

April 22, 2020

Ms. Kristine Ridge
City Manager/Dir. of Emergency Servs.

VIA PDF E-MAIL
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City of Santa Ana
20 Civic Center Plaza
Santa Ana, California 92701

Re: Executive Order No. 2-2020, § 3 (Ban on Rent Increases)

Dear Ms. Ridge and Ms. Carvahlo:

I write on behalf of the California Apartment Association concerning Executive Order No. 2-2020, and in particular Section 3 of that Order, which prohibits rent increases on every tenant in the city:

SECTION 3. Based on the findings set forth in the Executive Order adopted by the Director of Emergency Services on March 19, 2020, residential landlords in the City are hereby prohibited from increasing rent for all tenants while Executive Order N-28-20 adopted by the Governor of the State of California remains in effect or is extended by the Governor.

While we recognize that the Governor's various emergency orders have expanded local governments' authority in some respects during the current shelter-in-place periods, those orders do not authorize this provision, which is beyond the power of the City of Santa Ana. It is preempted by the Costa-Hawkins Rental Housing Act, Civ. Code §§ 1954.50-1954.545 ("Costa-Hawkins"); Assembly Bill 1482 (2019-2020 Reg. Sess.); and Penal Code § 396.

[CES2223.010]

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Costa-Hawkins “permits owners of certain types of property to adjust the rent on such property *at will*, [n]otwithstanding any other provision of law.’ (Civ. Code § 1954.52, subd. (a).)” *DeZerega v. Meggs*, 83 Cal. App. 4th 28, 40-41 (2000) (emphasis added). Simply put, it permits the landlords of single family homes, rental units for which a certificate of occupancy was issued after February 1, 1995, and earlier-constructed rental units which were already exempt by local law to raise rents without local interference at all, *see* Civ. Code § 1954.52(a), and with respect to all other units it permits landlords to raise rents upon vacancy, *see* Civ. Code § 1954.53(a). Section 3 of the Executive Order runs contrary to this statute.

Assembly Bill 1482, codified at 2019 Cal. Stats. 597, qualifies Costa-Hawkins somewhat. It directly limits rent increases on certain units that would otherwise be totally exempt from regulation under Costa-Hawkins. Civ. Code § 1947.12. However, it does so as a matter of *state* law; it does not give *local* governments any greater power to regulate rent increases than they had under Costa-Hawkins itself. In fact, AB 1482 is explicit about this fact. *See* Civ. Code § 1947.12(k)(1) & (2). So AB 1482 does not authorize Section 3 of the Executive Order either.

Finally, during emergencies Penal Code § 396(e) makes it unlawful for a landlord “to increase the rental price, as defined in paragraph (11) of subdivision (j), advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent,” with certain exceptions. The Executive Order, by contrast, purports to make it illegal for a landlord to increase the rental price by any amount whatsoever. This, it cannot do.

While Governor Newsom’s Executive Order N-28-20 waived certain provisions of state law to permit local governments to restrict *evictions* during the emergency, it did not go so far as to waive provisions—like Costa-Hawkins—that give landlords the ability to set their rents. To the contrary, it provided that “Nothing in this order shall relieve a tenant of the obligation to pay rent, nor restrict a landlord’s ability to recover rent due.” In other words, it made an explicit distinction between the substantive power of a landlord to set initial and substantive rents, and the procedural

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ability to enforce those rents by eviction during the emergency period. Consistent with that fact, the Governor’s Order expressly identified “Civil Code sections 1940 et seq.” (regulating certain aspects of with residential rentals) and “1954.25 et seq” (dealing with commercial rent control) as being waived, but conspicuously omitted any reference to Civil Code section 1954.50 et seq.—*i.e.*, Costa-Hawkins.

Finally, though Penal Code § 396(k) provides that “This section does not preempt any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited by this section,” that provision does not justify the City’s complete prohibition on rent increases.

For one thing, it contains no exception to Costa-Hawkins, which has not been waived and therefore remains applicable; which does expressly preempt local action with respect to rental rates for many units; and which was the statute adopted later in time.¹

Moreover, by disclaiming preemption of “any local ordinance prohibiting the same or similar conduct,” Penal Code § 396 implicitly reflects an intention to preempt ordinances that do go beyond “prohibiting the same or similar conduct,” such as Section 3 of Executive Order No. 2-2020. A local policy that prohibits rent increases altogether during an emergency can hardly be said to be “prohibiting the same or similar conduct” as one that permits a 10 percent increase in such circumstances, and more in some cases. That is especially clear when Penal Code § 396(e), authorizing the 10 percent increase, is contrasted with Penal Code § 396(f), which does temporarily freeze rents on units that become vacant *pursuant to an eviction* during the emergency. Penal Code § 396(e) is clearly meant to permit reasonable rent increases otherwise, in accordance with applicable law (*i.e.*, Costa-Hawkins and AB 1482).

¹ The provision that is now Penal Code § 396(k) was originally adopted in 1994. *See* Stats. 1st Ex. Sess. 1993–94, ch 52, § 2 (AB 36 X). Costa-Hawkins was adopted the following year.

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In view of the foregoing, we would ask that you amend the Executive Order to remove Section 3, so as to comply with state law.

Sincerely,



Christopher E. Skinnell

cc: Joshua Howard
Victor Cao