

1                                   **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,**  
2                                   **IN AND FOR THE COUNTY OF CONTRA COSTA**

3 CALIFORNIA APARTMENT ASSOCIATION

4                                   Plaintiff,

5                                   Vs.

6 CITY OF RICHMOND.

7                                   Defendant.

NO. C17-00005

**ORDER**

**FILED**  
FEB 14 2017  
STEPHEN H. NASH CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By \_\_\_\_\_ Deputy Clerk  
**C. FORFANG**

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10                                   Plaintiff California Apartment Association’s motion for a preliminary injunction to enjoin  
11 enforcement of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance,  
12 which was approved by the voters of Richmond in November 2016 (hereafter, “the Ordinance”)  
13 was heard on February 1, 2017. Karen McCay from Pahl & McCay appeared for Plaintiff. Leah Castella  
14 from Burke, Williams & Sorensen, LLP and Rachel Sommovilla from the City Attorney’s Office for the  
15 City of Richmond appeared for Defendant the City of Richmond. Following argument, the matter was  
16 taken under submission. The Court has re-reviewed the pleadings, authorities submitted and arguments  
17 of counsel, and,  
18

19                                   **IT IS, THEREFORE, ORDERED;**

20                                   Plaintiff California Apartment Association’s motion for a preliminary injunction is **denied**.

21                                   **Standard for Granting a Preliminary Injunction**

22                                   “[A] *preliminary* injunction is an order that is sought by a plaintiff *prior to a full adjudication of*  
23 *the merits of its claim.* (See 6 Witkin, Cal. Procedure (4th ed. 1997) Provisional Remedies, § 287, p.  
24 228.) To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the  
25 irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication

1 of the merits. (See *City of Torrance v. Transitional Living Centers for Los Angeles, Inc.* (1982) 30  
2 Cal.3d 516, 526.) [¶] Past California decisions further establish that, as a general matter, the question  
3 whether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood  
4 that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result  
5 from the granting or denial of interim injunctive relief.” (*White v. Davis* (2003) 30 Cal.4th 528, 554.)

6           The City argues that Plaintiff must show irreparable harm. In *Loder v. City of Glendale* (1989)  
7 216 Cal.App.3d 777, the court reversed a trial court’s granting of a preliminary injunction because the  
8 plaintiff had not shown irreparable injury. *Loder* was a taxpayer lawsuit and the court held that the  
9 taxpayer’s harm is financial in nature and thus insufficient to show irreparable injury. *Loder* makes clear  
10 that the court should consider irreparable harm when ruling on a motion for a preliminary injunction,  
11 and that the failure to show irreparable harm is a valid reason to deny a preliminary injunction. (*Id.* at p.  
12 786.)

13           Plaintiff attempts to distinguish *Loder* as a holding unique to taxpayer lawsuits. While it is true  
14 that this case is not a taxpayer lawsuit, that distinction goes to whether or not there is irreparable harm. It  
15 does not, however, change the analysis on whether or not the court must consider if such harm exists.

16           Plaintiff argues that it need not show irreparable harm because it is making constitutional  
17 challenges to the face of the Ordinance, which are purely questions of law. Thus, Plaintiff argues that the  
18 Court should only consider Plaintiff’s likelihood of prevailing on the merits. Plaintiff has cited a number  
19 of cases to support this proposition, however, Plaintiff’s position is not supported by its cited legal  
20 authority.  
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22           Plaintiff relies heavily on the language in *Hunter v. City of Whittier* (1989) 209 Cal.App.3d 588,  
23 595-596. There, the court stated that “[o]ccasionally, however, the likelihood of prevailing on the merits  
24 depends upon a question of pure law rather than upon evidence to be introduced at a subsequent full  
25

1 trial. This issue can arise, for example, when it is contended that an ordinance or statute is  
2 unconstitutional on its face and that no factual controversy remains to be tried. ... Even where the  
3 question of law is not entirely determinative, it may be appropriate for the appellate court to express its  
4 opinion in order to clarify or narrow the issues for trial. [Citation.]” Thus, the language in *Hunter*  
5 applies to *appellate* court proceedings.

6 Plaintiff also relies on dicta in two California Supreme Court cases. In *Common Cause v. Board*  
7 *of Supervisors* (1989) 49 Cal.3d 432, the court stated that “if the party seeking the injunction can make a  
8 sufficiently strong showing of likelihood of success on the merits, the trial court has discretion to issue  
9 the injunction notwithstanding that party's inability to show that the balance of harms tips in his favor.  
10 (*King v. Meese, supra*, 43 Cal. 3d at pp. 1227-1228 [dictum].)” (*Id.* at p. 447.) However, in *Common*  
11 *Cause* the court found that there was no likelihood of success on the merits and concluded that the  
12 preliminary injunction should not have issued. (*Ibid.*) Thus, the quoted language in *Common Cause* is  
13 dicta.  
14

15 Similarly, in *King*, the court stated that “the more likely it is that plaintiffs will ultimately  
16 prevail, the less severe must be the harm that they allege will occur if the injunction does not issue.”  
17 (*King, supra*, 43 Cal.3d at p. 1227.) *King* considered the balance of harms, but it does not appear that  
18 *King* considered if the harm to plaintiffs was irreparable. And ultimately, the court found that the  
19 plaintiffs were not likely to prevail on the merits and that the trial court properly denied the preliminary  
20 injunction.  
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22 Similarly, in *W. Hollywood Concerned Citizens v. City of W. Hollywood* (1991) 232 Cal.App.3d  
23 486, the court affirmed denial of the injunction and stated that since the plaintiffs “have not established a  
24 ‘reasonable probability’ they will prevail on the merits at trial, we have no reason to balance the  
25

1 hardships between the landlords and the City.” (*Id.* at p.500.) Again, it was not clear that the court had  
2 considered of the harm to plaintiffs was irreparable harm.

3 In *Palos Verdes Shores Mobile Estates v. City of L.A.* (1983) 142 Cal.App.3d 362, 368, the court  
4 noted that the only issue presented on appeal was whether the rent ordinance in question was  
5 constitutional on its face and whether the administrative guidelines promulgated thereunder were valid.  
6 The court then decided that it was appropriate for it to make a determination on the facial validity of the  
7 ordinance. (*Ibid.*) Similarly, in *Oceanside Mobilehome Park Owners' Ass'n v. City of Oceanside* (1984)  
8 157 Cal.App.3d 887, the court reviewed the trial court’s granting of a preliminary injunction and cited to  
9 *Palos Verdes* for the proposition that the appellate court could determine the facial validity of an  
10 ordinance that presented an issue of law. (*Id.* at p. 908 fn.3.) *Oceanside*, like, *Palos Verdes* did not  
11 discuss irreparable harms and it is not clear that the parties did not present evidence of irreparable harms  
12 or stipulate to such harms at the trial court.

14 In *Thomsen v. City of Escondido* (1996) 49 Cal.App.4th 884, the trial court granted a preliminary  
15 injunction and the appellate court decided to review the constitutionality of an ordinance de novo  
16 without discussing the harm to plaintiff. (*Id.* at p. 890.) *Thomsen* quoted *Bullock v. City and County of*  
17 *San Francisco* (1990) 221 Cal. App. 3d 1072, 1094 for the rule that “when the matter is solely a  
18 question of a violation of law the standard of review is not abuse of discretion but whether statutory or  
19 constitutional law was correctly interpreted and applied by the trial court.” (internal quotations and  
20 italics omitted.)

22 However, in *Bullock* the court found that the trial court had made an error of law regarding the  
23 validity of a rent ordinance. (*Id.* at p. 1102.) The court then went on, “out of abundance of caution”, to  
24 consider the “traditional ‘interim harm’ and ‘likelihood of prevailing on the merits’ factors” and  
25 specifically noted that the plaintiff had shown irreparable harm. (*Id.* at p. 1095, 1102.) The court

1 explained that its “caution derives from *Cohen v. Board of Supervisors* [(1985)] 40 Cal.3d 277, where  
2 the Supreme Court held a municipal ordinance preempted by state law, but nevertheless remanded the  
3 case to the Court of Appeal for consideration of the traditional factors in light of the Supreme Court's  
4 decision on the purely legal issue of preemption. (*Id.* at pp. 289-290, 304.)” (*Bullock, supra*, 221  
5 Cal.App.3d at p. 1095, fn. 12.)

6 In some of Plaintiff's cases, irreparable harm was found to exist. In *Citizens to Save California v.*  
7 *California Fair Political Practices Com.* (2006) 145 Cal.App.4th 736 the trial court found that plaintiffs  
8 would suffer irreparable harm. (*Id.* at p. 744.) In *Cal. Ass'n of Dispensing Opticians v. Pearle Vision Ctr.*  
9 (1983) 143 Cal.App.3d 419, 434, the court found there was a presumption of irreparable injury. Finally,  
10 in *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, is not on point as it  
11 relates to the availability of costs and attorneys' fees.

12 Some of Plaintiff's cases appear to hold that an *appellate court* can decide an issue solely on the  
13 merits, but those cases do not that a *trial court* may do so. Thus, the Court finds that it should apply the  
14 normal test for a motion for preliminary injunction and consider whether or not Plaintiff has shown  
15 irreparable harm if the injunction is not issued.

#### 16 Discussion of Irreparable Harm

17 Plaintiff cites to Code of Civil Procedure § 526(a)(5) and (6) when arguing that a preliminary  
18 injunction should be granted. It also appears that Plaintiff may be arguing that an injunction should issue  
19 pursuant to Code of Civil Procedure § 526(a)(2).  
20

21 Subsection 2 applies to cases where there is great or irreparable injury. Plaintiff argues that it has  
22 shown an irreparable injury, which is presumably brought under subsection 2. In *Tahoe Keys Property*  
23 *Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, the plaintiff argued  
24 there was a taking because the Water Resources Control Board was collecting fees, which plaintiff  
25

1 claimed were unconstitutional. As *Tahoe Keys* explained, “it is clear that a plaintiff must make some  
2 showing which would support the exercise of the rather extraordinary power to restrain the defendant's  
3 actions prior to a trial on the merits. [Citations.] In general, if the plaintiff may be fully compensated by  
4 the payment of damages in the event he prevails, then preliminary injunctive relief should be denied.  
5 [Citation.]” (*Id.* at p. 1471.) The court then found that the plaintiff had shown little risk of irreparable  
6 harm. (*Id.* at p. 1473.)

7  
8 The Court finds *Tahoe Keys* is analogous to the situation here. Although Plaintiff brings other  
9 constitutional challenges besides taking, the harm that Plaintiff’s members would suffer is monetary.  
10 The allegations in the verified complaint are that Plaintiff’s members will be damaged by the loss of  
11 individual property rights. (Comp. ¶¶ 27, 33, 43.) These allegations are not specific, however, it appears  
12 that the main concern of Plaintiff is the monetary loss.

13 At the hearing, Plaintiff argued that it would be subject to other harms, including the inability to  
14 control who lives at a landlord’s property and difficulties with removing tenants involved in criminal  
15 activity from a rented property. However, evidence of these harms was not included in the preliminary  
16 injunction papers and actual harm from these incidents appears speculative at this stage.

17 Subsection 5 applies when it be extremely difficult to ascertain the amount of compensation  
18 which would afford adequate relief. Plaintiff argued in its briefs and during oral argument that it would  
19 be extremely difficult for the landlords to calculate their lost rental income and to collect this lost  
20 income from tenants. The Court does not find this argument persuasive. If the Ordinance is ultimately  
21 struck down then the landlords will be able to raise their rents without the restrictions included in the  
22 Ordinance and should be able to recover any lost profits.

23  
24 Plaintiff also argued in its brief that there would be a multiplicity of lawsuits, citing to subsection  
25 6. Plaintiff argued that its landlords will be subject to a multiplicity of lawsuits if the Ordinance is

1 entirely struck down and the landlords must work to get their unpaid rent. Plaintiff does not present  
2 admissible evidence to support this claim. And its argument is speculative at this point. It is not clear  
3 that tenants would refuse to pay rent if legally owed to landlord and risk the consequences of not paying.

4 **Conclusion**

5 Therefore, the Court finds that Plaintiff has not met its burden of showing it will suffer  
6 irreparable harm without the injunction and the Court hereby denies Plaintiff's motion.

7  
8 The Court plans to set the hearing on the permanent injunction on an expedited basis. The parties  
9 are ordered to meet and confer on a briefing schedule and proposed hearing dates, which will be at least  
10 two weeks after the reply is filed. The Court prefers succinct briefs, but given the complexity of this case  
11 the Court increases the page limits on the moving and opposition memoranda to 20 pages. The parties  
12 shall appear to discuss these matters with the Court on March 3, 2017, at 9:00 a.m. in Department 9. The  
13 parties may avoid this hearing by appearing ex parte with a stipulation and proposed order that addresses  
14 these matters.

15 DATED: February 14, 2017

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19 **JUDGE OF THE SUPERIOR COURT**  
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25

SUPERIOR COURT - MARTINEZ  
COUNTY OF CONTRA COSTA  
MARTINEZ, CA 94553  
(925) 608-1000

CLERK'S CERTIFICATE OF MAILING

CASE TITLE: CALIF APARTMENT ASSOC VS CITY OF RICHMOND

CASE NUMBER: MSC17-00005 - CIVIL

THIS NOTICE/DOCUMENT HAS BEEN SENT TO THE FOLLOWING ATTORNEYS/PARTIES:

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I am a Clerk of the Court indicated below and am not a party to this cause. On the date below indicated, I served a copy of the attached document(s) by depositing a true copy in the mail in a sealed envelope with postage prepaid, at MARTINEZ, California addressed as above indicated.

TITLE OF DOCUMENT SERVED: ORDER FROM SUBMISSION

DATE MAILED: 02/14/17

CLERK OF THE COURT

BY:   
C. FORFANG  
Deputy Clerk of the Court



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