



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE REPORT

AGENDA DATE: March 5, 2019

TO: Mayor and Councilmembers

FROM: Ariel Calonne, City Attorney

SUBJECT: Follow-Up to Questions on Proposed Residential Tenant Protection Ordinances

This report addresses issues and suggestions that arose during the Ordinance Committee's meeting on February 26, 2019.

Does State Law Require A Landlord to Have Cause for Evictions?

During public comment, a speaker argued that state law already contains substantive protections against no-cause evictions. This is not correct.

Under Civil Code section 1946.1, any month-to-month tenancy can be terminated without cause upon 60 days' notice.

State law does require cause for early termination of leases. Code of Civil Procedure section 1161 defines "unlawful detainer" to include 3-day notice of termination for failure to pay rent, failure to meet other terms of the lease, or creating a nuisance or other unlawful activity. Basically, a lease is a contract for a specified period of occupancy, and the occupancy cannot be shortened without cause. However, nothing in state law compels a landlord to offer a lease extension upon conclusion of the original term.

In addition, state law clearly empowers cities to control the acceptable reasons or causes for eviction. Civil Code section 1946.1(g) provides that:

"This section may not be construed to affect the authority of a public entity that otherwise exists **to regulate** or monitor **the basis for eviction.**"
(Emphasis added.)

In other words, state law protects the City's **substantive** power to regulate the acceptable causes for evictions.

On the other hand, state law is also clear that cities may not regulate or change the state law **procedures** for evictions. This was the basis for my earlier advice to avoid the Task Force recommendations which would have affected the notices for and timing of evictions. But, just like the legislature in section 1946.1, the courts have long recognized the City's power to limit the **substantive** reasons for eviction:

“. . . , under *Birkenfeld*, 'municipalities may by ordinance limit the substantive grounds for eviction by specifying that a landlord may gain possession of a rental unit only on certain limited grounds. . . . But they may not procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes'” (*San Francisco Apartment Assn. v. City and County of San Francisco* (2018) 20 Cal.App.5th 510, 516, *review denied* (Apr. 25, 2018); citations omitted.)

Accordingly, it is clear that cities have the authority to specify substantive limits on the reasons why a landlord can recover possession of his or her property.

Policy Issues

Tenants' Eviction Defenses Under The Mandatory Lease Ordinance

Mr. Jay Hartz commented that Section 26.40.020 A. of the Mandatory Lease Ordinance should be revised to add a one-year limit on tenants' defenses against actions to recover possession. (See Attachment 1.) The revised language would read as follows (with bold, double underscores shown against the February 26 Ordinance Committee draft):

26.40.020 Remedies.

A. DEFENSE TO ACTION TO RECOVER POSSESSION. Failure of a landlord to comply with any of the provisions of this Chapter shall provide the tenant, **for a period of one year from the date of the failure of the landlord to comply with this Chapter,** with a defense in any legal action brought by the landlord to recover possession of the rental unit.

Applicability of the Mandatory Lease Ordinance to Owner-Occupied Units

The Santa Barbara Association of Realtors, Santa Barbara Rental Property Association, and the California Apartment Association sought clarification of proposed Section 26.40.010 G. 2. which provides:

G. APPLICABILITY. This section shall not apply to:

...

2. An owner-occupied unit that is rented to a tenant for less than one year; or

They seek clarification on whether this section applies to “duplexes and/or triplexes where owners share the property with their tenant.” (Attachment 2, SBAOR letter, February 22, 2019.)

As drafted, we do not believe the duplex or triplex units occupied by tenants are “owner-occupied” for the purposes of the proposed ordinance.

ATTACHMENT(S): 1. Mr. Jay Hartz Handout, February 26, 2019
2. SBAOR, SBRPA, CAA letter, February 22, 2019

PREPARED BY: Ariel Calonne, City Attorney

SUBMITTED BY: Ariel Calonne, City Attorney

APPROVED BY: City Administrator's Office

PROPOSED REVISION TO LANGUAGE OF
SECTION 26.40.020 A OF PROPOSED ONE YEAR LEASE
ORDINANCE.

I SUGGEST THAT THE SECTION BE REVISED TO READ:

“FAILURE OF A LANDLORD TO COMPLY WITH ANY
OF THE PROVISIONS OF THIS CHAPTER SHALL
PROVIDE THE TENANT, FOR A PERIOD OF ONE YEAR
FROM THE DATE OF THE FAILURE OF THE LANDLORD
TO COMPLY WITH THIS ORDINANCE , WITH A
DEFENSE IN ANY NO CAUSE EVICTION ACTION (AS
DEFINED IN SECTION 26.50.080 A. OF
ORDINANCE__ {MASS EVEICTION ORDINANCE}
BROUGHT BY THE LANDLORD TO RECOVER
POSSESSION OF THE RENTAL UNIT.”

Jey HARTZ

Attachment 1



February 22, 2019

Chair Kristen Sneddon
Councilmember Oscar Gutierrez
Councilmember Randy Rowse
PO Box 1990
Santa Barbara, CA 93102

RE: Proposed Residential Tenant Protection Ordinances

Dear Chair Sneddon and Councilmembers,

The Santa Barbara Association of REALTORS® (SBAOR), The Santa Barbara Rental Property Association (SBRPA), and the California Apartment Association (CAA) applaud the efforts of the City to enact the unanimously agreed upon recommendations from the Tenant/Landlord Task Force (Task Force). This Task Force, which was comprised of tenants and landlords, met for five months to create compromises which would enhance positive relationships between tenants and landlords. The major portion of the Task Force recommendations was education and we have attached a draft renter brochure that we will customize to be Santa Barbara centric. In addition to written education, we are ready to launch a community education program in order to teach both tenants and landlords of their rights.

While we wait for the educational component of the recommendations to be unveiled by the City, the One-Year Lease and Relocation Ordinances are a good first step towards our good faith and shared goals of creating residential tenant and landlord protections. The spirit of these Ordinances are on-point per the recommendations of the Task Force, but as with all Ordinances, the details still need to be reviewed and clarified. Below are our concerns and suggested amendments to the Ordinances.

Mandatory Offer of Residential Lease

- Request to cease mandatory offerings of leases upon a tenant rejection. Requirements to continue to offer year after year, despite previous rejections creates unnecessary requirements that do not conflict with the spirit of the ordinance. Additionally, it will increase conditions where housing providers may accidentally fall out of compliance.
- Section G.2 - We are still confused about the applicability of G.2. Does an owner occupied unit include duplexes and/or triplexes where owners share the property with their tenant.

Relocation Assistance to Tenants Impacted by Mass No-Cause Evictions

26.50.020 – Relocation Assistance Required

Subsection A.

- The formula for X units which house eligible households, during any given Y day period should be 35% over 12 months (see attached chart for explanation).
- In response to the concerns expressed by the tenant advocates, the 6-14 units should have non-binding mediation and the offer of first right of refusal.
- There is confusion around the payment for 15+ units. To make it simpler and easier to understand for both the tenants and landlords, we suggest changing the payment to 3 times the current rent. This ensures the tenant is receiving a fair amount and can relocate because they

will have the first month rent, last month rent, and deposit. This relocation assistance is not so the tenant can make money, but be able to relocate.

- Ensure remedies in “Mass Non Renewal” are reasonable. There is no upper limit on how many times a tenant’s damages can be multiples. This provision creates liability for mere attempts to recover possession, without any limitation on how minor the violation is. A landlord who mistakenly fails to include the notice of rights with a termination notice but then corrects his/her error by serving a new notice could be held liable. Perhaps a upper limit should be placed on the damages or a time to cure a violation could be added. Minor violations should not be subject to extreme damages.

Subsection C

- In order to align with subsection A, an additional 1 month rent should be paid to the qualifying tenant.

26.50.080 – Definitions

- Page 8 - between Items 8 and 9 has language that “no cause eviction **shall include**” action in which the landlord seeks in good faith possession plus adds paragraph 9, 10, and then another paragraph 9 and 10. We think this language between Paragraph 8 and 9 is in error.
- Items in damages should remain stricken.

These two ordinances have been crafted after months of input from both the tenant and landlord sides. While we understand our discussions are not official points of negotiations, it’s important to note that two divergent segments of this issue came together at one table to open the lines of communication and agree on points that are fair for both sides. Concessions were made by both sides and we as the private sector and “providers” of rental opportunities have proven we have worked hard. We appreciate the changes we previously suggested to these ordinances and thank you for incorporating these few minor changes and creating an ordinance that is fair for both tenants and landlords.

Sincerely,



Thomas Schultheis
Santa Barbara Association of REALTORS®
2019 President



Jim Carrillo
Santa Barbara Rental Property Association
2019 President



Fred Sutton
California Apartment Association
Vice President of Public Affairs

Relocation Assistance

1-4 units – No assistance

6-14 units – Non binding mediation required

15 units and above:

Relocation Assistance – 4 times median rental rate or \$5000, whichever is higher.

Trigger – Landlord or property owner recovers possession of 35% or more of the units over a 12 month period.

1. Forces owners who vacate 35% of a building or more, over a one year period, to pay relocation assistance.
2. Allows new and existing owners to remodel/repair a number of units per year without getting penalized, and would allow all units to get repaired/remodeled in a 3 year period of time.



The 35% number should not drastically affect the Risk/Return balance above, and should not hinder new investment in our community. There is risk involved with rental property, and people expect a return on their investment. They should be allowed to protect and improve their investment asset and investment return. Allowing roughly a third of units to be remodeled per year is right at the line. Any less than that and the investment picture changes.

	25%	30%	35%	40%	45%	50%
15 unit	3	4	5	6	6	7
20 unit	5	6	7	8	9	10
25 unit	6	7	8	10	11	12
30 unit	7	9	10	12	13	15
35 unit	8	10	12	14	15	17
40 unit	10	12	14	16	18	20
45 unit	11	13	15	18	20	22
50 unit	12	15	17	20	22	25