SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

22STCP04376
CALIFORNIA APARTMENT ASSOCIATION, et al. vs CITY OF PASADENA, et al.

March 28, 2023
9:30 AM

Judge: Honorable Mary H. Strobel

Judicial Assistant: N DiGiambattista
Courtroom Assistant: R Monterroso

CSR: REPORTER PRO TEMPORE: Shayna Montgomery/CSR 13452
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Petitioner(s): Christopher Skinnell (Telephonic) (X)

For Respondent(s): Michele Beal Bagneris (X) (Telephonic); Robin B Johansen and Dion O'Connell (x) (Telephonic); Javan Nikomid Rad (X) (Telephonic) -- See additional appearances below.

NATURE OF PROCEEDINGS: HEARING ON PETITION FOR WRIT OF MANDATE

Pursuant to Government Code Sections 68086 and 70044, and California Rules of Court Rule 2.956, Shayna Montgomery/CSR 13452, certified shorthand reporter, is appointed as an official court reporter pro tempore in this proceeding and is ordered to comply with the terms of the court reporter agreement. Order is signed and filed this date.

The matter is called for hearing and argued.

After hearing argument, the court take the matter under submission.

Counsel for petitioner to give notice.

LATER: The court rules as follows:

Petitioners California Apartment Association, Ahni Dodge, Simon Gibbons, Margaret Morgan, Danielle Moskowitz, and Tyler Werrin ("Petitioners") petition for a writ of mandate directing Respondents City of Pasadena and Pasadena City Council (collectively, "City" or "Respondents") to refrain from implementing or enforcing the initiative measure titled "Pasadena Charter Amendment Initiative Petition Measure Imposing Rent Control" or "Measure H." Petitioners also seek a judicial declaration stating that Measure H is void and unenforceable. Respondents and Intervenors Michelle White, Ryan Bell, and Affordable Pasadena ("Intervenors") separately oppose the petition. The court heard oral argument on March 28, 2023 after which it took the matter under submission. The court now issues its ruling.

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Judicial Notice

Intervenors' Requests for Judicial Notice ("RJN") at Woocher Declaration ¶¶ 3, 6, 9, 12, 15, 18, 21 – Granted. (Evid. Code § 452(b) and (h); § 451(a).) The court does not judicially notice the interpretation of the referenced materials asserted in other paragraphs of the Woocher declaration. (See e.g. Woocher Decl. ¶¶ 4, 19.)

Petitioners' RJN filed March 24, 2023 – Denied. The court did not authorize any evidence to be filed after the reply brief. Petitioners did not request leave to file late papers.

Background and Procedural History

Measure H was proposed by initiative petition and City placed it on the ballot for the November 2022 election. (Rec. 5 [Pet., ¶ 14]; Rec. 147 & 161 [Answers].)
The ballot question summarized Measure H as "an amendment to the Pasadena City Charter limiting rent adjustments in the City of Pasadena annually to 75% of the percentage increase in the Consumer Price Index for multifamily rental units built before February 1, 1995; prohibiting evictions from rental units, except for just cause based on 11 specified criteria; and creating an independent Rental Housing Board appointed by the City Council to oversee and adopt rules and regulations." (Rec. 68.)

On November 8, 2022, the voters of City approved Measure H. (Rec. 69-77.) The election results were certified by the Los Angeles County Registrar-Recorder/County Clerk and by the Pasadena City Council in December 2022. (Rec. 69-77, 137.)

On December 16, 2022, Petitioners filed their verified petition for writ of mandate and complaint for declaratory and injunctive relief. The petition alleges four separate causes of action for writ of mandate, as analyzed below. Each of the individual Petitioners are residents and registered voters in Pasadena who voted in the November 2022 election, and all have paid sales and property taxes within Pasadena in the past year. Petitioners Dodge, Gibbons, Morgan, and Werrin have interests in rental properties within the City of Pasadena that would be subject to Measure H's provisions. (Rec. 126-41.)

On January 12, 2023, the court set the petition for hearing for March 28, 2023, and set a briefing schedule. That same date, the court approved the parties' stipulation to permit Michelle White,

Ryan Bell, and Affordable Pasadena to intervene as defendants in this action. Respondents and Intervenors have answered the petition.

On February 24, 2023, Petitioners filed their opening brief in support of the petition ("OB"). The court has received Respondents' opposition ("Resp. Oppo."); Intervenors opposition ("Int. Oppo."); the reply ("Reply"); and the parties' exhibits ("Rec.").

On March 24, 2023, two court days before the hearing, Petitioners filed a declaration of Hilary J. Gibson and a request for judicial notice. The court did not authorize the parties to file evidence or other papers after the deadlines set at the January 12, 2023, status conference. Petitioners were required to submit all evidence "at the latest, the date the reply brief is filed." The reply was due eight days before the hearing. (See Minute Order dated 1/12/13.) While Petitioners state that this evidence was not available when the reply was filed, Petitioners did not request leave to file late papers. For these reasons, the court disregards these late papers. Even if considered, these late papers would not change the court's ruling on the writ petition, which makes a facial and not as-applied challenge to Measure H.

Standard of Review

The petition for writ of mandate is brought pursuant to CCP section 1085. There are two essential requirements to the issuance of an ordinary writ of mandate under Code of Civil Procedure section 1085: (1) a clear, present, and ministerial duty on the part of the respondent, and (2) a clear, present, and beneficial right on the part of the petitioner to the performance of that duty. (California Ass'n for Health Services at Home v. Department of Health Services (2007) 148 Cal.App.4th 696, 704.)

The petition raises pure questions of law concerning the validity of Measure H. "'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.'.... Interpretation of a statute or regulation is a question of law subject to independent review." (Christensen v. Lightbourne (2017) 15 Cal.App.5th 1239, 1251.)

In addition to general cannons of statutory construction, the following special rules apply in this case. "Declaring it 'the duty of the courts to jealously guard this right of the people' [citation], the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process' [citation]. '[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be

improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.' " (Rossi v. Brown (1995) 9 Cal.4th 688, 695.)

Further, "[t]o support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute .... Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (Tobe v. City of Santa Ana (1995) 9 Cal.4th 1069, 1084.) This rule applies to Petitioners' first, second, third, and fourth causes of action, which contend that Measure H is unconstitutional on its face.

Petitioners bear the burden of proof and persuasion in a mandate proceeding brought under CCP section 1085. (California Correctional Peace Officers Assn. v. State Personnel Bd. (1995) 10 Cal.4th 1133, 1154.) A reviewing court "will not act as counsel for either party … and will not assume the task of initiating and prosecuting a search of the record for any purpose of discovering errors not pointed out in the briefs." (Fox v. Erickson (1950) 99 Cal.App.2d 740, 742.)

Analysis

First Cause of Action – Violation of California Constitution, Article XI, Section 3(b)

Petitioners contend that Measure H is a revision of the Pasadena City Charter ("Charter"), not an amendment, in violation of article XI, section 3(b) of the California Constitution. (Pet. ¶¶ 24-33; OB 13-19.)

Analytical Framework

Article XI, section 3(b) provides: "The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body." Petitioners acknowledge that "no (reported) case has ever struck down a change to a city charter … as an improper revision." (Reply 6.) Petitioners contend that the California Supreme Court has struck down revisions to the California Constitution, and that those decisions apply to a city charter as well. (OB 13.) Article XVIII, section 3 of the California Constitution states that "the electors may amend the Constitution by initiative," and other sections state that a "revision" requires a constitutional convention or legislative submission of

the measure to the voters. (art. XVIII, §§ 1, 2, 4.) While there are some differences between the process for amending or revising the state constitute versus a city charter, in the absence of case law addressing city charter revisions, California Supreme Court decisions regarding amendments and revisions of the California Constitution are persuasive authority.

In Strauss v. Horton (2009) 46 Cal.4th 364, the California Supreme Court considered whether an initiative providing that "[o]nly marriage between a man and a woman is valid or recognized in California" was a constitutional revision. The Court concluded that this initiative was an amendment, not a revision. In its analysis, the Court summarized, in detail, the case law regarding the distinction between a constitutional amendment and a revision. Quoting a prior decision, the Court summarized the analytical framework, as follows: ""Taken together, our … decisions mandate that our analysis in determining whether a particular constitutional enactment is a revision or an amendment must be both quantitative and qualitative in nature. For example, an enactment which is so extensive in its provisions as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions may well constitute a revision thereof. However, even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also. In illustration, the parties herein appear to agree that an enactment which purported to vest all judicial power in the Legislature would amount to a revision without regard either to the length or complexity of the measure or the number of existing articles or sections affected by such change." (Strauss, supra, 46 Cal.4th at 427, quoting Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 223.)

Only two decisions have invalidated an initiative as an unconstitutional revision. In McFadden v. Jordan (1948) 32 Cal.2d 330, the Court considered a proposed amendment that "was referred to popularly as the 'ham and eggs' initiative, because of the varied subjects it encompassed." (Strauss, supra at 422.) As summarized by the McFadden Court, "The measure proposes to add to our present Constitution 'a new Article to be numbered Article XXXII thereof' and to consist of 12 separate sections (actually in the nature of separate articles) divided into some 208 subsections (actually in the nature of sections) set forth in more than 21,000 words. The Constitution as now cast, with the amendments added since its original adoption as revised in 1879, contains 25 articles divided into some 347 sections expressed in approximately 55,000 words." (McFadden, supra at 334.) The initiative created a powerful new "Pension Commission"; regulated numerous unrelated subjects, including pensions, wagering and gaming, oleomargarine, and naturopathic healing; reapportioned the Senate; imposed new taxes; and restricted any other public entity from imposing any tax. (Id. at 334-339.) The initiative further

provided that any judicial decision that "adversely, or at all, either affects [the initiative] or the administration thereof . . . shall have no effect until it shall have been approved by the majority vote of the electorate." (Id. at 340.) Another section "repeals any portion of the present Constitution which 'is in conflict with any of the provisions of this article.'" (Ibid.) As the McFadden Court explained, "at least fifteen of the twenty-five articles contained in our present Constitution would be either repealed in their entirety or substantially altered by the measure, a minimum of four … new topics would be treated, and the functions of both the legislative and the judicial branches of our state government would be substantially curtailed." (Id. at 345.) The Court concluded that the initiative was an unconstitutional revision based on "the wide and diverse range of subject matters proposed to be voted upon, and the revisional effect which it would necessarily have on our basic plan of government." (Id. at 345-346.)

In Raven v. Deukmejian (1990) 52 Cal.3d 336, the Court considered a challenge to Proposition 115, the "Crime Victims Justice Reform Act," an initiative measure adopted by the voters. The Court invalidated one provision (article I, section 24) as "a qualitative constitutional revision" and held the remaining sections of Proposition 115 were valid and could be severed. (Id. at 341.) Proposition 115 would have added a provision stating that the rights of criminal defendants "shall be construed by the courts of this state in a manner consistent with the Constitution of the United States." (Id. at 350.) The Raven Court stated that "[i]n essence and practical effect, new article I, section 24, would vest all judicial interpretive power, as to fundamental criminal defense rights, in the United States Supreme Court. From a qualitative standpoint, the effect of Proposition 115 is devastating." (Id. at 352.) The Court stated that "California courts in criminal cases would no longer have authority to interpret the state Constitution in a manner more protective of defendants' rights than extended by the federal Constitution, as construed by the United States Supreme Court." (Ibid.) The Court held that article I, section 24 of the initiative was an improper revision because it "would substantially alter the substance and integrity of the state Constitution as a document of independent force and effect" (Ibid.) and instead "vests a critical portion of state judicial power in the United States Supreme Court, certainly a fundamental change in our preexisting governmental plan." (Id. at 355.)

As summarized in Strauss, our Supreme Court has upheld multiple initiatives as lawful constitutional amendments, including initiatives that resulted in significant governmental and societal changes in California. (See Strauss, supra, 46 Cal.4th at 418-440 [summary of cases]; see e.g. Amador, supra, 22 Cal.3d at 225-228 [holding that Proposition 13 was not an unconstitutional revision even though it "will result in various substantial changes in the operation of the former system of taxation"]; Legislature v. Eu (1991) 54 Cal.3d 492, 508 [term

limits initiative does not substantially change nature of legislative branch].)

The Strauss Court itself rejected an argument that Proposition 8 was a revision. In doing so, the Court stated: "In considering the amendment/revision distinction embodied in the California Constitution, however, it is crucial to understand that the amendment process never has been reserved only for minor or unimportant changes to the state Constitution. In this regard, it is useful to keep in mind that (1) the right of women to vote in California, (2) the initiative, referendum, and recall powers, (3) the reinstatement of the death penalty, (4) an explicit right of privacy, (5) a substantial modification of the statewide real property tax system, and (6) legislative term limits—to list only a very few examples—all became part of the California Constitution by constitutional amendment, not by constitutional revision. Thus, it is clear that the distinction drawn by the California Constitution between an amendment and a revision does not turn on the relative importance of the measure but rather upon the measure's scope: as we have explained, only if a measure embodies a constitutional change that is so far reaching and extensive that the framers of the 1849 and 1879 Constitutions would have intended that the type of change could be proposed only by a constitutional convention, and not by the normal amendment process, can the measure properly be characterized as a constitutional revision rather than as a constitutional amendment." (Strauss, supra at 447.)

Petitioners' Contentions

Petitioners contend that Measure H is a quantitative revision because it "adds 42 pages to the Pasadena Charter, which was previously only 47 pages" and "consists of 18,362 words, compared to the pre-existing 24,213 words." (OB 14.) Petitioners contend that "by essentially any quantitative measure the changes wrought by Measure H are more quantitatively substantial" than the changes in McFadden, supra. (Ibid.)

Petitioners contend that Measure H is a qualitative revision of the Charter because it: (1) "confers sweeping powers on the Rent Board that usurp essential legislative and executive functions from the City Council, Mayor, and City Manager"; (2) "interferes with the Council's essential governmental functions regarding budgeting and fiscal planning"; (3) "authorizes greater compensation for Rent Board members, by far, than for the Mayor, Council, or any other appointed Board"; and (4) "alters the essential powers of recall and removal and allows a small minority of residents to remove Board members without a vote of the people." (OB 14-19.)

Quantitative Effect

The number of words or pages that an initiative adds to a charter is not determinative of whether an initiative is an amendment or revision. A quantitative revision is "an enactment which is so extensive in its provisions as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions." (Amador, supra, 22 Cal.3d at 223.) While Measure H is lengthy, it did not delete or fundamentally alter any existing provisions of the Charter. That fact distinguishes this case from McFadden, in which "at least fifteen of the twenty-five articles contained in our present Constitution would be either repealed in their entirety or substantially altered by the measure, a minimum of four … new topics would be treated." (McFadden, supra, 32 Cal.2d at 345.) Moreover, unlike Measure H, which focuses narrowly on rent control and landlord-tenant relations, the initiative in McFadden covered a "wide and diverse range of subject matters" that were not related. (Id. at 345-346.) The narrow scope of Measure H distinguishes McFadden with respect to the quantitative effect of the initiative in that case.

As Respondents argue, a rent control measure identical to Measure H would appear more quantitatively significant, in terms of words and pages, in one city or county depending on the length of the already existing charter. As an illustration, "Pasadena City Charter is relatively succinct as compared, for example, to that of the City and County of San Francisco, which contains 255 sections and 96,661 words, plus appendices." (Resp. Oppo. 10, citing S.F. Charter art. I – IVIII (2022).) Under Petitioners' theory, Measure H would be more quantitatively significant in Pasadena than in San Francisco. That result is arbitrary and inconsistent with the Supreme Court's jurisprudence, summarized above.

The Rental Board Does Not Fundamentally Alter the Basic Structure of City Government

The Pasadena City Charter establishes a "council-manager" form of government, in which the City's legislative and quasi-judicial powers reside with a Mayor and seven councilmembers (collectively acting as the City Council), and the City's executive and administrative powers reside with the Mayor and City Manager. (Rec. 83-90.) Article IV, sections 408-410 describe the powers vested in the City Council. "All powers of the City shall be vested in the City Council subject to the provisions of this Charter and to the Constitution of the State of California." (Rec. 85.) The City Council "shall appoint and may remove the City Manager, City Attorney, City Prosecutor, and City Clerk." (Ibid.) Section 410 authorizes City Council to create and establish, and also to abolish or modify the functions of, "city departments, offices and agencies, advisory

boards, commissions and committees." (Rec. 85-86.)

The powers of the City Manager are described in Article VI of the Charter, and particularly section 604. The City Manager's powers and duties include the following, among others: "(A) To supervise, coordinate and administer the various functions of the City; (B) To see that the provisions of this Charter and all laws and ordinances of the City are enforced; (C) To appoint, promote, discipline and terminate the employment of all officers and employees of the City in accordance with the personnel system created pursuant to this Charter except those officers appointed by the City Council, which officers shall have the power to appoint their respective staffs; (D) To exercise supervision and control over all departments, divisions, and offices of the City except the City Attorney, City Prosecutor, and City Clerk, and their respective staffs; … (F) To recommend to the City Council for adoption such measures and ordinances as he or she shall deem necessary or expedient; …. (H) To prepare and submit to the City Council the annual budget; (I) To keep the City Council at all times fully advised as to the financial condition and needs of the City." (Rec. 89.)

Petitioners contend that Measure H fundamentally alters this structure of government because it authorizes the Rental Board ("Board") to operate independently from the City Council and City Manager, and because it "vests that Board with exclusive powers over one of the most fundamental policy issues in California—housing—which would otherwise be the exclusive purview of the City Council exercising its legislative powers and the City Manager exercising the City's executive function." (OB 15.) Petitioners highlight section 1811(e), (f), (l), (m), and (n) of Measure H as support for these contentions.

Section 1811(e) describes Board's powers and duties over rent control in City, including to "[s]et allowable Rent increases at fair and equitable levels to achieve the purposes of this Article"; appoint hearing officers and act as the appellate body for Petitions for Individual Rent Adjustment; "[e]stablish a budget for the reasonable and necessary implementation of the provisions of this Article, including but not limited to the hiring of necessary staff"; and "[i]ntervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a Landlord or Tenant with respect to Rental Units subject to this Article." Section 1811(f) states that "Board shall issue and follow such rules and regulations as will further the purposes of the Article." Section 1811(l) describes the financing of the Board and is discussed in detail below. Section 1811(m) states, in pertinent part: "The Rental Board shall be an integral part of the government of the City, but shall exercise its powers and duties under this Article independent from the City Council, City Manager, and City Attorney, except by request of the

Rental Board." Section 1811(n) states that "Board may, in its sole discretion, and without approval of the City Council, retain private attorneys to furnish legal advice or representation in particular matters, actions, or proceedings." (Rec. 43-46.)

Measure H does not empower the Board to "enact law to administer and enforce the rent control law" and it does not "usurp" legislative functions from the City Council. (OB 15 [bold italics added].) Rather, as is common in many types of legislation, the Board is authorized to "[e]stablish rules and regulations for administration and enforcement of this Article." (Rec. 43 and § 1811(e)(2); see generally First Industrial Loan Co. v. Daugherty (1945) 26 Cal.2d 545, 549 ["The Legislature may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the 'power to fill up the details' by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect."].) Board's authority to establish administrative rules and regulations is limited to the areas of rent control and landlord-tenant relations, as described in Measure H. The City Council retains authority to legislate on every other issue. Further, City Council could also legislate on matters related to Measure H, as long as its actions do not conflict with Measure H, as would be the case for any Charter amendment adopted by initiative.

Measure H also does not fundamentally alter the City Manager's functions under the Charter. (See OB 15 and fn. 8.) Although the Charter vests numerous administrative, executive, and supervisorial powers in the City Manager, it does not state that such powers must be exclusively held by the City Manager. (Rec. 89.) Such a restriction on the City's authority to delegate administrative functions to a board cannot be implied from the Charter. (See Miller v. City of Sacramento (1977) 66 Cal.App.3d 863, 868-869 [a charter "is a limitation of, not a grant of power .... thus in construing the charter no restriction on the city's power may be implied."].) Moreover, the Charter already exempts "officers appointed by the City Council, which officers shall have the power to appoint their respective staffs," from the City Manager's supervisory powers. (Charter § 604(C); Rec. 89.) Measure H grants the Board administrative powers and duties in the discrete areas of rent control and landlord-tenant relations. (See § 1811(e)-(m); Rec. 43-46.) The City Manager retains administrative authority over the vast majority of governmental functions.

Petitioners contend that the Board is comparable to the "pension commission" that would have been created by the initiative in McFadden. (OB 15-16.) Petitioners cite section 1811(m), which states that the Board "shall exercise its powers and duties under this Article independent from the City Council, City Manager, and City Attorney." (Ibid.) Petitioners also point out that Measure H

authorizes Board to "establish its own budget, free from the normal City budgeting process… (3) set fees, in its discretion, to support its budget and set penalties for violations of its rules; … (5) hire and fire its own staff and consultants; (6) file or intervene in court actions; and (7) retain its own counsel," among other powers. (OB 15; Reply 9.)

In context of the narrow scope of Measure H, the provisions cited by Petitioners do not show a fundamental change in City's basic structure of government. As discussed, Measure H authorizes the Board to promulgate rules and regulations for the administration and enforcement of the article, and it grants Board powers and duties in the discrete areas of rent control and landlord-tenant relations. City Council retains its legislative functions and City Manager retains primary administrative authority. Further, under Measure H, the City Council retains the power to appoint Board members and to fill vacancies when they occur. (§ 1811(a) and (k); Rec. 41, 45.) Board members may be recalled by "qualified voters" of the City. (§ 1811(d); Rec. 43.) The Board is financed by a fee charged to landlords and, as discussed below, does not appear, from the face of the measure, to interfere with the fiscal management of City. (§ 1811(l); Rec. 45.)

Measure H is not similar or comparable to the initiative measure in McFadden. Among other reasons, the measure in that case was extremely broad in scope and encompassed numerous unrelated matters; the pension commission was granted "far reaching and mixed" powers, including both executive and legislative powers; and the initiative repealed or substantially altered numerous provisions from the existing constitution.

Measure H Does Not Interfere With City's Essential Governmental Functions Regarding Budgeting and Fiscal Planning

Petitioners contend that Measure H interferes with City Council's essential government functions regarding budgeting and fiscal planning. (OB 16-18.) "[T]o find [an unconstitutional] revision, it must necessarily or inevitably appear from the face of the challenged provision that the measure will substantially alter the basic governmental framework set forth in our Constitution." (Legislature v. Eu (1991) 54 Cal.3d 492, 510.)

Section 1811(l) of Measure H describes Board's financing authority, in pertinent part, as follows: "The Rental Board shall finance its reasonable and necessary expenses, including without limitation engaging any staff as necessary to ensure implementation of this Article, by charging Landlords an annual Rental Housing Fee as set forth herein, in amounts deemed reasonable by the Rental Board in accordance with applicable law. The Rental Board is also empowered to

request and receive funding when and if necessary from any available source, including the City of Pasadena, for its reasonable and necessary expenses." (Rec. 45.)

Petitioners develop no argument that Board's power to finance its expenses through a Rental Housing Fee will interfere with City Council's responsibilities over fiscal management. Moreover, even if Petitioners challenge the Rental Housing Fee, Petitioners do not show that it "necessarily or inevitably" appears from Measure H that this new fee "will substantially alter the basic governmental framework" set forth in the Charter. Indeed, this fee will be paid by landlords and appears entirely unconnected to City Council's fiscal powers and duties.

Petitioners similarly do not challenge the provision stating that Board may "request" funding from "any available source, including the City." That provision appears permissive and does not show, on its face, a conflict with City's fiscal management.

Petitioners assert that section 1811(l)(2) places a substantial burden on the City's fiscal management and therefore could not be added to the Charter by initiative. (OB 16-18.) Section 1811(l)(2) states, in full:

City to Advance Initial Funds. During the initial implementation of this Article, the City shall advance all necessary funds to ensure the effective implementation of this Article, until the Rental Board has collected Rental Housing Fees sufficient to support the implementation of this Article. The City may seek reimbursement of any advanced funds from the Rental Board after the Rental Housing Fee has been collected. Reimbursement of the City shall not take precedent over the normal and reasonable operating costs of the Rental Board.

(Rec. 46.)

At a City Council meeting in January 2023, the City Manager estimated that these initial start-up funds could be between five and six million dollars. (Rec. 173-174.) At the meeting, the Mayor also stated "I do think we should give some thought to where the 5.2 million or so dollars come from." (Ibid.) City's operating budget for FY 2023 is $955.7 million, with $295.9 million of that amount being general fund revenues. (See Rec. 401.) The $5.2 million estimate cited by the Mayor, and by Petitioners in their briefs, is only 0.54% of the total City budget for FY 2023. Even assuming Board did not reimburse City for the initial start-up funds, it does not necessarily or inevitably appear from Measure H that this one-time cost "will substantially alter the basic governmental framework" set forth in the Charter.

In the opening brief, Petitioners also argue that the financing provisions in Measure H interfere with City Council's ability to comply with the "Gann Limit" of Article XIIIB of the California Constitution. (OB 18:1-26.) The court agrees with Intervenors and Respondents that the Gann Limit is not relevant to the question of whether Measure H is a charter amendment or revision. (Int. Oppo. 15, fn. 14; Resp. Oppo. 13:19-23.) Petitioners largely do not oppose this argument in reply. (Reply 9, fn. 6; Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc. (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].) Petitioners have the burden to show that Measure H is an unconstitutional revision. As Petitioners acknowledge in reply, the Gann Limit explicitly applies only to "proceeds of taxes," which does not include regulatory fees that do not exceed "the costs reasonably borne" by the regulating entity. (See Cal. Const., art. XIII B, § 8(c); County of Placer v. Corin (1980) 113 Cal.App.3d 443, 451 ["We conclude 'proceeds of taxes' generally contemplates only those impositions which raise general tax revenues for the entity."].) Section 1811(l)(1) of Measure H states that Board sets the Rental Housing Fee "to ensure full funding of its reasonable and necessary expenses." (Rec. 45.) Since nothing on the face of Measure H suggests that the Rental Housing Fee or Board's initial start-up costs will exceed the costs reasonably borne by Board, Petitioners do not show that Measure H will interfere with City Council's ability to comply with the "Gann Limit."

The Board Compensation and Recall/Removal Provisions in Measure H Are Charter Amendments

Petitioner asserts that Measure H "authorizes greater compensation for Rent Board members, by far, than for the Mayor, Council, or any other appointed Board." (OB 19.) Even if Board Member compensation exceeds that of the Mayor, Council, or other appointed Boards in Pasadena, it does not necessarily or inevitably appear from Measure H that this provision "will substantially alter the basic governmental framework" set forth in the Charter.

Petitioners argue that Measure H alters City Council's authority to remove appointed members of City boards. (OB 19.) Relatedly, Petitioners argue that "Measure H also expands the right of recall, which pursuant to state and City law has heretofore been available only for the removal of elected officials, to appointed Rental Housing Board members." Petitioners state that Measure H "further alters that power by providing that the successful circulation of a recall petition by a small minority of the Board members' constituency." (OB 19.) These arguments are misplaced. Section 410 of the Charter, which sets forth Council's authority over City agencies, boards, and

commissions, was not modified or repealed by Measure H. Neither were the recall procedures for elected officials. While Measure H establishes a new recall procedure for the appointed members of the Rental Board, and does not grant Council authority to remove the Board members, those features of the initiative do not fundamentally change the structure of city government.

The court does not suggest that the changes to City's Charter embodied in Measure H are unimportant or unsignificant. However, as stated in Strauss, "the amendment process never has been reserved only for minor or unimportant changes." (Strauss, supra, 46 Cal.4th at 446.) "[T]he distinction drawn by the California Constitution between an amendment and a revision does not turn on the relative importance of the measure but rather upon the measure's scope." (Ibid.) On a quantitative and qualitative basis, Measure H does not fundamentally alter the Pasadena City Charter or the basic structure of city government in Pasadena. The court concludes that Measure H is an amendment to the Charter and that enactment of Measure H by initiative did not violate article XI, section 3(b) of the California Constitution.

Rent Control Measures in Other Cities; and Birkenfeld and Creighton Decisions

In opposing the first cause of action, Intervenors point out that "voters in at least five other California cities with a council-manager form of government have used the initiative process to enact measures providing for independent rent boards to administer their rent control laws, with the measures in Santa Monica, Berkeley, and Mountain View having been adopted by charter amendment initiatives, just like Measure H." (Int. Oppo. 13 and fn. 7-13.) Similarly, Respondents argue that "there are at least 15 rent control boards operating in the state, and Petitioners can cite no case even suggesting that the initiatives that established them were impermissible charter revisions." (Resp. Oppo. 7.) As noted by Intervenors, the rental control laws in Santa Monica and Berkeley were upheld in Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129 and Creighton v. City of Santa Monica (1984) 160 Cal.App.3d 1011 on grounds not raised by Petitioners in the petition in this action. (Int. Oppo. 13.)

The existence of similar rent control measures in the charters of other cities suggests that Measure H is not unique in its scope or structure and is consistent with this court's ruling on the first cause of action. However, Intervenors and Respondents do not show that any of these other initiative measures were challenged as unlawful charter revisions pursuant to Article XI, section 3(b) of the Constitution. Neither Birkenfeld nor Creighton analyzed whether the rental control measures were a charter amendment or revision. "An opinion is not authority for propositions not considered.'" (People v. Knoller (2007) 41 Cal.4th 139, 154-55.) Accordingly, in its analysis

of the first cause of action, the court has not found the existence of similar rental control measures in other cities or the Birkenfeld or Creighton decisions to be determinative.

The first cause of action is DENIED.

Second Cause of Action – Violation of Article I, Section 22 of California Constitution

Petitioners contend that a requirement in section 1811(a) of Measure H that 7 of the 11 Board members must be tenants and must not hold an interest in rental properties in Los Angeles County violates article I, section 22 of the California Constitution. (Pet. ¶¶ 34-38; OB 20-21; Reply 10-12; see Rec. 41 [§ 1811)(a).)

Article I, section 22 provides that "[t]he right to vote or hold office may not be conditioned by a property qualification." It appears the term "property qualification" is not defined in the Constitution. The parties do not cite any case law interpreting article I, section 22 in context of a statute or charter similar to Measure H.

Section 1811(a) provides, in relevant part: "The Rental Board will consist of eleven (11) members. Seven (7) members must be Tenants, None of whom may have Material Interest in Rental Property at the time of their appointment or at any later time during their service. The City Council shall appoint one Tenant member from each of the seven (7) districts of Pasadena. The remaining four (4) Rental Board members, henceforth referred to as 'at-large' members, shall be appointed by the City Council, and may reside in any district of Pasadena, may or may not be Tenants, and may or may not have Material Interest in Rental Property." (Rec. 41.) "Material Interest in Rental Property" is defined as follows: "An individual has a Material Interest in Rental Property if they, or any member of their Extended Family, own, manage, or have a 5% or greater ownership stake in Rental Units in the county of Los Angeles, or if they or any member of their Extended Family owned, managed, or had a 5% or greater ownership stake in Rental Units in the county of Los Angeles in the past three (3) years." (Rec. 26.) "Extended family" is defined as "spouse, whether by marriage or not, domestic partner, parent, child, sibling, grandparent, aunt or uncle, niece or nephew, grandchild, or cousin." (Rec. 25-26.)

Petitioners contend that these provisions "plainly" violate article I, section 22. (OB 21.) Petitioners contend that a leasehold is a property interest, and "possession of a leasehold interest in a residential unit in Pasadena is a mandatory qualification for holding any of the 'district' offices on the Rent Board." (Reply 10; OB 21.)

It is not obvious that the term "property qualification" in article I, section 22 includes a requirement to be a tenant. Although the term "property" could include a leasehold, Thee Sombrero, Inc. v. Scottsdale Ins. Co. (2018) 28 Cal.App.5th 729, 738, the phrase "property qualification" could also suggest ownership of land. The court concludes that the phrase "property qualification" in article I, section 22 is ambiguous, as applied to the tenancy requirement in section 1811(a) of Measure H. Thus, it is appropriate to refer to extrinsic aids related to the adoption of article I, section 22.

"To ascertain the intent and objective of an ambiguous constitutional provision, a court may consider . . . the record of the debates". (Mosk v. Superior Court (1979) 25 Cal.3d 474, 495.) Multiple statements in the Debates and Proceedings of the 1878 Constitutional Convention suggest that article I, section 22 was intended to protect the rights of Californians who did not own real property. (See Rec. 411-416.) As examples, a Mr. Edgerton stated in reference to the predecessor to article 1, section 22: "A man has a right to seek an office.... Certainly that right should not be dependent upon the amount of property he owns." (AR 412.) Mr. Freud, a proponent of the constitutional provision, stated at several times during the debates that ownership of land should not be a qualification to hold office or vote. (See e.g. AR 412 ["The man who drives my wagon is honest, and honorable, and intelligent, but while he has no property . . . [h]is name as well as mine should appear upon the assessment [voter] roll."; AR 415 ["The American nation is eminently a nation of landholders and property owners. This provision, then, is essentially a protection and encouragement to the small landless minority"].) While Mr. Freud also stated that "[p]roperty qualifications of any and every kind are not in consonance with the spirit of an American State," (AR 412), the constitutional debates more strongly support Intervenors' and Respondents' position.

Petitioners also argue that "[a]n additional [property] qualification for holding those offices is not possessing another specific property interest—a 'Material Interest in Rental Property' within Los Angeles County." (OB 21.) This argument is not persuasive. This requirement in Measure H that 7 of the 11 Board members not hold a "Material Interest In Rental Property" is, in effect, a qualification based on the lack of ownership of property. The plain language of article I, section 22, as well as the cited legislative history, provides no support for Petitioners' argument that "property qualification" includes a requirement that a person not hold any type of property interest.

Even if the requirement to be a tenant could constitute a "property qualification" in some

circumstances, Petitioners do not show that Measure H, on its face, violates article I, section 22. In the context of a constitutional amendment that was enacted in 1879 and given the historical background of its adoption, the court cannot find that the provision "inevitably pose[s] a present total and fatal conflict with applicable constitutional prohibitions." (Tobe v. City of Santa Ana (1995) 9 Cal.4th 1069, 1084.) Because the provision was adopted by citizen initiative "if doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.' " (Rossi v. Brown, supra, 9 Cal.4th at 695.)

Section 1811(a) of Measure H does not implicate a "right to vote." The right to "hold office" in article I, section 22 arguably includes the right to be appointed to a government board. However, as a general matter, section 1811(a) does not condition the right serve on Board on a "property qualification." While Measure H reserves a greater number of seats on the Board for tenant representatives, every resident of Pasadena may be appointed to serve on the Board. Petitioners cite no authority that Article I, section 22 requires equal representation on government boards. Petitioners' claim of unequal treatment related to Board participation is addressed in the third cause of action, analyzed below.

In reply, Petitioners argue that "each seat on a multi-member board is a separate office." Thus, Petitioners argue that a prohibition on non-tenants serving on 7 of the Board seats, in effect, imposes a property qualification on the right to hold certain "offices." (Reply 11 and fn. 10, citing Elec. Code § 10220. This argument does not change the court's conclusions. Election Code section 10220 pertains to the nomination process to "elective offices." Under Measure H, Board members are appointed, not elected. Thus, section 10220 does not apply. Further, as discussed above, the requirement to be a tenant is best not construed to be a "property qualification" as intended by article I, section 22.

As noted, the parties do not cite any case law interpreting article I, section 22 in context of a statute or charter similar to Measure H. The two cases cited by Intervenors in a footnote are inapposite. (Int. Oppo. 17, fn. 18, Southern Cal. Rapid Transit Dist. v. Bolen (1992) 1 Cal.4th 654, 679, fn. 10; Greene v. Marin County Flood Control & Water Conservation Dist. (2010) 49 Cal.4th 277, 297, fn. 8.) Board is not a "limited purpose" special district. Further, while Board's decisions may impact landlords and tenants differently, both landlords and tenants are interested and affected by Measure H.

The second cause of action is DENIED.

Third Cause of Action – Violation of Equal Protection Clauses of California and U.S. Constitutions

Petitioners contend that the requirement in section 1811(a) of Measure H that 7 of the 11 Board members must be tenants and must not hold a material interest in rental properties in Los Angeles County violates the equal protection clauses of the California and U.S. Constitutions. (Pet. ¶¶ 39-43; OB 21-22; Reply 12-13.)

"Guarantees of equal protection embodied in the Fourteenth Amendment of the United States Constitution and article I, section 7 of the California Constitution prohibit the state from arbitrarily discriminating among persons subject to its jurisdiction. This principle, however, does not prevent the state from drawing distinctions between different groups of individuals but requires the classifications created bear a rational relationship to a legitimate public purpose." (People v. Chavez (2004) 116 Cal.App.4th 1, 4-5.)

"'The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner.' [Citations.] 'The 'similarly situated' prerequisite simply means that an equal protection claim cannot succeed, and does not require further analysis, unless there is some showing that the two groups are sufficiently similar with respect to the purpose of the law in question that some level of scrutiny is required in order to determine whether the distinction is justified.'" (People v. Rhodes (2005) 126 Cal.App.4th 1374, 1383.)

Similarly Situated Groups Subject to Unequal Treatment

Petitioners do not persuasively address this threshold requirement of an equal protection claim. Petitioners argue that section 1811(a) of Measure H discriminates between tenants and "property owners" with respect to participation on the Board. (OB 21:21-24 [Measure H confers "preferential voting rights on tenants and [places] severe restrictions on the rights of property owners to serve"].) Petitioners then argue, without elaboration, that "[p]roperty owners and tenants alike are affected by the Rent Board's decision-making." (OB 22:5-7; see also Reply 12-13.) Petitioners cite no case law that supports their position that tenants and property owners are similarly situated with respect to a rent control law.

Based on Petitioner's briefing, the court is not persuaded that the threshold requirement for an equal protection claim is met. That some property owners (i.e., landlords) and tenants are both

impacted by the Board's decisions does not, in itself, establish that they are similarly situated with respect to the purpose of Measure H. The purposes of Measure H are different for tenants and landlords. Thus, "the purpose of this Amendment is to promote neighborhood and community stability, healthy housing, and affordability for renters in Pasadena by regulating excessive rent increases and arbitrary evictions to the maximum extent permitted under California law, while ensuring Landlords a fair return on their investment and guaranteeing fair protections for renters, homeowners, and businesses." (Rec. 20.) Important provisions of Measure H, including section 1806, Just Cause for Eviction Protections, and section 1807, Stabilization of Rents, do not apply similarly to landlords and tenants. (Rec. 30-38.) Some non-tenant property owners, i.e., those that do not own rental properties, will not be regulated at all by Measure H. Further, in the initiative's findings, the voters found that tenants occupy significantly more housing units in the City than property owners, they experience greater housing instability, and they are uniquely subject to evictions without just cause. The voters also found that landlords are over-represented on the Council. (Rec. 20-25.)

Petitioners do not show that tenants and property owners are similarly situated with respect to the purpose of Measure H. "There is . . . no requirement that persons in different circumstances must be treated as if their situations were similar." (People v. McCain (1995) 36 Cal.App.4th 817, 819.) Because Petitioners do not prove that the "similarly situated" prerequisite is met, their "equal protection claim cannot succeed, and does not require further analysis.'" (People, supra, 126 Cal.App.4th at 1383.)

Rational Basis Review

Even if the "similarly situated" element of an equal protection challenge were met, the court finds that Petitioners have not proven the remaining elements of an equal protection claim.

"When a showing has been made that two similarly situated groups are treated disparately, the next element of a meritorious equal protection claim addresses whether the government had a sufficient reason for distinguishing between the two groups." (Vaquero Energy, Inc. v. County of Kern (2019) 42 Cal.App.5th 312, 323.) "Where, as here, a disputed statutory disparity implicates no suspect class or fundamental right, 'equal protection of the law is denied only where there is no 'rational relationship between the disparity of treatment and some legitimate governmental purpose.' " (Johnson v. Department of Justice (2015) 60 Cal.4th 871, 881.) "To mount a successful rational basis challenge, a party must 'negative every conceivable basis' that might support the disputed statutory disparity. [Citation.] If a plausible basis exists for the disparity,

courts may not second-guess its 'wisdom, fairness, or logic.'" (Ibid.)

Property owners are not a suspect class. Further, there is no fundamental right to hold appointive office. (See Rittenbrand v. Cory (1984) 159 Cal.App.3d 410, 420-421; accord Bill v. Williams (1977) 70 Cal.App.3d 531, 535 ["The right of candidacy is not viewed as a 'fundamental right' which of itself warrants strict scrutiny."]) Petitioners cite no authority to the contrary, including in reply. Accordingly, even if property owners and tenants are similarly situated with respect to Measure H (which Petitioners do not prove), the rational basis standard of review applies to City's different treatment of these groups for purposes of Board's composition.

The voters of Pasadena had a rational basis for the disparate treatment of tenants and property owners in section 1811(a). The requirement that tenants must hold 7 of the 11 seats has the effect of limiting the number of landlords that can serve on the Board to 4 seats. As noted above, the voters found, among other things, that landlords are overrepresented on the Council. The voters also found that "Landlords are aware that Pasadena Tenants are organizing and advocating for rent stabilization and just cause eviction protections; that Landlords are likely to react to concrete efforts to establish such protections in Pasadena by rapidly increasing rental housing costs; and therefore that the circulation of the instant petition is likely to cause a distortion in the Pasadena rental housing market." Further, the voters found that "as documented in the video archive of the City Council Meeting on March 25th 2019 during Item 15, the Pasadena Department of Housing and Career Services was instructed by the Council not to consider rent control or just cause for eviction when proposing possible expansions to the City's Tenant Protection Ordinance, which demonstrates the unwillingness of the Council to legislate any rent control or eviction protections in the City." (Rec. 24-25.) The voters could rationally conclude that it was necessary to limit the number of landlords on the Board to prevent those who have traditionally controlled the rental market in City from dominating the Board.

In the opening brief, Petitioners did not develop any argument that the disparate treatment of tenants and property owners in section 1811(a) lacked a rational basis. (See OB 21-22.) In reply, Petitioners argue that "Measure H's guarantee of a supermajority to tenant representatives [cannot] be sustained even under rational basis review." (Reply 13, citing Quinn v. Millsap (1989) 491 U.S. 95.)

Petitioners do not show that the challenged law in Quinn was similar to section 1811(a). Quinn concerned a provision of the Missouri Constitution providing that "the governments of the city of St. Louis and St. Louis County may be reorganized by a vote of the electorate of the city and

county upon a plan of reorganization drafted by a 'board of freeholders.'" A prerequisite to membership on this board of freeholders was ownership of real property. (Quinn, supra, 491 U.S. at 97.) The Supreme Court held that this disparate treatment lacked a rational basis, stating: "It is a form of invidious discrimination to require land ownership of all appointees to a body authorized to propose reorganization of local government." (Id. at 107.) Quinn did not hold that a tenancy qualification to serve on some seats of a government board is a form of "invidious discrimination." Quinn also did not consider the potential rationales for disparate treatment of candidates for a rental control board. For all these reasons, Quinn is inapposite and does not support Petitioners' equal protection claim.

Based on the foregoing, even assuming that tenants and property owners are similarly situated with respect to Measure H, City has a rational basis to distinguish between these two groups with respect to Board's composition.

Petitioners Do Not Show that Heightened Scrutiny Review Applies

Petitioners argue that heightened scrutiny should apply to the disparate treatment of tenants and property owners in Measure H, but none of their cited cases support their position. (See OB 21-22; see also Resp. Oppo. 15-16 and Int. Oppo. 18 [distinguishing Petitioners' cases].)

Carter v. Commission on Qualifications of Judicial Appointments (1939) 14 Cal.2d 179, 182 and Helena Rubenstein International v. Younger (1977) 71 Cal.App.3d 406, 418 addressed whether individuals were entitled to hold a particular office. In Carter, the Court held that a sitting state senator was not disqualified from appointment to the Supreme Court. In Helena Rubenstein, the Court held that although a jury had convicted the Lieutenant Governor of perjury, he could not be removed from office until final judgment had been entered against him. Neither case held that property owners are a "suspect class." Although Carter and Helena both state that the right to hold public office "is one of the valuable rights of citizenship," both predate cases that state that the right to hold public office is not fundamental and may not be subject to strict scrutiny. "Both the United States and California Supreme Courts have utilized strict scrutiny only where barriers to candidacy have a real and appreciable impact upon other fundamental rights, such as the right to vote." (Rittenbrand v. Cory (1984) 159 Cal.App.3d 410, 420-421 [citing cases].)

Petitioners acknowledge that "supermajority requirements are not per se unconstitutional," but then state: "when they discriminate against an 'identifiable class'—specifically including those based on property ownership—they have been held to violate equal protection. See, e.g., Curtis

v. Bd. of Supervisors, 7 Cal. 3d 942, 958 (1972)." (OB 21:25-28.) Relatedly, Petitioners cite a statement in Anderson v. Celebrezze (1983) 460 U.S. 780 that ""it is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status." (OB 22:1-5, citing Anderson at 793.)

Curtis and Anderson addressed ballot access laws infringing the fundamental right to vote. Thus, in Curtis, the Supreme Court overturned, as violating equal protection, a statute that "grants owners of large tracts of land the power to veto the formation of a new city, to the disadvantage of both residents who own no land and those whose holdings consist of small improved parcels." (Curtis, supra, 7 Cal.3d at 946.) The statute, in effect, granted large landowners "the special power to prevent the incorporation election" and "deny to [non-land-owning] residents the right to vote on the issue of incorporation." (Id. at 954-955.) Similarly, Anderson invalidated a statute imposing different filing deadlines for independent and party-nominated presidential candidates. (Anderson, 460 U.S. at 806.)

Petitioners seem to argue that section 1811(a) runs afoul of Curtis and Anderson. (OB 21:21-24.) However, these cases both concern restrictions on the right to vote. They are not analytically the same as considering the composition of the Board. Petitioners cite no authority that there is a fundamental right of property owners to be equally represented on a government board.

In reply, Petitioners argue "Measure H is subject to heightened scrutiny because it is not content-neutral." (Reply 12 and fn. 11-12, citing Daunt v. Benson (6th Cir. 2021) 999 F.3d 299, 311.) Petitioners' argument is not persuasive. While Section 1811(a) treats certain persons differently considering the different economic interests held by tenants and landlords, Section 1811(a) does not disqualify any candidate for the Board based on his or her viewpoint or the content of speech. 1

Petitioners' Privacy Claim

As part of their equal protection argument, Petitioners also assert that Measure H "burdens would-be landlord members' ability to serve by forcing them to comprehensively disclose the rental property interests of not just themselves but also 'extended family' members in Los Angeles County." (OB 22.) This is not an equal protection argument, but rather an argument about privacy interests. The petition does not allege a cause of action for violation of a constitutional right to privacy. Because a privacy claim is not pleaded, the court does not

consider whether disclosure requirements in Measure H infringe on any right of privacy.

Petitioners' privacy argument does not support their equal protection claim. Petitioners rely on Carmel-by-the-Sea v. Young (1970) 2 Cal.3d 259, 268-69, which invalidated a financial disclosure law on the grounds that it was an overbroad intrusion into the right of privacy and that the legitimate purpose of the law could be achieved by more narrowly and precisely drawn legislation. (Id. at 272.) Carmel-by-the-Sea was not an equal protection case and does not support a conclusion that Measure H violates the equal protection clauses. The disclosure requirements of section 1811(b) of Measure H apply equally to "all prospective members of the Rental Board."

The third cause of action is DENIED.

Fourth Cause of Action – State Law Preemption

Petitioners contend that the relocation assistance provision in Measure H, and several notice provisions, are preempted by state law. (OB 22-24; Pet. ¶¶ 44-54.)

Rules of Preemption

"'Under article XI, section 7 of the California Constitution, '[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.' If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. Local legislation is 'duplicative' of general law when it is coextensive therewith. Similarly, local legislation is 'contradictory' to general law when it is inimical thereto. Finally, local legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area, or when it has impliedly done so in light of one of the following indicia of intent: '...." (San Diego Gas & Electric Co. v. City of Carlsbad (1998) 64 Cal.App.4th 785, 792-793.)

Courts "have been particularly 'reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.'" (Big Creek Lumber Co. v. County of Santa Cruz (2006) 38 Cal.4th 1139, 1149.) "'The common thread of the cases is that if there is a significant local interest to be

served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption.' " (Ibid.)

"The question whether an actual conflict exists between state law and charter city law presents a matter of statutory construction." (City of El Centro v. Lanier (2016) 245 Cal.App.4th 1494, 1505.) "The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further. However, when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (Nolan v. City of Anaheim (2004) 33 Cal.4th 335, 340.)

"The party claiming that general state law preempts a local ordinance has the burden of demonstrating preemption." (Big Creek Lumber Co., supra, 38 Cal.4th at 1149.)

Relocation Assistance Provision

Petitioners contend that the relocation assistance requirement in section 1806(b)(C) of Measure H is preempted by the Costa-Hawkins Rental Housing Act, including Civil Code section 1954.52(a). (OB 22-23.)

Section 1806(b) of Measure H, titled "Relocation Assistance," states in pertinent part:

A Landlord seeking to recover possession under Subsections (a)(8)-(11) above shall provide Relocation Assistance.....
[¶]
(B) The Rental Board shall issue rules and regulations to effectuate this subsection including but not limited to rules and regulations setting forth the procedures for establishing the amount of Relocation Assistance applicable to any given Tenant household....
(C) A Landlord shall provide Relocation Assistance to any Tenant household who is displaced from a Rental Unit due to inability to pay Rent increases in excess of 5 percent plus the most recently announced Annual General Adjustment in any twelve-month period. The Landlord must provide Relocation Assistance to such Tenant households no later than the date that they vacate

the Rental Unit. The Board shall issue rules and regulations to further effectuate this subdivision, including but not limited to the procedures and forms for establishing and facilitating payment of Relocation Assistance, an appeal process, if any, and rules to ensure the reasonably timely payment of any applicable Relocation Assistance. The Board may reduce the threshold triggering Relocation Assistance to Rent increases lower than 5 percent plus the most recently announced Annual General Adjustment in any twelve-month period if it determines that the lower threshold is necessary to further the purposes of this Article.

(Rec. 35.)

"Relocation assistance" is defined as "Financial assistance in the amounts set forth in Section 1806(b)." (Rec. 27.)

"[The] overall effect [of the Costa-Hawkins Act] is to preempt local rent control ordinances in two respects. First it 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).) Second it adopts a statewide system of what is known among landlord-tenant specialists as 'vacancy decontrol,' declaring that '[n]otwithstanding any other provision of law,' all residential landlords may, except in specified situations, 'establish the initial rental rate for a dwelling or unit.' (Civ. Code, § 1954.53, subd. (a).)" (DeZerega v. Meggs (2000) 83 Cal.App.4th 28, 41.)

The Act "preempts local rent control by permitting landlords to set the initial rent for vacant units, but expressly preserves local authority to 'regulate or monitor the grounds for eviction.'" (Bullard v. S.F. Rent Stabilization Bd. (2003) 106 Cal.App.4th 488, 489, citing Civil Code § 1954.53(e); see also Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2009) 175 Cal.App.4th 1396, 1405-06.)

Petitioners state that section 1806(b)(C) applies, "almost exclusively," to tenants of exempt units. (See Pet. ¶ 48.) Intervenors and Respondents appear to agree. Under Costa-Hawkins, the landlord may adjust the rent of such exempt units "at will." (DeZerega, supra at 41.) Thus, Petitioners assert that section 1806(b)(C) frustrates Costa-Hawkins and is preempted because it "penalizes" property owners who exercise their right to adjust the rental rates on exempt properties. (OB 23; Reply 13.)

Based on these arguments, Petitioners contend that section 1806(b)(C) is facially unconstitutional. For this claim, "petitioners must demonstrate that the act's provisions inevitably

pose a present total and fatal conflict with applicable constitutional prohibitions." (Tobe v. City of Santa Ana (1995) 9 Cal.4th 1069, 1084.)

Petitioners do not meet this burden. Section 1806(b)(C) does not restrict the ability of a landlord to increase rents for exempt units. The landlord of an exempt unit may raise the rent as much as is allowed under state law. If tenants leave because they are unable to pay that amount, section 1806(b)(C) may result in the rent increase becoming less lucrative, in some cases, due to the payment of relocation assistance. However, the Costa-Hawkins Act only requires that the landlord may impose the rent increase. Section 1806(b)(C) requires relocation assistance on a one-time basis, and only for tenants that vacate as a result of rent increases of the specified amount, and does not inevitably conflict with the requirement in Costa-Hawkins that the landlord may raise rents on exempt units.

Petitioners seem to argue that, if large enough, the relocation assistance could cancel out or substantially reduce any rent increase imposed by the landlord. Petitioners also assert that "Rent Board is authorized to lower the threshold to trigger this penalty 'if it determines that the lower threshold is necessary to further the purposes of this Article.'" (OB 23.) However, those are as-applied arguments. Section 1806(b)(C) does not specify the amount of relocation assistance and leaves that to the Board to determine by regulation. It cannot be determined, at this time, how Board will exercise its discretion to set the amount of relocation assistance or whether to reduce the threshold to trigger relocation assistance. Depending on the amount of the relocation assistance, section 1806(b)(C) may have no meaningful impact on the landlord's incentives to raise rents.

Petitioners rely on cases involving local ordinances that directly conflicted with the "vacancy decontrol" aspect of the Costa-Hawkins Act. (OB 23.) In Bullard, supra, 106 Cal.App.4th 488, the Court invalidated a local ordinance requiring landlords who evict tenants in order to move into the unit to offer the tenant another unit at a regulated rate. The ordinance directly conflicted with Costa-Hawkins because it prevented the landlord from establishing the initial rental rate for the replacement unit. (Id. at 491-493.) In Palmer/Sixth Street Properties, L.P., supra, 175 Cal.App.4th 1396, the Court concluded that, as applied to a specific project, an affordable housing ordinance was preempted by Costa-Hawkins because it denied the developer the right to establish the initial rental rates for the affordable housing units required by the ordinance. (Id. at 1410.)

Bullard and Palmer/Sixth Street Properties, L.P. are not controlling here. Section 1806(b)(C)

does not regulate the rent that may be charged when a unit is vacated. It also does not prohibit rent increases for an exempt unit, as discussed. Neither of these cases suggest that relocation assistance that may, on a one-time basis, reduce the profitability of a rental increase on an exempt unit is preempted by Costa-Hawkins. Even if the relocation assistance could possibly conflict with Costa-Hawkins by making a rental increase uneconomical, the court cannot determine, prior to implementation, that Measure H "inevitably pose[s] a present total and fatal conflict with applicable constitutional prohibitions." (Tobe v. City of Santa Ana (1995) 9 Cal.4th 1069, 1084.)

Based on the foregoing, Petitioners' facial challenge to section 1806(b)(C) is denied. In light of this conclusion, the court need not reach Intervenors' contention that section 1806(b)(C) is authorized by Civil Code section 1954.52(c) and San Francisco Apartment Assn. v. City and County of San Francisco (2022) 74 Cal.App.5th 288, 290. (Int. Oppo. 19-20.)

Notice Provisions

Petitioners contend that notice provisions in sections 1806(a)(9), 1806(a)(10), and 1803(cc) of Measure H are preempted by Civil Code section 1946.1, Government Code section 7060.4(b), and/or CCP section 1161(2). (OB 23-24.)

Section 1806(a)(9) of Measure H. As Intervenors acknowledge, section 1806(a)(9) "differs" from the general notice provisions in Civil Code section 1946.1. (Int. Oppo. 20:10:11.) Specifically, for tenancies "for a term not specified by the parties," section 1946.1(b) requires the property owner "give notice at least 60 days prior to the proposed date of termination" of a tenancy, and section 1946.1(c) requires at least 30 days notice for a tenant that has resided in the dwelling for less than a year. (See San Francisco Apartment Assn. v. City and County of San Francisco (2018) 20 Cal.App.5th 510, 521.) Section 1806(a)(9) substantially lengthens those notice requirements to six months (180 days) in the case of "owner move-in." "[S]tate laws preempt the field of the timing of landlord-tenant transactions." (Id. at 519.) "Where a statute has set the amount of notice required, the municipality may not impose further requirements of additional notice." (Mobilepark W. Homeowners Ass'n v. Escondido Mobilepark W. (1995) 35 Cal.App.4th 32, 47 (1995); see also Tri County Apartment Assn. v. City of Mountain View (1987) 196 Cal.App.3d 1283, 1298 ["the timing of landlord-tenant transactions is a matter of statewide concern not amenable to local variations"].)

Respondents contend that Petitioners' cited authorities are "outdated" as a result of the California

Tenant Protection Act ("TPA"), enacted in 2019, "which restricts landlords' ability to evict tenants who have occupied a unit for at least 12 months." (Oppo. 19.) Respondents contend that the TPA "addresses the notice that the landlord must provide before evictions based on owner move-ins and the withdrawal of the unit from the rental market" and also "expressly allows local governments to enact just-cause eviction ordinances that prevail over the TPA if they are more protective of renters." (Oppo. 19, citing Civ. Code § 1946.2(a), (c), (d), (f).) Contrary to Respondents' assertion, the TPA does not specify the amount of notice a landlord must give in the event of termination of the tenancy due to owner move-in. (See § 1946.2(d), (f).) Since owner move-in is not a "curable lease violation," the notice requirement of section 1946.2(c) does not apply. The provision in the TPA authorizing local government to enact more protective just-cause eviction ordinances does not state that the local government may modify the timing of landlord-tenant transactions. (§ 1946.2(g)(1)(B).)

In a footnote, and without discussion of authorities, Respondents also state that "Civil Code section 1946.1 only applies to tenancies 'for a term not specified by the parties' and so does not preempt applications of Section 1806(a)(9) to tenancies with specified terms." (Oppo. 19, fn. 13.) Respondents' short analysis of the issue is insufficient to deny the petition as to section 1806(a)(9). Section 1806(a)(9) specifies the notice requirement for all types of tenancies, without regard to the term specified by the parties. It directly conflicts with section 1946.1 and is preempted with respect to tenancies without a specified term. While section 1946.1 does not apply to tenancies of a specified term, Respondents' cited authorities do not suggest that an otherwise preempted provision may be maintained in such circumstances. (See e.g. Tobe v. City of Santa Ana (1995) 9 Cal.4th 1069, 1084.) Further, in its briefing, Respondents proposed no method of severance even if section 1806(a)(9) is not preempted for tenancies with specified terms.

At the hearing City argued that because this is a facial challenge, Petitioner was required to, and failed to show section 1806(a)(9) was invalid in all situations. This argument was based on its contentions regarding fixed versus unspecified terms. As discussed above that argument was not sufficiently developed in the briefing, and the court does not consider it here. City also argued that the court could "reform" the provision to make it applicable only to tenancies without specified terms, citing Kopp v. Fair Political Practices Commission (1995) 11 Cal.4th 607. The court is not persuaded. In Kopp, the court analyzed at length the ability of a court to reform an initiative to save it from constitutional infirmity. None of the cases cited in Kopp concerned preemption of initiative provisions by state statutes. Based on this argument at the hearing the court is not persuaded that reformation is appropriate here, especially where there has been no

briefing on whether "we can say with confidence that (i) it is possible to reform the statute in a manner that closely effectuates policy judgments clearly articulated by the enacting body, and (ii) the enacting body would have preferred the reformed construction to invalidation of the statute." Id. at 661. Petitioners had no opportunity to address this new argument in their briefing.

At the hearing, Intervenors argued that section 1946.1 does not preempt section 1806(a)(9) based on San Francisco Apartment Assn. v. City and County of San Francisco (2018) 20 Cal.App.5th 510, 521. The ordinance at issue there did not alter the state law-required notice period for termination of a tenancy. Rather, the challenged provision protected households with a child under the age of 18 or an educator from no-fault eviction during the school year. While the Court recognized that the distinction between procedure and substantive law can be difficult to draw, it found the ordinance in question was not preempted as it created a class of "no-fault evictions" and "a permissible substantive defense to eviction." (Id. at 521.) The court compared the provision to other defenses to eviction which protect certain groups, such as restrictions on eviction of a tenant who is catastrophically ill. By contrast, section 1806(a)(9) applies to all tenants facing eviction for owner move-in and directly alters the timing of landlord-tenants transactions by imposing a longer notice requirement.

Because the notice provision in section 1806(a)(9) directly conflicts with section 1946.1, it is preempted by state law.

Section 1806(a)(10) of Measure H. Section 1806(a)(10) permits eviction based on the withdrawal of a unit from the rental market with a minimum of 180 days' notice (or one year if the tenant is senior or disabled). (Rec. 34.) As Respondents acknowledge, the 180-day notice requirement in section 1806(a)(10) conflicts with "the Ellis Act's general 120-day notice requirement." (Resp. Oppo. 19, fn. 13.) Specifically, Government Code section 7060.4 of the Ellis Act provides, in pertinent part:

(a) Any public entity which, by a valid exercise of its police power, has in effect any control or system of control on the price at which accommodations are offered for rent or lease, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that the owner notify the entity of an intention to withdraw those accommodations from rent or lease....

(b) The statute, ordinance, or regulation of the public entity may require that the owner record with the county recorder a memorandum summarizing the provisions, other than the confidential provisions, of the notice in a form which shall be prescribed by the statute, ordinance, or

regulation, and require a certification with that notice that actions have been initiated as required by law to terminate any existing tenancies. In that situation, the date on which the accommodations are withdrawn from rent or lease for purposes of this chapter is 120 days from the delivery in person or by first-class mail of that notice to the public entity. However, if the tenant or lessee is at least 62 years of age or disabled, and has lived in their accommodations or unit within the accommodations for at least one year prior to the date of delivery to the public entity of the notice of intent to withdraw pursuant to subdivision (a), then the date of withdrawal of the accommodations of that tenant or lessee shall be extended to one year after the date of delivery of that notice to the public entity, provided that the tenant or lessee gives written notice of their entitlement to an extension to the owner within 60 days of the date of delivery to the public entity of the notice of intent to withdraw....

(c) The statute, ordinance, or regulation of the public entity adopted pursuant to subdivision (a) may also require the owner to notify any tenant or lessee displaced pursuant to this chapter of the following:
(1) That the public entity has been notified pursuant to subdivision (a).....

In Channing Properties v. City of Berkeley (1992) 11 Cal.App.4th 88, the Court of Appeal held that an ordinance requiring landlords to provide six months' notice to tenants before withdrawing units from the rental market was preempted by section 7060.4, which, at the time, required 60 days' notice prior to withdrawal of the accommodations. (Id. at 95-96.) As relevant here, the Court of Appeal stated:

The Act's only provision regarding notice to tenants is section 7060.4, subdivision (b), which allows imposition of a requirement that tenants be notified that the public entity has been notified of the owner's intention to withdraw accommodations from rent or lease. Since the notice to tenants authorized by subdivision (b) necessarily must be given after the notice to the city, it follows that, in this situation, the Act does not allow a requirement of more than 60 days' notice to tenants.

The City urges there is no preemption of its six-month notice requirement because the 60-day provision of section 7060.4, subdivision (a), applies only where a landlord is filing a certification that eviction proceedings have been instituted "as required by law." According to the City, a landlord cannot file the certification required to be filed 60 days before withdrawal of accommodations unless he or she has complied with all laws governing termination of tenancies, including the City's requirement of 6 months' notice to tenants. This argument, however, begs the

question whether the Act prohibits the City from requiring more than 60 days' notice. By carefully spelling out certain types of notice which public entities may require, the Act clearly indicates that only these types are authorized and other, additional notice requirements are not permissible.

(Id. at 96-97.)

Channing is directly on point with respect to the general requirement in section 1806(a)(10) of 180 days' notice prior to withdrawal of the accommodation. The Channing Court specifically rejected an argument similar to the one advanced by Intervenors that section 7060.4 "does not expressly specify the notice required to be provided to tenants prior to eviction; section 1806(a)(10) fills that gap." (Into. Oppo. 20-21.) Because the 180-day notice requirement in section 1806(a)(10) directly conflicts with section 7060.4 of the Ellis Act, it is preempted.

Respondents argue that Petitioners' preemption claim is not ripe and "Rental Board should be given the chance to harmonize Measure H with state law to give effect to the voters' intent." (Resp. Oppo. 20.) The court disagrees. It may be determined from the face of Measure H that certain notice provisions are preempted by state law. Accordingly, those provisions are not enforceable and Petitioners' claim is ripe. There is no purpose in waiting for Board to promulgate regulations for unenforceable provisions.

Respondents also argue that "both Section 1806(a)(10) and the Ellis Act have one year notice requirements for senior citizens and disabled tenants." (Resp. Oppo. 19, fn. 13.) The court agrees that section 1806(a)(10) does not necessarily conflict with section 7060.4 with respect to the longer notice requirement for tenants who are "senior or Disabled." (Rec. 34.) Thus, that part of section 1806(a)(10) is not facially unconstitutional.

While not raised by any party, the court noted in its tentative that Measure H apparently defines "senior" as at least 60 years of age. (See § 1806(a)(9)(F).) Section 7060.4(b) provides a lengthened notice period "if the tenant or lessee is at least 62 years of age or disabled." Petitioners do not argue that this distinction in the senior age is dispositive for purposes of preemption or severance. Nonetheless, it appears section 1806(a)(10) must use the same seniority age as the Ellis Act. At the hearing, Intervenor argued that that section 1806(a)(9)(F) defines "elderly" and not "senior" for purposes of section 1806(a)(10). Intervenor's argument is persuasive. Because section 1806(a)(10) does not clearly conflict with section 7060.4(b)'s definition of "senior," the initiative's notice provision is not facially preempted with respect to

seniors.

Because this 180-day notice requirement in section 1806(a)(10) directly conflicts with section 7060.4 of the Ellis Act (for non-seniors), it is preempted. The longer notice period for senior or disabled tenants does not clearly or necessarily conflict with section 7060.4 of the Ellis Act and is not facially invalid.

Section 1803(cc) of Measure H. Section 1803(cc) defines the content of a "Written Notice to Cease," which "gives a Tenant an opportunity to cure an alleged violation or problem prior to initiating legal proceedings to terminate tenancy." (Rec. 28.) The Written Notice must: "(1) Provide the Tenant a reasonable period to cure the alleged violation or problem; (2) Inform the Tenant that failure to cure may result in the initiation of eviction proceedings; (3) Inform the Tenant of the right to request a reasonable accommodation; (4) Inform the Tenant of the contact number for the Rental Board; and (5) Include a specific statement of the reasons for the Written Notice to Cease with specific facts to permit a determination of the date, place, witnesses and circumstances concerning the reason for the eviction. (6) Where a breach of Lease is alleged, inform the Tenant what Lease provision has been breached and what the Tenant must do in order to cure the breach." (Ibid.)

Petitioners contend that section 1803(cc) "layers on additional procedural requirements" to the eviction process and conflicts with CCP section 1161(2), which sets forth the notice requirements to begin unlawful detainer proceedings. (OB 24.) Petitioners rely on Birkenfeld v. City of Berkeley (1976) 17 Cal.3d 129, which held that a "charter amendment's requirement that landlords obtain certificates of eviction before seeking repossession of rent-controlled units cannot stand in the face of state statutes that fully occupy the field of landlord's possessory remedies." (Id. at 152.) The charter amendment required the landlord to obtain the certificates of eviction from the rent control board. "To be granted a certificate the landlord must carry the burden of showing not only the existence of permissible grounds for eviction and that the tenancy has been properly terminated by notice but also that there are 'no outstanding Code violations on the premises' other than those 'substantially caused by the present tenants.'" (Id. at 150.) The Court held that "the requirement of a certificate of eviction raises procedural barriers between the landlord and the judicial proceeding" and directly conflicted with the unlawful detainer procedures in CCP sections 1159-1179a. (Id. at 151.)

The "Notice to Cease" requirement in section 1803(cc) are far less extensive than the procedural requirements discussed in Birkenfeld which required landlords to obtain certificates of eviction

from the rental control board prior to commencing unlawful detainer proceedings. Section 1803(cc)(2)-(4) simply require the landlord to provide the tenant information about the potential for eviction; the tenant's right to request a reasonable accommodation; and the contact number for the Board. Those notice requirements do not burden or impact the unlawful detainer process in state law.

Sections 1803(cc)(1), (5), (6) require the landlord to "Provide the Tenant a reasonable period to cure the alleged violation or problem" and to provide the tenant a "statement of the reasons" for the potential eviction. Petitioners do not show that these notice requirements cannot coincide with the unlawful detainer process in CCP section 1161. (See Rental Housing Assn. of Northern Alameda County v. City of Oakland (2009) 171 Cal.App.4th 741, 762-763 [upholding "notice and cure" provisions as permissible local ordinances].) "The mere fact that the two sets of legislation employ similar regulatory tools ... does not mean they occupy the same field." (Ibid.)

Further, for a facial challenge, Petitioners must show that these notice requirements totally and inevitably conflict with state law. Petitioners do not meet that burden. Notably, section 1803(cc) simply provides a definition of "Written Notice to Cease." Petitioners develop no legal argument that the manner this term is used throughout Measure H conflicts with state law. Having provided no analysis of when and how the "Written Notice to Cease" is required in Measure H, and how it would specifically conflict with state law, Petitioners do not prove their facial preemption claim. (Fox v. Erickson (1950) 99 Cal.App.2d 740, 742 [a reviewing court "will not assume the task of initiating and prosecuting a search of the record for any purpose of discovering errors not pointed out in the briefs"].) Landlords are not precluded from challenging the "Notice to Cease" requirements in Measure H on an as-applied basis in unlawful detainer or other judicial proceedings.

Severability

Measure H includes a severability clause, which states in part: "If any provision of this Article or application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of this Article that can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable." (Rec. 60.)

"Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically severable.... The final determination

depends on whether the remainder ... is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidity of the statute ... or constitutes a completely operative expression of the legislative intent ... [and is not] so connected with the rest of the statute as to be inseparable." (Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 821.) "The cases prescribe three criteria for severability: the invalid provision must be grammatically, functionally, and volitionally separable." (Ibid.)

As discussed above, the 6-month notice provision in section 1806(a)(9) directly conflicts with section 1946.1 and is preempted by state law. This provision is grammatically, functionally, and volitionally separable from the remainder of Measure H. Accordingly, the phrase "after providing 6 months written notice to the Tenant," is severed from the first paragraph of section 1806(a)(9).

The 180-day notice requirement in section 1806(a)(10) directly conflicts with section 7060.4 of the Ellis Act (except with respect to seniors and disabled), and is preempted. The longer notice period for senior or disabled tenants does not clearly or necessarily conflict with section 7060.4 of the Ellis Act and is not facially invalid. The preempted 180-day notice provision is functionally and volitionally separable from Measure H.

At the hearing, City argued that the severance should be as minimal as possible and preserve those portions of section 1806(a)(10) which are not preempted. The court agrees. The court severs "180-day" from the second to last sentence of 1806(a)(10) so that the last two sentences read as follows: "Tenants shall be entitled to a minimum of notice or one (1) year in the case Tenants are defined as senior or Disabled. Notice times may be increased by regulations if state law allows for additional time."

Conclusion

Subject to further argument, the first, second, and third causes of action are DENIED.

The fourth cause of action is GRANTED IN PART. The phrase "after providing 6 months written notice to the Tenant," is severed from the first paragraph of section 1806(a)(9) in Measure H. In section 1806(a)(10) the court will sever "180-day" from the second to last sentence of the section.

The fourth cause of action is DENIED IN ALL OTHER RESPECTS.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

22STCP04376 March 28, 2023
CALIFORNIA APARTMENT ASSOCIATION, et al. vs CITY OF PASADENA, et al. 9:30 AM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N DiGiambattista
Courtroom Assistant: R Monterroso

CSR: REPORTER PRO TEMPORE: Shayna Montgomery/CSR 13452
ERM: None
Deputy Sheriff: None

Counsel for Petitioner is directed to give notice of this ruling and to lodge a proposed form of judgment and a proposed form of writ in accordance with LASC Local Rules, rule 3.231(n).

FOOTNOTE:

1- Although the petition alleged unequal treatment of certain tenants (Pet. ¶ 41), Petitioners did not pursue that claim in their writ briefing. The claim is thus waived. (Nelson v. Avondale HOA (2009) 172 Cal.App.4th 857, 862-863 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived"].)

A copy of this minute order is e-mailed this date and is also mailed via U.S. Mail to counsel of record.

Certificate of Mailing is attached.

Additional appearance for Respondent(s):
Fredric Dean Woocher , Beverly Palmer, Julia Michel (x) (Telephonic)

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	FILED Superior Court of California County of Los Angeles 03/28/2023 David W. Slayton, Executive Officer / Clerk of Court By: N. DiGiambattista Deputy
PLAINTIFF/PETITIONER: California Apartment Association et al	
DEFENDANT/RESPONDENT: City of Pasadena, et al.	
CERTIFICATE OF MAILING	CASE NUMBER: 22STCP04376

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (HEARING ON PETITION FOR WRIT OF MANDATE) of 03/28/2023 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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David W. Slayton, Executive Officer / Clerk of Court

By: N. DiGiambattista
Deputy Clerk

CERTIFICATE OF MAILING