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ROBERT S. CLEMENTI
1925 - 2004

January 22, 2013

Via email: arenacnst@charter.net

Mr. Paul Arena
The Rockford Apartment Association

Re: *Article IV Residential Quality Support Ordinance*

Dear Mr. Arena:

The firm of DiMonte & Lizak, LLC is a twenty-four attorney general practice law firm located in Park Ridge, Illinois. Multiple attorneys at DiMonte and Lizak, LLC have municipal law experience ranging from serving as the Mayor of the Village of Kildeer for multiple terms, to litigating code and ordinance violation cases on behalf of home owners and businesses, to prosecuting a Civil Rights, RICO and Section 1983 action against a municipality. You have asked DiMonte & Lizak, LLC to analyze the proposed municipal ordinance identified as Article IV Residential Quality Support Ordinance which will be presented to the Rockford City Counsel for consideration. Specifically, you have identified the following issues:

- i. Whether the creation of a voluntary advisory housing board is beyond the non-home rule City of Rockford authority as provided by state law.
- ii. Whether the provision for email notification under Subsections D and E of Section 17-50 is beyond the non-home rule City of Rockford authority as provided by state law.
- iii. Whether the non-home rule City of Rockford has authority to treat tenants of a residential rental dwelling unit as a respondent in its code enforcement efforts.

Opinion

For the reason stated below, the proposed Article IV Residential Quality Support Ordinance, in whole and in part, is a valid exercise of the City of Rockford's authority as a non-home rule entity to set standards and procedures for the abatement of nuisance and of other violations of the municipal code.

Law

As a non-home rule unit of municipal government, the City of Rockford may exercise only those powers enumerated in the Illinois Constitution or conferred upon, either expressly or impliedly, by state statute. *Village of Northfield v. BP America Inc.*, 403 Ill.App.3d, 55, 58, 933 N.E.2d 413, 417 (1st Dist. 2010). It is well established that the municipality may not adopt ordinances which infringe upon the spirit of state law or which are repugnant to the general policy of the state. *Id.* at 58, 933 N.E.2d at 418. However, ordinances are presumed valid, and the party challenging an ordinance bears the burden of proving invalidity. *Id.* at 58, 933 N.E.2d at 417. Municipal ordinances are presumed to be constitutional, and the party challenging the validity of an ordinance has the burden of showing that it violates the constitution. *Express Valet Inc. v. The City of Chicago*, 373 Ill.App.3d 838, 854, 869 N.E.2d 964, 978-79 (1st Dist. 2007). Courts are obligated to uphold the constitutionality of an ordinance wherever reasonably possible. *Id.* A municipality has not only those powers expressly granted to it, but also those powers necessarily implied or incident to the powers expressly granted, and those essential to the accomplishment of its declared objects and purposes. *Hunt v. City of Peoria*, 30 Ill.2d 230, 231, 195 N.E.2d 719, 720 (1964). If the council has the power to pass the ordinance, it must have the power to carry it into effect. *Id.* at 231, 195 N.E.2d at 720. When a state statute specifically authorizes a municipality to regulate the subject matter in a manner not in conflict with state laws, the municipality may pass ordinances that are more restrictive than the state law. See generally, *Village of Deerfield v. Greenberg*, 193 Ill.App.3d 215, 218, 52 N.E.2d 12, 14 (2nd Dist. 1990). The mere fact that a state statute and a local ordinance are not identical does not mean that the two regulations are in conflict for the purpose of preemptions. *Village of Northfield v. BP America, Inc.*, 430 Ill.App.3d 55, 61, 933 N.E.2d 413, 420 (1st Dist. 2010).

Analysis

Two provisions of the Illinois Municipal Code create a statutory scheme to address sanitation code violations (65 ILCS 5/11-19.2-1 et seq.) and building code violations (65 ILCS 5/11-31.1-1 et seq.). Both of these statutes contain similar grants of authority to municipalities to establish municipal ordinances to deal with either sanitation code violations or building code violations. Specifically, the sanitation code violation statute provides:

The corporate authority of any municipality having a population of 100,000 or more inhabitants may establish by ordinance a code hearing unit within an existing code enforcement agency or as a separate independent agency in the municipal government. The function of the code hearing unit is to expedite the prosecution and correction of code violations in the manner set forth in this division.

65 ILCS 5/11-19.2 -2.

The building code violation statute is identical except it does not limit the corporate authority to municipalities having a population of 100,000 or more inhabitants. 65 ILCS 5/11-31.1-2. More significantly, both statutes grant the municipality the authority of establishing other methods to enforce the provisions of its code. Specifically, both statutes contain identical language, reading as follows:

Mr. Paul Arena
January 22, 2013
Page 3

In any municipality where this division is adopted, this division should not preclude the municipality from using other methods to enforce the provisions of its code.

65 ILCS 5/11-19.2-3, 65 ILCS 5/11-31.1-3.

The sanitation code statute also contains the following language:

Any municipality establishing a code hearing unit by ordinance under this Division may adopt such other provisions as are necessary and proper to carry into effect the powers granted and the purposes stated herein.

65 ILCS 5/11-19.2-13.

Even though Rockford is a non-home rule municipality, the state legislators expressly granted to all municipalities in the State of Illinois the express authority to adopt code hearing departments within an existing code enforcement agency or as a separate independent agency within the municipal government, and to establish procedures to enforce the provisions of its code. Because the State statutes do not mandate for or against the use of a voluntary housing advisory board or service of notice by electronic means, the City of Rockford is at liberty to establish those procedures reasonably necessary to effectuate the enforcement of its codes which are not in direct conflict with a state's statute or make complying with a state's statute impossible. Neither of these two provisions of the proposed ordinance fall into that category.

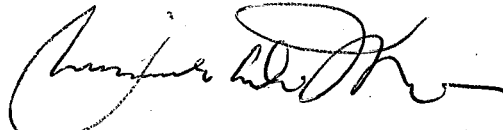
Further, the question was raised whether the City of Rockford can treat a tenant as a respondent in a code enforcement action. Again, reference to the state sanitation code violation and building code violation sections answers this question in the affirmative. The sanitation code violation statute defines a "respondent" as a property owner, waste hauler or other person charged with liability for an alleged code violation and the person to whom the notice of violation is directed. 65 ILCS 5/11-19.2-1(e). Accordingly, this statute expressly identifies the respondent as the party charged with liability for an alleged code violation which is all encompassing and includes a tenant. The building code violation statute states that no action for eviction, abatement of a nuisance, forcible entry or detainer or other similar proceeding should be threatened or instituted against an occupant of a dwelling solely because such occupant agrees to testify or testifies at a code violation hearing. 65 ILCS 5/11-31.1-8. The reasonable interpretation of this section is that an action for abatement of a nuisance may be instituted against an occupant of a dwelling as long as it is not solely because such occupant agrees to testify or testifies at a code violation hearing. As such, if the tenant is the cause of the nuisance, an action for abatement against the tenant is sanctioned under the statute.

Conclusion

Based on the analysis presented above, our conclusion is as follows:

- i. The creation of a voluntary advisory housing board is within the non-home rule City of Rockford authority as provided by state law.
- ii. The provision for email notification under Subsections D and E of Section 17-50 is within the non-home rule City of Rockford authority as provided by state law.
- iii. The non-home rule City of Rockford has legal authority to treat tenants of a residential rental dwelling unit as a respondent in its code enforcement efforts.

Yours truly,



Riccardo A. DiMonte

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