



CITY COUNCIL STAFF REPORT



October 25, 2022

ITEM TITLE

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

Report Number: 22-0185

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 placing an ordinance on first reading to add Chapter 9.65 to the Chula Vista Municipal Code entitled “Residential Tenant Protection Ordinance.” **(First Reading)**

SUMMARY

On May 17, 2022, staff presented an ordinance responsive to a September 14, 2021 City Council referral to review potential tenant protections in the City of Chula Vista and received feedback.

Tonight’s action provides the City Council with a permanent ordinance, Chula Vista Municipal Code Chapter 9.65 “Residential Tenant Protection Ordinance” (“CVMC 9.65” or the “Ordinance”), that is responsive to the original referral and subsequent Council comments to address no-fault terminations of tenancy related to substantial remodels of rental properties, removal of rental properties from the rental market, demolition of rental properties, and owner or family move-ins. The provisions further define and prohibit harassment and retaliation against tenants and provide remedies and tools for enforcement.

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 environmental. 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 CVMC 9.65 advance to City Council and that the City establish a task force to assist in tenant and landlord disputes. The Commission also expressed some difficulty in moving forward with the ordinance, indicating that they felt additional outreach might bring the stakeholders into closer agreement.

DISCUSSION

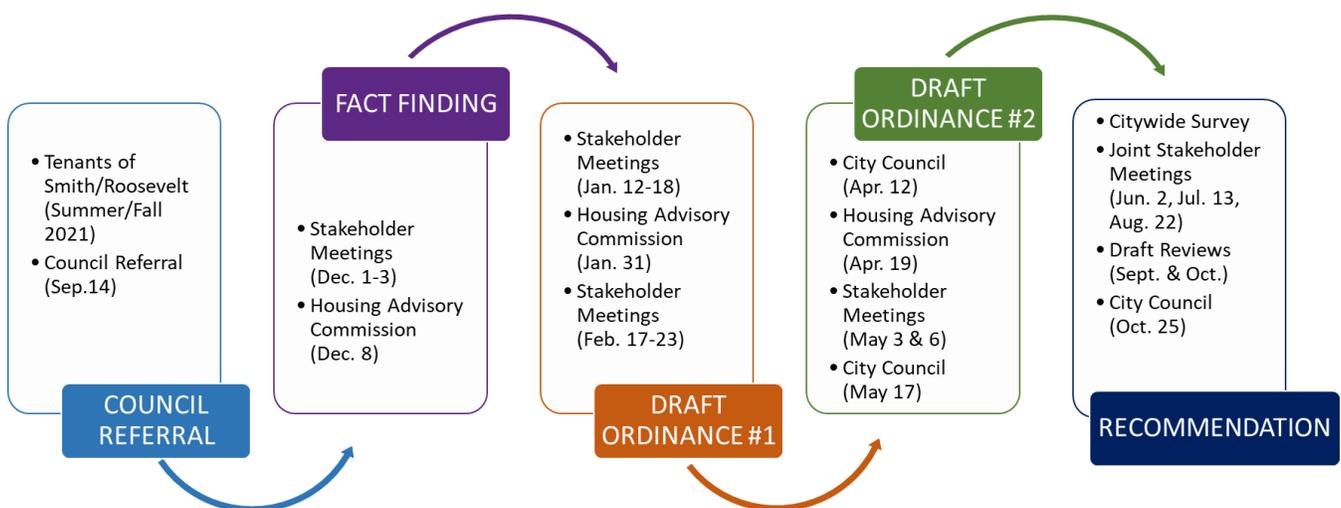
On September 14, 2021, after several months of public comments regarding the eviction of tenants at two properties within the City of Chula Vista, and requests for action by the Alliance of Californians for Community Empowerment (ACCE), the City Council made a referral to staff to review and address the following key areas of tenant protection law:

- Substantial Rehabilitation
- Removal from Rental Market
- Harassment and Retaliation
- City Remedies & Enforcement

On April 12, 2022, an extensive update was provided to City Council on the process established to respond to the September 14, 2021 referral as [Item No. 8.1](#). This was followed by a presentation of a proposed ordinance on May 17 as [Item No. 7.2](#). Tonight’s report serves to respond to specific concerns voiced at the May 17 meeting, provide an update of meetings with stakeholders since that time, and present the City Council with a responsive ordinance inclusive of final stakeholder input and additional data.

Exhibit 1 provides a timeline of the referral process.

**Exhibit 1
Tenant Protection Referral Timeline**



Legal Considerations

Three main State Laws currently provide tenant protections related to the referred items. A summary of each, and the City's authority to implement local protections is summarized below.

The Ellis Act (Government Code section 7060, *et seq.*):

The Ellis Act provides that a local jurisdiction may not compel a rental property owner via statute, ordinance, regulation, or administrative action to continue to offer accommodations for rent. In other words, the City may not prevent a landlord from exiting the rental business. The Ellis Act does, however, permit all local jurisdictions to mitigate any adverse impacts on persons displaced as a result of the withdrawal of a property from the rental market (*see* Government Code section 7060.1(c)). In jurisdictions that have adopted local rent control measures, specific additional protective provisions are authorized by statute. If a local jurisdiction implements local rent control measures, additional tenant protections could be available under the Ellis Act; however, it would be the local jurisdiction's responsibility to implement and enforce rent control, as well as any adopted additional protections.

The State's Tenant Protection Act of 2019 ("STPA") (AB1482):

The STPA in Civil Code section 1946.2 provides that a tenancy may only be terminated for Just Cause, which includes both At-Fault Just Cause and No-Fault Just Cause terminations. At-Fault Just Cause reasons for terminating a tenancy include actions by the tenants that justify termination of the tenancy. No-Fault Just Cause reasons for terminating a tenancy include situations in which the tenant is not at fault, and the termination is instead being initiated because of the landlord's actions. The STPA, in reference to the Ellis Act provisions, lists removal of a rental property from the rental market as a No-Fault Just Cause basis. (*see* Civil Code section 1946.2(b)(2)(B)). Additional No Fault Just Cause reasons for terminating a tenancy include: (1) owner or family member move-in; (2) substantial remodel or complete demolition of the rental property; and (3) a court order or other law forcing the closure of the rental property.

In addition to requiring At Fault or No-Fault Just Cause to terminating a tenancy, the STPA further provides for various tenant protections, including reason-specific termination notices and relocation assistance. Most importantly, the STPA allows local jurisdictions to create their own ordinances to provide for greater tenant protections. In instances where a local jurisdiction enacts an ordinance that is more protective than the STPA provisions, the local protections supersede the STPA.

Finally, Civil Code section 1947.12 imposes state-wide rent control, capping the number of times per year that rent can be increased, and capping the percentage of such increases. Section 1947.12 does not limit local jurisdictions from establishing their own local rent control provisions. In reviewing the options for the Ordinance, rent control was not considered as it was not part of the referral made to staff.

Retaliatory Behavior Prohibition (Civil Code 1942.5):

State law provides protections from retaliation for tenants that have exercised a legal right against a landlord. In the event that a tenant exercises a tenant's right (including participation in an organized tenant's rights association) or reports a habitability issue to an enforcing agency, a landlord cannot terminate the tenancy, force the tenant to leave involuntarily, increase rent, or decrease any services for a specified period of time so long as the tenant has not failed to pay rent. Local jurisdictions may adopt additional tenant anti-harassment provisions pursuant to their local police power authority.

Council Comments

Table 1 provides a summary of comments from City Council on May 17 and provides details of how City staff have addressed these concerns.

Table 1
Summary of Council Comments on May 17th & Action to Address

May 17 th Comment	Action to Address
Assessment of Housing Staff Resources	A separate action will be brought forward to Council regarding Housing resources and restructuring to address increasing emphasis on Housing matters.
Develop Outreach Plan	City entered into a contract with NV5/Ardurra in June 2022 for assistance in facilitating stakeholder meetings, inventorying available stakeholder resources and developing an outreach strategy for initial ordinance implementation and a long-term educational campaign. An outline of the collaborative stakeholder outreach opportunities is provided later in the staff report.
Tracking/Data Collection	Added Ordinance requirements for landlords to provide data to be submitted to the City along with notice(s) served to resident(s), to be more fully defined in the Administrative Regulations. City staff will maintain no-fault noticing and work with CSA to establish data collection for other tenant/landlord issues and terminations.
How Would Tenancy be Validated?	Ordinance provides definitions on qualifications for tenancy and tools for tenants to civilly pursue.
Length of Tenancy for Protections	Removed the requirement that Just Cause is required only for Long-Term Tenancies. As a result, Just Cause is required to terminate a tenancy of any length.
Review Relocation Metric of U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent (SAFMR) to Ensure it Reflects Current Rental Market	<p>The SAFMR is updated in April of every year. While the City has seen a significant increase in rental rates in the past year, historically the Consumer Price Index (CPI) increase for the San Diego area averages 2.5-3.0% annually. A survey, further discussed below was conducted in July 2022 and showed average rents well below the SAFMR.</p> <p>However, to address concerns regarding increased market rents, the Ordinance has been updated to provide relocation assistance for a specified number of months at the greater of the SAFMR for that zip code or actual contracted rent.</p>
Strengthen Protections around First Right of Refusal	Added requirement for landlord to include minimum criteria for requalification of tenancy with first right of refusal noticing and greater specificity of timeframes.
Clarify Enforcement of Criminal Offenses	Ordinance updated to specify that criminal penalties are authorized only in the case of the Owner's interference with a Tenant's occupancy involving (a) threat, fraud, intimidation, etc.; (b) a public nuisance; (c) cutting off utilities; or restricting trade (including delivery services) to or from a Tenant.

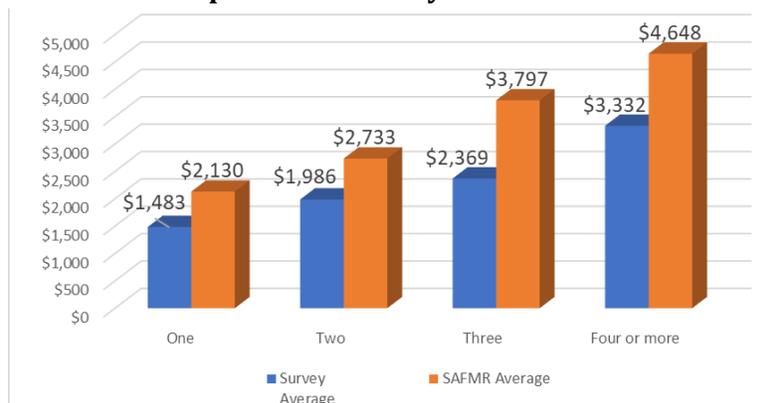
Citywide Survey

Based on continuing concern that additional local data was needed surrounding the types of termination of tenancies that have recently occurred, types of properties impacted, and existing rental rates, Staff contracted with LUTH Research to conduct a survey of tenants and landlords throughout the City (see Attachment 1 for the full report). Between July 6 and July 26, through market research calls, stakeholders and city media channels, a citywide survey was distributed to collect additional data and responses were received from 271 tenants and 89 landlords who lease out 116 separate units.

The survey highlights included:

- 41% of tenant respondents resided in the 91910 zip code, followed by 91911 at 26%, 91913 at 17%, 91915 at 8%, 91902 at 5%, and 91914 at 2%.
- Only one in ten tenant respondents are renting a property that the owner also lives on.
- One in five tenant respondents have been in the property ten years or longer.
- Nearly one-half of tenant respondents are renting two-bedroom units and one in three are renting three-bedroom units.
- The average rent paid for a 1-bedroom rental in Chula Vista is just under \$1,500, it is just under \$2,000 for a 2-bedroom and nearly \$2,400 for a 3-bedroom rental. Exhibit 2 provides a comparison of these results to the SAFMR, showing on average the SAFMR is higher than reported rents.
- 41% of tenant respondents received a rent increase for 2022, while one in three tenant respondents have never had a rent increase.
- Rent increases averaged \$180 in 2022.
- One in ten Chula Vista tenant respondents say they have received an eviction notice or a termination of tenancy in the past three months.
- The primary reason for an eviction notice is for non-payment of rent; however, many have also received notices due to the owner or family moving in and substantial rehabilitation.
- Around one in ten tenants belong to ACCE and slightly fewer belong to San Diego Tenants Unite/Tenants Together.
- Landlords reported issuing no-fault terminations in the past 3 months affecting 157 tenants.
- 35% of landlords indicated they were not aware of noticing requirements under AB1482.

**Exhibit 2
Comparison of Survey Data vs. SAFMR**



Stakeholder Outreach

The May 17 staff report provides a full update of stakeholder input to that point. In all, over 20 stakeholder and/or public meetings, as summarized in Table 2, have been held over the course of responding to the referral. Meeting notes from stakeholder meetings on June 2, July 13, and August 22 have been included as Attachment 2.

Table 2
Summary of Outreach Meetings & Stakeholder Involvement

Stakeholder	Concept / Fact Finding	Draft Ordinance (1)	Draft Ordinance (2)	Ordinance #1 <i>Presented to Council 5/17</i>	Due Diligence	Ordinance #2 <i>Presented to Council 9/13</i>
Alliance of Californians for Community Empowerment (ACCE)	12/1/21	1/13	2/23	5/3 & 5/6	6/2 & 7/13	8/22
Building Industry Association (BIA)			2/1			8/22
California Apartment Association (CAA)	12/3/21	1/12	2/17	5/3 & 5/6	6/2 & 7/13	8/22
Chula Vista Chamber of Commerce Policy Committee			2/23			
Pacific Southwest Association of Realtors (PSAR)	12/1/21	1/13	2/17	5/3 & 5/6	6/2 & 7/13	8/22
San Diego Association of Realtors (SDAR)		1/18	2/17	5/3 & 5/6	6/2 & 7/13	8/22
Southern California Rental Housing Association (SCRHA)	12/2/21	1/12	2/17	5/3 & 5/6	6/2 & 7/13	8/22
Western Manufactured Housing Communities (WMA)		1/18		5/3		8/22
Housing Advisory Commission (HAC)	12/8/21	1/31	4/19			

While staff has continued to make updates to the Ordinance based on stakeholder input throughout the process, landlords have contended from the beginning that local protections beyond those offered by State Law should not be implemented since the State Tenant Protection Act of 2019 (“AB1482” or the “STPA”) was adopted just prior to the pandemic making the real industry impacts still unknown, and there has not been a demonstrated need for additional protections in Chula Vista. On the other hand, tenant advocates have contended that no-fault evictions are a loophole in AB1482, are a growing trend for displacement of residents throughout the State, and local jurisdictions should act now before the issue grows further.

“Residential Tenant Protection Ordinance”

Based upon the May 17 input received from the Council and subsequent data and stakeholder input, a final Ordinance is being presented for consideration. Attachment 3 provides an overview of State Law surrounding substantial remodel, demolition, removal from market, and retaliatory harassment (AB1482, Civil Code 1942.5, and Ellis Act), in comparison to the proposed Ordinance.

Important points of the new ordinance include:

- For single-family residences, only those owned by a business entity have greater requirements than current State law.
- Section 9.65.050, Harassment and Retaliation Against Tenant Prohibited, applies to single-family residences that are owned by a business entity, properties with two units that are both rented (duplexes or single-family with ADU), and Residential Rental Complexes.
- Section 9.65.060, Just Cause Required for Termination of Tenancy, applies to all single-family residences that are owned by a business entity, properties with two units that are both rented (duplexes or single-family with ADU), and to Residential Rental Complex with 3 units or more.

- Section 9.65.070, Requirements Upon Termination of a Tenancy, requires that notice and relocation assistance be provided to tenants in the event of a No-Fault Just Cause termination. This provision applies to all single-family residences that are owned by a business entity, properties with two units that are both rented (duplexes or single-family with ADU), and to Residential Rental Complex with 3 units or more. Owners are required to provide notice to the City of the No Fault Just Cause termination of tenancy. For units in a Residential Rental Complex, relocation assistance must be provided to the tenant in an amount equal to two months' rent, or for elderly or disabled tenants, an amount equal to three months' rent. For all other units, relocation assistance must be provided to the tenant in an amount equal to one month's rent.

Implementation

Should Council adopt the Ordinance as presented, the effective date would be March 1, 2023. Over the next approximately 90 days, staff would continue to work with stakeholders to finalize the Administrative Regulations and provide educational outreach to all affected parties. A summary of potential methods was compiled with stakeholder input and is provided in Attachment 4.

Specifically, City staff will be launching an updated webpage dedicated to landlord/tenant resources (<https://www.chulavistaca.gov/landlordtenant>), will provide direct mailing and utilize social media and community organizations to educate the community. Currently, 752 complexes which contain 3 units or more ("Residential Rental Complex" as defined in the Ordinance), a total of 22,905 units, have business licenses to operate. Staff will coordinate with the Finance Department and Code Enforcement to ensure information on the Ordinance is included in future annual business license renewal mailings; separate mailings will be made as needed, and emails will be sent to all Residential Rental Complexes on file.

CSA San Diego will increase education to tenants through community events and community-based organizations and will collect additional data on terminations of tenancy, that are not covered by the Ordinance and being collected by the City, in order to track trends and inform future policy.

Conclusion

Staff has held over twenty (20) stakeholder meetings throughout the ordinance development process, including three public meetings through the Housing Advisory Commission, in addition to the City Council meetings on April 12 and May 17. 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 Ordinance as presented provides 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");
- Narrowing the definition of what constitutes a 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 with additional relocation benefits;
- Limiting additional city resource needs; and

- Addressing unintentional impacts throughout the process.

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 the Ordinance will 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. Staff will continue to evaluate impacts and provide the HAC with updates related to administrative changes and/or budgetary impacts.

ATTACHMENTS

1. LUTH Research Citywide Landlord & Tenant Survey
2. Stakeholder Meeting Notes from June 2, July 13, and August 22
3. Comparison of State Law & Proposed Local Protections
4. Summary of Collaborative Stakeholder Outreach Opportunities

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