City of Emeryville
CALIFORNIA

**MEMORANDUM**

**DATE**: November 1, 2016

**TO:** Carolyn Lehr, City Manager

**FROM**: Charles S. Bryant, Community Development Director

**SUBJECT: Ordinance Of The City Council Of The City Of Emeryville Adding Chapter 40 To Title 5 Of The Emeryville Municipal Code, "Residential Landlord and Tenant Relations"**

## RECOMMENDATION

Staff recommends that the City Council adopt the first reading of the attached ordinance to add Chapter 40 to Title 5 of the Emeryville Municipal Code, "Residential Landlord and Tenant Relations". The ordinance adopts eviction protections and harassment protections for tenants in the City of Emeryville.

## BACKGROUND

The most recent estimates available from the U.S. Census Bureau indicate that there are a total of 6,666 residential dwelling units in the City.[1] Of the total units, 5,997 are occupied, with approximately 64 percent occupied by renters and 36 percent owner-occupied. Of all the dwelling units, nearly sixty percent (3,832) were built before 1990. Likewise, slightly more than half of dwelling units that are rented were constructed before 1990 (2,062).

Because a majority of City residents are renters, and in light of the current housing affordability concerns that pervade the Bay Area, the City has explored ways to regulate the relations between certain residential landlords and residential tenants to increase certainty and fairness within the residential rental market.

On October 1, 2014, the Housing Committee recommended that the City explore means of addressing disputes between residential landlords and tenants regarding residential rent increases and arbitrary terminations of tenancy. On May 5, 2015 the City Council held a study session at which staff was directed to analyze various just cause eviction and anti-harassment protections, and referred the matter to the Housing Committee to work out the details. On October 7, 2015, the Housing Committee reviewed and provided feedback on the staff analysis of various tenant protection measures. At a

[1] All statistics from U.S. Census Bureau, 2014 American Community Survey 5-Year Estimates, Tables DP04 and B25036 unless otherwise specified.

study session on June 7, 2016, the City Council reviewed the recommendations of the Housing Committee and directed that a just cause eviction, anti-harassment, and relocation assistance ordinance be drafted for future consideration by the Council.

## DISCUSSION

The proposed ordinance broadly regulates most residential rental units in the City, limits the reasons that landlords may terminate a tenancy in accordance with state laws, prohibits harassment of residential tenants, requires tenants be provided with notices of tenant rights under the ordinance, and mandates that landlords use a form notice of termination of tenancy and provide a copy of the completed notice and applicable rental agreement to the City.

Certain residential units are exempt from the proposed ordinance, including owner-occupied units where the owner is renting two or fewer bedrooms, housing units owned by a nonprofit hospital, convent, monastery or similar type of development, government owned units, units owned by a nonprofit cooperative that is controlled by the residents, and units subject to state or federal regulations that are already subject to a form of just cause eviction protections that would preempt the City's regulations.

Landlords owning units covered by the ordinance would be prohibited from evicting tenants unless the landlord has a just cause for the eviction. Just causes are defined as:

- Failure to pay rent;
- Breach of the rental contract;
- The tenant uses the unit for illegal activities;
- The tenant creates or maintains a dangerous or unsanitary condition;
- The tenant fails to allow the landlord access to the unit after receiving notice in accordance with California law;
- The tenant rejects a written lease extension that is substantially similar to the original lease agreement;
- The tenant violates any occupancy restriction in the rental agreement;
- The landlord is recovering the unit after a rental of six months or shorter where the Landlord previously was an owner-occupant of the unit; or
- The landlord intends to convert the unit into a condominium under the provisions of the Emeryville Municipal Code pertaining to Residential Condominium Conversions.

In addition to the above grounds for eviction, the ordinance allows certain "no fault" evictions, including:

- If the landlord is permanently removing the unit from the residential rental market;

- If the landlord, or the landlord's parent(s) or child(ren), intend to move into the unit;
- If the unit is the only unit the landlord owns and the landlord intends to sell it;
- If the rental unit is unfit for human habitation and is being repaired; or
- If the rental unit is being temporarily removed from the market in order to make capital improvements, so long as the landlord has all permits necessary for and diligently pursues the completion of the work.

In the event of a no-fault eviction, the tenant, under the proposed ordinance, is entitled to relocation assistance from the landlord equal to five times the U.S. Department of Housing and Urban Development (HUD) Fair Market Rents or four times the current monthly rent paid by the tenant, whichever is greater. The amount of the relocation assistance was determined based on the City Council's direction to provide assistance in the amount of first and last months' rent at market rate for a comparable unit, one month's rent for a security deposit, and moving expenses equal to one month's rent (i.e. four months of market rate rent for a comparable unit).

Determining comparable market rate rents could lead to disputes between landlords and tenants regarding the correct amount of the relocation payment. To minimize the occurrence of these disputes, an easily verifiable standard for the required relocation assistance is needed. Accordingly, the proposed ordinance relies on the HUD Fair Market Rents to set the relocation payment, but because the HUD Fair Market Rents are currently less than actual market rents, the proposed ordinance provides tenants eligible for the relocation assistance with one additional month's rent to address the discrepancy between the HUD Fair Market Rents and actual market rents.

Notably, tenants are currently entitled to a relocation assistance payment under the City's condominium conversion regulations in the Planning Regulations. That relocation assistance payment is the greater of either three times the HUD Fair Market Rents or three times the current monthly rent paid by the tenants. Accordingly, condominium conversions are considered "For Cause" terminations under the proposed ordinance, because the relocation assistance payment currently protects tenants terminated due to a conversion.

Landlords evicting tenants for a no-fault eviction must also offer the tenant the right to return to the unit if the landlord re-rents the unit within two years after terminating the tenancy. The tenant must keep the landlord informed of the tenant's address where the notice of the right to return can be sent and the tenant must respond to the right to return within thirty days of delivery of the notice. The landlord must offer the tenant the right to return under substantially the same terms as the prior rental agreement, but if the rent is increased, the landlord must also provide a notice of rent increase as required by California law.

The proposed ordinance also prohibits landlords from harassing tenants. Harassment is defined to include:

- Interrupting housing services
- Failing to repair or maintain the rental unit
- Abusing the landlord's right to access the rental unit
- Removing the tenant's personal property from the unit
- Influencing the tenant to vacate the unit
- Offering the tenant consideration in exchange for the tenant to vacate the unit
- Threatening the tenant
- Refusing to accept rent
- Refusing to cash a rent check for over thirty days
- Requesting information that violates the tenant's right of privacy
- Other repeated acts or omissions of such significance as to substantially interfere with or disturb the tenant's comfort, peace or quiet enjoyment of the rental unit.

The proposed ordinance requires that landlords provide tenants with notice of protections under the ordinance, which may be included in a lease or rental agreement. The proposed ordinance also requires that a landlord terminating a tenancy provide the City with a copy of the notice of termination given to the tenant as well as a copy of the current lease with which the City may verify monthly rents and any relocation payment, as applicable. The proposed ordinance includes a form notice of termination to be used by landlords.

## ADVISORY BODY RECOMMENDATIONS

On October 5, 2016 the Housing Committee reviewed the draft Eviction and Harassment Protection Ordinance and recommended forwarding it to the City Council for approval with a request that the City Council review a landlord's ability to evict a tenant under the "No Fault Terminations" when a "Landlord Will Sell Unit". The committee would like staff to provide legal justification for this type of eviction and whether other cities allow evictions of this type.

On October 18, 2016, the Economic Development Advisory Committee (EDAC) reviewed the draft Eviction and Harassment Protection Ordinance. The EDAC's comments will be provided verbally at the November 1, 2016 City Council meeting.

## FISCAL IMPACT

The proposed ordinance is designated as a "right to private action" enforcement provision. However, staff has identified certain administrative actions to be undertaken,

as well as support for inquiries and challenges that will arise, and which will represent increased costs for the City. To achieve the greatest responsiveness and cost efficiencies, staff will recommend a combination of part-time staff assistance—perhaps provided by an intern—together with a new or expanded contract for Housing Program Assistance by an experienced third party provider to include technical assistance. The contract assistance could provide intake, explanation of ordinance provisions, hearing/mediation services, and other related technical assistance.

In all, staff estimates that the total cost for support and administration will be in the $60,000 - $70,000 range annually. This technical assistance does not include funding any enforcement actions that may be taken by the City, . If the ordinance is approved by the City Council, staff will bring forward on an upcoming agenda, a request for funds to be allocated either from the General Fund or another source such as Housing Fund 299. In either case, the program cost will impact the City's budget in support of current services and projects.

## LEGAL CONSIDERATIONS

The City Council has discussed but is not currently pursuing a rent control or rent stabilization ordinance that would regulate the amount by which a landlord could increase residential rents. Accordingly, the relevant state regulations of residential tenancies are: Civil Code Section 827, which mandates that landlords provide written notice of rent increases to tenants; and Civil Code Section 1945, which mandates that a residential tenancy continue as a month to month tenancy if the landlord accepts rent after the expiration of a written lease or rental agreement.

The City is authorized to enact the proposed ordinance as an exercise of its police power; it is not preempted by state law because the proposed ordinance provides for procedural regulation of evictions by landlords, which local authority was affirmed by the California Supreme Court in *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 148.

## CONCLUSION

Staff recommends that the City Council take the following actions:

1. Introduce the Ordinance after a motion to read by title only.
2. Take public testimony regarding the Ordinance.
3. Adopt the first reading of the Ordinance.

**PREPARED BY:** Catherine J. Firpo, Housing Coordinator

**REVIEWED BY:** Chadrick Smalley

Economic Development and Housing Manager

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

Carolyn Lehr

Carolyn Lehr, City Manager

Attachment: Draft Ordinance