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RECEIVED

MAY 19 2020

BOARD OF SUPERVISORS

May 18, 2020

Estelle Fennell - Chair of the Board
Humboldt County Board of Supervisors
825 Fifth St.
Eureka, CA 95501

Re: Ordinance 2642

Dear Members of the Board,

I am writing on behalf of HumCPR, regarding Humboldt County Ordinance re: Rent Moratorium, Ordinance 2642, which has heretofore been approved. It is their hope that the Board take immediate action and amend this Ordinance to address the lack of proper Police Power under the California Emergency Services Act and/or power under the express terms of the Governor's Executive Order. This Board's passage of Ordinance 2642 has no legal authority to be imposed outside of the active date of the Executive Order signed by the Governor. That Executive Order ends on May 31, 2020 unless extended by the Governor.

Upon review of the express language of the Governor's Executive Order, all local jurisdictions have expanded authority to act to address local concerns not addressed by the Executive Order. This includes rent protection and it includes local authority to protect commercial businesses and to impose further restrictions to protect residential tenants during the effective dates of the Executive Order. However, by the express language of the Order, that expanded authority act is only during the time the Executive Order is in effect. The County's Ordinance exceeds the express terms of the Executive Order and there is nothing set forth in Section II of the Ordinance itself that points to any legal authority for the Ordinance after the expiration of the Executive Order.

1. The California Emergency Services Act:

The California Emergency Services Act is contained in sections 8550-8668 of the Government Code. It was enacted in 1970 (Stats. 1970, ch. 1454) to replace the similar

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California Disaster Act which was then found in sections 1500-1601 of the Military and Veterans Code.

The California Emergency Services Act is a comprehensive act which has as its purpose the assurance that state and local entities will adequately prepare for and deal with the effects of natural, manmade, or war-caused emergencies through the requisite coordination of the resources available at the state and local level. To this end the Act's purpose is also to confer emergency powers upon the Governor, the chief executives and governing bodies of local governments and to establish the California Office of Emergency Services within the Governor's Office. (§ 8550.)

The comprehensive character and scope of the Act may be demonstrated by a brief reference to some of the various articles of the Act. Article 1 sets forth the Act's purposes. Article 2 contains definitions of terms used in the Act such as "state of emergency, " "local emergency, " "mutual aid region, " "master mutual aid agreement," etc. Article 3 sets forth the powers of the Governor under the Act such as his power to make and rescind orders and regulations (§ 8567), his powers to mitigate the effects of an emergency in accordance with the State Emergency Plan (§ 8570), and his power to commandeer private property during a state of emergency. Article 3.5 sets forth an emergency plan to deal with oil spills. Article 4 provides for the establishment of the California Emergency Council and its duties. Article 5 establishes the Office of Emergency Services and provides for its powers and duties. Article 7 sets forth the manner in which state agencies are to assist the Governor and the Office of Emergency Services under the Act. Article 10 provides for local disaster councils which are to provide for the mobilization of resources within cities and counties. Article 11 sets forth the Act's provisions relating to mutual aid both interstate and intrastate. Article 13 provides for the power of the governor to proclaim a state of emergency. Article 14 provides for the declaration of a local emergency by cities and counties. Article 17 provides for privileges and immunities of public employees and others in carrying out the provisions of the Act, and Article 19 provides for penalties for violations of the Act.

2. The Executive Order:

On March 27, 2020, Governor Gavin Newsom issued Executive Order N-37-20, banning enforcement of already-filed eviction orders for residential renters affected by COVID-19 through May 31, 2020. This Executive Order is lawfully based upon Cal. Government Code section 8550 et seq. which gives the Governor vast powers to respond

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to a declared "State of Emergency." Those executive powers given to the Governor cease to exist when the "state of emergency" ceases.

The Executive Order extends by 60 days (May 31, 2020) the time a tenant has to respond to a summons in an unlawful detainer (eviction) case filed by a landlord. However, that extension applies only for unlawful detainers based on nonpayment where the tenant (a "covered tenant") has satisfied certain conditions:

The tenant has a COVID-related loss of income;

The tenant has notified the landlord within a reasonable time period not to exceed 7 days; and

The tenant retains certain documentation of the COVID-related loss.

All other unlawful detainer cases are unaffected by the Order.

Pursuant to the Executive Order, the Governor granted additional powers to municipalities to address the needs of the public during the effective date of the Executive Order which ends on May 31, 2020 unless further extended by the Governor. However, as set forth under the Government Code, those local powers cease to exist upon the expiration of the Executive Order on May 31, 2020, unless extended by the Governor.

3. Court Emergency Rules.

Seeking to sustain essential court services while balancing weighty considerations, including litigants' due process rights, access to justice, and stringent health and safety orders, the California Judicial Council has adopted its own Emergency Rules in response to the ongoing coronavirus pandemic (COVID-19). The Court has this power to effect Emergency Rules separate and distinct from the Governor's powers which as stated above are limited to the time wherein the Executive Order is in effect.

With respect to Unlawful Detainers, by virtue of the Supreme Court's Authority to control its docket during this time, Courts are now prohibited from issuing a summons in an unlawful detainer action filed after April 6, 2020, effectively banning new proceedings unless the court finds the eviction is necessary to protect public health and safety. For unlawful detainer proceedings commenced on or before April 6, 2020, defaults cannot be entered for a failure to appear and trial dates that were set as of April 6, 2020 will be continued at least 60 days, unless necessary to protect public health and safety. Citizens still retain the right to file unlawful detainers, but the Courts will not

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issue a Summons nor any defaults until after the expiration of 90 days after the Executive Order ceases.

4. Sections of Ordinance 2642 are in excess of police powers and infringement on contracts.

In response to the COVID-19 pandemic, numerous local governments in California have issued orders or enacted ordinances that also limit evictions. Humboldt passed Ordinance 2642 which not simply suspends the right to file an unlawful detainer action beyond the end of the Governor's Executive Order; it provides for a specific cause of action with treble damages and attorney fees if a landlord files a complaint for an unlawful detainer for a 90 day period *after* the expiration of the Governor's Executive Order.

The Judicial Council's rules as set forth above are statewide and prohibit evictions of all residential and commercial tenants and it was set into force via the Court's inherent authority to control its own docket, separate and distinct from the Governor's Executive Order. The Court's rules have the practical effect of superseding Humboldt's eviction limitations; the Court's rules allow the filing of the action but prohibits the issuance of a summons during the 90 days following the suspension or expiration of the Executive Order. This effectively protects all residential as well as commercial tenants during this period of time.

Because Humboldt's Ordinance 2642 impose additional penalties and limitations on the landlord's remedies, those penalties and limitations must be based upon lawful authority; either by the express language of the Executive Order or under the express provisions of Government Code section 8630 et seq. Ordinance 2642 is not authorized by the Executive Order, nor any other Government Code section including but not limited to section 8630 et. seq.

The Ordinance passed by this Board on April 28, 2020, seeks to control unlawful detainers outside of the scope of the Governor's Executive Order and outside of the declared State of Emergency. To the extent that this ordinance seeks to control unlawful detainers within the declared date for the Executive Order (ie, until May 31, 2020), the Board has some authority to do so by the express wording of the Executive Order and under the Government Code. However, outside of the date, after the end of the Executive Order (May 31, 2020), there is no legal authority to act as declared under your new Ordinance; at least none declared in Section II of Ordinance 2642. Section II

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declares the authority to act under: 1) the provisions of the Executive Order; 2) the provisions of the Court's Emergency rules; and 3) un-named generic reference to California Emergency Services Act.

While it certainly is a moral act to try and provide tenants with extended periods in which to pay past due rent and prohibit landlords from charging late fees or default interest, your local order and ordinance impermissibly impair the terms of a private contract. Ordinance 2642 has no legal basis to apply after the expiration of the Executive Order and is outside the police powers set forth under Government Code section 8630 et seq.. Unless authorized by the Executive Order, section of Ordinance 2642 is an improper use of the local police power not authorized either by the Executive Order or by Government Code sections.

The sections at issue are Section VI, paragraph 2, Section VIII and Section IX. The Ordinance's prohibition, creation of a cause of action for tenants, treble damages and attorney fees as a penalty declares that it will be in effect for 90 days after the expiration of the Executive Order. These sections are both Constitutionally and Statutorily infirm.

The HumCPR asks that the Board specifically direct its counsel to provide the legal authority under the Government Code to act outside of the time frame authorized under the Executive Order with respect to Ordinance 2642. Absent having express authority under the time frame of the Executive Order, your action to extend periods of time for past due rent and allowing for treble damages as well as attorney fees against a landlord are not a lawful application of the County's police powers. Such provisions in your recently passed Ordinance need to be immediately addressed to limit the Ordinance to only within the emergency powers allowed within the effective date of the Executive Order.

Please do not hesitate to call if you have questions or comments.

Sincerely,



Allison G. Jackson

cc: client