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California Apartment Association

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

CALIFORNIA APARTMENT ASSOCIATION,  
a California not-for-profit corporation,

Plaintiff,

v.

THE COUNTY OF SAN DIEGO, a political  
subdivision of the State of California; THE  
BOARD OF SUPERVISORS OF THE  
COUNTY OF SAN DIEGO, the elected  
governing body of the County of San Diego; and  
DOES 1 through 10,

Defendants.

Case No. 37-2021-00023731-CU-MC-CTL

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

1 Plaintiff California Apartment Association (“Plaintiff” or “CAA”) alleges for its Complaint against  
2 Defendants the County of San Diego (“County”), the Board of Supervisors of the County of San Diego  
3 (“Board”), and DOES 1 through 10, as follows:

#### 4 **INTRODUCTION**

5 1. In response to the COVID-19 public health emergency, the State of California (“State”)  
6 enacted statewide eviction moratoriums, first through the Governor’s executive authority, and second  
7 through legislative action. Assembly Bill 3088 (“AB-3088”), the COVID-19 Tenant Relief Act  
8 (“CTRA”), provided for a statewide eviction moratorium through February 1, 2021. The CTRA  
9 proclaimed that the public health crisis was “a matter of statewide concern.” That moratorium was  
10 extended to June 30, 2021 by Senate Bill 91 (“SB-91”). The CTRA’s controlling preemption language  
11 prohibits the adoption of any other eviction measures in response to the COVID-19 pandemic that go into  
12 effect before July 1, 2021.

13 2. On May 4, 2021, the Board passed Ordinance No. 10724, an Ordinance of the Board of  
14 Supervisors of the County of San Diego Exercising the County’s Police Power to Prohibit Residential  
15 Evictions Without Just Cause and to Enact a Moratorium on Certain Residential Rent Increases  
16 (“Ordinance”).<sup>1</sup> The Ordinance provides for more restrictive eviction prohibitions in the County than  
17 those allowed by the State and also puts in place certain rent control measures. Additionally, the  
18 Ordinance applies to both the unincorporated areas in the County, as well as incorporated cities. The  
19 Ordinance is scheduled to take effect on June 3, 2021.

20 3. The Ordinance passed by a 3-2 vote, after several hours of testimony from members of the  
21 public. A majority of the written comments to the Board, as well as the speakers at the hearing, opposed  
22 the Ordinance.

23 4. Among other things, the Ordinance prevents owners—many of them small “mom and pop”  
24 landlords—from evicting tenants under all circumstances except if the landlords can show “just cause”  
25 for the eviction. “Just cause” exists to evict a tenant if, and only if, the owner can prove that the tenant  
26 presents a “hazard to the health or safety of other tenants or occupants of the same property,” subject to a  
27

28 <sup>1</sup> A true and correct copy of the Ordinance is attached hereto as **Exhibit 1**.

1 number of exceptions. The term “hazard” is not defined in the Ordinance, or elsewhere. Moreover,  
2 removing a tenant presenting a “hazard” still exposes the landlord to the potential for costly litigation.

3 5. CAA is an association of rental housing providers across the State of California. Many of  
4 its members own units in the County and will be subject to, and injured by, the Ordinance’s eviction  
5 moratorium and rent control measures. For example, the restrictions imposed by the Ordinance prevent  
6 small landlords from moving themselves, and/or members of their families, into their units, due to  
7 financial hardship, housing displacement, or some other circumstance.

8 6. The Ordinance violates the California Constitution and California state law, as described  
9 herein. In addition, for those members with housing units in cities within the County, the Ordinance  
10 unconstitutionally purports to apply to those properties, as well. CAA brings this challenge to the  
11 Ordinance on behalf of itself and its members, seeking declaratory and injunctive relief.

## 12 **PARTIES**

13 7. CAA is a California non-profit corporation authorized to do business in the State of  
14 California. CAA is the largest rental housing trade association in the United States, representing more  
15 than fifty thousand property owners and housing operators responsible for nearly two million rental  
16 housing units throughout California, including owners and operators within the County. CAA provides  
17 its membership with support, information, and educational resources relevant to every aspect of  
18 California’s rental housing industry. CAA is proud to represent thousands of San Diego County housing  
19 providers, especially “mom and pop” operators who rely on their rental investments to sustain their  
20 livelihood and, in some cases, retirement.

21 8. Some CAA members own rental units within the unincorporated areas of the County and  
22 are subject to the Ordinance. Others own rental units within incorporated areas of the County (*i.e.*, cities  
23 within the County), against whom the Ordinance also purports to apply. These CAA members are  
24 “Landlords” as that term is defined in the Ordinance, and would have standing to challenge the Ordinance  
25 in their own right. *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977). CAA members  
26 also have contractual and ownership rights in their properties that are directly impacted by the Ordinance.

1           9.       A present and concrete controversy exists between the parties because, but for the  
2 Ordinance enacted by the Board, and set to be enforced by the County on June 3, 2021, CAA's members  
3 would have the ability to exercise their right to access the courts and pursue the eviction of their tenants  
4 that violate their leases, the right to take possession of their unique real property, the right to re-let their  
5 property to new tenants willing to uphold the terms of a lease, and the right to increase rent on their  
6 properties.

7           10.      For example, Mrs. Georgina Kleinsmith is a member of CAA. She owns a detached  
8 condominium currently rented to two tenants. The property has been rented to these tenants on a month-  
9 to-month basis for approximately a decade. These tenants have not been financially impacted by COVID-  
10 19. Indeed, these tenants recently purchased a lot of land they are now developing for the purpose of  
11 improving with a new manufactured home. By contrast, Mrs. Kleinsmith's son, his girlfriend and her  
12 seven-year old daughter are facing financial hardship. They are subjected to increasing rental rates in  
13 their current apartment and facing hardship in accumulating funds for a future rental deposit. At present,  
14 Mrs. Kleinsmith requires access to and possession of her condominium in order to provide shelter to her  
15 son, who currently has nowhere to go upon the termination of his lease at the end of this month. The  
16 Ordinance, however, prevents Mrs. Kleinsmith from exercising her rights to possession and use of her  
17 property – even to provide housing to her own son – and the tenants have refused to vacate and return  
18 possession of the property indefinitely. The Ordinance has caused, and continues to cause, significant  
19 harm and distress to Mrs. Kleinsmith.

20           11.      Defendant County of San Diego is a political subdivision of the State of California and has  
21 the power to sue and be sued. The County has the power to “make and enforce within its limits all local,  
22 police, sanitary, and other ordinances and regulations not in conflict with general laws.” CAL. CONST. art.  
23 XI, § 7. Defendant Board of Supervisors of the County of San Diego is the legislative and executive  
24 authority of the County. The Board enacted the Ordinance challenged here.

25           12.      The fictitious defendants Does 1 through 10 are sued pursuant to the provisions of  
26 California Code of Civil Procedure § 474. Plaintiff does not know the true names and capacities, whether  
27 individual, corporate, associate or otherwise, of such fictitious defendants. Plaintiff is informed and  
28

believes, and thereon alleges, that each of said defendants was in some way responsible for, participated in or contributed to the matters and things of which Plaintiff complains herein, and in some fashion has legal responsibility therefor. Plaintiff will amend this Complaint to show the true names and capacities when the same have been ascertained.

13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, each of the Defendants was the agent of each of the remaining Defendants, and in doing the things alleged herein, was acting within the course and scope of such agency or employment.

### **JURISDICTION AND VENUE**

14. This Court has jurisdiction over all causes of action asserted herein pursuant to California Constitution, Article VI, § 10, because this case is not given by statute to any other trial court. Further, this Court has general subject matter jurisdiction pursuant to California Code of Civil Procedure § 410.10.

15. Jurisdiction and venue are proper in this Court under Code of Civil Procedure §§ 394 and 395. This is an action against a county and its governing body, which may be tried in that county. Further, this Court is in the county where all the defendants reside and where all of the alleged wrongful conduct occurred.

### **FACTUAL ALLEGATIONS**

16. The basis for California's eviction moratoriums all stem from the March 4, 2020 Governor's declaration of a State of Emergency to help the State prepare for a broader spread of COVID-19. The explicit goal of each of the eviction moratoriums has been to address the intersection of the public health risks associated with housing instability and homelessness, and the economic insecurity caused by the COVID-induced recession.

17. In addition to California's declaration of a State of Emergency to address COVID-19, each county public health official in California also declared local public health emergencies and have continuously updated their health orders throughout the pandemic. The San Diego County Health Officer declared a Local Health Emergency due to COVID-19, and issued a Proclamation of Local Emergency, on February 12, 2020. The most recent Public Health Order, which currently controls, was issued on May 6, 2021.

1 **California’s Eviction Moratorium**

2 18. On March 16, 2020, the Governor issued an Executive Order, establishing an eviction  
3 moratorium throughout the State of California through May 31, 2020. *See* Executive Order N-28-20. The  
4 moratorium was extended by 60 days on May 29, 2020. *See* Executive Order N-66-20. On August 31,  
5 2020, the CTRA was enacted into law providing for a statewide eviction moratorium through February 1,  
6 2021. On January 29, 2021, SB-91 extended the eviction moratorium through June 30, 2021. At this  
7 point in time, there is no indication as to whether the State will further extend the moratorium beyond  
8 June 30.

9 19. The CTRA was passed as an “urgency statute” deemed “necessary for the immediate  
10 preservation of the public peace, health or safety” of California residences. AB-3088, § 24. The statute  
11 was passed based on the State Legislature’s findings that:

- 12 • “Millions of Californians are unexpectedly, and through no fault of their own, facing  
13 new public health requirements and unable to work and cover many basic expenses,  
14 creating tremendous uncertainty for California tenants, small landlords, and  
15 homeowners.” *Id.* at § 2(c).
- 16 • “Stabilizing the housing situation for tenants and landlords is to the mutual benefit of  
17 both groups and will help the state address the pandemic, protect public health and set  
18 the stage for recovery.” *Id.* at § 2(f).

19 20. Based on these findings, the Legislature stated its intent to establish the statewide eviction  
20 moratorium “to establish through statute a framework for all impacted parties to negotiate and avoid as  
21 many evictions and foreclosures as possible.” *Id.* at § 2(f). AB-3088 sought to “forestall massive social  
22 and public health harm by preventing unpaid rental debt from serving as a cause of action for eviction or  
23 foreclosure during this historic and unforeseeable period. . .” *Id.* at § 2(g). The framework was designed  
24 to provide “temporary emergency relief for financially distressed tenants, homeowners, and small  
25 landlords” to “help stabilize Californians through the state of emergency in protection of their health and  
26 without the loss of their homes and property.” *Id.* AB-3088 also included preemption language.

1           21.     SB-91, which extended AB-3088 through June 30, 2021 based on the same reasoning laid  
2 out in AB-3088, reiterated the preemption language provided for in AB-3088. Specifically, SB-91  
3 provides: “Any extension, expansion, renewal, reenactment or new adoption of a measure, however  
4 delineated, that occurs between August 19, 2020, and June 30, 2021, shall have *no effect* before July 1,  
5 2021.” SB-91 at § 21 (emphasis added).

6           22.     Further, SB-91 (like AB-3088) specified that the statewide moratorium addressed “a matter  
7 of statewide concern rather than a municipal affair.” *Id.*

### 8 **The Ordinance**

9           23.     On May 4, 2021, the Board passed the Ordinance, which provides for a moratorium on  
10 evictions and on residential rent increases throughout the County. It is due to go into effect on June 3,  
11 2021. The Ordinance applies to “cities within the County of San Diego and unincorporated areas of the  
12 county. . .” *Id.* at § 8(a). The specified intent of the Ordinance is to protect County tenants who are left  
13 “unprotected from eviction” by AB-3088 and SB-91. *Id.* at § 1(w). The Ordinance, prohibiting residential  
14 evictions and rental increases throughout the County, is effective “until 60 days after the Governor lifts  
15 all COVID-19-related stay-at-home and work-at-home orders.” *Id.* at § 3(a).

16           24.     The Ordinance goes beyond state law and only allows landlords to begin eviction  
17 proceedings if they have “just cause,” defined as “an imminent health or safety threat.” *Id.* at § 3(b). An  
18 “imminent health or safety threat” is further defined as “a hazard to the health or safety of other tenants  
19 or occupants of the same property, taking into account (1) the risk of potential spread of coronavirus  
20 caused by the eviction, in case of a Local Emergency due to COVID-19, (2) any public health or safety  
21 risk caused by the eviction, and (3) all other remedies available to the landlord and other occupants of the  
22 property, against the nature and degree of health and safety risk posed by the tenant’s activity.” *Id.* at §  
23 2(b). The Ordinance specifically excludes from the definition of “imminent health or safety threat” the  
24 tenant’s “COVID-19 illness or exposure to COVID-19, whether actual or suspected”. *Id.* The Ordinance  
25 does not define the term “hazard.”

26           25.     The Ordinance’s restrictive definition of the “just cause” exception makes it difficult, if  
27 not impossible, for a landlord to invoke the exception to evict a tenant, even if the owner wants to use the  
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1 rental property to house a family member in financial distress and in need of immediate housing. And  
2 invoking the “just cause” exception opens up the landlord to the potential for costly and time-consuming  
3 tenant-initiated litigation.

4 26. In addition, the Ordinance’s restrictions on evictions conflict with provisions of the CTRA  
5 that allow landlords to evict tenants for specific just cause reasons, which are now disallowed by the  
6 Ordinance.

7 27. While there is general reference in the findings section of the Ordinance to San Diego’s  
8 public health recommendations—along with the CDC and the California Department of Public Health—  
9 the Ordinance does not make specific reference to a finding of why or how the Public Health Orders in  
10 San Diego support its finding that the local eviction and rent increase moratoria are necessary to protect  
11 the public health of San Diego tenants in accordance with the local public health order. *See id.* at § 1(g).  
12 Further, San Diego’s Public Health Orders do not reference any reasons for why San Diego County would  
13 need to go above and beyond the State’s eviction moratorium to protect the health of San Diego County  
14 tenants and renters. In fact, the Public Health Orders do not reference evictions or rent increases at all.

15 28. What is more, while the Board of Supervisors had the opportunity to pass a near-identical  
16 version of the Ordinance as an “urgency statute” on April 6, 2021, it failed to do so. Instead, the Ordinance  
17 was passed as a regular ordinance, which takes effect 30 days after its final passage. *See id.* at § 10(a).

18 29. Finally, the Ordinance applies to ***all*** rental housing owners and ***all*** tenants in the County,  
19 and not just to owners and tenants in the unincorporated areas of the County. Specifically, the Ordinance  
20 applies to “cities within the County as well.” *Id.* at § 8(c). Significantly, the Ordinance protects ***all*** tenants  
21 regardless of their wealth, income, or COVID-19-related financial distress. Thus, by its own terms, the  
22 moratorium is concerned, not with protecting the most vulnerable tenants at risk of financial hardship or  
23 from suffering homelessness, but with benefitting tenants as a group (whether needed or not), at the  
24 expense of landlords and rental property owners.

25 30. Absent prohibitory injunctive relief, the Ordinance is set to go into effect on June 3, 2021.  
26 The moratorium on evictions and rent increases will expire “60 days after the Governor lifts all COVID-  
27 19-related stay-at-home and work-at-home orders.” *Id.* at § 3(a). Since it is unknown when the Governor  
28



1 will lift these orders, the Ordinance’s expiration date is also unknown, and the Ordinance will be in effect  
2 for an indefinite period.

3 31. Plaintiff and its members objected to the passage of the Ordinance, both in writing and at  
4 the hearing by the Board, as did hundreds of others in the County. Yet, the Ordinance was passed by a 3-  
5 2 vote.

6 **The Public Health Situation in San Diego County**

7 32. In recent months, the public health situation in San Diego County has improved  
8 dramatically. As of May 27, 2021, 59.9% of the target population (residents aged 12 and over) have  
9 received at least one dose of the COVID-19 vaccine, with numbers increasing every day. Further, all  
10 indicators—number of cases, infection positivity rates, hospitalizations, and deaths—show marked  
11 improvements, and demonstrate that the health situation in San Diego County is not a health emergency  
12 that would require county-specific action beyond the state’s eviction moratorium.

13 **FIRST CAUSE OF ACTION**

14 **Violation of Article XI, Section 7 of the California Constitution**

15 **Against All Defendants**

16 33. Plaintiff incorporates herein by reference each and every allegation contained in the  
17 preceding paragraphs of this Complaint as though fully set forth herein.

18 34. “A county or city may make and enforce *within its limits* all local, police, sanitary, and  
19 other ordinances and regulations *not in conflict* with general laws.” CAL. CONST. art. XI, § 7 (emphasis  
20 added). As such, cities and counties in California have “plenary authority to govern, subject only to the  
21 limitation that they exercise this power within their territorial limits and subordinate to state law.” *A&B*  
22 *Cattle Co v. City of Escondido*, 192 Cal. App. 3d 1032, 1037 (1987).

23 35. Where local ordinances conflict with state law, they are preempted and void. *Id.*; *see also*  
24 *People ex rel. Deukmejian v. County of Mendocino*, 36 Cal. 3d 476, 484 (1984). Conflicts between a local  
25 ordinance and state law “exist if the ordinance duplicates, contradicts, or enters an area fully occupied by  
26 general law, either expressly or by legislative implication.” *Cohen v. Board of Supervisors*, 40 Cal. 3d  
27 277, 290 (1985).

1           36. Here, the State Legislature, in enacting the CTRA, specifically declared that it was  
2 “address[ing] a matter of statewide concern rather than a municipal affair,” and stated that “[a]ny  
3 extension, expansion, renewal, reenactment, or new adoption of a measure . . . that occurs between August  
4 19, 2020, and June 30, 2021, shall have no effect before July 1, 2021.” SB-91 at § 21. Therefore, on its  
5 face, the CTRA preempts all local eviction moratoria, particularly those that go into effect before July 1,  
6 2021. The Ordinance is unmistakably preempted by this explicit language in the CTRA. Furthermore,  
7 while the CTRA explicitly allows local jurisdictions to “extend, expand, renew, reenact, or newly adopt  
8 an ordinance that requires just cause for termination of a residential tenancy,” the Ordinance goes well  
9 beyond this legislative grace by creating certain rent control measures and strict eviction prohibitions.

10           37. The Board has enacted an Ordinance that, if allowed to take effect on June 3, 2021, would  
11 create an emergency eviction moratorium in light of the COVID-19 pandemic. The State already  
12 addressed the challenges facing renters at the height of the pandemic by enacting the CTRA. The law’s  
13 protections have been extended through the end of June 30, 2021. *See* SB-91. The Ordinance is duplicative  
14 of state law in some areas, *e.g.*, by granting protections that already exist under the CTRA. But, in other  
15 areas, the Ordinance contradicts state law, *e.g.*, by purporting to override provisions of the CTRA that  
16 allow landlords to evict tenants under a limited number of specific just cause reasons. Local legislation  
17 is contradictory to state law “when it is inimical thereto” – in other words, it is harmful or obstructive to  
18 state law. *Sherwin-Williams, Co. v. City of Los Angeles*, 4 Cal. 4th 893, 898 (1993). The State has chosen  
19 to give landlords a set of just cause exceptions through which to protect their legitimate interests; the  
20 Ordinance seeks to place a moratorium on evictions with no such exceptions. This is “inimical” to the  
21 protections that the State has sought to provide landlords in that it attempts to eliminate them.

22           38. The Ordinance cites Government Code section 8634 as the basis for implementing the  
23 eviction and rent increase moratoria. Section 8634 provides: “During a local emergency, the governing  
24 body of a political subdivision . . . may promulgate orders and regulations ***necessary to provide for the***  
25 ***protection of life and property*** . . .”. Gov. Code § 8634 (emphasis added). Further “[t]he board of  
26 supervisors of each county shall take measures as may be necessary to preserve and protect the public  
27 health in the unincorporated territory of the county, including, if indicated, the adoption of ordinances,  
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1 regulations and orders not in conflict with general laws. . .” Health and Safety Code § 101025. The  
2 county health official (appointed by the county board of supervisors pursuant to Health and Safety Code  
3 § 101000) “shall enforce and observe in the unincorporated territory of the county . . . (a) Orders and  
4 ordinances of the board of supervisors, pertaining to the public health . . . and (c) Statutes relating to public  
5 health.” *Id.* at § 101030.

6 39. The Ordinance goes beyond the County’s constitutional authority as it is not necessary “to  
7 preserve and protect the public health” of San Diego County tenants. First, the current public health  
8 situation in San Diego County is improving daily, with COVID-19 infections down, vaccinations on the  
9 rise, and pandemic-related restrictions being lifted.<sup>2</sup> Second, and more importantly, the Ordinance was  
10 not passed in accordance with, or in reference to, any specific Public Health Order issued by the San Diego  
11 County Health Department. In addition, those Public Health Orders—dozens of which have been passed  
12 since the start of the global pandemic—do not reference the health implications of evictions or rent  
13 increases at all, and thus do not provide any explanation or rationale as to why the County needs to go  
14 above and beyond the state eviction moratorium that is already in place to protect the health of its resident  
15 tenants. At the same time, the Ordinance fails to explain why a limitation on rent increases is necessary  
16 at all, particularly given state law already limits rent increases. Finally, the Board of Supervisors implicitly  
17 acknowledged that the Ordinance is not responding to an immediate emergency when it failed to pass a  
18 near-identical version of the Ordinance on April 6 as an “urgency statute” that would go into effect  
19 immediately. Instead, the Ordinance was put off for discussion and vote by a month—to the May 4 Board  
20 of Supervisors Meeting—and will not take effect for an additional 30 days after its passage—on June 3,  
21 2021.

22 40. Here, as the COVID-19 pandemic is waning and the public health “emergency” is  
23 improving day-by-day, the County chose to use its extraordinary emergency powers to not only pass an  
24 eviction moratorium that conflicts with the State’s eviction moratorium, but also to enact certain rent  
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26 <sup>2</sup> As of May 27, 2021, 59.9% of the target population (residents aged 12 and over) have received at least  
27 one dose of the COVID-19 vaccine, with numbers increasing every day. Further, all indicators—number  
28 of cases, infection positivity rates, hospitalizations, and deaths—show marked improvements, and  
demonstrate that the health situation in San Diego County is not a health emergency that would require  
county-specific action beyond the state’s eviction moratorium.

1 control measures. The County's actions, as a matter of common sense, make no sense, and exceed its  
2 authority based on the current public health circumstances in San Diego County.

3 41. At a minimum, the County exceeded its constitutional authority to issue eviction and rent  
4 increase moratoria that apply to incorporated cities in the County. The moratoria, at best, could only apply  
5 to unincorporated areas in the County. The "limits" of a county for the purposes of its police power, as  
6 the term is used in Article XI, Section 7 of the California Constitution, are only those areas within the  
7 county that are ***unincorporated***. *City of Dublin v. County of Alameda*, 14 Cal. App. 4th 264, 274-75  
8 (1993); *see also County Sanitation Dist. No. 2 v. County of Kern*, 127 Cal. App. 4th 1544, 1612 (2005)  
9 ("The incorporated areas of [the] County are necessarily outside the jurisdiction and authority of the  
10 County; County's authority extends only to the unincorporated areas within its borders.").

11 42. Yet, the Ordinance purports to apply to both "cities within the County of San Diego" as  
12 well as the unincorporated areas in the County. *See* Ordinance at § 8(a). As such, the Ordinance exceeds  
13 the County's authority, under the California Constitution, to exercise its plenary police powers outside of  
14 unincorporated areas of the County. As such, at a minimum, the Ordinance should be limited to those  
15 areas in San Diego County that are unincorporated.

16 43. Plaintiff and its members have no adequate remedy at law and will suffer serious and  
17 irreparable harm from the unconstitutional exercise of County jurisdiction over them and their properties,  
18 as reflected in the Ordinance.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff requests declaratory and injunctive relief as follows:

21 1. A declaratory judgment that the Ordinance's eviction moratorium and rent increase  
22 moratorium are null and void, and of no effect, because it deprives rental housing owners, including  
23 Plaintiff's members, of the rights, privileges, and immunities secured by the California Constitution as  
24 follows:

- 25 a. The eviction moratorium is preempted by the CTRA; and  
26 b. The eviction moratorium and the rent increase moratorium exceed the County's  
27 authority under the California Constitution.

1           2.       A temporary, preliminary, and permanent injunction enjoining the County, and all those in  
2 active concert or participation with the County, from implementing or enforcing the Ordinance's eviction  
3 moratorium and rent increase moratorium;

4           3.       If the Ordinance's eviction and rent increase moratoria are upheld, a declaratory judgment  
5 that the Ordinance only applies to the unincorporated areas of the County, as mandated by Article XI,  
6 Section 7, of the California Constitution;

7           4.       If the Ordinance's eviction and rent increase moratoria are upheld, a temporary,  
8 preliminary, and permanent injunction enjoining the County, and all those in active concert or  
9 participation with the County, from implementing or enforcing the Ordinance outside the County's  
10 unincorporated areas;

11           5.       Reasonable attorneys' fees and costs incurred in this action; and

12           6.       Any and all other relief to Plaintiff as the Court may deem just and proper.

13  
14 Dated: May 28, 2021

**JENNER & BLOCK LLP**

15  
16 By: /s/ Todd C. Toral

Todd C. Toral

Nayiri Pilikyan

17 Elizabeth Avunjian

18 Attorneys for Plaintiff

19 California Apartment Association  
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# **Exhibit 1**

ORDINANCE NO. 10724 (N.S.)

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO  
EXERCISING THE COUNTY'S POLICE POWER TO PROHIBIT RESIDENTIAL  
EVICTIONS WITHOUT JUST CAUSE AND TO ENACT  
A MORATORIUM ON CERTAIN RESIDENTIAL RENT INCREASES

The County of San Diego Board of Supervisors ordains as follows:

Section 1. Findings.

- (a) International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19").
- (b) On January 30, 2020, the World Health Organization ("WHO") declared a Public Health Emergency of International Concern as a result of the COVID-19 virus. On January 31, 2020, the United States Secretary of Health and Human Services also declared a Public Health Emergency of the COVID-19 virus.
- (c) On February 14, 2020, the San Diego County Health Officer declared a Local Health Emergency due to COVID-19, leading to the San Diego County Chief Administrative Officer serving as the San Diego (County) Director of Emergency Services and as the Coordinator of the Unified San Diego County Emergency Services Organization, issued a Proclamation of Local Emergency due to the COVID-19 pandemic which was ratified by the County of San Diego Board of Supervisors on February 19, 2020.
- (d) On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for a broader spread of COVID-19. The declaration was issued as the number of positive California cases continued to rise and following one official COVID-19 death.
- (e) The World Health Organization announced on March 11, 2020 that it has characterized COVID-19 as a pandemic.
- (f) On March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19.

- (g) The Centers for Disease Control and Prevention, the California Department of Public Health, and the San Diego County Department of Public Health have all issued recommendations, including, but not limited to, social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus.
- (h) On March 18, 2020, the Federal Housing Administration (FHA) enacted a 60-day moratorium on foreclosures and evictions for single family homes with FHA-insured mortgages, and the Federal Housing Finance Agency suspended foreclosures and evictions for single family homes with mortgages backed by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) for 60-days.
- (i) On March 19, 2020 an Executive Order and Public Health Order directed all Californians to stay home except to go to an essential job or to shop for essential needs. It was modified on May 4, 2020.
- (j) On August 28, 2020, the State released the Blueprint for a Safer Economy to permit gradual reopening of certain businesses and activities. Counties are assigned tiers that are updated weekly and determined by the county's case rate and test positivity rate. The County is currently in the red tier.
- (k) On December 3, 2020, and December 6, 2020 Governor Gavin Newsom signed regional stay at home orders that further expanded local shelter in place orders in regions where intensive care unit (ICU) capacity dropped below fifteen percent. The order was lifted on January 25, 2021.
- (l) The Governor of the State of California has stated that individuals exposed to COVID-19 may be temporarily unable to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources, including shelters and food banks;
- (m) Many County of San Diego residents are experiencing substantial losses of income as a result of business closures, the loss of hours or wages, or layoffs related to COVID-19, hindering their ability to keep up with rent payments.
- (n) Those residents financially impacted due to COVID-19 may not be able to make timely rent payments or may be forced to choose between making rent payments and having sufficient funds for food, medical care or other necessities for themselves and their families.
- (o) Without sufficient and long-term eviction protections, many tenants "self-evict" and move out even without adequate replacement housing, rather than face future legal eviction that could impact their ability to find new housing; while others are forced to move out of their



housing without adequate replacement housing may move into overcrowded living situations or become homeless.

- (p) The County of San Diego is experiencing a severe housing affordability crisis and approximately forty-six percent of San Diego County housing units are occupied by renters, who would not be able to locate affordable housing within the County if they lose their housing.
- (q) In response to the housing affordability crisis, in 2019 Governor Newsom signed into law Assembly Bill 1482, a statewide response to the problem of rent gouging that further burden tenants, some of whom cannot afford exorbitant rent increases and who might be at risk of self-evicting if faced with rent amounts that they can no longer pay.
- (r) Because experiencing homelessness can exacerbate vulnerability to COVID-19, it is necessary to take measures to preserve and increase housing security for San Diego County residents; and to protect public health and prevent transmission of COVID-19, it is essential to avoid unnecessary displacement and homelessness.
- (s) An urgency ordinance that requires just cause for termination of a residential tenancy during the COVID-19 crisis would help ensure that residents stay safely housed during the pandemic and would therefore reduce opportunities for transmission of the virus
- (t) On August 31, 2020, Governor Gavin Newsom signed into law Assembly Bill 3088 (AB 3088), which included COVID-19 eviction protections for some California tenants;
- (u) AB 3088 prohibits residential tenants from being evicted for failure to pay rent because of a COVID-19-related hardship occurring between March 1 and August 31, 2020, as long as the tenant provides the landlord with a written declaration of hardship. Residential tenants who experience a new COVID-19-related hardship between September 1, 2020, and January 31, 2021, are also protected from eviction as long as they pay 25 percent of the rent due by January 31, 2021.
- (v) Senate Bill 91, approved by Governor January 29, 2021 (hereinafter “SB 91”), extends the protections of the AB 3088 through June 30, 2021.
- (w) AB 3088 and SB 91 leave certain tenants unprotected from eviction, such as tenants who were unable to pay rent before the COVID-19 pandemic and tenants who are facing eviction for certain reasons other than nonpayment of rent.
- (x) During the tenure of AB 3088 and SB 91, San Diego County Superior Court has continued to process new eviction filings, hold hearings on existing eviction cases, and enter eviction judgments during the Local Emergency due to COVID-19.
- (y) The County of San Diego Sheriff’s department has continued to physically evict tenants from their homes during the COVID-19 Local Emergency.

- (z) A June 16, 2020 report by the San Diego Association of Governments found that more than two-thirds of Black (67%) and Hispanic (70%) residents in the San Diego region live in ZIP codes with higher than average unemployment rates.
- (aa) A June 16, 2020 report by San Diego Association of Governments found that approximately half of Black (52%) and Hispanic (49%) residents in the San Diego region live in ZIP codes with higher than average COVID-19 cases.
- (bb) A June 16, 2020 report by San Diego Association of Governments found that when compared to the white population, Black and Hispanic residents of the San Diego region are four times as likely to live in areas that have been impacted by COVID-19 and unemployment.
- (cc) On January 12, 2021 the San Diego County Board of Supervisors adopted a Resolution Declaring Racism as a Public Health Crisis.
- (dd) Legal Aid San Diego has reported a 30% increase in housing related cases from 2019 to 2020; and a 50% increase in housing related cases since January 2021.
- (ee) SB 91 does not alter a county's authority to extend, expand, renew, reenact, or newly adopt an ordinance that requires just cause for termination of a residential tenancy, consistent with subdivision (g) of Section 1946.2 of the Civil Code.
- (ff) This ordinance requires just cause for termination of a residential tenancy and provides additional tenant protections that are not prohibited by any other provision of law, and will serve justice and promote racial equity for renters in the County of San Diego and serves to preserve the public health and safety which is threatened by COVID-19 and to keep the residents of the County of San Diego housed.
- (gg) This Ordinance offers more protection to tenants than Civil Code section 1946.2 does, and is binding as required by Civil Code section 1946.2(g)(1)(B)(iii).

## Section 2. Definitions.

- (a) "Change in CPI" means the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the San Diego area, as published by the United States Bureau of Labor Statistics.
- (b) "Imminent health or safety threat" is a hazard to the health or safety of other tenants or occupants of the same property, taking into account (1) the risk of potential spread of coronavirus caused by the eviction, in case of a Local Emergency due to COVID-19, (2) any public health or safety risk caused by the eviction, and (3) all other remedies available to the landlord and other occupants of the property, against the nature and degree of health and safety risk posed by the tenant's activity. An imminent health or safety threat cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.

- (c) "Landlord" includes owners, lessors, or sublessors (of any level) of either residential rental property, and the agent, representative, or successor of any of the foregoing.
- (d) "Local Emergency" includes any period of local emergency declared by the County of San Diego in response to the COVID-19 pandemic.
- (e) "Residential unit" is a unit that is occupied by a tenant as their place of residence, including but not limited to apartments, houses, rooms, and residential hotels. A unit is considered a residential unit if it is used for residential occupation regardless of its permitting status.
- (f) "Tenant" includes a tenant, subtenant, lessee, sublessee (of any level), or any other person entitled to use or occupancy of residential property, including occupants who are holding over after the expiration of the term of a written or oral lease and current occupants who occupied the property with the current or prior consent of the property's landlord or a prior owner. This shall also include a prior homeowner residing in a residential unit post-foreclosure.

### Section 3. Moratorium Prohibiting Residential Evictions Without Just Cause.

- (a) The ordinance is effective until 60 days after the Governor lifts all COVID-19-related stay-at-home and work-at-home orders.
- (b) For purposes of this section, "just cause" requires a showing that the Tenant is an imminent health or safety threat, as defined in Section 2 above.
- (c) In the absence of just cause, no Landlord may lawfully terminate a residential tenancy and are therefore prohibited from engaging in any of the following behaviors with respect to a Tenant of a residential unit:
  - (1) Serve a notice of termination of tenancy;
  - (2) File or serve an unlawful detainer lawsuit, ejectment action, or other action to recover possession of a residential unit;
  - (3) Evict a Tenant or require a Tenant to vacate a residential unit, including by seeking the entry of an eviction judgment or by causing or permitting a writ of possession to be executed, including in the case of judgments entered prior to the date of this ordinance; or
  - (4) Take any other action in reliance on a notice of termination of tenancy that expired during the Local Emergency or attempt to induce a tenant to vacate based on such a notice. Any notice of termination of tenancy served or expiring during the Local Emergency or within sixty (60) days afterward shall be deemed invalid and insufficient to support an action in unlawful detainer during the Local Emergency or at any time afterward; or

- (5) Represent to a Tenant that the Tenant is required to move out of their unit by law.
- (d) Actions to recover an unpaid COVID-19 rental debt, as defined in Section 1179.02 of the Code of Civil Procedure, is governed by SB 91, and nothing in this ordinance shall be construed to supersede or conflict with SB 91.
- (e) To the extent state law is more protective of a residential tenancy than this section, those state law provisions shall apply to the residential tenancy. Nothing in this section shall be construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to relocation assistance or rent waiver.
- (f) No Landlord shall be permitted to recover possession of a rental unit or prevail in an unlawful detainer action unless the Landlord is able to provide notice of termination of tenancy does fully complies with all of the terms of this Section 3 and that the lawsuit was served and filed complying with all terms of this Section.
- (g) Nothing in this section shall be construed to reduce or eliminate a Landlord's duty to make a reasonable accommodation for disability in rules, policies, practices, or services that may be necessary to afford a person equal opportunity to use and enjoy a dwelling, including remedies such as the reinstatement of a terminated tenancy.
- (h) Nothing in this section shall be construed to supersede any applicable requirements in Civil Code section 1946.2 pertaining to relocation assistance or rent waiver.
- (i) In addition to complying with any other applicable notice requirements under local, state, or federal law, any notice of termination of tenancy served on a Tenant with respect to a residential unit during the Local Emergency and sixty (60) days afterward shall:
- (1) Include the following statement in bold underlined 12-point font: **"The Emergency Eviction Moratorium is currently in effect. Other than for failure to pay rent or an imminent health or safety threat, evictions are restricted during the Local Emergency declared by the County of San Diego]. Tenants who are being evicted for failure to pay rent may have additional protections under California law. You may contact Legal Aid Society of San Diego (1-877-534-2524) or the Legal Referral and Information Service of the San Diego County Bar Association at 619-231-8585 or 800-464-1529. For additional information and referrals or visit <https://www.lassd.org>."**
  - (2) Include the reason for termination amounting to just cause or a different basis for eviction authorized under this ordinance and must set forth specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reason for eviction.
  - (3) Be written in all languages that the Landlord and/or the Landlord's agents normally use for verbal communications with the Tenant.

- (j) In order to prevail in an action to recover possession of a residential unit, a Landlord must prove strict compliance with all applicable notice requirements or any applicable portion of this ordinance.
- (k) Nothing in this ordinance shall relieve a Tenant of the obligation to pay rent, nor restrict a Landlord's ability to recover rent due.

#### Section 4. Moratorium on Residential Rent Increases.

- (a) From the effective date of this Ordinance until July 1, 2021, no Landlord may increase a Tenant's rent by any amount greater than the CPI for the previous year.
- (b) Just cause, as defined in Section 3 of this ordinance, does not include a Tenant's failure to pay any increase in rent from the effective date of this Ordinance until July 1, 2021.
- (c) A residential real property that is exempt from the rent limits imposed by Civil Code section 1947.12 is exempt from this section.
- (d) This section does not apply when a unit becomes vacant and the Landlord sets the initial rent for a new tenancy for a new Tenant.

#### Section 5. No Waiver of Rights.

Any agreement to waive any rights under this ordinance, including a stipulation, settlement agreement, or lease agreement, shall be void as contrary to public policy

#### Section 6. Right to Education, Outreach, and Organizing.

- (a) No Landlord may take any adverse action against a Tenant, including increasing the Tenant's rent, attempting to evict the Tenant, removing services provided to a Tenant, or threatening to do any of the foregoing because of any of the following reasons:
  - (1) the Tenant disseminated information about Tenant rights ordinances;
  - (2) the Tenant disseminated information about a Tenant rights organization; or
  - (3) the Tenant belonged to or participated in a Tenant rights organization.
- (b) Just cause, as defined in Section 3 of this ordinance, does not include termination of a tenancy for performing activities protected by subdivision (a) of this section.

#### Section 7. Remedies.

- (a) No Landlord shall be permitted to recover possession of a rental unit or prevail in an unlawful detainer action, ejectment action, or other action to recover possession of a residential unit unless the Landlord is able to prove strict compliance with any applicable provision of this ordinance, including all notice requirements. A Landlord's lack of strict

compliance with the terms of subsections 3(g), and all other noncompliance constituting a fatal defect to the Landlord's case shall entitle a Tenant to judgment.

- (b) The provisions of this ordinance may be asserted as an affirmative defense in an unlawful detainer action, ejectment action, or any other action to recover possession of a residential unit.
- (c) If a Landlord attempts to recover possession or recovers possession of a residential real property in violation of this ordinance, retaliates against a Tenant for the exercise of any rights under this ordinance, or attempts to prevent a Tenant from acquiring any rights under this ordinance, the aggrieved Tenant may institute a civil proceeding for injunctive relief, money damages (including damages for mental or emotional distress as specified below), and all other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the Landlord acted in knowing violation of or in reckless disregard of this Ordinance. The remedy available under this section shall be in addition to any other existing remedies which may be available to the Tenant under local, state or federal law.
- (d) The remedies provided by this ordinance are cumulative and in addition to any other remedies available at law or in equity, including sanctions for violating an order issued pursuant to the Emergency Services Act (Government Code section 8550 et seq.) and all remedies provided for in Government Code section 25132 or for authorized for violations of the San Diego County Code of Regulatory Ordinances.

#### Section 8. Applicability.

- (a) Government Code section 8634 authorizes the Board of Supervisors to promulgate countywide orders and regulations necessary to provide for the protection of life and property during a local emergency. Pursuant to Government Code section 8634, the regulations in this ordinance shall apply to cities within the County of San Diego and unincorporated area of the county, subject to subsections (b) and (c) below.
- (b) If the governing body of a city has enacted an ordinance that has stronger protections for Tenants during the COVID-19 emergency, the Tenant may apply the city ordinance in lieu of the county ordinance, to the extent its ordinance is stronger.
- (c) To the extent the city ordinance is not stronger, the county ordinance protecting Tenants shall apply despite contrary provisions or silence on the subject in the city ordinance.

#### Section 9. Severability.

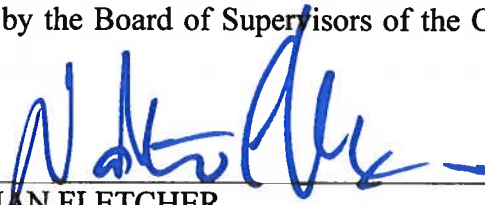
If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase

thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

Section 10. Effective Date.

- (a) The ordinance shall take effect 30 days after final passage.
- (b) The ordinance is effective until 60 days after the Governor lifts all COVID-19-related stay-at-home and work-at-home orders.

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 04<sup>th</sup> day of May 2021.



NATHAN FLETCHER  
Chair, Board of Supervisors  
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Vargas, Lawson-Remer, Fletcher  
NOES: Anderson and Desmond

ATTEST my hand and the seal of the Board of Supervisors this 04<sup>th</sup> day of May 2021.

ANDREW POTTER  
Clerk of the Board of Supervisors

By   
Grace Caro, Deputy



Ordinance No.: 10724 (N.S.)  
Meeting Date: 05/04/2021 (26)