No. 25-

IN THE

Supreme Court of the United States

LEROY GEORGE SIDDELL,

Petitioner,

v.

CITY OF SAN DIEGO, CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a state-court judgment rests on an adequate and independent state-law standing ground barring review under 28 U.S.C. § 1257 when the court denies relief on that ground yet proceeds to adjudicate and reject a federal Takings Clause claim on the merits.

2. Whether a government order that bars a landlord from recovering possession after the landlord's legal right to exclude has accrued effects a per se physical taking under the Fifth and Fourteenth Amendments.

3. Whether, consistent with the Just Compensation Clause, a government may, by invoking a public-health emergency, impose uncompensated public burdens on a discrete class of property owners that, in fairness and justice, should be borne by the public as a whole.

PARTIES TO THE PROCEEDING

Petitioner LeRoy George Siddell was the plaintiff and appellant below. He brought the action on behalf of taxpayers in the City of San Diego.

Respondent City of San Diego was the defendant and respondent below.

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

1. Siddell v. City of San Diego, No. 37-2022-00025224-CU-EI-CTL, Superior Court of California, County of San Diego. Judgment was entered following the trial court's ruling on the bifurcated liability issue.

2. Siddell v. City of San Diego, No. D084679, California Court of Appeal, Fourth Appellate District, Division One. The Court of Appeal filed its opinion affirming the judgment on December 24, 2025.

3. Siddell v. City of San Diego, No. S294758, Supreme Court of California. The California Supreme Court denied review on March 11, 2026, and denied requests for publication.

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The order of the Superior Court of California, County of San Diego, Case No. 37-2022-00025224-CU-EI-CTL, issued June 7, 2024, ruling on the bifurcated liability issue and directing judgment for respondent, is reproduced at Pet. App. C, at 37a.

JURISDICTION

The California Court of Appeal, Fourth Appellate District, Division One, filed its opinion affirming the judgment on December 24, 2025. The Supreme Court of California denied petitioner's petition for review on March 11, 2026.

This Court has jurisdiction under 28 U.S.C. § 1257(a) because the petition seeks review of a final judgment rendered by the highest court of a State in which a decision could be had, and petitioner timely seeks review of federal questions decided below.

CONSTITUTIONAL, STATUTORY, AND ORDINANCE PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part: "nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment makes the Fifth Amendment's Takings Clause applicable to the States and their political subdivisions and provides, in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

28 U.S.C. § 1257(a) provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

California Constitution article I, section 1 provides:

> "All people are by nature free and independent and have inalienable rights. Among these

> are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

California Constitution article I, section 19 provides, in relevant part:

> "Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner."

California Code of Civil Procedure § 526a provides, in relevant part:

> "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax that funds the defendant local agency . . . ."

San Diego Ordinance No. O-21447 imposed a temporary moratorium on certain no-fault residential evictions. Section 1(a) provided:

> "A landlord shall not evict, or endeavor to evict, a tenant where the grounds for terminating

> the tenancy or occupancy is not based on any alleged fault by the tenant," subject to specified exceptions.

Section 1(d) provided:

> "'endeavor to evict' shall include a landlord taking or attempting to take any of the following actions: threatening to or actually serving a notice, filing, or prosecuting any action to obtain possession of the property rented by that tenant or otherwise seeking to evict that tenant."

The pertinent text of the constitutional, statutory, and ordinance provisions principally involved is reproduced in the appendix.

STATEMENT OF THE CASE

A. The Ordinance and Related Eviction Restrictions

This case arises from the City of San Diego's adoption of Ordinance No. O-21447, a temporary moratorium on "no-fault" residential evictions during the COVID-19 emergency. The ordinance declared that avoiding displacement was necessary to protect public health, prevent homelessness, promote economic stability, and preserve the public peace, health, safety, and welfare during the pandemic. Pet. App. D, at 45a, 47a–49a.

Ordinance No. O-21447 prohibited landlords from evicting, or endeavoring to evict, tenants where the grounds for terminating the tenancy or occupancy were not based on alleged tenant fault, subject only to limited exceptions. The ordinance defined "endeavor to evict" broadly to include threatening or serving a notice, filing or prosecuting an action to obtain possession, or otherwise seeking to evict a tenant. Pet. App. D, at 49a-51a.

By prohibiting landlords from recovering possession when the legal right to terminate or exclude continued occupancy would otherwise have become enforceable, the ordinance operated at the point at which the owner's right to recover possession became legally enforceable. Pet. App. D, at 50a–51a.

The ordinance stated that nothing in it relieved tenants of the obligation to pay rent or restricted landlords' ability to recover rent due, and it allowed tenants to assert the ordinance as an affirmative defense in unlawful detainer proceedings. The ordinance remained in effect until September 30, 2022, or sixty days after the end of the local emergency, whichever occurred first. Pet. App. D, at 51a–52a.

Ordinance No. O-21447 did not operate in isolation. It functioned alongside San Diego Ordinance No. O-21291, which imposed a temporary moratorium on evictions for qualifying nonpayment of rent and broadly defined "endeavor to evict" to include serving notices, filing unlawful detainer actions, collecting late fees, and other routine efforts to recover possession. Pet. App. D, at 56a, 61a–63a.

Together, these measures foreclosed the ordinary legal remedies by which landlords could regain possession: Ordinance No. O-21447 barred no-fault evictions;

Ordinance No. O-21291 barred qualifying nonpayment evictions; and both treated the use of standard legal process as a prohibited "endeavor to evict." Pet. App. D, at 50a–51a, 62a–63a.

These local restrictions also operated within California's broader just-cause tenancy regime. Under Civil Code § 1946.2, once a tenant has continuously and lawfully occupied a unit for twelve months, the owner may not terminate the tenancy without just cause. Pet. App. D, at 75a–77a.

Thus, although Ordinance No. O-21447 was framed as temporary, its prohibition on recovering possession—especially when combined with other eviction restrictions—could carry tenancies across statutory thresholds that independently restrict an owner's right to terminate the tenancy. Pet. App. D, at 51a–52a, 75a–77a.

In that respect, the moratorium's effect on the right to exclude was not limited to its stated expiration, but operated within a legal framework that could convert temporary occupancy into continued possessory protection under state law. Pet. App. D, at 51a–52a, 75a–77a.

B. The Complaint

Petitioner LeRoy George Siddell filed this action in the Superior Court of California, County of San Diego. The complaint was brought on behalf of taxpayers in the City of San Diego and named the City as defendant. Pet. App. B, at 4a.

The complaint alleged that petitioner and the taxpayer plaintiffs were taxpayers and landowners within the City, and that petitioner brought the action as a private attorney general under California Code of Civil Procedure § 1021.5. Pet. App. B, at 4a–6a.

The complaint further alleged that Ordinance No. O-21447 violated the United States and California Constitutions because it amounted to inverse condemnation and an unlawful taking of property rights without just compensation. Pet. App. B, at 4a.

Petitioner alleged that the ordinance prevented landlords from evicting tenants or using legal process to collect rent, and that this constituted an uncompensated taking of property rights. Pet. App. B, at 4a; Pet. App. D, at 50a–51a.

Petitioner also alleged that the ordinance caused financial harm and that the controversy was not moot even if the ordinance expired, because inverse-condemnation damages had already occurred. Pet. App. B, at 4a–5a.

The complaint sought injunctive and declaratory relief, attorney's fees, costs, and inverse-condemnation damages. Pet. App. B, at 4a–6a.

C. Bifurcation and Trial Court Ruling

The trial court bifurcated liability from damages on the inverse-condemnation claim. In its June 7, 2024 minute order, the court stated that the matter was set for hearing on "the trial of the bifurcated issue of liability on the second cause of action for inverse condemnation" and that, pursuant to the parties' stipulation, the issue would be heard on the parties' briefs. Pet. App. C, at 37a–38a.

The court ruled that petitioner had not established standing because the complaint did not allege that Siddell or the taxpayer plaintiffs were landlords within the City of San Diego subject to the ordinance, and because allegations that plaintiffs were taxpayers and landowners were insufficient. The court treated the pleading allegations as insufficient and entered judgment without granting leave to amend. Pet. App. C, at 41a, 44a.

The court alternatively rejected the takings claim on the merits. It held that the ordinance was not a per se physical taking because it did not effectuate a permanent physical occupation of plaintiffs' property. It also rejected the regulatory-takings theory, concluding that the City had established necessity based on the COVID-19 pandemic. The court adjudicated the inverse-condemnation cause of action in favor of the City and ruled that there would be no separate trial on damages. Pet. App. C, at 42a–44a.

D. The Court of Appeal Decision

The California Court of Appeal affirmed. The court described the action as a challenge to an ordinance imposing a temporary moratorium on no-fault residential evictions and noted that the trial court had ruled plaintiffs lacked standing and, alternatively, that the ordinance was neither a per se physical taking nor a regulatory taking. Pet. App. B, at 2a–6a.

The Court of Appeal held that petitioner lacked general standing because the complaint did not allege that Siddell or the taxpayer plaintiffs were landlords, had tenants or renters, or otherwise had a legal right to pursue eviction or other possessory action. Pet. App. B, at 9a–11a.

It also held that petitioner had not established taxpayer standing under California Code of Civil Procedure § 526a because the complaint contained only a conclusory statement that plaintiffs were taxpayers and landowners, and petitioner did not provide evidence of taxes paid or liability to pay taxes funding the City. Pet. App. B, at 14a–16a.

The court further rejected petitioner's private-attorney-general theory, holding that § 1021.5 is an attorney-fee statute and does not create standing. Pet. App. B, at 21a.

Notwithstanding its standing holding, the Court of Appeal proceeded to address the federal takings merits. It held that the ordinance did not effect either a per se physical taking or a regulatory taking. Pet. App. B, at 25a–36a.

Thus, the Court of Appeal both affirmed dismissal for lack of standing and proceeded to resolve and reject the federal takings claim on the merits. Pet. App. B, at 10a–11a, 14a–21a, 25a–36a.

On the per se physical-takings issue, the Court of Appeal distinguished *Cedar Point* on the ground that the ordinance regulated tenants whom landlords had initially invited onto the property through lease or rental agreements, rather than authorizing entry by strangers. Pet. App. B, at 27a–31a.

The court treated the rental relationship as a pre-existing limitation on the right to exclude and distinguished *Cedar Point* on that basis, even though the ordinance barred landlords from recovering possession when the right to terminate or exclude continued occupancy would otherwise have become enforceable. Pet. App. B, at 29a–31a.

The court concluded that, although landlords could not evict renters for no fault of their own during the ordinance, they had not lost the right to exclude strangers, and therefore held that the ordinance did not amount to a government appropriation of property. Pet. App. B, at 31a.

On regulatory takings, the Court of Appeal held that the ordinance was not a categorical regulatory taking because landlords could still accept rental payments, and it further held that petitioner was not entitled to compensation under the emergency exception to the just-compensation requirement. Pet. App. B, at 31a–36a.

The Court of Appeal analyzed Ordinance No. O-21447 as a temporary no-fault eviction moratorium. It did not analyze the cumulative effect of that ordinance together with other emergency eviction moratoria or California's just-cause tenancy framework. Pet. App. B, at 25a–36a.

E. Proceedings in the California Supreme Court

Petitioner sought review in the California Supreme Court. Petitioner presented the federal takings questions, including whether courts applying *Penn Centra*l and the Fifth Amendment must consider the cumulative effect of overlapping municipal and state restrictions operating together as an integrated regulatory framework. Pet. App. E, at 78a–85a.

On March 11, 2026, the California Supreme Court denied review and denied the requests for publication of the Court of Appeal opinion. Pet. App. A, at 1a. This petition follows.

F. Preservation of Federal Questions

The federal questions presented here were preserved at each stage of the state-court proceedings. In the trial court, petitioner argued that San Diego Ordinance No. O-21447 violated the Fifth Amendment, as applied to the States through the Fourteenth Amendment, by effecting an uncompensated taking, including both a per se physical taking and, alternatively, a regulatory taking. Petitioner further argued that Ordinance No. O-21447 operated in conjunction with related municipal eviction restrictions and state law as part of an overlapping regulatory scheme that cumulatively impaired owners' possessory and exclusion rights while shifting public burdens onto private property owners without compensation. Pet. App. E, at 78a.

Petitioner renewed those federal arguments in the California Court of Appeal, arguing that the ordinance compelled continued occupation after the right to recover possession had accrued, appropriated the right to exclude by compelling continued occupancy, and alternatively effected a regulatory taking under *Penn Central*, including when considered together with overlapping municipal and state restrictions. Pet. App. F, at 87a; The Court of Appeal rejected petitioner's federal takings claims on the merits. Pet. App. B, at 2a.

Petitioner then presented the federal questions in the Petition for Review filed in the California Supreme Court, including whether courts applying *Penn Central* and the Fifth Amendment must consider the cumulative effect of overlapping municipal and state restrictions operating together as an integrated regulatory framework. Pet. App. G, at 107a. The California Supreme Court denied review. Pet. App. A, at 1a.

REASONS FOR GRANTING THE WRIT

This case presents important and recurring questions concerning the scope of the Takings Clause after *Cedar Point*, the limits of emergency power under the Just Compensation Clause, and the relationship between state-court standing rulings and federal constitutional review.

Lower courts have divided over whether eviction restrictions barring landlords from recovering possession — including for nonpayment of rent — effect a per se physical taking, and members of this Court have recognized that the issue warrants review. See *GHP Mgmt. Corp. v. City of Los Angeles*, 145 S. Ct. 2615 (2025) (Thomas, J., joined by Gorsuch, J., dissenting from denial of certiorari).

This case presents a closely related unresolved question under this Court's precedents: whether government may avoid per se takings liability by characterizing compelled continued occupation as ordinary landlord-tenant regulation whenever the occupant originally entered with consent. The decision below answers yes. Pet. App. B, at 27a–31a.

That rule permits government to transform a temporary emergency measure into uncompensated compelled occupancy — and an appropriation of the right to exclude — that, through overlapping tenancy protections, can outlast the moratorium itself, while avoiding review through state-law standing rulings even after deciding the federal takings issue on the merits. Pet. App. B, at 21a, 25a–36a; Pet. App. D, at 51a–52a, 75a–77a.

Review is warranted for three reasons. First, the judgment below should not be insulated from review by an asserted state-law standing ground after the Court of Appeal separately adjudicated the federal Takings Clause claim on the merits. Pet. App. B, at 21a, 25a–36a.

Second, the decision conflicts with this Court's physical-takings precedents by treating the government's suspension of a landlord's legally enforceable right to recover possession as a mere landlord-tenant regulation rather than an appropriation of the right to exclude. Pet. App. B, at 27a–31a.

Third, the decision expands emergency-power principles in a manner inconsistent with the Just Compensation Clause's core purpose: preventing government from forcing a discrete class of property owners to bear public burdens that, in fairness and justice, should be borne by the public as a whole. Pet. App. B, at 31a–36a.

I. The Court Should Grant Review Because The State-Law Standing Ruling Does Not Bar Review Of The Federal Takings Question The Court Of Appeal Actually Decided.

The threshold issue in this case is whether the Court of Appeal's state-law standing ruling bars review under

28 U.S.C. § 1257 even though the same court proceeded to adjudicate and reject petitioner's federal Takings Clause claim on the merits. It should not.

The Court of Appeal did not decline to reach the federal issue. After affirming the trial court's standing ruling, it stated that, notwithstanding that holding, it would exercise discretion to consider the merits of the takings challenge and then concluded that the ordinance did not effect either a per se or regulatory taking. Pet. App. B, at 25a.

The court then devoted a substantial merits discussion to the federal Takings Clause, including *Cedar Point*, *Yee*, physical takings, regulatory takings, and emergency necessity. Pet. App. B, at 25a–36a.

That merits ruling is not immaterial. It supplies an independent federal holding that forecloses petitioner's Takings Clause claim and provides guidance to California courts and public entities. The Court of Appeal affirmed dismissal for lack of standing and, at the same time, resolved the federal constitutional claim adversely to petitioner. Pet. App. B, at 21a, 25a–36a. A state court should not be able to decide a federal question and then shield that federal ruling from review by pairing it with an alternative state-law standing ruling.

This Court's review under § 1257 exists to ensure that state courts do not become the final arbiters of federal constitutional rights. Where a state court has actually decided a federal question, this Court may review that federal determination unless the judgment rests on a state ground that is both adequate and independent. But the adequacy and independence of the standing ruling here are doubtful because the state court did not stop at standing. It reached the federal question and rejected it. The federal issue was therefore passed upon by the state court and is properly before this Court. Pet. App. B, at 21a, 25a–36a.

Nor does Article III require a different result. State courts are not bound by Article III standing requirements when they adjudicate federal issues. In *ASARCO Inc. v. Kadish*, 490 U.S. 605 (1989), this Court recognized that state courts may entertain claims under broader state standing rules even when the same plaintiffs might lack Article III standing in federal district court. The Court of Appeal acknowledged the same principle here. Pet. App. B, at 7a–8a.

The Article III inquiry on review of a state-court judgment turns on whether the party invoking this Court's jurisdiction presents a justiciable controversy and seeks redress from an adverse judgment. Here, petitioner seeks review of a final state-court judgment that rejected his federal Takings Clause claim on the merits and denied any compensation or further proceedings. Pet. App. B, at 25a–36a; Pet. App. C, at 44a.

The trial court's standing analysis also illustrates why the state-law standing ground should not bar review. The action was brought under California taxpayer-standing principles, which exist to permit challenges to allegedly unlawful government action that might otherwise evade review. Pet. App. B, at 11a–12a.

The trial court nonetheless invoked federal-style injury-in-fact concepts and faulted petitioner for not proving injury, loss, and affected-property status at a stage when liability had been bifurcated from damages. Pet. App. C, at 38a–41a.

The Court of Appeal acknowledged that Article III principles do not bind California courts in this state-law action. Yet it affirmed a judgment that had used injury-in-fact reasoning to terminate the case and then proceeded to reject the federal takings claim on the merits. Pet. App. B, at 7a–8a, 25a–36a; Pet. App. C, at 39a–44a.

That procedural posture creates precisely the kind of uncertainty warranting review: whether a state court may deny relief on state standing grounds while also issuing a merits ruling on a federal constitutional claim that then escapes review.

The problem is compounded by the bifurcation order. The trial court had expressly bifurcated liability from damages and set the first phase for adjudication of the legal liability issue on the inverse-condemnation claim. Pet. App. C, at 38a.

Petitioner's trial brief also stated that damages would be addressed after the court determined whether the ordinance constituted an unconstitutional taking. Pet. App. G, at 108a. Yet the court used the absence of injury, loss, and affected-property evidence—matters related to the deferred damages and injury phase—to deny standing and then ruled there would be no damages trial. Pet. App. C, at 41a, 44a.

That sequence created a procedural trap. Injury and damages were deferred; then the absence of injury and damages evidence was used to deny standing; then the deferred phase was cancelled. Pet. App. C, at 38a, 41a, 44a.

If the court believed additional allegations were required to establish affected-property status, the defect was curable and should have been addressed through amendment or factual development, not final judgment[1]. The Court of Appeal nevertheless rejected petitioner's request for leave to amend or further proceedings, reasoning that the issue concerned threshold standing rather than damages. Pet. App. B, at 24a–25a.

The procedural unfairness was compounded by the courts' failure to adjudicate petitioner's independent state constitutional property-rights theory. Petitioner invoked California Constitution article I, section 1, which expressly protects the rights to acquire, possess, and protect property, as a state-law basis for reviewing the ordinance apart from compensation doctrine. Pet. App. G, at 109a–110a; Pet. App. E, at 79a, 83a–85a.

The courts instead collapsed the case into standing and takings-compensation analysis, leaving the independent property-rights claim unaddressed. Pet. App. B, at 7a–36a; Pet. App. C, at 39a–44a. That omission reinforces why the standing ruling should not be treated as an adequate and

1. Had amendment or factual development been permitted, petitioner could have alleged ownership of an affected residential rental unit and a forced choice between leaving it vacant or leasing it under a regime that substantially restricted later recovery of possession. Petitioner does not ask this Court to decide those facts, only to recognize that the identified standing defect was curable and that final judgment without amendment or a standing evidentiary opportunity denied a meaningful opportunity to be heard.

independent ground barring review of the federal takings issue actually decided below.

A state-law standing ruling applied in that manner should not bar review of the federal question. At minimum, this Court should grant, vacate, and remand so the state courts may address standing under proper principles and allow amendment or factual development before foreclosing a federal Takings Clause claim.

II. The Decision Below Conflicts With This Court's Physical-Takings Precedents Protecting The Right To Exclude.

This Court has repeatedly recognized that the right to exclude is one of the most essential sticks in the bundle of property rights. See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435–36 (1982); *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149–52 (2021).

In *Cedar Point Nursery*, the Court held that a regulation appropriating a right to invade private property effects a per se physical taking.

The Court made clear that when government appropriates the owner's right to exclude, it does not merely regulate property use; it takes a property interest.

The decision below conflicts with that principle. Ordinance No. O-21447 barred landlords from evicting or endeavoring to evict tenants where the grounds for termination were not based on tenant fault. It broadly defined endeavoring to evict to include serving notices, filing or prosecuting actions to obtain possession, and otherwise seeking to recover possession. Pet. App. D, at 50a–51a.

As applied when the legal right to terminate or recover possession would otherwise have accrued, the ordinance did not merely regulate rent, use, or timing. It barred the owner from exercising the very right that defines possession: the right to exclude continued occupancy. Pet. App. D, at 50a–51a.

The ordinance compelled continued occupancy unless the landlord fit within narrow government-approved exceptions: withdrawing the property from the rental market, undertaking qualifying repair or safety-related work, or moving the landlord or specified family members into the unit. Pet. App. D, at 50a.

A landlord who simply sought to recover possession at the end of a tenancy, without invoking one of those exceptions or proving tenant fault, was barred from exercising the right to exclude. In that circumstance, the tenant's continued possession was no longer solely the product of private consent; it was compelled by law. Pet. App. D, at 50a–51a.

The Court of Appeal rejected the per se taking claim by treating the rental relationship as a pre-existing limitation on the right to exclude. Pet. App. B, at 29a–31a. It distinguished *Cedar Point* on the ground that tenants had originally been invited onto the property by lease or rental agreement, unlike the union organizers in Cedar Point. Pet. App. B, at 29a–30a.

The court concluded that landlords did not lose the right to exclude strangers, and therefore the ordinance did not amount to a government appropriation of property. Pet. App. B, at 31a.

That reasoning misapprehends the property interest at issue. Petitioner's claim was not that the City initially forced strangers onto private property. The claim was that, once the landlord's legal right to terminate or recover possession had accrued, the City barred the landlord from exercising the right to exclude continued occupation. Pet. App. F, at 90a–93a; Pet. App. G, at 111a–115a.

A tenant's original entry by consent does not mean the government may compel continued occupation after the owner's legal right to possession arises. Consent to a lease is not consent to government-imposed possession beyond the point at which state law would otherwise allow recovery.

Yee v. City of Escondido, 503 U.S. 519 (1992), does not compel the result below. *Yee* rejected a facial physical-takings challenge to rent control and mobilehome regulations where the owners had voluntarily rented their land and had not been required to submit to a government-authorized invasion by strangers.

However, *Yee* did not hold that every law affecting landlord-tenant possession is immune from per se takings analysis. Nor did it involve a government order that barred recovery of possession at the moment the owner's right to exclude became legally enforceable.

The difference is decisive. A rent regulation may adjust the economic terms of an ongoing landlord-tenant relationship. However, a prohibition on recovering possession after the legal right to terminate has accrued appropriates a discrete property interest: the owner's vested right to exclude continued occupation. That property interest is not abstract. It is the right to determine who may possess the property and when possession must be surrendered.

The Court of Appeal's contrary rule creates a broad categorical exception for landlord-tenant regulations that cannot be reconciled with Cedar Point. If an owner's initial consent to possession forever removes later government-compelled occupancy from per se takings scrutiny, then the right to exclude becomes uniquely fragile in the rental-housing context. Pet. App. B, at 29a–31a.

Under that rule, government could require owners to continue hosting occupants after the owner's legal right to terminate had accrued, so long as the initial entry was voluntary. That rule would transform a limited leasehold relationship into a government-controllable possessory entitlement without compensation.

The temporary label does not solve the constitutional problem. This Court has held that temporary takings may be compensable. In *Arkansas Game & Fish Commission v. United States*, 568 U.S. 23 (2012), the Court rejected a categorical exemption for temporary government-induced invasions.

Likewise, in Cedar Point, the Court recognized that the temporary duration of access goes to compensation, not whether a per se physical taking occurred. A temporary appropriation of the right to exclude remains an appropriation while it lasts.

The problem is especially acute because the ordinance did not operate in isolation. It operated alongside other local and state eviction restrictions, including San Diego Ordinance No. O-21291, which restricted evictions for qualifying nonpayment and likewise prohibited efforts to recover possession. Pet. App. D, at 56a, 61a–63a

It also operated against California's just-cause tenancy regime, under which tenants who remain in lawful occupancy for specified periods acquire continuing statutory protections against termination without just cause. Pet. App. D, at 75a–77a.

The Court of Appeal did not analyze this cumulative effect. It evaluated Ordinance No. O-21447 as a temporary no-fault moratorium and did not consider whether serial moratoria and background just-cause laws could extend the practical impairment of the right to exclude beyond the ordinance's formal expiration. Pet. App. B, at 25a–36a; see also Pet. App. E, at 79a–81a, 83a–85a. That omission matters.

A government order that bars recovery of possession may carry a tenancy across statutory thresholds at which state law independently restricts termination. In that circumstance, a temporary moratorium can mature into continuing possessory consequences. Pet. App. D, at 75a–77a.

By extending occupancy during the emergency period, those measures could carry tenants across statutory thresholds under Civil Code § 1946.2, after which the landlord could not recover possession absent statutory just cause. Pet. App. D, at 75a–77a. Thus, a temporary moratorium could mature into a continuing involuntary possessory restriction that outlasted the ordinance itself.

This Court should grant review to clarify that the physical-takings inquiry turns on the property interest appropriated, not on whether the occupant originally entered by consent or whether the government labels its command temporary. Once the owner's legal right to recover possession has accrued, a government order barring exercise of that right appropriates the right to exclude and effects a per se physical taking.

III. The Decision Below Expands Emergency-Power Principles In A Manner Inconsistent With The Just Compensation Clause.

The Court of Appeal also held that petitioner was not entitled to compensation because the ordinance was enacted in response to the COVID-19 emergency and fell within an emergency or police-power exception. Pet. App. B, at 31a–36a. That holding warrants review.

The Just Compensation Clause permits government to act for public purposes, but it requires compensation when government takes private property for public use.

The clause is designed to prevent government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. *Armstrong v. United States*, 364 U.S. 40 (1960).

The decision below inverts that principle. It allows a municipality to invoke a public-health emergency to place the cost of a public response on landlords without compensation. Pet. App. B, at 31a–36a.

The City's asserted purposes were public: preventing homelessness, reducing displacement, slowing COVID-19 transmission, and preserving public welfare. Pet. App. D, at 45a–49a.

Those purposes may be important. However, their public importance does not answer the compensation question. Even in a public-health emergency, constitutional limits remain in force. See *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020). If the government chooses to secure public health and housing stability by appropriating or materially impairing private property rights, the Takings Clause requires the public to pay for the public benefit.

Emergency conditions may justify prompt government action. However, they do not create a blanket exemption from the Just Compensation Clause.

This Court's takings cases recognize only narrow necessity principles in extraordinary circumstances. The no-compensation necessity principle has arisen where destruction or abatement of property was necessary to prevent imminent and greater harm: stopping a spreading fire, *Bowditch v. Boston*, 101 U.S. 16 (1879); preventing enemy capture during active war, *United States v. Caltex* (Philippines), Inc., 344 U.S. 149 (1952); or requiring removal of diseased trees that threatened neighboring orchards, *Miller v. Schoene*, 276 U.S. 272 (1928). Those cases do not justify converting every declared emergency into an exception to the Just Compensation Clause.

The decision below extends that narrow doctrine to a civil public-health emergency in which the government did not destroy property, but instead imposed a broad economic and possessory regulation that shifted the burdens of pandemic housing policy to a discrete class of private owners after their legal right to recover possession had accrued. Pet. App. B, at 31a–36a; Pet. App. D, at 50a–52a. That expansion is dangerous. Under the rule below, any emergency regulation directed at preventing public harm can be characterized as an uncompensated exercise of police power.

That approach would swallow the Just Compensation Clause in precisely the circumstances where the risk of burden-shifting is greatest. Emergencies often produce urgent public needs. Yet when government satisfies those needs by appropriating private property interests or compelling owners to absorb public burdens, compensation remains the constitutional mechanism that preserves fairness. Necessity may justify the government's action, but it does not eliminate the constitutional duty to compensate when the government takes property rather than destroys it.

The Court of Appeal's regulatory-takings analysis illustrates the problem. It held that landlords retained some economic benefit because they could still accept rent. Pet. App. B, at 31a.

The ability to accept rent does not eliminate the taking of the right to recover possession. Nor does a theoretical claim for rent compensate for the government's prohibition on exercising the right to exclude — particularly where a companion ordinance separately barred eviction for qualifying nonpayment of rent. Pet. App. D, at 56a–64a.

The property interest taken here was not merely the right to receive money; it was the possessory right to recover and control the property — a fundamental property right.

The decision below also invites governments to evade takings scrutiny by segmenting emergency measures into temporary enactments.

Each moratorium may be described as short-term, but serial restrictions and background tenancy laws can produce cumulative and continuing effects. Pet. App. D, at 56a–64a, 75a–77a.

The Just Compensation Clause requires courts to consider the practical burden imposed on property owners, not merely the formal expiration date of one ordinance.

This case presents an appropriate vehicle for review. The Court of Appeal expressly addressed and rejected the federal takings claim. It distinguished Cedar Point, relied on *Yee*, and applied an emergency exception to deny compensation. Pet. App. B, at 25a–36a. The California Supreme Court denied review. Pet. App. A, at 1a.

Although the Court of Appeal opinion was unpublished, petitioner informed the California Supreme Court that multiple public entities — including numerous municipalities, the County of Los Angeles, and the State of California — requested publication, reflecting the perceived significance of the decision for municipal regulation and constitutional litigation. Pet. App. E, at 82a, 85a. The California Supreme Court denied the requests for publication. Pet. App. A, at 1a.

The questions presented are recurring and important. Local and state governments continue to rely on emergency powers, housing regulations, and tenant-protection regimes.

Property owners and public entities need clear guidance on when such measures cross the constitutional line from regulation to taking, and whether emergency purposes eliminate or merely justify the duty to compensate.

The decision below provides the wrong answer and leaves unresolved the threshold reviewability problem created when a state court denies standing but nevertheless decides the federal constitutional merits. Pet. App. B, at 7a–21a, 25a–36a.

The petition should be granted. At a minimum, this Court should grant, vacate, and remand so that the state courts may address standing, amendment, and the federal Takings Clause under proper constitutional principles.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the Court should grant the petition, vacate the judgment below, and remand for further proceedings addressing standing, amendment, and petitioner's federal Takings Clause claim under proper constitutional principles.

Respectfully submitted,

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Dated: June 9, 2026

APPENDIX

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APPENDIX A — ORDER DENYING REVIEW OF THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE, FILED MARCH 11, 2026

Court of Appeal, Fourth Appellate District,
Division One - No. D084679

S294758

IN THE SUPREME COURT OF CALIFORNIA

En Banc

LEROY GEORGE SIDDELL,

Plaintiff and Appellant,

v.

CITY OF SAN DIEGO,

Defendant and Respondent.

The petition for review is denied.

The requests for an order directing publication of the opinion are denied.

/s/ GUERRERO
Chief Justice

APPENDIX B — COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE, FILED DECEMBER 24, 2025

COURT OF APPEAL OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

D084679
Super. Ct. No. 37-2022-00025224-CU-EI-CTL)

LEROY GEORGE SIDDELL,

Plaintiff and Appellant,

v.

CITY OF SAN DIEGO,

Defendant and Respondent.

Filed December 24, 2025

APPEAL from a judgment of the Superior Court of San Diego County, James A. Mangione, Judge. Affirmed.

Plaintiff and appellant Leroy George Siddell appeals a judgment in favor of the City of San Diego (City) following a bench trial on Siddell's complaint, assertedly filed on behalf of all San Diego taxpayers, challenging an ordinance that placed a temporary moratorium on no-fault residential evictions in the city of San Diego. Following that proceeding, the trial court ruled Siddell and the other plaintiffs lacked standing to bring the complaint. It alternatively ruled the ordinance was neither a per se physical taking nor a regulatory taking. Siddell contends the court erred in these rulings, in part because the plaintiffs properly invoked taxpayer standing under Code of Civil Procedure[1] section 526a or alternatively were entitled to sue as private attorneys general under section 1021.5. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2022, during the COVID-19 pandemic,[2] City passed Ordinance No. O-214471 (the ordinance), which

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1. Undesignated statutory references are to the Code of Civil Procedure.

2. The ordinance at issue recounts the COVID-19 health threat and various declarations of emergency leading up to state eviction protections and the ordinance's passage. The United States District Court for the Southern District of California in *Southern California Rental Housing Association v. County of San Diego* (S.D.Cal. 2021) 550 F.Supp.3d 853 summarized facts giving rise to the COVID-19 public health emergency. (*Id.* at pp. 857-859.) The circumstances led to "[r]egulations . . . put in place by federal, state, and local governments to slow the spread of the disease by requiring limited social contact, and self-quarantining citizens at home," as well as ordinances imposing a short-term eviction moratorium. (*Id.* at p. 859 [addressing County of San Diego ordinance].) The *Southern California Rental Housing* district court reviewed a motion for a preliminary injunction, and addressed an association's likelihood of success on the merits on a claim that a San Diego County eviction moratorium ordinance violated the Takings Clause of the federal constitution's Fifth Amendment. (*Id.* at pp. 860, 864-867.) This court in *640 Tenth, LP v. Newsom* (2022) 78 Cal.App.5th 840, 294 Cal. Rptr. 3d 123 likewise provided some background on the pandemic in addressing whether the Governor's emergency COVID-19 orders restricting business operations constituted a regulatory taking. (*Id.* at pp. 849-850, 859-865.)

imposed a temporary moratorium on no-fault residential evictions in the city of San Diego. The ordinance, with specified exceptions,[3] prohibited landlords from evicting or attempting to evict tenants where the grounds for terminating the tenancy or occupancy was not based on any alleged tenant fault. The ordinance was to remain in effect until September 30, 2022, or 60 days after City's mayor declared the end of the local state of emergency, whichever occurred first. The ordinance lapsed on September 30, 2022.

In June 2022, Siddell sued City allegedly on behalf of all San Diego taxpayers and landowners, as well as in the capacity of a private attorney general under section 1021.5. Siddell alleged the ordinance violated the state and federal Constitutions amounting to an "unlawful taking of property rights without any provision of just compensation" and an "unlawful attempt to exercise eminent domain power." He alleged the ordinance made no provision for just compensation for landlord property owners, and thus violated federal due process. He sought a permanent injunction against the ordinance's enforcement,[4] a declaration that it be declared null and

3. The exceptions were when a landlord, with six months prior written notice, intended to withdraw all rental units from the rental market; the landlord sought to recover possession for repair or construction work under an order that the unit be vacated due to safety or habitability or where continued occupancy severely threatened the occupants' immediate health and safety; or the landlord or specified family members intended to occupy the unit as their primary residence upon 90 days prior written notice.

4. The parties agreed during the course of proceedings that Siddell's request for injunctive relief was moot. The moratorium

void, section 1021.5 attorney fees, costs, and inverse condemnation damages. City answered the complaint, asserting as one affirmative defense, among others, that the plaintiffs lacked standing.

The court eventually bifurcated the issue of liability from damages on the inverse condemnation claim. It set the matter for trial on the pleadings and declarations only. Siddell filed a trial brief, arguing in part that the ordinance constituted a per se taking or alternatively a regulatory taking. City filed an opposing brief. It argued Siddell lacked standing to bring the suit, pointing out he failed to allege he owned any residential property within City subject to the ordinance or suffered any injury in fact because of the ordinance. City asked the court to take judicial notice of executive orders, an emergency ordinance and an April 2022 staff report. The parties agreed that trial would be on the pleadings filed and declarations, without live witnesses.

The matter came on for trial in June 2024. Siddell did not appear. City submitted on the tentative ruling, which the court confirmed. Granting City's requests for judicial notice,[5] the court first ruled that the complaint

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lapsed in September 2022, thus, no effective injunctive relief could be granted.

5. On appeal, Siddell does not challenge the propriety of judicial notice of the matters submitted by City. Ordinances are appropriately judicially noticeable as "legislative enactments issued by . . . any public entity in the United States." (Evid. Code, § 452, subd. (b); see *Hovannisian v. City of Fresno* (2024) 107 Cal.App.5th 833, 843, 328 Cal. Rptr. 3d 517.) Likewise, on City's

failed to allege facts showing that the plaintiffs had standing to sue. More specifically, the court ruled "the complaint fails to allege that either . . . Siddell, or any of the 'Taxpayers' on whose behalf Siddell brings the complaint, are landlords within the City of San Diego who are subject to the ordinance. Allegations that 'plaintiffs are taxpayers and landowners within the City of San Diego' . . . , without more, are insufficient." The court observed the complaint also failed to allege "that either . . . Siddell or the taxpayers suffered an injury in fact because of the ordinance."

Alternatively, the court ruled that plaintiffs had not established the ordinance effected a taking. It found the ordinance was "not a *per se* physical taking because [it] did not effectuate a permanent physical occupation of plaintiffs' property." It further found "[n]othing in the terms of the ordinance effectuates a physical taking of any property" and that "the ordinance was expressly time-limited and expired by its own terms on September 20, 2022 [*sic*]." The court rejected Siddell's argument of a regulatory taking, finding City established the circumstances of the COVID-19 pandemic supported applying the doctrine of necessity.[6] The court thus adjudicated the second cause

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unopposed request, the court properly took judicial notice of the executive orders. (*640 Tenth, LP v. Newsom, supra*, 78 Cal.App.5th at p. 850, fn. 4.)

6. The court stated that this principle, reflected in *Lucas v. S.C. Coastal Council* (1992) 505 U.S. 1003, at page 1029, footnote 16, 112 S. Ct. 2886, 120 L. Ed. 2d 798, is one "'absolving the State . . . of liability for the destruction of "real and personal property, in cases of actual necessity, to prevent" . . . or forestall . . . grave threats to the lives and property of others' . . . ." It ruled: "As

of action in City's favor, and ruled there would not be a separate trial on damages.

Siddell filed this appeal.

DISCUSSION

I. Standing

Siddell contends the plaintiffs had taxpayer standing under section 526a, and also were entitled to bring the suit as private attorneys general. According to Siddell, the plaintiffs' challenge to the ordinance is a facial constitutional challenge, which "does not require plaintiffs to allege actual enforcement or individualized harm, so long as the ordinance is alleged to be invalid in most or all of its intended applications."

In response, City argues that because Siddell did not allege or show he owned residential property within City or that he suffered any financial losses because of the ordinance, he lacks standing. City further argues that Siddell waived the issue of section 526a taxpayer standing by failing to raise it in the trial court. In making these arguments, City relies on *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 112 S. Ct. 2130, 119 L. Ed.

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recognized in *South Bay United Pentecostal Church v. Newsom* (9th Cir. 2020) 959 F.3d 938, the COVID-19 pandemic was as a result of a 'highly contagious and often fatal disease for which there presently is no known cure.' [Citation.] The court finds such circumstances support application of the doctrine [of] necessity. As there is no reply, plaintiffs do not raise any arguments to the contrary."

2d 351 for the elements for standing under article III of the United States Constitution. But Siddell brings state law claims (for an injunction and inverse condemnation under article I, section 19 of the California Constitution) brought in state court, and as we reiterate below, article III principles do not apply. "[T]he constraints of [a]rticle III do not apply to state courts . . . ." (*ASARCO Inc. v. Kadish* (1989) 490 U.S. 605, 617, 109 S. Ct. 2037, 104 L. Ed. 2d 696 ["state courts are not bound to adhere to federal standing requirements"].)

A. Standard of Review

We reject City's waiver argument based on the nature of standing, which is typically a question of law. (See *San Diegans for Open Government v. Fonseca* (2021) 64 Cal. App.5th 426, 436, 279 Cal. Rptr. 3d 1 ["""Both standing and the interpretation of statutes are questions of law to which we typically apply a de novo standard of review"""]; *California DUI Lawyers Association v. California Department of Motor Vehicles* (2018) 20 Cal.App.5th 1247, 1258, 229 Cal. Rptr. 3d 787 [exercising de novo review where the facts relevant to taxpayer standing were not in dispute].) "At its core, standing concerns a specific party's interest in the outcome of a lawsuit. [Citations.] We therefore require a party to show that he or she is sufficiently interested as a prerequisite to deciding, on the merits, whether a party's challenge to legislative or executive action independently has merit. [Citation.] In making this threshold determination, our inquiry differs somewhat from the standing analysis employed in the federal courts. Unlike the federal Constitution, our state Constitution has no case or controversy requirement . . . .” (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247-1248, 218 Cal. Rptr. 3d 394, 395 P.3d 274 (*Weatherford*); see also *San Diegans for Open Government v. Public Facilities Financing Authority of City of San Diego* (2019) 8 Cal.5th 733, 738, 257 Cal. Rptr. 3d 43, 455 P.3d 311.)

“““[C]ontentions based on a lack of standing involve jurisdictional challenges and may be raised at any time in the proceeding.””” (*Zolly v. City of Oakland* (2022) 13 Cal.5th 780, 789, 297 Cal. Rptr. 3d 1, 514 P.3d 799 [permitting a city to raise lack of standing for the first time on appeal]; see also *Taking Offense v. State of California* (2025) 18 Cal.5th 891, 910; *Associated Builders and Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361, 87 Cal. Rptr. 2d 654, 981 P.2d 499.) When a court dismisses an action for lack of standing, “we must ‘view the evidence in the light most favorable to the judgment [or order of dismissal], and are bound by trial court’s findings that are supported by substantial evidence.’” (*San Diegans for Open Government v. Fonseca, supra*, 64 Cal.App.5th at p. 436.)

Here, because the trial took place on the pleadings and briefing without witnesses, the underlying fact and circumstances are not in dispute. We merely assess whether Siddell’s complaint’s allegations establish standing to sue City over the ordinance.

B. General Standing

“Absent specific requirements for a statutory cause of action, standing in civil cases is governed by the ‘general standing requirements under . . . section 367.' [Citation.] . . . [S]ection 367 requires that an action 'be prosecuted in the name of the real party in interest,' and we have defined a '"real party in interest"' as "'"any person or entity whose interest will be directly affected by the proceeding"'" including anyone with "'"a direct interest in the result."'"" (*Zolly v. City of Oakland, supra*, 13 Cal.5th at p. 789.) "'[L]ost money or property . . . is itself a classic form of injury in fact.'" (*Ibid.*) "Typically, to have standing, a plaintiff must plead an actual justiciable controversy and have some 'special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" (*San Diegans for Open Government v. Public Facilities Financing Authority of City of San Diego, supra*, 8 Cal.5th at p. 738.)

Siddell did not address standing in his trial brief, leaving only his complaint's allegations. Though Siddell alleged that the plaintiffs "have suffered financial harm," the complaint merely identified him and the other plaintiffs as "taxpayers and land*owners*" (italics added) within City. He did not allege that while the ordinance was in effect they were landlords, that they had tenants or renters, or that they otherwise had a legal right to pursue eviction or other possessory action. That a person must have been a landlord at the relevant time period to have suffered injury is reflected in the complaint's allegation that persons and entities harmed by the ordinance "may be readily identified" by a City-maintained special tax roll by which City "charges landlords a 'Rental Tax': which is due and payable each and every year and should therefore be current."

Other than the conclusory allegation of harm, the complaint is absent any indication that Siddell or the plaintiffs have a “““direct interest in the result””” (*Zolly v. City of Oakland, supra*, 13 Cal.5th at p. 789) or suffered the requisite impact to have standing under section 367. (Compare, *ibid.* [plaintiffs’ allegations that city fees had caused their waste collection to increase every month was sufficient to confer standing].) And because Siddell did not provide a sworn declaration to accompany his trial brief, he did not present evidence on these points. We conclude plaintiffs lack standing under these general standing requirements.

C. Taxpayer Standing

“Taxpayer standing derives from . . . section 526a, subdivision (a).” *Thompson v. Spitzer* (2023) 90 Cal. App.5th 436, 453, 307 Cal. Rptr. 3d 183.)[7] “[S]ection 526a . . . authorizes actions by a resident taxpayer against officers of a county, town, city, or city and county to

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7. The statute provides in part: “An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax that funds the defendant local agency, including, but not limited to, the following: [¶] (1) An income tax. [¶] (2) A sales and use tax or transaction and use tax initially paid by a consumer to a retailer. [¶] (3) A property tax, including a property tax paid by a tenant or lessee to a landlord or lessor pursuant to the terms of a written lease. [¶] (4) A business license tax.” (§ 526a, subd. (a).)

obtain an injunction restraining and preventing the illegal expenditure of public funds." (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 267, 96 Cal. Rptr. 42, 486 P.2d 1242, superseded by statute on another ground as stated in *Simms v. NPCK Enterprises, Inc.* (2003) 109 Cal.App.4th 233, 242-243, 134 Cal. Rptr. 2d 557.) "The 'primary purpose' of the statute 'is to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement."'" (*San Diegans for Open Government v. Public Facilities Financing Authority of City of San Diego, supra*, 8 Cal.5th at p. 738, fn. 3.)

"'[S]ection 526a provides a mechanism for controlling illegal, injurious, or wasteful actions by [government] officials. That mechanism, moreover, remains available even where the injury is insufficient to satisfy general standing requirements under . . . section 367.' [Citation.] . . . 'In light of [section 526a's] purpose, it is crucial that the statute provide a "'broad basis of relief.'" [Citation.] Accordingly, [courts have] construed section 526a liberally . . . in light of its remedial purpose.' [Citation.] 'Cases that challenge the legality or constitutionality of governmental actions fall squarely within the purview of section 526a.'" (*Thompson v. Spitzer, supra*, 90 Cal.App.5th at pp. 453-454, quoting *Weatherford, supra*, 2 Cal.5th at pp. 1249, 1252 & *California DUI Lawyers Association v. Department of Motor Vehicles, supra*, 20 Cal.App.5th at p. 1261.)

Notwithstanding these principles, "section 526a does not confer unrestricted standing to taxpayers."

(*Weatherford, supra*, 90 Cal.App.5th at p. 1251.) A plaintiff must establish "she or he has paid, or is liable to pay, to the defendant locality a tax assessed on the plaintiff by the defendant locality." (*Id.* at p. 1252.) Further, "[a] '"taxpayer action must involve an actual or threatened expenditure of public funds. [Citation.] [¶] General allegations, innuendo, and legal conclusions are not sufficient [citation]; rather, the plaintiff must cite specific facts and reasons for a belief that some illegal expenditure or injury to the public fisc is occurring or will occur."' [Citation.] Similarly, the 'term "waste" as used in . . . section 526a means something more than an alleged mistake by public officials in matters involving the exercise of judgment or discretion.' [Citation.] Rather, it is more readily understood as 'a "useless expenditure of funds." [Citation.] Accordingly, [section 526a] should not be applied to principally "political" issues or issues involving the exercise of the discretion of either the legislative or executive branches of government.' [Citation.] Likewise, no claim will 'lie where the challenged governmental conduct is legal.'" (*Collins v. Thurmond* (2019) 41 Cal. App.5th 879, 910, 258 Cal. Rptr. 3d 830; see also *Sundance v. Municipal Court* (1986) 42 Cal.3d 1101, 1138, 232 Cal. Rptr. 814, 729 P.2d 80; *Thompson v. Spitzer, supra*, 90 Cal. App.5th at p. 456; *California DUI Lawyers Association v. Department of Motor Vehicles, supra*, 20 Cal.App.5th at p. 1258 ["Case law has made clear that 'waste' does not encompass discretionary governmental action. '[A] taxpayer is not entitled to injunctive relief under . . . section 526a where the real issue is a disagreement with the manner in which government has chosen to address a problem'"].)

While Siddell did not forfeit the question of taxpayer standing by failing to raise it in the trial court, because he did not submit a declaration, there is no evidence from which we can determine the types of taxes he and any other plaintiff paid, or the "specific facts and reasons" on which he relies to demonstrate """that some illegal expenditure or injury to the public fisc is occurring or will occur""" (*Collins v. Thurmond, supra*, 41 Cal.App.5th at p. 910) as a result of the ordinance's eviction moratorium. We can look only to the allegations of his complaint to determine whether they are sufficient to confer standing.

We conclude they are not. As indicated above, the complaint contains only a conclusory statement that Siddell and the other plaintiffs are "taxpayers and landowners within the City of San Diego." Section 526a limits its reach, and standing to bring an action against a local agency such as City, to "a resident therein . . . , who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax that funds the defendant local agency . . . ." (§ 526a, subd. (a).)[8] Such taxes may include an income tax, a sales and use tax, a property tax, or a business license tax. (*Ibid.*) It is true that section 526a should be broadly construed, but Siddell's bare legal conclusion that plaintiffs are taxpayers, in this procedural context, is not enough.

We take guidance from *Weatherford, supra*, 2 Cal.5th 1241 in reaching this conclusion. There, following the

8. A "'[r]esident' means a person who lives, works, owns property, or attends school in the jurisdiction of the defendant local agency." (§ 526a, subd. (d)(2).) The allegation that plaintiffs are landowners within San Diego meets that requirement.

parties' stipulated judgment of dismissal, the high court examined whether a plaintiff must have paid or be liable for property taxes in order establish taxpayer standing. The plaintiff there contended the manner in which a city and county enforced a vehicle code violated both the state and federal constitutions. (*Id.* at p. 1245.) Because she was not personally subject to the practice, she averred she had taxpayer standing, and claimed she had paid sales and gasoline taxes, water and sewage fees, and "'other taxes, charges and fees routinely imposed'" in the city and county. (*Ibid.*) The Court of Appeal held a plaintiff had to be liable to pay a property tax or have paid it during the prior year to have the necessary standing. (*Id.* at p. 1246.)

The high court reversed. (*Weatherford, supra*, 2 Cal.5th at pp. 1252-1253.) Its ability to consider the question was limited by the fact the parties had entered into the stipulated judgment without any factual development, so "basic factual questions—including *which taxes the defendants actually impose*—[were] unresolved." (*Id.* at p. 1252.) The court nevertheless concluded it sufficed that a plaintiff alleged "she or he has paid, or is liable to pay, to the defendant locality a tax assessed on the plaintiff by the defendant locality." (*Ibid.*; see also *Taking Offense v. State, supra*, 18 Cal.5th at p. 916 [discussing *Weatherford*].) The court was "certain that the Legislature's purpose, at a minimum, was for the statute to apply where plaintiffs are directly taxed by the defendant locality." (*Weatherford*, at p. 1252.) Given the case's procedural posture, and the fact the "record [was] devoid of information regarding which taxes defendants actually impose, or whether [plaintiff] has, in fact, paid any assessed taxes to [the city and county]," it remanded for further proceedings. (*Ibid.*)[9]

This case is in a different procedural posture. Siddell's appeal follows a bench trial on the pleadings and declarations, if any, on the parties' agreement that the court would decide the merits solely on that record. Siddell had the burden to establish the plaintiffs' standing. (*Taking Offense v. State, supra*, 18 Cal.5th at p. 911.) Under these circumstances, Siddell, who did not address standing in his trial brief or present a declaration delineating the sort of taxes he or any other plaintiff paid or were liable to pay, had a full opportunity to establish the requisite tax liability/payments, but did not. The trial court ruled he did not establish taxpayer standing, and we are required to uphold its ruling if correct on any theory, regardless of its reasoning. (*569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 435, fn. 10, 212 Cal. Rptr. 3d 304; *Muro v. Cornerstone Staffing Solutions, Inc.* (2018) 20 Cal. App.5th 784, 790, 229 Cal. Rptr. 3d 498 ["A judgment is

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9. Chief Justice Cantil-Sakauye concurred and pointed out the need to modernize and clarify section 526a. (*Weatherford, supra*, 2 Cal.5th at pp. 1253-1255; see *Taking Offense v. State, supra*, 18 Cal.5th at pp. 916-917.) Following *Weatherford*, the Legislature amended the statute to clarify what sorts of taxes would be sufficient to confer standing on a taxpayer who paid them to bring an action to restrain or recoup an illegal or wasteful public expenditure. (*Taking Offense*, at pp. 916-917, citing Stats. 2018, ch. 319, § 1.) The Legislature also expanded the target defendants to any local agency and required that plaintiffs reside within the local agency's jurisdiction. (§ 526a, subd. (d); *Taking Offense*, at p. 916.)

presumed correct, and if it is correct on any theory, it must be affirmed regardless of the trial court's reasoning"].)[10]

Even setting aside that conclusion, we would hold that Siddell's claim, at bottom, impermissibly "trespass[es] into the domain of legislative or executive discretion." (*Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 160-161, 101 Cal. Rptr. 880, 496 P.2d 1248; see also *Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 496, 274 Cal. Rptr. 3d 727 ["'[S]ection 526a has its limits. In particular, the courts have stressed that the statute should not be applied to . . . issues involving the exercise of the discretion of either the legislative or executive branches of government'"]; *Humane Society of the United States v. State Bd. of Equalization* (2007) 152 Cal.App.4th 349, 356, 61 Cal. Rptr. 3d 277 [same].) A taxpayer cannot invoke section 526a "where the real issue

10. Siddell does not specify what sorts of allegedly illegal or wasteful public expenditures City incurred in connection with the ordinance, which imposes restrictions on landlords' conduct. (Compare *Blair v. Pitchess, supra*, 5 Cal.3d at pp. 265-266, 268 [considering challenge to "claim and delivery process" by which a sheriff or marshal could take property without notice; plaintiffs contended the county officials were illegally "expending the time of county officials in executing its provisions" and court observed it liberally applied rule "'permitting taxpayers to bring a suit to *prevent the illegal conduct of city officials*,'" italics added].) Nor does Siddell argue he has common law taxpayer standing. (See *Taking Offense v. State, supra*, 18 Cal.5th at p. 911; *San Diegans for Open Government v. Fonseca, supra*, 64 Cal.App.5th at p. 438, fn. 6.) The principle would apply to a suit against a government body "involving fraud, collusion, ultra vires or a failure to perform a duty specifically enjoined . . . ." (*Fonseca*, at p. 438, fn. 6.)

is a disagreement with the manner in which government has chosen to address a problem because a successful claim requires more than 'an alleged mistake by public officials in matters involving the exercise of judgment or wide discretion.'" (*Coshow v. City of Escondido* (2005) 132 Cal. App.4th 687, 714, 34 Cal. Rptr. 3d 19, quoting *Sundance v. Municipal Court, supra*, 42 Cal.3d at p. 1138.) In *Schmid v. City and County of San Francisco*, for example, the court held that an art commission director who "wielded the executive discretion to remove works of art that did not fit the Commission's vision" per commission's policies and guidelines "cannot be sued under . . . section 526a." (*Schmid v. City and County of San Francisco, supra*, 60 Cal.App.5th at p. 496.)

In the ordinance, the San Diego City Council found:

- "[I]n the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement during the emergency and to prevent housed individuals from falling into homelessness";

- "[D]isplacement of residential tenants caused by eviction creates undue hardship on these tenants by making it difficult to follow public health orders and guidance of social distancing and isolation, and puts them at risk of homelessness due to the City's documented shortage of affordable housing";

- "[T]hrough 'no-fault' evictions, tenants can be evicted and displaced from their homes despite satisfying monthly rental obligations and acting in good faith to comply with the terms of their lease";

- "[A] tenant's sudden and immediate displacement caused by a 'no-fault' eviction can have a profound impact on the financial, emotional, and professional stability of a tenant's life, which impacts are compounded by the ongoing COVID-19 pandemic";

- "[E]victions have been associated with higher COVID-19 transmission and mortality through overcrowded living environments, transiency, reduced access to healthcare, and challenges to comply with mitigation strategies";

- "[W]hile in effect this Ordinance supersedes the Tenant's Right to Know Regulations regarding 'no-fault' evictions and enacts a temporary moratorium on 'no-fault' evictions to prevent tenant displacement, to promote economic stability and fairness within the City's rental market during the COVID-19 pandemic, to prevent avoidable homelessness, and to preserve the public peace, health, safety, and welfare";

- "[I]t is in the public interest to take steps to ensure people remain housed during this public health emergency";

- "[A]dopting this Ordinance is necessary and appropriate to address the threats to the public health. safety, and welfare of its citizens to ensure residents continue to have stable shelter and to protect residents from avoidable homelessness[.]"

The ordinance provides that subject to the above-referenced exceptions (see footnote 3, *ante*), "[a] landlord shall not evict, or endeavor to evict, a tenant where the grounds for terminating the tenancy or occupancy is not based on any alleged fault by the tenant." It provides that "[n]othing in this Ordinance relieves the tenant of the obligation to pay rent or restricts the landlord's ability to recover rent due." The ordinance's protections create an affirmative defense for tenants in an unlawful detainer action. The ordinance states "[t]hat the provisions of this Ordinance, being necessary for the welfare of the City of San Diego and its residents, shall be liberally construed to effectuate its purpose, which is to protect tenants from being evicted where grounds for terminating the tenancy or occupancy are not based on any alleged fault by the tenant during recovery from the COVID-19 pandemic."

We conclude City's decision to implement the eviction moratorium so as to protect the health, safety and welfare of citizens in response to the COVID-19 public health emergency is a matter of discretion that may not be the subject of a section 526a taxpayer action. "Under article XI, section 7 of our state constitution, a 'county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.' (Cal. Const., art. XI, § 7.) These powers are known generally as the police powers of local government." (*Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 561-562, 273 Cal. Rptr. 3d 619, citing *City and County of San Francisco v. Regents of University of California* (2019) 7 Cal.5th 536, 544, 248 Cal. Rptr. 3d 352, 442 P.3d 671.) "[T]he police power of a city is as broad as the police power exercised by the Legislature itself. . . . In exercising its police power, a city has broad discretion to determine what is reasonable in endeavoring to protect public safety, health, . . . and general welfare." (*Loska v. Superior Court* (1986) 188 Cal. App.3d 569, 575, 233 Cal. Rptr. 213; accord, *Abeel v. Clark* (1890) 84 Cal. 226, 229-231, 24 P. 383 ["'What is for the public good, and what are public purposes, and what does properly constitute a public burden, are questions which the legislature must decide upon its own judgment, and in respect to which it is invested with a large discretion, which cannot be controlled by the courts'"].)

We reject Siddell's argument that plaintiffs are entitled to bring the action as private attorneys general under section 1021.5. He correctly acknowledges that section 1021.5 "does not create standing." Section 1021.5 is an attorney fee statute; it creates an exception to the general rule that parties in litigation pay their own attorney fees, permitting a fee award for successful litigants who vindicate fundamental constitutional rights for the public benefit. (*Grossmont Union High School District v. Diego Plus Education Corp.* (2023) 98 Cal.App.5th 552, 570, 316 Cal. Rptr. 3d 721.) The statute does not permit parties who otherwise lack standing to maintain public interest litigation. Indeed, "'[t]here is no general "public interest" exception to the requirement of standing.'" (*Spotlight on Coastal Corruption v. Kinsey* (2020) 57 Cal.App.5th 874, 883, 271 Cal. Rptr. 3d 867, quoting *People ex rel. Becerra v. Superior Court* (2018) 29 Cal.App.5th 486, 497, 240 Cal. Rptr. 3d 250.) "Public interest standing is available only in a mandate proceeding, not in an ordinary civil action." (*People ex rel. Becerra v. Superior Court*, at p. 503.)

Siddell further argues plaintiffs are entitled to bring a facial constitutional challenge—a claim that the ordinance is unconstitutional on its face—which assertedly does not require plaintiffs to show individualized harm. He points to *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 40 Cal. Rptr. 2d 402, 892 P.2d 1145, and the court's explanation of a facial challenge. (*Id.* at p. 1084.) Citing *Landgate, Inc. v. California Coastal Commission* (1998) 17 Cal.4th 1006, 73 Cal. Rptr. 2d 841, 953 P.2d 1188 and *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 24 Cal. Rptr. 3d 72, Siddell maintains courts routinely permit facial challenges in land use and housing contexts, and the court "erred by requiring plaintiffs to allege individualized enforcement or direct harm, thereby collapsing the distinction between facial and as-applied claims and misapplying controlling law."

Landgate, Inc. v. California Coastal Commision, supra, 17 Cal.4th 1006, 73 Cal. Rptr. 2d 841, 953 P.2d 1188 does not address standing. And while *City of Santa Monica v. Stewart, supra*, 126 Cal.App.4th 43, 24 Cal. Rptr. 3d 72 discussed standing, it did so to hold one of the actions, by the City of Santa Monica, was not justiciable in that it failed both the standing and ripeness aspects of that concept. (*Id.* at pp. 59-60.) The city there challenged initiatives seeking to prevent city officials from receiving certain advantages from persons or entities who derived benefit from those officials' discretionary decisions. (*Id.* at p. 50.) The Court of Appeal found the city lacked traditional standing under section 367—it did not have "'an actual and substantial interest in the subject matter of the action'" or stood to be "'benefitted or injured'" by a judgment in the action (*id.* at p. 60)—because it bore minimal responsibilities under the initiative, and the complaint did not specify any actual or threatened action which would injure the city or violate its rights. (*Ibid.*) Siddell does not discuss *City of Santa Monica* in depth, and it does not support his claim of taxpayer standing.

Tobe v. City of Santa Ana involved a city ordinance intending to maintain public streets and areas in a clean and accessible condition. (*Tobe v. City of Santa Ana, supra*, 9 Cal.4th at pp. 1080-1081.) The decision concerned whether the plaintiffs there—homeless persons, taxpayers and persons charged with violating the ordinance—had perfected an as-applied challenge to the ordinance. (*Id.* at p. 1083.) In discussing the issue, the court addressed the nature of challenges to ordinances and the sorts of beneficial interest plaintiffs must show.[11] Ultimately, the court did not decide whether the plaintiffs had such a

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11. "To obtain mandate or other relief from penalties imposed under a past application of the law, the defendant must presently be suffering some adverse impact of the law which the court has the power to redress. [¶] If instead it is contended that an otherwise valid statute has been applied in a constitutionally impermissible manner in the past and the plaintiff seeks an injunction against future application of the statute in that manner, the plaintiff must show a pattern of impermissible enforcement. [Citations.] [¶] In most cases a plaintiff seeking this relief, either by a petition for writ of mandamus or complaint for declaratory and injunctive relief, must have a sufficient beneficial interest to have standing to prosecute the action, and there must be a present impermissible application of the challenged statute or ordinance which the court can remedy." (*Tobe v. City of Santa Ana, supra*, 9 Cal.4th at p. 1085.)

beneficial interest because they had standing as taxpayers "to restrain illegal expenditure or waste of city funds on *future* enforcement of an unconstitutional ordinance or an impermissible means of enforcement of a facially valid ordinance." (*Id.* at p. 1086.) The court proceeded to conclude the plaintiffs had made only a facial attack on the ordinance's constitutionality, and upheld its validity against that challenge. (*Id.* at pp. 1086-1109.)

Siddell misplaces reliance on *Tobe v. City of Santa Ana, supra*, 9 Cal.4th 1069, 40 Cal. Rptr. 2d 402, 892 P.2d 1145 to advocate he and the other plaintiffs have standing. To the extent the court in *Tobe* addressed standing, it was dicta. And, the court stated without explanation that the plaintiffs there had taxpayer standing. We have found the contrary here. *Tobe* is inapposite in any event, since Siddell can no longer seek to restrain future enforcement, and does not argue the ordinance here is facially valid, unlike the plaintiffs with standing in *Tobe*. (*Tobe v. City of Santa Ana*, at p. 1086.)

Finally, Siddell argues the court erred by dismissing his case "based on a perceived deficiency in pleading—namely, the failure to allege specific harm to individual plaintiffs." He maintain the proper remedy was to grant him leave to amend to conform to proof at trial, or to hold continued proceedings on damages after further factual development. Siddell suggests the "factual record is still developing" in this case. The argument mischaracterizes both the court's order and disregards the procedural posture of the case. The court referred to the inadequate allegations because the parties had agreed to submit the matter on the pleadings for trial. The court's observation that the complaint lacked proof of individualized injury was not a ruling respecting damages, but one about threshold standing. Siddell had the burden on that point, but chose not to present any declaration on the matter, and did not appear at the trial on the merits. Absent standing, plaintiffs had no ability to maintain the suit or prove damages.

II. Claim of Unconstitutional Taking

Notwithstanding our holding above, we have discretion to consider the merits of Siddell's takings challenge, particularly where the court gave the parties a full opportunity to litigate the matter. (See *Taking Offense v. State, supra*, 18 Cal.5th at p. 919.) Doing so, we conclude the ordinance does not effect either a per se or regulatory taking.

A. General Principles

The Takings Clause of the Fifth Amendment provides that no "private property shall be taken for public use, without just compensation." (U.S. Const. 5th Amend.) The clause applies to the states through the Fourteenth Amendment. (*Kelo v. City of New London, Connectivut* (2005) 545 U.S. 469, fn. 1; *640 Tenth, LP v. Newsom, supra*, 78 Cal.App.5th at p. 859.)

"A physical taking occurs where the government physically intrudes upon a plaintiff's property or allows others to do so." (*640 Tenth, LP v. Newsom, supra*, 78 Cal.App.5th at p. 859, citing *Loretto v. Teleprompter*

Manhattan CATV Corp. (1982) 458 U.S. 419, 427, 102 S. Ct. 3164, 73 L. Ed. 2d 868 & fn. 5.) Regulatory takings differ. A categorical regulatory taking will occur where a government regulation deprives the owner of all economically beneficial uses. (*640 Tenth*, at p. 860.) This type of regulatory taking is an "extraordinary circumstance when *no* productive or economically beneficial use of land is permitted." (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 330, 122 S. Ct. 1465, 152 L. Ed. 2d 517.) But "'[w]here a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action.'" (*York v. City of Los Angeles* (2019) 33 Cal.App.5th 1178, 1193, 245 Cal. Rptr. 3d 731, quoting *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 617-618, 121 S. Ct. 2448, 150 L. Ed. 2d 592.)

Thus, "a government regulation that merely prohibits landlords from evicting tenants unwilling to pay a higher rent, [citation]; that bans certain private uses of a portion of an owner's property, [citations]; or that forbids the private use of certain airspace, [citation], does not constitute a categorical taking." (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, supra*, 535 U.S. at pp. 322-323.) "'The first category of cases requires courts to apply a clear rule; the second necessarily entails complex factual assessments of the purposes and economic effects of government actions.'" (*Id.* at p. 323, quoting *Yee v. City of Escondido* (1992) 503 U.S. 519, 523, 112 S. Ct. 1522, 118 L. Ed. 2d 153.)

B. Per Se Taking

Siddell contends the ordinance effected a per se taking by compelling physical occupation without consent. He says the ordinance "barred landlords from recovering possession of their property, even after a lease expired or a tenant ceased payment, thereby nullifying the owner's fundamental right to exclude—a core attribute of property ownership." He relies in part on the United States Supreme Court's decision in *Cedar Point Nursery v. Hassid* (2021) 594 U.S. 139, 149, 141 S. Ct. 2063, 210 L. Ed. 2d 369 (*Cedar Point*).[12]

A majority of the U.S. Supreme Court held in *Cedar Point* that if a regulation results in a physical appropriation of property, a per se taking has occurred. (*Cedar Point, supra*, 594 U.S. at p. 149.) Thus, where raisin growers were required to physically set aside a percentage of their crop for the government, the requirement constituted a physical taking. (*Ibid.*, citing *Horne v. Department of Agriculture* (2015) 576 U.S. 350, 361.)

In *Cedar Point*, a packing company and nursery sought to bring a claim for a per se physical taking by a California regulation enacted in 1975 granting labor organizations a right to enter agricultural employers' property for up to three hours per day, 120 days per year, to solicit unionization support. (*Cedar Point, supra*, 594 U.S. at pp. 143-144, 152; *id.* at p. 166 [Breyer, J. dissenting,

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12. Siddell also relies on the Federal Circuit Court of Appeals holding in *Darby Development v. United States* (Fed.Cir. 2024) 112 F.4th 1017, which he acknowledges is not binding on us.

noting year of enactment].) The petitioners did not seek compensation, but declaratory and injunctive relief to prohibit the regulation's enforcement against them. (*Id.* at p. 145.) The *Cedar Point* majority held they stated such a claim, reasoning that like government-authorized overflights of airplanes, the government's creation of an easement to permit boats through a developer's private marina, and a law requiring installation of cable equipment on landlords' properties, the government regulation "appropriated a right of access to the growers' property, allowing union organizers to traverse it at will for three hours a day, 120 days a year" and had "appropriate[d] a right to physically invade the growers' property—to literally 'take access' . . . ." (*Id.* at p. 152.) Characterizing the "right to exclude" as "'one of the most treasured' rights of property ownership,'" the court stated: "Rather than restraining the grower's use of their own property, the regulation appropriates for the enjoyment of third parties the owners' right to exclude." (*Id.* at p. 150.) It was therefore a per se, uncompensated, physical taking in violation of the Fifth and Fourteenth Amendments. (*Ibid.*; see also *id.* at p. 152.) The court found the temporary duration of the physical appropriation irrelevant to the inquiry of whether a per se physical taking had occurred; according to the majority, that bore only on the amount of compensation. (*Id.* at p. 153.)

The *Cedar Point* majority addressed concerns that its holding would endanger a host of government activities involving entry onto private property. (*Cedar Point, supra*, 594 U.S. at p. 159.) It emphasized that certain government-authorized physical invasions would not amount to takings because they were "consistent with longstanding background restrictions on property rights." (*Id.* at p. 160.) The court pointed out that "the government does not take a property interest when it merely asserts a 'pre-existing limitation upon the landowner's title.'" (*Ibid.*) It said such background limitations "also encompass traditional common law privileges to access private property," including one that "allowed individuals to enter property in the event of public or private necessity." (*Id.* at pp. 160-161 [citing Restatement principles discussing entry "to avert an imminent public disaster" or "to avert serious harm to a person . . . ."].) The California access regulation at issue fell under neither of those exceptions because "no traditional background principle of property law requires the growers to admit union organizers onto their premises," and "unlike standard health and safety inspections, the access regulation is not germane to any benefit provided to agricultural employers or any risk posed to the public." (*Id.* at p. 162.)

The ordinance here is materially different from the regulation at issue in *Cedar Point, supra*, 594 U.S. 139. It is consistent with the sort of background limitations directed at averting public health disasters, and circumstances involving a pre-existing limitation on the plaintiffs' property rights, namely the rental lease or contract by which the owners invited tenants to inhabit the premises. (Accord, *Yee v. City of Escondido, supra*, 503 U.S. at pp. 522, 528-529 [rejecting mobile home park owners' claim of physical occupation by state mobile home law and rent control ordinance; "Put bluntly no government has required any physical invasion of [the park owner's] property. [The] tenants were invited by [the park owners], not forced upon them by the government" and the existence of a wealth transfer in itself does not convert regulation into physical invasion].) Because it was warranted by the COVID-19 public health emergency, the ordinance is more akin to a health and safety regulation than the access regulation at issue in *Cedar Point*. (Accord, *Block v. Hirsh* (1921) 256 U.S. 135, 154, 156-157, 41 S. Ct. 458, 65 L. Ed. 865 [rejecting landlord's claim of unconstitutional taking by legislation necessitated by "emergencies growing out of the war" requiring a landlord give 30 days notice to repossess property, reasoning "[h]ousing is a necessary of life. All the elements of a public interest justifying some degree of public control are present"].) "[P]roperty in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community, [citations] and the Takings Clause did not transform that principle to one that requires compensation whenever the State asserts its power to enforce it." (*Keystone Bituminous Coal Association v. DeBenedictis* (1987) 480 U.S. 470, 491-492, 107 S. Ct. 1232, 94 L. Ed. 2d 472, see also *id.* at p. 485 ["the character of the governmental action involved here leans heavily against finding a taking; the Commonwealth of Pennsylvania has acted to arrest what it perceives to be a significant threat to the common welfare"].)[13]

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13. In *Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 545, 125 S. Ct. 2074, 161 L. Ed. 2d 876, the court made clear it was not disturbing the holding of *Keystone Bituminous Coal Association v. DeBenedictis, supra*, 480 U.S. 470, 107 S. Ct. 1232, 94 L. Ed. 2d 472, even though *Keystone* "arguably" (*Lingle*, at p. 545) used language of a since-disapproved "substantially advances"

Further, the ordinance does not appropriate property "for the enjoyment of third parties . . . ." (Compare, *Cedar Point*, at p. 150 and *F.C.C. v. Florida Power Corp.* (1987) 480 U.S. 245, 252, 107 S. Ct. 1107, 94 L. Ed. 2d 282 ["statutes regulating the economic relations of landlords and tenants are not *per se* takings. [Citations.] 'So long as these regulations do not *require* the landlord to suffer the physical occupation of a portion of his building *by a third party*, they will be analyzed under the multifactor inquiry generally applicable to nonpossessory governmental activity,'" second italics added], citing *Loretto v. Teleprompter Manhattan CATV Corp., supra*, 458 U.S. at p. 440.) While under the ordinance landlords could not evict renters for no fault of their own during its duration, they did not lose their right to exclude strangers as in *Cedar Point*. In sum, the ordinance did not amount to a government appropriation of property. We hold *Cedar Point* does not support Siddell's argument of a per se physical taking.

C. Regulatory Taking

Nor does the ordinance effect a regulatory taking. The ordinance does not constitute a categorical regulatory taking, since landlords subject to it still enjoy economic benefits of ownership. Even under the eviction moratorium, landlords can continue to accept rental payments from tenants. Their properties have not been rendered "economically idle." (*Lucas v. S.C. Coastal Council* (1992) 505 U.S. 1003, 1019, 112 S. Ct. 2886, 120 L. Ed. 2d 798.)

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formula for an unconstitutional taking. (*Lingle*, at pp. 545-546 ["We emphasize that our holding today . . . does not require us to disturb any of our prior holdings," citing *Keystone*].)

To the extent Siddell claims a noncategorical regulatory taking, the trial court concluded that City had met its burden of showing necessity due to the pandemic. We agree plaintiffs are not entitled to inverse condemnation compensation under the "emergency exception to the just compensation requirement" (*Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 383, 41 Cal. Rptr. 2d 658, 895 P.2d 900) for City's legitimate exercise of its police power. The "general rule is that damage to, or even destruction of, property pursuant to a valid exercise of the police power often requires no compensation under the just compensation clause. '[I]n its legitimate exercise the police power often works not only damage to property but destruction of property. Injury to property can and often does result from the demolition of buildings to prevent the spread of conflagration, from the abandonment of an existing highway, from the enforced necessity of improving property in particular ways to conform to police regulations and requirements . . . . And equally well settled and understood is the law that in the exercise of this same power property may in some, and indeed in many, instances be utterly destroyed. The destruction of buildings, of diseased animals, of rotten fruit, of infected trees, are cases that at once come to mind as applicable to both personalty and realty. Always the question in each case is whether the particular act complained of is without the legitimate purview and scope of the police power. If it be [outside the entities' legitimate police power], then the complainant is entitled to injunctive relief or to compensation. If it be [within the legitimate police power], then it matters not what may be his loss, it is *damnum absque injuria* [damage without injury].'" (*Customer Co. v. City of Sacramento, supra*, 10 Cal.4th at p. 383; see also *Pacific Bell v. City of San Diego* (2000) 81 Cal.App.4th 596, 603, fn. 6, 96 Cal. Rptr. 2d 897 [noting the police power or emergency exception to inverse condemnation has a "venerable history" in both state and federal courts], in part citing *House v. L.A. County Flood Control Dist.* (1944) 25 Cal.2d 384, 391, 153 P.2d 950 ["Unquestionably, under the pressure of public necessity and to avert impending peril, the legitimate exercise of the police power often works not only avoidable damage but destruction of property without calling for compensation . . . . In such cases calling for immediate action the emergency constitutes full justification for the measures taken to control the menacing condition, and private interests must be held wholly subservient to the right of the state to proceed in such manner as it deems appropriate for the protection of the public health or safety"].)

In *640 Tenth, LP v. Newsom*, this court discussed the exception in addressing business owners' claim that the California Governor's emergency stay-at-home orders effected a regulatory taking. (*640 Tenth, LP v. Newsom, supra*, 78 Cal.App.5th at pp. 849, 863-865.) This court observed that an analytic approach in assessing the character of the governmental action, one of the relevant factors in assessing whether a regulatory taking has occurred,[14] was to focus on whether a regulation was

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14. In evaluating a claim of a non-categorical regulatory taking, we balance three factors: "(1) the economic impact of the regulation; (2) its interference with reasonable investment-backed expectations; and (3) the character of the government

designed to prevent serious public harm. (*Id.* at pp. 863-864.) While we acknowledged the business restrictions adversely affected the owners' reasonable investment-backed expectations, "the Governor's emergency orders 'are quintessential examples of regulations that "adjust[] the benefits and burdens of economic life to promote the common good."' [Citation.] The character of these actions is akin to that of other historical examples of governmental actions undertaken to counter serious threats to the public that were subsequently found not to be takings." (*Id.* at p. 864.)

We have no difficulty applying the exception to City's temporary no-fault eviction moratorium, enacted in furtherance of public health and safety interests stemming from to the deadly COVID-19 pandemic.[15] We are not the

action." (*640 Tenth, LP v. Newsom, supra*, 78 Cal.App.5th at p. 860, citing *Horne v. Department of Agriculture, supra*, 576 U.S. at pp. 351, 360.)

15. "The COVID-19 global pandemic is the gravest public health crisis in over a century. At present, the novel coronavirus has killed at least 230,000 Americans and infected over 9 million more. The true toll may never be known, but is likely significantly higher. The Centers for Disease Control and Prevention . . . , for example, estimates that the number of 'excess deaths' in the United States is closer to 300,000. Neither the State of California nor the City of Los Angeles have been spared from the ravages of COVID-19. Nearly a million Californians have been infected, and nearly 18,000 have died." (*Apartment Association of Los Angeles County, Inc. v. City of Los Angeles* (C.D.Cal. 2020) 550 F.Supp.3d 1088, 1090, 1100-1103, fns. omitted [holding association seeking preliminary injunction against City eviction moratorium did not demonstrate landlords were likely to suffer irreparable harm, and

first court to reach this conclusion in takings challenges to other eviction moratorium policies. (See *Southern California Rental Housing Association v. County of San Diego, supra*, 550 F.Supp.3d at p. 867 [holding San Diego County temporary eviction moratorium ordinance did not violate the Takings Clause; the ordinance "was enacted with the stated purpose of ensuring that citizens could remain housed during the unprecedented COVID-19 pandemic to limit the spread of a deadly virus. . . . [T]he [o]rdinance clearly sets forth the dangers associated with renters being evicted, and potentially forced to move in with family or friends, use community shelters, or became homeless, as the risk of COVID-19 transmission increases with close contact. The [o]rdinance acts to create a temporary shift in the burdens and benefits of the landlord-tenant relationship with the stated purpose of advancing the common good"]; *238 Serrano Properties LLC et al. v. The State of California* (C.D.Cal 2025) 2025 WL 2946988, at pp. *7-8 [rejecting takings challenge to southern California city and county eviction moratoria stemming from the pandemic because the defendants "acted to promote public safety health, and the common good during an unprecedented pandemic" and the "policies to address the COVID-19 pandemic lack the character of government action that would constitute a regulatory taking"; "this [c]ourt as well as other district courts have found the similar regulations served to adjust the benefits and burdens of the COVID-19 pandemic to promote the common good. [Citations.] Without [d]efendants'

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balance of equities required that hardships "must yield precedence to the vital interests of the public as a whole"].)

policies it is probable that many tenants residing within plaintiffs' properties would have been evicted. The result of such evictions would pose the 'harms typical of mass displacements' as well as the 'exacerbate[ed] spread of COVID-19 as well, to the detriment of all'"].)

DISPOSITION

The judgment is affirmed. City shall recover its costs on appeal.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.

APPENDIX C — MINUTE ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO, CENTRAL, DATED JUNE 7, 2024

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 06/07/2024 TIME: 08:30:00 AM DEPT: C-74

JUDICIAL OFFICER PRESIDING: Blaine K. Bowman
CLERK: Kim Mulligan
REPORTER/ERM: Kasey Mobley CSR# 13407
BAILIFF/COURT ATTENDANT: J. Cortes

CASE NO: **37-2022-00025224-CU-EI-CTL**
CASE INIT.DATE: 06/27/2022
CASE TITLE: **Siddell vs City of San Diego [IMAGED]**
CASE CATEGORY: Civil – Unlimited
CASE TYPE: Eminent domain/Inverse condemnation

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES
Jana Mickova Will, counsel, present for Defendant(s).

Appearances are as noted above. There is no appearance by Plaintiff.

The time being 9:04 AM, with this hearing set for 8:30 AM, there is no appearance by Plaintiff. The Plaintiff is not present remotely via MS Teams or in person. The Court had the bailiff check the outside hallway with no response.

Counsel as noted above submit(s) on the Court's tentative ruling.

The Court CONFIRMS the tentative ruling as follows:

This matter is set for hearing on the trial of the bifurcated issue of liability on the second cause of action for inverse condemnation. Pursuant to the parties' stipulation, this issue is to be heard by the court on the parties' briefs [ROA 92].

The court first addresses the evidentiary issues.

Defendant City of San Diego's request for judicial notice is GRANTED. Although Plaintiffs' trial brief refers to "Plaintiff's request for Judicial Notice" there is no request for judicial notice from Plaintiffs in the court file. Nonetheless, the court considers both of the exhibits to Plaintiffs' trial brief.

The court then rules on the merits.

Plaintiffs contend that San Diego City Municipal Ordinance No. 0-21447, which imposed a temporary moratorium on no-fault evictions for residential tenants during the state of emergency related to COVID-19, constituted a taking of property rights which requires compensation to landlords in the City of San Diego. It is undisputed that Ordinance Number 0-21447 lapsed, by its own terms, on September

30, 2022, and is no longer in effect. Plaintiffs argue that the Ordinance violated Article 1, Sections 1 and 19 of the California Constitution and the Fifth Amendment of the United States Constitution.

In opposition the first argument the City raises is that Plaintiffs lack standing. As *People ex rel._Becerra v. Superior Court* (2018) 29 Cal.App.5th 486 explains,

"[s]tanding concerns a specific party's interest in the outcome of a lawsuit. [Citations.] We . . . require a party to show that he or she is sufficiently interested as a prerequisite to deciding, on the merits, whether a party's challenge to legislative or executive action independently has merit. [Citation.]" (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247-1248, 218 Cal.Rptr.3d 394, 395 P.3d 274.) "Standing is a threshold issue necessary to maintain a cause of action, and the burden to allege and establish standing lies with the plaintiff. [Citations.]" (*Mendoza v. JPMorgan Chase Bank, N.A.* (2016) 6 Cal. App.5th 802, 810, 212 Cal.Rptr.3d 1.)

"'As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator. [Citations.] To have standing, a party must be beneficially interested in the controversy; that is, he or she must have "some special interest to be served or some particular right to be preserved and protected over and above the interest held in common with the public at large." [Citation.] The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical.' [Citation.]" (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 599, 179 Cal.Rptr.3d 365, 336 P.3d 686, italics in original.)

People ex rel. Becerra, 29 Cal.App.5th at 495-496. *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555 sets forth the following criteria to establish standing.

. . . . First, the plaintiff must have suffered an "injury in fact" – an invasion of a legally protected interest which is (a) concrete and particularized, see *id.,* at 756, 104 S.Ct., at 3327; *Warth v. Seldin,* 422 U.S. 490, 508, 95 S.Ct. 2197, 2210, 45 L.Ed.2d 343 (1975); *Sierra Club v. Morton,* 405 U.S. 727, 740-741, n. 16, 92 S.Ct. 1361, 1368-1369, n. 16, 31 L.Ed.2d 636 (1972);[1] and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" *Whitmore, supra,* 495 U.S., at 155, 110 S.Ct., at 1723 (quoting *Los Angeles v. Lyons,* 461 U.S. 95, 102, 103 S.Ct. 1660, 1665, 75 L.Ed.2d 675 (1983)). Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." *Simon v. Eastern Ky. Welfare Rights Organization,* 426 U.S. 26, 41-42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). Third, it must be "likely," as opposed to merely "speculative," that

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the injury will be "redressed by a favorable decision." *Id.*, at 38, 43, 96 S.Ct., at 1924, 1926.

Lujan, 504 U.S. at 560-561.

The court finds, as pled, the complaint fails to allege facts sufficient to establish Plaintiffs' standing.

Specifically, the complaint fails to allege that either Plaintiff LeRoy George Siddell, or any of the "Taxpayers" on whose behalf Siddell brings the complaint, are landlords within the City of San Diego who are subject to the Ordinance. Allegations that "Plaintiffs are taxpayers and landowners within the City of San Diego" [Cplt. ¶ 1], without more, are insufficient. The complaint also fails to allege that either Plaintiff Siddell or the Taxpayers suffered an injury in fact because of the Ordinance. In Plaintiffs' trial brief Plaintiffs argue that "[t]he City of San Diego did nothing to protect Owners from losses they have sustained when tenants are unable – or are able and refuse – to pay their rental obligations" and "[t]he Owners injuries are exacerbated by the fact that Owners remain obligated to pay property taxes to the state and local government and pay for electricity, sewer, water and garbage removal for the nonpaying tenant." However, absent evidence that Plaintiffs are landlords subject to the Ordinance, and absent evidence that any of the Plaintiffs actually suffered any loss, Plaintiffs fail to establish that Plaintiffs have suffered injury in fact because of the Ordinance. As Plaintiffs have not filed a reply, Plaintiffs do not raise any arguments or present any evidence in dispute.

Even if Plaintiffs are able to overcome the hurdle of establishing standing, the result would not change because Plaintiffs fail to establish that the Ordinance was a taking. As set forth in *Yee v. City of Escondido, Cal.* (1992) 503 U.S. 519,

[t]he Takings Clause of the Fifth Amendment provides: "[N]or shall private property be taken for public use, without just compensation." Most of our cases interpreting the Clause fall within two distinct classes. Where the government authorizes a physical occupation of property (or actually takes title), the Takings Clause generally requires compensation. See, *e.g., Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 426, 102 S.Ct. 3164, 3171, 73 L.Ed.2d 868 (1982). But where the government merely regulates the use of property, compensation is required only if considerations such as the purpose of the regulation or the extent to which it deprives the owner of the economic use of the property suggest that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole. See, *e.g., Penn Central Transportation Co. v. New York City,* 438 U.S. 104, 123-125, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631 (1978). The first category of cases requires courts to apply a clear rule; the second necessarily entails complex factual assessments of the purposes and economic effects of government actions.

Yee, 503 U.S. at 522-523.

Plaintiffs first argue that the Ordinance was a *per se* physical taking. The court finds the Ordinance was not a *per se* physical taking because the Ordinance did not effectuate a permanent physical occupation of Plaintiffs' property. See, *Yee,* 503 U.S. at 532; *Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419, 441. Nothing in the terms of the Ordinance effectuates a physical taking of any property. Moreover, the Ordinance was expressly time-limited and expired by its own terms on September 20, 2022.

Plaintiffs also argue that the Ordinance was a regulatory taking. The court finds the City meets its burden of establishing necessity as a result of the COVID-19 pandemic. *TrinCo Inv.* Co. *v. U.S.* (Fed. Cir. 2013) 722 F.3d 1375 recognizes the

. . . principle, "absolving the State – of liability for the destruction of 'real and personal property, in cases of actual necessity, to prevent' . . . or forestall . . . grave threats to the lives and property of others," is commonly referred to as the "doctrine of necessity" or the "necessity defense." *Lucas v.* S.C. *Coastal Council,* 505 U.S. 1003, 1029 n. 16, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992).

TrinCo, 722 F.3d at 1377. As recognized in *South Bay United Pentecostal Church v. Newsom* (9th Cir. 2020) 959 F.3d 938, the COVID-19 pandemic was as a result of a "highly contagious and often fatal disease for which there presently is no known cure." *South Bay United,* 959 F.3d at 939. The court finds such circumstances support application of the doctrine for necessity. As there is no reply, Plaintiffs do not raise any arguments to the contrary.

Based on the foregoing, the court finds Plaintiffs fail to meet their burden of establishing standing to bring the inverse condemnation cause of action and fail to meet their burden of establishing a taking so as to support a finding of compensation due to Plaintiffs under the inverse condemnation action. Accordingly, the court adjudicates the second cause of action in favor of Defendant City of San Diego and against Plaintiffs.

In light of this ruling, there will be no separate trial on the issue of damages.

As the second cause of action for inverse condemnation was the only remaining cause of action at issue in this case, the court orders the City to submit a proposed judgment consistent with this ruling within 10 days of this ruling.

If this tentative ruling is confirmed the Minute Order will be the final order of the court and the parties shall not submit any further order on this motion.

IT IS SO ORDERED.

/s/ Blaine K. Bowman
Judge Blaine K. Bowman

APPENDIX D — ORDINANCES, CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED

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4/19/2022 #50
CLERK'S FILE COPY (O-2022-98 REV.)

ORDINANCE NUMBER O-__21447__ (NEW SERIES)

DATE OF FINAL PASSAGE __APR 22 2022__

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO ENACTING A TEMPORARY MORATORIUM ON "NO-FAULT" EVICTIONS FOR RESIDENTIAL TENANTS·DURING THE CONTINUED LOCAL STATE OF EMERGENCY RELATED TO THE NOVEL CORONAVIRUS, COVID-19.

WHEREAS, a novel coronavirus, COVID-19, causes infectious disease and was first detected in other countries in December 2019; and

WHEREAS, the Centers for Disease Control and Prevention considers COVID-19 to be a very serious public health threat and the World Health Organization declared the COVID-19 outbreak to be a global pandemic; and

WHEREAS, on February 19, 2020, the County Board of Supervisors ratified a declaration of local health emergency related to COVID-19; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19; and

WHEREAS, on March 12, 2020, then Mayor Kevin Faulconer proclaimed the existence of a local emergency in the City of San Diego (City) as a result of COVID-19, which the Council of the City of San Diego (Council) ratified on March 17, 2020; and

WHEREAS, the local state of emergency in the City as a result of COVID-19 has been renewed multiple times, most recently on February 8, 2022; and

WHEREAS, since March 2020, State and County public health officials have responded to the pandemic with a series of orders, including ordering all individuals living in the City of San Diego to stay home or at their place of residence, except to obtain essential services; and

WHEREAS, COVID-19 has caused, and is expected to continue to cause, serious negative impacts on the local economy and serious financial impacts to local residents, including substantial loss of income due to the loss of compensable work hours or wages, layoffs, and business closures; and

WHEREAS, in August 2020, the California legislature adopted state residential eviction protections for tenants unable to pay rent due to the COVID-19 pandemic and preempted local eviction protections; and

WHEREAS, the state eviction protections were extended to residential tenancies through March 31, 2022; and

WHEREAS, in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement during the emergency and to prevent housed individuals from falling into homelessness; and

WHEREAS, displacement of residential tenants caused by eviction creates undue hardship on these tenants by making it difficult to follow public health orders and guidance of social distancing and isolation, and puts them at risk of homelessness due to the City's documented shortage of affordable housing; and

WHEREAS, the Tenant's Right to Know Regulations in Chapter 9, Article 8, Division 7 of the San Diego Municipal Code limit the grounds for evictions of tenancies of more than two years, including "no-fault" evictions that do not arise from the action or inaction of the tenant in violation of the lease or the law; and

WHEREAS, through "no-fault" evictions, tenants can be evicted and displaced from their homes despite satisfying monthly rental obligations and acting in good faith to comply with the terms of their lease; and

WHEREAS, a tenant's sudden and immediate displacement caused by a "no-fault" eviction can have a profound impact on the financial, emotional, and professional stability of a tenant's life, which impacts are compounded by the ongoing COVID-19 pandemic; and

WHEREAS, evictions have been associated with higher COVID-19 transmission and mortality through overcrowded living environments, transiency, reduced access to healthcare, and challenges to comply with mitigation strategies; and

WHEREAS, from July 2021 through January 2022, Legal Aid Society of San Diego received nearly 1,400 requests for assistance for housing-related issues from households in the City of San Diego and approximately 23 percent of these requests involved a "no-fault" eviction; and

WHEREAS, the City's COVID-19 Housing Stability Assistance Program has received 42,759 applications for assistance during the past nine months, with the third and fourth highest number of applications received during the months of January and February 2022; and

WHEREAS, while in effect this Ordinance supersedes the Tenant's Right to Know Regulations regarding "no-fault" evictions and enacts a temporary moratorium on "no-fault" evictions to prevent tenant displacement, to promote economic stability and fairness within the City's rental market during the COVID-19 pandemic, to prevent avoidable homelessness, and to preserve the public peace, health, safety, and welfare; and

WHEREAS, it is in the public interest to take steps to ensure people remain housed during this public health emergency; and

WHEREAS, the Council finds that adopting this Ordinance is necessary and appropriate to address the threats to the public health, safety, and welfare of its citizens to ensure residents continue to have stable shelter and to protect residents from avoidable homelessness; and

WHEREAS, this Ordinance is intended to prevent tenants from being evicted when there is no just cause for eviction and the basis of the eviction is not due to any default of tenant's obligations under the lease or rental agreement including any non-payment of rent as protected by COVID-19 Tenant Relief Act of 2020, Assembly Bill 3088 (2019-2020 Reg. Sess.), as extended; and as compared to the just cause protections of the California Tenant Protection Act of 2019, Assembly Bill 1482 (2019-2020 Reg. Sess.) (Act). This Ordinance further limits the permissible reasons for termination of a residential tenancy and provides additional tenant protections. The Council intends that this Ordinance be more protective than the Act and that this Ordinance shall apply rather than the Act; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That a temporary moratorium on no-fault residential evictions in the City of San Diego is imposed as follows:

Appendix D

(a) A landlord shall not evict, or endeavor to evict, a tenant where the grounds for terminating the tenancy or occupancy is not based on any alleged fault by the tenant, except in the following circumstances:

(1) The landlord intends to withdraw all rental units in all buildings or structures on a parcel of land from the rental market and the landlord has provided all tenants on the parcel with at least six months prior written notice of the landlord's intent to withdraw all rental units from the rental market;

(2) The landlord seeks to recover possession of the rental unit for repair or construction work necessary to comply with a government or court order that necessitates vacating the rental unit concerning the safety or habitability of the rental unit or where continued occupancy severely threatens the immediate health and safety of the occupants; or

(3) The landlord, or the landlord's parent, grandparent, child or grandchild intend to occupy the rental unit as their primary residence and the landlord has provided the impacted tenant with at least 90 days prior written notice of the landlord's intent to occupy the rental unit.

(b) As used in this Ordinance, the term "rental unit" means a room or group of two or more rooms designed, intended, or used for human habitation, and includes apartments, condominiums, single-dwelling units, and hotel rooms that are not used solely for transient occupancies as set forth in California Civil Code section 1940(b).

(c) As used in this Ordinance, “written” has the same definition as in San Diego Municipal Code section 11.0210.

(d) As used in this Ordinance, “endeavor to evict” shall include a landlord taking or attempting to take any of the following actions: threatening to or actually serving a notice, filing, or prosecuting any action to obtain possession of the property rented by that tenant or otherwise seeking to evict that tenant, including resorting to notice pursuant to California Code of Civil Procedure sections 1161, or 1162, filing or prosecuting any unlawful detainer action.

(e) Nothing in this Ordinance relieves the tenant of the obligation to pay rent or restricts the landlord’s ability to recover rent due.

(f) A residential tenant in the City of San Diego may use the protections afforded in this Ordinance as an affirmative defense in an unlawful detainer action.

Section 2. That this Ordinance is intended to supplement, not to duplicate or contradict, applicable state and federal law and shall be construed in light of that intent. Further, this Ordinance is found to be more protective of tenants than the California Tenant Protection Act of 2019 (Act) and shall apply over the Act to tenants who qualify for protection under this Ordinance.

Section 3. That the provisions of Chapter 1, Article 1, Division 2 of the San Diego Municipal Code, including those relating to construction, interpretation, and enforcement of administrative remedies, shall apply to this Ordinance.

Section 4. That the provisions of this Ordinance, being necessary for the welfare of the City of San Diego and its residents, shall be liberally construed to effectuate its purpose, which is to protect tenants from being evicted where grounds for terminating the tenancy or occupancy are not based on any alleged fault by the tenant during recovery from the COVID-19 pandemic.

Section 5. That the City reserves the right to enforce the administrative remedies in Chapter 1, Article 2 of the San Diego Municipal Code and to pursue any other remedies legally available against individuals knowingly or intentionally violating the provisions of this Ordinance or falsifying information to qualify for the relief granted in this Ordinance.

Section 6. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 7. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage, and shall remain in effect until September 30, 2022 or 60 days after the end of the local state of emergency as declared by the Mayor, whichever occurs first.

Appendix D

APPROVED: MARA W. ELLIOTT, City Attorney

By *<u>/s/ Hilda R. Mendoza</u>*
Hilda R. Mendoza
Deputy City Attorney

HRM:nja:sc
03/28/2022
04/04/2022 REV.
Or.Dept: Council District - 9
Doc. No.: 2929310

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of <u>APR 19 2022</u>.

ELIZABETH S. MALAND
City Clerk

By <u>/s/ Elizabeth Maland</u>
Deputy City Clerk

Approved: <u>4/22/22</u> /s/ <u>Todd Gloria</u>
(date) TODD GLORIA, Mayor

Vetoed: ____________ ____________________________
date TODD GLORIA, Mayor

Appendix D

Passed by the Council of The City of San Diego on APR 19 2022 by the following vote:

Councilmembers	Years	Nays	Not Present	Recused
Joe LaCava	☐	☐	☐	☑
Jennifer Campbell	☑	☐	☐	☐
Stephen Whitburn	☑	☐	☐	☐
Monica Montgomery Steppe	☑	☐	☐	☐
Marni von Wilpert	☑	☐	☐	☐
Chris Cate	☐	☑	☐	☐
Raul A. Campillo	☐	☐	☐	☑
Vivian Moreno	☑	☐	☐	☐
Sean Elo-Rivera	☑	☐	☐	☐

Date of final passage APR 22 2022

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By /s/ Elizabeth Maland, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

APR 04 2022, and on APR 22 2022

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By /s/ Elizabeth Maland, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-21447

(

Appendix D

O-2021-92)
COR.COPY #SSOOA
1/26

ORDINANCE NUMBER O-<u>21291</u> (NEW SERIES)

DATE OF FINAL PASSAGE <u>JAN 26 2021</u>

AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO CHARTER SECTION 295 ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL TENANTS ARISING OUT OF A SUBSTANTIAL DECREASE IN INCOME OR SUBSTANTIAL OUT-OF-POCKET MEDICAL EXPENSES RESULTING FROM THE NOVEL CORONA VIRUS, COVID-19, OR GOVERNMENT AL RESPONSE TO COVID-19.

WHEREAS, a novel coronavirus, COVID-19, causes infectious disease and was first detected in other countries December 2019; and

WHEREAS, COVID-19 symptoms include fever, cough, and shortness of breath, and those who have been afflicted have experienced anything from mild illness to death; and

WHEREAS, the Centers for Disease Control and Prevention considers COVID-19 to be a very serious public health threat and the World Health Organization declared the COVID-19 outbreak to be a global pandemic; and

WHEREAS, on February 19, 2020, the County Board of Supervisors ratified a declaration of local health emergency related to COVID-19; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19; and

WHEREAS, on March 12, 2020, former Mayor Kevin Faulconer proclaimed the existence of a local emergency in the City of San Diego (City) as a result of COVID-19, which the Council of the City of San Diego (Council) ratified on March 17, 2020; and

WHEREAS, on March 16, 2020, Governor Newsom issued Executive Order N-28-20 suspending any provision of state law that would preempt or otherwise restrict a local government's exercise of its police power to impose substantive limitations on residential and commercial evictions when the basis for eviction is nonpayment of rent arising out of a documented substantial decrease in household or business income or substantial out-of-pocket medical expenses caused by COVID-19 or by any local, state, or federal government response to COVID-19; and

WHEREAS, since March 2020, State and County public health officials have responded to the pandemic with a series of orders, including ordering all individuals living in the City of San Diego stay home or at their place of residence, except to obtain essential services; and

WHEREAS, COVID-19 is causing, and is expected to continue to cause, serious negative impacts on the local economy and serious financial impacts to local residents, including substantial loss of income due to the loss of compensable work hours or wages, layoffs, and business closures; and

WHEREAS, the Governor, the San Diego County Public Health Officer, and the Mayor have issued a variety of orders and directives to respond to the emergency, including closing or significantly curtailing certain business operations, prohibiting gatherings among members of separate households, and cancelling conferences, sporting events, and other large group activities; and

WHEREAS, the County Superintendent of Schools and all district superintendents in the County have closed schools for three weeks beginning March 16, 2020, and since then, the majority of public schools serving City of San Diego students have been closed for in-person learning for all or part of the 2020-2021 school year; and

WHEREAS, school and childcare closures have required many parents to adjust work schedules or take time off of work, whether paid or unpaid, to care for school-aged children; and

WHEREAS, loss of income as a result of COVID-19 may prevent City residential tenants from fulfilling their financial obligations under their lease or force them to make difficult choices between rent or other necessities; and

WHEREAS, the October 2020 report from the San Diego Association of Governments estimated the San Diego region experienced a $12.4 billion reduction in regional gross domestic product and $4.8 billion loss in wages across nearly all sectors in the first six months of the pandemic; and

WHEREAS, in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement during the emergency and to prevent housed-individuals from falling into homelessness; and

WHEREAS, displacement of residential tenants caused by eviction would create undue hardship on these tenants by making it difficult to follow public health orders and guidance of social distancing and isolation, and would further put them at risk of homelessness due to the City's documented shortage of affordable housing, putting these tenants and the general public at great risk; and

WHEREAS, on June 30, 2020, the Council adopted Resolution R-313133 creating an emergency rental assistance program administered by the San Diego Housing Commission to provide financial support to eligible tenants and landlords affected by the COVID-19 pandemic; and

WHEREAS, the City and Housing Commission are pursuing additional funds to support continued operation of the rental assistance program; and

Appendix D

WHEREAS, this Ordinance enacts a temporary moratorium on residential evictions to prevent tenant displacement, to promote economic stability and fairness within the City's rental market during the COVID-19 pandemic, to prevent avoidable homelessness, and to preserve the public peace, health, safety, and public welfare; and

WHEREAS, it is in the public interest to take steps to ensure people remain housed during this public health emergency; and

WHEREAS, the Council finds that adopting this emergency Ordinance is necessary and appropriate to address the threats to the public health, safety, and welfare of its citizens related to the significant economic impacts of the COVID-19 pandemic, to protect residents and businesses from being evicted due to nonpayment of rent due to substantial lost income or substantial out-of-pocket medical expenses caused by COVID-19, or as a result of complying with public health orders and recommendations related to COVID-19; and

WHEREAS, this Ordinance is intended to prevent tenants from being evicted due to suffering a financial impact related to COVID-19 or any government response to COVID-19. As compared to the just cause protections of the California Tenant Protection Act of 2019, Assembly Bill 1482 (Act), this Ordinance further limits the permissible reasons for termination of a residential tenancy and provides additional tenant protections. The Council intends that this Ordinance be more protective than the Act and that this Ordinance shall apply rather than the Act; and

WHEREAS, San Diego Charter, Article III, section 11 vests all legislative authority for the City in the Council; and

WHEREAS, California Government Code section 8634 allows the Council, as the governing body, to make orders and regulations necessary to provide for the protection of life and property; and

WHEREAS, the Council finds that there is an emergency necessitating immediate adoption of this Ordinance pursuant to San Diego Charter section 295; and

WHEREAS, under San Diego Charter section 280(a)(3), this Ordinance is not subject to veto by the Mayor because it is an emergency Ordinance; and

WHEREAS, under San Diego Charter section 295(e), a supermajority vote of the Council is required for passage of this Ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That a temporary moratorium on evictions for nonpayment of rent by residential tenants in the City of San Diego who are directly impacted by the novel coronavirus disease, known as COVID-19, is imposed as follows:

(a) Except for eviction actions authorized by the COVID-19 Tenant Relief Act of 2020 (codified in California

Code of Civil Procedure sections 1179.01 through 1179.07), no landlord shall evict, or endeavor to evict, a tenant for not timely paying rent that initially became due during the time period beginning on the effective date of this Ordinance and ending 60 days after the end of the local state of emergency as declared by the Mayor, where the tenant's failure to pay is due to financial impacts related to COVID-19 and the tenant provided written notice to the landlord on or within seven days after the rental payment due date that they are unable to pay rent in full.

(b) Within seven days of providing notice under subsection (a), the landlord may request the tenant provide documentation or objectively verifiable information that the tenant is unable to pay rent due to financial impacts related to COVID-19. The tenant shall have 14 days from the date of the landlord's request to provide the requested documentation. If the tenant does not provide timely notice or evidence of financial impacts related to COVID-19, the landlord may pursue any enforcement action in accordance with state and local laws unless the tenant can demonstrate timely compliance was impossible due to hospitalization or other incapacity of the tenant in which case the protections of this Ordinance shall apply to the tenant.

(c) As used in this Ordinance, "financial impacts" means a substantial loss of household income due to business closure, a substantial reduction in compensable hours of work or wages, layoff, or substantial out-of-pocket medical expenses. A financial impact is "related to COVID-19" if it is caused by the COVID-19 pandemic, including caring for an immediate family member with a positive COVID-19 diagnosis, or if it is caused by any governmental response to the COVID-19 pandemic, complying with any public health orders, school or childcare closures, or recommended guidance related to COVID-19 from local, state, or federal authorities.

(d) As used in this Ordinance, "written" has the same definition as in San Diego Municipal Code section 11.0210, and includes email or text communications to a landlord or landlord's representative or agent with whom the tenant has previously corresponded by email or text.

(e) As used in this Ordinance, "endeavor to evict" shall include a landlord taking or attempting to take any of the following actions based on the tenant's nonpayment of rent: charge or collect any late fees for rent that is delayed for the reasons set forth in this Ordinance, threatening to or actually serving a notice, filing, or prosecuting any action to obtain possession of the property rented by that tenant or otherwise endeavoring to evict that tenant for nonpayment of rent, including resorting to notice pursuant to California Code of Civil Procedure sections 1161, 1161.1, or 1162, filing or prosecuting any unlawful detainer action based on a three-day pay or quit notice, or pursuing a no-fault eviction.

(f) Nothing in this Ordinance relieves the tenant of the obligation to pay rent or restricts the landlord's ability to recover rent due.

(g) Nothing in this Ordinance is intended to prevent or discourage landlords and tenants from developing repayment agreements or modifying their leases to address hardships related to COVID-19.

(h) A tenant with financial impacts related to COVID-19 may use the protections afforded in this Ordinance as an affirmative defense in an unlawful detainer action.

Section 2. That, except for the provisions of Section 3, this Ordinance shall be effective on the later of February 1, 2021 or the date any state law applicable to the City that prohibits adoption of local measures to protect tenants from eviction expires, as may be amended, and shall remain in effect for 60 days after the end of the local state of emergency as declared by the Mayor. Section 3 of this Ordinance shall be effective on February 1, 2021 and shall remain in effect for 60 days after the end of the local state of emergency as declared by the Mayor.

Section 3. That the Mayor or his designee is authorized, to the extent legally permissible, to negotiate appropriate rent relief with City tenants who would qualify for protection under this Ordinance and to execute any lease amendments that may be necessary depending on the relief negotiated without seeking further Council approval.

Section 4. That the Mayor may adopt rules and regulations reasonably necessary to implement this Ordinance and guidelines related to appropriate rent relief for City tenants. In the event the State of California issues law or guidance defining these terms, that law or guidance shall control over the Mayor's adopted rules and regulations.

Section 5. That this Ordinance is intended to supplement, not to duplicate or contradict, applicable state and federal law and shall be construed in light of that intent. Further, this Ordinance is found to be more protective of tenants than the California Tenant Protection Act of 2019, Assembly Bill 1482, (Act) and shall apply over the Act to tenants who qualify for protection under this Ordinance.

Section 6. That the provisions of Article I, Division 2 of the San Diego Municipal Code, including those relating to construction and interpretation, and enforcement of administrative remedies, shall apply to this Ordinance.

Section 7. That the provisions of this Ordinance, being necessary for the welfare of the City of San Diego and its residents, shall be liberally construed to effectuate its purpose, which is to protect tenants from being evicted for missing rent payments due to the COVID-19 pandemic.

Section 8. That the City reserves the right to enforce the administrative remedies in Article I, Division 2 of the San Diego Municipal Code and to pursue any other remedies legally available against individuals knowingly or intentionally violating the provisions of this Ordinance or falsifying information to qualify for the relief granted in this Ordinance.

Section 9. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 10. That this Ordinance is declared to be an emergency measure required for the immediate preservation of the public peace, safety, health, and welfare pursuant to San Diego Charter section 295, and shall take effect immediately from the day of adoption by the affirmative vote of at least six members of the City Council.

APPROVED: MARA W. ELLIOTT, City Attorney

By *<u>/s/ Heather M. Ferbert</u>*
Heather M. Ferbert
Chief Deputy City Attorney

HMF:soc
01/19/2021
01/25/2021 Cor. Copy
Or.Dept: Mayor's Office
Doc. No.: 2561948_2

Appendix D

Passed by the Council of The City of San Diego on JAN 26 2021. by the following vote:

Councilmembers	Years	Nays	Not Present	Recused
Joe LaCava	☑	☐	☐	☐
Jennifer Campbell	☑	☐	☐	☐
Stephen Whitburn	☑	☐	☐	☐
Monica Montgomery Steppe	☑	☐	☐	☐
Marni von Wilpert	☑	☐	☐	☐
Chris Cate	☐	☑	☐	☐
Raul A. Campillo	☑	☐	☐	☐
Vivian Moreno	☑	☐	☐	☐
Sean Elo-Rivera	☑	☐	☐	☐

Date of final passage JAN 26 2021

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of
San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of
San Diego, California.

By /s/ [Illegible], Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on

JAN 26 2021, said ordinance being of the kind ad character authorized for passage on its introduction by Section 275 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of
San Diego, California.

By /s/ [Illegible], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-21291

Appendix D

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257(a)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Cal. Const. art. I, § 1

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

Cal. Const. art. I, § 19

Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.

Appendix D

Cal. Code Civ. Proc. § 526a — Taxpayer Standing (Relevant Excerpts)

An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax that funds the defendant local agency, including, but not limited to, the following:

(1) An income tax.

(2) A sales and use tax or transaction and use tax initially paid by a consumer to a retailer.

(3) A property tax, including a property tax paid by a tenant or lessee to a landlord or lessor pursuant to the terms of a written lease.

(4) A business license tax.

Subdivision (d)(2):

Resident means a person who lives, works, owns property, or attends school in the jurisdiction of the defendant local agency.

Appendix D

Cal. Civ. Code § 1946.2 — Just-Cause Termination of Residential Tenancies (Relevant Excerpts)

Subdivision (a):

Notwithstanding any other law, after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate a tenancy without just cause, which shall be stated in the written notice to terminate tenancy. If any additional adult tenants are added to the lease before an existing tenant has continuously and lawfully occupied the residential real property for 24 months, then this subdivision shall only apply if either of the following are satisfied:

(1) All of the tenants have continuously and lawfully occupied the residential real property for 12 months or more.

(2) One or more tenants have continuously and lawfully occupied the residential real property for 24 months or more.

Subdivision (b):

For purposes of this section, just cause means either of the following:

(1) At-fault just cause, which means any of the following:

(A) Default in the payment of rent.

(B) A breach of a material term of the lease, as described in paragraph (3) of Section 1161 of the Code of Civil Procedure, including, but not limited to, violation of a provision of the lease after being issued a written notice to correct the violation.

(C) Maintaining, committing, or permitting the maintenance or commission of a nuisance as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(D) Committing waste as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

[. . .]

(2) No-fault just cause, which means any of the following:

(A) Intent to occupy the residential real property by the owner or the owner's spouse, domestic partner, children, grandchildren, parents, or grandparents for a minimum of 12 continuous months as that person's primary residence.

[. . .]

(B) Withdrawal of the residential real property from the rental market.

(C) The owner complying with any of the following:

(i) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property.

(ii) An order issued by a government agency or court to vacate the residential real property.

(iii) A local ordinance that necessitates vacating the residential real property.

(D) Intent to demolish or to substantially remodel the residential real property.

APPENDIX E — EXCERPTS OF PETITION FOR REVIEW OF THE SUPREME COURT FOR THE STATE OF CALIFORNIA, FILED JANUARY 30, 2026

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

S294758

LEROY GEORGE SIDDEL,

Petitioner,

v.

CITY OF SAN DIEGO CALIFORNIA,

Respondent.

On Petition for Review from the
California Court of Appeal
Fourth Appellate District, Division One
No. D084679

PETITION FOR REVIEW

Leroy George Siddell (SBN 48670)
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San Diego, CA 92102
Office: (619) 231-3991
Email: attorneysiddell@yahoo.com

I. QUESTIONS PRESENTED

1. Whether California courts may reject a facial constitutional challenge to a property regulation without first determining whether the regulation substantially impairs fundamental property liberties protected by article I, section 1 of the California Constitution, by relying on compensation doctrine or the absence of damages determinations under article I, section 19 at the liability stage of a bifurcated proceeding.

2. Whether courts applying Penn Central Transportation Co. v. New York City may evaluate a challenged ordinance in isolation, without considering the cumulative effect of overlapping municipal and state regulations alleged to operate together to restrict possession, exclusion, or economically viable use of property.

3. Whether Code of Civil Procedure section 526a permits a taxpayer to maintain a facial constitutional challenge to a municipal ordinance at the liability stage of a bifurcated proceeding without evidentiary proof of specific tax payments or individualized economic injury.

* * *

B. Review Is Warranted to Clarify That Regulatory Takings Analysis Requires Consideration of Cumulative Burdens Rather Than Fragmented, Ordinance-by-Ordinance Review

The Court of Appeal's decision also raises an important and recurring issue concerning the proper application of regulatory takings principles under both state and federal law. In rejecting petitioner's takings claims, the court evaluated the challenged ordinance in isolation, without considering the cumulative effect of overlapping municipal and state regulations that operate together to restrict possession, exclusion, and economically viable use of property.

Regulatory takings jurisprudence does not permit constitutional analysis to be evaded through piecemeal legislation. Whether under article I, section 19 or the Fifth Amendment, courts must assess the regulatory scheme as a whole at the liability stage, including the combined effect of multiple enactments that may each appear marginal when viewed independently but collectively impose a constitutionally significant burden. (*Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 124, 130–131; *Keystone Bituminous Coal Assn. v. DeBenedictis* (1987) 480 U.S. 470, 497–498; *San Remo Hotel L.P. v. City & County of San Francisco* (2002) 27 Cal.4th 643, 671–672.)

Although California courts have addressed cumulative regulatory effects primarily through federal takings doctrine, the absence of a clearly articulated state-constitutional framework has permitted lower courts to default to fragmented, ordinance-by-ordinance review, thereby diluting constitutional protections and allowing governments to accomplish through sequential regulation what could not be sustained if assessed cumulatively.

Isolated review invites piecemeal adjudication and permits constitutional scrutiny to be avoided through incremental regulation. This issue is likely to recur in litigation involving housing, land-use, and emergency regulations, where layered enactments frequently operate in concert.

Review is therefore warranted to clarify and provide guidance that courts may not dilute constitutional protections by evaluating regulatory burdens one at a time, irrespective of whether the analysis proceeds under *Penn Central* or article I, section 1, and to reaffirm that takings analysis requires a holistic assessment of the character and cumulative impact of government action.

Review is further warranted to determine whether the cumulative-burdens analysis necessary to prevent constitutional evasion through piecemeal regulation applies with equal or greater force under article I, section 1 of the California Constitution, whose express protection of property as an inalienable right is textually broader than its federal counterpart and should not be confined to federal takings doctrine alone.

C. The Decision Below Improperly Imposes Non- Statutory Evidentiary Prerequisites for Taxpayer Standing, Undermining Facial Constitutional Review

Review is warranted because the Court of Appeal imposed an evidentiary requirement for taxpayer standing that is not contemplated by Code of Civil Procedure section 526a and was not disputed by the opposing party.

Although petitioner expressly alleged landowner, resident, and taxpayer status—and taxpayer standing was not placed in evidentiary dispute—the Court of Appeal treated the absence of evidentiary proof identifying the type of tax paid as a dispositive defect.

In doing so, the court effectively converted a pleading-based prerequisite to standing under Code of Civil Procedure section 526a

That statewide significance is demonstrated by the fact that, following issuance of the unpublished opinion, multiple public entities—including numerous municipalities, the County of Los Angeles, and the State of California—filed requests for publication, indicating a shared view that the decision's analytical approach bears on matters likely to recur in municipal regulation and constitutional litigation.

Clarification by this Court is therefore necessary to ensure uniform and principled application of constitutional standards under the California Constitution.

III. STATEMENT OF THE CASE AND PROCEDURAL POSTURE

Petitioner, alleging landowner, resident, and taxpayer status, filed this action challenging a municipal ordinance on state and federal constitutional grounds.

The complaint asserted that the ordinance substantially impaired fundamental property interests protected by article I, section 1 of the California Constitution and affected an uncompensated taking under article I, section 19 and the Fifth Amendment.

The action was brought as a facial constitutional challenge and as a taxpayer action under Code of Civil Procedure section 526a.

The superior court ordered bifurcation of liability and damages, directing that constitutional liability issues be resolved as a matter of law before any determination of compensation or damages.

Petitioner proceeded in compliance with that bifurcation order. At the liability stage, petitioner contended that the challenged ordinance operated not in isolation, but within an existing regulatory framework, and that its effects must be evaluated in combination with overlapping municipal and state restrictions that together impaired possession, exclusion, and economically viable use of property.

The superior court nonetheless resolved the case at the liability stage as a matter of law and entered judgment against petitioner on threshold standing and constitutional grounds, concluding that petitioner had failed to establish standing based on the absence of individualized economic injury or damages.

The court concluded that petitioner had not established individualized personal injury and further determined that the challenged ordinance did not effect a compensable taking under federal takings doctrine.

The court did not address whether the ordinance substantially impaired property rights protected by article I, section 1 of the California Constitution independent of compensation analysis.

No evidentiary hearing was conducted, and the damages phase—which the bifurcation order expressly reserved for later proceedings—was never reached.

On appeal, the Court of Appeal affirmed. The court concluded that petitioner failed to establish taxpayer standing based on the absence of evidentiary proof identifying the type of tax paid or liability to pay taxes under Code of Civil Procedure section 526a, despite the absence of any evidentiary dispute regarding petitioner's alleged taxpayer status.

The court further determined that petitioner had not established standing under general personal-injury principles or as a private attorney general, notwithstanding the bifurcation order and the pleading allegations of landowner, resident, and taxpayer status.

The Court of Appeal also rejected petitioner's state and federal takings claims, applying federal takings doctrine to conclude that no compensable taking occurred.

In doing so, the court evaluated the challenged ordinance in isolation and did not address whether the ordinance—either independently or in combination with existing regulatory restrictions—substantially impaired property rights protected by article I, section 1 of the California Constitution apart from compensation analysis.

The case was resolved on purely legal grounds, without disputed factual findings and without a damages record. The opinion was not published.

Following issuance of the decision, multiple public entities—including municipalities and state and county governments—filed requests for publication, demonstrating the decision's broader significance and its potential to influence future constitutional challenges to regulatory ordinances.

IV. CONCLUSION

This case presents an appropriate vehicle for clarifying the analytical framework California courts must apply when reviewing facial constitutional challenges to property regulations.

Review is warranted to clarify the proper constitutional sequence under article I, sections 1 and 19; to clarify and reaffirm the * * *

APPENDIX F — EXCERPTS OF APPELLANT'S OPENING BRIEF FOR THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, FILED MAY 23, 2025

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

NO. DO84679

LEROY GEORGE SIDDELL ON BEHALF OF ALL TAXPAYERS IN THE CITY OF SAN DIEGO, CALIFORNIA

Appellant and Plaintiff,

v.

CITY OF SAN DIEGO CALIFORNIA,

Appellee and Defendant.

Appeal From The Superior Court of California
County of San Diego, Central Division
Hon. Blaine K. Bowman, Judge Presiding
Superior Court No. 37-2022-00025224-CU-EI-CTL

APPELLANT'S OPENING BRIEF

Leroy George Siddell (SBN 48670)
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* * *

STATEMENT OF APPEALIBILITY

This appeal is taken from a final judgment entered by the San Diego County Superior Court on July 3, 2024, following a bifurcated bench trial on the issue of liability in an inverse condemnation action. The trial court ruled in favor of Defendant City of San Diego, holding that Plaintiffs lacked standing and, alternatively, that the challenged ordinance did not constitute an unconstitutional taking of private property. The judgment fully disposes of all issues as to all parties on the question of liability. Plaintiffs timely filed a notice of appeal on July 10, 2024. Accordingly, this appeal lies as of right under Code of Civil Procedure section 904.1, subdivision (a)(1), which authorizes an appeal from a final judgment in a civil action.

ISSUES PRESENTED

I. Whether the Trial Court Erred in Holding that Plaintiffs Lacked Standing to Challenge an Unconstitutional Municipal Taking.

II. Whether the Trial Court Erred in Concluding that the City's Ordinance Did Not Effect a Per Se Physical Taking Under the United States and California Constitutions.

III. Whether the Ordinance, Even if Not a Per Se Taking, Constituted a Regulatory Taking Requiring Just Compensation

* * *

D. Dismissal Without Leave to Amend Was Improper—Particularly Given the Bifurcation of Liability from Damages

The trial court dismissed the case based on a perceived deficiency in pleading—namely, the failure to allege specific harm to individual plaintiffs. But this error was magnified by the procedural context: the court had already bifurcated the case, reserving the question of damages for a later phase after briefing and discovery. That bifurcation was not unilateral—it reflected the stipulation and understanding of both parties. The purpose was to resolve the threshold issue of whether the ordinance constituted a taking, without the burden or cost of litigating damages across multiple taxpayer claims unless liability were first established.

Even if the court believed more specificity was required at the liability phase, the proper remedy was leave to amend, or adjudication after further factual development—not outright dismissal. Under Code of Civil Procedure § 472c, leave to amend should be granted liberally, especially where no prior amendments were filed and the litigation raised issues of first impression and substantial public importance. (See *Sanai v. Saltz*, 170 Cal.App.4th 746, 769–70 (2009).)

Moreover, to the extent the court viewed the complaint as lacking proof of individualized injury, that is not a pleading defect—it is a matter of trial evidence. California courts permit pleadings to be amended to conform to proof at trial, particularly where the factual record is still developing. (See *People v. First Federal Credit Corp.*, 104 Cal.App.4th 721, 734 (2002).)

The court's refusal to permit either amendment or a continued proceeding on the damages phase undermined the very logic of the bifurcation it had previously ordered.

II. THE TRIAL COURT ERRED IN CONCLUDING THAT THE ORDINANCE WAS NOT A TAKING UNDER THE UNITED STATES AND CALIFORNIA CONSTITUTIONS

A The Ordinance Effected a Per Se Taking by Compelling Physical Occupation Without Consent

Under *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021), any government action that compels physical occupation of private property—regardless of duration—is a per se taking. The Supreme Court was unequivocal: neither the temporary nature of the intrusion nor its public policy justification absolves the government of its duty to pay compensation. Even short-term or emergency access rights, when mandated by law, are per se takings. The City's Ordinance No. O-21447 barred landlords from recovering possession of their property, even after a lease expired or a tenant ceased payment, thereby nullifying the owner's fundamental right to exclude—a core attribute of property ownership.

This is not *Yee v. City of Escondido*, 503 U.S. 519 (1992), where landlords voluntarily entered into tenancy relationships and retained the right to exit the rental market. Here, landlords had no legal means to terminate tenancies, even for legitimate reasons such as personal use, family housing, or lease expiration. Their consent was extinguished by law, not withheld by choice.

California law recognizes the right to exclude others—including the right to revoke prior permission and require someone to leave—as among the most fundamental incidents of property ownership. So essential is this right that multiple distinct areas of state law independently protect it: through civil remedies, criminal sanctions, and specialized landlord-tenant statutes.

California law protects the right to exclude so vigorously that unauthorized occupation—whether by entry or by remaining beyond the period of consent—is actionable and, in many cases, criminalized. Penal Code § 602 prohibits "entering and occupying" property without consent (§ 602(m)) and "refusing or failing to leave" after being asked (§ 602(o)).

In civil law, unlawful detainer under Code of Civil Procedure §1161(1) defines wrongful possession to include "continuing in possession after expiration of the term," and common law trespass similarly treats a person who remains after permission is revoked as a trespasser. (See also Civ. Code § 1708.8.)

These provisions confirm that in California, the right to exclude is not limited to initial entry—it encompasses the power to terminate another's right to remain. The City's ordinance abrogated that core right by compelling owners to accept continued occupation even after lease expiration, with no process, compensation, or recourse.

Although not binding on this Court, the Federal Circuit's decision in *Darby Development Co. v. United States*, 112 F.4th 1017 (Fed. Cir. 2024), is highly persuasive. There, the court held that a federal eviction moratorium, which compelled landlords to continue housing tenants after lease expiration, constituted a per se taking under the Fifth Amendment. The court reasoned that "[p]reventing landlords from evicting tenants who breach their leases intrudes on one of the most fundamental elements of property ownership—the right to exclude." (Id. at 1025.) The Darby court's analysis aligns with *Cedar Point Nursery* and illustrates how temporary occupancy mandates—even during emergencies—require just compensation.

The Ordinance's effect mirrors *Loretto v. Teleprompter Manhattan CA TV Corp.*, 458 U.S. 419 (1982), which treated even a small physical occupation (a cable box) as a taking. *Cedar Point* reaffirmed that logic, holding that a right of access—even temporary—destroys the owner's exclusive dominion.

Plaintiffs also showed that the ordinance was not an isolated event, but the culmination of a broader legal regime: paired with earlier eviction moratoria (e.g., Ordinance O-21291), it effectively nullified all grounds for removal, including no-fault, nonpayment, and even end-of-term tenancies. The City transferred functional control of private dwellings to tenants without compensation, while owners continued to bear property taxes, mortgage obligations, and utility costs. Because this was a physical occupation mandated by law, the constitutional injury is complete: per se takings liability attaches without any need for a balancing test or factual inquiry into the regulation's purpose or economic impact. (*Loretto,* at 436; *Cedar Point*, at 2072.)

This is precisely what the Supreme Court condemned in *Armstrong v. United States,* 364 U.S. 40, 49 (1960): forcing some individuals to bear burdens that the public should share. As *Arkansas Game & Fish Comm'n v. United States,* 568 U.S. 23 (2012), clarified, even temporary government use requires just compensation. Invalidation alone is not a remedy; compensation is the constitutional command.

In sum, the City's ordinance compelled occupancy, deprived owners of exclusion rights, and shifted public burdens onto private shoulders. Under *Cedar Point, Loretto, Darby*, and *Armstrong*, that is a per se taking.

B. Public Necessity Does Not Absolve the Duty to Compensate

The government may act in times of crisis, but constitutional limits on state power do not yield to emergency proclamations. As the Supreme Court reaffirmed in *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 68 (2020), "even in a pandemic, the Constitution cannot be put away and forgotten."

In the takings context, the principle is even clearer: public necessity may justify a taking—but it does not eliminate the duty to compensate. The government may take private property for a legitimate public use—including emergency housing, disaster mitigation, or pandemic response—but once it does so, the Takings Clause squarely requires just compensation. And indeed, absent a valid public use, a taking is not permitted at all. The "necessity" or "benefit to the public" is what justifies the taking in the first place; it does not excuse the obligation to pay for it.

As the Supreme Court stated in *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 416 (1922), quoting *Monongahela Navigation Co. v. United States,* 148 U.S. 312, 324 (1893):

> "A strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

This principle was reaffirmed in *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 318 (1987), where the Court rejected the idea that temporary or emergency takings could be remedied solely by invalidation of the regulation. The Court explained that the Fifth Amendment "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." See also *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

It is well-settled that public necessity may justify a taking—but it does not excuse the duty to compensate. The government may take private property for a legitimate public use, including emergency housing, disaster mitigation, or pandemic response. But once it does so, the Takings Clause squarely requires just compensation.

That principle applies squarely here. The City sought to shield tenants from the economic effects of the COVID-19 pandemic. But rather than bear that cost collectively—as a community—the City transferred the burden exclusively to landlords, compelling them to house tenants without payment, for an indefinite period, and with no prospect of recovery.

Such policies may be well-intentioned, but the Constitution does not measure intent—it measures impact and fairness. When government appropriates private property for public benefit, it must compensate the owner. This is not a policy preference; it is a constitutional requirement. (See *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 323 (2002) ["The Constitution contains no exception for temporary takings."].) Indeed, absent such a public use, no taking is permitted at all.

The City cannot immunize itself from liability by invoking the pandemic. Once it commandeered the property rights of one group to serve the needs of another, its duty to compensate was triggered. That is the core promise of the Takings Clause.

III. ALTERNATIVELY, SHOULD THE COURT DECLINE TO FIND A PER SE TAKING, THE ORDINANCE EFFECTED A REGULATORY TAKING REQUIRING JUST COMPENSATION

The City's COVID-19 eviction moratorium did not merely delay landlord rights; it dismantled them. Though framed as a temporary emergency measure, Ordinance O-21447 was part of a calculated regulatory design that effected a de facto transfer of property control from private owners to favored occupants—without compensation, without time limitation, and without judicial recourse. Under the three-factor test articulated in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), this regulatory overreach constituted an uncompensated taking in violation of Article I, §§ 1, and 19 of the California Constitution and the Fifth Amendment.

A. The Economic Impact Was Severe and Ongoing

Although the trial court bifurcated the issue of damages and a full evidentiary record on economic harm has not yet been developed, the constitutional injury inflicted by the City's ordinance is plain on its face. Ordinance O-21447 struck at the very core of the landlord's interest—the intertwined rights to collect rent and to control possession of one's property. These rights are not incidental; they are the essence of what ownership means. Without them, the "bundle of sticks" becomes hollowed, and ownership is reduced to little more than a title burdened with liability.

As Justice Holmes warned more than a century ago, "[i]f regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 415 (1922). This case is the very embodiment of that principle. Under the guise of emergency, landlords were conscripted into service as involuntary providers of indefinite housing, denied the ability to evict for nonpayment, yet still required to shoulder the financial burdens of ownership—property taxes, utilities, maintenance, insurance—without relief or recourse. It was the economic equivalent of commandeering: an uncompensated public mandate imposed on a private class of citizens for the perceived good of the many.

The City has suggested that landlords retained recourse through future civil suits for unpaid rent. But this notion is a legal illusion, untethered from economic reality and contradicted by the practical experience of California's unlawful detainer courts. In the real world, landlords often waive back rent entirely just to regain possession—because collection, even after judgment, is illusory at best and futile at worst. The legal right to sue a judgment-proof tenant, months or years later, offers no solace to owners who were forced to subsidize occupancy during the moratorium. Enforcement is costly, slow, and frequently unrewarding. In this context, the "right" to collect rent post hoc is not a remedy—it is a mirage.

Thus, while the ordinance suspended landlords' most vital contractual rights, it preserved none of their practical remedies. It did not regulate property; it conscripted it. The lease became meaningless, yet the obligations of ownership endured. As the Supreme Court reaffirmed in *Cedar Point Nursery v. Hassid,* 141 S. Ct. 2063, 2072 (2021), "the right to exclude is a fundamental element of the property right." The ordinance not only nullified that right—it obliterated it, and in doing so, obliterated the economic value the right was meant to protect.

B The Ordinance Destroyed Distinct Investment-Backed Expectations

The second *Penn Central* factor—the extent to which the regulation interferes with investment-backed expectations—tilts heavily toward a compensable taking. Landlords leased their properties under long-settled legal principles: that upon lease expiration, breach, or lawful termination, they could recover possession.

These expectations were not speculative; they were grounded in centuries of common law and codified in California Civil Code §§ 1946 and 1951.2. The right to enforce lease terms, including termination and eviction, has always been a core expectation of property ownership and leasing in California.

Ordinance O-21447 upended these settled expectations. Without negotiation, compensation, or individualized review, it converted fixed-term leaseholds into indefinite tenancies terminable only at the tenant's discretion. A contractual relationship became a unilateral government mandate. This is not the kind of background regulation that landlords can foresee and price into their investment—it was a seismic shift in the legal landscape, imposed retroactively and with sweeping effect.

Although styled as temporary, the ordinance operated in practice as a de facto permanent reconfiguration of landlord-tenant relations. For more than a year, landlords were categorically denied the right to recover possession for nonpayment or expiration of lease.

This was not a brief regulatory pause—it was a gapless, citywide extinguishment of a core enforcement right. And because that gap rendered lease expiration provisions and default clauses unenforceable for an extended, uninterrupted period, it vitiated the very expectations those provisions were designed to protect. - - - Moreover, the practical effect of the ordinance—when combined with parallel state restrictions—was to create an uninterrupted tenancy exceeding one year. In many cases, this vested tenants with additional statutory protections, transforming short-term or at-will tenancies into stabilized, long-term occupancies by operation of law.

The City effectively "filled the gap" between its own moratoria and state-imposed protections, ensuring that tenants remained in possession without any lapse in coverage. This was not a temporary delay in enforcement—it was a strategic orchestration of uninterrupted occupancy, one that produced lasting legal consequences for property owners. Landlords had no way to anticipate that emergency measures would be used to construct a new framework of tenancy rights, fundamentally altering the expectations they had when entering the lease.

Government action that frustrates reasonable investment-backed expectations is widely recognized as a central indicator of a compensable taking under *Penn Central* and its progeny. See *Palazzolo v. Rhode Island, 533 U.S. 606, 617 (2001)*.

That principle applies here with force. The ordinance did not merely burden the economic value of rental property—it fundamentally altered its legal character. As Justice Scalia cautioned in his *Tahoe-Sierra* dissent, even temporary restrictions on property use can have the same economic effect as a permanent taking: "If you say I can't use my property for the next year, that is a taking of that year." 535 U.S. 302, 355 (2002) (Scalia, J., dissenting).

This principle was later confirmed in *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 26 (2012), where the Court rejected any categorical exemption for temporary government invasions and held that even time-limited physical occupations may give rise to takings liability.

The result was not a mere delay in enforcement, but a structural suspension of the contractual and legal framework upon which residential leasing depends. By rendering lease provisions unenforceable and allowing tenancies to ripen into protected occupancies by operation of law, the ordinance did not simply interfere with expectations—it redefined them without consent or compensation. Such government-imposed reconfiguration of property rights lies at the very core of what the Takings Clause forbids.

C. The Character of the Government Action Targeted a Discrete Class of Private Owners to Advance a Public Objective

The third *Penn Central* factor—the character of the government action—confirms the unconstitutional nature of the City's ordinance. This was not a generally applicable, reciprocal burden shared across society. It was a targeted and categorical suspension of landlord enforcement rights, imposed for the explicit purpose of achieving a public welfare goal: preventing displacement during the pandemic. To accomplish that end, the City transferred the full burden of housing relief onto a narrow class of private citizens—landlords—compelling them to provide public shelter without compensation or individualized relief.

The Supreme Court has long warned that "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way." *Mahon,* supra at 416. Here, the government did not engage in a balanced regulatory approach—it simply commandeered private use rights to serve a broader social goal. Such actions, even when facially temporary, are constitutionally suspect where, as here, the ordinance operated with surgical precision against one group while shielding others from shared sacrifice.

This is precisely the sort of disproportionate burden the Takings Clause forbids. As the Supreme Court made clear in Penn Central, courts must consider both the economic impact of a regulation and the extent to which it interferes with reasonable investment-backed expectations—particularly where government action approaches appropriation. *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978).

The City's ordinance functioned not as a neutral regulatory framework, but as a vehicle for forced occupation—effectively nullifying lease terms and extinguishing the right to exclude, which Cedar Point Nursery reaffirms is "a fundamental element of the property right." *Cedar Point Nursery v. Hassid,* 141 S. Ct. 2063, 2072 (2021).

In sum, the character of the ordinance was neither balanced nor broadly regulatory—it was an instrument of private appropriation for public use, implemented without process, compensation, or proportionality.

* * *

and where, as here, the burden is concentrated and the benefit public, compensation is constitutionally required. 27 Cal. 4th 643, 664–65 (2002). See also *Galland v. City of Clovis*, 24 Cal. 4th 1003, 1023 (2001) [California takings clause "construed somewhat more liberally than its federal counterpart"].

To allow the City to evade state constitutional scrutiny by invoking federal minimalism would invert California's property rights framework. The courts must apply California's own broader protections, and under those protections, the ordinance constitutes an uncompensated and unconstitutional damaging of property rights.

E. The Ordinance Functioned as the Capstone of a Coordinated Regulatory Design

The City's ordinance did not operate in isolation. It completed a network of overlapping federal, state, and municipal measures that, taken together, formed a comprehensive and uninterrupted regime of tenant retention. From statewide bans on nonpayment evictions (e.g., AB 3088, SB 91, AB 832), to the City of San Diego's own local moratorium on nonpayment evictions effective July 1, 2022, to overlapping restrictions on "no-fault" evictions imposed by Ordinance O-21447, the regulatory architecture systematically eliminated every lawful pathway by which landlords could recover possession—whether due to nonpayment, lease expiration, owner move-in, or other no-fault grounds.

For the duration of the moratoria, landlords were legally barred from regaining control of their properties, regardless of circumstance. But the impact did not end when the ordinances expired. By filling the legal gaps between successive restrictions, the City ensured that many tenants remained in uninterrupted possession for over one year—a threshold that, under California law, vests tenants with enhanced protections under AB 1482 and just cause eviction rules. What began as a temporary prohibition on enforcement became, in practice, a permanent reconfiguration of landlord rights. In effect, the City's scheme transferred a core incident of ownership—the right to exclude and recover possession—into a government-created entitlement held by the tenant, enforceable by statute. The result was not a modest emergency response, but a coordinated legal structure that extinguished core enforcement rights across every dimension of the landlord-tenant relationship.

Ordinance O-21447 served as the capstone of this design, ensuring that no gap existed between prior and subsequent restrictions. This continuity was not incidental; it was deliberate. By closing the final window of permissible removal, the City ensured that tenancies extended beyond one year, thereby vesting tenants with additional rights under AB 1482. What began as a series of temporary emergency responses became, through cumulative effect, a structural shift in property relations—transforming private leaseholds into involuntary tenancies protected by statute.

Courts have long recognized that property rights cannot be extinguished through a series of incremental regulations whose combined effect is to deprive owners of meaningful use or control. As the Supreme Court cautioned in *Armstrong v. United States*, 364 U.S. 40, 49 (1960), the Takings Clause is designed to prevent "some people alone" from bearing "public burdens which, in all fairness and justice, should be borne by the public as a whole." Likewise, *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), makes clear that takings claims must consider the cumulative burden of government action—not merely its form or motive. The law does not permit a state to "piecemeal away" property rights through regulatory design, nor to sidestep constitutional scrutiny by fragmenting a comprehensive deprivation into multiple statutes or ordinances.

This cumulative and coordinated effect distinguishes the ordinance from traditional land use regulation. It reflects not neutral planning, but a targeted reallocation of private property rights for public use. That is the very paradigm of a compensable taking—whether under the federal Takings Clause or the broader protections afforded by Article I, Sections 1 and 19 of the California Constitution.

CONCLUSION

The trial court erred in dismissing this action for lack of standing and in holding, alternatively, that the City's ordinance did not constitute a compensable taking. Plaintiff brought a facial constitutional challenge to a municipal ordinance that functioned not as a temporary regulatory pause, but as a compelled transfer of core property rights from owners to tenants—without compensation, without process, and without individualized relief. The ordinance nullified lease terms, * * *

APPENDIX G — RELEVANT EXCERPTS FROM STATE COURT PROCEEDINGS, OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION, FILED FEBRUARY 5, 2024

ELECTRONICALLY FILED
Superior Court of California
County of San Diego
02/05/2024 at 7:05:00 PM
Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

G-1 — Excerpts from Trial Court Brief

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO CENTRAL DIVISION

Case No. 37-2022-00025224-CU-EJ-CTL

LEROY GEORGE SIDDELL ON BEHALF OF ALL TAXPAYERS IN THE CITY OF SAN DIEGO, STATE OF CALIFORNIA,

Plaintiffs,

vs.

CITY OF SAN DIEGO CALIFORNIA, A MUNICIPAL CORPORATION,

Defendants.

Appendix G

PLAINTIFF'S TRIAL BRIEF
ON BIFURCATED ISSUE OF
CONSTITUTIONALITY OF
CITY ORDINANCE NO. O-21447

DATE: March 22, 2024
TIME: 8:30 a.m.
DEPT: 74

Comes now Plaintiffs, by and through their attorney, LeRoy George Siddell, and submits the following trial brief on the bifurcated issue of the constitutionality of Ordinance No. O-21447.[1]

I
INTRODUCTION

The issue to be decided in this bench trial is whether San Diego City Municipal Ordinance No. 0-21447, imposing a moratorium on no-fault evictions, constituted a taking of property rights requiring compensation to landlords in the City. A copy of the Ordinance is attached to Plaintiffs request for Judicial Notice as Exhibit "A." The Ordinance should be read in conjunction with the companion Ordinance 021291, imposing a moratorium on evictions for non-payment of rent through the same periods of time. Attached as Exhibit "B" to request for

1. Defendant's have resisted providing discovery on the issue of damages peculiarly within their exclusive control, and the parties have stipulated that this issue will be addressed by the parties following the ruling of the Court on whether Ordinance 0-21477 constitutes an unconstitutional taking of property rights.

Judicial Notice. Thus, eviction for any reason other than imminent public safety were striped from landlords. The full burden is shifted from the public to landlords[2].,

Plaintiffs submits that the ordinance violates the California Constitution, Article 1, Sections 1 and 19, and the Fifth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment.

II
DISCUSSION

A. CONSTITUTIONAL PROVISIONS APPLICABLE

The issues involved in this case involve fundamental rights of the People of the State of California to preserve their property interests. The rights are also a fundamental core American value.

California Constitution Article 1 - Declaration of Rights: Section 1. Provides:

2. Even if a tenant receives rental assistance payments under the Cares Act, no provisions is made for requiring payments to landlords - even though landlords are required to pay the mortgage and expenses of maintaining the property. Indeed, after the expiration of the moratoriums, all back rent owing is to be deemed a consumer debt, entitling a tenant to collect the full amounts of rent from the government and not pay the landlord. Thus, non payment of rent is included within the definition of no-fault evictions.

> "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

Thus, California recognizes property rights as a fundamental, inalienable right.

Plaintiff has located no cases which have considered the impact of Article 1, Section 1 on the analysis of a inverse condemnation, or taking claim. Plaintiff submits that the nature of the right heightens the level of scrutiny of the States actions affecting Plaintiff's property rights.

California Constitution Article 1, Section 19 provides:

> "(a) Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner."

Plaintiff submits Defendants Ordinance violated this provision by taking personal property rights without payment, or depositing the value of the property, or permitting Plaintiff's the right to a jury to ascertain the value of the rights being taken. Indeed, the impact and harm to property owners was not even considered by the City of San Diego.

The United States Constitution, Fifth Amendment, applicable to the States via the Fourteenth Amendment, provides, in relevant part:

> "nor shall private property be taken for public use, without just compensation"

Thus, the operative question in any takings case is simply "whether the government has physically taken property for itself or someone else— by whatever means—or has instead restricted a property owner's ability to use his own property." *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021). This Supreme Court recognized that a taking can be physical or regulatory because "Government action that physically appropriates property is no less a physical taking because it arises from a regulation." *Id.*

B. THE ORDINANCE CONSTITUTES A *PER SE* TAKING:

Our nation has often faced the temptation to abandon our commitment to individual rights in the face of crisis. Yet these rights mean nothing if we allow our leaders to treat them as mere privileges, revocable whenever the storm clouds roll in. The Supreme Court has held that "even in a pandemic, the Constitution cannot be put away and forgotten." *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 68 (2020).

When the government physically acquires private property for a public use, the Takings Clause obligates the government to provide the owner with just compensation. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U. S. 302, 321. The Court assesses such physical takings using a *per se* rule: The government must pay for what it takes. *Id.*, at 322.

As this Court has observed, the right to exclude others is "one of the most treasured rights of property ownership" and "is 'one of the most essential sticks in the bundle of rights that are commonly characterized as property[.]'" *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) and *Kaiser Aetna v. United States,* 444 U.S. 164, 176 (1979)). "Given the central importance to property ownership of the right to exclude . . . the Court has long treated government-authorized physical invasions as takings requiring just compensation." *Id.* at 2073.

The right to exclude of necessity includes the right to determine the length of time a Person may stay on a persons property. Otherwise, the right would become meaningless. Indeed, the fundamental nature of this right is recognized in California PC Penal Code § 602 PC, which defines criminal trespassing as entering (or remaining) on someone else's property without permission or without a right to do so. While termination of a tenancy is governed by other rules, the right to terminate a tenancy is fundamental to the ownership of property - especially after the termination of the lease or rental period. Plaintiff submits the the right to determine who may enter, and for how long is historically a part of the fundamental bundle of property rights. The fundamental right may be limited by regulatory procedures, but not removed altogether, even for a temporary period of time.

The United States Supremes Court has "confirm[ed] that takings temporary in duration can be compensable." Arkansas Game & Fish Comm'n v. United States, 568 U.S. 23, 32 (2012) (citing cases); see also, e.g., R. J. Widen Co. v. U.S., 357 F.2d 988, 996 (Ct. Cl. 1966) ("Temporary takings are recognized in the law of federal eminent domain" and require payment of just compensation during time the government effected a taking temporarily) (past taking occurred for which compensation must be paid when federal engineers temporarily entered plaintiffs land to construct flood control measures) (citing, e.g., United States v. General Motors Corp., 323 U.S. 373, 382 (1945) (temporary taking of a portion of a building to assist with the war effort was a taking necessitating just compensation)); see also, Brown v. Legal Found. of Washington, 538 U.S. 216, 233 (2003) ("compensation is mandated when a leasehold is taken and the government occupies the property for its own purposes, even though that use is temporary.").

As this Court stated in First English, "[i]nvalidation of the ordinance or its successor ordinance after this period of time, though converting the taking into a 'temporary' one, is not a sufficient remedy to meet the demands of the Just Compensation Clause." 482 U.S. at 319.

Property ownership includes the right to exclude . . . It is indisputable that the public has a strong interest in combating the spread of the COVID-19 Delta variant. But our system does not permit agencies to act unlawfully even in pursuit of desirable ends. See, *Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2489–90 (2021).

Here, it may be desirable to prevent homelessness due to the COVID-19 pandemic, appropriating private property for that public purpose, without providing just compensation as required by the California Constitution and Fifth Amendment to the United States Constitution is "unlawful.

The purpose of the Fifth Amendment undergirds the analysis to be applied, which the Supreme Court has explained as being to bar Government from forcing some people alone to bear the public burdens which, in all fairness and justice, should be borne by the public as a whole. *Armstrong v. United States*, 364 U.S. 40, 49 (1960), quoted in *Lingle v. Chevron Corp.*, 544 U.S. 528, 537 (2005).

As addressed below, the Armstrong rationale applies here. To the extent that society benefits by allowing tenants to remain in the owners property, during an emergency the State may place limited burdens on the homeowner's property rights does not change the fundamental nature of the State action as constituting a taking from the property owner for the benefit of the public.

In *Monongahela Nav. Co. v. United States*, 148 U.S. 312, 324-25 (1893), the Court explained the compensation principle "in no wise detracts from the power of the public to take whatever may be necessary for its uses; while, on the other hand, it prevents the public from loading upon one individual more than his just share of the burdens of government, and says that when he surrenders to the public something more and different from that which is exacted from other members of the public, a full and just equivalent shall be returned to him.

By forcing extended (uncompensated) leaseholds on property owners during the pandemic, the burden of that benefit to society has been disproportionately—in fact, exclusively—placed on the private owners of the property. The City of San Diego did nothing to protect Owners from losses they have sustained when tenants are unable—or are able and refuse—to pay their rental obligations. The Owners' injuries are exacerbated by the fact that Owners remain obligated to pay property taxes to the state and local government and pay for electricity, sewer, water and garbage removal for the nonpaying tenant.

See, also, *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (2022), where a unanimous Court held that preventing landlords from evicting tenants constitution forcing future access to the property, and constitutes a taking requiring compensation.

Government action may violate the Takings Clause when the action is "the functional equivalent [of] the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539. One such "functional equivalent" is when government action leads to the physical invasion of private property, categorized as an automatic, *per se*, taking. See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 433 (1982) (physical invasion by mandated cable box). The most recent taking by physical invasion decision from the Supreme Court is Cedar Point Nursery, 141 S.Ct. 2063. The Court in Cedar Point Nursery reviewed California statutes requiring a property owner to grant temporary, physical access to union organizers on private property for the purpose of soliciting employees to join or form a union. Cedar Park Nursery, 141 S.Ct. at 2069. The plaintiff nursery argued the California law mandated a physical occupation of its property, causing a *per se* taking. *Id.* The Supreme Court agrees: [t]he right to exclude is "one of the most treasured" rights of property ownership . . . "one of the most essential sticks in the bundle of rights that are commonly characterized as property" . . . . [and] the right to exclude is the "*sine qua non*" of property. Cedar Point Nursery, 141 S.Ct. at 2072-73 (citations omitted); see also id. at 2075. Similarly, the Proclamations forced Owners to accept the continued occupation of tenants without any payment of rent, without compliance with rules, following the termination of the term of their license (rental term) and without any prospect of government reimbursement constitutes a *per se* taking.

As Justice Thurgood Marshall explained in Loretto, "property law has long protected an owner's expectation that he will be relatively undisturbed at least in the possession of his property" and "[t]o require, as well, that the owner permit another to exercise complete dominion literally adds insult to injury." 458 U.S. at 436 (citing Kaiser Aetna v United States, 444 U.S. 164, 179–180

(1979) (the right to exclude others, is "one of the most essential sticks in the bundle of rights that are commonly characterized as property"); Restatement of Property § 7 (1936)); see also *F.C.C. v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987) (likening the right to exclude to the right to invite persons of one's choice onto private property); *Hendler v. United States*, 952 F.2d 1364, 1374-75 (Fed. Cir. 1991) ("the ability to exclude freeriders").

In the State of California, the fundamental, inalienable right is enshrined in the Constitution, Article 1, Section1. The City's Ordinance purports to alienate the right of the property owner to serve a public purpose without compensation in violation of Article 1, Section 19, and the Fifth Amendment to the United States Constitution.

C. ALTERNATIVELY, THE CITY ORDINANCE IS NOT A MERE REGULATORY USE LIMITATION

Should the Court not find a *per se* taking, then the Court must consider whether a regulatory taking has occurred. In *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393 (1922), the U.S. Supreme Court established the proposition that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Id.*, at 415. This framework now applies to use restrictions as varied as zoning ordinances, *Village of Euclid v. Ambler Re alty Co.*, 272 U. S. 365, 387–388 (1926), orders barring the mining of gold, *United States v. Central Eureka Mining Co.*, 357 U. S. 155, 168 (1958), and regulations prohibiting the sale of eagle feathers, *Andrus v. Allard*, 444 U. S. 51, 65–66 (1979).

We balance three factors: (1) the "economic impact of the regulation on the claimant;" (2) "the extent to which the regulation has interfered with distinct investment-backed expectations;" and (3) the "character of the governmental action." *Penn Cent. Transp. Co.*, 438 U.S. at 124; see also *Cedar Point Nursery*, 141 S. Ct. at 2072 (reaffirming Penn Central's "flexible test"). In discerning whether a taking has occurred, the first two factors are the main determinants, and "the third 'may be relevant.'" *Hawkeye Commodity Promotions, Inc. v. Vilsack*, 486 F.3d 430, 441–42 (8th Cir. 2007) (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538–39 (2005)). The test is designed to "prevent the government from 'forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" *Palazzolo*, 533 U.S. at 618 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

The City is depriving Plaintiffs of receiving rental income and managing their property in accordance with the terms of the leases. No landlord could have reasonably expected regulations of the duration and extend imposed. Previously, the State and City had merely imposed limitations on the procedures for eviction, but had not taken the right to manage the owners property from them. Thus, Plaintiffs have suffered economic harm and interference with investment-backed expectations[3].

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3. With relation to the third element, Plaintiffs note the Defendants actions, although termed temporary, appear to have been designed to permanently award tenants the right to remain in the property and deprive landlords of the right to control their property or exclude them for other reasons - to shift the burden for the homeless to Plaintiff's. The California Legislature

Indeed, contrary to many claims, the majority of rental consisting of four units or less are own by individuals, not some large corporation. According to the Association of Realtors, 70% of such rentals fall into this category. The small owners are being forced to bear the brunt of financial burden the City of San Diego's fight against homelessness under this Ordinance. (See, https://www.nar.realtor/blogs/economists-outlook/mom-and-pop-business-owners-day-landlords-of-small-rental-properties.)

The Ordinance constitutes a regulatory taking. Whether temporary or permanent does not excuse the taking without compensation. See, *Arkansas Game & Fish Comm'n*, supra. It is not exception that there was a Pandemic. The Constitution may not be put aside. See *Roman Catholic Diocese* , Supra. Thus, Defendant's claim of an exception for immediate danger has been expressly rejected by the US Supreme Court.

enacted C.C. §1946.2 in 2022, purporting to remove the right to evict persons who have resided in a property for over 12 months lawfully. While the constitutionality of this statute does not need to be resolved in this case, the extended moratorium in this case appears to have also served as a stop-gap to extend time of lawful occupancy and constitutes and intent to permanently deprive the owners of their right to exclude persons from their property.