Office of the Los Angeles City Attorney
Hydee Feldstein Soto

Holly Wolcott, City Clerk
200 North Spring St., Room 395
Los Angeles, CA 90012

January 25, 2023

Dear Ms. Wolcott:

Please find attached a written threat of litigation relating to Council Files 21-0042-S4 and 21-0042-S5. Please place this letter and the attachment into those Council Files. Thank you.

Sincerely,

Strefan Fauble
Assistant City Attorney

California Apartment Association
515 S. Flower Steet 18th Fl.
Los Angeles, CA 90071

January 24, 2022

Via Electronic Mail Only

Chair Raman & Committee Members
Los Angeles Housing & Homelessness Committee
200 North Spring Street
Los Angeles, CA 90012

RE: Items 1 & 2 - Non-Payment of Rent Minimum Thresholds & Rent Increase Tenant Relocation Assistance Penalty

Dear Honorable Committee Members,

The California Apartment Association (CAA) represents local housing providers, operators and suppliers along with business owners and real estate industry experts who are involved with a range of rental properties from those that offer single-family residences to large apartment communities. Our members provide homes to over 150,000 Los Angeles families. In addition to representing members interests in the legislative forum, CAA and its affiliate organizations are also active in monitoring and engaging in legal actions that affect rental housing providers.

CAA opposes the two proposals before the committee to mandate: (1) the payment of relocation assistance to tenants who choose to vacate a rental unit after receiving a rent increase exceeding CPI + 5% or 10%, whichever is less, and (2) prohibit a landlord from serving a notice to pay rent or quit until a tenant owes an amount that exceeds one month of HUD fair market rent for an equivalently sized unit. In addition to being bad policy, these proposals are also preempted by state law.

The Relocation Assistance Penalty Violates Costa-Hawkins

The Costa-Hawkins Rental Housing Act ("Costa-Hawkins") exempts certain units – namely new construction[1], single-family homes, and condominiums – from local rent control. Cal. Civ. Code § 1954.52(a). Costa-Hawkins expressly provides that owners of such units may establish "the initial *and all subsequent rental rates*". *Id.* Requiring rental housing providers of such units to pay relocation assistance to tenants who vacate a unit following a rent increase that exceeds a specified amount penalizes rental housing providers who exercise their right to set rental rates and indirectly imposes rent control in violation of Costa-Hawkins.

It is well-established that local governments may not frustrate the purposes of Costa-Hawkins by imposing a penalty on the exercise of rights conferred by that law. *See Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal.App.4th 488 (city could not impose rent limits on property in violation of Costa-Hawkins as a condition of evicting a tenant so the

[1] As applied to the City of Los Angeles, new construction includes properties issued their first certificate of occupancy after October 1, 1978.

landlord could occupy the unit); *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 (city could not enforce affordable housing requirement that was preempted by Costa-Hawkins and could not charge an "in lieu" fee for failure to provide such housing); *see also San Francisco Apartment Assn. v. City and County of San Francisco* (2016) 3 Cal.App.5th 463 (city could not penalize landlords for exercising statutory rights under the Ellis Act). The mandate being proposed here clearly penalizes owners of exempt units for exercising their rights under Costa-Hawkins, and for that reason is preempted.

A nearly identical policy is the subject of a lawsuit currently pending in Los Angeles Superior Court filed by CAA challenging Pasadena's recently adopted rent control and just cause eviction law. See December 16, 2022 Complaint, *California Apartment Association, et al. v. City of Pasadena, et al.* (LA Super. Ct. Case No. 22STCP04376).

Minimum Thresholds for Serving a 3-Day Notice for Non-Payment of Rent Are Preempted

The proposal to require tenants to exceed a threshold amount of debt before a landlord may serve a notice to pay rent or quit, too, is preempted by state law. California Code of Civil Procedure § 1161(2), which regulates 3-day notices to pay rent or quit provides that such a notice "may be served *at any time* within one year after the rent becomes due" [emphasis added]. The proposed ordinance at issue here would directly conflict with this law by preventing landlords from serving a 3-day notice until the total rental debt exceeds the threshold amount.

The direct conflict with Code of Civil Procedure § 1161(2) is, in and of itself, sufficient to preempt the proposed ordinance but the conflicts with state law do not end there. In *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 151, the California Supreme Court found that municipalities may by ordinance limit the substantive grounds for eviction but they may *not* procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes. The proposed ordinance here does the latter. It does not regulate the substantive ground for eviction. A tenant may be evicted for non-payment of rent, including the threshold amount of rent. A tenant simply cannot be evicted until such time that they owe more than the threshold amount. In other words, the ordinance regulates the timing of non-payment of rent evictions rather than the underlying cause and thus serves a procedural, rather than substantive, purpose and is preempted by state unlawful detainer statutes.

A related, but distinct, line of case law has held that the timing of landlord-tenant transactions is a matter of statewide concern not amenable to local variations. *Tri County Apartment Assn. v. City of Mountain View* (1987) 196 Cal.App.3d 1283, 1298. A San Francisco law that had a similar impact to the ordinance being proposed here was recently invalidated under this line of precedent in a lawsuit brought by the San Francisco Apartment Association, a chapter of CAA. The San Francisco law, rather setting a minimum threshold amount, required a tenant to be given a 10-day notice to cure prior to being served with a 3-day notice to pay rent or quit – the effect of the law, however, was the same. Like the proposed ordinance here, it served to delay non-payment of rent evictions. In finding the law to be preempted by state law, Judge Charles Haines distinguished cases that have upheld the regulation of other grounds for eviction, noting that non-payment of rent is different because, among other things, the payment of rent "is the most fundamental of all aspects of tenancy." *See* July 22, 2022 Order Granting Writ of Mandate, *San Francisco Apartment Association v. City and County of San Francisco* (SF Super. Ct. Case No. CPF-22-517718).

Like the San Francisco law, this ordinance proposed here is likely to be struck down by the courts if it passed into law.

Conclusion

We urge the committee to oppose these illegal and ineffective policies that do nothing to address the underlying housing crisis. CAA and its affiliated organization have already filed lawsuits in Pasadena and San Francisco over the same or similar policies. If the city insists on moving forward with these problematic ordinances, they too will be vulnerable to legal challenge.

Thank you for your consideration.

Sincerely,

Whitney L. Prout, Legal and Compliance Counsel
California Apartment Association