MEMORANDUM

VIA ELECTRONIC MAIL

TO: Florida Apartment Association, Inc.

FROM: Scott A. Glass, Esq., B.C.S., City, County and Local Government Law
Erik F. Szabo, Esq., B.C.S., Construction Law

DATE: June 21, 2022

RE: Requirements under §125.0103, F.S., for the Orange County Board of County Commissioners ("BCC") to place a rent control ordinance on the November, 2022 general election ballot for consideration by Orange County electors.[1]

Question Presented:

If the Orange County Board of County Commissioners (the "BCC") were to adopt a rent control ordinance based on current conditions in the residential rental housing market in Orange County, would such ordinance meet the legal requirements necessary to be placed on the November, 2022 general election ballot and to become law if passed by a majority of the electors voting?

Short Answer:

It is extremely unlikely that the shortcomings of the current residential rental market in Orange County meet the stringent statutory and common law requirements to be deemed the type of dire emergency which must exist before a local government in Florida can adopt an enforceable rent control ordinance. While current conditions affecting rents in Orange County can sometimes result in seemingly unfair consequences for particular households, the totality of facts and circumstances simply do not rise to the level that both the courts and the Florida Legislature have said must exist to warrant the use of the state's police power to interfere with constitutionally protected private property rights. As explained in greater detail, *infra,* in order for the BCC to legally adopt an enforceable rent control ordinance it must first prove: (i) the ***existence*** of a housing ***emergency*** (ii) so ***grave*** (iii) as to constitute a ***serious menace*** (iv) to the ***general public***—not just a specific demographic—and that the proposed rent control ordinance would (v) ***eliminate***, not simply reduce or mitigate, the alleged housing emergency. These requirements have their genesis in a series of emergency housing laws passed by the New York Legislature to deal with an

[1] This memo addresses only those requirements imposed by §125.0103, F.S., and does not address requirements imposed by other Florida statutes relating to the conduct of elections, nor does it address requirements, if any, imposed by the Orange County Supervisor of Elections Office regarding such county-wide referenda.

extraordinary housing crisis which arose in its most populous cities during World War I, but they were subsequently codified by the Florida Legislature after an ultimately unsuccessful effort by the City of Miami Beach in the late 1960s and early 1970s to impose rent controls on private landlords based on unfavorable, but not extraordinary, economic conditions in that city. Since first codified by the Florida Legislature's adoption of §125.0103, F.S., in 1977, no Florida jurisdiction has successfully met the exacting factual and legal requirements necessary to validly enact rent control and, as set forth in greater detail, *infra*, it appears exceedingly unlikely that Orange County will be the first to do so.

History of Rent Control Ordinances:

Despite having existed in the U.S. since at least World War I, the reality is that government intervention in the private residential rental housing market to rectify actual or perceived price gouging remains relatively rare today and is largely limited to a few high-density states and large, overcrowded cities.[2] In order to understand why a concept that is over a hundred years old has not been used more often in a country with a steadily increasing population which is currently over 330 million people, it is necessary to have at least a cursory knowledge of prior efforts to adopt and enforce rent control laws.

To this end, we turn to the State of New York in 1920, just a few years after the end of what was then known as the Great War and which we now call World War I. During the war the housing industry, like many other industries, limited their normal work for a number of reasons. Many of their workers left to join the fight in Europe. A number of builders redirected their efforts to producing war material or fulfilling other military needs, such as construction of base housing and training facilities. In any event, the end result was that housing production decreased dramatically in large cities just as thousands of rural workers headed to the cities to take critical jobs in the defense industry, e.g., building ships, making uniforms and packaging and shipping needed supplies. Thus, the private residential rental market simultaneously experienced a dramatic increase in demand and an equally dramatic decrease in production which led to unprecedented and precipitous increases in rental rates which, in turn, resulted in multiple families having to pool resources and share rental units that were designed for occupancy by a single-family. This overcrowding led to significant adverse consequences such as the accelerated spreading of illness, co-occupancy of single units by unmarried members of the opposite sex (which was considered morally unacceptable by society at the time), and physical altercations.[3]

[2] See, Feb. 21, 2022 Legal Memorandum from Dep. City Atty., Morris Massey, and Asst. City Atty., Rebecca Johns, to the Hon. Chairman Orlando Gudes and Members of the Tampa City Council regarding research into rent stabilization regulations in other jurisdictions. Available at: https://occompt.legistar.com/View.ashx?M=A&ID=929586&GUID=B8277B69-C8EB-4536-B143-4194A793B6B9

[3] See, *Edgar A. Levy Leasing Co. v. Siegel 810 West End Ave. v. Stern,* 258 U.S. 242, 243-245 (1922).

After the war was over, the New York Legislature recognized that not every rural worker who had come into the cities would want to return to the countryside. It also knew that it would take some time for the housing industry to come back up to pre-war production levels. Thus, the Legislature adopted the Emergency Housing Laws of the State of New York, chapters 942-953, inclusive, laws of New York 1920, a comprehensive legislative scheme with multiple components designed to stabilize rents and residency while providing incentives such as tax breaks to the industry to accelerate the production of new rental units.[4]

The Emergency Housing Laws also provided that tenants in possession of housing or apartments in certain New York cities would be permitted to continue in possession until November 1, 1922, regardless of whether their existing leases expired before then, so long as they paid a "reasonable rent" to be determined by a court.[5] A number of landlords took exception to this effort by the State to interfere with their private property rights and existing contracts (leases) and filed suit challenging these rent control provisions as unconstitutional takings and violations of the United States Constitution's Contract Clause. Two of these challenges ultimately reached the United States Supreme Court in the combined case of *Edgar A. Levy Leasing Co. v. Siegel 810 West End Ave. v. Stern*, 258 U.S. 242 (1922).

The first landlord in *Levy* had offered to renew his tenant's lease prior to enactment of the emergency housing laws by the Legislature. The tenant, apparently with nowhere else to go, signed the lease renewal despite the fact that it increased his rent by 48.96%. After the emergency laws were passed the tenant refused to pay the new rent, but offered to pay a "reasonable rent" to be determined by the court.[6] Similarly, the second landlord in *Levy* sought to recover his premises from a tenant who refused to vacate even though his lease had expired. The tenant claimed that the new legislation automatically extended his lease until November 1, 1922 and that he was entitled to continue occupying the premises until that time, so long as he continued to pay his previous rent or such other rent the court determined to be reasonable.[7]

In response, the State essentially acknowledged that in normal times the new housing laws would probably be determined contrary to the Constitutions' takings and contract clauses, but argued that they were not enacted in normal times, but instead during a "state of social emergency, caused by an insufficient supply of dwelling houses and apartments, so grave that it constituted **a serious**

[4] *Ibid.*

[5] *Levy*, 258 U.S. at 244.

[6] *Ibid.*

[7] *Ibid.*

menace to the health, morality, comfort, and even to the peace of a <u>large part of the people</u> of the state."[8]

Ultimately, the Court agreed with the State. In drafting its opinion, the Court took pains to note that it was obligated to "give very great respect … to the legislative declaration that an emergency existed … ."[9] Moreover, the Court specifically noted that it was not relying on anecdotal knowledge of adverse impacts caused by the housing shortage on particular individuals or groups of people, but was instead relying on "elaborate and thorough" investigations conducted by the Governor's Reconstruction Commission, the Joint Legislative Committee on Housing and a similar committee created by the Mayor of New York, all of which began their work approximately two years before the challenged laws were ever enacted.[10] As a result of these long and thorough studies, the Court determined, "[t]hat there was a **very great shortage** in dwelling house accommodations in the cities of the state …; that this condition was causing **widespread distress**; that extortion in most oppressive forms was flagrant in rent profiteering; that, for the purpose of increasing rents, **legal process was being abused and eviction was being resorted to as never before**; and that **unreasonable and extortionate increases in rent** had frequently resulted in **two or more families being obliged to occupy an apartment adequate only for one** family, **with** a **consequent overcrowding, which was resulting in insanitary conditions, disease, immorality**, discomfort, and **widespread** social discontent."[11] Thus, the Court upheld the emergency laws based upon: (i) the extensive and credible evidence provided by the three committees; (ii) recognition that the legislation was limited in duration; and, (iii) that the Court owed substantial deference to the Legislature, a co-equal branch of government with the judiciary.

<u>Rent Control Ordinances in Florida</u>:

After the Court's ruling in *Levy*, it was the law of the land that the government could step in to regulate the private rental housing market in times of dire emergency, a position that was upheld again during and immediately after World War II when a number of jurisdictions were faced with similar crises. Nonetheless, the issue does not appear to have arisen in Florida until the 1960s, when the City of Miami Beach enacted a local ordinance to regulate rents after concluding that an inflationary spiral and a housing shortage existed.[12] The ordinance was challenged and quickly struck down based on the court's conclusion that, even under the expanded municipal powers

[8] *Levy,* 258 U.S. at 245, emphasis added.

[9] *Id.* at 246.

[10] *Id.* at 245.

[11] *Id* at 246 (emphasis added).

[12] See, *City of Miami Beach v. Fleetwood Hotel, Inc.,* 261 So. 2d 801 (Fla. 1972)

granted by the then new Section 2, Article VIII of the Constitution of Florida (1968), regulation of the private residential rental market is not a municipal function except in the case of a dire emergency. The court then noted that an ever-increasing cost of living coupled with a shortage of housing is obviously burdensome, but there was no evidence that it was causing the dire adverse impacts on a large swath of the public as had happened in *Levy*. Thus, the court concluded the use of the city's police power to forcibly alter existing contract rights and coerce a change in the economic relationship between landlords and tenants was simply not warranted.

Not long after the *Fleetwood Hotel* decision was issued, the Florida Legislature passed the Florida Home Rule Powers Act, greatly expanding local governments' authority to regulate their own affairs. Taking advantage of the new act, the City of Miami Beach once again attempted to impose a rent control ordinance. Ultimately, the Florida Supreme Court recognized that the city now had the power to adopt such an ordinance, but determined that the city's new rent control ordinance was constitutionally defective because it attempted to delegate the city's legislative powers to an appointed rent control administrator.[13]

In 1974 the City of Miami Beach stepped back into the batter's box to take a third swing at the rent control ball. This time, however, the City heeded the lessons (and specific language) of the U.S. Supreme Court's *Levy* decision, as well as the lessons learned in its previous failed attempts. Specifically, the city included certain findings of fact and conclusions of law in the preamble to its new rent stabilization ordinance, specifically stating the following:

> WHEREAS, a **grave and serious public emergency** exists with respect to the housing of a **substantial number** of citizens of Miami Beach; and
>
> WHEREAS, the deterioration and demolition of existing housing; an insufficient supply of new housing; the inhibition upon the construction of new housing resulting from the operation of the Florida Pollution Control Act, other environmental protection laws, and an insufficient supply of financing; and the existing economic inflationary spiral have resulted in a substantial and critical shortage of safe, decent and reasonably priced housing accommodations as evidenced by the low vacancy rates prevailing in the City; and
>
> WHEREAS, this emergency cannot be dealt with effectively by the ordinary operations of the private housing market and unless residential rents are regulated, such emergency and the inflationary pressures therefrom will produce a **serious threat to the public health, safety and general welfare** of the citizens of Miami Beach, Florida; … .[14]

[13] *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974).

[14] *Lifschitz v. City of Miami Beach*, 339 So. 2d 232, 234 (Fla. 3d DCA 1976) *cert. denied*, 348 So. 2d 949 (Fla. 1977).

This language shows that the city finally recognized that in order to adopt an enforceable rent stabilization ordinance it had to prove that it had a housing shortage, that the shortage was directly caused by something more than the regular ebb and flow of the private residential rental market, and the shortage adversely impacted more of its citizens than just a discrete group at the lower end of the economic spectrum. Moreover, the city further recognized that, under the law of the land, it needed to incorporate findings that the housing shortage had led directly to actual adverse consequences which posed a serious threat to the public health, safety and welfare of all its citizens.

Whether the findings incorporated by the City of Miami Beach in its 1974 rent stabilization were actually true or not was ultimately not relevant to the court's decision. When the ordinance was challenged, the 3rd District Court of Appeal noted that Florida law typically mandates that ordinances are presumed valid and that courts are required to give great deference to the judgment and discretion of an elected city council.[15] The court noted that there was competent evidence in the record supporting the city's findings and that it was not the role of the court to reweigh such evidence on appeal.[16] Accordingly, the ordinance was upheld as a valid exercise of the city's police power.

Miami Beach's victory ultimately proved pyrrhic because, when Miami Beach tried to replace it's rent control ordinance with a new ordinance in 1977 the Florida Legislature stepped in and removed the presumption of validity the *Lifschitz* court had relied upon.[17] Specifically, the Legislature adopted Ch. 77-50, Laws of Florida, which not only removed the presumption of validity for rent control ordinances, but placed the burden on those defending such ordinances to prove, "the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public, and that such controls are necessary and proper to eliminate such grave housing emergency."[18] Accordingly, when the new ordinance was subsequently challenged, the court could not, and did not, defer to the city's legislative findings. The court went on to find that the city failed to meet its statutorily prescribed burden of proving that the city was facing the type of dire crisis necessary to exercise the police power to intervene in the private residential rental property market.[19]

Unable to meet its burden under Ch. 77-50, Miami Beach argued that, because Miami Beach was the only local government in Florida seeking to enact a rent control ordinance, the legislation was targeting the city and constituted an invalid general law of local jurisdiction. The Florida Supreme Court rejected such argument noting that, "[i]t is clear on the face of this statute that it is a general

[15] *Id.* at 235.

[16] *Id.*

[17] See, *City of Miami Beach v. Frankel,* 363 So. 2d 555 (Fla. 1978).

[18] See, §5(a), Ch. 77-50, Laws of Florida, codified as §125.0103(5)(b), F.S. and §166.043(5)(b), F.S.

[19] See, *City of Miami Beach v. Frankel, fn.* 12.

law applicable statewide. It contains no classification scheme. … . The fact, if established, that Miami Beach is the only City in the State to have enacted a rent control ordinance, would be immaterial."[20]

Since the *Frankel* case, no court in Florida has apparently had occasion to interpret this statute.

The Statute:

Section 125.0103, F.S. (2022), provides in relevant part as follows:

> ***
>
> (2) No law, ordinance, rule, or other measure which would have the effect of imposing controls on rents shall be adopted or maintained in effect except as provided herein and unless it is found and determined, as hereinafter provided, that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.
>
> (3) Any law, ordinance, rule, or other measure which has the effect of imposing controls on rents shall terminate and expire within 1 year and shall not be extended or renewed except by adoption of a new measure meeting all the requirements of this section.
>
> (4) Notwithstanding any other provisions of this section, no controls shall be imposed on rents for any accommodation used or offered for residential purposes as a seasonal or tourist unit, as a second housing unit, or on rents for dwelling units located in luxury apartment buildings. For the purposes of this section, a luxury apartment building is one wherein on January 1, 1977, the aggregate rent due on a monthly basis from all dwelling units as stated in leases or rent lists existing on that date divided by the number of dwelling units exceeds $250.
>
> (5) No municipality, county, or other entity of local government shall adopt or maintain in effect any law, ordinance, rule, or other measure which would have the effect of imposing controls on rents unless:
>
> > (a) Such measure is duly adopted by the governing body of such entity of local government, after notice and public hearing, in accordance with all applicable provisions of the Florida and United States Constitutions, the charter or charters governing such entity of local government, this section, and any other applicable laws.

[20] *Id.* at 558.

> (b) Such governing body makes and recites in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.
>
> (c) Such measure is approved by the voters in such municipality, county, or other entity of local government.
>
> (6) In any court action brought to challenge the validity of rent control imposed pursuant to the provisions of this section, the evidentiary effect of any findings or recitations required by subsection (5) shall be limited to imposing upon any party challenging the validity of such measure the burden of going forward with the evidence, and the burden of proof (that is, the risk of nonpersuasion) shall rest upon any party seeking to have the measure upheld.
>
> ***

Interpretation of the Statute:

As noted, *infra*, we have not located any case interpreting the relevant provisions of the statute. Thus, if Orange County proceeds to adopt a rent control ordinance and place it on the ballot in November, the Ninth Judicial Circuit Court in and for Orange County will have to rely on the canons of statutory construction to discern the intent and effect of the statute.

The first step in interpreting a statute is to look at the actual language used, "because legislative intent is determined first and foremost from the statute's text." *Raymond James Fin. Servs., Inc. v. Phillips*, 126 So. 3d 186, 190 (Fla. 2013). The language chosen by the Legislature is so important that at least one Florida court has noted that, "there is no basis for us to look to 'polestars' when the ship of statutory interpretation is guided by clear text. That is to say, we (need) look only to clear text for statutory meaning … ." *Brown v. State*, 848 So. 2d 361, 364 (Fla. 4th DCA 2003). Thus, in any challenge to an Orange County rent control ordinance the court will look to the actual words used by the Florida Legislature. In this case, the court will no doubt first look at the language of §125.0103(2), F.S. which provides that:

> No law, ordinance, rule, or other measure which would have the effect of imposing controls on rents shall be adopted or maintained in effect except as provided herein and unless it is found and determined, as hereinafter provided, that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.

This provision clearly prohibits Orange County from adopting a rent control ordinance unless the controls it seeks to impose are **necessary and proper** to **eliminate** an existing housing **emergency**

which is so **grave** as to constitute a **serious menace** to the **general public**. The question thus becomes, what do the specific terms used by the Legislature, particularly the ones in boldface in the previous sentence, mean? A review of the statute shows no definitions are provided, thus the court will look to the plain dictionary definition for these terms.[21]

Taking the Legislature's chosen terms in the order they appear, "necessary" is defined by Merriam-Webster as, "absolutely needed," while dictionary.com defines it as, "being essential, indispensable, or requisite" and the Cambridge English Dictionary defines it as, "needed in order to achieve a particular result."[22] Thus, in order for an Orange County rent control ordinance to be upheld the circuit court would have to find that such ordinance was "absolutely needed" in order to achieve the specified result, i.e., to "eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public."

In addition to finding a prescribed rent control ordinance to be an indispensable tool in reaching the statute's stated goal of eliminating a grave housing crisis, the particular ordinance must also be found to be a "proper" tool for achieving such goal. Turning again to the commonly understood dictionary definition of "proper," Merriam-Webster defines "proper" as "appropriate and suitable for the task at hand", e.g., a hammer is a proper tool for driving nails. Likewise, dictionary.com defines proper as "appropriate or correct," while the Oxford Dictionary defines proper as "being of the required type; suitable or appropriate." Thus, the court would have to find that the rent control ordinance proposed is a suitable tool for eliminating an existing housing "emergency" which is so "grave" as to constitute a serious menace to the general public.

At this point it is worth noting that the Legislature specifically used the absolute term, "eliminate," rather than a more subjective term such as ameliorate, mitigate, lessen or relieve in defining the statute's goal. "Eliminate," is commonly understood to mean remove or delete. The Cambridge English Dictionary defines it as, "to remove or take away someone or something."[23] Similarly, Merriam-Webster defines "eliminate" as "to put an end to or get rid of, to remove."[24] Thus, it would not be enough to uphold a rent control ordinance for the circuit court to simply find that imposing it would make the housing crisis less grave or would provide partial or temporary relief

---

[21] In determining a word's meaning Florida courts have long held that, "dictionary definitions are a source from which the plain meaning of a word not otherwise defined in a statute may be derived." *Dept. of Highway Safety and Motor Vehicles v. Chakrin*, 304 So. 3d 822, 827 (Fla. 2d DCA 2020) (citing *Shepard v. State*, 259 So. 3d 701, 705 (Fla. 2018)). See also, *W. Fla. Reg'l Med. Ctr., Inc. v. See,* 79 So. 3d 1, 9 (Fla. 2012)(in interpreting a statute a court must look "first to the plain and obvious meaning of the statute's text, which a court may discern from a dictionary").

[22] See, https://www.merriam-webster.com/dictionary/necessary, https://www.dictionary.com/browse/necessary, and https://dictionary.cambridge.org/us/dictionary/english/necessary.

[23] Https://dictionary.cambridge.org/us/dictionary/english/eliminate.

[24] Https://www.merriam-webster.com/dictionary/eliminate.

during an existing housing emergency. The Legislature has clearly stated that such rent control ordinance must be necessary to eliminate, i.e., put an end to, the existing housing emergency.

While a rent control ordinance may serve as part of a comprehensive remedial solution, such as those proposed in New York's 1920 Housing Emergency Laws, the Florida Legislature chose language that clearly prohibits Orange County from adopting an individual control which, in and of itself, is insufficient to eliminate an alleged existing housing emergency. While advocates of rent control might argue such an ordinance as a necessary first step, neither the BCC nor a reviewing court has the authority to overlook or replace the specific language chosen by the Florida Legislature.

Courts are prohibited from inserting words or phrases into a statute in order to express intentions which do not clearly appear therein, but must instead give the statute the plain and ordinary meaning of the words employed by the Legislature. See, *Rose v. Town of Hillsboro Beach,* 216 So. 2d 258 (Fla. 4th DCA 1968). Moreover, courts cannot substitute words of similar, but not identical, meaning for the actual words selected by the legislative body for inclusion in its ordinance. Courts must assume that the legislative body knew the plain and ordinary meanings of the words it used and chose them accordingly. *Colonial Apartments, L.P. v. City of DeLand,* 577 So. 2d 593, 596 (Fla. 5th DCA 1991) (*quoting Rinker Materials Corp. v. City of North Miami,* 286 So. 2d 552 (Fla. 1973)). As noted by the Florida Supreme Court in *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 454 (Fla. 1992) (quoting *Van Pelt v. Hilliard*, 78 So. 693, 694-695 (Fla. 1918)):

> Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity… . If it has been passed improvidently the responsibility is with the Legislature and not the courts (to clarify or revise such statute).

In the instant case, had the Legislature desired to allow local governments to adopt rent control ordinances when doing so would merely mitigate, ameliorate or lessen an existing housing emergency rather than eliminate it, the Legislature could have so provided through the simplest exercise of draftsmanship. See, *Rose v. Town of Hillsboro Beach,* 216 So. 2d at 259, 260 (Fla. 4th DCA 1968). Unfortunately for those who seek to have a rent control ordinance imposed at this time, the evidence, both that presented in the GAI report submitted at the June 7, 2022 BCC meeting and that in Commissioner Bonilla's prior report, show the only way to eliminate an alleged housing emergency is to increase the supply of housing such that it is available to everyone in the county's increasing population who desires it.

Of course, all of the foregoing presupposes that the current housing situation in Orange County actually qualifies as "an existing housing emergency which is so grave as to constitute a serious menace to the general public." In order to make that determination, however, a court would again

have to look at the specific language chosen by the Florida Legislature. In doing so the court would find that the common dictionary meaning of "emergency" is "a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action."[25] Additionally, the common meaning of "grave" is, "significantly serious" and "likely to produce great harm or danger."[26] "Menace" is defined by the Cambridge English Dictionary as, "something that is likely to cause harm," and Merriam-Webster defines it as a "threat or danger," and lists the following synonyms: "danger, hazard, peril, pitfall, risk and trouble."[27] Finally, "general public," is commonly understood to mean "all the people in an area" in contrast to a specific, "smaller group of people in an area."[28] Accordingly, in order for a court to uphold a rent control ordinance it would have to find that there is, in fact, a sudden, urgent, usually unexpected occurrence or occasion that is significantly serious enough to constitute a great danger, hazard or peril to all of the people in Orange County and that such rent control ordinance is absolutely necessary to totally remove such threat.[29]

There can be no doubt that the Legislature set an extraordinarily high bar for local governments seeking to impose rent control regulations on the private residential rental market in Florida. Even if the Legislature had not chosen such restrictive terms, the history of the statute's adoption during the City of Miami Beach's court battles over rent control evidences the Legislature's intent that those proposing such controls prove, with hard facts, that a housing emergency rising to the level of those previously only experienced during times of world war presently exists, and further prove that the tools created in the proposed ordinance are the ones absolutely necessary to completely overcome such emergency. There can also be no doubt that, while there is definitely a shortage of affordable rental housing in Orange County and some anecdotal evidence of substantial rent increases, the evidence does not show the type of double and triple occupancy, increased spread of disease, unsanitary conditions and other factors which are necessary to rise to the level necessary for the Orange County Board of County Commissioners to adopt a rent control ordinance, let alone put it to a public referendum.

---

[25] See, https://www.dictionary.com/browse/emergency. See also, https://www.merriam-webster.com/dictionary/emergency which defines the term as, "an unforeseen combination of circumstances or the resulting state that calls for immediate action."

[26] Https://www.merriam-webster.com/dictionary/grave. See also, https://www.dictionary.com/browse/grave which defines grave as "threatening a seriously bad outcome or involving serious issues; critical."

[27] Https://dictionary.cambridge.org/us/dictionary/english/menace. See also, Https://www.merriam-webster.com/dictionar/menace.

[28] See, https://www.merriam-webster.com/dictionary/the%20general%20public and https://www.collinsdictionary.com/us/dictionary/English/general-public.

[29] Section 125.0103(5)(b), F.S., mandates that the governing body make and recite findings establishing the existence, **in fact**, of a housing emergency so grave as to constitute a serious menace to the general public before adopting proposed controls as are necessary and proper to eliminate such grave housing emergency.

The burden and nature of proof which Orange County would need to submit in order to uphold a rent control ordinance is discussed in detail in both Assistant County Attorney, Dylan Schott's, March 29, 2022 Legal Memorandum to Mayor Demings and in the February 21, 2022 Legal Memorandum From Deputy Tampa City Attorney, Morris Massey, and Assistant Tampa City Attorney, Rebecca Johns to the Honorable Chairman Orlando Gudes and Members of the Tampa City Council, each of which address legal issues related to rent stabilization in Florida and each of which was provided to the BCC as part of the June 7, 2022 agenda packet. We have reviewed both of these memoranda, and supporting documentation referenced therein, and concur with their conclusions.

Partial List of Legal Authorities and Other Material Reviewed:

In researching and drafting this Legal Memorandum we have reviewed, among other authorities and sources, the following material:

Florida Statutes:

§125.0103, F.S. (2022)

§1, Ch. 77-50, Laws of Florida (1977)

§71, Ch. 79-400, Laws of Florida (1979)

§1, Ch. 88-240, Laws of Florida (1988)

§2, Ch. 90-283, Laws of Florida (1990)

§52, Ch. 97-300, Laws of Florida (1997)

§8, Ch. 99-360, Laws of Florida (1999)

§33, Ch. 2001-201, Laws of Florida (2001)

§1, Ch. 2020-174, Laws of Florida (2020)

Case Law (Federal):

Edgar A. Levy Leasing Co., Inc. v. Siegel, 810 West End Ave. v. Stern, 258 U.S. 242 (1922).

Case Law (Florida):

City of Miami Beach v. Fleetwood Hotel, Inc., 261 So. 2d 801 (Fla. 1972).

City of Miami Beach v. Forte Towers, Inc., 305 So. 2d 764 (Fla. 1974), *reh'g denied* (1975).

City of Miami Beach v. Frankel, 363 So. 2d 555 (Fla. 1978).

Diamond Aircraft Indus., Inc. v. Horowitch, 107 So. 3d 362, 367 (Fla. 2013).

Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452 (Fla. 1992).

Lifschitz v. City of Miami Beach, 339 So. 2d 232 (Fla. 3d DCA 1976), *cert. denied*, 348 So. 2d 949 (Fla. 1977).

Raymond James Fin. Servs., Inc. v. Phillips, 126 So. 3d 186, 190 (Fla. 2013).

Rinker Materials Corp. v. City of North Miami, 286 So. 2d 552 (Fla. 1973).

Shepard v. State, 259 So. 3d 701 (Fla. 2018).

Van Pelt v. Hilliard, 78 So. 693 (Fla. 1918).

Brown v. State, 848 So. 2d 361 (Fla. 4th DCA 2003).

Colonial Apartments, L.P. v. City of DeLand, 577 So. 2d 593 (Fla. 5th DCA 1991).

Dept. of Highway Safety and Motor Vehicles v. Chakrin, 304 So. 3d 822 (Fla. 2d DCA 2020).

Rose v. Town of Hillsboro Beach, 216 So. 2d 258 (Fla. 4th DCA 1968).

Additional Legal Materials:

March 29, 2022, Memorandum of Law regarding rent stabilization from Jeffrey J. Newton, County Attorney and Dylan Schott, Assistant County Attorney to the Hon. Mayor Jerry L. Demings.

February 21, 2022, Memorandum of Law regarding rent stabilization from Morris Massey, Deputy City Attorney and Rebecca Johns, Assistant City Attorney, to the Hon. Chairman Orlando Gudes and Members of Tampa City Council.

Additional Non-Legal Materials:

Cambridge English Dictionary, available at https://dictionary.cambridge.org/us/dictionary/english

Collins Dictionary, available at https://www.collinsdictionary.com/us/dictionary/english

Cornell University Legal Information Institute, available at https://www.law.cornell.edu/wex

Dictionary.Com, available at https://www.dictionary.com/browse

March 8, 2022, Memorandum regarding rent stabilization from the Hon. Emily Bonilla, District 5 Commissioner to the Hon. Mayor Jerry Demings and the Hon. Orange County Commissioners.

May 25, 2022 letter from Greater Tampa Realtors to the Hon. Tampa City Council Members regarding rent controls and housing affordability.

Merriam-Webster Dictionary, available at https://www.merriam-webster.com/dictionary

Orange County Rent Stabilization Analysis prepared and presented by GAI Consultants, Inc. Community Solutions Group at June 7, 2022 BCC meeting and available at: https://occompt.legistar.com/View.ashx?M=F&ID=10932480&GUID=A48C5B93-2A6B-451E-8F22-79C88F7E5C11

Rent Stabilization Analysis (Powerpoint) presented at June 7, 2022 BCC meeting available at: https://occompt.legistar.com/View.ashx?M=F&ID=10963401&GUID=03FB2335-9168-4324-8BF5-3B75C9C67F68

The Britannica Dictionary, available at https://www.britannica.com.dictionary

Video of Agenda Item III. A., Planning, Environmental, and Developments Services Department, 2., Rent Stabilization, available at https://netapps.ocfl.net/Mod/meetings/1

ORLDOCS 19739694 2