



CITY OF SANTA BARBARA

CITY COUNCIL AGENDA REPORT

AGENDA DATE: January 9, 2024

TO: Mayor and City Councilmembers

FROM: City Attorney's Office

SUBJECT: Tenant Protection Ordinances [Ordinance Introduction]

RECOMMENDATION: That Council:

- A. Introduce and subsequently adopt, by reading of title only, an Ordinance of the Council of the City of Santa Barbara Amending the Santa Barbara Municipal Code by Amending Sections 26.50.010, 26.50.040, 26.50.060, 26.50.070 and by Adding Section 26.50.080 Relating to Just Cause Eviction; by Adding Section 26.50.055 to Provide a Tenant Right of First Refusal to Re-rent Following a No-Fault Just Cause Eviction; by Adding Section 26.50.075 Relating to Occupancy Following a Substantial Remodel, and by Adding Chapter 26.60 Relating to Protection of Tenants from Harassment; and
- B. Introduce and subsequently adopt, by reading of title only, an Ordinance of the Council of the City of Santa Barbara Amending the Santa Barbara Municipal Code by Amending Sections 26.40.020 and 26.40.030 Relating to Required One-Year Lease Offers to Residential Tenants.

BACKGROUND:

The Tenant Protection Act of 2019 (Stats. 2019, ch. 597; AB 1482) established statewide just cause eviction and relocation assistance protections for residential tenants, but also authorized cities to enact more protective local regulations which supersede state law. On December 8, 2020, the City Council adopted Ordinance No. 5979 to establish local regulations that were more protective than the provisions of Civil Code Section 1946.2 as it existed at that time. On March 21, 2023, the City Council adopted Ordinance No. 6107 as an urgency measure further amending Municipal Code Chapter 26.50 to strengthen tenant protections regarding no-fault just cause eviction. Shortly thereafter, the County Board of Supervisors adopted similar tenant protection measures applicable to unincorporated areas, and on July 11, 2023, the Board of Supervisors adopted an ordinance to provide tenants a right of first refusal to re-rent a unit following a no-fault just

cause eviction. During the current legislative session, the Legislature adopted Senate Bill 567 further amending Civil Code Section 1946.2 to provide additional tenant protections. The bill was signed by the Governor and is chaptered as 2023 Statutes, Chapter 290. The proposed ordinance will continue to provide greater protections than under Civil Code Section 1946.2 by providing higher relocation assistance amounts than state law, making permanent the temporary protections provided under Civil Code Section 1946.2, which are scheduled to sunset in 2030, and having an earlier effective date than some of the provisions adopted by Senate Bill 567. Further, the proposed ordinance adds a new Municipal Code chapter designed prevent tenant harassment, which is modeled after similar ordinances of other California cities including Oakland and Lost Angeles.

On October 27, 2023, a copy of the draft ordinance amending Chapter 26.50 relating to just-cause evictions and the addition of Chapter 26.60 relating to tenant harassment was distributed for review and comment to interested persons, including tenant and rental owner organizations and representatives. On December 5, 2023, the Ordinance Committee considered the matter and after public input continued it for further consideration at its meeting on December 12, 2023. The Committee directed the City Attorney to include amendments responding to suggestions by Legal Aid, the League of Women Voters, and Councilmember Jordan for consideration at the December 12 meeting. On December 12, 2023, the Committee considered a draft ordinance including additional amendments as distributed and described at that meeting. Following further public input, the Committee unanimously approved and recommended for introduction and adoption the draft ordinance as presented at the December 12 meeting. The Committee also unanimously directed the City Attorney's Office to draft and present directly to the City Council an additional ordinance amending Chapter 26.40, which relates to required one-year lease offers to residential tenants. Both ordinances are presented with this Agenda Report.

DISCUSSION

Staff recommendation A. Ordinance amending Chapter 26.50 relating to just-cause evictions and adding Chapter 26.60 relating to protecting tenants from harassment.

This report is organized by subject matter. The ordinance sections and page numbers that correspond to the subject matter are noted in parenthesis following each subject heading.

Updates to Existing Just Cause Provisions (Sections 2 – 6, 8, Pages 2 – 14.)

Currently, Municipal Code Section 26.50.010 precludes owners of rental units from terminating a tenancy except for just cause. Just cause is either at-fault just cause or no-fault just cause as defined in Municipal Code Section 26.50.070. Section 2 of the proposed ordinance will incorporate the definitions of at-fault just cause and no-fault just cause as adopted by Senate Bill 567. The amendment also declares existing law through

an express statement that a termination of tenancy subject to the just cause requirement includes any attempt by an owner to recover possession of a rental unit, including through expiration of a lease or failing, choosing not to renew a lease, or court proceeding.

Ordinance Section 3 clarifies that the exclusion of deed restricted units from operation of Chapter 26.50 does not apply to tenancies assisted by Section 8 Housing Choice Vouchers where the housing is not otherwise restricted.

Ordinance Section 4 amends Municipal Code Section 26.50.040 to add a requirement for notification of a tenant's right of first refusal to re-rent in connection with a no-fault just cause termination of a tenancy. It also adds a requirement to provide all notices required under Civil Code Section 1946.2 as amended by Senate Bill 567. Further, it clarifies that the dollar amount of tenant relocation assistance must be included in the notice.

Existing remedies for violations of the just cause requirements include defense to an unlawful detainer action, civil damages, and administrative or criminal enforcement. Section 5 of the proposed ordinance amends Municipal Code Section 26.50.060 clarifying that it is the owner's burden to plead and prove just cause and to add civil damage awards mirroring those under amendments made by Senate Bill 567, including the potential for a court to award for up to three times actual damages in civil cases where the owner's conduct is willful or done with fraud, malice, or oppression. The amendment also clarifies that an incomplete notice is void.

Just cause for termination of a tenancy is defined in Municipal Code Section 26.50.070. Several amendments to the definitions of no-fault just cause are proposed in Section 6 of the draft ordinance starting at page 8. First, Subsection B. 2. a. amends requirements for no-fault just cause based upon recovery of a rental unit for the purpose of occupancy by the owner or a member of the owner's family. The amendment will require the intended occupant of the unit to move into the rental unit within 90 days after the tenant vacates and to live at the unit for at least 12 consecutive months, otherwise, the tenant will have the right to re-rent the unit on the same terms as when the tenancy was terminated along with reimbursement of moving expenses. An exception exists where the intended occupant moves into the rental unit within 90 days but dies before having occupied the unit for 12 months. Second, Subsection B. 2. b. would be amended to require an owner seeking to permanently withdraw a rental unit from the market to file a notice with the Community Development Department specifying the intended new use. This will help enforce the good faith and permanent removal elements of this reason for removal. Third, Subsection B. 2. d. relating to demolition or substantial remodel of unit is amended to add a requirement for an opinion from an independent construction expert that the work cannot be reasonably accomplished in a safe manner with the tenant in place and that the work requires the tenant to vacate the unit for at least 30 consecutive days. That subsection is also amended to delete the requirement for early tenant alter notices because the notices were causing confusion and not serving their intended purpose. Fourth, with respect to the definition of substantial remodel, Subsection G of Section 26.50.070 will be amended to make it clear that any days where a tenant could continue

living in a rental unit without violating health, safety, and habitability laws cannot be counted when determining if the work requires a tenant to vacate for at least 30 days.

Section 8 of the draft ordinance adds Municipal Code Section 26.50.075 to preclude an owner from re-renting a unit that has been substantially remodeled until all the permitted work has been inspected and certified as complete by the Building Department.

Finally, Section 9 of the draft ordinance will add Municipal Code Section 26.50.080 to preclude a new owner of property having five or more rental units from initiating no-fault just cause evictions to demolish or substantially remodel a unit for a period of one year following the owner's acquisition of the property.

Right of First Refusal to Re-rent following a No-fault Just Cause Eviction (Section 7, page 12.)

The new right of first refusal to re-rent is modeled after the recently adopted County ordinance. It is contained in Section 7 of the proposed ordinance, which adds Section 26.50.055 to the Municipal Code to do the following:

- Require an owner to give written notice to tenants of the right of first refusal at the same time the tenant is given notice of the termination of tenancy and notice of right to relocation benefits.
- Give tenants who are evicted for no-fault just cause a right of first refusal to re-rent the unit or a comparable unit for a period of two years.
- Require tenants who wish to take advantage of the right of first refusal to keep the owner apprised of the tenants' contact information.
- Require owners to make the offer to re-rent in the form of a written lease that complies with the City's existing requirements under Chapter 26.40.
- Require owners to establish the rental price in accordance with Civil Code § 1954.53, when applicable.
- Limit the rent for a re-rental following a no-fault eviction based on substantial remodel to an increase of 10% or 5% plus CPI, whichever is lower, of the rent at the time of the no-fault eviction. For purposes of the right of first refusal to re-rent following a termination of tenancy for a substantial remodel, which by definition includes any recovery of possession, is considered for all purposes to be a temporary interruption of the tenant's right to a unit, and the exercise of the right to re-rent is considered a continuation of the pre-existing lease subject to the potential of a limited rent increase.

The right to re-rent is additional to rights to re-rent under Civil Code Section 1946.2 (b)(2)(A)(vi) [right to re-rent if an intended family member fails to occupy a unit as their primary residence for at least 12 months] and 1946.2 (b)(2)(D)(iv) [right to re-rent if substantial remodel is not commenced or completed].

Tenant Protection from Harassment (Section 10, Pages 13 - 17.)

Section 10 of the proposed ordinance will add a new Municipal Code Chapter 26.60 to protect tenants from willful harassment by owners and owners' agents, contactors, subcontractors, or employees. Examples of activities that could constitute prohibited harassment include:

- Reducing or eliminating housing services required by a lease, contract, or law, including the elimination of parking if provided in the tenant's lease or contract, or access to common areas or amenities.
- Failing to perform and timely complete legally required repairs and maintenance.
- Failing to exercise due diligence in completing repairs and maintenance once undertaken or failing to follow appropriate industry standards designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts.
- Abusing the owner's right of access into a rental housing unit as established and limited by California Civil Code Section 1954, including entering or photographing portions of a rental unit that are beyond the scope of lawful entry or inspection.
- Threatening a tenant, by word or gesture, with physical harm.
- Misrepresenting to a tenant that the tenant is required to vacate a rental unit or enticing a tenant to vacate a rental unit through intentional misrepresentation or the concealment or omission of a material fact.
- Repeatedly offering unwanted payments or other inducements to a tenant to vacate.
- Threatening to report a tenant or other persons to any local, state, or federal agency on the basis of their perceived or actual immigration status.
- Inquiring as to the immigration or citizenship status of a tenant, prospective tenant, additional tenant, occupant, or prospective additional occupant of a rental unit.
- Refusing to acknowledge or accept receipt of lawful rent payments.
- Engaging in activity prohibited by federal, state, or local housing anti-discrimination laws.
- Retaliating, threatening, or interfering with tenant organizing activities, including forming or participating in tenant associations and unions.
- Retaliating, threatening, or interfering with a tenant's right to appear at Council meetings or file complaints with the City.
- Interfering with a tenant's right to privacy, including video or audio recording that captures the interior of a tenant's bedroom, bathroom, changing room, fitting room, dressing room, or the interior of any other area in which the occupant has a reasonable expectation of privacy.

The items are stated in full in proposed Section 26.60.010.

Enforcement of the anti-harassment protections would be by civil proceedings brought an aggrieved tenant. Remedies that a judge could impose in a civil case include:

- Actual damages or a minimum amount of \$1000 per violation, whichever is greater.
- In the court's discretion, reasonable attorney's fees and costs.
- Up to three times the actual damages upon a showing that the owner has acted with oppression, fraud, or malice.
- An award may also be entered for punitive damages for the benefit of the tenant against the owner. Civil penalties up to \$10,000 per violation, tenant relocation, and other appropriate relief.
- Injunctive relief and any other remedy provided by law.

Staff Recommendation B. Ordinance amending Municipal Code Sections 26.40.020 and 26.40.030 relating to required one-year lease offers to Residential Tenants.

The second ordinance amends Chapter 26.40, which was adopted in 2019. The first proposed amendment is to Section 26.40.020 to remove confusing, limiting language. After amendment, the section will clearly state that a failure to comply with the provisions of Chapter 26.40 is a defense to a legal action brought to recover possession of a unit. The second proposed amendment is to Section 26.40.030, to amend the definition rental unit so that the types of units covered under Chapter 26.40 and Chapter 26.50 are the same.

ENVIRONMENTAL REVIEW

These ordinances are not subject to environmental review pursuant to the State CEQA Sections 15060(c)(3) pertaining to activities that will not result in a direct or reasonably foreseeable indirect change to the environment and 15061 (b)(3), the common sense exception, because the ordinances have no potential for resulting in physical change to the environment directly or indirectly in that it merely regulates existing physical development.

PREPARED BY: Daniel S. Hentschke, Assistant City Attorney

SUBMITTED BY: Tava Ostrenger, Acting City Attorney

APPROVED BY: City Administrator's Office