



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
Jacky Morales-Ferrand

SUBJECT: Joining City of Los Angeles
Amicus Curiae Brief Supporting
New York City's Rent
Stabilization Law

DATE: April 16, 2021

RECOMMENDATION

Authorize the City Attorney to join an Amicus Curiae brief drafted by the City of Los Angeles on behalf of California local jurisdictions supporting New York City in a Second Circuit Court of Appeal case challenging New York City's rent stabilization law.

OUTCOME

This authorization to the City Attorney would allow San Jose to join an Amicus Curiae brief in COMMUNITY HOUSING IMPROVEMENT PROGRAM, RENT STABILIZATION ASSOCIATION OF N.Y.C., INC., CONSTANCE NUGENT-MILLER, MYCAK ASSOCIATES LLC, VERMYCK LLC, M&G MYCAK LLC, CINDY REALTY LLC, DANIELLE REALTY LLC, FOREST REALTY, LLC, *Plaintiffs-Appellants*, vs. CITY OF NEW YORK, RENT GUIDELINES BOARD, DAVID REISS, CECILIA JOZA, ALEX SCHWARZ, GERMAN TEJEDA, MAY YU, PATTI STONE, J. SCOTT WALSH, LEAH GOODRIDGE, SHEILA GARCIA, RUTHANNE VISNAUSKAS, *Defendants-Appellees*, N.Y. TENANTS AND NEIGHBORS (T&N), COMMUNITY VOICES HEARD (CVH), COALITION FOR THE HOMELESS, *Intervenors*.

BACKGROUND

We were contacted by the Los Angeles City Attorney's Office inquiring whether the City of San Jose ("City") would join an Amicus Curiae brief on behalf of California local rent control jurisdictions supporting New York City in a federal court case challenge to its rent stabilization law. The Los Angeles City Attorney's Office is drafting the brief. We understand that other cities and counties are also considering joining the brief.

ANALYSIS

In 2019, two federal court actions were brought separately against the State of New York and the City of New York under 42 U.S.C. §1983 alleging a violation of the 5th Amendment Takings Clause, 14th Amendment Due Process, and the Contracts Clause based upon amendments to the State and City's rent stabilization laws¹. On September 30, 2020, the United States District Court for the Eastern District of New York granted both the City and State of New York's Motions to Dismiss on all claims, except for the regulatory takings claim brought by two Plaintiffs against the City of New York. The case was dismissed in its entirety against the State of New York. Plaintiffs have appealed the District Court's decision and filed their opening brief with the United States Court of Appeals, 2nd Circuit.

While the Appellate Court's decision is not binding on the City of San Jose, it is nonetheless of importance because the issues raised in the Appellant's Brief may have broad Constitutional implications surrounding rent control generally. Over the decades, both federal and state courts have routinely upheld many rent control measures as a proper exercise of a municipality's police power. However, rent control jurisdictions are not immune to these legal challenges. The Courts are regularly presented with new challenges as rent control laws continue to evolve and impact the relationship between landlord and tenant. In the instant case, the District Court determined that the bulk of the 2019 rent control amendments did not violate the 5th Amendment, Due Process, or Contracts Clause. In the appeal, the Appellate Court will take a fresh look (*de novo* review) at the allegations and legal arguments. The arguments raised on appeal involve core principles affecting a landlord's property rights to possess, use, and dispose of their property. Thus, the Court's reasoning may create broader impacts on a City's ability to regulate these rights under their rent control programs. Also, the Court's opinion could be instructive to our local courts in any future challenges. Therefore, how the Appellate Court decides this matter is important to rent control jurisdictions broadly and in particular to the City, given our local rent control Ordinances and Council policies concerning rent stabilization. Accordingly, in consultation with our Housing department, it is recommended that San Jose join the City of Los Angeles in the effort to guide the Appellate Court on these important issues.

¹ Community Housing Improvement Program, Rent Stabilization Association of N.Y.C., Inc., et al., v. City of New York, Rent Guidelines Board, David Reiss, Cecilia Joza, Alex Schwarz, German Tejada, May Yu, et al., Case No. 19-cv-4087(EK)(RLM); 74 Pinehurst LLC, 141 Wadsworth LLC, 177 Wadsworth LLC, Dino Panagoulas, Dimos Panagoulas, et al. v. State of New York, New York Division of Housing and Community Renewal, Ruthann Visnauskas, et al., Case No. 19cv-6477 (EK)(RLM)

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CONCLUSION

The opportunity to join the Amicus Curiae brief drafted by the City of Los Angeles on behalf of California local jurisdictions supporting New York City in a Second Circuit Court of Appeal case challenging New York City's rent stabilization law would be consistent with San Jose's rent stabilization policies.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the April 20, 2021, City Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and Housing Department.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

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CEQA

Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment.

NORA FRIMANN
City Attorney

JACKY MORALES-FERRAND
Director, Housing Department

By: /s/ Nora Frimann
NORA FRIMANN
City Attorney

By: /s/ Jacky Morales-Ferrand
JACKY MORALES-FERRAND
Director

For questions please contact Nora Frimann, City Attorney, at (408) 535-1900.

cc: Dave Sykes