

TO: Human Relations Commission (HRC)

FROM: Renter Protections Ad Hoc Sub Committee
Vice Chair Adriana Eberle
Commissioner Dr. Michelle Kraus

DATE: November 10, 2022

SUBJECT: **Agenda Item # 4** - Recommendations from the ad hoc sub-committee in response to the City Council referral to the Commission on ways to improve implementation of current City renter protections.

Report from HRC Ad Hoc Subcommittee on Renter Protections

Purpose. This report addresses the work done by the Ad Hoc Subcommittee of the HRC to conduct a review of current renter protections. The goal is to summarize the discussions and reports about current stabilizations and protections of Palo Alto's renters that will soon make up 50% of the residents.

Background. Starting with Colleagues Memos to Council in 2017, that highlighted the importance of protecting renters and to create renter protection policies that help keep renters housed.¹

Invaluable assistance came as a fellow in the Planning and Development Services Department who came to the City as part of a 'Challenge Grant' from Partnership for the Bay's Future. Important work was completed to create a profile of local renters and to research renter protections policies (PDS Report).²

These draft policies were discussed at several meetings of the Planning and Transportation Commission (PTC), as well as, at the Human Relations Commission (HRC) culminating with a discussion at the Council on November 29, 2021. The following were the key renter protections that were considered:

¹ 2017 Colleagues Memorandum: <https://www.cityofpaloalto.org/civicax/filebank/documents/61406>

² PDS Report. <https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/human-relations-commission/2021/08-12-2021-hrc-agenda-renter-protections-full-report.pdf>

1. Rental Survey Program
2. Expand Tenant Relocation Assistance
3. Eviction Reduction Program
4. Anti-Rent-Gouging Policy Act (TOPA/COPA)
5. Security Deposit Limit
6. Fair Chance Ordinance
7. Right to Counsel
8. Tenant/Community Opportunity to Purchase
9. Proactive Rental Inspection

Subsequently, the following motion was passed by the City Council:

- A. Clarify that the goal is to focus on households who are low income and rent burdened.
- B. Bring back to Council an amendment to expand our relocation ordinance to buildings of 10 units or more per property (high priority).
- C. Bring back to Council an ordinance amendment on eviction reduction/just cause eviction to include properties built within 15 years and does not include units occupied less than a year or single-family homes not owned by a corporation or renters who live in a duplex when one unit is owner occupied (priority).
- D. Bring back to P&S proposal and discussion on expanding anti-gouging measure to address loopholes.
- E. Refer to P & S the design and implementation of a rental survey including proposed fees, resources and a timeline (high priority).
- F. Direct Staff to draft recommendation on Security Deposit Limit ordinance capping security deposit to 1.5x the rent per the PTC and HRC recommendations for unfurnished units only.
- G. Support County efforts for the Right to Counsel.
- H. Fair chance ordinance to be reviewed by P&S for analysis on consequences/unintended consequences.
- I. **Refer to HRC to make recommendations to the Council to improve implementation of *current* City renter protections.**

This report addresses the work done by an ad hoc subcommittee of the HRC to respond to (I) above. Staff in the Planning and Community Development Department are currently working on the other recommendations.

More Details: The renter protections currently included in the City's Municipal Code (local ordinances) are explained in short below. For a full description, please follow link to the full text.

Municipal Code 9.68 – Rental Housing Stabilization

https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto_ca/0-0-0-66765#JD_Chapter9.68

One-year lease

Enacted in 1980, already at a time when there was a greater demand than supply of housing in Palo Alto. Along with increasing inflation, there was an acknowledgment that this put considerable pressure on residents seeking rental house. Council stated that tenants are entitled to “a contractual relationship with a landlord that offers some assurance of stability under the terms of a written lease so as to minimize displacement of tenants into a rental housing market which affords them few and expensive options”; therefore, the one-year lease requirement was enacted. The municipal code states that “the landlord must offer to the tenant or prospective tenant a written lease which has a minimum term of one year. Such offer must be made in writing. Signing of a lease which has a minimum term of one year shall be considered an offer in writing.” A one-year lease must indicate the rent and it may not be modified during the term of the one-year lease. If a tenant chooses to have a month to month rental agreement of less than one year, the one-year lease must be rejected. The offer of a one- year lease must be offered at the beginning of each rental term.

Relocation Assistance for no-fault eviction

One of the tenant protections that emerged following a Council discussion in 2018 on renter protection was Tenant Relocation Assistance. The subsequent eviction of many tenants when a downtown building converted to a hotel further heightened the need for renter protections and led to this Council action.

A "no-fault eviction" means an action by a landlord to recover possession of a rental unit for any reason other than the following:

1. The tenant has failed to pay rent to which the landlord is legally entitled.
2. The tenant has violated a lawful obligation or covenant of the tenancy.
3. The tenant has refused the landlord reasonable access to the unit for the purposes of making repairs or improvements, for any reasonable purpose as permitted by law, or for the purpose of showing the rental unit to any prospective purchaser or tenant.

4. The tenant is permitting a nuisance to exist in, or is causing damage to, the rental unit.
5. The tenant is using or permitting a rental unit to be used for any illegal purpose.
6. The landlord seeks in good faith to recover possession of the rental unit in order to comply with regulations relating to the qualifications of tenancy established by a governmental entity, where the tenant is no longer qualified.
7. No fault evictions shall include, without limitation, actions in which the landlord seeks in good faith to recover possession of the rental unit.
8. To demolish or otherwise permanently withdraw the rental unit from offer for rent or lease pursuant to California Government Code sections 7060-7060.7.
9. To perform work on the building or buildings housing the rental unit that will render the rentable unit uninhabitable.
10. For use and occupancy by the landlord or the landlord's spouse, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, children, or parents provided the landlord is a natural person.
11. For no specified cause.

When passed in 2018, the ordinance covered Tenant Relocation Assistance for no-fault evictions for structures lots containing 50 or more units. At its November 29, 2021 meeting, Council moved for staff to prepare a Palo Alto Municipal Code (PAMC) ordinance amendment to extend existing tenant relocation assistance for no fault eviction to more properties in Palo Alto, including properties with 10 rental units or more. Staff brought the draft ordinance to the Planning & Transportation Community on January 26, 2020. Staff then returned to Council on January 31, 2022 and February 13, 2022, for a first and second reading of the ordinance amendment, respectively. Tenant relocation assistance for no fault evictions for properties with 10 rental units or more came into effect immediately on January 31, 2022 through [Emergency Ordinance No. 5543](#). Tenant relocation assistance remains in effect through [Ordinance No. 5544](#) and is codified in [PAMC Section 9.68.035](#).

Municipal Code 9.72 – Mandatory response to request for discussion of disputes between landlord and tenants.

https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto_ca/0-0-0-66860#JD_Chapter9.72

Mandatory Response

The Mandatory Response Ordinance was passed by the Council in 2002. This action was the result of a multi-year campaign by the HRC to respond to the concerns of tenants in Palo Alto who were faced with rising rents and other rental disputes without a viable forum to seek resolution. The ordinance establishes a dispute resolution process for certain specified landlord-tenant disputes, including rental increases, repairs and maintenance, privacy concerns and security deposits.

The first stage of the process offers the involved parties the opportunity to resolve their dispute through telephone conciliation. If the conciliation is unsuccessful, both parties are required to

attend a mediation session and to listen to the explanatory “opening statement” from the mediator. Parties are not required to remain in the mediation after the opening statement and they are not required to reach agreement if they do choose to remain. If an agreement is reached, the terms are determined by the parties themselves, not by the mediators.

A tenant or a landlord may invoke the mandatory dispute resolution process by filing a written petition with the administrator. The petition must be filed within 21 days of the event giving rise to the dispute. The Ordinance assumes that tenants will learn of their rights to file a petition primarily as a result of notice from their landlords. The Ordinance requires landlords to provide notice to tenants covered by the Ordinance. In addition to complying with the notice requirement, landlords are also required to register their rental units with the city, including contact information for the landlord and any person with authority to resolve disputes.

The Mandatory Response apply to residential rental property as follows:

- (a) Any residential rental property containing two or more dwelling units, except two-unit residential rental property in which one of the units is owner-occupied; or
- (b) Any residential rental property that is owned by a person or legal entity that owns two or more residential rental properties within the city.

Landlord Registry

Landlords are required to register their rental units with the city, including contact information for the landlord and any person with authority to resolve disputes. The registry collects basic contact information about the owner and property manager’s and the number of rental units per property. The ordinance authorizes the city to impose a fee on rental units to compensate for the administrative costs of the program, although that fee has never been enacted. The Office of Human Services within the Community Services Department manages the existing rental unit registry program. The program does not have a high participation rate because staffing resource constraints limit staff ability to conduct dedicated landlord outreach.

Ad hoc Subcommittee Discussion and Work

In order to measure the impact of the renters’ protections referred by Council to the HRC, the ad hoc subcommittee met with Project Sentinel (PS), together with Palo Alto Mediation Program (PAMP); the Palo Alto Renters Association (PARA), together with SV@Home (SV); and the California Apartment Association (CAA).

The following feedback was gathered from these three meetings:

1. Mandatory Response 9.72

According to reports submitted to the City by PS/PAMP, from July 1, 2019 to June 30, 2020, there were 15 Mandatory Response Program (MRP) cases, 14 settled and 1 didn't. From July 1, 2020 to December 31, 2021 there were none. Although there is no empirical evidence as to why there were so many less cases, PS and PAMP members believe the impact of COVID (through moves and protections) might have been one reason. Another possibility is that tenants fear retaliation by landlords if they go the mandatory route, or that there is a lack of knowledge about the MRP. The good news is that the MRP is a good mechanism to get landlords and tenants in the same room, and once they are there they usually stay. All members agreed that for landlords who refuse to show up to Mandatory Response (which is not common), the program needs more consequences beyond the current fine. The MRP would also be more effective if it could be legally binding. Right now there is no way to enforce the mediator's recommendations.

It is imperative that the rental agreements include a statement about the MRP as required; but is not always included if the landlord is not aware of the MRP program.

2. Landlord Registry

According to PS/PAMP, the main issue is that not enough landlords know about the registry and in turn this affects whether people know about the MRP. The fact that there is no consequence for not registering makes it impossible to enforce. Palo Alto could emulate San Jose which has an ordinance that prohibits landlords from raising rents if they are not registered.

Representatives from PARA stated that tenants are in support of the registry program and have identified this as an area of primary importance during online and in-person surveys, as well as, during community events and during public comment sections of City Council meetings. Tenants and other allied community members recognize the capacity of the registry to support later pushes for renter protections and more affordable housing.

A CAA member's main concern was the possibility of invasion of privacy for personal information listed on the registry. It was suggested allowing landlords to be able to choose a point of contact to the registry.

3. One Year Lease

According to PS/PAMP, the one-year lease is standard in the area and there have not been too many complaints (if any) that tenants were not being offered that option. During COVID the biggest complaint was tenants trying to break their leases prematurely.

PARA reported instances where tenants are legally facing no-fault evictions at the conclusion of their one-year leases. PARA offered one example where a landlord gave multiple illegal reasons

for eviction at the end of the lease prior to finally saying that they were going to have a family member inhabit the unit.

CAA members stated that one-year leases can make it challenging to do repairs and upgrades in “stacked” (one on top of the other) units. They can also make renovations difficult. For small complexes where many leases do not end at the same time, the problem is even more challenging. In these circumstances it was stated that it would be helpful to have the flexibility to have shorter or longer lease options available.

4. Relocation Assistance Ordinance –Expand our relocation ordinance to buildings of 10 units or less per property.

PAMP and SV members believed that it would be ideal to add some qualifications beyond just # of units, such as length of time at the complex, senior on limited income and a person with a disability on a limited income. Members were also concerned about how many landlords are actually paying relocation assistance, they would like a way to track this information.

According to PARA members, although relocation assistance makes a huge impact for those receiving it, it does not cover people in at fault evictions who are in the greatest need of support and unable to pay rent due to financial difficulties. Relocation assistance was passed during the middle of the mass eviction PARA handled earlier this year and just passing relocation assistance did have the desired effect of slowing down the pace of evictions. It was difficult to assess who in that eviction was able to stay in Palo Alto as a result of relocation assistance – only the new addresses of 30 of the 120 tenants have been confirmed; and six have stayed in Palo Alto. Significant public education is needed to ensure renters know about this right. The feedback received by PARA is that tenants do not know about this right, if and when they would qualify for it, how much they could receive, and how to get the funds.

Several CAA members asked for consideration of other mechanisms to come up with the dollar amount for the relocation assistance. At present it’s the same, regardless if it’s an old or high-end property. One suggestion was of a multiplier based on the rent as it can be easier to scale. The members also stated that a resident’s income should be considered in determining how much relocation assistance they can receive. One unintended side effect of relocation assistance is that owners sometimes put off improvements due to relocation fees they would have to pay, and at some point it can become a habitability issue with issues such as asbestos, etc.

Additional Comments and Concerns from Focus Group Participants

Calls to City/Project Sentinel:

- No “teeth” to the agreement (although it looks like most landlords and tenants do come to a mutually acceptable resolution once they engage in mediation).
- Misperception of role of PAMP/PS, they are not attorneys and can’t give legal advice
- Perception that the law is slanted in favor of landlords.

- Some people think there are more local rental laws than there are. PS/PAMP work with mostly state law and the local ordinance that are available.

PARA:

- The most important thing the council should know is that evictions are happening now, tenants need more protections than they currently have and PARA is constantly seeing people being evicted and forced out of this community.
- While a one-year lease, relocation assistance, and a Mandatory Response Program/Landlord Registry have the potential to make an impact and may discourage landlords from harassing or evicting tenants by placing financial disincentives or tracking bad behavior, they place limited or no legal barriers to harassment or eviction. They primarily serve to 1) aid renters in the aftermath of eviction 2) assist the next tenant by gathering information of landlords who are operating illegally or in bad faith. They do not significantly or at all increase the legal barriers to harassment or eviction, do not allow tenants to collectively advocate, and they do not make living in Palo Alto any more affordable. We need to affirmatively, not retroactively, protect and encourage safe, affordable, and stable housing.
- Project Sentinel has offered helpful professional perspective such as from former social workers, but we strongly recommend switching to a mediation service that is legally binding, it's ineffective to have one that isn't.
- Right now there is a massive gap in support tenant needs - tenants often reach out in urgent situations needing immediate information, and there isn't a community organization that can really help them (CLESPA only helps Palo Alto tenants in specific situations, Stanford Law Clinic only helps with unlawful detainers, etc.)
- The only supports available are for once a tenant receives an eviction notice and by that time they may choose to self-evict, they'll be on a tight deadline and all their energy is going to be focused on finding a new home, challenging an eviction is intimidating – all that's currently available really comes down to just buying the tenant some time if they face an eviction notice
- We recommend creating an example timeline of renting and strengthening tenant support at every point in the timeline of renting, not just once an eviction notice is serviced - so far example:
 - When you sign a lease included in that packet is information on your rights and organizations you can reach out to for support for different situations such as to check if it's legal if fees are added to your lease

Subcommittee Recommendations: The ad hoc subcommittee carefully reviewed current rental protections and considered the feedback from stakeholders during the focus groups and now brings forth the following recommendations for the full HRC's consideration.

The proposed recommendations of the HRC to the City Council are:

1. Council direct staff to review the **Mandatory Response Ordinance 9.72** for consideration of tougher standards for non-compliance by landlords and the possibility of having a process that is legally binding.
2. Council direct staff to explore ways to confirm that leases being used within the City of Palo Alto contain the **Mandatory Response Clause**.
3. Council evaluate ways in which the proposed **Rental Survey Program** (still in process) will affect the current landlord registration requirement.
4. Council consider consequences for landlord who fail to register their properties on the **landlord registry**.
5. Council consider the following in their future work to patch the gaps left by State law³ AB1482⁴: 1) Cover renters who have lived in their units less than one year; 2) Include eviction protection to units that are single-family homes not owned by a ⁵corporation or renters who live in a duplex when one unit is owner occupied.
6. Council consider expanding relocation assistance to buildings with less than 10 units not owned by corporations. Furthermore, the HRC recommends that staff explore using other metrics to dictate when relocation assistance should be triggered.

The HRC makes no recommendation regarding the One-Year Lease requirement.

In addition, the ad hoc subcommittee recommends further consideration of two issues:

1. Recommends and agrees with the PTC in limiting landlords' ability to inquire about an applicant's criminal history and the development of a Fair Chance Ordinance. Two cities have passed such over the past two years – Berkeley and Oakland; are considered 'best practice ordinances.'^{6 7}
2. Recommends the re-consideration of 'Proactive Rental Inspection Programs.' Proactive Rental Inspection Programs are another powerful renter protection tool being explored by neighboring jurisdictions. A proactive rental inspection program would mean that inspectors were routinely visiting the entire rental housing inventory to make sure that the units were safe and legal. Traditionally, Proactive Rental Inspection Programs have the most impact in jurisdictions where rental housing units may not be disrepair.'⁸

³Full law. <https://leginfo>.

https://fairchance4all.org/faq.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1482

⁴ PDS report p.15-16

⁵ PDS report p20

⁶ https://static1.squarespace.com/static/5d3a3edf4508ff00014b406f/t/5fd168448ba64b78df48a6f7/1607559237612/JustCities_FCH_PolicyComparisonChart.pdf

⁷ <https://fairchance4all.org/faq>

⁸ PDS PP23-24