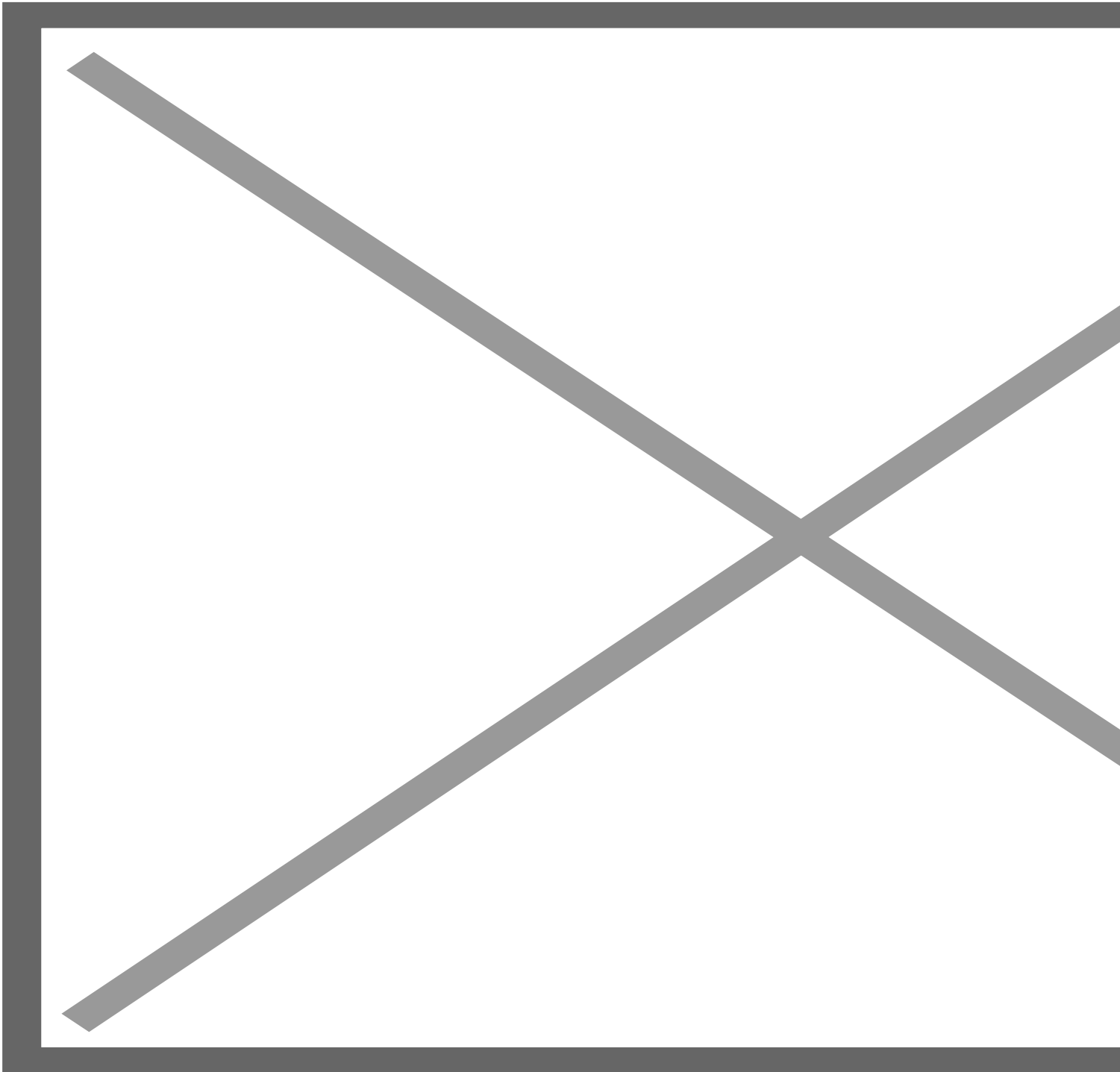


Another San Francisco Ordinance Falls To The Ellis Act

Once again, the City and County of San Francisco has been found to have exceeded the limits of its authority under the Ellis Act in its efforts to deter conversion of residential rental units. *Small Property Owners of San Francisco Institute v. City and County of San Francisco*, 22 Cal. App. 5th 77 (2018). The Ellis Act prohibits local governments from "compel[ing] the owner of any residential real property to offer, or to continue to offer accommodations in the property for rent or lease." (Gov't Code § 7060(a).) Courts have held that the Ellis Act completely occupies the field of substantive eviction controls over landlords who withdraw units from the market and prohibits local ordinances that penalize the exercise of rights established by the statute.



The ordinance challenged in this case modified the City's Planning Code to permit enlargement, alteration or reconstruction of nonconforming residential units in zoning districts where residential use was principally permitted, but imposed a 10-year waiting period for units that had been the subject of a "no fault" eviction. Small Property Owners of San Francisco Institute ("SPOSFI") sued, claiming that the imposition of a 10-year waiting period penalized the exercise of the right to exit the rental business and therefore conflicted with and was preempted by the Ellis Act. The City argued (1) SPOSFI could not state a facial challenge to the Ordinance; and (2) the imposition of the 10-year waiting period fell within the City's authority to regulate land use and mitigate impacts on displaced tenants. The court rejected both arguments. It found that SPOSFI did state a facial challenge to the Ordinance because, in every case where a property owner exercised its Ellis Act rights, the property owner had a locally imposed legal barrier of a 10-year waiting period to make alterations, and it did not

matter that the waiting period occurred after the eviction rather than before. The court also held that the complete prohibition of alteration of a nonconforming unit for 10 years reached beyond regulating the particulars of a property owner's proposed alterations and yet did not help displaced tenants -- it therefore constituted an undue burden on the exercise of Ellis Act rights in violation of the Act.

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