



2004 DEC 22 PM 4: 58

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January 4, 2005

Honorable City Council
Oakland, California

City Council President Ignacio de la Fuente and Members of the City Council:

Subject: Resolution Authorizing the City Attorney to File (1) a Letter in Support of a Petition for Review in the California Supreme Court, (2) a Request to Depublish (not publish), and/or (3) an Amicus (Friend of the Court) Brief in Support of the City of Santa Monica in *Action Apartment v. Santa Monica* in which the California Court of Appeal Held that State Law Preempts a Provision of Santa Monica's Ordinance that Provides Tenants Remedies for Landlords' False or Misleading Allegations in Eviction Notices

Summary of Action Requested

This matter was discussed in closed session on December 21, 2004 and placed on the open session agenda for the Council to take action.

The City of Santa Monica has asked that the City of Oakland and other cities join in its efforts to overturn the decision of the California Court of Appeals in *Action Apartment v. Santa Monica*, 123 Cal.App.4th 47 (2004). In *Action Apartment* the appellate court ruled that state law preempted a provision of Santa Monica's Tenant Harassment Ordinance that provided remedies for tenants whose landlords evicted or attempted to evict them based on false or misleading allegations in an eviction notice. Santa Monica will request that the appellate court depublish (not publish) the *Action Apartment* decision so that the decision will bind only the parties to the litigation and attorneys will be precluded from citing or relying on *Action* as precedent in other cases. Santa Monica also will seek review in the California Supreme Court.

Background

President de la Fuente and Members of the City Council
Subject: Report and Resolution Authorizing the City Attorney to Request Depublication
or File an Amicus Brief in *Action Apartment v. Santa Monica*
December 21, 2004
Page Two

In *Action Apartment*, a landlord organization challenged provisions of Santa Monica's Tenant Harassment Ordinance that provided remedies for tenants when their landlord evicted or attempted to evict them based on false or misleading allegations in an eviction notice. The Santa Monica City Council enacted the ordinance to address its concern that landlords were harassing tenants into vacating so that the landlords could increase rents to market level.¹

The Court of Appeals ruled that eviction notices are part of eviction litigation, and therefore are protected by the litigation privilege. Accordingly, the Court of Appeals decided that Civil Code § 47(b) preempted the ordinance's remedies that permitted a tenant to recover damages from a landlord for issuing a false or misleading eviction notice.

If the *Action Apartment* decision stands, preemption by Civil Code § 47(b) could impair the City's from enact meaningful remedies for some of its ordinances.

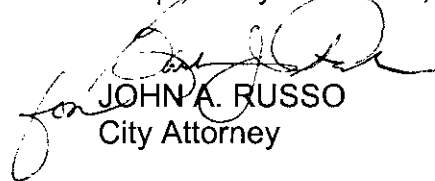
Fiscal Impact

The City will not incur any outside counsel expenses because the letter or brief will be prepared and filed by the staff in the City Attorney's Office.

Recommendation

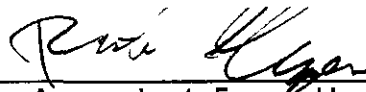
We recommend that the City Council authorize the City Attorney to support Santa Monica's efforts to depublish the decision in *Action Apartment* and seek reversal of the decision in the California Supreme Court.

Respectfully submitted,


JOHN A. RUSSO
City Attorney

Attorney Assigned:
Richard F. Illgen

¹ State law allows landlords to charge market rate rents if a tenant voluntarily vacates a rental property or is evicted for cause. (Costa-Hawkins Rental Housing Act, (Cal. Civil Code § 1954.50, *et seq.*)


Approved as to Form and Legality

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Oakland City Council

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RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

Resolution Authorizing the City Attorney to File (1) a Letter in Support of a Petition for Review in the California Supreme Court, (2) a Request to Depublish (not publish), and/or (3) an Amicus (Friend of the Court) Brief in Support of the City of Santa Monica in *Action Apartment v. Santa Monica* in which the California Court of Appeal Held that State Law Preempts a Provision of Santa Monica's Ordinance that Provides Tenants Remedies for Landlords' False or Misleading Allegations in Eviction Notices

WHEREAS, in *Action Apartment v. Santa Monica* 123 Cal.App.4th 47 (2004) the California Court of Appeal ruled that certain tenant remedies in the City of San Monica's Tenant Harassment Ordinance were preempted by California Civil Code 47(b) (the litigation privilege);

WHEREAS, *Action Apartment* may have an adverse impact on the authority of cities to legislate without state law preemption;

WHEREAS, *Action Apartment* also may have an adverse impact on cities' ability to create enforcement mechanisms for their laws;

WHEREAS, the City of Santa Monica requests other cities assist with its efforts to depublish or appeal *Action Apartment* to the State Supreme Court; therefore be it

RESOLVED: that the City Attorney, on behalf of the City of Oakland, is authorized to do the following (1) request the Court of Appeal or Supreme Court decision depublish the *Action Apartment* decision so that it cannot be cited as legal authority or precedent, (2) file a letter supporting Santa Monica's petition for review before the California Supreme Court and/or (3) file an amicus (friend of the court) brief supporting Santa Monica's appeal in *Action Apartment*.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND PRESIDENT DE LA FUENTE

NOTES-

ABSENT-

ABSTENTION-

Attest: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California