

CONCEPT PAPER – AMEND THE HOME RULE LAW TO GIVE MUNICIPALITIES THE ABILITY TO RESPOND TO LOCAL HOUSING NEEDS

Proposal: Eliminate the Home Rule Business Exclusion (53 Pa.C.S. § 2962(f)) or amend the exclusion so that it applies only to the specific duty mentioned in the statute (the duty to withhold, remit or report taxes or penalties).

Rationale: Home rule municipalities in Pennsylvania must have the flexibility to develop their own policies that effectively respond to local housing needs.

PROBLEM TO BE ADDRESSED

The PA Home Rule Law, which applies to all home rule municipalities other than Philadelphia, contains a provision that restricts the power of home rule municipalities to implement policies that they determine to be necessary to effectively respond to local housing needs. The so-called “Business Exclusion” prohibits home rule municipalities from “determin[ing] duties, responsibilities or requirements placed upon businesses, occupations and employers.” This prohibition has been used to strike down a number of reasonable local policies, including:

- A requirement that large employers give the municipality advance notice of any planned closure or relocation and meet with municipal officials to develop a plan to minimize the harmful economic and social effects that would result. *Smaller Manufacturers Council v. Council of the City of Pittsburgh*, 485 A.2d 73 (Pa. Cmwlth. 1984).
- A worker non-displacement ordinance that required companies receiving a new contract for janitorial, security, or building maintenance services at large commercial buildings retain existing employees for a period of 180 days unless they are terminated for cause based on performance or conduct. *Bldg. Owners & Mgrs. Ass’n of Pittsburgh v. City of Pittsburgh*, 985 A.2d 711 (Pa. 2009) (“BOMA”).
- A building security ordinance that required security officers and building service employees to receive training so that they are capable of serving certain protective and investigative functions in the event of events that imperil the health and safety of the buildings’ occupants. *Pennsylvania Restaurant & Lodging Association v. City of Pittsburgh*, 211 A.3d 810 (Pa. 2019).
- A “source of income” ordinance prohibiting residential landlords from refusing to rent to applicants based upon the source of income they plan to use to pay their rent, specifically including participation in the Housing Choice Voucher program. *Apartment Ass’n of Metro. Pittsburgh, Inc. v. City of Pittsburgh*, 261 A.3d 1036 (Pa. 2021).
- A rental registration ordinance that provided for code inspections of residential rental properties every three years and required residential landlords to designate a responsible

local agent, follow best practices, attend a landlord academy, and have their registration and inspection information placed on a public, online database. *Landlord Service Bureau, et al. v. City of Pittsburgh, et al.*, No. 1026 C.D. 2021 (Pa. Cmwlth, March 17, 2023).

These decisions demonstrate how the Business Exclusion prevents home rule municipalities from effectively responding to local housing needs. For instance, the source of income ordinance at issue in *Apartment Ass'n* was adopted because a high percentage of low-income renters who are issued housing choice vouchers must return them unused, and because refusal to rent to voucher holders is often used as a proxy for illegal discrimination based on race, national origin and familial status. Pittsburgh determined that the policy is needed in order to combat illegal discrimination and improve the effectiveness of scarce affordable housing resources in addressing the city's severe shortage of affordable housing.

Similarly, the *Smaller Manufacturers* decision effectively precludes home rule municipalities from adopting a community opportunity to purchase policy requiring owners of affordable rental housing to notify tenants, nonprofits or public officials and attempt to negotiate a preservation sale before putting the property on the market. Cities around the country have found such laws to be a vital preservation tool. The availability of a tool like this is especially important in light of the recent increase in institutional investor acquisitions of low market housing.

PROPOSED SOLUTION

Eliminate the Home Rule Business Exclusion (53 Pa.C.S. § 2962(f)) or amend the exclusion so that it applies only to the specific duty mentioned in the statute (the duty to withhold, remit or report taxes or penalties).

Home rule municipalities in Pennsylvania must have the flexibility to develop their own policies that effectively respond to local housing needs, including health, safety, and stability concerns. The rental industry is not powerless to influence local lawmaking. They do not require special protection. Local elected officials are capable of engaging all stakeholders and developing effective policies that address important issues while taking everyone's considerations into account. The Commonwealth should untie their hands and let them do the job they have been elected to do.