ORANGE COUNTY GOVERNMENT
FLORIDA

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To: Mayor Jerry L. Demings

From: Jeffrey J. Newton, County Attorney
Dylan Schott, Assistant County Attorney

Date: March 29, 2022

Subject: Board Discussion on April 5, 2022 regarding Rent Stabilization

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MEMORANDUM

At your request and in preparation for the Board's discussion on April 5, 2022, please consider this Memorandum which provides background, legal issues and analysis regarding rent stabilization.

Background:

On June 23, 2020, the Orange County Board of County Commissioners ("**Board**" or "**BCC**") discussed a report from Commissioner Emily Bonilla regarding a proposed referendum for a one-year rent freeze. According to the Clerk's minutes of that meeting, a motion was made by Commissioner Bonilla, seconded by Commissioner Gomez Cordero, to schedule a public hearing for July 7, 2020 regarding proposed referendum language for a one-year rent freeze and for the Board to vote to place the referendum on the ballot. The motion failed by a vote of 2 to 5.

On March 8, 2022, Commissioner Bonilla submitted a memorandum and report to the Orange County Mayor and County Commissioners regarding a proposed rent stabilization ordinance to be discussed at the Board's meeting on April 5, 2022. This memorandum discusses several issues that have been raised in preparation for the meeting on April 5, 2022.

Issues:

I. Whether Florida courts have interpreted either of the following provisions as used in Section 125.0103, Florida Statutes (the "**Statute**"):

   A. "A housing emergency so grave as to constitute a serious menace to the general public;" or

   B. "Luxury apartment buildings."

II. Whether any local governments in Florida have imposed rent controls pursuant to the Statute.

III. Whether a charter county can adopt an ordinance requiring residential landlords to provide tenants with sixty (60) days' notice before increasing rental rates by

more than five-percent (5%), and, if so, whether the charter county is required to satisfy any specific criteria or make any specific findings before adopting said ordinance.

Short Answers:

I. No, Florida courts have not interpreted either provision of the Statute, and therefore it is unclear how either provision would be interpreted or applied today.

A. Certain federal and state court opinions on housing emergencies and rent controls can provide insight into how a court may interpret the Board's statutory requirement to make findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and findings that such rent controls are necessary and proper to eliminate said grave housing emergency.

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. In the event of a legal challenge, the County will have the burden of proving the aforementioned findings.

B. The Statute defines "luxury apartment building" as one wherein on January 1, 1977, the aggregate rent due on a monthly basis from all dwelling units as stated in leases or rent lists existing on that date divided by the number of dwelling units exceeds $250. A court could adjust this statutory definition for inflation and otherwise apply the Statute as written. According to the United States Bureau of Labor Statistics, $250 in January 1977 has the same buying power as $1,212.46 in February 2022. Under this interpretation, the County would be prohibited from imposing rent controls on apartment buildings where the aggregate rent due on a monthly basis from all dwelling units exceeds $1,212.46.

II. No, there is no apparent record of any local governments in Florida imposing rent controls pursuant to the Statute. However, Miami-Dade County is scheduled to consider a resolution on April 5, 2022 directing the Mayor or designee to conduct a study to determine if a housing emergency currently exists in Miami-Dade County that is so grave as to constitute a serious menace to the general public and that stabilizing rents to remain affordable is necessary and proper to eliminate such grave housing emergency.

III. Likely yes, a charter county can likely adopt an ordinance requiring residential landlords to provide tenants with sixty (60) days' notice before increasing rental rates more than five-percent (5%). Charter counties have broad authority to adopt ordinances, and it is unlikely that a court would find said ordinance has

been preempted to the state or conflicts with state statute. There are no apparent requirements for a charter county to satisfy any specific criteria or

make any specific findings before adopting such an ordinance beyond those recitations and findings generally made as a matter of practice. On February 24, 2022, the City of Tampa passed a motion directing staff to develop an ordinance that would require landlords to give notice before raising rents, and on March 15, 2022, Miami-Dade County adopted a similar ordinance.

Discussion:

I. The Statute's Grave Housing Emergency and Luxury Apartment Building Provisions.

Generally, local governments are prohibited from adopting ordinances that would have the effect of imposing controls on rents. Fla. Stat. § 125.0103(2). However, the Statute creates an exception for rent controls that are necessary and proper to eliminate an existing **housing emergency which is so grave as to constitute a serious menace to the general public**. *See id.* (emphasis added). The Statute includes several conditions and restrictions on local governments that adopt rent control measures pursuant to this grave housing emergency exception:

(1) The ordinance shall terminate and expire within 1 year and shall not be extended or renewed except by the adoption of a new ordinance meeting all of the requirements of the Statute;

(2) Notwithstanding any other provision of the Statute, no rent controls shall be imposed on rents for the following:

  (a) Any accommodation used or offered for residential purposes as a seasonal or tourist unit;

  (b) Any accommodation used or offered for residential purposes as a second housing unit; or

  (c) **On rents for dwelling units located in luxury apartment buildings**;

(3) The ordinance must be duly adopted by the local government's governing body after notice and public hearing and in accordance with applicable laws;

(4) The governing body must make and recite in the ordinance 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;

(5) The ordinance must be approved by the voters within the local government; and

(6) In any court action brought to challenge the validity of the rent control ordinance, the evidentiary effect of any findings or recitations required by the Statute shall be limited to imposing upon any party challenging the validity of the ordinance

> the burden of going forward with the evidence, and the burden of proof (that is, the risk of nonpersuasion) shall rest upon any party seeking to have the measure upheld.

See Fla. Stat. § 125.0103(3)-(6) (emphasis added).

A. Grave Housing Emergency.

The Statute requires a governing body to make and recite in its ordinance its findings establishing the existence in fact of a "...housing emergency so grave as to constitute a serious menace to the general public..." Fla. Stat. § 125.0103(5)(b). Additionally, the governing body is required to make and recite its findings establishing that such rent controls are "...necessary and proper to eliminate such grave housing emergency." *Id.* Florida courts have not interpreted these provisions of the Statute, and therefore it is unclear what findings and recitations are sufficient to meet the Statute's requirements. *Id.* However, certain federal and state court opinions on rent control laws adopted pursuant to housing emergencies can provide some insight into the issue.

The aforementioned language from the Statute likely stems from the 1922 U.S. Supreme Court case *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242 (1922), in which the Court considered the constitutional validity of rent control laws passed by the State of New York in 1920. In *Levy*, the Court affirmed the judgements of the state court which held that the rent control laws were a constitutional and valid exercise of the state's police power. *Id* at 244-50. The Court reasoned that the rent control laws were enacted as emergency statutes and therefore invoked the state's police powers. *See id.* at 245. The Court said:

> The warrant for this legislative resort to the police power was the conviction on the part of the state legislators that there existed in the larger cities of the state **a social emergency**, caused by an insufficient supply of dwelling houses and apartments, **so grave that it constituted a serious menace to the health, morality, comfort, and even to the peace of a large part of the people of the state**.

Id. (emphasis added). The Court reasoned that the New York Legislature did not depend on the knowledge of its members but instead relied on reports prepared by committees "of the best intelligence" that had conducted "elaborate and thorough" investigations on housing conditions in the cities of the state for almost two years before the rent control laws were enacted. *See id.* These committees found:

> That there was a very great shortage in dwelling house accommodations in the cities of the state to which the acts apply; that this condition was causing widespread distress; that extortion in most oppressive forms was flagrant in rent profiteering; that, for the purpose of increasing rents, legal process was being abused and eviction was being resorted to as never before; and that unreasonable and extortionate increases of rent had frequently resulted in two or more families being obliged to occupy an apartment adequate only for one family, with a consequent overcrowding, which was resulting in insanitary conditions, disease, immorality, discomfort, and widespread social discontent.

Id. at 246. Accordingly, the Court ruled that the emergency declared by the New York Legislature did in fact exist when the rent control laws were passed. *See id.*

Subsequently, in the 1960s and 1970s, the City of Miami Beach took several actions to impose emergency rent controls before the Statute went into effect. The City's actions were litigated and resulted in several opinions from the Supreme Court of Florida and Florida's Third District Court of Appeals. While these court opinions may not necessarily be relevant for any future rent control ordinances adopted by Orange County (since the court opinions analyzed municipal actions that were taken prior to the adoption of the Statute), they can provide insight into what findings a local government must make to establish a housing emergency.

In 1969, the City of Miami Beach enacted an ordinance to regulate rents after making a determination that an inflationary spiral and a housing shortage existed in the City. *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801, 802 (Fla. 1972). The City stated that it acted with the intent and purpose of protecting its residents from exorbitant rates. *Id.* In holding that the City's ordinance was invalid, the Supreme Court of Florida cited several cases from the Supreme Court of the United States, including the *Levy* case discussed above. *Id.* at 804. The Court ruled that "emergency" has been narrowly defined and that an increase in the cost of living (an inflationary spiral) alone is not a justification for rent control legislation which limits the amount of rent which a tenant may be required to pay. *Id.*

In 1974, the City of Miami Beach passed Ordinance No. 74-2018 imposing rent control measures. In *Lifschitz v. City of Miami Beach*, 339 So. 2d 232, 234 (Fla. 3d DCA 1976), the Third District Court of Appeals considered whether the City's ordinance was void because "in fact no emergency existed." The Court affirmed the trial court's finding that due to the unusual character of Miami Beach, as demonstrated by the evidence, there did exist at the time of the passage of the ordinance and thereafter until the time of the final hearing, appropriate and sufficient circumstances, conditions and factors to justify its enactment. *Id.* at 234-35. The Court looked at the preamble of the ordinance which read, in part:

> WHEREAS, **a grave and serious public emergency exists with respect to the housing of a substantial number of citizens of Miami Beach**; and
>
> WHEREAS, the deterioration and demolition of existing housing; an insufficient supply of new housing; the inhibition upon the construction of new housing resulting from the operation of the Florida Pollution Control Act, other environmental protection laws, and an insufficient supply of financing; and the existing economic inflationary spiral have resulted in a substantial and critical shortage of safe, decent and reasonably priced housing accommodations as evidenced by the low vacancy rates prevailing in the City; and
>
> WHEREAS, this emergency cannot be dealt with effectively by the ordinary operations of the private rental housing market, and unless residential rents are regulated, such emergency and the inflationary

> pressures therefrom will produce a serious threat to the public health, safety and general welfare of the citizens of Miami Beach, Florida;

Id. (emphasis added). The Court reasoned that a scarcity of housing, accelerating rents, and a constant influx of people seeking housing in the area was ample evidence as to the factors creating a housing emergency. *Id.* at 235. The Court ruled that the ordinance was presumptively valid and the question of the existence of an emergency at the time of its passage rested in the judgment and discretion of the city council. *Id.*

The City of Miami Beach's Ordinance No. 74-2018, as discussed in the *Lifschitz* case above, expired in 1976, so in 1977 the City of Miami Beach adopted Resolution No. 77-15314 providing a new rent control measure (known as proposed Ordinance No. 77-2093) to be placed before the electorate of the City in a referendum on June 7, 1977. *See City of Miami Beach v. Frankel*, 363 So. 2d 555, 556 (Fla. 1978). However, on May 21, 1977, approximately two weeks before the referendum was scheduled for a vote, the Statute and all of its conditions and requirements went into effect. *See id.* The Supreme Court of Florida reviewed the City's proposed ordinance and held
that the proposed ordinance was out of harmony with the Statute in several respects, and to that extent would have been a void enactment. *Id.* The proposed ordinance contained several clauses in its preamble finding: (1) a grave and serious housing emergency, (2) a vacancy rate below 5 percent, (3) a shortage of vacant land available for new construction, (4) an inflationary spiral that resulted in a shortage of housing, (5) an elderly population with fixed incomes, and (6) rising rents. *See* Proposed Ordinance No. 77-2093, City of Miami Beach. Despite the City's findings and recitations in proposed Ordinance No. 77-2093, the Court ruled that the City did not meet the Statute's requirements including the requirement that "a local government, in enacting a rent control measure, must make findings and recite them in the enactment, of a housing emergency so grave as to constitute a serious menace to the general public." *See Frankel*, 363 So. 2d at 557.

Today, it is unclear what findings and recitations are sufficient to establish the existence in fact of "a housing emergency so grave as to constitute a serious menace to the general public" due to the lack of attempted rent control laws in Florida since the Statute went into effect and because the Statute has not been interpreted by the courts. While the Third District Court of Appeals found that recitations made by the City of Miami Beach in Ordinance No. 74-2018 regarding a scarcity of housing, accelerating rents, and a constant influx of people was enough to establish "a housing emergency," this was before the Statute was enacted to explicitly require "a housing emergency so grave as to constitute a serious menace to the general public." *Lifschitz* 339 So. 2d at 235; Fla. Stat. § 125.0103(5)(b). When the Supreme Court of Florida did apply the Statute's standard to the City of Miami Beach's proposed Ordinance No. 77-2093, the Court found that the proposed ordinance did not meet the Statute's requirements, including the requirement to make findings of a housing emergency so grave as to constitute a serious menace to the general public, despite the fact that the City's proposed ordinance contained several clauses in the preamble finding: (1) a grave and serious housing emergency, (2) a vacancy rate below 5 percent, (3) a shortage of vacant land available for new construction, (4) an inflationary spiral that resulted in a shortage of housing, (5) an elderly population with fixed incomes, and (6) rising rents. *See Frankel*, 363 So. 2d at 557; *see* Proposed Ordinance No. 77-2093, City of Miami Beach. Thus, it is unlikely that a shortage of housing, increase in the cost of living, or an inflationary

spiral alone are enough to establish "a housing emergency so grave as to constitute a serious menace to the general public." *See id.*; *see also Fleetwood Hotel*, 261 So. 2d at 804 (ruling that "emergency" is narrowly defined and that an increase in the cost of living, or "an inflationary spiral," alone is not a justification for rent control legislation).

Instead, any rent control ordinance in Orange County will likely need to contain findings and recitations that are more similar to the *Levy* case than the *Frankel* case, as discussed above, in order to establish "a housing emergency so grave as to constitute a serious menace to the general public." In *Levy*, the New York Legislature relied on the following findings when it enacted its emergency rent control laws:

> That there was a very great shortage in dwelling house accommodations in the cities of the state to which the acts apply; that this condition was causing widespread distress; that extortion in most oppressive forms was flagrant in rent profiteering; that, for the purpose of increasing rents, legal process was being abused and eviction was being resorted to as never before; and that unreasonable and extortionate increases of rent had frequently resulted in two or more families being obliged to occupy an apartment adequate only for one family, with a consequent overcrowding, which was resulting in insanitary conditions, disease, immorality, discomfort, and widespread social discontent.

Levy Leasing Co., 258 U.S. at 246. And the Supreme Court of the United States said that, based on these findings, the Legislature correctly believed that there was "...a **social emergency**, caused by an insufficient supply of dwelling houses and apartments, **so grave that it constituted a serious menace to the health, morality, comfort, and even to the peace of a large part of the people of the state**." *See id.* (emphasis added). Thus, findings and recitations related to the residential rental market causing widespread distress, extortion, flagrant rent profiteering, abuse of the legal process, increased eviction rates, and overcrowding among the public are more likely to establish the Statute's requisite grave housing emergency than findings and recitations related to an increase of the cost of living or an inflationary spiral alone. *Id.*; *Fleetwood Hotel*, 261 So. 2d at 804.

However, this is not to say that a shortage of housing or increase in rents cannot be the basis for a grave housing emergency. In fact, a "great shortage of dwelling house accommodations" was the basis for the New York rent control laws that were upheld by the U.S. Supreme Court. *Levy Leasing Co.*, 258 U.S. at 246. But rather, the findings made by the County in any rent control ordinance likely need to establish the grave housing emergency **and** the effect that the emergency is having on the general public. The findings need to describe how the grave housing emergency "constitutes a serious menace to the general public." Fla. Stat. § 125.0103(5)(b). This is the primary distinction between New York's findings and the findings made by the City of Miami Beach—both jurisdictions suffered from a housing shortage, but New York elaborated on how the shortage was a serious menace to the public by describing the shortage's impact on the health, morality, comfort, and peace of the public. *Levy Leasing Co.*, 258 U.S. at 246. For example, New York found that the housing emergency had caused multiple families to share one apartment leading to overcrowding which resulted in "insanitary conditions, disease, immorality, discomfort, and widespread social discontent." *Id.* Whereas the City of Miami Beach merely recited statistics related to shortages and increased prices to

establish the housing emergency. *See* Proposed Ordinance No. 77-2093, City of Miami Beach. Thus, any rent control ordinance adopted by the Board will likely need to make findings establishing a grave housing emergency (e.g. shortage of housing, accelerating rents, increased demand, etc.) **and** how said emergency constitutes a serious menace to the general public by describing the emergency's impact on the health, safety, and welfare of the general public (e.g. widespread distress, extortion, flagrant rent profiteering, abuse of the legal process, overcrowding resulting in insanitary conditions and disease, etc.).

Additionally, in the event of a legal challenge to any rent control ordinance adopted by Orange County, a court will likely consider how the Board made its findings because the findings have to establish the existence of a grave housing emergency **in fact**. *See* Fla. Stat. § 125.0103(5)(b) (emphasis added). While the Third District Court of Appeals found that the City of Miami Beach's recitations in Ordinance No. 74-2018 were sufficient to establish a housing emergency, the Court was applying the rule that the City's ordinance was presumptively valid and that the question of the existence of an emergency at the time of the ordinance's passage rested in the judgment and discretion of the City Council. *See Lifschitz* 339 So. 2d at 235. However, under the current Statute, Orange County will likely have the burden of proving the existence of a grave housing emergency and proving that its rent control ordinance is necessary and proper to eliminate said grave housing emergency. *See* Fla. Stat. § 125.0103(6). Thus, despite the Third DCA's ruling in *Lifschitz*, it is unlikely that recitations of a housing emergency made in the discretion of the Board alone will be sufficient to meet the Statute's requirements—Orange County will need evidence to prove its findings establishing the existence in fact of a grave housing emergency.

B. Luxury Apartment Buildings.

The Statute states that no controls shall be imposed on rents for dwelling units located in luxury apartment buildings. Fla. Stat. § 125.0103(4). The Statute defines a "luxury apartment building" as "one wherein on January 1, 1977, the aggregate rent due on a monthly basis from all dwelling units as stated in leases or rent lists existing on that date divided by the number of dwelling units exceeds $250." *Id.*

It is unclear how a court would interpret or apply this provision of the Statute today because this provision has not been interpreted by a court before. A court could find that the Florida Legislature intended for the $250 statutory amount to be adjusted for inflation and otherwise apply the Statute as written. According to the United States Bureau of Labor Statistics, $250 in January 1977 has the same buying power as $1,212.46 in February 2022. Under this interpretation, any rent control ordinance adopted by the County would be prohibited from imposing controls on rents for luxury apartment buildings, i.e. buildings where the aggregate rent due on a monthly basis exceeds $1,212.46.

Alternatively, a court could read the Statute narrowly and find that it only applies to apartment buildings that were in existence on January 1, 1977 and whose aggregate rent due on a monthly basis from all dwelling units exceeds $250. Under this interpretation, the County would be prohibited from imposing rent controls on luxury apartment buildings in existence on January 1, 1977, but otherwise unrestricted from imposing rent controls on apartment buildings constructed after January 1, 1977, except

for the remaining conditions and restrictions contained in the Statute. Ultimately, it is not clear how a court would interpret or apply this provision of the Statute.

II. Rent Controls by other Local Governments.

There is no apparent record of any local governments in Florida imposing rent controls pursuant to the Statute since the Statute went into effect on May 21, 1977. However, Miami-Dade County is scheduled to consider a resolution on April 5, 2022 to direct the Mayor or designee to conduct a study to determine if a housing emergency currently exists in Miami-Dade County that is so grave as to constitute a serious menace to the general public and that stabilizing rents to remain affordable is necessary and proper to eliminate such grave housing emergency. On February 24, 2022, the City of Tampa passed a motion declaring a critical housing crisis and directed staff to meet with the community and report back to the City Council on May 26, 2022 with ideas to solve the housing problem. The City of St. Petersburg's Housing, Land Use, and Transportation Committee considered a motion to declare a housing emergency on February 10, 2022, but the motion failed.

III. Ordinance Requiring Notice before Increasing Rental Payments.

A charter county can likely adopt an ordinance requiring residential landlords to provide tenants with sixty (60) days' notice before increasing rental rates by more than five-percent (5%) ("**Proposed Ordinance**"). Charter counties have broad authority to enact county ordinances that are not inconsistent with general law. *See* Fla. Const. Art. VIII, § 1(g). There are two ways that a county ordinance can be inconsistent with general law and therefore unconstitutional: (1) a county cannot legislate in a field if the subject area has been preempted to the state, and (2) a county cannot enact an ordinance that directly conflicts with a state statute. *See generally Phantom of Brevard, Inc. v. Brevard Cty.*, 3 So. 3d 309, 314 (Fla. 2008).

Florida law recognizes both express preemption and implied preemption. *D'Agastino v. City of Miami*, 220 So. 3d 410, 421 (Fla. 2017). Express preemption requires a specific legislative statement—it cannot be implied or inferred—and the preemption of a field is accomplished by clear language. *Id.* Implied preemption occurs when the state legislative scheme is so pervasive as to virtually evidence an intent to preempt the particular area or field of operation, and where strong public policy reasons exist for finding such an area or field to be preempted by the Legislature. *Id.* Chapter 83, Part II, Florida Statutes, commonly known as the "Florida Residential Landlord and Tenant Act" (the "**Act**") applies to the rental of residential dwelling units and sets forth the rights and duties of landlords and tenants.

In Florida Attorney General Advisory Legal Opinion 94-41 ("**AGO 94-41**"), the City of Miami Beach asked whether it could adopt an ordinance to extend the notice provisions in Section 83.57, Florida Statutes, for the termination of residential tenancies without specific duration from 15 days' notice (as required by the Act) to a longer duration. The Attorney General opined that local governments may enact local legislation extending the notice requirements for the termination of a tenancy without a specific duration to supplement the provisions in Section 83.57, Florida Statutes. In reaching its opinion, the Attorney General reasoned that the Act does not contain any express preemption, local governments have broad home rule powers, an ordinance extending the notice of

termination requirement would be supplemental to the Act, and landlords could comply with said ordinance without violating the Act. Therefore, it was the Attorney General's opinion that a local government ordinance extending the termination notice requirements for certain tenancies would not be inconsistent with general law.

The Act does not expressly preempt the field of residential landlord and tenant relationships to the state, so it is unlikely that a court would find the Proposed Ordinance inconsistent with general law due to express preemption. Further, it is unlikely that the Act impliedly preempts the particular area of notification requirements for increases to rental rates because the Act does not contain any regulations related to said notifications, so it is also unlikely that a court would find the Proposed Ordinance inconsistent with general law due to an implied preemption of this particular notice area. Additionally, it is unlikely that the Act impliedly preempts the entire field of residential landlord and tenant relationships to the state. While the Act does set forth rights and duties of residential landlords and tenants, it is not the only legislation that regulates the field. For example, Miami-Dade County, City of Miami, and City of Miami Beach have all extended the length of the notice required for landlords to terminate residential tenancies without a specific duration in which the rent is payable on a monthly basis from 15 days' notice (as required by the Act) to 30 or 60 days. *See* Miami-Dade County Code § 17-03; City of Miami Code § 47-1; City of Miami Beach Code § 58-386; and Fla. Stat. § 83.57(3). Thus, it is unlikely that the Act is "so pervasive" as to evidence the state's intent to occupy the field of residential landlord and tenant relations when several other local governments in the state have passed laws regulating the field.

In extending the aforementioned termination notice requirements, Miami-Dade County, City of Miami, and City of Miami Beach relied on AGO 94-41. The Attorney General did not find that the Act impliedly preempts local governments from regulating within the field of residential landlords and tenants. Instead, the Attorney General's Office found the opposite when it opined that the City of Miami Beach could enact local legislation extending the notice requirements. While opinions from the Attorney General's Office are not binding on the courts, they can be persuasive. Thus, it is unlikely that a court will find that the Proposed Ordinance is impliedly preempted or that the Act impliedly preempts the field of residential landlord and tenant law to the state because local governments have a history of imposing additional regulations on residential landlords and tenants supplemental to those set forth in the Act and in accordance with an opinion from the Attorney General's Office.

Further, the Act does not provide specific notification requirements for landlords seeking to increase rental rates. Therefore, it is unlikely that the Proposed Ordinance would conflict with the Act since it would not require a residential landlord to violate the Act in order to comply with the Proposed Ordinance. *See Jordan Chapel Freewill Baptist Church v. Dade County*, 334 So. 2d 661, 664 (Fla. 3d DCA 1976) (ruling that legislative provisions are in conflict if, in order to comply with one provision, a violation of the other is required). Instead, the Proposed Ordinance could likely exist in concurrence with the Act. *See id.* at 664-65. Thus, it is unlikely that a court will find that the Proposed Ordinance is inconsistent with general law due to a direct conflict with the Act.

There are no apparent requirements for the County to satisfy any specific criteria or make any specific findings before adopting the Proposed Ordinance beyond those recitations and findings the County generally makes as a matter of practice when

adopting ordinances.

Additionally, other local governments in Florida have taken actions to require landlords to give tenants written notice prior to increasing the rental rate. On March 15, 2022, Miami-Dade County adopted Ordinance No. 22-30 requiring residential landlords that propose to increase the rental rate by more than five percent to provide 60 days written fair notice to the tenant. On February 24, 2022, the City of Tampa passed a motion directing staff to develop an ordinance that would require landlords to give six months' notice before raising rents and to present the ordinance to the City Council on April 21, 2022. Similarly, Orange County can likely adopt an ordinance that requires residential landlords to provide tenants with sixty (60) days' written notice before the landlord increases the rental rate by more than five-percent (5%).

On the other hand, a person could challenge the Proposed Ordinance in court and argue that the Act impliedly preempts the field of residential landlord and tenant law to the state and therefore prohibits the County from requiring residential landlords to provide tenants with written notice of rental increases. The Act provides wide-ranging requirements on residential leases and the rights and obligations of each party to those leases. As a matter of public policy, a court could find that it would be beneficial to have a consistent set of rules throughout the state to which landlords and tenants are required to abide. Moreover, the Proposed Ordinance seeks to establish a wholly new regulation (notice of increased rents) whereas the ordinances passed by Miami-Dade County, City of Miami, and City of Miami Beach pursuant to AGO 94-41 merely supplemented regulations that already existed in the Act (notice of termination). A court could find that a local government is permitted to supplement regulations already contained in the Act, but impliedly preempted by the state from creating new regulations related to residential landlords and tenants. Thus, a court could find that the Proposed Ordinance is inconsistent with the Act due to the Act being so pervasive as to evidence the state's intent to impliedly preempted the field of residential landlord and tenant relations to the state.

Conclusion:

In summary, the Statute's provisions requiring findings of "a housing emergency so grave as to constitute a serious menace to the general public" and "luxury apartment building" have not been interpreted by the courts. Thus, it is unclear how either provision will be interpreted or applied today. However, past federal and state court opinions on housing emergencies and rental controls indicate that findings of an increased cost of living or inflationary spiral alone are not sufficient to establish a housing emergency. 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. In the event of a legal challenge, the County will likely have the burden of proving the aforementioned findings.

There is no apparent record of any local governments in Florida imposing rent controls pursuant to the Statute. However, Miami-Dade County is scheduled to consider a resolution on April 5, 2022 directing the Mayor or designee to conduct a study to determine if a housing emergency currently exists in Miami-Dade County that is so

grave as to constitute a serious menace to the general public and that stabilizing rents to remain affordable is necessary and proper to eliminate such grave housing emergency.

Finally, the County can likely adopt an ordinance that requires residential landlords to provide tenants with sixty (60) days' written notice before the landlord increases the rental rate by more than five-percent (5%). There are no apparent requirements for the County to satisfy any specific criteria or make any specific findings before adopting the Proposed Ordinance beyond those recitations and findings generally made as a matter of practice. On March 15, 2022, Miami-Dade County adopted Ordinance No. 22-30 requiring residential landlords that propose to increase the rental rate by more than five percent to provide 60 days written fair notice to the tenant. On February 24, 2022, the City of Tampa passed a motion directing staff to develop an ordinance that would require landlords to give six months' notice before raising rents and to present the ordinance to the City Council on April 21, 2022. However, a person could argue that the Act impliedly preempts the County from adopting the Proposed Ordinance.

c.: Byron W. Brooks, AICP, County Administrator