



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL **FROM:** Richard Doyle

SUBJECT: Suspension of Rents **DATE:** April 6, 2020

BACKGROUND

On April 7, 2020, the City Council will be considering adding an agenda item recommending a rent suspension for a period of ninety (90) days that would cancel any rental payments during the effective period of the Ordinance.

ISSUE

What are the legal considerations concerning a City’s ability to enact an ordinance that would suspend rents for those impacted by COVID-19?

SHORT ANSWER

Suspending a tenant’s contractual obligation to pay rent goes outside the boundaries of rent control and implicates the constitutional contractual rights of the parties and property rights of landlords.

ANALYSIS

- I. State law Prevents a City from Regulating the Rental Rates on Properties Exempt from Rent Control.

The Costa Hawkins Act under California law prevents a City from affecting the rental rate of a property that has been previously exempted from rent control. The Apartment Rent Ordinance applies to rental units that had certificate of occupancy issued on or prior to September 7, 1979 or that was offered or available for rent on or before this date. The Apartment Ordinance, when

originally passed in 1979, exempted any new rental units first rented after its effective date. Accordingly, any properties built after the effective date of the rent control is prevented from having its rents regulated by local jurisdiction.

II. Rent Control Ordinances Permit Reducing the Rent Only Based Only Upon a Diminished Value of the Rental Unit.

Most rent control jurisdictions, including San José, provide a procedure for reducing the rent based upon a diminished value of the rental unit. Jurisdictions permitting such adjustments generally approve rent decrease (or rent credit) applications when necessary to compensate tenants for diminished value of their units due to reduced housing services, code violations, and/or deteriorated or uninhabitable conditions. This process furthers the purpose of rent control laws by counteracting the risk of landlords imposing an impermissible indirect increase through a reduction in housing services.

Rent control ordinances, however, do not provide for rent reductions based upon reasons outside of the conditions of the property, such as a tenant's hardships. The Court has also denied a city's rent reduction when the condition of the property do not rise to the level of a reduction of housing services.

III. Rent Freezes, not Rent Suspensions, are Clearly Within the Police Power of a Rent Control Jurisdiction So Long as They Provide the Landlord an Opportunity to Obtain a Fair Return.

Local rent control ordinances have utilized their police power authority to enact rent freezes in order limit rent increases. These procedures have been upheld by Courts so long as they provide a mechanism for increasing the rent to afford the landlord the ability to obtain a reasonable return on their investment.

IV. A Rent Suspension Implicates Both the Contractual Rights of the Parties and the Property Rights of a Landlord.

Broadly speaking, rent control enactments are deemed a proper exercise of a local entity's police power. That power, however, must be consistent with the fair intent of the constitutional limitation of that power. Rent control measures, like any other exercise of police power, are vulnerable to legal challenge when they go beyond their police power authority to enact reasonable rent control legislation. Specifically, rent control legislation have been subject to challenge under a 5th Amendments takings claim when the regulation's economic impact on the Landlord is such that it interferes with their reasonable investment-backed

expectations. The regulation cannot deprive the owner of the economic use of the property, such that it unfairly singles out the property owner to bear a burden that should be borne by the public as a whole.

Furthermore, the Constitution prohibits regulations that would substantially impair a contract by undermining the bargain between the parties and interfering with a party's reasonable expectations under their contract.

CONCLUSION

As discussed, a suspension of rents implicates several legal issues concerning the police power to directly affect the contractual relationship between landlord-tenant and property rights protected under the U.S. Constitution. While cities can enact reasonable rent control legislation, it must be in harmony with Constitutional principles and within the boundaries of California law. A Constitutional violation could subject the City to significant legal exposure.

RICHARD DOYLE, City Attorney

By: /s/ Chris Alexander
CHRISTOPHER ALEXANDER
Deputy City Attorney

For questions please contact Richard Doyle, City Attorney, at (408) 535-1900.