



Office of the Mayor

ACTION CALENDAR

March 14, 2017

To: Members of the City Council

From: Mayor Jesse Arreguin
Councilmembers Kriss Worthington, Ben Bartlett & Cheryl Davila

Subject: Tenant Protection Ordinance, Amending BMC Chapter 13.79

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.79 to prohibit tenant harassment.

BACKGROUND

In this housing market, where rents are increasing dramatically, there is a huge incentive for owners to force out long-term tenants in order to receive a higher market rent. There have been an increasing number of cases of tenant harassment in recent years in Berkeley. Some renters do not raise habitability issues with their owners or with city inspectors for fear of retaliation. Some renters have also been subject to constant disruptive behavior as a means to constructively evict. Some have also received verbal or written threats of eviction, with no legal basis.

Yet these acts can occur with very few remedies for tenants to stop this kind of behavior. Now more than ever, Berkeley needs a civil remedy for tenant harassment. Currently under Berkeley city law there are very few remedies to address tenant harassment by a property owner or their agent. While Rent Board Regulation 1013 prohibits a Costa- Hawkins vacancy increase if harassing behavior occurs, that only happens after a tenant moves out. If harassment occurs while the tenant is still residing in the unit, there are a limited number of options to stop the harassment or to seek damages.

Fortunately, other cities in California have already adopted Anti-Harassment Ordinances which can serve as a basis for a Berkeley law.

At the March 10, 2016 4x4 Committee meeting, the topic of creating a Tenant Protection Ordinance was discussed. The Committee agreed that such a policy was needed in Berkeley to protect against harassment and to keep tenants in their homes. On May 31, 2016 the City Council referred to the City Manager and City Attorney to develop a Tenant Protection Ordinance. This Ordinance responds to the Council's referral.

San Francisco adopted a Tenant Harassment policy in 2008 by voter initiative

(Proposition M), which among other remedies granted rent decreases for verified cases of harassment. The California Court of Appeal in *Larson v. City and County of San Francisco* (2011) held that provisions granting the San Francisco Rent Board the power to award rent reductions were invalid under the judicial powers clause. The *Larson* decision did not however invalidate civil remedies for tenant harassment.

The Cities of West Hollywood and Santa Monica have also adopted Tenant Harassment Ordinances which grant civil remedies, including empowering the City Attorney to enforce and seek injunctive relief. Most recently, the Oakland City Council adopted a Tenant Protection Ordinance in 2014, which provides a private right of action for cases of tenant harassment.

FINANCIAL IMPLICATIONS

Unknown. The Ordinance provides a civil remedy to tenants for cases of harassment. If the City Attorney chooses to pursue legal action to enforce the Ordinance, costs for litigation and staff time would be involved.

ENVIRONMENTAL SUSTAINABILITY

No adverse effects to the environment.

CONTACT PERSON

Jesse Arreguin, Mayor, 510-981-7100

Attachments:

1: Ordinance

ORDINANCE NO. #,###-N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.79 TO PROHIBIT TENANT HARASSMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Title

This Ordinance shall be known as the “Berkeley Tenant Protection Ordinance”.

Section 2. That Berkeley Municipal Code Chapter 13.79 is amended to read as follows:

Chapter 13.79

TENANT PROTECTIONS: AUTOMATICALLY RENEWING LEASES AND BUYOUT AGREEMENTS

Sections:

- 13.79.010 Owner provision of notice of intent not to renew.**
- 13.79.020 Notice of intent not to renew or extend the lease.**
- 13.79.030 Rent Board notification of automatically renewing lease.**
- 13.79.040 Remedies--Civil penalty--Not exclusive.**
- 13.79.050 Buyout offers and agreements.**
- 13.79.060 Tenant Protections.**
- 13.79.070 Severability.**

13.79.010 Owner provision of notice of intent not to renew.

A landlord of residential rental property who has leased a residential rental unit pursuant to a written lease which provides for the automatic renewal or extension of the lease for all or part of the lease term shall provide the lessee(s) a form notice of the lessees’ intent not to renew or extend the lease at the time the lease is executed. (Ord. 7278-NS § 1 (part), 2013)

13.79.020 Notice of intent not to renew or extend the lease.

Where a lessee has leased residential rental property pursuant to a written lease that provides for the automatic renewal or extension of the lease for all or part of the lease term and the lessee provides written notice of his or her intent not to renew or extend the lease to the landlord either on the form provided by the landlord pursuant to Section 13.79.010 or any other writing at any time prior to 30 days before the expiration of the lease, the lessee shall not be subject to the automatic renewal clause. (Ord. 7278-NS § 1 (part), 2013)

13.79.030 Rent Board notification of automatically renewing lease.

A. A landlord of residential rental property who has leased a residential rental unit pursuant to a lease which provides for the automatic renewal or extension of the lease for all or part of the lease term and who is subject to the registration requirements of Section 13.76.080 shall notify the Rent Stabilization Board at the time the landlord files a Vacancy Registration Form for a new tenancy that the lease includes an automatic renewal provision.

B. A landlord of residential rental property who has leased a residential rental unit pursuant to a lease which provides for the automatic renewal or extension of the lease for all or part of the lease term and who is not subject to the registration requirements of Section 13.76.080 shall notify the Rent Stabilization Board within 20 days from the date of lease execution that the lease includes an automatic renewal provision. (Ord. 7278-NS § 1 (part), 2013)

13.79.040 Remedies--Civil penalty--Not exclusive.

A. The remedies provided under this Section are in addition to any the City or any person might have under applicable law.

B. Any person aggrieved by the landlord's failure to comply with this Chapter may bring a civil action against the landlord of the residential rental property for all appropriate relief including damages and costs which she or he may have incurred as a result of the landlord's failure to comply with this Chapter.

C. In any action to recover damages resulting from a violation of this Chapter, the prevailing plaintiff(s) shall be entitled to reasonable attorneys' fees in addition to other costs, and in addition to any liability for damages imposed by law. (Ord. 7278-NS § 1 (part), 2013)

13.79.050 Buyout offers and agreements.

A. This Section applies to every controlled rental unit and all rental units subject to the "good cause" eviction protections codified in Berkeley Municipal Code Section 13.76.130.

B. The following definitions apply for the purposes of this Section:

1. "Buyout agreement" means an agreement wherein the landlord pays the tenant money or other consideration to vacate the rental unit. An agreement to settle a pending unlawful detainer action shall not be a "Buyout Agreement."

2. "Buyout offer" means an offer, written or oral, by a landlord to pay a tenant money or other consideration to vacate a rental housing unit. An offer to settle a pending unlawful detainer action shall not be a "buyout offer."

C. Prior to making a buyout offer for a controlled rental unit, the landlord shall provide

each tenant in that unit a written disclosure, on a form developed and authorized by the City or Rent Stabilization Board, that shall include the following:

1. A statement that the tenant has a right not to enter into a buyout agreement;
2. A statement that the tenant may choose to consult with an attorney before entering into a buyout agreement;
3. A statement that the tenant may rescind the buyout agreement for up to thirty days after it is fully executed;
4. A statement that the tenant may consult the Rent Stabilization Board with respect to the buyout agreement;
5. Any other information required by the Rent Stabilization Board consistent with the purposes and provisions of this Section; and
6. A space for each tenant to sign and write the date the landlord provided the tenant with the disclosure.

D. Every buyout agreement shall be in writing and include the following statements in bold letters in at least fourteen-point type in close proximity to the space reserved for the signature of the tenant(s):

You may cancel this agreement in writing at any time before the thirtieth day after all parties have signed this agreement. You have a right not to enter into a buyout agreement. You may choose to consult with an attorney or the Rent Stabilization Board before signing this agreement. The Rent Stabilization Board may have information about other buyout agreements in your neighborhood.

E. A buyout agreement that does not satisfy all the requirements of this Section shall not be effective and shall be void at the option of the affected tenant(s). However any remedy based on an ineffective or void buyout agreement shall not include displacement of a subsequent tenant or tenants of the affected unit.

F. A tenant shall have the right to rescind a buyout agreement for up to thirty days after its execution by all parties. In order to rescind a buyout agreement, the tenant must hand-deliver, e-mail, or place in the U.S. mail a statement to the landlord indicating that the tenant has rescinded the buyout agreement no later than the 30th day after it is executed by all parties.

G. 1. The landlord shall retain a copy of each signed disclosure form for five years, along with a record of the date the landlord provided the disclosure to each tenant, and shall give each tenant a copy of the buyout agreement at the time the tenant executes it.

2. The landlord shall provide a copy of the buyout agreement to the Rent Stabilization Board no sooner than the thirty-first day after the buyout agreement is executed by all parties, and no later than sixty days after the agreement is executed by all parties.

H. 1. The buyout agreements must be maintained by the Board's legal staff in a file that is separate from any other file.

2. All information included in the buyout agreements by which an individual might reasonably be identified ("personally-identifying information"), including without limitation an individual's name, phone number, unit number, or specific street address, must be maintained as confidential.

3. The Board shall collect data from the filed buyout agreements--including, without limitation, the compensation paid as consideration for the agreement and the neighborhood of the affected unit--and shall make that data public; but only to the extent that no personally-identifying information is revealed. (Ord. 7469-NS § 2, 2016)

13.79.060 Tenant Protections

A. The purposes of this Section include:

1. Encouraging lawful conduct between occupants of rental units used for residential purposes in the City of Berkeley and the owners of such rental units (including the agents of owners and others acting in concert with such persons);
2. Maintaining peaceful relations in the community and minimizing breaches of the peace by discouraging self-help evictions, protecting vulnerable portions of the Berkeley community, preserving Berkeley's affordable residential housing stock, minimizing further burden on the City's health care system caused by victims of involuntary displacement, minimizing additional burdens on the City's school system, students, and their families created by students being forced to withdraw from or change schools due to family displacement.
3. To further the City's interest in prohibiting illegal evictions through the use of fraudulent and/or misleading representations, intimidating conduct, and coercive conduct.
4. This Section augments existing City ordinances, and other laws, to achieve stability in our inter-personal relationships, our communities, our markets, and to promote the common welfare in upholding fundamental human rights.

B. The following definitions apply for the purposes of this Section:

1. "Tenant" shall mean any renter, tenant, subtenant, lessee, or sublessee of a Rental Unit, as that term is defined herein, or any group of tenants, subtenants, lessees, or sublessees of any Rental Unit entitled to the use or occupancy of such Rental Unit.

2. “Landlord” shall mean an owner of record, agent of such owner, contractor for the Landlord, or subcontractor performing work for the benefit of the Landlord, lessor, sublessor or any other person or entity entitled to receive rent, or who actually receives rent, for the use or occupancy of any Rental Unit, or any, representative or successor of any of the foregoing.
 3. "Rental Unit" shall mean any real property, or portion thereof, including the land appurtenant thereto, rented, or available for rent, which is used for residential use or occupancy, as well as Live/Work Units as defined in Chapter 23F.04, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the Tenant.
- C. No Landlord of any Rental Unit located in the City of Berkeley, shall do any of the following **in bad faith**:
1. Influence, or attempt to influence a Tenant to vacate a Rental Unit through fraud or intimidation, or through unauthorized physical acts.
 2. Threaten by use of fraud, intimidation, or coercion to terminate a tenancy, to recover possession of a Rental Unit, or to evict a Tenant from a Rental Unit. Such threats shall include threatening to report any Tenant, occupant, or guest of any Tenant or occupant, to U.S. Immigration and Customs Enforcement
 3. Reduce, interrupt, or withhold any services or amenities provided to the Tenant pursuant to the rental agreement, custom, or law. Such services include, but are not limited to, provision of the quiet use and enjoyment of the Rental Unit.
 4. Interfere with any Tenant’s rights of privacy. Unlawful interference with a Tenant’s right to privacy shall include, but is not limited to, requesting information regarding citizenship or residency status or social security number of any Tenant or member of the Tenant’s family or household, occupant, or guest of any Tenant, except for the purpose of obtaining information for the qualifications for a tenancy prior to the inception of a tenancy. Unlawful interference with the right to privacy also includes releasing any confidential information regarding any person described in this subdivision, except as required by law.
 5. Abuse the limited right of access into a Rental Unit as established and limited by Civil Code 1954.
 6. Abuse, exploit, discriminate, or take advantage of, any actual or perceived disability, trait or characteristic of any Tenant, **including, but not limited to, the**

Tenant's participation in any section 8, housing choice voucher, or other subsidized housing program.:

7. Fail to perform any repairs in a timely and professional manner that minimizes inconvenience to the Tenant; or fail to exercise due diligence in completing repairs and maintenance once undertaken; or fail to follow appropriate industry standards to or protocols designed to minimize exposure to noise, dust, lead paint, asbestos, other building materials with potentially harmful health impacts.
 8. ~~Fail to Threaten to not~~ perform repairs and maintenance required by contract, custom, or law, or threaten to do so.
 9. Fail to accept or acknowledge receipt of a Tenant's rent, or to promptly deposit a Tenant's rent payment, or to promptly provide a receipt to a tenant upon request, except as such refusal may be permitted by state law after a notice to quit has been served and the time period for performance pursuant to the notice has expired.
 10. Offer payments to a Tenant to vacate without providing written notice to the Tenant of his or her rights under this Chapter, using the form prescribed by City staff; however this shall not prohibit offers made in pending unlawful detainer actions.
 11. Engage any Tenant in any form of human trafficking as defined by California Penal Code section 236.1, as a condition of that Tenant's continued occupancy of a Rental Unit.
- D. The Berkeley Rent Stabilization Board may enact regulations to implement this Section.
- E. Notices
1. Landlords are required to provide a notice regarding the provisions of Section 13.79.060 to all Tenants using the required form prescribed by the City staff, at the beginning of a tenancy and with any notice of termination of tenancy. Failure to provide said notice shall be a defense in any unlawful detainer action.
 2. Before a Tenant may file a civil suit alleging a violation of Section 13.79.060(C), subsections ~~3, 4,~~ 7, 8, ~~9,~~ the affected Tenant must first notify the Landlord or his or her designated agent regarding the problem. If the allegation is a violation, the Tenant must allow fifteen (15) days for the Landlord to correct the problem, unless the Landlord notifies the Tenant that the repairs will take more than fifteen (15) days and provides

for a reasonable time period for completion. If the repair takes more than fifteen (15) days, the Tenant may file the civil suit if the Landlord does not take reasonable steps to commence addressing the problem or the Landlord does not follow through to complete the repairs with reasonable diligence.

F. This Section shall not apply to recovery of possession of the following types of Rental Units.

1. Rental Units in properly licensed hospitals, skilled nursing facilities, health care facilities, non-profit facilities whose primary purpose is to provide short term treatment for alcohol drug, or substance abuse, ~~or~~ Rental Units provided incidental to alcohol, drug, or substance abuse recovery programs, or transitional housing for homeless persons that is in compliance with Health & Safety Code sections 1502, *et seq.*
2. A Rental Unit that is rented by a nonprofit, accredited institution of higher education to a Tenant or Tenants who are student(s), faculty, or staff of the institution or a member school of the Graduate Theological Union, provided, however, that the institution owned the Rental Unit as of January 1, 1988.

G. This Section is remedial to accomplish the goals herein expressed. It shall be interpreted and applied liberally to accomplish those goals.

H. Remedies

1. Any person aggrieved by a violation of this Section, any person or entity who will fairly and adequately represent the interests of the protected class, ~~and or~~ the City ~~or the Rent Board at the behest of the City~~, may file a civil action to enforce this Section.
2. The relief available to a plaintiff in such an action may ~~shall~~ include an injunction; all actual damages suffered by any aggrieved party; and an award of civil penalties in the sum of between one thousand dollars and ten thousand dollars for each violation.
3. An ~~The~~ award of actual damages may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, ~~The award of actual damages may include an award for mental and/or emotional distress and/or suffering. In the case of such an award, it shall only be trebled~~ if a defendant acted in knowing violation of, or in reckless disregard ~~offer~~, the provisions of this Section.

4. A defendant shall be liable for an additional civil penalty of up to five thousand dollars for each violation of this Section committed against a person who is disabled within the meaning of California Government Code section 12926, et seq., or aged sixty-five or over.
 5. A prevailing defendant in a civil action under this subdivision shall only be entitled to an award of attorneys' fees if it is determined by the Court the action was wholly without merit or frivolous.
 6. Nonexclusive Remedies and Penalties. The remedies provided in this subdivision are not exclusive, and nothing in this Section shall preclude any person from seeking any other remedies, penalties or procedures provided by law.
- I. All forms of retaliation against any Tenant because of the Tenant's exercise of her, his, or their rights under this Section, including a Tenant's objecting to a Landlord's conduct alleged to be a violation of this Section, is prohibited. Any such retaliation, and/or any other violation of this ordinance, may be asserted as an affirmative defense by a Tenant in any action to recover possession of a Rental Unit.
 - J. Lawful Evictions

Nothing in this Section shall be construed ~~as~~ to prevent the lawful eviction of a Tenant by appropriate legal means.

13.79.070 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this title, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.