



Memorandum

TO: HOUSING & COMMUNITY
DEVELOPMENT COMMISSION

FROM: Rachel VanderVeen

SUBJECT: AMENDMENT TO THE TENANT
PROTECTION ORDINANCE –
IMIGRATION STATUS

DATE: February 1, 2018

Approved

Date

RECOMMENDATION

Accept the report and provide recommendations to staff on potentially amending the Tenant Protection Ordinance to include a requirement for compliance with AB 291 which prohibits landlords from threatening notification of their tenants' immigration status to immigration authorities, for the purposes or intent of retaliation, harassment, or intimidation.

BACKGROUND

On May 9, 2017, the City Council adopted the Tenant Protection Ordinance (TPO) which established 12 separate "Just Cause" basis a landlord must use to terminate or evict tenants. The City Council directed the City Attorney to return to Council to make changes to the ordinance to establish criminal activity as a separate just cause for eviction. The City Council also directed staff to provide additional protections pertaining to a tenant's immigration status. Specifically, the City Council directed staff to make the following changes to the Ordinance:

- Amend section "17.23.1250 Just Cause Termination" to ensure that criminal activity committed on or near the premises shall provide an independent basis for tenant's eviction, without requiring neighbors to testify or provide other evidence that the criminal conduct constitutes a legal "nuisance."
- Amend section "17.23.1270 Anti-Retaliation Protections," to prohibit landlords from threatening notification of immigration authorities of their tenants' immigration status, or from sharing information regarding the immigration status of their tenants.

Additionally, City Council action on May 9 approved the May 5 memo from Mayor Liccardo and Councilmember Jones pertaining to criminal activity. This memo directed staff to:

- Establish a list of specific crimes or types of crimes that could serve as the basis for an eviction.
- Require that the tenant be provided "written notice to cease" before an eviction. Such notice would allow the tenant an opportunity to remedy the problem before being evicted.

- Establish specific criteria as to the timeframe and location of the criminal activity, to ensure that tenants are not evicted for crimes committed in the past or which are not related to their tenancy.

On October 5, 2017, Governor Brown signed AB 291. This bill prohibits owners from disclosing information regarding tenants' or their associates' immigration status for the purposes or intent of retaliation, harassment, or intimidation. This bill is further discussed below in the Analysis section of the memorandum.

On November 14, 2017, City Council approved amendments to the Tenant Protection Ordinance regarding modifying the scope of the exception to the material or habitual lease violation of tenancy cause for eviction. Amendments to the Tenant Protection Ordinance were adopted November 28, 2017 and effective December 29, 2017. The staff report discussed by City Council on November 14 did not include recommendations on criminal activity or immigration.

This memorandum addresses the City Council direction regarding immigration status protections. A discussion of criminal activity will be brought to the Commission at a future HCDC meeting.

ANALYSIS

The City Council directed staff to amend the TPO to prohibit landlords from threatening notification of immigration authorities of their tenants' immigration status, or from sharing information regarding the immigration status of their tenants.

Since June 2017, the Department has been conducting public outreach on various aspects of the TPO. Both landlord and tenant stakeholder groups stated that instead of creating new local provisions in the TPO, the City should include a requirement for compliance with the new state law (AB 291) to address the City Council's concerns.

AB 291 provides protections restricting landlord and attorney actions including, but not limited to the following: prohibits landlords from disclosing information related to tenants' immigration status, whether in retaliation for engaging in legally-protected activities or to influence them to vacate; bars landlords from disclosing information related to tenants' immigration status for the purpose of retaliation, intimidation, harassment, or in order to evict a tenant without using proper procedures; provides a defense to unlawful evictions based on immigration status; and prohibits attorneys from reporting, or threatening to report, the immigration status of persons involved in housing cases. AB 291 became effective January 1, 2018, and staff has included **Attachment A**, provided by the Office of Assemblymember Chiu's Office, as an educational resource regarding this new law.

Summary of Recommendation

Staff is recommending that the TPO include a requirement of compliance with AB 291 under Civil Code Section 1940.35(a) to address the City Council’s concerns regarding immigration. This new State law prohibits landlords from threatening notification of their tenants’ immigration status to immigration authorities, for the purpose or intent of retaliation, harassment, or intimidation, or to gain possession of the rental unit or to influence tenants to vacate their rental unit. In order to pursue breaches of this law, tenants would have to pursue violations in court. This can be challenging for tenants particularly when there are limited resources to assist them. By adopting a local ordinance, residents can obtain education about these protections at the local level. Including the protections in the TPO will provide an opportunity for tenants to learn about their rights through the Rent Stabilization Program.

EVALUATION AND FOLLOW-UP

Staff intends to bring the amendments to the TPO to the City Council for consideration in Spring 2018. The City Council will hold a second reading of amendments two weeks following its first reading. The amendments to the Ordinance would be effective 30 days following the City Council’s second reading.

PUBLIC OUTREACH

The Housing Department met with a wide range of stakeholders while developing amendments to the Tenant Protection Ordinance. With the assistance of the California Apartment Association, Bay Area Homeowners Network, and the Renters’ Coalition, the Housing Department met with property owners and managers of small properties, large properties, and a variety of tenants and tenant advocates on multiple occasions. A public meeting was held on June 26, 2017, where the issue of immigration was discussed with the meeting participants. A public comment file summarizing the comments related to immigration is included as **Attachment B**.

Over the coming weeks, the Housing Department is hosting two additional public meetings to discuss amendments to the TPO, the Ellis Act Ordinance and the Apartment Rent Ordinance. The proposed changes to the TPO regarding protections for tenants based on immigration status will be included in those discussions. These meetings will be held at the following dates and times:

Meeting	Date & Time		Location
Policy Development Community Meeting	February 7, 2018	9:00 – 11:00 am	San José City Hall, Wing Rooms
Policy Development Community Meeting	February 12, 2018	6:30 – 8:30 pm	Seven Trees Community Center

HOUSING AND COMMUNITY DEVELOPMENT COMMISSION

February 1, 2018

Subject: Amendment to the Tenant Protection Ordinance – Immigration Status

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/s/

Rachel VanderVeen
Program Manager

ATTACHMENTS:

- **Attachment A** – AB 291 Fact Sheet
- **Attachment B** – Summary of Public Comments on Immigration Status

ASSEMBLY BILL 291 (CHIU)

IMMIGRANT TENANT PROTECTION ACT OF 2017

SUMMARY

This bill protects tenants from deportation threats. California renters should not have to fear intimidation and retaliation in their homes.

BACKGROUND

Landlords learn a lot about tenants: their social security numbers, the languages they speak, the times they're at home, and the identities of their families. Tenants have virtually no protection against misuse of this information.

Advocates in Los Angeles, Orange County, the San Francisco Bay Area, the Central Coast, and the Central Valley share stories of landlords threatening to report tenants to immigration authorities unless they immediately move out. In many cases, these threats are made to retaliate against tenants for reporting habitability issues, such as exposed electrical wiring and vermin, which landlords are legally required to fix. In other cases, it's to avoid the statutory eviction process, which ensures due process for tenants at risk of losing their homes. Threats are even made in connection with gentrification, when, in order to raise rents, long-time tenants are suddenly targeted for eviction based on their suspected immigration status.

THE PROBLEM

While the majority of landlords are law-abiding, some unscrupulous landlords seek to avoid their legal obligations by threatening to report tenants to immigration authorities. In recent years, the Legislature has enacted strong protections against such threats in the workplace. It is time to provide tenants the same protections in their homes.

Advocates statewide have reported many such instances, including the following:

"It is very common that landlords threaten to call ICE if a tenant refuses to vacate (whether a valid eviction notice has been served or not), and also if tenants complain about habitability or other maintenance and repair issues. We are worried that these sorts of threats in a post-Trump era will make it even less likely that undocumented tenants will stand up for themselves against abusive and illegal landlord behavior."

"The main thing I see is intimidation - landlords threatening to call immigration on tenants in order to get them to leave."

"When a new landlord takes over a building and wants to gentrify, he or she will run a credit check on undocumented tenants and then seek to evict on the grounds that the tenants provided false or duplicate social security numbers in their rental applications—even if the rental commenced years earlier."

THE SOLUTION

AB 291 would do as follows:

- Prohibit landlords from threatening to report tenants to immigration authorities, whether in retaliation for engaging in legally-protected activities or to influence them to vacate.
- Bar landlords from disclosing information related to tenants' immigration status for the purpose of retaliation, intimidation, harassment, or in order to evict a tenant without using proper procedures.
- Provide tenants the right to sue landlords who disclose information about their citizenship status to law enforcement for the purpose of retaliation, intimidation, harassment, or in order to evict a tenant without using proper procedures.
- Codify an existing defense to unlawful evictions based on immigration status.
- Prohibit questions about tenants' immigration status in discovery or at trial.
- Prohibit attorneys from reporting, or threatening to report, the immigration status of persons involved in housing cases.

As versions of most of these protections already exist in employment law, it only makes sense to extend them to landlord-tenant law.

Undocumented tenants know their landlords have the power to destroy their lives with a single phone call. Should they have to live in fear simply because they rent their homes?

SUPPORT

California Rural Legal Assistance Foundation (co-sponsor)
Western Center on Law and Poverty (co-sponsor)
ACLU

AIDS Legal Referral Panel
Alameda County Board of Supervisors
Alliance of Californians for Community Empowerment
Asian Americans Advancing Justice
Bay Area Legal Aid
Bet Tzedek
California Apartment Association
California Employment Lawyers Association
California Federation of Teachers, AFT, AFL-CIO
California Immigrant Policy Center
California Labor Federation
California School Employees Association (CSEA), AFL-CIO
California State Council, Service Employees
International Union (SEIU)
California WIC Association (CWA)
City of East Palo Alto
City and County of San Francisco
Coalition for Humane Immigrant Rights of Los Angeles
(CHIRLA)
Community Legal Services in East Palo Alto
Community Water Center
Council on America-Islamic Relations, California (CAIR-
CA)
Courage Campaign
Equal Justice Society
Fair Housing Advocates of Northern California
Fair Housing Council of Orange County
Fathers & Families of San Joaquin
Filipino Advocates For Justice
Filipino Migrant Center
Fresno Interdenominational Refugee Ministries (FIRM)
Golden State Manufactured-Home Owners League
(GSMOL)
Healthy Homes Collaborative
Housing and Economic Rights Advocates (HERA)
Inner City Law Center
Jewish Public Affairs Committee of California
Latino Coalition for a Healthy California
Law Foundation of Silicon Valley
Legal Aid Association of California
Legal Aid Foundation of Los Angeles (LAFLA)
Legal Aid Society of Orange County
Legal Aid Society of San Mateo County
Legal Services of Northern California
Mutual Housing California
National Association of Social Workers, California
Chapter
National Housing Law Project
Neighborhood Legal Services of Los Angeles County
Non-Profit Housing Association of Northern California
(NPHANC)
Pasadena Tenants Union
PolicyLink

Progressive Asian Network for Action (PANA)
Project Sentinel
Public Advocates
Public Counsel
Public Law Center
San Diego Volunteer Lawyer Program, Inc.
Southeast Asia Resource Action Center
Strategic Actions for a Just Economy (SAJE)
Tenants Together
The Public Interest Law Project
University of California, Berkeley City Planning + Public
Health Master's Students Committee
University of California, Berkeley College of
Environmental Design Student of Color
University of California, Berkeley Planning Students
Association
Urban Habitat
Vietnamese Youth Development Center
Individuals (7)

NEUTRAL

Apartment Association, California Southern Cities
Apartment Association of Orange County
California Association of Realtors
East Bay Rental Housing Association
North Valley Property Owners Association
San Diego County Apartment Association

FOR MORE INFORMATION

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Summary of Discussion & Comments

Tenant Protection Ordinance

Community Meeting Series 6/26/17

Tenant Protection Ordinance

Topic: **Immigration**

June 26, 2017

6 Comments

1. Research other cities' guidelines
2. If tenants are undocumented and are having trouble providing documentation / proof of being related, and landlords are intimidating tenants based on immigration status, it is going to be even more difficult to provide proof/documentation.
3. There should be sanctions for landlords who threaten tenants based on an immigration status to prevent retaliation.
4. Include the office of Immigrant Affairs during these Housing Department meetings because generalizations made by meeting participants are problematic.
5. Include clause is a step to protect tenants in an unbalanced power dynamic, this fear of immigration authorities called by your landlord should not be how people live. How would it be enforced?
6. If tenant is undocumented but otherwise law abiding, then ignore the tenants immigration status