

January 24, 2023

VIA ELECTRONIC MAIL

Clerk of the Housing & Homelessness
Committee
200 N Spring St.
Los Angeles, CA 90012
Clerk.HousingandHomelessness@lacity.org

Dear Clerk:

This office represents the Apartment Association of Greater Los Angeles (“AAGLA”), as well as numerous landlords who furnish, at their sole expense and risk, the increasingly scarce and much-needed housing resource throughout the City of Los Angeles (“City”). Please be advised that our clients adamantly oppose the adoption of the two ordinances up for consideration in connection with the “special” Housing and Homelessness Committee meeting currently scheduled to take place on January 24, 2023 (and agendized as Item Nos. 21-0042-S4 and 21-0042-S5).

Preliminarily, both items appear poised to be adopted as “urgency ordinances,” presumably under Government Code § 36937(b) or Government Code § 65858. Both sections prohibit the adoption of urgency ordinances in the absence of persuasive evidence demonstrating the need for “immediate preservation of the public peace, health or safety.” (Gov. Code §§ 36937(b) and 65858; *see also Parr v. Municipal Court* (1971) 3 Cal.3d 861, 865.) The “urgency clause” is not sacrosanct and courts are free to look beyond the clause to determine whether, in fact, an “urgency” actually exists.

In this case, both proposed ordinances recite the “homeless crisis” in support of a finding of “urgency,” as well as the COVID-19 pandemic, and the fact that “nearly 70 percent of the residents of Los Angeles are renters and more than half of those renters are rent burdened, and are experiencing financial fragility, and housing insecurity.” With respect, “homelessness” is nothing new in the City of Los Angeles. The homeless encampments found throughout the City have been in existence for decades. Moreover, the fact that “we are emerging” from the pandemic certainly does not support any further finding of emergency. Nor does the fact that nearly 70% of City residents are tenants. The City’s recitation of platitudes such as “financial fragility” and “housing insecurity” likewise does not demonstrate any sort of “immediate” threat to the public peace, health or safety. The City does not refine these terms, nor does it give any sort of metric for what constitutes “financial fragility” or “housing insecurity.” These are conclusory platitudes that prove absolutely nothing.

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It is beyond dispute that the City cannot demonstrate—with actual evidence—facts necessitating an “urgency” sufficient to allow it to side-step, or more accurately, ignore, the normal process for the adoption of an ordinance. As such, if one or both ordinances are adopted, they are obviously susceptible to immediate enjoinder.

In addition to ignoring the requirements needed to adopt the proposed ordinances as “urgency” measures, the proposed ordinances are also preempted by overriding State law provisions. California’s unlawful detainer statutes directly preempt any and all local laws placing procedural burdens on landlords that impair landlords’ ability to evict defaulting tenants. (*Birkenfeld v. City of Berkeley* (1976) 17 Ca.3d 129, 140-142.) The same is true with respect to the proposed ordinance seeking to impose new relocation obligations in favor of tenants who desire not to renew their leaseholds at otherwise permissible rents, which proposal would no doubt also violate the terms and exemptions set forth in the Costa Hawkins Rental Housing Act. Forcing owners to pay 3-months rent plus \$1,401 in moving costs if rents are increased above A.B. 1482 levels directly runs afoul of the express exemptions set forth in Costa Hawkins.

Finally, irrespective of the legality of the proposed ordinances, both ordinances would directly interfere with landlords’ constitutionally-recognized and fundamental ownership right to exclude tenants at sufferance from their respective properties. As such, both measures constitute *per se* physical takings for which the City would be required to pay “just compensation.” (*See Cedar Point Nursery v. Hassid* (2021), 141 S. Ct. 2063; *Pakdel v. City & County of San Francisco* (2021) 141 S. Ct. 2226; *Alabama Ass’n of Realtors v. Dep’t of Health & Human Servs.* (2021) 141 S. Ct. 2485; and *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419.) As the United States Supreme Court and California Supreme Court have both made clear, where public burdens—such as those purportedly justifying these “emergency” measures—are foisted upon individuals, the takings clauses compel the government to pay “just compensation” to those who have shouldered the public burden.

In the event the City does go through with these ill-advised measures, my clients will have no choice but to pursue any and all legal options including litigation in the appropriate forum.

Sincerely,

RUTAN & TUCKER, LLP



Douglas J. Dennington

DJD:pj