



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: June 7, 2016

TO: Carolyn Lehr, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: Study Session On Proposed Eviction And Harassment Protection Ordinance

RECOMMENDATION

Staff recommends that the City Council provide direction on the proposed Eviction and Harassment Protection Ordinance as discussed in this report and presented by staff at the study session.

BACKGROUND

At its meeting on October 1, 2014, the Housing Committee approved a motion recommending that the City contract with a landlord/tenant mediation provider to work directly with Emeryville tenants facing rent increases and to look further into a rent mediation board such as those in the cities of San Leandro and Alameda.

In early 2015 staff was directed by the City Council to bring a variety of tenant protections including rent control, rent boards, eviction protections and harassment protections to the Council for discussion.

At the City Council meeting on May 5, 2015 the Council directed staff to work with the Housing Committee to draft a tenant protection ordinance related to eviction and harassment protections. The Council directed staff to draft an ordinance that provided tenants protection from no cause evictions, evictions due to unit removal from the rental market, and harassment protections, and to exclude an administrative review process from the draft ordinance. As an alternative, a tenant wishing to challenge an eviction would bring a private right of action and would rely on the City's ordinance in the court action against the landlord. Under this model, City staff would not review or approve evictions. The Council also directed staff to exclude rent control due to its limited applicability in Emeryville, since approximately 700 units (or 10% of the total units in Emeryville) would be subject to rent control under the Costa Hawkins Act.

On October 7, 2015, the Housing Committee reviewed elements from model and existing eviction and harassment protection ordinances and made recommendations to the City Council, as detailed below. On October 14, 2015, the Economic Development Advisory Committee reviewed the Housing Committee's proposals and provided general comments.

Staff has continued to research issues related to providing eviction and harassment protection and with input from the City Attorney's Office has further refined the proposed elements for consideration.

DISCUSSION

State law dictates the eviction process, formally called an "unlawful detainer lawsuit". Details of the eviction process can be found in the California Department of Consumer Affairs California Tenants document excerpted as Attachment 1.

In addition, eviction protection ordinances must comply with the Ellis Act (California Government Code section 7060-7060.7), but only if the local agency has adopted rent control. The renter protections offered by the Ellis Act do not apply if local agency does not have rent control requirements. Since the City Council has indicated it does not wish to adopt a rent control ordinance at this time, details of the Ellis Act are not analyzed in this report.

On October 7, 2015, staff presented the Housing Committee with a list of specific elements from model and existing eviction and harassment protection ordinances. The elements include: (1) exemptions, (2) allowable grounds for eviction, (3) relocation payments, (4) defense to the eviction, (5) notice to the City Clerk, (6) tenant harassment protections, (7) rent adjustments, (8) notice to tenants of their rights, and (9) civil remedies. The Housing Committee reviewed the list of elements and proposed modifications. The proposed Tenant Protection Ordinance Elements incorporating Housing Committee and staff modifications is included as Attachment 2. Below please find the list of elements with Housing Committee comments in ~~strike through~~ and underline, with additional staff recommendations indicated in italics.

(1) Exemptions - Units that are exempt and therefore would not be covered by the ordinance.

- Two unit residences where the landlord lives in one unit and the landlord has occupied the unit for 12 months and is not absent for a total of 2 months in the 12 month period.
- ~~Newly constructed units~~
- Government Owned Housing Units
- Non-Profit Owned Housing Units
- Transient or tourist hotel occupancy

- Housing accommodations in nonprofit hospital, convent, monastery, church, religious facility or extended care facility
- Landlords with boarders renting a bedroom in an owner-occupied unit

The Housing Committee recommended removing the “Newly constructed units” provision from the list of exemptions and therefore units built after the effective date of the ordinance will be subject to the ordinance.

The Housing Committee recommended including in the list of exemptions landlords with boarders renting a bedroom in an owner-occupied unit (e.g. in a two or more bedroom unit).

Staff recommends the above provisions including the Housing Committee modifications.

(2) Allowable Grounds for Eviction - Conditions that a landlord must be able to prove in order to evict a tenant.

- Failure to pay rent
- Substantial breach of rental agreement
- Nuisance
- Illegal use of the unit
- Termination of the rental agreement and tenant refuses to execute a written extension for materially the same terms
- Tenant has, after proper written notice to cease, refused the landlord access to the unit
- Unapproved sub-tenant
- Owner move-in or relative with one degree of kinship (must remain owner/kin occupied for 2 years)
- Demolition
- Landlord is withdrawing unit from rent or lease (special protections for seniors and disabled tenants under Ellis Act)
- Health and Safety reasons for removal from rental market
- To carry out necessary capital improvements or rehabilitation (with possible right to reoccupy)

The Housing Committee recommended allowing evictions in the case where the landlord intends to rent to a relative with one degree of kinship.

Staff recommends the above provisions including the Housing Committee modifications.

(3) Relocation Payment - Payment(s) to tenant in the event of an allowable eviction.

In the amount of:

- First and last month's deposit at market rate for a comparable unit in local market
 - Security deposit (not to exceed one month's current rent)
 - Moving expenses, not to exceed one month's rent (at current rent)
 - An additional 1 month rent (at current rent) for each 30 days in which relocation payment is not made after the tenant has vacated the unit
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- For owner move-ins or relative with one degree of kinship (must remain owner/kin occupied for 2 years)
 - Withdrawal of the unit from the rental market
 - Demolition
 - Health and safety (with right to return once unit is placed back on the rental market --excluding when the unit was removed from the rental market because of acts of God
 - Rehabilitation (with right of return once the unit is placed back on the rental market.)

The Housing Committee recommended that relocation payments should be made on evictions in which landlord removes the unit from the Housing Market.

The Housing Committee recommended including a penalty of one month's current rent for each month after tenant move-out that the landlord does not remit the relocation payment to the tenant.

The Housing Committee recommended including first and last month's payments at market rate for a comparable unit in the local market, a security deposit, and moving expenses not to exceed one month's current rent amount.

Staff recommends limiting the security deposit to not exceed one month's current rent.

The Housing Committee recommended excluding acts of God from the Health and safety reasons for removal from rental market. In other words, if the unit is removed from the housing market due to acts of God, the landlord is not responsible for relocation payments to the tenant.

The Housing Committee recommended to allow "right of return" to tenants on units that were removed from the rental market due to health and safety issues or rehabilitation.

Staff recommends adding language to the Health and Safety category such as: "Removal from the rental market to conduct substantial repairs that cannot be completed while the unit is occupied, and that are necessary either to bring the property into compliance with applicable codes and laws affecting health and safety of tenants of the building or under any outstanding notice of code violation affecting the health and safety of tenants of the building."

Staff recommends adding language to the Rehabilitation Category such as: "The owner, having obtained all necessary permits, seeks in good faith to undertake substantial repairs that cannot be completed with the unit occupied."

(4) Defense to the eviction - Conditions in which the tenant can challenge the eviction.

- Landlord is not current on Emeryville Business License fees and ~~other state and federal fees and taxes~~ or has not submitted fees and taxes that are "true and correct".
- Landlord occupied exemption not valid because landlord does not reside in the unit for 10 or more months a year
- Tenant not properly given notice of tenant rights
- City Clerk not properly noticed
- Landlord acceptance of the rent subsequent to the eviction notice.

The Housing Committee recommended that if a landlord accepts rent after the eviction notice is issued, that the acceptance is a defense of the eviction

Staff recommends removing "other state and federal fees and taxes" because the city does not have the ability in this context to require these documents because they are confidential.

Staff recommends adding language such as "the owner, having accepted the final rent due before the eviction, collects additional rent" because landlords generally collect rent monthly and eviction notices are required to give 60 day notices and therefore a landlord will likely collect one month's rent during the notice period.

(5) Notice to City Clerk - Requirements for landlord notification to the City in the event of an eviction.

- 10 days
- Attach rental agreement
- Include rents charged for tenants last three years of occupancy or entirety of occupancy if less than three years.
- Reason for eviction
- Copy of Eviction Notice

The Housing Committee recommended that the notice to the City Clerk include rents for tenant's last three years of occupancy or entirety of occupancy if less than three years.

Staff recommends no notice to the City because the City does not have an administrative function in the eviction or eviction defense.

(6) Tenant Harassment Protections - Protections for tenants from being harassed into "voluntarily" moving without an eviction as well as protections for tenants from landlord retaliation for challenging an eviction.

- Interrupt or fail to provide housing services (or threat to do so)
- Fail to perform repairs and maintenance
- Fail to exercise due diligence in completing repairs
- Abuse of owners right to access
- Remove from rental unit personal property
- Influence or attempt to influence tenant to vacate through fraud, intimidation or coercion (including threatening on basis of immigration status)
- Offer payments to a tenant to vacate (more than once in a 6 month period)
- Threaten the tenant, by word, gesture or by physical harm
- Interfere with tenants right to quiet use and enjoyment of rental unit
- Willful Failure to accept or acknowledge receipt of the tenant lawful rent payment
- Willful Failure to cash rent check for over 30 days
- Interfere with tenant's right to privacy
- Request information that violates the tenant's right to privacy
- Other repeated acts or omissions
- ~~Removal of a housing service for the purpose of causing the tenant to vacate the rental unit (parking space, etc.)~~ Failure to provide a utility or other amenity promised under the lease.
- Retaliation against tenant because of the tenant's exercise of rights under the Ordinance

The Housing Committee recommended modifying the language to include failure to provide a utility or other amenity promised under the lease.

Staff recommends the element titled "Other repeated acts or omissions" to include language such as "Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace and quiet of any tenant and that cause any tenant to vacate the dwelling unit or to surrender or waive any rights in relations to occupancy"

(7) Rent Increases - Prohibition on raising the rent in a unit above market prices as a form of eviction.

- ~~Cannot use rents above market rents as a means to evict otherwise must follow state law regarding notices.~~

The Housing Committee recommends removal of this element *and staff concurs*

(8) Notice to Tenants of their Rights under the Ordinance - Requirements for tenants' notification of their rights under the proposed ordinance.

- At lease up or lease renewal
- Within 30 days of ordinance in effect
- With Eviction Notice
- Within 30 days when the ordinance has a substantial amendment as defined by the City

Housing Committee recommended adding at lease renewal and within 30 days when the ordinance has a substantial amendment as defined by the City.

Staff recommends the above provisions including the Housing Committee modifications.

(9) Civil Remedies - Tenant challenges against an illegal eviction and any damages due to them.

- Enforced by Aggrieved Tenant
- Injunction
- Damages
- ~~Attorney Fees~~

The Housing Committee recommended deleting attorney's fees.

Staff recommends including the City's ability to sue under the ordinance.

Mediation Services

Staff recommends contracting with a mediation service provider to interact with low income landlords and tenants negotiating an eviction. This neutral third party provider would assist low income landlords in understanding their responsibilities under the ordinance and to provide low income tenants with information regarding their rights and responsibilities and mediation services in negotiating issues regarding their tenancy and eviction.

Development of the Ordinance

Development of the ordinance will require staff resources, estimated at 20-30 hours of total staff time from the City Attorney's Office, 40-80 hours of total staff time from the

Community Development Department, and 10-20 hours of total staff time from the Finance Department as well as approximately \$10,000 in mailing costs. Development will include City Attorney and staff time to research and draft the ordinance as well as required notices. This will include soliciting recommendations from the Housing Committee and the Economic Development Advisory Committee. If Council recommends City Clerk notification of evictions, the City Clerk will need to develop procedures for accepting and documenting submission of eviction notices. Staff will mail notices to residential addresses and residential commercial business license holders to inform them when the draft ordinance will be reviewed by the City Council. Staff will send an additional notice to the same mailing list once the ordinance has been adopted in order to inform tenants and landlords of their rights and responsibilities.

Implementation of the Ordinance

Ongoing implementation of the ordinance is estimated to require between 0.5 and 1.0 full time equivalent (FTE) staff time at a Management Analyst level depending on the number of evictions and the number of Right of Action cases filed in court. Staff will send periodic notices to landlords and residential properties in order to inform landlords and tenants of their rights and responsibilities and any future changes to those rights and responsibilities at an approximate cost of \$5,000 per mailing. If so directed, the City Clerk will receive and file all Notices of Eviction. The Finance Department has adopted new Residential Business License applications with gross receipt information per dwelling unit. Housing staff in the Community Development Department expect to receive extensive information requests at the onset of the ordinance as well as ongoing questions from landlords and tenants. In the event a tenant brings an action against a landlord in court, staff will be required to provide information on the notices submitted to the City Clerk (if this provision is included) and proof of payment of appropriate Residential Business License Fees. Community Development staff would also review eviction notices to ensure that the correct information and payments have been made with the Residential Business License applications.

Staff resources will also be required for enforcement of the ordinance. Those costs will depend on the form of enforcement authorized by the ordinance.

ADVISORY BODY RECOMMENDATIONS

The Housing Committee's recommendations are included in the discussion above.

On October 14, 2015 the Economic Development Advisory Committee reviewed the Eviction and Harassment Protection Ordinance document and the Housing Committee proposals. The committee members did not wish to comment or provide recommendations on the specific elements of the ordinance, but provided the following general feedback:

- The ordinance should allow for equal treatment of tenants and landlords.

- The ordinance should be as clear as possible, to simplify implementation and mutual understanding.
- How the ordinance affects existing leases should be clarified.
- How the ordinance applies to work/live units should be clarified.

DISCUSSION QUESTIONS

Based on the above discussion, staff seeks the Council's direction on the proposed draft Eviction and Harassment Protection Ordinance:

1. Does the City Council wish to adopt an Eviction and Harassment Protection Ordinance?
2. Does the Council concur with the revisions recommended by the Housing Committee and staff, particularly those recommendations with respect to:
 - a. Exemptions
 - b. Grounds for eviction
 - c. Relocation payments
 - d. Eviction defense
 - e. Notice to the City Clerk
3. Does the Council wish to make any further revisions to the elements of the proposed ordinance?

CONCLUSION

Staff requests that the City Council provide feedback and direction on the elements of the proposed ordinance based on the above discussion. Based on the direction and discussion at the study session, staff may recommend an additional study session, or the Council may direct its advisory committees to provide further recommendations. After staff has received clear direction on the elements of the ordinance, a draft ordinance will be prepared. In addition, community input will be sought through a citywide mailing to all residential addresses as well as to all residential commercial business license holders. The final draft ordinance will be brought back to the Council for consideration at a first and second reading. After passage of the ordinance, information will be sent to all residential commercial business license holders with directions on how to access required notices to their tenants.

PREPARED BY: Catherine Firpo, Housing Coordinator

REVIEWED BY: Chadrick Smalley, Economic Development & Housing Manager

**APPROVED AND FORWARDED TO THE
EMERYVILLE CITY COUNCIL**



Carolyn Lehr
City Manager

- Attachments:
1. Eviction Process in California
 2. Proposed Eviction and Harassment Protection Ordinance Elements
 3. Detailed Cost and Revenue Estimates