



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Shola Olatoye
Director, Housing &
Community Development

SUBJECT: Informational Report on AB 3088 and
SB 1079

DATE: March 22, 2021

City Administrator Approval 

Date: Apr 1, 2021

RECOMMENDATION

Staff Recommends That The City Council Receive An Informational Report Regarding State Assembly Bill (AB) 3088 and State Senate Bill (SB) 1079.

EXECUTIVE SUMMARY

The City Attorney's Report of Selected Legislation Enacted in 2020 was submitted to the Rules Committee on February 25, 2021. At that time, the Rules Committee requested that the Housing and Community Development Department (HCD) prepare an informational report to provide additional information on 1) Senate Bill (SB) 1079, regarding residential property foreclosures and how information is getting to property owners, and 2) Assembly Bill (AB) 3088 amended by SB 91 regarding evictions. This informational report provides the requested information and was prepared in coordination with the City Attorney's Office and the Department of Planning and Building.

BACKGROUND / LEGISLATIVE HISTORY

On February 25, 2021, the City Attorney's Office submitted a Report of Selected Legislation Enacted in 2020 to the Rules Committee. At that meeting, the Committee requested that additional information be provided regarding SB 1079 and AB 3088. AB 3088 was adopted in August 2020 to protect residential tenants statewide from eviction for non-payment of rent caused by the COVID-19 pandemic. The protections provided by AB 3088 were extended when the legislature enacted SB 91 in January 2021. This report reflects the extended timeframes. SB 1079 was enacted in September 2020 to reduce the advantage that real estate speculators and corporations had in the foreclosure sales process by prohibiting the bundling of properties for sale and giving prospective owner-occupants, tenants, local governments, and housing nonprofits an opportunity to disrupt the foreclosure sale process by bidding post-auction. The bill applies to real property containing one to four residential units. Additional details about both SB 1079 and AB 3088 are provided in the next section.

City Council
April 20, 2021

ANALYSIS AND POLICY ALTERNATIVES

I. Assembly Bill 3088: COVID-19 Tenant Relief Act

AB 3088, the COVID-19 Tenant Relief Act, was adopted in August 2020 to protect residential tenants statewide from eviction for non-payment of rent caused by the COVID-19 pandemic. The protections provided by AB 3088 were extended when the legislature enacted SB 91 in January 2021. This report reflects the extended timeframes.

Under AB 3088, residential tenants are protected from eviction based on non-payment of rent if the rent became due during the “covered time period” (March 1, 2020 through June 30, 2021) and the tenant was unable to pay because of “COVID-19 related financial distress.”

“COVID-19-related financial distress” is defined as any of the following:

- (1) Loss of income caused by the COVID-19 pandemic.
- (2) Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.
- (3) Increased expenses directly related to the health impact of the COVID-19 pandemic.
- (4) Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit a tenant’s ability to earn income.
- (5) Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.
- (6) Other circumstances related to the COVID-19 pandemic that have reduced a tenant’s income or increased a tenant’s expenses.

To invoke the protection of the COVID-19 Tenant Relief Act, a tenant must provide the landlord with a “Declaration of COVID-19-related financial distress” in a form set forth in the statute. For unpaid rent that accrued from March 1, 2020, through August 31, 2020, tenants may not be evicted if they provide a declaration of COVID-19 related financial distress. For unpaid rent that accrued between September 1, 2020, and June 30, 2021, tenants cannot be evicted if they provide a declaration of COVID-19 related financial distress **and** pay 25 percent of the amount owed for this period no later than June 30, 2021.

A landlord may require a “high-income tenant,” defined as a tenant with an annual household income of 130 percent of Area Median Income (\$154,960 for a four-person household) to provide documentation along with declaration of COVID-19 related financial distress.

AB 3088 provides a much-needed defense against eviction for Oakland tenants who reside in units that are not subject to Oakland’s Eviction Moratorium Ordinance No. 13606 C.M.S., which is estimated at approximately 15,000 units. However, for tenants residing in units that are subject to Oakland’s Just Cause for Eviction Ordinance, O.M.C. 8.22.300 et seq., Oakland’s Eviction Moratorium Ordinance provides broader protection from most types of eviction, whether based on unpaid rent or on other grounds.

Like Oakland’s Eviction Moratorium Ordinance, AB 3088 does not relieve the tenant of the obligation to pay rent. Rather it grants exclusive jurisdiction over actions to collect COVID-19 rental debt, to the small claims court, regardless of the amount. The usual small claims maximum of \$10,000 for individuals and \$5,000 for corporations does not apply. The statute

also prohibits landlords from suing tenants in small claims court for COVID-19 rental debt until August 1, 2021.

SB 91 also creates a Rental Assistance Program funded with Emergency Rental Assistance Program funds made available to the state through the Federal Consolidated Appropriations Act, 2021, the second federal stimulus bill. Through the Consolidated Appropriations Act, \$1.2 billion was allocated to the State of California and \$13.8 million was allocated to the City of Oakland.

II. Senate Bill 1079

SB 1079 was enacted in September 2020 to reduce the advantage that real estate speculators and corporations had in the foreclosure sales process by prohibiting the bundling of properties for sale and giving prospective owner-occupants, tenants, local governments, and housing nonprofits an opportunity to disrupt the foreclosure sale process by bidding post-auction. The bill applies to real property containing one to four residential units.

Prior to the enactment of SB 1079, nonjudicial foreclosure sales were deemed complete when the auctioneer accepted the final bid. However, SB 1079 provides Eligible Tenant Buyers and other Eligible Bidders an opportunity to purchase the property after the trustee sale closes, unless a prospective owner occupant was the successful purchaser. If the highest bidder was not a prospective owner occupant, Eligible Tenant Buyers may purchase the property subject to certain requirements and timelines.

Eligible Tenant Buyers include any natural person occupying the property as a primary residence at the time of the trustee sale under a rental agreement entered into prior to the foreclosure. Eligible Tenant Buyers may not be the child, spouse, or parent of the foreclosed owner. Other Eligible Bidders include prospective owner occupants, non-profit housing developers, community land trusts, limited-equity housing cooperatives, City, county or state government agencies, and the Regents of the University of California.

Before any foreclosure sale, notice of the sale must be posted in a public place, published in a newspaper of general circulation, and posted on the property for 20 days and must contain specified information regarding the tenants' potential right to purchase a property. SB 1079 also requires a trustee to maintain an internet website and a telephone number to provide specified information on the properties that is free of charge and available 24 hours a day, seven days a week.

In addition, SB 1079 increases the penalties that can be imposed against owners who purchase vacant residential properties at foreclosure sales if the owners don't maintain the properties free of blight. If an owner fails to correct blighted conditions at the property after proper notice, the City can fine the owner up to \$2,000 per day for the first 30 days and up to \$5,000 per day thereafter.

Table 1, below, provides a summary of the two pieces of legislation.

Table 1 AB 3088 and SB 1079 Summary Information

Bill	Eligibility	Uses	Time/Deadline
Assembly Bill 3088 - COVID-19 Tenant Relief Act	Residential tenants	Provides a statewide defense to residential evictions for COVID-19 rental debt. Does not preempt Oakland's Eviction Moratorium Ordinance.	Adopted in August 2020; protection extended when legislature enacted SB 91 in January 2021.
		Grants exclusive jurisdiction over actions to collect COVID-19 rental debt to the small claims court, regardless of the amount. Prohibits landlords from suing tenants in small claims court for COVID-19 rental debt until August 1, 2021.	August 1, 2021
Senate Bill 1079	Real property containing one to four residential units.	Prohibits the bundling of properties for sale at foreclosure auctions and gives prospective owner-occupants, tenants, local governments, and housing nonprofits an opportunity to disrupt the foreclosure sale process by bidding post-auction.	Enacted in September 2020; Effective January 1, 2021
Senate Bill 1079 (Cont.)	Eligible Tenant Buyers and other Eligible Bidders	Before any foreclosure sale, notice of the sale must be posted in a public place, published in a newspaper of general circulation, and posted on the property for 20 days. Eligible parties provided an opportunity to purchase the property after the trustee sale closes, subject to certain requirements and timelines.	
		Increases the penalties that can be imposed against owners who purchase vacant residential properties at foreclosure sales if the owners don't maintain the properties free of blight up to \$2,000 per day for the first 30 days and up to \$5,000 per day thereafter.	

FISCAL IMPACT

This item is for informational purposes only and does not have a direct fiscal impact or cost

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for this informational report beyond the standard City Council agenda noticing procedures.

COORDINATION

This report was prepared in coordination with the Office of the City Attorney and the Planning and Building Department and was reviewed by the Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: AB 3088 and SB 1079 are designed to protect low-income tenants and prevent displacement and homelessness that may result from market impacts of increasing rents, speculative property acquisitions, and other economic forces. These bills will positively impact the economics of a community by ensuring that residents with lower incomes can attain economic stability and security, improved quality of life, and increased disposable income.

Environmental: The lack of housing options in Oakland worsens air pollution, as community members who are displaced are forced to drive long distances to their jobs. Considerable evidence shows that households living near employment-dense areas and transit corridors have lower carbon footprints than those living in less dense areas further from transit. Retaining affordable housing opportunities located near transit is particularly impactful, as low-income households are more likely not to own cars if they have access to quality transportation options.

Race & Equity: Demographic data evidence that Oakland's affordable housing and homelessness crisis disproportionately impacts Oakland's lower-income residents and in particular the African American community. As such, AB 3088 and SB 1079 will serve to protect low-income tenants in general and African American tenants in particular and provide tools and opportunities to retain their housing in the communities they reside in and achieve housing stability.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive An Informational Report Regarding State Assembly Bill (AB) 3088 and State Senate Bill (SB) 1079.

For questions regarding this report, please contact Maryann Leshin, Deputy Director, at 510.238.6225.

Respectfully submitted,



SHOLA OLATOYE
Director, Housing and Community Development
Department

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