IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

Landlords of Linn County and Rehman Enterprises, L.C.,	)	
Plaintiffs,	)	**No. EQCV069920**
vs.	)	
City of Cedar Rapids, Iowa,	)	**RULING ON MOTIONS FOR SUMMARY JUDGMENT**
Defendant.	)	

Hearing was held on April 22, 2011 on the Motions for Summary Judgment filed by the parties. Attorney William Roemerman appeared on behalf of Plaintiff, along with Stephanie Danielson, President of Landlords of Linn County. Assistant City Attorney Mohammad Sheronick appeared on behalf of Defendant. Having considered the file, relevant case law, and written and oral arguments of counsel, the Court hereby enters the following ruling:

FACTUAL AND PROCEDURAL BACKGROUND

Landlords of Linn County is a non-profit corporation whose members own and manage residential rental units in Cedar Rapids. Rehman Enterprises, L.C. is the owner of 14 residential rental units in Cedar Rapids. Plaintiffs filed a Petition for Declaratory Judgment on July 29, 2010 after Defendant City of Cedar Rapids repealed the previously existing Municipal Code Chapter 29 and replaced it with a rewritten Chapter 29 on July 13, 2010. The new Chapter 29 requires residential rental agreements to include a "Crime Free Lease Addendum." The new Chapter 29 also includes provisions intended to enforce the Addendum. The Addendum provides that residents of rental units, members of the residents' households, guests of the residents, and "other persons affiliated with the resident" may not engage in any criminal activity on the rental property, including simple misdemeanors, and may not engage in certain enumerated crimes, including specified simple misdemeanors, within 1000 feet of the rental property. A violation of the Addendum is good cause for immediate termination of tenancy. The Addendum permits Defendant to revoke, suspend, deny or decline to renew any landlord license or rental unit registration due to violations of the Addendum. Included among the violations is "failure to implement the Crime Free Addendum as outlined by this ordinance on all new and renewal lease agreements," as well as committing violations of the Addendum "without any notable or reasonable effort" at enforcement.

On August 10, 2010, Defendant removed the action to federal court on the basis of federal question jurisdiction. On December 9, 2010, Chief Judge Linda Reade of the U.S. District Court for the Northern District of Iowa remanded Plaintiff's claims arising under Iowa law to the Iowa District for Linn County. Defendant filed its Answer on December 21, 2010, denying the allegations of the Petition that are adverse to it. Plaintiffs filed their pending Motion for Summary Judgment on February 4, 2011. Defendant filed its resistance and Cross Motion for Summary Judgment on February 18, 2011. The matter came on for hearing on April 22, 2011.

PETITION FOR DECLARATORY JUDGMENT

In support of its Petition, Plaintiffs' first claim is that new Chapter 29 violates Iowa Code § 364.1, which provides, in relevant part, that the "grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent city power." Plaintiffs contend the landlord-tenant relationship is a civil relationship created by a contract between the landlord and the tenant, both private parties.

Plaintiffs allege that new Chapter 29:

a) purports to govern the private civil relationship between landlords and tenants by dictating terms that must be included in the private contract between the landlord and the tenant and also by dictating when one private party (the landlord) must take action against another private party (the tenant) for breach of lease contract.
b) on its face alters the legal rights and responsibilities existing between landlords and tenants by means of the mandatory lease terms.
c) on its face requires private parties (landlords), upon pain of license revocation, suspension or denial, to institute private civil litigation against other private parties (tenants).

Plaintiffs' second claim is that the new Chapter 29 violates the "void for vagueness" doctrine of the 5th and 14th amendments to the United States Constitution and of Article I, Section 9 of the Iowa Constitution. Plaintiffs argue landlords have a constitutionally protected property interest in the ability to collect rent for the lease of real estate owned by them pursuant to the due process clause of the 5th and 14th amendments to the U.S. Constitution and Article I, Section 9 of the Iowa Constitution. Plaintiffs also argue that this property interest may not be infringed upon by a government except after due process of law, and no one may be required, at peril of a property interest, to speculate as to the meaning of enactments. Plaintiffs contend the new Chapter 29 contains no articulable standard defining what is a reasonable or notable effort to enforce the Addendum, and is so vague that persons of common intelligence must guess at its meaning or application. Therefore, argue Plaintiffs, the Addendum violates the void for vagueness doctrine recognized under due process clauses of the 5th and 14th amendments of the U.S. Constitution, and Article I, Section 9 of the Iowa Constitution.

Plaintiffs' third claim is that the new Chapter 29 violates the taking and due process provisions of the 5th and 14th amendments of the U.S. Constitution and of Article I, Section 9 of the Iowa Constitution. Plaintiffs allege that landlords have a constitutionally protected interest in the ability to collect rent for the lease of real estate owned by them pursuant to the due process clauses of the 5th and 14th amendments to the U.S. Constitution and under Article I, Section 9 of the Iowa Constitution, which may not be infringed upon by a government except upon due process of law. Plaintiffs state that the new Chapter 29 requires landlords, upon pain of loss of license, to engage in a notable effort to enforce the Addendum against any tenant if the tenant or tenant's household-member/guest/affiliate is identified by Defendant as a law breaker. Plaintiffs claim the only enforcement mechanism available to landlords is a civil action for eviction. Plaintiffs also claim the Addendum requires the landlord, at the landlord's expense, to file suit

against a tenant even under circumstances where the landlord has no grievance against the tenant and the only aggrieved party is Defendant.

Plaintiffs contend an ordinance that requires a private party to institute a civil action at the private party's own expense to vindicate a purely public grievance violates the taking provision of the 5th amendment to the U.S. Constitution and of Article I, Section 18 of the Iowa Constitution, as well as the due process clauses of the 5th and 14th amendments of the U.S. Constitution and Article I, Section 9 of the Iowa Constitution. Plaintiffs argue Defendant is required to litigate Defendant's grievances at Defendant's own expense, and new Chapter 29 contains no requirement that Defendant provide evidence to support its accusations of criminal conduct by any tenant/guest/family member/affiliate. Plaintiffs further argue existing state statutes will prohibit Defendant from providing such evidence of criminal conduct even if the evidence is known to Defendant.

Plaintiffs' fourth and final claim is that the new Chapter 29 is inconsistent with Iowa Code § 562A.27A. Not only does new Chapter 29 provide for a tenant's eviction for many more, and less serious, crimes, it also has no "cure" provision. Specifically, argue Plaintiffs, § 562A.27A provides that if the criminal activity was committed by a co-tenant or guest, then innocent co-tenants may repair the violation and preserve their rights to the lease premises by taking certain remedial actions specified in the statute. Plaintiffs state that the Addendum provides that commission of any crime by any tenant, or guest or "other persons affiliated with" the tenant is an irreparable violation of the rental agreement and is grounds for immediate eviction. Plaintiffs contend the requirements of the Addendum are an exercise of municipal power that is inconsistent with § 562A.27A.

MOTION FOR SUMMARY JUDGMENT

In their Motion for Summary Judgment, Plaintiffs first point out that they are not seeking to invalidate all of the new Chapter 29, but are attacking only those portions of the new Chapter 29 that mandate use of the Addendum and those portions that seek to enforce the mandate. When the case was removed to federal court, the federal court ordered that the case should be remanded to this Court for ruling on all state issues, with federal jurisdiction reserved over the federal constitutional issues, at Defendant's option. In its Answer, Defendant has elected to reserve the federal questions for the federal court, which appears will be necessary only if this Court's ruling on state law issues does not render the federal questions moot.

Plaintiffs' first argument in support of their Motion is that new Chapter 29 violates home rule. Plaintiffs argue that because new Chapter 29 attempts to enact private or civil law governing civil relationships, new Chapter 29 is inconsistent with § 364.1, and Defendant's attempt cannot be justified because it is not done "incident to an exercise of an independent city power."

Plaintiffs next assert that new Chapter 29 violates home rule because it is inconsistent with Iowa Code § 562A.27A. This section permits termination of a lease for conditions creating a clear and present danger to others. Plaintiffs contend Defendant has attempted to cast a much broader net than § 562A.27A and allows eviction for crimes never contemplated by the

legislature. Plaintiffs also contend new Chapter 29 is inconsistent with § 562A.27A because it purports to take away tenant cure rights specifically granted to tenants by the legislature.

Plaintiffs also make the argument that new Chapter 29 violates Article I, Section 9 of the Iowa Constitution. Plaintiffs claim that because the ordinance sets no standards and provides no criteria for judging what it means to allow a violation of the Addendum or what efforts will be considered to be notable or reasonable, the Addendum is unconstitutionally vague under the Iowa Constitution.

Finally, Plaintiffs contend new Chapter 29 violates the taking provisions of Article I, Section 18 of the Iowa Constitution. Plaintiffs contend they have a property interest through their lease agreements; there is a taking because loss of tenants will occur under the Addendum; and Plaintiffs will not be compensated for the taking.

Defendant filed its Cross Motion for Summary Judgment/Resistance to Plaintiffs' Motion on February 18, 2011. Defendant's first argument is that it is entitled to judgment as a matter of law on Plaintiffs' claim that the Addendum violates Defendant's powers under home rule. Defendant states the entire housing ordinance is designed to "protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents." Defendant argues this comports with § 364.1. Defendant contends that while Plaintiffs may dislike the substance of the Addendum, Defendant still had authority to enact the ordinance pursuant to home rule. Defendant asserts new Chapter 29 was enacted pursuant to Defendant's police power, which pre-dates the home rule grant. Defendant claims § 364.17, which requires cities to enact housing codes, should be contrasted with the statutory flexibility and discretion given to a city in determining the contents of its housing code.

With respect to § 562A.27A, Defendant argues nothing in § 562A.27A (or in Chapter 562A as a whole) expressly pre-empts the Addendum provisions, and nothing in the text of Chapter 562A suggests that cities may not legislate in the area of landlord-tenant relations. Defendant argues the Addendum and § 562A.27A can easily be read together and one does not have to be chosen over the other.

With respect to the void for vagueness argument, Defendant contends that for Plaintiffs to be successful, Plaintiffs must be able to negate every reasonable basis on which the statute can be sustained, and Plaintiffs cannot do this. Defendant argues enforcement of the ordinance and Addendum is an ongoing, collaborative, and non-punitive effort between the City, landlords, and tenants. Defendant argues the Addendum sets forth a reasonable person standard, and each case will be considered on numerous variables that are fact dependent to the specific situation.

Finally, with respect to the taking arguments, Defendant claims there has been no taking because there has been no physical invasion or total taking of anyone's property; there have been no damages; there has been no economic loss; and the scenarios presented by Plaintiffs are hypothetical in nature. Defendant also claims there has been no exhaustion of administrative remedies with respect to a taking claim.

For their reply argument, Plaintiffs contend express preemption applies and supports a finding that new Chapter 29 is unconstitutional. Plaintiffs argue the mandatory lease provisions establish legal rights between landlords and tenants, and the rights take effect via lawsuits between private entities. Therefore, argue Plaintiffs, new Chapter 29 is a civil law governing civil relationships. Plaintiffs further argue that there is no independent power authorizing the private law mandated by Defendant.

With respect to the arguments based on § 562A.27A, Plaintiffs argue that the Addendum is not harmonious with § 562A.27A. Plaintiffs contend § 562A.27A provides that a tenant can be evicted if he is guilty of certain identified crimes, but provides that other tenants in the same unit may not be evicted if they avail themselves of certain remedial measures. On the other hand, argue Plaintiffs, the Addendum states that any criminal violation by anyone on the premises is an irreparable violation of the lease and good cause for the immediate termination of the tenancy. Plaintiffs also contend § 562A.27A makes illegal possession of controlled substances by a guest a basis for eviction if the tenant had foreknowledge of the violation, but is not a basis for eviction if the tenant did not have foreknowledge. On the other hand, argue Plaintiffs, the Addendum does not draw this distinction, and explicitly states that the entire household shall be terminated if there is a violation by anyone, regardless of knowledge.

Plaintiffs also claim, in relation to § 562A.27A, that the ordinance fails due to field preemption. Plaintiffs argue the legislature wanted to provide a discretionary mechanism for evicting only those criminals who present a clear and immediate danger to their neighbors. They argue Defendant seeks to provide a mandatory mechanism for evicting tenants who commit crimes, including misdemeanants, regardless of their danger to their neighbors, and evict tenants for crimes committed by other, even if done without the tenant's knowledge or consent.

As to the void for vagueness argument, Plaintiffs argue there is no way to determine what the ordinance means. Plaintiffs contend Defendant has admitted that no one knows what the standards are to be applied to landlords, and the standards have yet to be developed and depend upon a collaborative process.

Finally, with respect to the taking argument, Plaintiffs assert the property that is taken is the right to income due under a lease and dollar value of legal fees incurred when a landlord is forced to sue a tenant against whom the landlord has no personal grievance. Plaintiffs contend they will lose rent as a result of the ordinance, and Defendant may pursue an eviction even if the landlord does not. Plaintiffs also contend the ordinance contains no provision for judicial review, which is fatal to the ordinance.

CONCLUSIONS OF LAW

"Summary judgment is appropriate if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." Kolarik v. Cory Intern. Corp., 721 N.W.2d 159, 162 (Iowa 2006) (citing Iowa Rule of Civil Procedure 1.981(3)). "Further considerations when reviewing a motion for summary judgment are summarized as follows:

> 'A factual issue is material only if the dispute is over facts that might affect the outcome of the suit. The burden is on the party moving for summary judgment to

> prove the facts are undisputed. In ruling on a summary judgment motion, the court must look at the facts in a light most favorable to the party resisting the motion. The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.'"

Id. (citing Estate of Harris v. Papa John's Pizza, 679 N.W.2d 673, 677 (Iowa 2004) (quoting Phillips v. Covenant Clinic, 625 N.W.2d 714-717-18 (Iowa 2001)).

"To obtain a grant of summary judgment on some issue in an action, the moving party must affirmatively establish the existence of undisputed facts entitling that party to a particular result under controlling law." McVey v. National Organization Service, Inc., 719 N.W.2d 801, 802 (Iowa 2006). "To affirmatively establish uncontroverted facts that are legally controlling as to the outcome of the case, the moving party may rely on admissions in the pleadings…affidavits, depositions, answers to interrogatories by the nonmoving party, and admissions on file." Id. "Except as it may carry with it express stipulations concerning the anticipated summary judgment ruling, a statement of uncontroverted facts by the moving party made in compliance with rule 1.981(8) does not constitute a part of the record from which the absence of genuine issues of material fact may be determined." Id. at 803. "The statement required by rule 1.981(8) is intended to be a mere summary of the moving party's factual allegations that must rise or fall on the actual contents of the pleadings, depositions, answers to interrogatories, and admissions on file together with any affidavits." Id. "If those matters do not reveal the absence of genuine factual issues, the motion for summary judgment must be denied." Id.

"When two legitimate, conflicting inferences are present at the time of ruling upon the summary judgment motion, the court should rule in favor of the nonmoving party." Eggiman v. Self-Insured Services Co., 718 N.W.2d 754, 763 (Iowa 2006) (citing Daboll v. Hoden, 222 N.W.2d 727, 733 (Iowa 1974) ("If reasonable minds could draw different inferences and reach different conclusions from the facts, even though undisputed, the issue must be reserved for trial.").

"However, to successfully resist a motion for summary judgment, the resisting party must set forth specific evidentiary facts showing the existence of a genuine issue of material fact." Matter of Estate of Henrich, 389 N.W.2d 78, 80 (Iowa App. 1986). "[The resisting party] cannot rest on the mere allegations or denials of the pleadings." Id.

There are no facts in dispute in this case; the only issues before the Court are legal issues that are capable of disposition through summary judgment. Therefore, the Court proceeds with consideration of the parties' Motions for Summary Judgment.

The Court first addresses Plaintiffs' Motion for Summary Judgment.[1] Plaintiffs' first argument in support of their Motion is that new Chapter 29 violates home rule. With respect to home rule, the Iowa Supreme Court has held:

[1] The Court notes Defendant has not disputed that Plaintiffs have standing to bring this action. Therefore, the Court finds Plaintiffs' arguments regarding standing are moot and the merits thereof do not need to be addressed in this Ruling.

> In 1968, the Iowa Constitution was amended to provide municipal governments with limited powers of home rule. Iowa Const. art. III, § 38A. The home rule amendment established what we have referred to as legislative home rule. *Berent v. City of Iowa City*, 738 N.W.2d 193, 196 (Iowa 2007). Under legislative home rule, the legislature retains the unfettered power to prohibit a municipality from exercising police powers, even over matters traditionally thought to involve local affairs. Conversely, as long as an exercise of police power over local affairs is not "inconsistent with the laws of the general assembly," municipalities may act without express legislative approval or authorization. Iowa Const. art. III, § 38A.

City of Davenport v. Seymour, 755 N.W.2d 533, 537-38 (Iowa 2008).

> Iowa Code § 364.1 provides:
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> A city may, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent city power.

Iowa Code § 364.1 (2011). The Iowa Supreme Court has held:

> "An exercise of a city power is not inconsistent with a state law unless it is irreconcilable with the state law." Iowa Code § 364.2(3). A municipal ordinance is irreconcilable with a law of the General Assembly and, therefore, preempted by it, when the ordinance " 'prohibits an act permitted by statute, or permits an act prohibited by a statute.' " *City of Des Moines v. Gruen*, 457 N.W.2d 340, 342 (Iowa 1990) (quoting *City of Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983)); *accord Goodenow v. City Council of Maquoketa*, 574 N.W.2d 18, 26 (Iowa 1998); *cf. Goodell v. Humboldt County*, 575 N.W.2d 486, 500 (Iowa 1998) (applying same analysis to identical provisions governing county home rule authority).

Baker v. City of Iowa City, 750 N.W.2d 93, 99-100 (Iowa 2008).

Plaintiffs acknowledge that Iowa Courts have not interpreted the last sentence of § 364.1. However, argue Plaintiffs, every court that has had the opportunity to construe identical language has concluded that cities may not, by ordinance, dictate the terms of private contracts. Plaintiffs refer to cases decided in Massachusetts, Indiana, New Mexico, Georgia, and Louisiana in support of this assertion.

In Marshal House, Inc. v. Rent Review and Grievance Bd. of Brookline, 260 N.E.2d 200 (Mass. 1970), the Massachusetts Supreme Court found that a rent control ordinance that limited the freedom of contract between landlords and tenants was invalid. The Court held:

> It is suggested that rent control is, in its nature, a purely local function and that, therefore, a town by-law, even though it directly affects a principal aspect of the landlord-tenant relationship, is incident to an exercise of an independent municipal power. Doubtless, under art. 89, s 6, a town possesses (subject to applicable constitutional provisions and legislation) broad powers to adopt by-laws for the protection of the public health, morals, safety, and general welfare, of a type often referred to as the 'police' power. We assume that these broad powers would permit adopting a by-law requiring landlords (so far as legislation does not control the matter) to take particular precautions to protect tenants against injury from fire, badly lighted common passageways, and similar hazards. Such by-laws, although affecting the circumstances of a tenancy, would do so (more clearly then in the case of the present by-law) as an incident to the exercising of a particular aspect of the police power.
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> Rent control, in a general sense, is for the purpose of providing shelter at reasonable cost for members of the public, a matter comprised within the broad concept of the public welfare. Rent control, however, is also an objective in itself designed to keep rents at reasonable levels. Is the attempt to achieve this objective to be viewed as merely incident to the exercise of the whole range of the police power, or does art. 89, s 7(5), imply that the separate components of the police power are to be considered individually in determining whether the exercise of one of them enacts 'civil law governing civil relationships except as an incident to an exercise of an independent municipal power'? The quoted vague language points, in our opinion, to viewing separately the various component powers making up the broad police power, with the consequence that a municipal civil law regulating a civil relationship is permissible (without prior legislative authorization) only as an incident to the exercise of some independent, individual component of the municipal police power. To construe s 7(5) otherwise might give it a very narrow range of application.
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> We conclude that it would be, in effect, a contradiction (or circuitous) to say that a by-law, the principal objective and consequence of which is to control rent payments, is also merely incidental to the exercise of an independent municipal power to control rents. We perceive no component of the general municipal police power, other than the regulation of rents itself, to which such regulation fairly could be said to be incidental.

Marshal House, Inc. v. Rent Review and Grievance Bd. of Brookline, 357 Mass. 709, 717-18, 260 N.E.2d 200, 206-07 (Mass. 1970).

In another Massachusetts case, the Massachusetts Supreme Court held that "[a]n ordinance which affects the landlord-tenant relationship is a 'private or civil law governing civil relationships.'" Bannerman v. City of Fall River, 391 Mass. 328, 330-31, 461 N.E.2d 793, 795 (Mass. 1984).

Another case in which this issue is addressed is City of Bloomington v. Chuckney, 331 N.E.2d 780 (Ind. App. 1975). In this case, the court held that a municipal landlord tenant ordinance so directly affected "the landlord-tenant relationship that [portions of the ordinance] cannot be upheld as an incident to the exercise of an independent municipal power." City of Bloomington v. Chuckney, 331 N.E.2d 780 (Ind. App. 1975).

The New Mexico Court of Appeals considered a similar issue in the context of a minimum wage ordinance. The court held:

> Plaintiffs contend that the ordinance is a private or civil law governing the civil relationship of employer and employee because it "seeks to establish legal duties between private businesses and their private employees, and it establishes a new cause of action against private businesses that do not pay the wage." We agree. While there are no bright-line divisions between public law and private law, Terrance Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts,* 48 Minn. L.Rev. 643, 674 [hereinafter Sandalow], private law has been defined as consisting "of the substantive law which establishes legal rights and duties between and among private entities, law that takes effect in lawsuits brought by one private entity against another." Gary T. Schwartz, *The Logic of Home Rule and the Private Law Exception,* 20 UCLA L.Rev. 671, 688 [hereinafter Schwartz] (internal footnotes omitted). That definition certainly applies to the ordinance, which sets a mandatory minimum wage term for labor contracts between private parties that the employee may enforce by bringing a civil action against the employer. The fact that the city administrator may punish violation of the ordinance as a misdemeanor does not convert the ordinance into "public law" nor does it alter the basic nature of the ordinance, which is to set and enforce a key contract term between private parties. *See Marshal House, Inc. v. Rent Review & Grievance Bd. of Brookline,* 357 Mass. 709, 260 N.E.2d 200, 206 (1970) (noting that public enforcement is not dispositive of the private law nature of an ordinance). The relationship between private employer and employee has been described as a civil relationship because it is governed by the civil law of contracts. *See New Orleans Campaign for a Living Wage v. City of New Orleans,* 02-0991 at p. 11, 825 So.2d at 1117 (Weimer, J., concurring) (concluding that a private employee-employer relationship is both a private and civil relationship and that a minimum wage ordinance is attempting to regulate that relationship). We conclude that the ordinance is a private or civil law governing civil relationships within the meaning of the home rule amendment.

New Mexicans for Free Enterprise v. The City of Santa Fe, 138 N.M. 785, 796, 126 P.3d 1149, 1160 (N.M. App. 2005).

The Georgia Supreme Court has held:

> The Georgia Constitution prohibits cities from enacting special laws relating to the rights or status of private persons. Ga. Const. Art. III, Sec. VI, Para. IV(c); see also id. (a) (prohibiting a city from enacting a local or special law for which provision has been made by general law). The home rule act also precludes cities from taking "any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power." OCGA § 36-35-6(b). Although the meaning of this provision is ambiguous, it indicates that the state does " 'not wish to give our cities the power to enact a distinctive law of contract.' " See *Marshal House, Inc. v. Rent Review and Grievance Bd. of Brookline,* 357 Mass. 709, 260 N.E.2d 200, 204 (1970) (quoting Fordham, "Home Rule-AMA Model," 44 Nat'l

> Municipal Review 137, 142). At a minimum, it means that cities in this state may not enact ordinances defining family relationships. The Georgia General Assembly has provided for the establishment of family relationships by general law. See, e.g., OCGA §§ 19-3-1 to 19-5-17 (1991); see also *City of Bloomington v. Chuckney,* 165 Ind.App. 177, 331 N.E.2d 780, 783 (1975) ("a city should not be able to enact its own separate law of contracts or domestic relations since these areas are unsuited to less than statewide legislation").

City of Atlanta v. McKinney, 265 Ga. 161, 164, 454 S.E.2d 517, 520-21 (Ga. 1995).

Finally, the Louisiana Supreme Court has held that a city's minimum wage ordinance, which set a minimum wage rate private employers in the city were required to pay their employees, abridged the state's police power and violated a provision of the state constitution's home rule article prohibiting abridgement of the police power of the state. New Orleans Campaign for a Living Wage v. City of New Orleans, 825 So.2d 1098, 1108 (La. 2002).

While it is true that the Iowa Appellate Courts do not appear to have construed the last sentence of § 364.1, this Court concludes that the cases from other jurisdictions are persuasive on the question of whether cities may, by ordinance, dictate the terms of private contracts. In this case, new Chapter 29 purports to enact a private or civil law governing civil relationships, , i.e., that between a landlord and tenant. Therefore, as argued by Plaintiffs, new Chapter 29 is invalid under the home rule law unless it falls within the exception to this rule, which is that new Chapter 29 was passed "incident to an exercise of an independent city power."

Plaintiffs argue that new Chapter 29 was not enacted "incident to an exercise of an independent city power," again citing to the cases from Massachusetts, Indiana, and New Mexico for authority. Defendant argues that the general home rule police power set out in the first sentence of § 364.1 is the "independent city power". Plaintiffs point to the second sentence of § 364.1, which Plaintiffs claim provides an express limitation on the power set out in the first sentence. Defendant also argues that Iowa Code § 364.17 (which requires cities to enact housing codes) is an "independent city power." Plaintiffs argue that the Addendum is not part of a uniform building code and has nothing to do with the structural integrity or mechanical safety of any building.

The Court concludes the New Mexicans, Bannerman, and Chuckney cases are instructive on this issue. In considering a similar exemption, the New Mexicans court found that the exemption refers to an "independent municipal power," "which we conclude means any power *other* than home rule." New Mexicans, 126 P.3d at 1161. (emphasis added)

The Bannerman court held:

> An ordinance which governs a civil relationship may be valid despite the proscription of § 7(5) if it is "incident to an exercise of an independent municipal power." HRA, § 7(5). The city does not claim that the ordinance should be upheld as incident to the exercise of its zoning power (see *CHR Gen., Inc. v. Newton, supra* 387 Mass. at 355, 439 N.E.2d 788), but claims the ordinance is valid as incident to its power to operate the water and

> sewer system, its power to regulate traffic and city streets, and its general supervisory power over public health. Furtherance of the general public welfare is insufficient justification for an ordinance which otherwise violates § 7(5) because such an ordinance would not be based on an "individual component of the [city's] police power." *Marshal House, Inc., supra* 357 Mass. at 718, 260 N.E.2d 200. Nor can the ordinance be justified as incident to either of the other two powers enumerated by the city. Whether a particular unit of housing is owned or rented would affect neither the water and sewer system nor the traffic patterns of the neighborhood. Cf. *CHR Gen., Inc. v. Newton, supra* 387 Mass. at 356-357, 439 N.E.2d 788 (conversion ordinance not valid as exercise of city's zoning power because there is no difference in use between condominium units and apartments). The holding in *Goldman v. Dennis,* 375 Mass. 197, 375 N.E.2d 1212 (1978), that a conversion by-law was justified by the town's zoning power, is not persuasive as applied to this case. In that decision, conversion would turn a "cottage colony" rented out only during the summer season into year-round housing. See *CHR Gen., Inc. v. Newton, supra* 387 Mass. at 357, 439 N.E.2d 788. There is no evidence that apartment conversion in Fall River would have an effect of this kind. There is no independent power by which the city can justify the ordinance.

Bannerman, 461 N.E.2d at 796.

> The Chuckney court held:
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> The Ordinance goes so far as to dictate specific terms which must be included in every residental lease agreement entered into within the City of Bloomington. Many of these terms are wholly unrelated to city housing and safety codes and cannot, therefore, be incident to the city police powers in those areas.

Chuckney, 331 N.E.2d at 783.

As unsuccessfully argued in Chuckney, Defendant argues that its power to enact New Chapter 29 is derived from in the independent power to enact housing and building codes as required by § 364.17. As was the case the City of Bloomington in Chuckney, this reliance is misplaced. The Crime Free Lease Addendum has absolutely nothing to do with the uniform building code or the structural integrity or safety of any building. The Defendant seems to ignore the provisions of Iowa Code § 364.17(3)(b), which provides that "enforcement procedures shall be designed to improve housing conditions rather than to displace persons from their homes." Iowa Code § 364.17(3)(b) (2011).

This Court concludes that new Chapter 29 was not enacted incident to an exercise of an independent city power. The independent city power must be something other than the general police power granted in the first sentence of §364.1, to "preserve the rights, privileges, and property of the city or of it residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents". Defendant has not identified any independent power to justify the ordinance and their reliance on their power to enact housing safety codes is misplaced. Because new Chapter 29 violates the limitation imposed by Iowa Code § 364.1, the Court concludes new Chapter 29 is unenforceable.

Plaintiffs next assert that new Chapter 29 violates home rule because it is inconsistent with Iowa Code § 562A.27A. This section permits termination of a lease for conditions creating a clear and present danger to others. Plaintiffs contend Defendant has attempted to cast a much broader net than § 562A.27A contemplates, and allows eviction for crimes never contemplated by the legislature. Plaintiffs also contend new Chapter 29 is inconsistent with § 562A.27A because it purports to take away tenant cure rights specifically granted to tenants by the legislature.

The Iowa Supreme Court has held:

> The Iowa Constitution gives municipalities authority to regulate matters of local concern, subject to the superior power of the legislature: "Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs...." Iowa Const. art. III, § 38A; *see also* Iowa Code § 364.1 (allowing cities to exercise powers and perform functions "if not inconsistent with the laws of the general assembly"). This type of home rule is "sometimes referred to as legislative home rule" because the legislature retains the power "to trump or preempt local law." *Berent,* 738 N.W.2d at 196.
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> "An exercise of a city power is not inconsistent with a state law unless it is irreconcilable with the state law." Iowa Code § 364.2(3). A municipal ordinance is irreconcilable with a law of the General Assembly and, therefore, preempted by it, when the ordinance " 'prohibits an act permitted by statute, or permits an act prohibited by a statute.' " *City of Des Moines v. Gruen,* 457 N.W.2d 340, 342 (Iowa 1990) (quoting *City of Council Bluffs v. Cain,* 342 N.W.2d 810, 812 (Iowa 1983)); *accord Goodenow v. City Council of Maquoketa,* 574 N.W.2d 18, 26 (Iowa 1998); *cf. Goodell v. Humboldt County,* 575 N.W.2d 486, 500 (Iowa 1998) (applying same analysis to identical provisions governing county home rule authority).
>
> > In determining what the legislature has permitted and prohibited, we look to the legislative intent in enacting the state statutes and we require that any local ordinance remain faithful to this legislative intent, as well as to the legislative scheme established in the relevant state statutes.
>
> *Goodell*, 575 N.W.2d at 500.

Baker v. City of Iowa City, 750 N.W.2d 93, 99-100 (Iowa 2008).

Iowa Code § 562A.27A provides:

> 1. Notwithstanding section 562A.27 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property, the landlord, after the service of a single three days' written notice of termination and notice to quit stating the specific activity causing the

clear and present danger, and setting forth the language of subsection 3 which includes certain exemption provisions available to the tenant, may file suit against the tenant for recovery of possession of the premises pursuant to chapter 648, except as otherwise provided in subsection 3. The petition shall state the incident or incidents giving rise to the notice of termination and notice to quit. The tenant shall be given the opportunity to contest the termination in the court proceedings by notice thereof at least three days prior to the hearing.

2. A clear and present danger to the health or safety of other tenants, the landlord, the landlord's employees or agents, or other persons on or within one thousand feet of the landlord's property includes, but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant:

a. Physical assault or the threat of physical assault.

b. Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.

c. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription or order by a licensed medical practitioner while acting in the course of the practitioner's professional practice. This paragraph applies to any other person on the premises with the consent of the tenant, but only if the tenant knew of the possession by the other person of a controlled substance.

3. This section shall not apply to a tenant if the activities causing the clear and present danger, as defined in subsection 2, are conducted by a person on the premises other than the tenant and the tenant takes at least one of the following measures against the person conducting the activities:

a. The tenant seeks a protective order, restraining order, order to vacate the homestead, or other similar relief pursuant to chapter 236, 598, 664A, or 915, or any other applicable provision which would apply to the person conducting the activities causing the clear and present danger.

b. The tenant reports the activities causing the clear and present danger to a law enforcement agency or the county attorney in an effort to initiate a criminal action against the person conducting the activities.

c. The tenant writes a letter to the person conducting the activities causing the clear and present danger, telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person, and the tenant sends a copy of the letter to a law enforcement agency whose jurisdiction includes the premises. If the tenant has previously written a letter to the person as provided in this paragraph, without taking an action specified in paragraph “a” or “b” or filing a trespass or other action, and the person to whom

the letter was sent conducts further activities causing a clear and present danger, the tenant must take one of the actions specified in paragraph "a" or "b" to be exempt from proceedings pursuant to subsection 1.

However, in order to fall within the exemptions provided within this subsection, the tenant must provide written proof to the landlord, prior to the commencement of a suit against the tenant, that the tenant has taken one of the measures specified in paragraphs "a" through "c".

Iowa Code § 562A.27A (2011).

In § 562A.27A, the legislature has set forth grounds for eviction due to clear and present danger presented by a tenant. In New Chapter 29, Defendant has extended the grounds for eviction to include *all* criminal law violations, including simple misdemeanors. Grounds for eviction also include violations not only by the tenant, but by guests, even where the tenant does not have knowledge of the violation. This exercise of city power is irreconcilable with state law, and thus is inconsistent with state law. New Chapter 29 states that commission of any crime by a tenant or guest or persons affiliated with the tenant is an irreparable violation of the lease. There are no "cure" provisions in New Chapter 29, which also makes it irreconcilable with §562A.27A.

Defendant correctly argues that the Court is required to employ preemption analysis to determine whether the statute and the ordinance can be reconciled. Defendant argues neither express preemption nor implied preemption exists.

With respect to principles of preemption, the Iowa Supreme Court has held:

We have recognized three types of preemption. The first type, generally known as express preemption, applies where the legislature has specifically prohibited local action in a given area. *Goodell v. Humboldt County,* 575 N.W.2d 486, 492-93 (Iowa 1998); *Chelsea Theater Corp. v. City of Burlington,* 258 N.W.2d 372, 373 (Iowa 1977). In cases involving express preemption, the specific language used by the legislature ordinarily provides the courts with the tools necessary to resolve any remaining marginal or mechanical problems in statutory interpretation.

Where the legislature seeks to prohibit municipal action in a particular subject area, express preemption offers the highest degree of certainty with the added benefit of discouraging unseemly internecine power struggles between state and local governments. Express preemption is most consistent with the notion that "[l]imitations on a municipality's power over local affairs are not implied; they must be imposed by the legislature." *City of Des Moines v. Gruen,* 457 N.W.2d 340, 343 (Iowa 1990).

Nonetheless, this court has found that express preemption alone is not a sufficient tool to vindicate legislative intent in all circumstances. In order to ensure maximum loyalty to legislative intent, this court has developed the residual doctrine of implied preemption, notwithstanding language in our cases disapproving of implied limitations on municipal power. Implied preemption arises in two situations where the intent of the legislature to

preempt is apparent even though the legislature did not expressly preempt in unambiguous language.

Implied preemption occurs where an ordinance prohibits an act permitted by statute, or permits an act prohibited by statute. *Goodell,* 575 N.W.2d at 493; *Gruen,* 457 N.W.2d at 342. Under these circumstances, although there is no express preemption, the statute on its face contains a command or mandate that by its very nature is preemptory. The theory of this branch of implied preemption is that even though an ordinance may not be expressly preempted by the legislature, the ordinance cannot exist harmoniously with a state statute because the ordinance is diametrically in opposition to it. The exclamation point of an express preemption provision is simply redundant in light of the mandatory legislative expression. Although we used the label "implied preemption" to distinguish it from express preemption, this type of preemption is perhaps more accurately described as "conflict preemption." *See, e.g., Colacicco v. Apotex Inc.,* 521 F.3d 253, 261 (3d Cir.2008); *Mars Emergency Med. Servs., Inc. v. Twp. of Adams,* 559 Pa. 309, 740 A.2d 193, 195 (1999).

Although implied preemption of the conflict variety occurs frequently, the legal standard for its application is demanding. In order to qualify for this branch of implied preemption, a local law must be "irreconcilable" with state law. *Gruen,* 457 N.W.2d at 342. Further, our cases teach that, if possible, we are to "interpret the state law in such a manner as to render it harmonious with the ordinance." *Id.; see also Iowa Grocery Indus. Ass'n v. City of Des Moines,* 712 N.W.2d 675, 680 (Iowa 2006); *City of Iowa City v. Westinghouse Learning Corp.,* 264 N.W.2d 771, 773 (Iowa 1978). In applying implied preemption analysis, we presume that the municipal ordinance is valid. *Iowa Grocery,* 712 N.W.2d at 680. The cumulative result of these principles is that for implied preemption to occur based on conflict with state law, the conflict must be obvious, unavoidable, and not a matter of reasonable debate.

A second form of implied preemption occurs when the legislature has so covered a subject by statute as to demonstrate a legislative intent that regulation in the field is preempted by state law. Like implied preemption based on conflict, the test for field preemption is stringent. Extensive regulation of area alone is not sufficient. *Goodell,* 575 N.W.2d at 493; *City of Council Bluffs v. Cain,* 342 N.W.2d 810, 812 (Iowa 1983). In order to invoke the doctrine of field preemption, there must be some clear expression of legislative intent to preempt a field from regulation by local authorities, or a statement of the legislature's desire to have uniform regulations statewide. *Goodell,* 575 N.W.2d at 499-500; *City of Vinton v. Engledow,* 258 Iowa 861, 868, 140 N.W.2d 857, 861 (1966). The notion behind field preemption is that the legislature need not employ "magic words" to close the door on municipal authority. Yet, courts are not to speculate on legislative intent, even in a highly regulated field. There must be persuasive concrete evidence of an intent to preempt the field in the language that the legislature actually chose to employ. *Goodell,* 575 N.W.2d at 493.

Field preemption is a narrow doctrine that cannot be enlarged by judicial policy preferences. In determining the applicability of field preemption, this court does not

entertain arguments that statewide regulation is preferable to local regulation or vice versa, but focuses solely on legislative intent as demonstrated through the language and structure of a statute. *Id.* at 498-99.

City of Davenport v. Seymour, 755 N.W.2d 533, 538-39 (Iowa 2008).

It does not appear that express preemption applies with respect to § 562A.27A, in that there is no indication that the legislature has specifically prohibited local action in the area of housing ordinances. Additionally, there does not appear to have been a clear expression of legislative intent to preempt a field from regulation by local authorities, or a statement of the legislature's desire to have uniform regulations statewide. Therefore, the Court proceeds with consideration of whether the conflict preemption form of implied preemption applies.

In this case, new Chapter 29 cannot exist harmoniously with § 562A.27A because new Chapter 29 is diametrically in opposition to § 562A.27A. The Court already has determined that the exercise of city power attempted in new Chapter 29 is irreconcilable with state law, and thus is inconsistent with state law. In particular, the grounds for eviction and the lack of cure provisions in new Chapter 29 render it irreconcilable with state law.

The City correctly argues in its brief that the legal standard for preemption of the conflict variety is very demanding; that the court must presume the ordinance to be valid; that the conflict must be obvious, unavoidable, and not a matter of reasonable debate; and that the conflict must be unresolved short of choosing one enactment over the other. The City admits that under § 562A.27A(3), a tenant cannot be evicted if the tenant can show he/she has taken steps or established that the tenant has not permitted criminal activity on the rented premises. The City also admits that new Chapter 29 includes grounds for eviction that are much broader and more numerous than those narrowly defined in § 562A.27A. The City's argument that because the tenant cannot be evicted under § 562A.27A unless it is for crimes enumerated therein, or if the tenant has "cured" the violation, new Chapter 29 is, therefore, reconcilable with § 562A.27A. I disagree. The grounds for eviction under new Chapter 29 are far broader than those found in § 562A.27A. A municipal ordinance is irreconcilable with a law of the General Assembly and, therefore, preempted by it, when the ordinance " 'prohibits an act permitted by statute, or permits an act prohibited by a statute.' " *City of Des Moines v. Gruen*, 457 N.W.2d 340, 342 (Iowa 1990) (quoting *City of Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983)); *accord Goodenow v. City Council of Maquoketa*, 574 N.W.2d 18, 26 (Iowa 1998); *cf. Goodell v. Humboldt County*, 575 N.W.2d 486, 500 (Iowa 1998). The grounds for eviction and the lack of cure provisions in new Chapter 29 render it irreconcilable with state law. The conflict between the two laws is obvious, unavoidable and not a matter for reasonable debate. The only way to resolve the conflict between the two is, as the Defendant points out, to choose the provisions of § 562A.27A to protect a tenant who has followed the cure provisions afforded by that statute or who has committed a crime that is not enumerated in § 562A.27A. Therefore, this Court finds that the conflict preemption form of implied preemption applies to preempt the ordinance in this case and provides an additional basis for finding that new Chapter 29 is unenforceable.

Plaintiffs also make the argument that new Chapter 29 violates Article I, Section 9 of the Iowa Constitution. Plaintiffs claim that because the ordinance sets no standards and provides no

criteria for judging what it means to allow a violation of the Addendum or what efforts will be considered to be notable or reasonable, the Addendum is unconstitutionally vague under the Iowa Constitution.

With respect to vagueness, the Iowa Supreme Court has held:

> Due process requires that "no person shall be deprived of life, liberty, or property, without due process of law." Iowa Const. art. I, § 9; U.S. Const. amends. V, XIV, § 1. Both the federal and state Due Process Clauses prohibit vague statutes. *State v. Todd*, 468 N.W.2d 462, 465 (Iowa 1991). A civil statute is unconstitutionally vague when the language of the statute fails to convey a definite warning of the proscribed conduct. *ABC Disposal Sys., Inc.*, 681 N.W.2d at 605. A statute is not unconstitutionally vague if its meaning can be ascertained by reference to "generally accepted and common meaning of words used, or by reference to the dictionary, related or similar statutes, the common law, or previous judicial constructions." *Id.* "To avoid a rule from unduly restricting the regulation of certain matters, a certain degree of indefiniteness is necessary." *Id.* Finally, "[t]here is a presumption of constitutionality and a litigant can only rebut this presumption by 'negating every reasonable basis on which the statute can be sustained.' " *Id.* (citation omitted).

Insituform Technologies, Inc. v. Employment Appeal Bd., 728 N.W.2d 781, 788-89 (Iowa 2007).

The Court concludes new Chapter 29 conveys a definite warning of the proscribed conduct; i.e., criminal activity shall result in eviction. The ordinance is not so vague that its meaning cannot be ascertained "by reference to 'generally accepted and common meaning of words used, or by reference to the dictionary, related or similar statutes, the common law, or previous judicial constructions.'" Id. Plaintiffs cannot negate every reasonable basis upon which the ordinance can be sustained, and the "fact dependent" method of enforcement proposed by Defendant could provide a basis for Defendant to enforce the ordinance. While there certainly is indefiniteness in the ordinance, this is not impermissible under "void for vagueness" standards. Plaintiffs' argument that the ordinance violates Article I, Section 9 of the Iowa Constitution fails.

Finally, Plaintiffs contend new Chapter 29 violates the taking provisions of Article I, Section 18 of the Iowa Constitution. With respect to taking, the Iowa Supreme Court has held:

> The Fifth Amendment to the Federal Constitution provides in relevant part that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." The Fourteenth Amendment to the Federal Constitution makes the Fifth Amendment applicable to the states and their political subdivisions. *Chicago, Burlington & Quincy R.R. v. City of Chicago*, 166 U.S. 226, 233-34, 17 S.Ct. 581, 583, 41 L.Ed. 979, 983-84 (1897).

> Article I, section 18 of the Iowa Constitution similarly provides in relevant part that "[p]rivate property shall not be taken for public use without just compensation." Because of this similarity regarding takings, we consider federal cases interpreting the federal provision persuasive in our interpretation of the state provision. *Harms v. City of Sibley*, 702 N.W.2d 91, 97 (Iowa 2005). Such cases however are not binding on us regarding our interpretation of the state provision. *Id.* Kingsway has not asserted a basis to distinguish the protections afforded by the Iowa Constitution from those afforded by the Federal Constitution under the facts of this case. Nor have we found such a basis. For those reasons, our analysis applies equally to both the state and federal grounds. *See id.*
> …
>
> We employ the following framework of analysis in determining whether a taking has occurred:
>
> (1) Is there a constitutionally protected private property interest at stake? (2) Has this private property interest been "taken" by the government for public use? and (3) If the protected property interest has been taken, has just compensation been paid to the owner?
>
> *Bormann v. Bd. of Supervisors*, 584 N.W.2d 309, 315 (Iowa 1998).

Kingsway Cathedral v. Iowa Dept. Of Transp., 711 N.W.2d 6, 9 (Iowa 2006).

Plaintiffs contend they have a property interest through their lease agreements; there is a taking because loss of tenants will occur under the Addendum; and Plaintiffs will not be compensated for the taking.

"It is well settled a lessee is entitled to an award of just compensation for the public taking of his leasehold interest absent terms to the contrary on the lease agreement." Twin-State Engineering & Chemical Co. v. Iowa State Highway Commission, 197 N.W.2d 575, 577 (Iowa 1972).

The Iowa Supreme Court also has held:

> Whether a taking has occurred is determined by the character of the invasion and not by the amount of damages. *See, e.g., Schaller v. State*, 537 N.W.2d 738, 743 (Iowa 1995). For example, some acts done by government agencies that could be deemed nuisances and which affected but did not destroy or prevent all use of the affected property have been held to be takings under the Fifth Amendment to the Federal Constitution. The *continuance* or *permanency* of the government action sufficient to support the finding of a creation of a servitude has been the determining factor for a finding of a taking. *See Causby*, 328 U.S. at 265-67, 66 S.Ct. at 1068, 90 L.Ed. at 1212-13 (holding that repeated flights of military planes so low as to destroy use of land for chicken farm constituted a servitude on the land requiring just compensation, and diminution in value of property was the basis for compensation); *Portsmouth Harbor Land & Hotel Co. v. United States*, 260 U.S. 327, 329-30, 43 S.Ct. 135, 136-37, 67 L.Ed. 287, 289-90 (1922) (holding that firing, and imminent threat of firing, of navy coastal guns over plaintiff's property

imposed a servitude upon the plaintiff's land and thus amounted to a taking of some interest for public use).

Kingsway Cathedral v. Iowa Dept. Of Transp., 711 N.W.2d 6, 10 (Iowa 2006).

Plaintiffs meet the first element for determining whether a taking has occurred, in that their lease interests are protected private property interests. However, the Court has found little authority to support a legal conclusion that the private property interest has been taken by the government for public use. It is feasible under new Chapter 29 that a landlord could still rent out a unit after a tenant found to be in violation of new Chapter 29 has been evicted, thus limiting the damages suffered by the landlord. Because Plaintiffs cannot meet the second element for determining whether a taking has occurred, Plaintiffs' argument that new Chapter 29 violates the taking provisions of Article I, Section 18 of the Iowa Constitution fails.

With respect to Defendant's Cross Motion for Summary Judgment, the Court notes that Defendant's first argument is that it is entitled to judgment as a matter of law on Plaintiffs' claim that the Addendum violates Defendant's powers under home rule. Defendant states the entire housing ordinance is designed to "protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents." Defendant argues this comports with § 364.1. Since the Court already has found the ordinance does not comport with § 364.1, Defendant's first argument fails.

With respect to § 562A.27A, Defendant argues nothing in § 562A.27A (or in Chapter 562A as a whole) expressly pre-empts the Addendum provisions, and nothing in the text of Chapter 562A suggests that cities may not legislate in the area of landlord-tenant relations. Because the Court already has found that the proposed ordinance is irreconcilable with § 562A.27A, and that conflict preemption serves to preempt the ordinance, this argument fails.

With respect to the void for vagueness argument, Defendant contends that for Plaintiffs to be successful, Plaintiffs must be able to negate "every reasonable basis on which the statute can be sustained." Fisher v. Iowa Bd. of Optometry Examiners, 510 N.W.2d 873, 876 (Iowa 1994). The Court already has concluded the ordinance is not void for vagueness. However, because the ordinance fails on other grounds, this argument is moot.

Finally, all arguments made with respect to "taking" are moot because the Court has found that Plaintiffs' have not established that a taking occurred.

Plaintiffs' Motion for Summary Judgment should be granted, and Defendant's Motion for Summary Judgment should be denied.

RULING

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Summary Judgment is **GRANTED**. All portions of Cedar Rapids City Code Chapter 29 which reference or implement the "Crime Free Lease Addendum" are void and unenforceable.

IT IS FURTHER ORDERED that Defendant's Cross Motion for Summary Judgment is **DENIED**.

Dated: July 1, 2011

Clerk to notify.

pdf/nab

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NANCY A. BAUMGARTNER, JUDGE
Sixth Judicial District of Iowa