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**REPORT TO THE COMMITTEE
ON LAND USE AND HOUSING**

JUST CAUSE EVICTION REGULATIONS

INTRODUCTION

On September 3, 2003, this Committee discussed the recommendation of the City's Affordable Housing Task Force [AHTF] that the City adopt an ordinance precluding the eviction of tenants except for good cause. Specifically, the AHTF recommended that the City adopt provisions to require that landlords evicting residential tenants with over two years of occupancy serve the tenants with written notice stating "good grounds upon which the lessor, in good faith, seeks to recover possession." The draft ordinance further provided that if a landlord's grounds for termination of the tenancy were in dispute, the landlord would be required to prove their truth at any hearing.

At the Committee meeting, this Office addressed two primary legal concerns with the AHTF proposal. First, the proposed regulation, as submitted by the AHTF, did not include a definition of "good grounds" or "good faith." We suggested that grounds constituting "good faith" be articulated in any adopted ordinance in order to avoid questions of vagueness. Secondly, we noted that the proposed regulations did not state a purpose and did not appear calculated to directly further affordable housing goals in the City. At that time, we advised the Committee that California courts had upheld cause eviction regulations enacted pursuant to rent control. We noted that the City of San Diego does not have and the Committee was not entertaining a proposal to establish rent control. We advised that the proposed regulations must be adopted in furtherance of a legitimate government purpose.

The matter was referred to the City Attorney to draft a proposed ordinance, including clarifying the meaning of "good cause," and to develop a legal justification for supporting cause eviction in the absence of rent control. Attachment "A" to this report is the draft ordinance prepared for the Committee's review and consideration. This report addresses the legal issues which arise in adopting the draft ordinance.

DISCUSSION

I. Summary of Draft Ordinance.

As originally presented by the AHTF, the draft ordinance applies to residential tenancies of two years or more. It provides for termination of such residential tenancies only upon the following grounds:

1. Failure to pay rent;
2. Violation of a lawful obligation of the tenancy;
3. Nuisance;
4. Illegal use;
5. Refusal to renew lease;
6. Refusal to provide access;
7. Unauthorized subtenant;
8. Owner or relative occupancy;
9. Removal of the entire building from the rental housing market; or
10. Extensive repairs requiring tenant removal.

The grounds were enumerated in response to the Committee direction to clarify the meaning of “good cause” as stated in the AHTF recommendation. The enumerated grounds are similar to those found in other California cities and consistent with those referenced at the Committee hearing. In addition, the ordinance requires that the landlord include the grounds for eviction in a written notice provided to the tenant. The tenant may assert the landlord’s failure to comply with the provisions of the ordinance as an affirmative defense in any unlawful detainer proceeding.

Certain provisions of the draft ordinance were not addressed by the Committee at the September 3, hearing. These include exemptions for various facilities, including certain boarding and lodging accommodations, transient occupancies, and smaller rental properties, such as single-family owner-occupied residences. The exemption provisions were modeled on provisions adopted in other California communities. The Committee may wish to expand or limit this list.

II. The City Should Not Be Preempted From Adopting A Just Cause Eviction Ordinance Provided There Is Evidence In The Record That The Ordinance Furthers A Legitimate Government Purpose.

The City of San Diego, as a California charter city, has exclusive power to legislate over municipal affairs. Cal. Const. art. XI, § 5(a), *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 704 (1984). Its laws are only preempted by state law in narrow circumstances. First, there must be an actual conflict between the charter city laws and state law. If such a conflict exists, then the conflicting state legislation must affect matters of statewide interest and must be reasonably related and narrowly tailored to those matters of statewide interest. *Johnson v. Bradley*, 4 Cal. 4th 389, 398-399 (1992).¹ Based on the analysis set forth below, it is our opinion the proposed ordinance requiring just cause for residential evictions within the City of San Diego would not be preempted by state law provided it is reasonably related to a legitimate government purpose.

The first step in any preemption analysis involving a charter city is determining whether there is an actual conflict between state and local law. *Id.* The draft ordinance provides that landlords within the City of San Diego may terminate long-term residential tenancies only for enumerated reasons. If a landlord fails to comply with the eviction limitations, the tenant may raise the violation as a defense in any unlawful detainer proceeding.

The state regulates landlord tenant relationships and unlawful detainer proceedings. *See* Cal. Civ. Proc. Code § 1161 (unlawful detainer proceedings) and Cal. Civ. Code §§ 1940-1954.1 (governing residential landlord tenant relationships, generally). However, the California Supreme Court has recognized that these statutory provisions are not necessarily in conflict with local regulations that would limit the property owner's ability to recover possession if the purpose of the state regulations is sufficiently distinct from that of the local regulations. *Birkenfeld v. Berkeley*, 17 Cal. 3d 129, 149 (1976). In the *Birkenfeld* case, the local agency adopted rent control regulations, including provisions for just cause evictions. The court noted that the state's unlawful detainer statutes (Cal. Civ. Proc. Code §§ 1161 and 1161a) are procedural in nature because they merely provide a process for enforcement of the landlord's property rights where the landlord seeks to recover possession of the property upon expiration of the tenancy. By contrast, the court found the Berkeley eviction control regulations were a substantive limit upon the landlord's property rights, legitimately adopted pursuant to the local agency's police power. The Court stated, "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. [Citations omitted]." *Id.* There is no conflict with and therefore no preemption by state unlawful detainer procedural rules.

California Civil Code sections 1940-1954.1 govern landlord tenant relationships,

¹A comprehensive review of the preemption doctrine and its applicability to the City of San Diego can be found in City Attorney Report RC-2003-24 (Sept. 8, 2003).

generally. Civil Code section 1946 permits either party in a month-to-month residential tenancy to terminate upon thirty days' notice. The statute does not require a statement of cause for the termination. Although the draft regulations may be inconsistent with Civil Code section 1946 to the extent the statute is interpreted to allow a landlord to terminate for no cause, it does not follow that the City is preempted from adopting the just cause eviction regulations. The balance of the test for preemption of charter city provisions is not met. First, the courts have recognized that the state has not fully occupied the field of landlord tenant regulation. Rent control and unjust eviction controls have been recognized as legitimate local regulations. *Birkenfeld*, 17 Cal. 3d at 158. Second, as stated by the California Supreme Court in *Birkenfeld*, "[W]hether the relevant field be deemed to be rent control as such or a broader aspect of landlord-tenant relations [citations omitted], there is no legislative indication of 'a paramount state concern [which] will not tolerate further or additional local action.' [Citation omitted.]" (Emphasis added.) *Id.* at 142. Finally, there is no evidence that the proposed local regulations would have a negative effect on transient citizens.

While we believe the City should not be preempted, we emphasize that the issue has not been directly addressed by California courts. Local eviction controls have only been upheld in the context of rent control. Courts have recognized that without accompanying eviction controls, landlords could simply nullify the effect of the rent control regulations by evicting tenants, then raising rents. *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 693 (1984). However, the court's reasoning in the *Birkenfeld* case should apply to any just cause eviction regulations enacted to further a legitimate local government interest. The court's analysis was that the rent control regulations were a proper exercise of the City's police power and that the eviction controls furthered the purpose of those regulations.

Likewise, if the City has a legitimate governmental purpose that can be furthered through eviction controls, then the eviction controls should be upheld. The draft ordinance states that its purpose is to protect long term renters in the face of rising rents and an affordable housing shortage in the City. While the eviction controls do not affect a landlord's ability to raise rents, they do provide long-term renters protection against arbitrary eviction, and protect tenants from homelessness. We believe this is a legitimate governmental purpose, so long as the record contains supporting evidence.

III. The City Is Preempted From Adopting Provisions That Shift the Burden of Proof in a Civil Proceeding.

The ordinance proposed by the AHTF provided that if the landlord's statement of good grounds for termination of the tenancy were controverted, then the landlord would be required to establish its truth at the trial or hearing. This language is not included in the draft ordinance. The burden of proof in a civil proceeding is already directly addressed in state law and local agencies have been found to be preempted from legislating in this area.

The burden of proof in any civil proceeding is established by California Evidence Code section 500: "Except as otherwise provided by law, a party has the burden of proof as to each

fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.” In *Fisher v. City of Berkeley*, the state supreme court struck down, on preemption grounds, a proposed presumption provision in a just cause eviction ordinance finding that the presumption affected the burden of proof in regard to retaliatory evictions. The court noted a long line of cases finding that municipal governments do not have the authority to vary from the common law of evidence, citing *Orena v. City of Santa Barbara*, 91 Cal. 621 (1891) (“an ‘ordinance is void . . . [to the extent that it purports to] lay down rules of evidence . . .’”). *Fisher*, 37 Cal. 3d at 698. Therefore, we do not recommend the proposed ordinance language affecting the burden of proof in a civil proceeding.

CONCLUSION

The draft ordinance addresses the concerns raised at the September 3, 2003 meeting. Good cause has been clarified through an enumerated list. The proposal addressing the burden of proof has been deleted. Though we have no case directly on point in support, logical extension of existing court precedent suggests that the City would not be preempted in the adoption of just cause eviction controls in the City of San Diego, provided there is evidence in the record that supports the existence of a legitimate governmental purpose that the adoption of the ordinance would advance. An example of such an acceptable purpose would be to address impacts on renters displaced in a rising real estate market with very limited replacement housing available. This stated purpose should be supported by evidence in the legislative record upon adoption of any ordinance.

Respectfully submitted,

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City Attorney

PD:dm
Attachment
RC-2003-31