cities across the state recognize that emergency authority is not a blank check and that they must comply with the Costa-Hawkins Act.

Unfortunately, this was a nuance that both Santa Ana and Buena Park missed in their staff analysis. After hearing from stakeholders, it appears the City of Santa Ana has dropped their rent freeze in their most recent executive order (NO. 4-2020) to reduce its legal exposure. Given the legal implications, property owners may challenge the City of Fullerton’s enforcement of a rent freeze ordinance are likely to prevail. Tenants are ultimately harmed regardless of which party prevails. Therefore, it is in the best interest of City, tenants, and rental property owners to work on constructive housing solutions.

2. SPECIFIC FACTS AT 400 W. ORANGETHORPE DO NOT MERIT ADVERSE ACTION AGAINST OTHER PROPERTY OWNERS

I recognize that the proposed rent freeze originated as a response to the issues at the Palm Gardens Apartments amidst other longstanding community concerns. It is imperative to focus on the facts of the circumstance, specifically that (1) affordable rental rates are already stipulated as a condition of financing, (2) the maximum rent was established on April 1 during COVID-19 by a state agency, and (3) that AB 1482 (Tenant Protection Act of 2019) expressly exempts affordable housing units from rent control. The State’s Tax Credit Allocation Committee approved a rent increase on April 1, 2020 for all affordable housing units in the state. The City risks being further entangled in a legal quagmire by impairing of contracts between the owner, bondholders, and state or local government agencies who serve as a bond issuer.

Aside from the affordable housing stock, there are rental housing units in the City that are already regulated by the Tenant Protection Act of 2019 and anti-price gouging laws. These laws create price ceilings and provide a legal path for rate increases. The proposed rent freeze ordinance is unnecessary under the mentioned regulations, disproportionately antagonizes taxpaying property owners, and will eventually be deemed unlawful under the Costa-Hawkins Act. It becomes abundantly clear that the City’s proposed rent freeze creates more problems than solutions. We encourage the City to address its longstanding concerns with the specific property owner and to be more judicious in its regulatory approach.

3. CHALLENGES OF HOUSING PROVIDERS

There are several voluntary initiatives (Safe at Home guidelines) and existing regulations that provide stable pricing in the housing industry during this crisis. Housing providers have voluntarily and in many cases involuntarily subsidize housing at the peril of hasty government responses. Unfortunately, the initial proposals for COVID-19 housing relief policies have prioritized tenants and banks over taxpaying property owners. It is widely known that an overwhelming amount of rental housing providers are “mom and pop” and they do not have the cash nor credit to defer their expenses for more than a couple of months. The cascading effects of nonpayment of rent are further summarized by the LA Times Editorial Board: *It’s not just renters. Landlords need help, too.*³

In addition to the Judicial Council’s Emergency Rules, the City’s eviction moratorium suspends due process for these owners to recover past due rent by up to eight months. The uncertainty around recovering costs makes it virtually impossible for property owners to work with their lenders. Rental housing providers remain ineligible for mortgage relief and federal aid (CARES Act), while they still have ongoing expenses with devastating consequences as shown below:

³ The LA Times Editorial Board, “Los Angeles Times,” *Los Angeles Times*, April 15, 2020, <https://www.latimes.com/opinion/story/2020-04-15/coronavirus-landlord-renter-bailout>.

Rental Housing Expenses	Consequences for Nonpayment
Mortgage payments	Default and foreclosure of property
Property Taxes	Tax liens
Insurance	Loss of personal income and life savings
Utilities	Tarnished credit reports
Employees and contractors	Deferral of capital improvements
Maintenance and supplies	Inability to pay employees
Security	Breach of contract with contractors

Federal relief only applies to 27,000 rental housing properties out of approximately 22.7 million nationwide.⁴ Housing providers need more time than tenants when repaying their past due mortgage and/or taxes. Moreover, many lenders insist on immediate payment and foreclosures will only become an eventuality. A proposed rent freeze is a disproportionate response and adds another stress for housing providers.

For these reasons, the California Apartment Association opposes the proposed rent freeze and encourages the City Council to narrowly tailor its concerns. There are several alternative solutions that can better serve tenants such as:

1. Developing a renter relief program with the nearly \$15 million allocated for Orange County's Fourth District from the CARES Act.
2. Applying for the Permanent Local Housing Allocation administered by the California Department of Housing and Community Development for additional funding for renter relief programs.⁵
3. Evaluating the feasibility of relief for tenants, bondholders, bond issuers, and housing providers with the State Treasurer's Office.

Thank you for your time and thoughtful consideration. CAA is available to be a resource to you and the City.

Respectfully,



Victor Cao
Vice President of Public Affairs

cc: Mr. Ken Domer, City Manager
Mr. Richard Jones, City Attorney

⁴ "FHFA Moves to Provide Eviction Suspension Relief for Renters in Multifamily Properties," Public Affairs (Federal Housing Finance Agency, March 23, 2020), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Moves-to-Provide-Eviction-Suspension-Relief-for-Renters-in-Multifamily-Properties.aspx>)

⁵ <https://www.hcd.ca.gov/grants-funding/active-funding/plha.shtml>