



## Legislation Details (With Text)

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**Title:** Staff Report for an Ordinance Adding a Tenant Relocation Assistance Program to the City of San Leandro Municipal Code to Require the Payment of Tenant Relocation Assistance for Landlord-Caused Terminations of Tenancy and to Require Additional Notice Prior to Termination of Tenancy  
**Sponsors:** Cynthia Battenberg  
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Staff Report for an Ordinance Adding a Tenant Relocation Assistance Program to the City of San Leandro Municipal Code to Require the Payment of Tenant Relocation Assistance for Landlord-Caused Terminations of Tenancy and to Require Additional Notice Prior to Termination of Tenancy

### SUMMARY AND RECOMMENDATIONS

On July 3, 2017, the City Council voted 5-2 to return the proposed Ordinance to establish a Tenant Relocation Assistance Program to the City Council Rules Committee for further public discussion and refinement. The City Council requested continued discussion by the Rules Committee regarding any impacts on the Ordinance by *Coyne vs City and County of San Francisco*; should landlord be provided additional time to make the final tenant relocation assistance payment; should the Ordinance apply to multiple residential complexes of 4 units or less under single ownership; and, program funding.

On July 24, 2017, the City Council Rules Committee convened to discuss the issues listed above as well as other related matters and receive public comment. The Rules Committee recommended that staff make the following two changes in the proposed Ordinance for City Council review and public input at the September 5, 2017 City Council meeting:

- 1) Decrease the relocation assistance cap from \$10,000 to \$7,000.
- 2) Change the definition of residential property to mean any parcel with two or more tenant-occupied units.

Staff recommends that the City Council adopt the attached Ordinance adding Chapter 4-37 "Tenant Relocation Assistance" to the San Leandro Municipal Code, that includes the City Council Rules Committee's recommendations from its July 24<sup>th</sup> meeting.

## BACKGROUND AND ANALYSIS

Below are notable features of the proposed Ordinance based on the City Council Rules Committee's comments, and public input. Changes to the Ordinance per the July 24 Rules Committee meeting are italicized below.

### I. Eligibility

- A. Tenants are entitled to relocation assistance if the termination of tenancy is due to "landlord-caused termination." The Ordinance defines a "landlord-caused termination" as any landlord-caused action, including a rent increase that is 12% or greater than the base rent during a twelve-month period, which causes a tenant to elect to not remain in his/her unit. Exceptions to "landlord-caused termination include the following:
- 1) Tenant failure to pay rent
  - 2) Tenant breach of lease or rental contract
  - 3) Tenant illegal activities
  - 4) Failure to allow landlord access after legal notice
  - 5) Residential property uninhabitable without landlord fault (e.g., tenant's negligence or willful misconduct, earthquake, fire, flood)
  - 6) Lawful termination of employment where such employment by the landlord was a condition of the lease (e.g., apartment property manager)
  - 7) Temporary repairs where the landlord provides the tenant with short-term alternative housing during the renovation period
  - 8) Prior notice of renovations where the landlord notifies the tenant, before entering into a lease, of his/her intent to remodel the property. To ensure completion of the renovations, the landlord must renovate within one year of tenant occupying the rental unit and must submit plans with the City at the time he/she notifies the tenant of the termination of tenancy.
- B. *All parcels containing rental properties that have two (2) or more tenant-occupied housing units fall under the Ordinance. Per the July 24 City Council Rules Committee recommendation, this changes the "residential property definition" back to the Ordinance's original definition that was presented to Council at its June 19, 2017 meeting. Therefore, detached single family homes and individual condominium/townhome units would be exempt from the Ordinance, while duplexes (where both units are rented out), tri-plexes and four-plexes would be subject to the Ordinance.*
- C. Tenants with "special-circumstances household" members are entitled to additional tenant relocation assistance (see "Tenant Relocation Assistance" section below). "Special-circumstances household" is defined as "a tenant or anyone else authorized by the landlord" to occupy the rental unit based on the following characteristics: at least one resident is 62 years of age or older, or at least one resident qualifies as a person with disabilities under State law, or at least one or more residents is under 18 years of age.
- D. Rental housing properties with recorded affordability restrictions are exempt from this Ordinance. Such properties typically have entered into long-term affordability agreements with the City, State and/or the federal government (e.g., City subsidy, State/federal low income housing tax credit program) to serve lower income renters. For clarification purposes only, staff also made minor changes to the definition of affordable rental housing exemption.

## **II. Relocation Assistance Amounts**

- A. Eligible tenants will receive the higher of three times the monthly rent that the tenant is currently paying; or (2) three times the current Fair Market Rent for the Oakland-Fremont metropolitan area. The U.S. Department of Housing and Urban Development (HUD) annually publishes regional FMR limits by bedroom size. The 2017 FMRs are: \$1,435 (Studio), \$1,723 (1-Bedroom), \$2,173 (2-Bedroom) and \$3,017 (3 Bedroom).
- B. A special-circumstance household may receive an additional \$1,000 per rental unit.
- C. Landlord may deduct tenant relocation payment amounts required under California Health and Safety Code Sections 17975-17975.10 from the relocation assistance payment required by the City's proposed Ordinance.
- D. *A landlord shall provide total relocation assistance to an eligible tenant in an amount not to exceed \$7,000. Per the July 24 City Council Rules Committee recommendation, this change reflects a decrease from the \$10,000 cap in prior versions of the proposed Ordinance.*

## **III. Relocation Assistance Payment Procedures**

- A. Landlord shall pay relocation to an eligible tenant in two installments:
  - 1. Half within five days following notice delivered to a tenant of a landlord-caused termination and the other half within 5 days of the tenant's last day of tenancy.
  - 2. Where the landlord-caused termination involves a rent increase greater than 12% and the tenant elects to leave, landlord shall pay half within 5 days of receiving written notice from tenant to vacate the unit and the other half no later than 5 days before the last day of tenancy.
  - 3. Landlords may deduct from the second relocation assistance payment unpaid rent and/or damages in excess of the security deposit.
  - 4. If a tenant receives any relocation payments and opts to return to the apartment, then he/she shall reimburse the landlord for payments received.
  - 5. Landlord and tenant are not prohibited under this Ordinance from coming to their own mutually agreeable relocation terms.
  - 6. Landlord may not unduly influence or negotiate in bad faith with a tenant to agree to relocation assistance different from the requirements under this Ordinance by means of fraud, intimidation, and/or coercion (e.g., threats over immigration status).

## **IV. Notices**

- A. The proposed Ordinance establishes required text in the "notice of entitlement to relocation assistance" that describes the amount of relocation assistance to which a qualified tenant is eligible.
- B. The text notice delivered to the tenant must be in English, Spanish and Chinese.
- C. There are two types of relocation assistance notices under the proposed Ordinance:
  - 1. For landlord-caused terminations not involving rent increases greater than 12%, a landlord must provide a "notice of entitlement to relocation assistance" with the

- “notice of tenancy termination” at least 90 days prior to the termination of tenancy.
2. For landlord-caused termination due to rent increases greater than 12%, a landlord must provide a “notice of entitlement to relocation assistance” with the rent increase notice at least 60 days prior, per State law.

## **V. Prohibition of Retaliation**

- A. Under California Civil Code Section 1942.5, a landlord may not begin eviction proceedings or other retaliatory actions against a tenant who “lawfully and peaceably exercises his or her legal rights” under the Ordinance.

## **VI. Miscellaneous**

- A. Staff will prepare an annual report to the City Council assessing the Ordinance’s effectiveness, and recommending changes as appropriate.

The implementation and administration of the proposed Ordinance is an outstanding issue. Staff briefed the City Council Rules Committee on the need for part-time City or consultant staff to monitor landlord notices of termination, address inquiries and concerns from both tenants and landlords, develop and distribute outreach materials in multiple languages and provide technical assistance.

Staff estimates the annual cost for Tenant Relocation Program administration is \$50,000. Staff proposed an annual \$10 per rental unit fee charged to landlords on the business license tax to offset administration costs related to the Tenant Relocation Program and the Rent Review Ordinance (which costs approximately \$50,000 annually). Staff assumes that the need for Tenant Relocation Program administration would be similar to administrative needs for the Rent Review Board in that there would be years of significant activity and years when there would be little to no activity. The proposed Rental Unit Fee therefore would need to be evaluated annually, along with the annual program report, and only charged during years when there are costs associated with these programs.

At its July 24 meeting, the Rules Committee discussed program funding sources such as Real Property Transfer Tax revenue or the staff proposed \$10 per rental unit fee to be paid annually, as needed, in conjunction with the Business License Tax. The Committee concurred with the City Manager’s recommendation that program funding be discussed during the mid-year budget review.

## **Previous Actions**

- Staff provided City Council with an update on the status of the Tenant Relocation Assistance Program on September 6, 2016.
- On June 19, 2017, the City Council reviewed and received public comments on the first reading of the proposed ordinance to create a Tenant Relocation Assistance Program. There were 11 public comments: 3 from renters/renter advocates and 8 from landlords/realtors. The City Council voted 6-1 to revise the Ordinance with the 4 following changes listed below and bring back the Ordinance for first reading on July 3, 2017:
  - 1) Decrease the rent increase threshold from greater than 15% to greater than 12% of current rent,
  - 2) Exempt rental properties of 4 units or less from the proposed Ordinance,
  - 3) Allow landlords to deduct tenant relocation assistance payments required under

California Health and Safety Code Sections 17975-17975.10 from the relocation assistance payment imposed by the City's Ordinance. The deduction relates to State law that allows local building officials to issue enforcement orders for uninhabitable residential rental properties (e.g., red-tagging), which triggers payment of relocation expenses for the displaced tenants, and

- 4) Allow landlords to deduct from the final tenant relocation assistance payment the tenant -caused damages not covered by a security deposit.
- On July 3, 2017, the City Council reviewed the proposed Ordinance and received 19 public comments: 4 renters/renter advocates and 15 landlords/landlord advocates/realtors. The City Council voted 5-2 to return the matter to the Rules Committee for further discussion.

### **Committee Review and Actions**

- The City Council Rules Committee was the primary legislative body for the proposed Tenant Relocation Assistance Program. The Rules Committee met on the following dates to initiate and refine the proposed measures and text in the proposed Ordinance:
  - April 13, 2016
  - July 24, 2016
  - February 27, 2017
  - March 27, 2017
  - May 22, 2017
  - July 24, 2017

### **Applicable General Plan Policies**

The proposed Ordinance complies with the following under the current Housing Element component of the 2035 General Plan:

- Policy 56.07 Landlord-Tenant Relations: Provide assistance to landlords and tenants in resolving conflicts...Maintain measures that discourage the displacement of San Leandro renters as a result of sudden or steep increases.

### **Environmental Review**

Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of Municipal Code text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

### **Summary of Public Outreach Efforts**

As noted above, the City held numerous City Council Rules Committee meetings and City Council meetings (as described above) to gather public input on the proposed Tenant Relocation Assistance

Program. Notification methods for these public meetings, and tonight's public meeting, included: notices emailed or mailed to over 300 renters (including past and current Rent Review Board applicants), landlords and other interested stakeholders on the City's distribution list; posting on the local online neighborhood forum, Nextdoor; and posting on the City website and at City Hall of the meeting agendas/staff reports/draft Ordinance versions. Since Spring 2016, when discussion of proposed tenant relocation measures began in earnest, staff has taken public input by phone, email, and direct meetings with the public.

### **Legal Analysis**

The proposed Ordinance was prepared and analyzed by the City Attorney's Office and approved as to form.

### **Fiscal Impacts**

The projected annual cost to administer the proposed Ordinance is \$50,000, which could impact the General Fund should revenue sources to offset these costs not be identified.

### **Attachment to Staff Report**

- Exhibit A: Proposed Tenant Relocation Assistance Ordinance (with redline changes)

### **Attachment to Ordinance**

- Exhibit A: Proposed Tenant Relocation Assistance Ordinance (clean version)

**PREPARED BY:** Tom Liao, Deputy Community Development Director