



The City of San Diego

Staff Report

DATE ISSUED: April 11, 2022

TO: City Council

FROM: City Council District 9

SUBJECT: Residential Tenant Protection Ordinance to Prevent Displacement and Homelessness

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Council District(s): Citywide

OVERVIEW:

The proposed Residential Tenant Protection Ordinance will provide new protections for tenants from “no fault evictions,” which is when a tenant is evicted despite paying their rent and abiding by the terms of their lease. The proposed ordinance would align the City of San Diego’s tenant protections with state level tenant protections provided by the Tenant Protection Act of 2019 (AB 1482). In key areas, the Ordinance would provide additional protections to prevent displacement and homelessness while addressing the needs of San Diego renters.

PROPOSED ACTIONS:

1. Approve the Residential Tenant Protection Ordinance.
2. Declare this activity exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption).

DISCUSSION OF ITEM:

Background

The Tenants’ Right to Know Ordinance, which provides the current tenant protections in the City of San Diego, was adopted in 2004. The City has not made significant updates to it since then. California State Assembly Bill 1482, which went into effect in 2020, added California Civil Code section 1946.2 to provide eviction protections for renters. The State’s strengthened eviction protections do not apply in the City because of a provision in AB 1482 that limits its applicability to jurisdictions without an already existing just cause ordinance. The City’s Tenants’ Right to Know Ordinance (San Diego Municipal Code sections 98.0701-98.0760) is considered a “just cause” ordinance but provides fewer protections than AB 1482. Therefore, currently, San Diegans have fewer protections than other Californians.

AB 1482 also created a statewide limit on rent increases by adding California Civil Code section 1947.12, which does apply in San Diego and is in effect. The proposed ordinance does not include rent stabilization or rent control policies.

On April 4, 2022, the City Council adopted the Residential “No-Fault” Eviction Moratorium to preserve tenancies during the declared State of Emergency from COVID-19. The Moratorium went into effect on May 22, 2022, and expired on September 30, 2022. On October 31, 2022, the Council President brought

an information item to the City Council to receive feedback from the public and the Council on a framework for tenant protections. On December 6, 2022, Council President Sean Elo-Rivera announced a partnership with Mayor Todd Gloria to bring forward permanent tenant protections in early 2023.

Engagement with stakeholders occurred throughout the development of the proposed Ordinance. The Council President's Office began working on developing tenant protections in the Fall of 2021, which included meetings and receiving input from stakeholders, including landlords and tenant advocates. After the Council President and Mayor announced their joint efforts, their offices convened stakeholders in the rental industry and community-based and legal services organizations that represent San Diego tenants. That included facilitating the following meetings between stakeholders and both the Council President's Office and the Mayor's Office:

- The Mayor's Office convened the Council President's Office and industry representatives, including California Apartment Association (CAA), Southern California Rental Housing Association (SCRHA), the Building Industry Association of San Diego, the San Diego Regional Chamber of Commerce, North San Diego County Association of Realtors, and Pacific Southwest Association of Realtors.
 - Meetings on November 15, 2022 and December 16, 2022
- The Council President's Office and the Mayor's Office convened a Working Group with CAA, SCRHA, the Partnership for the Advancement of New Americans (PANA), the Alliance of Californians for Community Empowerment (ACCE), and Legal Aid Society of San Diego (LASSD).
 - Two-hour meetings on January 25, 2023, February 1, 2023, and February 8, 2023
- Council President Sean Elo-Rivera and Mayor Todd Gloria met with CAA and SCRHA.
 - Meeting on March 14, 2023
- Council President Sean Elo-Rivera and Mayor Todd Gloria met with PANA, ACCE, and LASSD.
 - Meeting on March 15, 2023
- Additional meetings between stakeholders and the Council President's Office or the Mayor's Office also took place throughout the development of the proposed Ordinance.

Strengthened Tenant Protections Proposal

Addressing the City's housing and homelessness crisis requires a three-prong strategy: prevent displacement and homelessness, minimize the time and impact of homelessness through supportive services and safe shelters, and create housing San Diegans can afford. Tenant protections that keep San Diegans housed can prevent potentially catastrophic lifelong impacts resulting from an eviction, especially when evicted through no fault of the tenant.

In addition to providing greater protections to those found in AB 1482 the proposed Ordinance includes the following additional protections to prevent displacement and homelessness:

1. Protections beginning on day one of tenancy (with exemptions for fixed term leases of three months or less);
2. Two months' relocation assistance at contract rent for no fault terminations of tenancies, with three months' assistance for seniors and people with disabilities;
3. Increased requirements for a landlord to terminate a tenancy for substantial remodel or demolition, including:
 - The application for the required permit must be posted at the property within three business days of submittal;
 - The permit must be issued before a landlord is able to serve a notice to terminate tenancy to the tenant;

- The tenant must be served a copy of the permit with the written termination notice stating, under penalty of perjury, the reason for termination, scope of the work, and why the work requires the tenant to vacate for at least 30 days;
- 4. Move-in notice with information provided by City and available on the San Diego Housing Commission's website with education and resources for tenants;
- 5. Accountability measures such as allowing attorney fees and punitive or exemplary damages to discourage bad actors, as well as a process for buyout agreements to avoid a formal termination of tenancy while ensuring tenants are informed of their rights;
- 6. Clarify that the exemption from San Diego's tenant protections for affordable housing does not include Section 8 Housing Choice Vouchers;
- 7. Tenant's right of first refusal if unit is brought back to the market within five years for certain "no fault" causes.

Need for Tenant Protections

From October 2021 to September 2022, 10 people found housing for every 13 people who experienced homelessness for the first time in San Diego County. In that timeframe 15,327 people became homeless for the first time while 11,861 people experiencing homeless were connected with housing.¹ The takeaway is clear — we must prioritize prevention as a crucial strategy to addressing homelessness, develop supportive services that minimize the time and impact of homelessness, and build more affordable housing. The City must address the immediate humanitarian crisis of San Diegans falling into homelessness at a faster rate than they can be housed.

The average rent in San Diego has increased 46 percent from 2012 to 2019.² Fifty percent of households are housing cost-burdened, meaning these households spend more than 30 percent of their income on housing costs.³ Cost-burdened households who receive an unexpected "no fault" eviction notice must then quickly enter the housing market at a time of rapidly rising rents and find a home they can afford, in addition to the cost of moving, deposits, and other expenses. Many families are at risk of falling into homelessness after a "no fault" eviction.

For people with disabilities, additional barriers to housing play a role in housing instability. Eighty percent of the City's housing stock was built before 1990 and most homes built before 1990 are not wheelchair accessible⁴, which creates barriers to finding suitable housing for individuals with accessibility needs. Individuals living with disabilities represent a disproportionate share of the homeless population⁵, often

¹ Regional Task Force on Homelessness. (2022). *HMIS 12-Month Overview*.

² City of San Diego. (2021, June 14). *City of San Diego General Plan Housing Element 2021-2029*. Review of the City of San Diego's 6th Cycle General Plan Housing Element 2021-2029 and Additions Thereto. Retrieved October 12, 2022, from <https://www.hcd.ca.gov/housing-elements/docs/san-diego-6th-adopted061421.pdf> (pg. HE-22)

³ City of San Diego. (2021, June 14). *City of San Diego General Plan Housing Element 2021-2029*. Review of the City of San Diego's 6th Cycle General Plan Housing Element 2021-2029 and Additions Thereto. Retrieved October 12, 2022, from <https://www.hcd.ca.gov/housing-elements/docs/san-diego-6th-adopted061421.pdf> (pg. HE-22)

⁴ City of San Diego. (2021, June 14). *City of San Diego General Plan Housing Element 2021-2029*. Review of the City of San Diego's 6th Cycle General Plan Housing Element 2021-2029 and Additions Thereto. Retrieved October 12, 2022, from <https://www.hcd.ca.gov/housing-elements/docs/san-diego-6th-adopted061421.pdf> (pg. HE-24)

⁵ Warth, G. (2020, September 15). *County's homeless: Disabled, 55 and older and black*. San Diego Union-Tribune. Retrieved October 12, 2022, from <https://www.sandiegouniontribune.com/news/homelessness/story/2020-09-15/countys-homeless-disabled-55-and-older-and-black>

live on fixed incomes, and cannot absorb rent increases, and therefore experience added difficulties maintaining, searching for, and finding accessible housing that meets their unique housing needs.

In 2020, 27 percent of people experiencing homelessness were seniors, 88 percent of whom became homeless in San Diego, and 43 percent of whom were unsheltered for the first time as seniors. Factors contributing to the rise in senior homelessness include fixed incomes and a reduction in employment opportunities.⁶ People with disabilities and seniors should receive additional assistance when served with an eviction notice for a “no fault” eviction.

The 2022 Point in Time Count (Count) found no fewer than 4,801 individuals experiencing homelessness across the City, which included a nine percent increase in the number of unsheltered individuals from 2020 when the Count was last completed, and found that Black San Diegans comprise 29 percent of unsheltered individuals in the 2022 Count.⁷

The Downtown San Diego Partnership counted a record high number of 1,939 people experiencing homelessness in Downtown San Diego in January 2023.⁸ In addition, low-income residents are most at-risk of displacement from rental housing as a result of rapidly rising rents, are more likely to have challenges staying in their homes if they are living paycheck-to-paycheck, and are often subject to predatory evictions or unable to obtain affordable legal representation.⁹

The Legal Aid Society of San Diego (LASSD), which provides free civil legal assistance to low-income clients, including protection against eviction and housing instability, reported a significant number of clients experiencing a “no fault” eviction. From April 1, 2022 through January 24, 2023, about a nine-month span, LASSD supported clients facing the following types of “no fault” evictions in the City of San Diego:

- Withdrawal from Rental Market: 56 households (monthly average 6.2)
- Substantial Remodel: 88 households (monthly average 9.8)
- Owner Move-in: 40 households (monthly average 4.4)
- Government Order: 0 households
- Total: 184 (monthly average 20.4)¹⁰

This is not all the “no fault” evictions that occurred during this time span in the City of San Diego. Current City protections do not apply to tenancies less than two years old, so there would be no need to provide any cause to evict a month-to-month tenant who has lived at their home for less than two years. Also excluded from this list are clients who should have been provided a no fault cause, but were not (i.e. received a defective notice). Lastly, these figures exclude residents who do not qualify for LASSD

⁶ Serving Seniors. Serving Seniors’ Senior Homelessness & Housing Initiative. Retrieved March 19, 2023, from <https://servingseniors.org/what-we-do/programs-services/homelessness-and-housing-initiative---needs-assessment.html>.

⁷ Regional Task Force on Homelessness. (2022). *2022 Point-in-Time Count*. Retrieved October 17, 2022, from <https://www.rtfhsd.org/wp-content/uploads/2022-City-of-San-Diego-Revised-Breakdown-2.5.pdf>

⁸ Warth, G. (2023, February 6). *Downtown San Diego homeless population reaches another record high*. San Diego Union-Tribune. Retrieved March 9, 2023, from <https://www.sandiegouniontribune.com/news/homelessness/story/2023-02-06/downtown-homeless-population-reaches-another-high>

⁹ The Center for American Progress. (2019, October 2). *A Right to Counsel Is a Right to a Fighting Chance*. Retrieved March 19, 2023, from <https://www.americanprogress.org/article/right-counsel-right-fighting-chance/>.

¹⁰ E-mail communication from Gilberto Vera, Esq., Senior Attorney with Legal Aid Society of San Diego, Inc. to Maya Rosas, Director of Strategic Initiatives with Council President Sean Elo-Rivera, on January 24, 2023.

services, such as for their immigration status or income, or the residents who would qualify but do not receive legal services from LASSD.

From July 2021 through January 2022, LASSD received nearly 1,400 requests for assistance for housing related issues from households in the City of San Diego.¹¹ About 23 percent of these households requested assistance with a “no fault” eviction, comprising the largest percentage of housing related issues for which San Diego households requested assistance.

According to research conducted by Professor Jennifer Nations of UC San Diego’s Homelessness Hub, who observed unlawful detainer court hearings for one day at the San Diego County Courthouse, only 3.97 percent of tenants in observed cases had legal representation from LASSD, demonstrating that LASSD’s data represents a small sample of the total number of evictions taking place. Of the observed cases, nearly 15 percent were for “no fault” causes.¹²

In October 2022, preliminary court filings for eviction cases reached a five-year high in San Diego County. This may have resulted from the expiration of the City’s “no fault” eviction moratorium in September 2022 as well as the depletion of COVID-19 pandemic rental assistance funds, and the rising cost of housing.¹³

A landlord has the duty to provide habitable housing that substantially complies with state and local building and health codes for the duration of a tenancy. If a premises becomes uninhabitable but correcting the habitability issues would require vacating the rental property for fewer than 30 days, that duty continues until the tenancy is terminated by a court order.¹⁴

San Diego’s Housing Element requires the City to adequately plan to meet its existing and projected housing needs, including its share of the Regional Housing Needs Allocation, which equals 108,036 additional housing units in the City of San Diego. It requires 44,880 of those units for extremely-low, very low, and low-income households, which need to be built between 2021 and 2029.¹⁵ However, in 2021 the City approved 5,033 new homes for construction, including only 451 homes for very low and low-income households, a fraction of what is needed to meet the City’s needs.¹⁶

Opposition to new housing, and in particular to permanent supportive housing, has contributed to a severe undersupply of housing to meet the need of residents of all incomes.¹⁷ This is compounded by the overall undersupply of housing at all income levels, creating a nearly impossible housing market for

¹¹ E-mail communication from Gilberto Vera, Esq., Senior Attorney with Legal Aid Society of San Diego, Inc. to Brett Weise, Senior Policy Advisor with Council President Sean Elo-Rivera, on January 27, 2022.

¹² E-mail communication from Jennifer Nations, PhD with UC San Diego’s Homelessness Hub to Maya Rosas, Director of Strategic Initiatives with Council President Sean Elo-Rivera, on January 24, 2023.

¹³ Dawson, D. (2022, December 19). *New eviction case filings hit five-year high while cities explore stronger tenant protections*. inewsource. Retrieved March 9, 2023, from <https://www.kpbs.org/news/local/2022/12/19/new-evictions-hit-five-year-high-cities-explore-stronger-tenant-protections>

¹⁴ 180 Green v. Superior Court (1974) 10 Cal.3d 616, 637-638; Civ. Code §§ 1941 and 1941.1.

¹⁵ San Diego Association of Governments. (2020, July 10). *FINAL 6th Cycle Regional Housing Needs Assessment Plan*. Retrieved October 12, 2022, from https://www.sandag.org/uploads/projectid/projectid_189_27782.pdf (pg. 4)

¹⁶ City of San Diego. (2022). 2022 Annual Report on Homes. Retrieved October 21, 2022, from https://www.sandiego.gov/sites/default/files/2022_annual_report_on_homes_oct_update.pdf.

¹⁷ San Diego Housing Commission. (2022, April 1). *Community Action Plan Performance Data - Progress Toward Housing Goals*. PSH Pipeline Tracker. Retrieved October 12, 2022, from <https://www.sdhc.org/homelessness-solutions/community-action-plan/performance-data/housing-goals/#pipeline-tracker>

people experiencing homelessness or those at risk of experiencing homelessness following a “no fault” eviction.

Fiscal Considerations: N/A

Charter Section 225 Disclosure of Business Interests: N/A

Environmental Impact: The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption), which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. There is the possibility that, in response to this ordinance, landlords may increase rents which could potentially drive tenants to lower-rent neighborhoods and lead to tenant displacement which could result in a physical change in the environment. However, rent increases are regulated by separate State statutory rent control regulations, and the Residential Tenant Protection Ordinance should decrease tenant displacement within the current regulatory regime. The Residential Tenant Protection Ordinance would not have a significant effect on the environment as it would decrease tenant displacement and mandate benefits for certain types of evictions, which would also decrease tenant displacement.

Climate Action Plan Implementation: N/A – Does not have a connection to the CAP

Equal Opportunity Contracting Information (if applicable): N/A

Previous Council and/or Committee Actions: On April 4, 2022, the Council adopted a temporary No-Fault Eviction Moratorium, which expired on September 30, 2022. On October 31, 2022, Council District 9 held an information item only workshop discussing the need for strengthened tenant protections and received feedback from the public and Council.

Planning Commission Action: N/A

Key Stakeholders and Community Outreach Efforts: All San Diegans including people experiencing homelessness, renters, homeowners, and future residents.

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