



CITY OF OAKLAND

AGENDA REPORT

TO: City Council

FROM: Barbara J. Parker
City Attorney

SUBJECT: Tenant Protection, Just Cause, and Rent
Ordinance Amendments

DATE: April 21, 2020

RECOMMENDATION

City Attorney Barbara J. Parker, Councilmember Nikki Fortunato Bas, and Council President Pro Tempore Dan Kalb Recommend that the City Council Adopt:

AN ORDINANCE AMENDING CHAPTER 8.22 OF THE OAKLAND MUNICIPAL CODE (RESIDENTIAL RENT ADJUSTMENTS AND EVICTIONS) TO (1) LIMIT THE MAXIMUM RENT INCREASE IN ANY ONE YEAR TO CONFORM TO STATE LAW, (2) MAKE FAILURE TO PAY REQUIRED RELOCATION BENEFITS AN AFFIRMATIVE DEFENSE TO EVICTION, (3) LIMIT LATE FEES, (4) PROHIBIT UNILATERALLY IMPOSED CHANGES TO TERMS OF TENANCY, (5) ADD ONE-FOR-ONE REPLACEMENT OF ROOMMATES TO THE DEFINITION OF HOUSING SERVICES, (6) PROHIBIT EVICTION BASED ON ADDITIONAL OCCUPANTS IF LANDLORD UNREASONABLY REFUSED TENANT'S WRITTEN REQUEST TO ADD OCCUPANT(S), AND (7) STRENGTHEN TENANTS' RIGHTS AND ENFORCEMENT OF TENANTS' RIGHTS UNDER THE TENANT PROTECTION ORDINANCE

EXECUTIVE SUMMARY

This proposed legislation would amend the Tenant Protection Ordinance ("TPO"), the Residential Rent Adjustment Program Ordinance ("Rent Ordinance"), the Just Cause for Eviction Ordinance ("JCO"), and other ordinances¹ related to tenant relocation payments for specified types of evictions.

Tenant Protection Ordinance Amendments

The proposed amendments to the TPO create more powerful deterrents to harassing behavior, protect vulnerable populations, and provide stronger public and private enforcement mechanisms. These amendments remove exemptions that provide loopholes for abuse, and clarify that harassment of tenants includes certain violations of state law, including illegal lockouts, utility shutoffs, and Unruh Civil Rights Act violations. The amendments prohibit certain amenities, such as parking, from being arbitrarily severed from a tenancy and limit fees for late payment of rent. The TPO amendments clarify the damages and penalties a court may award in a civil action, and provide heightened penalties for violations of the rights of tenants who are elderly, disabled, catastrophically ill, and/or immigrants.

¹ These ordinances include Terminating Tenancy to Withdraw Residential Rental Units from the Market, Uniform Residential Tenant Relocation Ordinance, and Relocation Payments for Owner or Relative Move-Ins.

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Rent Ordinance Amendments

The amendments to the Rent Ordinance permit tenants to seek a rent reduction if the landlord unreasonably denies them the right to replace a departing roommate, and also conform the maximum rent increase in a 12-month period to conform with state tenant protection law that took effect in January, 2020.

Just Cause Ordinance Amendments

Amendments to the JCO would make failure to pay required relocation benefits an affirmative defense to an eviction, in conformance with state law, and prohibit evictions based on either unilateral changes in the terms of tenancy or adding an additional occupant or occupants, if a landlord unreasonably refuses a written request to add an occupant or occupants.

LEGISLATIVE HISTORY AND BACKGROUND

Existing Oakland Landlord-Tenant Laws

In 1980, the Oakland City Council enacted its first rent control ordinance which established the Housing, Residential Rent Arbitration and Relocation Board and the Rent Adjustment Program. (Ordinance No. 9980 C.M.S.) This ordinance has been amended many times. The current Rent Ordinance (Oakland Municipal Code (“O.M.C.”) Section 8.22.010 et seq.) regulates most residential rent increases in Oakland.

In 2002, Oakland voters passed the Just Cause for Eviction Ordinance, requiring that owners of covered rental units prove one of eleven just causes before they can evict a tenant (O.M.C. Section 8.22.300 et seq.). In November 2018, the voters passed Measure Y which amended the JCO to remove the exemption for owner-occupied two- and three-unit properties and granted the City Council authority to amend the JCO to add limitations on a landlord’s right evict.

In 2003, the City Council adopted the Terminating Tenancy to Withdraw Residential Rental Units from the Rental Market Ordinance (a.k.a, “Ellis Ordinance”, O.M.C. Section 8.22.400 et seq.) to provide notice and relocation payment requirements for Ellis Act evictions. In 2018, Council amended both the Ellis Ordinance and the Code Compliance Relocation Program (O.M.C. Section 15.60.010 et seq.), and adopted the Uniform Residential Tenant Relocation Ordinance (O.M.C. Section 8.22.800 et seq.) and Relocation Payments for Owner or Relative Move-ins Ordinance (O.M.C. Section 8.22.850 et seq.); these ordinances establish a uniform schedule for relocation payments, and extending relocation payments to tenants displaced by owner move-in evictions.

In November 2014, the City Council enacted the Tenant Protection Ordinance (O.M.C. Section 8.22.600 et seq.) to deter harassing behavior by landlords, encourage landlords to follow the law and uphold their responsibility to provide habitable rental properties, and provide tenants legal recourse when they are subjected to harassing behavior by landlords. The City Council amended the TPO and Rent Ordinance in June 2019 to remove the exemption for owner-occupied two- and three-unit properties, consistent with the voters’ passage of Measure Y in November 2018.

The Housing Crisis

More than half a decade since the City enacted the TPO, the housing crisis continues to threaten and adversely impact the health, safety and the very lives of Oakland tenants. Almost two-thirds of Oakland's residents are renters, with nearly six out of every ten Oakland residents renting their homes. This is one of the highest percentages of renters in the Bay Area. Roughly a quarter of Oakland households face high housing costs in proportion to household income, poor housing conditions, unstable neighborhoods, overcrowding, or homelessness.² In just the past two years, Oakland's unhoused population has increased by 47%.³ While all Oakland tenants are impacted by the housing crisis, low-income tenants and African American, Hispanic and other communities of color have been hit the hardest; they disproportionately are renters, are rent burdened, live in overcrowded conditions, are homeless, and receive eviction notices.⁴ Oakland's July 2018 Equity Indicators Project report revealed deep inequities in housing, with an overall score of 36.8 on a spectrum of 0 (total inequity) to 100 (total equity).⁵

Oakland's skyrocketing rental market has exacerbated tensions between property owners and tenants residing in units that are rent-controlled and/or covered by the JCO. Because their properties are more valuable when they are vacant, owners are incentivized to engage in harassment to pressure their tenants to move out. This conduct often occurs even when the owner has no legal grounds to evict the tenant.

As a recent PolicyLink/San Francisco Foundation/USC PERE report emphasized, "[t]he immediate challenges of eviction and displacement should be addressed with a 'protection first' approach to stem the tide of displacement while efforts to preserve and construct housing are underway."⁶ Additionally, "Oakland At Home: Recommendations for implementing *A Roadmap Towards Equity*," a 2016 report from the Oakland Housing Cabinet convened by Mayor Libby Schaaf, included recommendations that the City strengthen the Tenant Protection Ordinance, particularly its enforcement mechanisms.

Oakland residents have overwhelmingly expressed their desire to increase protections for tenants. Seventy-five percent (75%) of the respondents to Oakland's 2018 Budget Priorities Survey considered homelessness or housing one of the top two issues they wanted the City to address in the FY 2019-2021 budget.⁷ Sixty-three percent (63%) of the respondents were willing to pay more for rent control enforcement and tenant protection. Finally, 71% of the respondents believed addressing housing displacement among people of color is extremely important or very important. This commitment of our residents is shared by the City of Oakland's Housing Implementation Cabinet, which has established a goal of protecting 17,000 affordable homes and identified "strengthen[ing] enforcement of renters' protections" as one of its seven final recommendations.⁸

² Oakland At Home: Recommendations for Implementing A Roadmap Towards Equity, From the Oakland Housing Cabinet. (March 2016). *available at* <http://oakland-home.squarespace.com/about>

³ Oakland Homelessness Surges 47% - Per-Capita Number Now Higher Than SF and Berkeley. (July 2019) *San Francisco Chronicle*. <https://www.sfchronicle.com/bayarea/article/Oakland-homelessness-surges-47-per-capita-14115123.php>

⁴ Oakland Equity Indicators Report (2018). <https://www.oaklandca.gov/documents/2018-oakland-equity-indicators-report>

⁵ *Id.*

⁶ Solving the Housing Crisis Is Key to Inclusive Prosperity in the Bay Area. (April 2018). <https://www.policylink.org/resources-tools/solving-housing-crisis-bay-area>

⁷ City of Oakland Budget Priorities Survey. (April 2019) <https://www.oaklandca.gov/documents/2018-city-of-oakland-budget-priorities-survey>

⁸ Oakland at Home, *supra* 1.

The first five years of the TPO's existence have also underscored that certain residents are especially vulnerable to harassment, including the elderly, disabled, and catastrophically ill. Moreover, as a result of developments at the national level, unscrupulous owners have exploited tenants' perceived immigration status to threaten, intimidate, and silence them.⁹ Oakland's Tenant Protection Ordinance, which will be strengthened by the proposed amendments, is a critical tool that can help preserve the diversity of the Oakland community in areas such as race, gender, national origin, age, sexual orientation, occupations and incomes.

California Tenant Protection Act of 2019

In September 2019, the California Legislature passed the Tenant Protection Act of 2019 (AB 1482), which limits rent increases and provides just cause for eviction protection to many residential rental units not otherwise covered under local law. This state law became effective January 1, 2020.

At the January 28, 2020, meeting of the City Council's Community & Economic Development Committee, Rent Adjustment Program (RAP) staff presented an informational report on local enforcement and implementation of AB 1482. In addition to recommending coordination with the rent programs of other cities on local enforcement options, the report made the following recommendations:

1. Amend Oakland's 10 percent annual rent cap to conform to state law;
2. Add failure to pay required relocation benefits as a defense to eviction in Oakland's Just Cause Ordinance to mirror state law.

Each of these recommendations concerns congruity between the state Tenant Protection Act and Oakland law. In general, the provisions of the Tenant Protection Act do not apply when a rental unit is covered by a local eviction or rent control ordinance that offers more protection than state law.¹⁰ However, the state Tenant Protection Act is stronger than Oakland law on the issue of relocation benefits. Currently, a tenant under the protection of the JCO cannot assert the landlord's failure to pay required relocation payments as a defense in an eviction action, though a tenant subject to state law can. This amendment would ensure that tenants subject to the local ordinance are not denied a benefit they are entitled to under state law.

Similarly, the Tenant Protection Act caps rent increases in a 12-month period at a maximum of either 5% plus CPI, or 10%, whichever is lower, while the Oakland Rent Ordinance caps rent increases at 10% in a 12-month period. This creates the potential for rent increases authorized under the Rent Ordinance to be illegal and actionable under the Act (example: a 10% increase based on banking or capital improvements when CPI is 3.5% and the corresponding state rent cap is 8.5%).

⁹ See, e.g., *People v. DODG Corporation, et. al.* (July 2019) available at <https://www.oaklandcityattorney.org/News/Press%20releases/Mann%20TPO%20case%20June%202019.html>; Oakland Tenants Live with Uncertainty In Tight Market. (January 2017) *San Francisco Chronicle*. available at <https://www.sfchronicle.com/bayarea/article/Oakland-tenants-live-with-uncertainty-in-tight-10842256.php>; Rent Increases, Evictions Up in Immigrant Communities Under Trump, Housing Lawyers Say (July 2017) *Sacramento Bee*. <https://www.sacbee.com/news/politics-government/capitol-alert/article160239609.html>

¹⁰ The just cause for eviction provisions of the Tenant Protection Act do not apply to units subject to a local just cause law that was (1) adopted on or before September 1, 2019, or (2) adopted or amended after September 1, 2019, if more protective than the Tenant Protection Act. The rent restriction provisions of the Tenant Protection Act do not apply to units subject to a local rent cap that restricts annual increases to amount less than provided by the Act.

ANALYSIS

These proposed amendments both clarify the rights of Oakland tenants and strengthen those rights. They expand the protection of the TPO, and the JCO and conform our local ordinances to state law. The proposed amendments are as follows:

A. Clarification of Definitions in TPO

The definitions of “tenant” and “owner” in the TPO are clarified and made consistent with those in the JCO. In addition, definitions are added for the terms “elderly,” “disabled,” and “catastrophically ill.”

B. Elimination of TPO Exemptions

Exemptions from the TPO for non-profit housing and newly constructed rental units are eliminated.

C. Expanded Scope of Tenant Harassment

To allow for City Attorney enforcement, conduct already prohibited by state law is added to the list of prohibited conduct in the TPO including: illegal lock-outs, utility shut-offs, discrimination, elder financial abuse, fraud, and forcing an occupant to vacate and re-register for the purpose of preventing them from acquiring tenancy rights. The scope of other prohibited conduct is also clarified. For example, video or audio recording inside a tenant’s home without a lawful purpose, unreasonably inquiring into a tenant’s relationship status, and unreasonably restricting or inquiring about overnight guests are explicitly included under interference with a tenant’s right to privacy. Bad faith unilateral changes in the terms of tenancy are also prohibited. In addition, the unilateral severance from a tenancy of various amenities, including parking, storage space, laundry rooms, patios, and gardens on the same lot, as well as kitchens, toilets, and lobbies in residential hotels, is prohibited, absent just cause for the severance. Lastly, fees for the late payment of rent are limited to no more than 1% of the monthly rent, applicable to rental agreements entered into or renewed on or after May 6, 2020.

D. Increased Minimum Damages in TPO

While the TPO already provides for minimum damages of \$1,000, to deter harassment of the most vulnerable tenants, minimum damages are increased to \$2,000 for elderly or disabled tenants and \$2,500 for catastrophically ill tenants. In addition, minimum damages for threatening to report a tenant to an immigration authority is increased to \$2,000.

E. Enhanced City Attorney Enforcement Powers of TPO

As described above, the expansion of the scope of prohibited conduct to include certain conduct already prohibited by state law enables the City Attorney to enforce compliance when there is a pattern and practice of unlawful harassment. In addition, the courts are given authority to impose civil penalties of up to \$1,000 per day for each violation of the ordinance in an action filed by the City Attorney when there is a pattern and practice of unlawful harassment.

F. Modification of 15-day Waiting Period in TPO

The 15-day waiting period before a tenant can file a civil action under the TPO after giving notice of a violation related to repairs is eliminated if the landlord's conduct is intentional and demonstrates willful disregard for the comfort, safety, or wellbeing of the tenants.

G. Revised Definition of Housing Services in Rent Ordinance

The definition of housing services in the Rent Ordinance is amended to include the right to maintain a specific number of occupants and the right to one-for-one replacement of roommates, thus giving tenants the right to petition the rent program for a rent reduction if the landlord unreasonably denies them the right to replace a departing roommate.

H. Maximum Rent Increase under Rent Ordinance

The 10% maximum rent increase for units covered by the Rent Ordinance is amended to "not more than 10 percent, or the amount permitted for Oakland rental units subject to California Civil Code 1947.12, whichever is lower." (emphasis added)

I. Failure to Pay Relocation Benefits added as Defense to Eviction

In conformance with AB 1482, a landlord's failure to pay legally required relocation benefits is made a defense to an eviction action under the JCO.

J. Limit on Evictions Based on Unilateral Changes in Terms of Tenancy

The JCO is amended to prohibit eviction based on an alleged violation of a term of tenancy that was unilaterally imposed by the landlord after the tenancy began, without providing proper notice to the tenant that they need not agree to the new term.

K. Limit on Evictions Based on Additional Occupants

The JCO is amended to prohibit eviction based on adding an additional occupant or occupants to a rental unit, if the landlord has unreasonably refused a tenant's written request to add an occupant or occupants, so long as the total number of occupants does not exceed occupancy limits imposed by law.

L. Amendments to Relocation Ordinances

Consistent with the JCO amendment that makes failure to comply with relocation payment requirements a defense to eviction, the ordinance includes conforming amendments to Articles III, VII, and VIII of Chapter 8.22 of the O.M.C.¹¹ In addition, the timing of relocation payments and effective dates of CPI increases to the relocation amounts are clarified.

¹¹ Articles III, VII, and VIII are the following ordinances: Terminating Tenancy to Withdraw Residential Units from the Rental Market, Uniform Residential Tenant Relocation Ordinance, and Relocation Payments for Owner or Relative Move-Ins.

FISCAL IMPACT

These amendments would have little direct fiscal impact on City government. Adequately responding to the public's inquiries regarding the amendments may result in small increases in staff support time in the Department of Housing and Community Development and the Office of the City Attorney. Many of the costs to the City Attorney's office will be recoverable in the form of attorney's fees that the City receives in successful actions brought by the City Attorney. The Department of Housing and Community Development may incur additional costs related to updating, creating, and translating FAQs and other materials related to the amendments.

PUBLIC OUTREACH / INTEREST

Groups representing landlords or tenants, the Oakland Housing Authority, and non-profit housing organizations were informed about this proposed legislation and invited to provide input.

COORDINATION

The City Attorney's Office, and City Council sponsors coordinated with the City Administrator's office on the introduction of this legislation.

SUSTAINABLE OPPORTUNITIES

Economic: Stronger tenant protections help prevent tenant displacement – thereby preventing homelessness, loss of employment, disruption of children's education, and other ways by which displacement undermines an individual's opportunity to improve his/her economic situation.

Environmental: Tenant harassment can force individuals to leave rent controlled housing. Because many Oakland residents cannot afford market rate housing in their communities, displaced individuals and families may have to leave Oakland to secure more affordable housing. This may cause individuals to live farther away from their workplaces, potentially leading to longer commutes and more cars on the road.

Housing is also a health issue. Displacement can lead to homelessness, and the average life expectancy of people without housing falls by as much as 27 years.¹²

Harassment often takes the form of code violations, failure to conduct repairs, and/or failure to perform maintenance, all of which expose particularly vulnerable populations to environmental hazards. These amendments would help to ensure that existing standards are adhered to and that tenants have access to the healthy housing.

¹² This is based on one study of homeless adults finding an average age at death of 51.2 years (Mortality Among Homeless Adults in Boston: Shifts in Causes of Death Over a 15-year Period. (2013). *JAMA Internal Medicine*. available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3713619/pdf/nihms-493296.pdf>) compared to the average life expectancy in the United States (78.74 years in 2013, according to the World Bank).

Race and Equity: These amendments would significantly aid in protection of populations vulnerable to harassment such as the disabled, elderly, catastrophically ill, African American, Hispanic and other communities of color, and immigrants by increasing the penalties levied against property owners who target them. The amendments advance social equity by protecting tenants who might otherwise not exercise their rights for fear of retaliation.

Additionally, these amendments would discourage owners from engaging in harassing behavior to empty their units and subsequently re-rent them at a higher profit, which would promote compliance with the City's existing rental laws. People of color, especially African Americans, in Oakland disproportionately rent, are rent burdened, live in overcrowded conditions, are homeless, and receive eviction notices. Strengthening the City's Protection efforts would advance equity in housing outcomes, which are critical to almost all other forms of equity.

ACTION REQUESTED BY THE CITY COUNCIL

Adopt An Ordinance Amending Chapter 8.22 Of The Oakland Municipal Code (Residential Rent Adjustments And Evictions) To (1) Limit The Maximum Rent Increase In Any One Year To Conform To State Law, (2) Make Failure To Pay Required Relocation Benefits An Affirmative Defense To Eviction, (3) Limit Late Fees, (4) Prohibit Unilaterally Imposed Changes To Terms Of Tenancy, (5) Add One-for One Replacement Of Roommates To The Definition Of Housing Services, (6) Prohibit Eviction Based on Additional Occupants If Landlord Unreasonably Refused Tenant's Written Request to Add Occupant(s), and (7) Strengthen Tenants' Rights And Their Enforcement Under The Tenant Protection Ordinance.

For questions regarding this report, please contact Oliver Luby at (510) 238-4924.

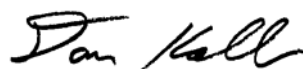
Respectfully Submitted,



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