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CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

September 6, 2022

Via E-Mail Only

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

RE: Discussion on Housing Crisis

Dear Mayor and Commissioners:

Pursuant to recent Commission comments, we have prepared the following housing crisis update which includes a summary of the statutory rent control ordinance process and information regarding other local governments who are currently pursuing rent control referendums. Section 166.043, Florida Statutes (attached), prohibits local governments from adopting rent control ordinances “unless it is found and determined...that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.” §166.043(2), Fla. Stat. The statute exempts the following categories of residential accommodations from a rent control ordinance: (1) seasonal or tourist unit; (2) second housing unit; and (3) luxury apartment buildings.” §166.043(4), Fla. Stat.

The statute requires a rent-control ordinance to be approved by two separate processes: (1) the local government’s standard ordinance adoption procedure (including, but not limited to, notice and a public hearing); and (2) a referendum approved by the voters. *See* §166.043(5), Fla. Stat. Also, any such ordinance automatically expires within 1 year and cannot be extended or renewed unless the local government adopts another ordinance in accordance with the statutory provisions (including, but not limited to another referendum). *See* §166.043(3), Fla. Stat. Finally, the statute, authorizes the adoption of a rent control ordinance only when the local government “makes and recites in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.” *See* §166.043(5), Fla. Stat.

Therefore, it is recommended that the City Commission secure the necessary data and the opinion of a qualified professional(s) to firmly establish, at a minimum, the following: (1) whether there exists within the City of Lake Worth Beach a “housing emergency so grave as to constitute a serious menace

to the general public” (including an explanation of how the statistics and data used establishes a “grave housing emergency”); (2) what impacts/effects the housing emergency is having on the general public’s health, safety and welfare (i.e., “serious menace to the general public”) (e.g., distress, extortion, increase of rents without legal process, evictions, homelessness, overcrowding, etc.); and (3) whether and how a rent control ordinance is “necessary and proper to eliminate such grave housing emergency” and the details/requirements of such an ordinance. We will work with staff to draft the appropriate procurement document for these professional services and ensure that the scope of services includes, but is not limited to, the above statutory questions. Please be aware that if a local government’s rent control ordinance is challenged in any court action, the government will have the evidentiary burden to prove that its ordinance meets the statutory requirements. *See* §166.043(6), Fla. Stat.

Regarding rent control by other local governments, Orange County adopted a rent control ordinance pursuant to section 125.0103, Florida Statutes (the county version of section 166.043) and has placed a referendum on the upcoming November election ballot. Generally, the Orange County ordinance limits rent increases in multiunit buildings (4 or more dwelling units) to the annual increase in the Consumer Price Index; however such controls do not apply to luxury units, single family homes, vacation rentals, and other specified units. The ordinance also addresses the development of “a process by which landlords can request exceptions to the limitations on rent increases based on the opportunity to receive a fair and reasonable return on investment.”

Shortly after the ordinance was adopted, a lawsuit challenging the ordinance and pending referendum was filed on behalf of the Florida Apartment Association and the Florida Association of Realtors. The lawsuit, in part, includes the general argument that the rent-control ordinance fails to meet the statutory requirements and is, therefore, invalid. Under this argument, the plaintiffs contend that the “Rent-Control Ordinance fails to establish the existence-in-fact of a “housing emergency so grave as to constitute a serious menace to the general public.” *See Complaint* ¶31. Under this argument, the plaintiffs maintain that the county fails to explain how and why the statistics it relies upon demonstrate a “grave housing emergency.” *See id.* They further argue that the ordinance is contrary to the legal memorandum drafted by the Orange County Attorney because it “appears to be premised entirely on statistics addressing vacancy rates, rising rents, a shortage of housing, an increase in the cost of living, and ‘spiraling inflation.’” *See Complaint* ¶33. They indicate that “These findings alone are insufficient to establish a ‘grave housing emergency’ under Florida Supreme Court precedence.” *See id.*

The plaintiffs also argue that even if Orange County could establish a “grave housing emergency,” the ordinance “contains no findings demonstrating a ‘serious menace to the general public.’” *See Complaint* ¶34. They rely, again, upon the county attorney’s memorandum, that “a rent-control ordinance must include findings addressing the housing emergency’s impact on the health, safety, and welfare of the general public such as ‘overcrowding’ resulting in ‘insanitary conditions’ and ‘disease.’” *See id.* They make the additional argument that the ordinance’s findings “fail to establish that rent control is ‘necessary and proper’ to ‘eliminate’ the grave housing emergency in Orange County.” *See Complaint* ¶35. The plaintiffs state that the county’s “increased housing costs are ‘likely beyond the control of local regulation’ and stemmed mostly from ‘inadequate housing production over years which a temporary rent ceiling would do little to correct.’” *See id.*

In the county attorney’s memorandum, he points out that “Florida courts have not interpreted either provisions of the Statute, and therefore it is unclear how either provision would be interpreted or applied today.” *See County Attorney Memorandum*, pg. 2. After highlighting the legal history of rent control ordinances and how a “grave housing emergency” may be defined, the attorney generally concluded, in part, “It is unlikely that findings of an increase in the cost of living or inflation alone will be sufficient to meet the requirements of the Statute. Instead, the Board would likely need findings of

a housing shortage, rising rents, increased demand, etc. and findings describing the impact of these conditions on the general public's health, safety, and welfare in order to meet the Statute's requirements. Further, the Board would likely need findings to establish that its rent control ordinance is necessary to eliminate the grave housing emergency." *See id.*

It was reported that the City of Tampa considered a rent control ordinance; however, the ordinance was not approved by the city council. It was also reported that the City of St. Petersburg's council agreed to draft a resolution declaring a housing emergency and proposing ballot language for rent control regulations; however, the council withdrew the resolution based on advice from their legal counsel. The council discussed a motion to draft a rent control ordinance and submit it to the voters by referendum; however, the motion failed.

If the City chooses to move forward with the drafting of a rent control ordinance, we recommend that it address the issues highlighted in the Orange County Complaint and the Orange County Attorney's Memorandum. For your review, we have attached the following documents: (1) Orange County Rent Control Ordinance; (2) Complaint challenging the Orange County ordinance (without attachments); and (3) Orange County Attorney's Memorandum regarding the rent control ordinance. As mentioned above, we will be working with staff to develop the appropriate procurement document for the professional services needed to explore and address the requirements of a rent control ordinance. Please let me know if you have any questions regarding the above.

Sincerely,

Glen J. Torcivia

Glen J. Torcivia
City Attorney

Enclosures: Section 166.043, Florida Statutes, Orange County Ordinance, Orange County Complaint (without attachments), Orange County Attorney Opinion

Copy: Carmen Davis, City Manager
William Waters, Community Sustainability Director