

To : St. Paul City Council Members and Mayor Carter
From: An informal consortium of housing attorneys all of whom live and vote in St. Paul, including James Poradek, Ann Juergens, Margaret Kaplan, Lawrence McDonough, Muria Kruger, James Wilkinson
Re: Considerations for St. Paul City Council Members to discuss with City Attorney's office
Date: June 15, 2021

In response to a request, we offer this list of questions for you to explore with the City Attorney. We've also attached the Housing Justice Center's analysis of the "Downside Risk of Immediate Repeal of S.A.F.E. Housing Ordinance" memo dated June 12, 2021 that is useful further background.

1. If the City Council agrees to vote to repeal the Tenant Protection Ordinance, what, if anything, have we asked of plaintiffs in return? Have we held any cards back for bargaining if we repeal?
 - a. At a minimum, will the plaintiffs agree to a dismissal of the case and to waive any claim for attorneys fees and costs?
 - b. If you have not asked for this, why not?
 - c. What kind of limit on our ability to pass a revised S.A.F.E. Housing Ordinance will plaintiffs insist upon?
 - d. What kind of limit on our ability to pass a revised S.A.F.E. Housing Ordinance will repealing the current ordinance and dismissing the lawsuit create as a legal matter?
 - e. Have you researched the effect of repeal on the legality of future similar ordinances? If yes, what did you find?
 - f. If we agree to repeal and dismiss but then come out with a similar ordinance in the future, how will the court and plaintiffs react? Will we look disingenuous?

2. What is the **downside** to the Council members taking more time to decide on whether repeal is the best path for achieving tenant protection?
 - a. Note that the **upside** of taking more time may include:
 - i. Developing a plan for a revised S.A.F.E. Housing Ordinance;
 - ii. Finding strong pro bono counsel to collaborate with the City Attorney to an extent agreed upon by the CA office;
 - iii. Enabling the Housing Justice Center and SMRLS time to find clients who are in a viable position to request to become intervenors –likely St. Paul clients and community organizations;
 - iv. Allowing time to develop ideas for and shape a robust mediation process with the property owners;
 - v. The City Council and the Mayor will be able to tell their constituents that they considered other alternatives and tried their best.
 - vi. Among other benefits. . .

3. If we are able to find a pro bono attorney to either take over or to assist in this nationally important litigation, as has been done in St. Paul in the past, would the City Attorney's office (and Mayor?) be open to working with them?
4. If we repeal the entire ordinance, what is the path forward for any kind of tenant protection legislation that even touches on just cause eviction, screening procedures, notice of sale or security deposits? Please explain to us why it is **not** likely that the repeal will create a real roadblock to tenant protections, both for formal legal reasons and politically.
5. We are told that it is likely that the 8th Circuit will decide the Minneapolis case by the end of the year. What is the downside of asking Judge Magnuson to stay this litigation until we get more guidance from the 8th Circuit on this subject? The advantages of asking the judge for a stay are:
 - a. Same plaintiffs' counsel moved for and obtained a stay of the Minneapolis litigation from Judge Magnuson because of the efficiency of waiting for Eighth Circuit order.
 - b. We can assure the Judge that we want to work within the Constitution and law and frame new ordinances that comply, but we won't know the limits for tenant protection until we get that 8th Circuit guidance.
 - c. They cannot justify running up attorneys fees during a stay.
 - d. We can use the time to develop a plan for a revised ordinance.
 - e. We can work on getting a mediation going during the stay.
6. Is it really the case that the plaintiffs need to stipulate to a stay of the litigation and that you cannot ask the judge directly for a stay even if the plaintiffs oppose it? We understand it may be unlikely that they agree to a stay, but the judge is able to order it without their approval, isn't he?