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CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

December 2, 2022

***Via E-Mail Only***

Mayor and Commissioners  
City of Lake Worth Beach  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

RE: RFP No. 23-200 – Housing Emergency Study and Rent Control Ordinance Analysis

Dear Mayor and Commissioners:

Based on prior discussions of the City Commission, the draft Request for Proposals No. 23-200 “Housing Emergency Study and Rent Control Ordinance Analysis” (the “RFP”) has been revised and is attached for your review. The revisions contain language to ensure that the RFP is drafted to include all potential respondents, including but not limited to, consulting firms, universities, other academic entities, etc. and include Vice Mayor McVoy’s rewrite of the Scope of Services found in Exhibit A. The Scope of Services touched on the need for an analysis of the rent control ordinance statutory criteria but did not outline the specific criteria and evidence required. This information has been added to the Scope of Services.

Regarding the RFP’s rent control ordinance analysis, as previously discussed, Section 166.043, Florida Statutes, requires that a municipality establish evidence to support the three statutory criteria needed to adopt a rent control ordinance: (1) the existence of a housing emergency; (2) that such emergency is “so grave as to constitute a serious menace to the general public”; and (3) that a rent control ordinance is “necessary and proper to eliminate” the emergency. As you are aware, Orange County’s rent control ordinance was challenged in a lawsuit filed by the Florida Association of Realtors and the Florida Apartment Association, Inc. Recently, the Fifth District Court of Appeals issued an opinion (attached) in that litigation which finds that the ordinance failed to meet the statutory criteria.

As previously acknowledged, the statutory criteria impose a high threshold for municipalities to legally justify a rent control ordinance, and the Fifth DCA’s opinion confirms and, arguably, heightens that characterization. Essentially, the Fifth DCA’s opinion found that a “housing emergency” under the rent control ordinance should be understood as “sudden or unexpected, creating a temporary condition necessitating immediate or quick action.” The Orange County ordinance included legislative findings addressing such things as “population increases over the past decade, longstanding housing shortages, and a study finding an affordable housing crisis in May 2018...” The court found that these findings “primarily refer to historical structural issues rather than a ‘sudden’ or ‘unexpected’ occurrence.” The court acknowledged that there were also other legislative findings that addressed “more recent circumstances,

like the COVID-19 pandemic worsening the housing crisis, resulting in spiraling inflation, housing prices, and rental rates.” However, the court pointed out that the Florida Supreme Court has held that an “increase in the cost of living (an inflationary spiral) alone is not a justification for rent control legislation.” The court also mentioned the testimony from the county’s consultant “that numerous other market conditions and social indicators” were at work, including “a low unemployment rate, high rental occupancy, a high home sale rate, and the regular retirement of stably paid workers.” The court concluded that based on this information, Orange County “cannot prove the ‘existence in fact’ of a ‘housing emergency’ sufficient to justify the ordinance...”

The court went on to analyze whether the ordinance adequately established that the housing situation “is so grave as to constitute a serious menace to the general public.” The court pointed out that testimony indicated that “there was no evidence that rents had become so high that ‘essential workers couldn’t afford to live and work in this community’...”; that there was “no evidence that the homeless population had become so great that it ‘overwhelmed public services’ and ‘the general public didn’t have access’...”; that there was “no evidence that the ‘rent issue’ poses any danger to ‘people who aren’t renters themselves.’” The court also mentioned that the legislative findings did not include factors listed in *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242 (1922) (e.g., great shortage in housing, shortage caused widespread distress, extortion, flagrant rent profiteering, legal process being abused, high eviction rate, unreasonable increases in rent led to 2 or more families living together, overcrowding, unsanitary conditions, disease, immorality, widespread social discontent, etc.). Relying on the *Levy* case (1922) and the testimony described above, the court found that the evidence was insufficient to establish “a serious menace to the general public.” Finally, the court found that Orange County’s legislative findings “do not even suggest that the Ordinance will ‘eliminate’ a housing emergency.” The court also cited to testimony and other evidence that “control measures are ‘not likely to have much of an effect on rental conditions in the market...’” and “that rent control measures may actually hurt rental conditions by ‘impeding the objective of speeding overall housing deliveries as well as creating a number of unintended consequences.’” The court’s analysis resulted in its opinion that the Orange County ordinance was “insufficient under the law to support a rent control measure.”

Based upon the Fifth DCA’s recent opinion and its analysis of the statutory criteria, we are seeking the Commission’s direction on whether or not to remove the Section 166.043 criteria analysis services ((1) – (3) above) from the RFP’s Scope of Services. Please let us know if you have any questions or additional revisions to the RFP.

Sincerely,



Glen J. Torcivia  
City Attorney  
Enclosures

c: Carmen Davis, City Manager  
Juan Ruiz, Assistant City Manager  
William Waters, Community Sustainability Director  
Valentina Sustaita, Assistant Finance Director