



# CITY COUNCIL STAFF REPORT



May 17, 2022

## ITEM TITLE

Tenant Protections: Consideration of Ordinances Regarding Local Tenant Protections to Address No-Fault Just Cause Terminations of Tenancy and Anti-Harassment

**Report Number:** 22-0135

**Location:** No specific geographic location.

**Department:** Development Services

**Environmental Notice:** The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act ("CEQA") State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

## Recommended Action

Consider one of the following: A) Place an ordinance on first reading adding Chapter 9.65 in the Chula Vista Municipal Code for "Residential Landlord and Tenant Provisions" (FIRST READING) - OR - B) Introduce and adopt an Emergency Ordinance and place an ordinance on first reading enacting a moratorium on no-fault just cause evictions through September 30, 2022 (INTRODUCTION AND ADOPTION; 4/5 VOTE REQUIRED) (FIRST READING)

## SUMMARY

On April 12, 2022, staff presented an update to City Council regarding a referral (from September 14, 2021) to review potential tenant protections in the City of Chula Vista. At that time, the City Council approved an expansion of services with CSA San Diego ("CSA") to provide additional data collection and outreach/education to assist in future policy decisions around this topic by Resolution No. 2022-0037 and directed staff to bring forward an ordinance for City Council consideration without further delay.

Tonight's action provides the City Council with two alternatives for consideration: (1) a permanent ordinance that is responsive to the referral to address no-fault termination of tenancy related to substantial remodel, removal from the rental market, harassment/retaliation, and City remedies and enforcement; or (2) an emergency ordinance to establish a moratorium on no-fault just cause termination of tenancy through September 30, 2022, which could enable staff to continue working with stakeholders on the permanent ordinance at Council's direction.

## ENVIRONMENTAL REVIEW

The Director of Development Services has reviewed the proposed activity for compliance with CEQA. The activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines because the proposal consists of a reporting action, is not for a site-specific project(s) and will not result in a direct or indirect physical change in the environment. Therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA.

## BOARD/COMMISSION/COMMITTEE RECOMMENDATION

On April 19, 2022, the Housing Advisory Commission (“HAC”) voted 4-1 recommending the draft ordinance to add Chapter 9.65 in the Chula Vista Municipal Code (“CVMC”) move forward to City Council and that the City establish a task force to assist in tenant and landlord disputes. The Commission also expressed difficulty in the decision to move forward with the ordinance indicating that they felt additional outreach might bring the stakeholders into closer agreement.

## DISCUSSION

On April 12, 2022, an extensive update was provided to City Council on the process established to respond to the September 14, 2021 referral. The full staff report, and associated attachments have been included as Attachment No. 1 to this item. Tonight’s report serves to answer additional questions that City Council posed at the April 12th meeting, provide an update of meetings with stakeholders since that time and present the City Council with a responsive ordinance or an alternative to adopt a moratorium on no-fault termination of tenancy.

### City Council Referral Regarding Tenant Protection Provisions

The September 14, 2021 City Council referral requested that staff look at potential gaps in state law around no-fault termination of tenancy. The 2019 Assembly Bill 1482 (“AB-1482”) established the terms “at-fault just cause” and “no-fault just cause” in relation to termination of tenancy and required landlords to provide such reasons in noticing to tenants for certain types of housing. Table 1 provides a summary of the reasons a termination of tenancy can be given.

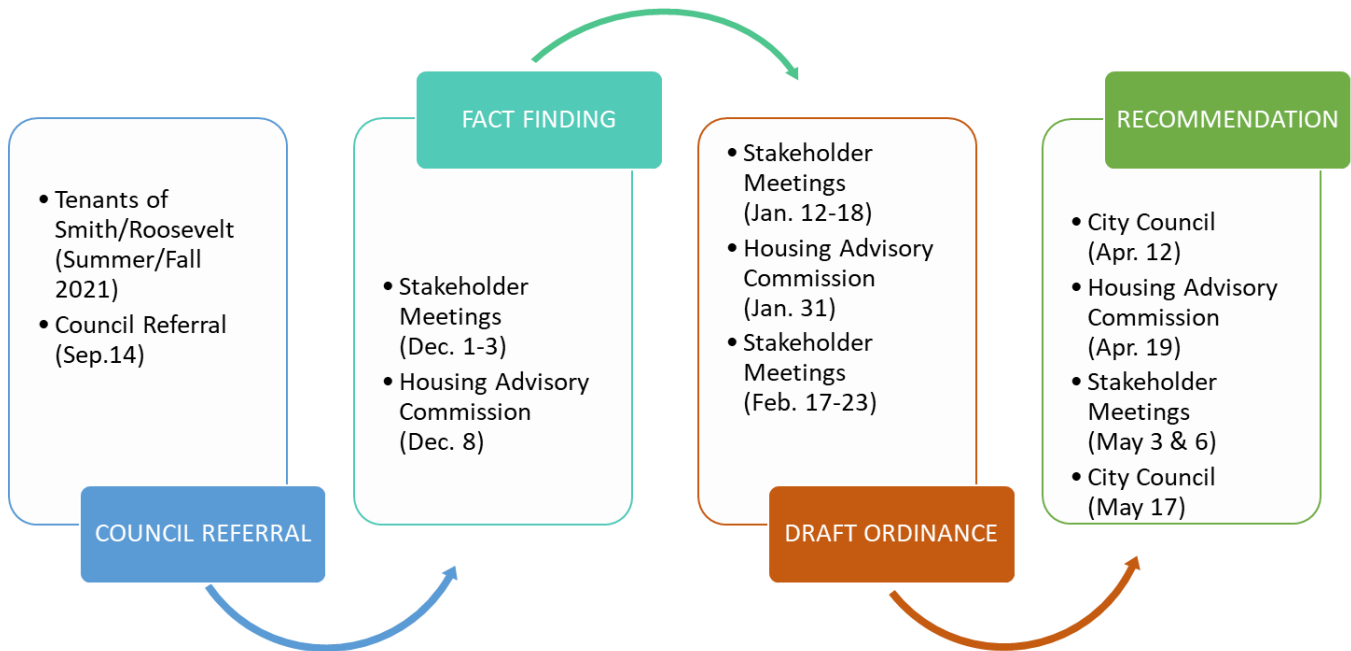
**Table 1**  
**AB-1482 Reasons for Termination of Tenancy**

At-Fault Just Cause	No-Fault Just Cause
Non-payment of rent	Removal from rental market
Non-compliance with lease terms	Demolition of property
Nuisance	Substantial remodel
Commit Waste	Government/Court order
Criminal activity	Owner or family move-in
Illegal subletting	
Refusal of entry to landlord	
Using premises for unlawful activity	
Failure to vacate after employment	
Failure to deliver possession	

Tenant advocates have contended that they are seeing an increase in the number of no-fault evictions and therefore have encouraged the City to adopt local protections. Based on the City Council direction on April

12<sup>th</sup>, additional actions were taken, inclusive of a meeting of the HAC on April 19, 2022, to bring forward an ordinance to address the original referral. Exhibit 1 provides a timeline of the referral process to date.

### Exhibit 1 Tenant Protection Referral Timeline



#### Fact Finding

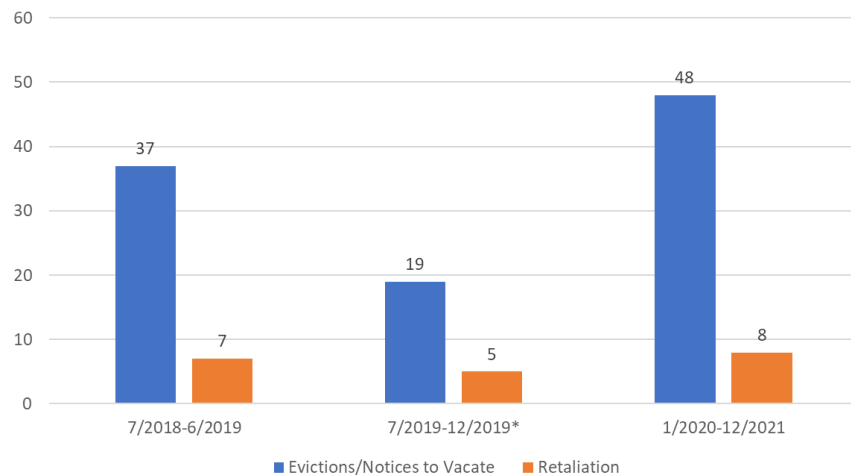
##### Termination of Tenancy and Evictions in the City of Chula Vista 2019-2021

The staff report from April 12, 2022, provided data related to calls to CSA from 2015-2018 but excluded the years 2019-2021 due to changes in the CSA contract, reporting software and pandemic related issues. Staff indicated that while data is available, they did not believe that this timeframe is reflective of what would be expected in the future due to the pandemic. Beginning in April 2020 due to moratoriums on evictions locally and throughout the State of California, as well as pandemic funding for Emergency Rental Assistance Programs (“ERAPs”), most residents that contacted the City were referred to our ERAP administrator SBSC Corporation (“SBSC”) for eligibility assessment. Through April 21, 2022, SBSC received 7,339 ERAP applications, of which 6,189 were processed.

As described in the April 12, 2022 report, CSA’s contract has historically been in place to provide services as required by the U.S. Department of Housing and Urban Development (“HUD”) and was therefore limited in scope. As depicted in Exhibit 2, during the timeframe of 2018-2021 CSA received 104 calls related to evictions/notices to vacate (30 calls average per year) and 20 calls related to retaliation (6 calls average per year). In comparison, between 2015-2018, 232 calls related to evictions/notices to vacate (77 calls average per year) and 4 calls related to retaliation (1 call average per year).

In addition, according to the Legal Aid Society of San Diego (“LASSD”), since January 1, 2020, they have received over 750 requests for assistance for Housing related issues from City of Chula Vista (“CV”) households. Since LASSD began tracking tenancy termination notice in July 2021 through January 2022, almost 30% of households calling for housing related issues from Chula Vista, requested assistance with a no-fault eviction notice (County average is 25%).

**Exhibit 2**  
**CSA Calls Related to Termination of Tenancy and Retaliation June 2018- December 2021**



\* 2019 represents 6-month period due to grant contracts

Staff additionally requested data from the San Diego County Sheriff's Department on evictions that have been ordered by the court. While it is unknown the cause of each eviction, Table 2 provides those evictions that were completed within Chula Vista during the period of October 2021 through March 2022.

**Table 2**  
**San Diego County Sheriff's Department Executed Evictions**

		2021			2022		
		October	November	December	January	February	March
# of San Diego County Region Evictions		51	40	65	86	95	118
# of Chula Vista Evictions	91902		1				
	91910	1			3	1	4
	91911		1	1	4	2	4
	91913			1			2
	91914						
	91915						3
	TOTAL	1	1	2	7	3	13
% of Chula Vista Evictions		1.96%	5.00%	3.08%	8.14%	3.16%	11.02%

### Local Tenant Protections

On April 4, 2022, the City of San Diego adopted an emergency ordinance to place a “temporary” moratorium on no-fault terminations of tenancy. A few key elements of this action include:

- Moratorium shall expire on the earlier of September 30, 2022 or 60 days after the declared local state of emergency from COVID-19 is lifted.
- Defines “no-fault” allowable terminations as:
  1. Correction of Violations
  2. Withdrawal of Residential Rental Structure from the Rental Market; or
  3. Owner or Relative Occupancy
- Removal from rental market requires a six (6) month termination of tenancy notice.
- Exemptions include 90-day notice for:
  - Renovations or upgrades have been ordered by the government; or
  - Owner wants to move a family member into the unit.

At the April 12, 2022 meeting, City Council indicated interest in the San Diego actions. An alternative to adopt a similar temporary moratorium for no-fault termination of tenancy but with a specific expiration date of September 30, 2022 has been prepared and is presented as Ordinance B. Should City Council exercise this option instead of a permanent ordinance, they may also direct staff to continue working with stakeholders on a permanent ordinance.

### Stakeholder Outreach

As summarized in Attachment 3 of the April 12, 2022, staff report, nearly twenty stakeholder meetings were held through February 2022. On April 19, 2022, stakeholders were provided with an additional opportunity to provide input at a special meeting of the HAC. Table 3 provides a summary of the additional input received. No substantive comments were received during the public comment period at the HAC meeting.

**Table 3**  
**Summary of Community Input from the April 19, 2022 HAC Meeting**

Commissioners	Tenants	Housing Providers
-Desire for more community involvement. -Would like alternative resolution methods.	-Supported the ordinance. -Indicated the court system was too slow for impacted tenants.	-Opposed the ordinance. -Indicated they were willing to work with residents for an alternative resolution. -Mobilehome advocates indicated they do not believe the ordinance should be applicable to their industry. Received after meeting with staff: -Increase the threshold to 5 units due to lending practices (Fannie Mae and Freddie Mac consider four units or less to be a small investor).

Staff followed up with the stakeholders for final revisions to the ordinance based on this input, including mobilehome owners. Based on this final feedback it was determined that it would be appropriate to exempt mobilehomes from the entirety of the local ordinance due to changes that took affect with the Mobilehome

Residency Law on July 1, 2020. These changes include contributions by residents to a fund for ombudsman activities and establishing a complaint-based process that includes enforcement and penalties. Staff has therefore determined that residents within mobilehome parks have adequate protections at the state level in addition to local closure and rent control ordinances (CVMC 9.40 and 9.50).

In early May staff took the opportunity to meet with the remainder of the stakeholders in a focus group format to discuss specific areas of the ordinance where staff anticipated further consensus might be possible. Summary minutes of the two meetings can be found as Attachment No. 2.

### **“Residential Landlord and Tenant Provisions” Ordinance**

In general, landlords have contended from the beginning of the process that local regulations beyond state law are not necessary because a substantial/pervasive problem has not been identified and we have not yet seen what impacts AB-1482 will have on the rental industry, due to pandemic moratoriums on evictions. Resident advocates have contended that without some key elements being included in a local ordinance we are leaving tenants vulnerable to no-fault termination of tenancy. Attachment 4 of the April 12, 2022 staff report, highlights the remaining key areas of disagreement, comparing current state law to Ordinance A and stakeholder recommendations.

#### Considerations

Staff assessed stakeholder input throughout the process to determine resources that would be required to administer and enforce the proposed ordinance, unintended impacts, and existing law. The following areas were closely examined to balance interests.

- Applicability – Tenants have contended that regulations should apply to all housing types and from day one of tenancy. Currently the City does not require any type of business license, inspections, etc. for rentals with 1 or 2 units and additionally stakeholders voiced concern over small landlords, often referred to as “mom and pop” being impacted by permanent restrictions. Code Enforcement does proactively inspect multi-family dwellings (3 or more units), and hotels/motels through the State of California Health & Safety Code 17961, in conjunction with the Uniform Building Code, as adopted by the CVMC. This requires local jurisdictions to enforce rules and regulations pertaining to the maintenance, sanitation, ventilation, use or occupancy and inspections of such complexes once every three to five years.

If Ordinance A, relating to termination of tenancy was to include all housing types, greater staff resources would be needed to educate and enforce the new regulations. However, since staff is already proactively engaged with complexes of 3 or more units, resources would moderately be impacted as staff could more easily engage with owners. Ordinance A currently does not include greater noticing and relocation requirements for 1–2-unit complexes and instead defaults to state law but does include enhanced relocation assistance for complexes of 3 or more units.

- Relocation – Jurisdictions that adopt protections above the state requirement of one (1) month’s rent for no-fault just cause terminations range widely. Staff’s goal in establishing a balanced relocation benefit was to provide funds for impacted residents to be able to provide a security deposit and first month’s rent (total 2 months’ rent in most instances) at a comparable unit with a data source that is readily available and updated. In addition, since elderly and disabled may have greater difficulty in moving the proposal includes an additional month (3 months total) in relocation assistance.

Various data sources were reviewed; however, the most localized and reliable source was deemed to be the U.S. Department of Housing and Urban Development Small Area Fair Market Rent (“HUD SAFMR”), current rates in Table 4.

**Table 4**  
**U.S. Department of Housing and Urban Development Small Area Fair Market Rent (2022)**

San Diego County, CA Advisory Small Area FMRs By Unit Bedrooms					
ZIP Code	Efficiency	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
91902	\$1,630	\$1,810	\$2,320	\$3,220	\$3,960
91910	\$1,270	\$1,400	\$1,800	\$2,520	\$3,110
91911	\$1,280	\$1,420	\$1,820	\$2,530	\$3,090
91913	\$1,870	\$2,070	\$2,660	\$3,690	\$4,520
91914	\$2,090	\$2,310	\$2,970	\$4,120	\$5,050
91915	\$2,090	\$2,310	\$2,970	\$4,120	\$5,050
City Average	\$1,705	\$1,887	\$2,423	\$3,367	\$4,130
Regional Average	\$1,394	\$1,542	\$1,979	\$2,748	\$3,365

- **Noticing Timeframe** – Currently a 30-day (residents less than 1 year tenancy) or 60-day (residents with greater than one year tenancy) notice is required by state law, except for rent controlled jurisdictions under the Ellis Act, adopted in 1985, which provide 120 or 365 days for elderly and/or disabled when a property is removed from the market. During the drafting of the ordinance, staff had included greater noticing requirements as an option for consideration, however upon further review it was determined that under the Ellis Act increases to noticing timeframes may be limited to rent controlled jurisdictions. It should be noted, other jurisdictions that have adopted local ordinances, all include 60 days or simply defer to state law. Only jurisdictions with rent control provide higher noticing requirements.
- **Substantial Remodel** – Stakeholders agree that a clearer definition of substantial remodel would be beneficial for both housing providers and tenants. However, tenants prefer provisions that would never allow termination of tenancy based on a substantial remodel and instead allow tenants to return to the property once the remodel is complete under their existing lease terms and rental rates with only applicable increases per AB-1482. While staff recognizes that displaced tenants may have difficulty finding comparable units within the San Diego region, promoting revitalization of aging, and deteriorating housing stock and allowing a return on investment to the owner is still necessary in some instances. Balancing the need to provide quality housing and the need to protect tenants is challenging and staff will continue to work with housing providers to address housing availability issues.

The proposed ordinance provides a definition of substantial remodel that includes a square foot percentage of improvement costs for multi-unit properties, depending on building type, based on current construction data, as provided in Attachment No. 3 and requires relocation benefits for both a temporary and permanent vacation of a unit. In addition, it provides tenants with a first right of refusal within 2 years to return to the unit should they provide landlords with their current contact information.

### Proposed Ordinance A

Ordinance A incorporates input received by all stakeholders, is responsive to the Council referral, and considers city liability and resources to address the following main areas:

- Definitions (9.65.030)
  - Residential Rental Complex has 3 or more units.
  - Provides four criteria that must be met to qualify as a Substantial Remodel:
    1. any structural, electrical, plumbing, or mechanical system is being replaced or substantially modified;
    2. the cost of the improvements (excluding insurance proceeds, land costs, and architectural/engineering fees) is equal to or greater than \$40 per square foot of the Residential Rental Unit;
    3. a permit is required from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos is required in accordance with applicable federal, state, and local laws and cannot be reasonably accomplished in a safe manner with the Tenant in place; and
    4. it is necessary for the Residential Rental Unit to be vacant for more than sixty (60) days. Cosmetic improvements alone, including painting, decorating, flooring replacement, counter replacement, and minor repairs, or other work that can be performed safely without having the Residential Rental Unit vacated, do not qualify as replacement or substantial modification.
- Terminations Prohibited without Just Cause (9.65.040)
  - Defines “At-fault just cause” and “No-fault just cause” consistent with state law.
- Termination for Occupation or Government or Court Order (9.65.050)
  - Does not apply to mobilehomes or Residential Rental Complex.
  - Consistent with state law for rentals with 1 or 2 units.
  - Provides for relocation assistance equal to:
    - One (1) month of the HUD SAFMR for the zip code of the unit or two (2) months for elderly or disabled for an occupation; and
    - Two (2) months of the HUD SAFMR for the zip code of the unit or three (3) months for elderly or disabled for a government or court order.
  - Provides first right of refusal for the Residential Rental Unit if returned to the rental market within two (2) years.
- Termination for Removal from Market “Ellis Act” (9.65.060)
  - Defers to CVMC 9.40 for mobilehome owners/tenants.
  - Consistent with state law for rentals with 1 or 2 units.
  - Requires that the property remain off the rental market for two (2) years. If not, then damages in the amount of six (6) months rent may be pursued by the former tenant. This requirement does not apply if the property is rented to a child, parent, or grandparent, if the property is converted to another use, or sold.
  - Applicable to Residential Rental Complex:
    - Noticing consistent with state law; and
    - Relocation assistance equivalent to two (2) months of the HUD SAFMR for the zip code of the unit or three (3) months for elderly/disabled, reference Table 4 for current rates.



- Termination for Demolition or Substantial Remodel (9.65.70 and 9.65.080)
  - Consistent with Civil Code Section 1946.2 for rentals with 1 or 2 units and mobilehome owners/tenants.
  - Applicable to Residential Rental Complex:
    - Noticing consistent with state law;
    - Relocation assistance equivalent to two (2) months of the HUD SAFMR for the zip code of the unit or three (3) months for elderly/disabled;
    - First right of refusal for new residential units within five (5) years for demolition or two (2) years for substantial remodel; and
    - Additional tenant protections that are not prohibited by any other provision of law.
- Anti-Harassment/Retaliation (9.65.090)
  - Defers to Section 1940.2 of the Civil Code and Division 2, Part 2, Chapter 2.5 of the Civil Code for mobilehome.
  - Refines harassment and retaliation behaviors and the term “quiet use and enjoyment”.
  - Provides mechanisms for resolution.
- Remedies and City Enforcement (9.65.100)
  - Provides guiding principles for alternative resolution methods.
  - Provides that the City, in its discretion, may take enforcement action, including pursuing administrative action, civil action, and criminal prosecution.
- Exclusions (9.65.110)
  - Excludes ordinance provisions from the following types of housing:
    - Hotel;
    - Rentals of 30 days or less;
    - Medical facilities and care facilities;
    - Residential Property or Dormitories owned by the City;
    - Shared housing (“roommate” of owner);
    - Single-family Owner-occupied residencies, where Owner rents or leases no more than two units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit.
    - Duplex where Owner occupies one unit;
    - Residential Rental Unit alienable separate from the title to any other dwelling unit that is not owned by a business entity;
    - Deed restricted affordable housing; or
    - Homeowner or Tenant of a mobilehome.

Table 5 provides an overview of the main areas where stakeholders continue to differ on suggested regulations. At the May 6<sup>th</sup> meeting stakeholders agreed that further discussions would not bring the groups to greater consensus and that policy decisions would be necessary to move forward. Staff have provided the corresponding sections to each issue should Council desire to amend Ordinance A to provide more or less restrictive measures.

**Table 5**  
**Summary of Areas for Potential Amendments**

Topic Area		Tenants	Housing Providers	Corresponding Sections of CVMC 9.65
<b>Applicability</b>	<b><i>Types of Housing</i></b>	Include all housing types.	Be consistent with State law exempting certain types of housing.	Section 9.65.030.I. defining Residential Rental Complex and/or 9.65.110 Limitations.
	<b><i>Length of Tenancy</i></b>	Begin day one of tenancy to protect all residents.	Be consistent with State law which begins coverage at 12 months of tenancy.	Section 9.65.030.F. and associated references.
<b>Terminations for At-fault Just Cause</b>	<b><i>Breaches of Lease Terms</i></b>	Only allow when tenant agrees to lease term changes.	Insurance and changing laws sometimes dictate need to alter lease terms.	Section 9.65.040.B.b.
<b>Terminations for No-Fault Just Cause</b>	<b><i>Removal from Market</i></b>	Adopt AB-1482 rent control to enable all protections of the Ellis Act.	Be consistent with State law for non-rent controlled jurisdictions.	Section 9.65.060.
	<b><i>Substantial Remodel</i></b>	Do not allow evictions for remodel.	Allow market rent after remodel.	Section 9.65.030.K. and/or Section 9.65.080.
	<b><i>First Right of Refusal</i></b>	Rent freeze upon return of original tenant and for the first tenancy if the unit goes back on the market.	Allow with provisions that require tenant to provide forwarding address within limited timeframe.	Sections 9.65.060.A.1.c, 9.65.070.A.1.c, and 9.65.080.A.1.c.
	<b><i>Noticing</i></b>	Increased noticing to 120 days or 365 for elderly/disabled.	Be consistent with State law requiring 30 days.	Sections 9.65.050.A.1.a, 9.65.060.A.1, 9.65.070.A.1 and 9.65.080.A.1. Pre-emption issues may make increased noticing challengeable.
	<b><i>Relocation</i></b>	Increase relocation to 3 x base rent plus additional funds for children and length of tenancy on a sliding scale.	Be consistent with State law providing one month of existing rent.	Sections 9.65.050.A.1.b, 9.65.060.A.2, 9.65.070.A.2 and 9.65.080.A.2.

## **Conclusion**

### Task Force

At the April 19, 2022 HAC meeting, Commissioners suggested the City establish a task force to review rental issues within the City. Currently staff recommends utilizing the contract approved with CSA on April 12, 2002, to track trends and results of expanded outreach. In addition, staff will be meeting with partners in early June to discuss how to better leverage resources including those provided by the National Conflict Resolution Center (“NCRC”) for mediation services. Staff will continue to monitor data through CSA and provide recommendations back to the HAC and City Council on existing and future policy as appropriate.

### Ordinance

Staff has held over twenty (20) stakeholder meetings throughout the process including three public meetings through the Housing Advisory Commission, in addition to the City Council meeting on April 12, 2022, where public testimony was heard in relation to the expansion of services with CSA, as well as the two focus groups held in early May. The goal has continually been to bring forward a draft ordinance to be responsive to the original City Council referral to address no-fault termination of tenancy related to substantial remodel, removal from rental market, harassment/retaliation, and City remedies and enforcement.

While stakeholders still widely disagree on several key elements, the “Residential Landlord and Tenant Provisions” as presented in Ordinance A provide tools to clarify state law and additional protections for Chula Vista tenants while balancing other stakeholder and City resource concerns.

Considerations in this process have included:

- Providing residents with additional protections for no-fault termination of tenancy;
- Minimally impacting small landlords (“mom and pops”);
- Defining substantial remodel;
- Allowing properties within the city to revitalize as needed due to age while providing resources for tenants to be able to move to a similar unit through longer noticing and additional relocation benefits;
- Limiting additional city resource needs; and
- Addressing unintentional impacts throughout the process.

Should City Council determine that further refinements need to occur, they may choose to make amendments to Ordinance A as outlined in Table 5 to adopt a permanent ordinance, or as an alternative enact Ordinance B to institute an emergency moratorium on no-fault just cause terminations in the City of Chula Vista through September 30, 2022. Adoption of this alternative would enable further conversations at Council direction to bring back a revised version of a permanent ordinance prior to the expiration of the moratorium.

## **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not a site- specific and consequently, the real property holdings of the City Council members do not create a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov’t Code §87100, et seq.).

Councilmember McCann may, however, have a conflict of interest given his ownership interest in rental property and property management business. Otherwise, Staff is not independently aware, and has not been informed by any other City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

## **CURRENT-YEAR FISCAL IMPACT**

There is no current year fiscal impact to the General Fund as a result of this action. Costs associated with development of this staff report and ordinance are included in the Housing Authority budget.

## **ONGOING FISCAL IMPACT**

There is no ongoing fiscal impact to the General Fund as a result of this action as currently presented. Implementation of Ordinance A or B in their current forms may have minor indirect costs for staff time to collect data, respond to and educate residents, particularly in the first months and/or year of implementation.

## **ATTACHMENTS**

1. April 12, 2022, Staff Report
2. Stakeholder Meeting Minutes from May 3<sup>rd</sup> and 6<sup>th</sup>
3. San Diego International Code Council Building Valuation 2022

*Staff Contact: Stacey Kurz, Housing Manager*  
*Tiffany Allen, Deputy City Manager/Director of Development Services*