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memorandum

To

City of Mountain View Rental Housing Committee

From

Karen Tiedemann

RE

Legislative Update and Case Law Update

This memo summarizes legislation adopted by the California legislature during the 2020 legislative year related to landlord-tenant law as well as recent court cases related to rent control. As a result of the COVID-19 pandemic, the California legislative session in 2020 was truncated resulting in fewer bills making it to the Governor's desk. 2020 landlord-tenant legislation was dominated by the passage of AB 3088, the Tenant, Homeowner and Small Landlord Relief and Stabilization Act of 2020. This memo will provide a brief summary of AB 3088 since this legislation has previously been discussed by the RHC. Additional landlord tenant legislation is limited to two bills making minor changes in landlord tenant law, SB1157 related to tenant credit reports, and SB 1190 related to tenant terminations. Additionally, AB 2782, impacting mobile home owners and rent control is also discussed. Finally, this memo discusses a recent 9th Circuit Court of Appeal case related to rent registry issues.

AB 3088:

As previously discussed with the RHC, AB 3088, which was signed into law by the Governor on August 31, 2020 and went into immediate effect, addresses eviction protections for tenants unable to pay rent due to impacts of the COVID-19 pandemic. AB 3088 prohibited all evictions for non-payment of rent until after October 5, 2020. Additionally, AB 3088 permanently prohibits evictions of tenants for nonpayment of rent between March 1, 2020 and August 31, 2020 if the tenant provides a Declaration of COVID-19 related financial distress. AB 3088 further prohibits the eviction of tenants for nonpayment of rent between September 1, 2020 and January 31, 2021 (Covered Time Period) if the tenant pays at least 25% of the rent due no later than January 31, 2021. Additionally, landlords are not able to bring an action in small claims court to recover unpaid rent related to COVID-19 impacts until after March 5, 2021.

Many of the protections of AB 3088 are set to expire at the end of January. Legislation has been introduced to extend the protections of AB 3088 and to provide funding for

tenant and landlord relief. AB 15 would extend the Covered Time Period through December 31, 2021 providing additional protections to tenants impacted by COVID. AB 16 would create a COVID-19 Tenant Small Landlord Affordable Housing Provider Stabilization Fund to be administered by the California Department of Housing and Community Development and funded through the State Budget process. AB 15 is written as an urgency bill requiring a 2/3rds vote of both houses. If passed and signed by the Governor it would become effective immediately.

#### SB1190

SB 1190 expands provisions of existing law that allow a tenant to terminate a tenancy without penalty if the tenant is the victim of domestic abuse, sexual assault, stalking, elder abuse or human trafficking if the tenant provides certain documentation to the landlord. SB 1190 further expands the tenants termination rights to include the right to terminate if a member of the tenant's immediate family is a victim of such a crime or act event if the tenant's immediate family member who is the victim of the crime or act does not live in the same household as the tenant. SB 1190 also expands the documentation that a tenant can provide to support such a termination to any form of documentation that reasonably verifies that the crime or act occurred and protects the tenant from forfeiture of his or her security deposit as a result of the termination.

#### SB 1157

SB 1157 requires landlords of assisted housing developments to offer tenants the option of having their rent payment information reported to a consumer credit reporting agency. Assisted housing developments are generally housing developments that receive public funds to provide affordable housing and include properties receiving density bonuses, concessions or incentives from local government. Landlords subject to SB 1157 are entitled to charge tenants who elect to have their rent payments reported no more than \$10 per month. The option to have rent payments reported must be included in all leases entered into after July 1, 2021 and offered to all tenants with leases that commenced prior to July 1, 2021 no later than October 1, 2021.

#### AB 2782

AB 2782 makes several changes to the laws that regulate the conversion of mobile home parks to other uses, including the conversion of rental parks to to condominiums or cooperative ownership, extending the time period for noticing required for the conversion impact report and expanding contents of the conversion impact report. Most notably, AB 2782 eliminates the exemption from local rent control for long term leases (lease of more than 12 months) for any lease entered into on or after February 13, 2020 and permanently ends the exemption for all long term leases effective January 1, 2025.

Cases:

*Hotop vs. City of San Jose*, No. 18-16995 (2020)

Hotop involved a challenge to the City of San Jose's rent registry requirements on the basis that the requirement to register rental units violated the Fourth, Fifth and Fourteenth Amendments of the United States Constitution as well as the Contracts Clause.

San Jose's rent registry requires that landlords complete an annual registration disclosing certain information regarding their rental units. Landlords are also required to reregister the units whenever the tenant vacates the unit. Completion of the registration is a condition to increasing the rent each year. Failure to complete the registration can subject landlords to penalties and misdemeanor criminal charges.

The plaintiffs' Fourth Amendment challenge claimed that the registration effected an unreasonable search. The Court found that the requirement to provide the registration information did not constitute an unreasonable search because landlords had no reasonable expectation of privacy in the information they were required to provide since landlords were already required to provide this type of information as part of the petition process for example.

Plaintiffs also argued that the registration requirement constituted a taking. The Court found that the fact that landlords cannot raise rents if they fail to comply with the registration requirements did not constitute a regulatory taking stating "when buying a piece of property, one cannot reasonably expect that property to be free of government regulations such as zoning, tax assessments, or ... rent control." (internal citations omitted).

The Court also summarily rejected the plaintiffs' contract clause claims and their equal protection claims.