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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC.,	)	Case No. CV 22-02085 DDP (JEMx)
	)	
Plaintiff,	)	<b>ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION</b>
v.	)	
COUNTY OF LOS ANGELES,	)	[Dkt. 17]
	)	
Defendants.	)	

Presently before the court is a Motion for Preliminary Injunction filed by Plaintiffs Apartment Association of Los Angeles County, Inc. ("AAGLA") and Apartment Owners Association of California, Inc. ("AOA"). Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following Order.

**I. Background**

The global COVID-19 pandemic is now in its third year. At the outset of the pandemic in the spring of 2020, Defendant Los Angeles County ("the County") implemented a moratorium on evictions of residential tenants. (Complaint ¶ 2.) The moratorium was premised on the County Board of Supervisors' finding that "COVID 19 is

1 causing, and is expected to continue to cause, serious financial  
2 impacts to Los Angeles County residents and businesses, . . .  
3 impeding their ability to pay rent[.]” (Plaintiff’s Request for  
4 Judicial Notice, Ex. 7 at 203.) The Board further found that  
5 “displacing residential . . . tenants . . . will worsen the present  
6 crisis,” and “severely impact the health, safety and welfare of  
7 County residents.” (Id. at 203-204.)

8 Although it remains to be seen whether, as Plaintiffs  
9 optimistically assert, “[w]e are at the end stages of the  
10 pandemic,” 2022 has not seen the lockdowns and other economic  
11 disruptions of the earlier days of the public health crisis.  
12 (Reply at 16.) Fortunately, Los Angeles County’s COVID 19  
13 community level, as determined by the Centers for Disease Control,  
14 is currently “low.”<sup>1</sup> Businesses are open, and the County no longer  
15 requires that masks be worn in most indoor settings.<sup>2</sup>  
16 Nevertheless, the Board found earlier this year that the emergence  
17 of COVID-19 variants, such as the Omicron variant, “demonstrat[es]  
18 a continuing necessity to preserve and extend many [] tenant  
19 protections.” (RJN, Ex. 7 at 202 at 207.) Accordingly, the County  
20 replaced its residential eviction moratorium with a revised set of  
21 lesser “Tenant Protections.” (RJN, Ex. 7 at 202).<sup>3</sup>

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24 <sup>1</sup>  
25 [http://publichealth.lacounty.gov/media/Coronavirus/data/response-pl  
an.htm](http://publichealth.lacounty.gov/media/Coronavirus/data/response-plan.htm)

26 <sup>2</sup>  
27 [http://publichealth.lacounty.gov/media/Coronavirus/docs/H00/COVID19  
ResponsePlan.pdf](http://publichealth.lacounty.gov/media/Coronavirus/docs/H00/COVID19/ResponsePlan.pdf) at 4-5.

28 <sup>3</sup> Pursuant to state law, the protections at issue here took  
effect July 1, 2022. Cal. Civ. Proc. Code § 1179.05(a)(1).

1 Plaintiffs are comprised of and represent over 30,000 owners  
2 and managers of rental housing units. (Complaint ¶¶ 11-12.)  
3 Plaintiffs' Complaint seeks declaratory and injunctive relief under  
4 42 U.S.C. § 1983 and California Code of Civil Procedure § 1060 to  
5 enjoin enforcement of the Tenant Protections, alleging that the  
6 Tenant Protections violate Plaintiffs' due process rights and are  
7 unconstitutionally vague. Plaintiffs' instant motion seeks a  
8 preliminary injunction on those same grounds.

9 **II. Legal Standard**

10 A party seeking a preliminary injunction must show that (1) it  
11 is likely to succeed on the merits; (2) it will suffer irreparable  
12 harm in the absence of preliminary relief; (3) the balancing of the  
13 equities between the parties that would result from the issuance or  
14 denial of the injunction tips in its favor; and (4) an injunction  
15 is in the public interest. Winter v. Natural Resources Def.  
16 Council, 555 U.S. 7, 20 (2008). Preliminary relief may be  
17 warranted where a party (1) shows a combination of probable success  
18 on the merits and the possibility of irreparable harm, or (2)  
19 raises serious questions on such matters and shows that the balance  
20 of hardships tips in favor of an injunction. See Arcamuzi v.  
21 Continental Air Lines, Inc., 819 F.2d 935, 937 (9th Cir. 1987).  
22 "These two formulations represent two points on a sliding scale in  
23 which the required degree of irreparable harm increases as the  
24 probability of success decreases." Id.; see also  
25 hiQ Labs, Inc. v. LinkedIn Corp., 938 F.3d 985, 992 (9th Cir.  
26 2019). Under both formulations, the party must demonstrate a "fair  
27 chance of success on the merits" and a "significant threat of  
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1 irreparable injury” absent the requested injunctive relief.<sup>4</sup>  
2 Arcamuzi, 819 F.2d at 937.

3 **III. Discussion**

4 A. Likelihood of Success on the Merits

5 Plaintiffs contend, among other things, that the Tenant  
6 Protections at issue here are unconstitutionally vague. Indeed,  
7 determining the nature and scope of the extant Tenant Protections  
8 in the first instance is no simple task.

9 Rather than adopt a new resolution implementing the Tenant  
10 Protections, the Board of Supervisors issued a resolution (“the  
11 Resolution”) incorporating over a dozen prior resolutions and  
12 amendments related to COVID-19.<sup>5</sup> (RJN Ex. 7 at 207.) The result  
13 is a resolution that lists, across several different sections and  
14 subsections, different types of protections, applicable at  
15 different times, to different groups of tenants. As relevant here,  
16 Section IV(K) of the Resolution defines the term “Protections” only  
17 to mean “the set of tenant protections applicable to a Tenant  
18 pursuant to the terms of this Resolution,” providing little  
19 guidance to landlords or tenants. (RJN Ex. 7 at 209).

20 Section VI of the Resolution is, somewhat misleadingly, titled  
21 “Eviction Protections.” (RJN Ex. 7 at 211). As the County appears  
22 to acknowledge, however, Section VI does not actually describe the  
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24 <sup>4</sup> Even under the “serious interests” sliding scale test, a  
25 plaintiff must satisfy the four Winter factors and demonstrate  
26 “that there is a likelihood of irreparable injury and that the  
injunction is in the public interest.” Alliance for the Wild  
Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

27 <sup>5</sup> Resolution of the Board of Supervisors of the County of Los  
28 Angeles Further Amending And Restating The County of Los Angeles  
COVID-19 Tenant Protections Resolution (January 25, 2022). (RJN  
Ex. 7 at 202).

1 form of any specific, currently applicable eviction or tenant  
2 protections regarding COVID-related nonpayment of rent. Section  
3 VI(A)(1) states, "During the time periods set forth below, a Tenant  
4 shall not be evicted for nonpayment of rent . . . if the Tenant  
5 demonstrates an inability to pay rent . . . due to Financial  
6 Impacts Related to COVID-19 . . . ." (RJN Ex. 7 at 211 (emphasis  
7 added)). Despite this seemingly categorical language, the County  
8 asserts that there is no longer a total moratorium on evictions for  
9 COVID-related nonpayment of rent, and that different, narrower  
10 protections apply during the current "Extensions Protections  
11 Period" pursuant to Section VI(A)(1)(b)(ii). (Id. at 212.) That  
12 subsection provides that a more limited pool of qualifying  
13 residential tenants "is protected from eviction under this  
14 Resolution." (Id. (emphasis added)). Only a residential tenant  
15 who (1) has household income equal to or less than 80 percent of  
16 the Area Median Income, (2) is unable to pay rent (3) "so long as  
17 the reason for nonpayment was Financial Impacts Related to COVID-  
18 19," (4) notifies their landlord of this COVID-related inability to  
19 pay and (5) self-certifies income level and financial hardship (6)  
20 within seven days after the date missed rent is due "is protected  
21 from eviction." (Id.) Landlords "must accept" a qualifying tenant's  
22 self-certification of income level and financial hardship. (Id. at  
23 216.) Section VI(A)(1)(b)(ii) does not, however, set forth what  
24 "protection from eviction" entails.

25 According to the County, that a qualifying tenant "is  
26 protected from eviction" does not actually mean that the tenant  
27 cannot be evicted. Such is not apparent from Section  
28 VI(A)(1)(b)(ii), or from any other provision in Section VI (or

1 Section IV). Rather, to determine what "protection from eviction"  
2 under Section VI(A)(1)(b)(ii) means, a tenant or landlord must  
3 refer to the language of Section XI, the "Remedies" section of the  
4 Resolution. (RJN Ex. 7 at 221.) There, Section XI(C) states that  
5 "any Protections . . . provided under this Resolution shall  
6 constitute an affirmative defense for a Tenant in any unlawful  
7 detainer action . . . ." (Id. (emphasis added).) Thus, under the  
8 County's interpretation, the current Tenant Protections do no more  
9 than provide an affirmative defense to a discrete set of tenants,  
10 under relatively specific circumstances, who are already involved  
11 in unlawful detainer proceedings.

12 That the Tenant Protections are difficult to suss out is not  
13 sufficient to render them unconstitutionally vague. See United  
14 States v. Williams, 553 U.S. 285, 304 (2008) ("perfect clarity and  
15 guidance has never been required"). The question, rather, is  
16 whether the resolution gives "the person of ordinary intelligence a  
17 reasonable opportunity to know what is prohibited, so that he may  
18 act accordingly." Grayned v. City of Rockford, 408 U.S. 104, 108  
19 (1972). Laws must also provide sufficiently explicit standards to  
20 prevent arbitrary or discriminatory enforcement. Id.; Williams,  
21 553 U.S. at 304.

22 The County contends that the Tenant Protections cannot  
23 possibly run afoul of these prescriptions because they do no more  
24 than establish a new affirmative defense for tenants, and thus do  
25 not prohibit landlords from doing anything. That blinkered reading  
26 of the Resolution, however, ignores Section IX(I), which expressly  
27 prohibits landlords from "[t]aking action to terminate any tenancy  
28 including service of any notice to quit or notice to bring any

1 action to recover possession of a rental unit based upon facts  
2 which the Landlord has no reasonable cause to believe to be true or  
3 upon a legal theory which is untenable . . . ." (RJN Ex. 7 at 220  
4 (emphasis added).) Violations of Section IX subject landlords to  
5 administrative fines and civil and criminal penalties under  
6 Sections X and XI. (Id. at 220-221.) In other words, a landlord  
7 cannot bring an unlawful detainer action, at peril of civil and  
8 criminal penalties, unless the landlord reasonably believes that a  
9 tenant's affirmative defense, created by and comprising the Tenant  
10 Protections, will fail.

11 A landlord cannot, of course, form any reasonable belief about  
12 the viability of a particular tenant's affirmative defense without  
13 an understanding of the elements of the defense. Although  
14 seemingly limited in application, the affirmative defense created  
15 by the Tenant Protections is expansive in scope, in that it applies  
16 to nonpayment of rent "so long as the reason for nonpayment was  
17 Financial Impacts Related to COVID-19." (RJN Ex. 7 at 212.)  
18 "Financial Impacts" include (1) "substantial loss of income caused  
19 by the COVID-19 pandemic," (2) "loss of revenue or business . . .  
20 due to business closure," (3) "increased costs," (4) "reduced  
21 revenues or other similar reasons impacting a Tenant's ability to  
22 pay rent due," (5) layoffs or "loss of compensable hours of work or  
23 wages," and (6) "extraordinary out-of-pocket medical expenses."  
24 (Id. at 208). "Related to COVID-19" means not just "related to . .  
25 . [a] suspected or confirmed case of COVID-19, or caring for a  
26 household or family member who has a suspected of confirmed case of  
27 COVID-19," but also related to "reduction or loss of income or

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1 revenue resulting from . . . economic or employer impacts related  
2 to COVID-19.” (Id. at 209).

3         Given the breadth of these definitions, it would be impossible  
4 for a landlord to determine whether the affirmative defense might  
5 apply in any particular instance. The bounds of, for example,  
6 “increased costs” resulting from “economic . . . impacts related to  
7 COVID-19” are virtually limitless. Even the most exacting  
8 categories of “Financial Impacts,” namely “substantial loss of  
9 income” and “extraordinary” medical expenses, are inherently  
10 variable and subjective. Indeed, the County acknowledges that “a  
11 particular amount in lost income may be ‘substantial’ for one  
12 tenant but not for another, just as a certain amount of medical  
13 expenses may be ‘extraordinary’ to one tenant but not another.”  
14 (Opp. at 14:19-21.) In the County’s view, this variability is a  
15 feature, not a bug, insofar as it “permits the Resolution to apply  
16 to different tenants of varying circumstances.”<sup>6</sup> (Id. at 14:18-  
17 19.) That may be, but that same vagueness also deprives landlords  
18 of the ability to gauge whether any particular tenant can  
19 successfully invoke the affirmative defense. Without any  
20 meaningful guidance from the Resolution, landlords are left to  
21 guess, not just as to the likelihood of success of any unlawful  
22 detainer action, but as to whether the very filing of any such  
23 action is prohibited.

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26         <sup>6</sup> The court notes that other provisions in the Resolution, and  
27 even within Section VI(A)(1)(b)(ii), are not so flexible. For  
28 example, the affirmative defense applies only “so long as the  
reason for nonpayment was Financial Impacts Related to COVID-19.”  
(RJN Ex. 7 at 211-212 (emphasis added).)



1 Even if a landlord chooses to run the risk of initiating an  
2 unlawful detainer proceeding, it is unclear whether she may contest  
3 all of the elements of the Tenant Protections affirmative defense.  
4 Among the required elements of the defense are that a tenant (1) be  
5 unable to pay rent and (2) have a household income equal to or less  
6 than eighty percent of the Area Median Income. The County concedes  
7 that a tenant bears the burden of proof of establishing the  
8 affirmative defense. The Resolution, however, states that  
9 "Landlords must accept" "a Residential Tenant whose household  
10 incomes [sic] is at 80 percent Area Median Income or below self-  
11 certifies [sic] their income level and financial hardship . . . ."  
12 (RJN Ex. 7 at 216). At oral argument, the County maintained that  
13 the phrase "must accept" does not mean that landlords must accept  
14 the merits of a tenant's self-certification, but rather that "the  
15 landlord must accept delivery of that self-certification." That  
16 interpretation has no support in the text of the Resolution, which  
17 does not give a person of ordinary intelligence reasonable notice  
18 that she is free to dispute a tenant's income level or degree of  
19 financial hardship, in court or elsewhere.

20 The County also appears to suggest that any infirmities in the  
21 Resolution are of no moment because the affirmative defense must be  
22 proven in "a full-fledged adversarial proceeding with a trial with  
23 multiple levels of discovery available to both sides," and a  
24 neutral decisionmaker need not accept a tenant's self-certification  
25 as sufficient to carry the burden of proof. This argument is not  
26 persuasive. As an initial matter, if a landlord "must accept" a  
27 tenant's representations as to certain elements of the affirmative  
28 defense, it is unclear how any contrary position could ever be

1 presented to a court in an adversarial proceeding. Furthermore,  
2 and more fundamentally, a vague, standardless statute cannot be  
3 resuscitated simply by delegating definitional responsibility to a  
4 court. "If arbitrary and discriminatory enforcement is to be  
5 prevented, laws must provide explicit standards for those who apply  
6 them." Grayned, 408 U.S. at 108. The void for vagueness doctrine  
7 "guards against arbitrary or discriminatory law enforcement by  
8 insisting that a statute provide standards to govern the actions of  
9 police officers, prosecutors, juries, and judges." Sessions v.  
10 Dimaya, 138 S. Ct. 1204, 1212 (2018) (emphasis added). The  
11 Resolution provides no more guidance to a neutral factfinder than  
12 to a landlord as to what financial impacts a tenant must suffer to  
13 invoke the affirmative defense.

14 Accordingly, Plaintiffs are likely to succeed on the merits of  
15 their claim that the Resolution's Tenant Protections are  
16 unconstitutionally vague.<sup>7</sup>

17 B. Remaining Factors

18 The other Winter factors also weigh in favor of a preliminary  
19 injunction. "It is well established that the deprivation of  
20 constitutional rights unquestionably constitutes irreparable  
21 injury." Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012)  
22 (internal quotation marks omitted); see also Goldie's Bookstore,  
23 Inc. v. Superior Ct. of State of Cal., 739 F.2d 466, 472 (9th Cir.  
24 1984) ("An alleged constitutional infringement will often alone  
25 constitute irreparable harm."). When the government is a party,  
26 the remaining factors, the balance of equities and the public

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28 <sup>7</sup> Having so concluded, the court does not reach Plaintiffs'  
other claims.

1 interest, merge. California v. Azar, 911 F.3d 558, 575 (9th Cir.  
2 2018). Here, the question is a close one. The public interest is,  
3 no doubt, served by efforts to minimize the spread of COVID-19.  
4 See, e.g., Westlake Fitness LLC v. Cnty. of Ventura, No.  
5 21-CV-0770-CBM-(EX), 2021 WL 971148, at \*2 (C.D. Cal. Jan. 29,  
6 2021). In light of the County's current approach to other  
7 containment measures, however, the denial of an injunction would  
8 seemingly do little to further that objective. Furthermore, "it is  
9 always in the public interest to prevent the violation of a party's  
10 constitutional rights." Melendres, 695 F.3d at 1002 (internal  
11 quotation marks and citation omitted). "[P]ublic interest concerns  
12 are implicated when a constitutional right has been violated[]  
13 because all citizens have a stake in upholding the Constitution."  
14 Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017) (quoting  
15 Preminger v. Principi, 422 F.3d 815, 826 (9th Cir. 2005)).  
16 Moreover, the Resolution's vagueness problems appear largely to be  
17 a matter of drafting, rather than fundamental character. "When  
18 constitutional alternatives are available to achieve the same  
19 goal," maintaining an unconstitutional policy is not in the public  
20 interest. Agudath Israel of Am. v. Cuomo, 983 F.3d 620, 637 (2d  
21 Cir. 2020). A preliminary injunction is, therefore, warranted  
22 here.

#### 23 **IV. Conclusion**

24 For the reasons stated above, Plaintiffs' Motion for  
25 Preliminary Injunction is GRANTED. Effective December 1, 2022, the  
26 County is hereby enjoined from enforcing the Tenant Protections  
27 described in Section VI(A) (1) (b) (ii) of the Resolution, as well as  
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1 those portions of Sections IX(I), X, and XI that reference or  
2 incorporate Section VI(A)(1)(b)(ii).<sup>8</sup>

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5 IT IS SO ORDERED.

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8 Dated: October 19, 2022



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DEAN D. PREGERSON

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United States District Judge

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<sup>8</sup> Given the ostensible purpose of the Tenant Protections, the potential for the County to adopt a constitutionally viable alternative, and the need for tenants and landlords to adjust to and plan for a post-injunction legal landscape, the court finds that a brief transitional period is warranted.