

U.S. District Court Enjoins St. Paul Tenant Screening Ordinance
Contributed by Rebecca E. Kuehn and Cierra Newman, Hudson Cook, LLP

On April 19, 2021, the U.S. District Court for the District of Minnesota issued a preliminary injunction preventing the City of St. Paul from enforcing any part of its new tenant screening ordinance—Chapter 193 of Ordinance 20-14—until a trial on the merits. The ordinance would have taken effect March 1, 2021.

The ordinance, among other things, outlines several prohibitions which require landlords to employ certain screening criteria established by the City and constrains both their ability to sell their property and to terminate leases. Specifically, the ordinance prohibits landlords in the City of St. Paul from considering certain criminal records as part of their screening criteria, including vacated or expunged convictions; misdemeanor convictions for which the date of sentencing is more than three years old; and certain felony convictions for which the dates of sentencing are more than a certain number of years old.

The ordinance also prohibits a landlord from declining to rent to a tenant solely because of that tenant's credit history, and limits the landlord's use of the credit history to an evaluation of whether the report demonstrates a failure to pay rent or utility bills. Lastly, the ordinance also prohibits landlords from considering certain rental history and from refusing to rent to individuals with income less than two-and-a-half times the rent if the prospective tenant can demonstrate a history of successful rent payment with the same or lower ratio of income to rent.

Violations of the ordinance are punishable by a fine, adverse rental-license action, and criminal prosecution. Accordingly, if a landlord terminates a lease without meeting the ordinance's requirements, the landlord may be liable in a civil suit for "damages equal to Relocation Assistance, costs of suit or arbitration and reasonable attorney's fees." Lastly, tenants "may seek redress in any court of competent jurisdiction" to enforce the ordinance.

The ordinance was challenged in federal court by a group of St. Paul landlords on a number of grounds, including that the ordinance resulted in a regulatory taking and was a violation of substantive due process. In granting the landlords' request for an injunction preventing the enforcement of the ordinance, the judge made the following findings:

1. Plaintiffs demonstrated a "possible likelihood that they will prevail on the merits of their per se takings claim" because the ordinance interferes with Plaintiffs' right to exclude unwanted tenants from their property and singles out Plaintiffs to address a societal problem.
2. Plaintiffs demonstrated a "probable likelihood of success on their regulatory takings claim" under the U.S. Supreme Court's *Penn Central* decision because the ordinance "comes at a heavy cost for owners" and "forces Plaintiffs to bear society's burden related to housing needs."
3. Plaintiffs demonstrated "a likelihood of success on the merits regarding their substantive due process claim." Although the ruling is not entirely clear, it appears Judge Magnuson believes that the right to exclude is a fundamental right and the court must therefore apply a "strict scrutiny" review, a standard the City did not even try to meet. In addition, Judge Magnuson

found that the City was unlikely to be able to meet even the lowest standard of review, “reasonable basis” review.

4. Plaintiffs have shown irreparable harm and were justified in filing this lawsuit when they did because they were waiting for further guidance from the implementation committee.
5. The City has not shown any legal justification for a substantial bond, so Plaintiffs’ request that the bond be set at \$1 is granted.

Note that this victory is preliminary, and the City may seek reconsideration of the ruling or appeal it to the United States Court of Appeals for the 8th Circuit.