

Potential Urgency Ordinance

Displacement of Residents from Rental Housing Due to Storms and Flooding

March 6, 2023



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City Council Authority

The adoption of rent control measures is a valid exercise of a city's police power subject to certain limitations. (Cal Const, Art. XI § 7; *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129).

Section 412 of the City's Charter provides in pertinent part:

“Any Ordinance declared by the City Council to be necessary as an emergency measure for preserving the public peace, health, or safety, and containing a statement of the reasons for its urgency, may be introduced and adopted at one and the same meeting if passed by at least five affirmative votes.”

Limits of Urgency Ordinances

- Urgency ordinances require a statement of valid, constitutional and persuasive facts to justify the determination.
- Urgency ordinances must have a sunset date/expire once the need for the ordinance has ended.
- The Council can adopt an identical “back up” ordinance by way of the usual procedure (i.e., two readings) to safeguard against a potential legal challenge against the urgency ordinance.



Intent Behind Potential Ordinance

Many City residents were displaced from their rental homes due to the severe storms and flooding in January. These residents cannot return to their homes until the rehabilitation process has been completed. The primary concerns expressed by Councilmembers and community members are as follows:

- 1) Property owners may raise rent once displaced tenants return to their homes,
- 2) Once properties are rehabilitated, owners may not provide a right of first refusal to displaced tenants and may rent properties to new tenants (at potentially higher rates), and/or
- 3) Property owners may initiate no fault evictions once displaced tenants return to avoid any rent increase restrictions adopted by the Council.



Rent Increase Moratoriums

ABILITY TO IMPLEMENT A RENT INCREASE MORATORIUM

- The City Council can institute a rent freeze via ordinance. However, it must comply with existing law.
- Due to the restrictions of the Costa-Hawkins Rental Housing Act (Civ. Code §§ 1954.50, et seq.), a moratorium on rent increases would help some, but not all, tenants.

THE TENANT PROTECTION ACT OF 2019 (“ACT”)

- The Act contains limited protections against rent increases that took effect January 1, 2020.
- Over the course of any 12-month period, a landlord cannot increase a tenant’s rent by 5% plus the percentage change in the cost of living (set by regional CPI) or 10%, whichever is less.
- The Act applies to all rent increases after March 15, 2019.
- The Act prevents landlords from increasing a tenant’s rent more than twice over a 12-month period, except to set new rental rates at the start of a new tenancy.
- The Act exempts certain housing types from the cap.

Potential Limitations

COSTA-HAWKINS RENTAL HOUSING ACT (CIV. CODE §§ 1954.50, ET SEQ.)

Any ordinance enacted by the City would need to be consistent with the Costa-Hawkins Rental Housing Act (“Costa-Hawkins”).

Primary provisions of Costa-Hawkins:

1. Protects a landlord’s right to raise rent to market rate on a unit once a tenant moves out.
2. Prevents cities from establishing rent control—or capping rent—on units constructed after February 1995.
3. Exempts single-family homes and condos from rent control restrictions.
4. Prevents cities from updating date-of-construction provisions in ordinances in place at the time of its passage.

- Costa-Hawkins does not regulate evictions.
- The topic of evictions is a separate area that the Council can consider regulating via ordinance in order to provide further tenant relief.

Right of First Refusal and No-Fault Evictions

- The City Council may also include just cause eviction protections and tenant return rights in an urgency or standard ordinance.
- California law requires right of first refusal/the right to return in certain circumstances.
- The Tenant Protection Act of 2019 includes specific requirements for just cause evictions, but local jurisdictions may adopt more protective just cause eviction protection measures, if certain requirements are met.



Right of First Refusal Laws

HEALTH AND SAFETY CODE

- When the owner of a building fails to comply with the terms of an order or notice to repair or abate Health and Safety or Building Standard Code violations, and a court finds that the building is in a condition which substantially endangers the health and safety of residents, then the court may order that if the owner undertakes repairs or rehabilitation as a result, and the conditions of the premises make it so that the tenant cannot safely reside in the premises, the owner is required to provide relocation benefits.
- If a tenant receives those relocation benefits, then the owner must also offer the right to re-occupy the premises before letting the unit for rent to a third party.

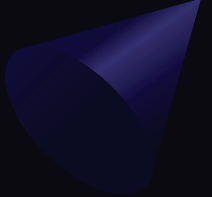
THE ELLIS ACT (GOV. CODE § 7060 ET SEQ.)

- If a building is “Ellised” (i.e., removed from the rental market in accordance with the Ellis Act), there are vacancy rent control restrictions on re-rental of the units.
- When a landlord invokes the Ellis Act, the apartments cannot be re-rented, except at the same rent the evicted tenant was paying, for five years following the evictions, and must be first offered to the evicted tenant for ten years after the eviction.

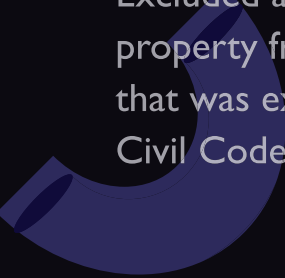
The Tenant Protection Act (“Act”) – No Fault Eviction

- The Act enumerates certain "no fault" just causes for eviction, including removal of the unit from the rental market or providing it to an immediate relative, substantially remodeling the unit, vacating the unit to address habitability issues, or responding to an administrative or court order.
- The Act exempts certain housing types from the tenant protections requiring a just cause showing prior to terminating a residential tenancy.
- The Act does not preempt existing local just cause eviction protection ordinances and allows local jurisdictions to adopt more protective just cause ordinances. An ordinance is considered “more protective” if all the following conditions are met:
 1. The just cause for termination of a residential tenancy under the local ordinance is consistent with Civil Code section 1946.2;
 2. The ordinance further limits the reasons for termination of a residential tenancy, provides for higher relocation assistance amounts, or provides additional tenant protections that are not prohibited by any other provision of law; and
 3. The local government has made a binding finding within their local ordinance that the ordinance is more protective than the provisions of this section.

Ordinance Examples



CONTRA COSTA COUNTY

- Implemented an urgency ordinance which temporarily prohibited evictions of tenants impacted by the pandemic
 - Also established a temporary moratorium on rent increases
 - Extended multiple times
 - Excluded any residential real property from the rent moratorium that was exempt from rent limits by Civil Code section 1947.12
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LOS ANGELES COUNTY

- Rent Stabilization and Tenant Protections Ordinance requires landlords to make a relocation assistance payment to evicted tenants who are not “at fault.”

CITY OF OAKLAND

- Good Cause Required for Conviction Ordinance requires that when a property owner is undertaking substantial repairs, upon completion of the needed repairs, the owner must offer the tenant first right to return.
- Tenant returns at the same rent and pursuant to a rental agreement with substantially the same terms as their original agreement

Timing

- Residents were displaced from rental housing as a result of the storms and flooding starting on or around January 8, 2023.
- All mandatory and discretionary evacuation orders were lifted on or around January 12, 2023.
- City staff estimate that approximately 1,600 residents were displaced from approximately 720 units. The City has a team surveying the community and will have the approximate number of rental units needing repair within approximately ten business days.
- We recommend the urgency ordinance sunset within 6-12 months of the estimated rehabilitation completion date.





Questions?

The City Attorney now invites the Council to ask any questions they may have regarding the potential urgency ordinance.