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[Govt. Code § 6103]*

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CITY OF SANTA MONICA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

THE APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC., et al.,

Plaintiffs,

v.

CITY OF SANTA MONICA, A Municipal Corporation,

Defendant.

Case No. SC124308

Judge: Lisa Hart Cole

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE SUMMARY ADJUDICATION; STATEMENT OF UNDISPUTED ISSUES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT; AND SUPPORTING DECLARATIONS

Date: October 7, 2016

Time: 8:30 a.m.

Dept.: O

Trial Date: None Set

Date Action Filed: June 10, 2015

RESERVATION ID: 150928073022

1 PLEASE TAKE NOTICE that on October 7, 2016, at 8:30 a.m., or as soon
2 thereafter as the matter may be heard in Department O of the above-entitled court,
3 located at 1725 Main Street, Santa Monica, California, before the Honorable Lisa Hart
4 Cole, Defendant will move the court for the following Order:

5 1. For summary judgment (or in the alternative summary adjudication) on the
6 complaint in favor of defendant and against plaintiff. Said motion will be made on the
7 grounds that California housing discrimination law does not preempt the City's affordable
8 housing measure and that no basis exists nor evidence supports plaintiffs' constitutional
9 law claims.

10
11 Said motion will be based upon this Notice of Motion, Statement of Undisputed
12 Facts, Memorandum of Points and Authorities, Declarations in support thereof, the
13 pleadings, records, and files herein, and upon such further oral evidence as may be
14 presented at the hearing of said motion.

15
16
17 Dated: July 21, 2016

MARSHA JONES MOUTRIE
City Attorney

18
19 by _____
20 GARY RHOADES
21 Deputy City Attorney

22 Attorneys for Defendant City of Santa Monica
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **INTRODUCTION**

4
5 By 2014, the City of Santa Monica was facing an affordable housing crisis.
6 (Undisputed Material Fact "UMF" No. 1.) As the affordable housing supply dwindled,
7 market rate rents had skyrocketed, vacancy rates were extremely low, and low-income
8 residents were struggling to find places to live in the City. (UMF No. 2.) One aspect of the
9 crisis was a shortage of landlords willing to accept tenants using government assistance such
10 as Section 8 vouchers. (UMF No. 3.)

11 To address the unique and local crisis, the City Council passed several measures in
12 2014 and 2015 to make it easier for low-income residents to find and keep housing in the
13 City. For one of those measures, on May 12, 2015, the City passed Ordinance Number 2485
14 ("Source of Income provision" or "Ordinance"). (UMF No. 4.) The Ordinance prohibited
15 landlords from refusing to rent to a potential tenant simply because the tenant intends to use
16 government sponsored rental assistance such as the aforementioned vouchers.

17 As discussed below, the Ordinance's recitals and legislative history make clear that its
18 purpose was to address the City's particular affordable housing crisis. In fact, the Ordinance's
19 very first recital laid out that purpose: "WHEREAS, the City of Santa Monica is committed
20 to provide and preserve affordable housing for all segments of the community." (UMF No.
21 5.) Affordable housing and the crisis are mentioned seven times in the recitals and brief staff
22 report. (UMF No. 6.)

23 Despite the affordable housing objectives behind the City's Source of Income
24 provision, the Plaintiffs' Complaint claims that a California law prohibiting housing
25 discrimination, the Fair Employment and Housing Act (FEHA), preempts Santa Monica's
26 affordable housing measure. Applying well-settled case law regarding preemption, however,
27 shows that no preemption exists because Santa Monica's affordable housing ordinance does
28 not fall within the field of exclusivity occupied by FEHA's housing discrimination law.

1 Beyond their preemption claim, Plaintiffs also attempt to throw several constitutional
2 claims against the wall. However, no particular allegations of injuries or potential injury
3 under any viable constitutional claim are provided in the Complaint and no evidence of such
4 exists. Even if there were such evidence, it would involve such negligible burdens that a
5 government's public interest in an affordable housing measure during an affordable housing
6 crisis would greatly outweigh it.

7 As such, Defendant City of Santa Monica is entitled to summary judgment. In the
8 event that summary judgment for any reason is denied, Defendants requests summary
9 adjudication that there is no merit to any or all of the plaintiffs' claims.

10
11 **STATEMENT OF FACTS**

12
13 **A. The Housing Choice Voucher Program (Section 8) in Santa Monica**

14 The Housing Choice Voucher program (also known as "Section 8") is a partnership
15 between the federal Department of Housing and Urban Development ("HUD") and Santa
16 Monica Public Housing Authorities ("PHA"), organized under the City's Housing Division--
17 aimed at assisting low income families find affordable housing. 24 C.F.R. § 982.1; HUD
18 pays rental subsidies to Santa Monica's PHA so eligible families can afford decent, safe, and
19 sanitary housing. *Id.* The Santa Monica PHA grants a voucher to a qualifying individual who
20 selects a unit and then if the PHA approves a family's unit and tenancy, the PHA contracts
21 with the owner to make rent subsidy payments on behalf of the family. *Id.* The two purposes
22 behind the Voucher Program are aiding low-income families in obtaining a decent place to
23 live and to promote economically mixed housing. *See* 42 U.S.C. § 1437f(a).

24 While Congress did not prohibit landlords from refusing to lease to persons with
25 vouchers, notably it also did not prohibit state and local governmental entities from adopting
26 laws or ordinances prohibiting such discrimination. A large number of local and state
27
28

1 governments have enacted such ordinances or laws including several in California.¹

2 Nationally, ten states and over thirty-five municipalities have adopted "source of
3 income" laws that prohibit landlords from refusing to rent to voucher holders. *See* U.S. Dep't
4 of Housing and Urban Development, Office of Policy Development and Research, *The*
5 *Impact of Source of Income Laws on Voucher Utilization and Locational Outcomes* (Feb.
6 2011) at vii-viii & Table A1 (*available at*
7 [https://www.huduser.gov/publications/pdf/Freeman_ImpactLaws_AssistedHousingRCR06.p](https://www.huduser.gov/publications/pdf/Freeman_ImpactLaws_AssistedHousingRCR06.pdf)
8 [d±](https://www.huduser.gov/publications/pdf/Freeman_ImpactLaws_AssistedHousingRCR06.pdf)). (Stating that according to a recent HUD study, these local laws are having their intended
9 effect: in areas with such laws, voucher utilization rates increase by 4 to 11 percentage
10 points.)

11 12 13 **B. Santa Monica's Source of Income Provision**

14 On May 12, 2015, the City passed the Ordinance Number 2485 ("Source of Income
15 provision" or "Ordinance"). (UMF No. 1.) The Ordinance prohibited landlords from refusing
16 to rent to a potential tenant based on a tenant's source of income with "source of income"
17 including government sponsored rental assistance such as Section 8 Vouchers. (UMF No. 2)
18 At the time of the Ordinance's passage, the City was experiencing an extreme affordable
19

20 ¹ In California, at least three cities other than Santa Monica have enacted ordinances similar
21 to San Francisco's that preclude landlords from refusing to rent to tenants based on their use of
22 Section 8 vouchers for rental payments. East Palo Alto Housing Code, Chapter 14.16 (unlawful to
23 "interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real propelty" on basis
24 of source of income, which "means all lawful sources of income or rental assistance program,
25 homeless assistance program, security deposit assistance program or housing subsidy program.");
26 Corte Madera Business Licenses and Regulations § 5.30.020 ("unlawful for the owner or manager of
27 rental housing to discriminate against an existing tenant on the basis of that tenant's use of a Section
28 8 rent subsidy"); San Francisco Police Code § 3304(a)(5) (unlawful to refuse to rent to a tenant
based on source of income, which includes "all lawful source of income or rental assistance from
any federal, State, local or non-profit-administered benefit or subsidy program . . . [and] a rental
assistance program . . . or housing subsidy program."

1 housing crisis. (UMF No. .) From 1998 to 2014, the affordable housing supply in Santa
2 Monica declined from 60 percent to 32 percent. Collins Decl. ¶ __. [Discuss more of the
3 crisis here using Collins letter, declaration, Tighe Decl.]

4 The City's purpose in passing the Ordinance was to address the affordable housing
5 crisis. (UMF No. __.) Not only do the Ordinance's recitals begin with the explanation that
6 "the City of Santa Monica is committed to provide and preserve affordable housing for all
7 segments of the community . . ." (UMF No. __.) but affordable housing and the crisis are
8 mentioned seven times in the recitals and brief staff report. (UMF No. .)

9 Also, in 2014-2016, the Santa Monica City Council passed three other measures to
10 respond to the affordable housing crisis. (UMF No. __) This context shows the extent of the
11 crisis and the extent to which the City was laboring to address it in May of 2015 when it
12 passed the Ordinance in question here.

13 The City's particular housing crisis included a shortage of landlords accepting
14 vouchers. (UMF No. .) Santa Monica's Source of Income provision was intended to address
15 the shortage of landlords in Santa Monica participating in the Voucher Program. (UMF NO.
16 __.) Accomplishing this would alleviate the difficulties voucher holders have in finding
17 landlords in Santa Monica willing to lease to persons with vouchers and help the City meet
18 the larger goal of addressing the affordable housing crisis. (UMF No. __.) The Ordinance
19 ensures that prospective tenants with Section 8 vouchers have access to affordable housing
20 throughout the City of Santa Monica so that they can live in better neighborhoods.

21
22 C. The Ordinance and its interaction with the Section 8 Housing Choice Voucher Program.

23
24 Santa Monica's Ordinance prohibits a landlord from refusing to lease to a prospective
25 tenant on the sole basis that the person has a Section 8 housing voucher. However, neither
26 the Ordinance nor the Section 8 Housing Choice Voucher Program require a landlord to
27 lease to a person with a voucher who does not meet the landlord's screening criteria. *See* 24
28 C.F.R. § 982.307(a)(2)(2014). The Ordinance and Voucher Program, in fact, do not require

1 any of the following:

- 2 • They do not require a landlord to accept a reduced rent. *See generally id.* at
3 § 982.305(a)(4), (5); § 982.503; § 982.505.
- 4 • They do not require a landlord to accept a lesser security deposit. *See id.*
5 at § 982.313(a).
- 6 • They do not require a landlord to use a different lease (although a Section 8
7 tenancy addendum is incorporated into the landlord's standard lease). *See id.*
8 at § 982.308(b) (2).
- 9 • They do not limit the landlord's right to terminate the lease at the end of the
10 initial lease term. *See id.* at § 982.310(a), (d).
- 11 • They do not require that a landlord make repairs to its dwelling units if the
12 unit does not meet basic housing quality standards.

13 Participation in the Section 8 Voucher Program requires the following: If an
14 individual with a voucher applies and qualifies under the landlord's normal screening
15 criteria, the landlord and the putative tenant sign a Request for Tenancy Approval form and
16 submit it to the local public housing authority. *See* 24 C.F.R. § 982.302(b), (c), (d) (2014).
17 The housing authority must inspect the unit to make sure that it meets basic housing quality
18 standards. *See id.* at § 982.305(b)(2)(i); § 982.401 (setting forth the housing quality
19 standards).

20 If the unit passes inspection, the tenant and the landlord will sign the landlord's
21 standard lease (with a basic tenancy addendum incorporated). *See* 24 C.F.R. § 982.308(b)
22 (1), (2). The landlord will sign a housing assistance payments contract -- which includes the
23 tenancy addendum -- with the public housing authority. *Id.* at § 982.305(c).

24 The relationship between the landlord and the tenant is governed entirely by the lease.
25 *See id.* at § 982.308 (Lease and tenancy). The landlord may manage the property just as any
26 other property with respect to any issues that arise during the tenancy. Although the Voucher
27 Program does require some adjustments of landlords, the requirements are no more of a
28 burden than the requirements imposed for years on landlords by California law, Santa

1 Monica law, Santa Monica rent control law, zoning requirements, and city code enforcement
2 requirements. [Citations and side by side comparisons]

3
4
5 **ARGUMENT**

6
7 **I.**

8 **STANDARD FOR GRANTING SUMMARY JUDGMENT**

9
10 Pursuant to Code of Civil Procedure § 437c(c), “the motion for summary judgment
11 shall be granted if all of the papers submitted show that there is no triable issue as to any
12 material fact and that the moving party is entitled to judgment as a matter of law.”

13 When a motion for summary judgment is supported by declarations sufficient to
14 sustain the motion, the burden shifts to the party opposing the motion to show that triable
15 issues of material fact actually exist. *Chern v. Bank of America* (1976) 15 Cal.3d 866, 873.
16 The plaintiff may not rely on mere allegations in its pleadings to show a triable issue of
17 material fact exists; he or she must set forth specific facts. *Union Bank v. Superior Court*
18 (1995) 31 Cal.App.4th 573, 584.

19
20 **II.**

21 **THE CITY IS ENTITLED TO SUMMARY JUDGMENT BECAUSE NEITHER**
22 **STATE OR FEDERAL LAW PROHIBIT CITIES FROM ADDRESSING THE**
23 **AFFORDABLE HOUSING CRISIS WITH REASONABLE MEASURES**

24
25 A. **The Source of Income Provision prohibiting landlords from treating**
26 **Section 8 voucher holders differently is an affordable housing measure**
27 **not preempted by California's FEHA.**

1 Plaintiffs' claim that Santa Monica's source of income provision is preempted by
2 California's Fair Employment and Housing Act which they say occupies the field of
3 employment and housing discrimination. Complaint ¶ 12. Preemption might have applied if
4 Santa Monica's provision tackled discrimination only. However, the Complaint omits the fact
5 that with the Ordinance, Santa Monica was attempting to produce, preserve, and protect
6 affordable housing in its jurisdiction.

7 As the party claiming preemption, Plaintiffs have the burden of demonstrating
8 preemption. *Browne v. City of Tehama*, 213 Cal. App. 4th 704, 719 (2013). Plaintiffs' burden
9 here—where they claim that a state law preempts a local ordinance—is heavy as it is "well
10 established" that "under the California Constitution a municipality has broad authority, under
11 its general police power, to regulate the development and use of real property within its
12 jurisdiction to promote the public welfare." *California Bldg. Ind. Ass'n v. City of San Jose*,
13 61 Cal. 4th 435, 455 (2015)(citing Cal. Const., art. XL, Section 7). Santa Monica's source of
14 income provision is an example of a regulation enacted pursuant to the City's police power.
15 *See id.* at 457 (concluding that San Jose's inclusionary housing ordinance, which required
16 residential developments of 20 or more units to set aside 15% of those units as affordable,
17 was "an example of a municipality's permissible regulation of the use of land under its broad
18 police power"). Preemption of such local regulations by state law "is not lightly presumed."
19 *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.* ("*Inland Empire*"),
20 56 Cal. 4th 729, 738 (2013). Moreover, where "there is a significant local interest"—as we
21 certainly have here with an affordable housing crisis in Santa Monica—"the presumption
22 favors the validity of the local ordinance against an attack of state preemption." *Garcia v.*
23 *Four Points Sheraton LAX*, 188 Cal. App. 4th 364, 373 (2010); *see also Browne*, 213 Cal.
24 App. 4th at 719 ("There is a particular reluctance to find preemption of a local regulation
25 covering an area of significant local interest that differs from one locality to another, such as
26 land use regulation.").

27 As discussed below, plaintiffs fail to meet their heavy burden of demonstrating that
28 Santa Monica's law prohibiting landlords from refusing to rent affordable apartments in the

1 City to Section 8 voucher holders is preempted.

2
3 **Santa Monica's Local Law Does Not Fall Within FEHA's Field Of Exclusivity.**

4 Plaintiffs' preemption claim requires them to prove that the source of income
5 provision of section 3304 is preempted because it attempts to enter an area fully occupied by
6 FEHA. The Complaint cites FEHA's preemption provision expressing intent to "occupy the
7 field of regulation of discrimination in employment and housing encompassed by the
8 provisions of this part" (Gov't Code § 12993(c)) to imply that Santa Monica's law is
9 preempted. *See* Complaint ¶ 12. However, FEHA does not occupy the field of affordable
10 housing and that is why Plaintiffs' claim fails.

11 The issue of whether a state law occupies the field of a local law arose in *California*
12 *Grocers Ass'n v. City of Los Angeles* [52 Cal.4th 177, 188 (2011)]. In *California Grocers*, the
13 California Supreme Court examined the question of whether California food safety laws
14 preempt a local ordinance that requires a grocery store, after a change of ownership, to retain
15 the employees of the former owner for a 90-day transition period. The Second District had
16 found preemption but the Court reversed. The Court first noted that "Express field
17 preemption turns on a comparative statutory analysis." 52 Cal.4th at 188. Next, a court
18 conducting this analysis must determine "[w]hat field of exclusivity ...the state preemption
19 clause define[s]," and then ask whether the local law falls within it. *Id.* at 188-89.

20 Applying the FEHA field to the first part of this analysis, FEHA's field of exclusivity
21 is the protection of civil rights through regulation of the discriminatory housing and
22 employment practices covered by FEHA. *See* Gov't Code § 12993(c); see also *Citizens for*
23 *Uniform Laws v. Cnty. Of Contra Costa*, 233 Cal. App. 3d 1468, 1470 (1991) (defining
24 FEHA's field of exclusivity as "the field of protecting civil rights by prohibiting some of the
25 same discriminatory practices [covered by a county ordinance]"); *id.* at 1471 (discussing the
26 "field of civil rights protection occupied by FEHA").

27 Santa Monica's source of income provision in section 3304 does not fall within this
28 field for two independent reasons. First, it is not primarily a civil rights regulation. It was

1 primarily proposed, debated and adopted as a local housing regulation, the purpose of which
2 was to make the Section 8 program more responsive to Santa Monica's housing conditions
3 and to improve the ability of Section 8 recipients to secure and maintain housing. Because it
4 serves a different purpose, it occupies a different field. Second, Santa Monica's source of
5 income provision addresses a practice that is not covered by FEHA.

6 While both FEHA and Santa Monica's source of income ordinance employ
7 prohibitions against certain forms of discrimination to advance their respective (and distinct)
8 policy goals, "[t]he mere fact that the two sets of legislation employ similar regulatory tools
9 (i.e., proscriptions against certain types of discrimination) does not mean they occupy the
10 same field." *Citizens for Uniform Laws*, 233 Cal. App. 3d at 1475. Rather, "[t]he pivotal
11 issue is whether the ordinance occupies the same 'field' or 'subject matter' as that regulated
12 by FEHA. If not, there is no preemption" (*Id.* at 1474 (citation omitted).)

13 Because the Santa Monica ordinance does not occupy FEHA's broad field of civil
14 rights, it is immaterial that both laws make use of antidiscrimination measures to accomplish
15 their distinct objectives.

16 When a local law serves a different purpose than a state statute, that different purpose
17 "removes it from the field occupied by the state legislation." *Citizens for Uniform Laws*, 233
18 Cal. App. 3d at 1475; *see also Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 149 (1976)
19 (holding that a local ordinance is not preempted by a state statute when the two laws serve
20 distinct purposes). FEHA is a broad civil rights measure intended to protect Californians
21 from certain types of arbitrary discrimination in various housing and employment contexts.
22 *See Gov't Code* § 12921(b); *Citizens for Uniform Laws*, 233 Cal. App. 3d at 1474 (holding
23 that the purpose of FEHA "is to protect civil rights") (citing *Gov't Code* §§ 12920, 12921).
24 California courts have repeatedly held that local laws enacted for other purposes are not
25 preempted by FEHA.

26 *In Rental Housing Association v. City of Oakland*, 171 Cal. App. 4th 741 (2009), for
27 example, the First District Court of Appeal considered a preemption challenge to an Oakland
28 law that made it "unlawful for a landlord to refuse to rent or lease or otherwise deny to or

1 withhold from any person any rental unit because the age of a prospective tenant would
2 result in the tenant acquiring rights under" other provisions of the ordinance. The court found
3 that the purpose of the Oakland ordinance was "to defend and nurture the stability of
4 housing" and to "address housing problems in the City of Oakland so as ... to advance the
5 housing policies of the City." Id. at 749-50. Accordingly, the court concluded that even
6 though the ordinance and FEHA both regulated housing discrimination, FEHA did not
7 preempt the Oakland law, because the age discrimination provision did not "have the same
8 purpose as FEHA and [did not] occupy the same field." Id. at 761 (citation omitted).

9 The court in *Citizens for Uniform Laws*, 233 Cal. App. 3d 1468, reached a similar
10 conclusion. In that case, the challenged law prohibited housing discrimination against
11 individuals with HIV. The court found that while "[t]he purpose of FEHA is to protect civil
12 rights," the local ordinance "was proposed, debated and adopted as public health legislation,
13 the purpose of which is to combat the AIDS epidemic by promoting HIV testing." Id. at
14 1474-75. Accordingly, the court held that the local ordinance was not preempted by FEHA,
15 despite the fact that both laws employed antidiscrimination protections in housing to realize
16 their respective purposes. Id. at 1475.

17 Like the ordinances at issue in *Rental Housing Association* and *Citizens for Uniform*
18 *Laws*, Santa Monica's source of income provision has a different purpose than FEHA. It was
19 not enacted primarily² to protect civil rights but to protect and preserve the City's supply of
20

21 ² Even if this Court finds that Santa Monica's Source of Income Provision is both an
22 affordable housing measure and a housing discrimination measure (in other words, with
23 mixed motives), preemption still does not apply. In *Cal. Tow Truck Ass'n v. City & County of*
24 *San Francisco* (9th Cir. 2012) 693 F. 3d 847, a local ordinance was challenged under federal
25 preemption regarding travel while the local concern was safety. The court looked at the issue
26 of mixed motives and determined that "[t]he presence of such mixed motives . . . does not
27 preclude the application of the safety exception, provided that the State's safety motives are
28 not pre-textual." 660 F.3d at 405. (*Cal. Tow Truck Ass'n v. City & County of San Francisco*

1 affordable housing.

2
3 In sum, Santa Monica's Source of Income provision serves a different purpose than
4 FEHA and therefore is not preempted.

5
6 **B. Santa Monica's Source of Income Provision Passes All Constitutional**
7 **Tests.**

8
9 **Introduction: The Complaint Lacks Supporting Allegations For**
10 **Its Constitutional Claims and Does Not Show An Actual Controversy**

11 In the most conclusory language, the Complaint claims four constitutional issues:
12 Use of Police Power, Impairment of Contracts, the 14th Amendment (a claimed right to enter
13 into new contracts), and Fair Return (and apparent reference to the Takings Clause). No
14 allegations are pled to support these claims and no actual controversy is claimed as to any of
15 them. With regard to any federal constitutional claims, the City notes that the United States
16 Department of Housing and Urban Development (“HUD”), the federal agency that
17 administers both the Fair Housing Act and the Voucher Program, has explicitly stated by
18 regulation that nothing in the regulations for the Voucher Program is intended to preempt
19 any state or local laws that prohibit discrimination against voucher holders because of status
20 as a voucher holder. [cite] Many states have taken HUD up on that invitation. *See supra*
21 Footnote __ p. __. HUD’s regulation is entitled to considerable deference and completely
22 undercuts the Complaint's claims that the Ordinance is preempted by or in violation
23 of the Constitution or any federal law.

24
25
26
27 _____
28 (9th Cir. 2012) 693 F.3d 847, 859-860.)

1 Police Power

2
3 Santa Monica's source of income provision is an example of a regulation enacted
4 pursuant to the City's police power. *See California Bldg. Ind. Ass'n v. City of San Jose*, 61
5 Cal. 4th 435, 457 (2015) (concluding that San Jose's inclusionary housing ordinance, which
6 required residential developments of 20 or more units to set aside 15% of those units as
7 affordable, was "an example of a municipality's permissible regulation of the use of land
8 under its broad police power").

9 The California Constitution itself confers upon all cities and counties the power to
10 'make and enforce within (their) limits all local, police, sanitary, and other ordinances and
11 regulations not in conflict with general laws.' (Cal.Const., art. XI, s 7.) In California, within
12 the territory it governs, a city's police power under article XI, section 7 "is as broad as the
13 police power exercisable by the Legislature itself." *Birkenfeld v. City of Berkeley* (1976) 17
14 Cal.3d 129, 140, 130 Cal.Rptr. 465, 550 P.2d 1001.) Indeed, "a municipality's judgment in
15 adopting legislation under its police power is entitled to great weight," and rational basis
16 review means that courts will not require mathematical precision in order to uphold the
17 legislation. *Music Plus Four, Inc. v. Barnet* (1980) 114 Cal.App.3d 113, 131.

18 Additionally, Municipal ordinances are presumed to be constitutional if any rational
19 consideration supports their enactment *Zahn v. Board of Public Works* 195 Cal. 497, affd.
20 274 U.S. 325, 47 S.Ct. 594; *Miller v. Board of Public Works*, 195 Cal. 477, 490, 234 P. 381,
21 38 A.L.R. 1479). If any rational motive exists for the exercise of the police power, the
22 motive for its exercise becomes immaterial and not a proper subject of inquiry and the court
23 will not substitute its judgment for that of the legislative body (*Simpson v. City of Los*
24 *Angeles*, 4 Cal.2d 60, 65, 47 P.2d 474; *Stahm v. Klein*, 179 Cal.App.2d 512, 518—520, 4
25 Cal.Rptr. 137). Whether the regulation is arbitrary or unreasonable must be determined under
26 the established rules governing judicial review of exercises of the police power. That power
27 is elastic, and capable of expansion to meet existing conditions of modern life. *National*
28 *Advertising Co. v. County of Monterey*, 211 Cal.App.2d 375, 377—378.

1 If the necessity or propriety of a regulation is a question upon which reasonable minds
2 might differ (*Miller v. Board of Public Works, supra*) or is fairly debatable (*Lockard v. City*
3 *of Los Angeles*, 33 Cal.2d 453, 462, 202 P. 38), the legislative determination will not be
4 disturbed. The courts may differ with the Legislature as to the wisdom and propriety of a
5 particular enactment as a means of accomplishing a particular end, but as long as there are
6 considerations of public health, safety, morals, or general welfare which the legislative body
7 may have had in mind and which would justify the regulation, it must be assumed by the
8 court that the legislative body had those considerations in mind and that those considerations
9 did justify the regulation (*Miller v. Board of Public Works, supra*, 195 Cal. p. 490, 234 P.
10 381). In sum, the “judiciary may not sit as a superlegislature to judge the wisdom or
11 desirability of legislative policy determinations made in areas that neither affect fundamental
12 rights nor proceed along suspect lines.” *Stinnett v. Tam* (2011) 198 Cal.App.4th 1412, 1426 .

13 Here, the rational motive during an affordable housing crisis was to address the
14 shortage of landlords with vacant units accepting Section 8 vouchers. The Ordinance has a
15 reasonable and necessary purpose in that the City determined when it passed the Ordinance
16 during an affordable housing crisis to address "a shortage of landlords participating in the
17 Section 8 program" and "to fulfill its commitment to fair and affordable housing." Therefore,
18 the City's Source of Income provision is a valid exercise of the City's police power.

19 20 Impairment of Contracts And Freedom To Enter Into New Contracts

21 Regarding the Impairment of Contracts, the federal Contract Clause's prohibition of
22 any law impairing the obligation of contracts must be accommodated to the government's
23 inherent police power to safeguard the vital interests of its people. Regarding Santa
24 Monica's affordable housing measure in question here, the threshold inquiry is “whether the
25 state [or local] law has, in fact, operated as a substantial impairment of a contractual
26 relationship.” *Energy Reserves Group v. Kansas Power & Light* (1983) 459 U.S. 400, 411-
27 412, quoting *Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 244. Thus, the
28 Constitutional prohibition on impairment of contracts applies only where the parties have

1 entered into a contract and a law is subsequently enacted that substantially impairs the
2 existing contract. There is no allegation or evidence of an existing contract adversely
3 affected by the City's Source of Income ordinance.

4 Since the Complaint fails to assert how any contract is impaired, it is impossible for
5 the Court to determine whether there is an impairment. *See Briarwood Properties, LTD v.*
6 *City of Los Angeles* (1985) 171 Cal. App. 3d 1020, 1032 (Rejecting Briarwood's impairment
7 of contract theory against City's relocation ordinance when Briarwood failed to set forth the
8 terms of the contract).

9 Even if there were evidence of a contract, the Voucher Program expressly directs
10 tenants to honor their rent payment obligation. This removes the possibility of an
11 impairment. The program also assists the rent payment obligation by providing a regular
12 subsidy and thus negating any notion of an impairment.

13 Also, the federal Contract Clause is "accommodated to the inherent police power of
14 the state" and permits laws altering the rights and obligations of contracting parties to the
15 extent "reasonable and necessary for the public purpose for which they were
16 enacted." *Interstate Marina Dev. Co. v. County of Los Angeles* (1984) 155 Cal. App 3d 435,
17 455. Here, the Ordinance has the reasonable and necessary purpose of affordable housing.

18 Even if this court finds some impairment, the United States Supreme Court has found
19 that the City may do with a legitimate public purpose. *Keystone Bituminous Coal Ass'n v.*
20 *DeBenedictis*, 480 U.S. 470, 504 (1986) (explaining that an impairment of contract
21 obligations may be justified by a legitimate public purpose so long as the court is satisfied
22 that the "adjustment of the rights" of contracting parties is based upon "reasonable conditions
23 and is of a character appropriate to the public purpose justifying the legislation's adoption.")

24 25 Fair Return

26
27 Another scant claim from the Complaint is a passing reference to "fair return" which
28 is a Takings Clause term of art. For the Plaintiff's "fair return" challenge, each Plaintiff must

1 prove that the City's regulation denied—as an investor—his ability to earn a fair return.
2 *Santa Monica Beach v. Superior Court* (1999) 19 Cal. 4th 952, 967. However, the
3 Complaint fails to provide any such allegation.
4

5 **CONCLUSION**
6

7 For the foregoing reasons, Defendant City of Santa Monica respectfully requests that
8 its Motion for Summary Judgment be granted and that entry of judgment in its favor be
9 ordered, and that it be awarded costs of suit, and such other and further relief as the Court
10 deems proper.

11 Dated: July 21, 2016

Respectfully submitted,

12
13 MARSHA JONES MOUTRIE,
14 City Attorney

15 By: _____
16 GARY W. RHOADES

17 Attorneys for Defendant
18 CITY OF SANTA MONICA
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