

October 9, 2020

Department of Records
City Hall Room 156
Philadelphia, PA 19107

Re: Request for Hearing on City of Philadelphia Fair Housing Commission Emergency
Regulation Regarding Chapter 9-809 COVID-19 Emergency Housing Protections

To Clerk of Department of Records:

Please be advised that I am general counsel to HAPCO Philadelphia, an organization that represents numerous small rental property owners in the City of Philadelphia, and is directly affected by the City of Philadelphia Fair Housing Commission Emergency Regulation Regarding Chapter 9-809 COVID-19 Emergency Housing Protections (the "Regulation"). This is HAPCO Philadelphia's formal request under The Philadelphia Code, Section 8-407, for a public hearing on the Regulation.

HAPCO Philadelphia objects to the Regulation on the following grounds:

1. Philadelphia Code Section 9-809(8), which forms the basis of the Fair Housing Commission Regulation, authorizes the Fair Housing Commission "to issue regulations implementing this Section 9-809." The Fair Housing Commission does not have the authority to "interpret" section 9-809. Yet, in the first sentence of the Regulation, it states that the emergency regulations are adopted to "interpret and implement." A regulatory agency, in general, through regulations, can set forth procedures which afford it a means for exercising its powers and perform its duties. It cannot create law or "interpret" the law. Creating law is for City Council and interpreting it is for the court.

2. In the second line of Section 2.4, the Regulation references "the last sentence of this subsection 2.3." It is unclear what this means.

3. The actual definition of "steps in furtherance of recovering possession" does not entail all of the items set forth in the Regulation. City Council, in the ordinance, was quite clear in using this particular language that it does not apply to steps in furtherance of seeking "eviction." If City Council intended that to be the case, they would have specifically stated that in the ordinance. Additionally, if there is a dispute as to the interpretation of this term, it is up to the courts to resolve that dispute. The Fair Housing Commission does not have the authority to provide their interpretation of the law through a Regulation and thereby change the legislation based on their desires. Put simply, they do not have the authority to legislate, which this Regulation attempts to do.

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4. Section 2.4 states that a step in furtherance of recovering possession includes “taking any action that is a prerequisite to an eviction action.” This directly conflicts with the law regarding the Mandatory Hardship Repayment Notice and Section 2.4(c) of this Regulation, which specifically states it is not a step in furtherance of recovering possession, even though it is in fact a prerequisite to an eviction action.

5. Section 2.4 includes in the definition of steps in furtherance of recovering possession, any action “that is calculated to direct or legally require a tenant to leave a rental premises” Once again, this is the Fair Housing Commission attempting to legislate and expand the ordinance, which it does not have the power to do.

6. Section 2.4 prohibits the landlord from “threatening to repossess a premises or begin eviction proceedings in any oral or written statement.” That is by no means a step in furtherance of recovering possession. Rather, it is informing the tenant of what is eventually going to happen if they do not pay.

7. Section 3.1.2 sets forth the forms that the ordinance requires be set up. This is the only valid part of the Regulation that “implements” the law. The remainder of the Regulation should be stricken.

Thank you for your attention to this matter.

Respectfully yours,



PAUL JAY COHEN

cc: Rue Landau, Fair Housing Commission
: Jo Rosenberger Altman, Philadelphia Law Department