

AMENDED LEGISLATIVE DIGEST
(9/14/2015 - Amended in Committee)

[Administrative Code - Amendments to Residential Rent Stabilization and Arbitration Ordinance]

Ordinance amending the Administrative Code to: 1) prohibit, with certain exceptions, rent increases based on the addition of occupants even where a pre-existing rental agreement or lease permits such an increase; 2) prevent evictions based on the addition of occupants if the landlord has unreasonably refused the tenant's written request, including a refusal based on the amount of occupants allowed by the rental agreement or lease; 3) require landlords, after certain vacancies, to set the new base rent, for the next five years, as the lawful rent in effect at the time of the vacancy; 4) require that there be a substantial violation of a lawful obligation or covenant of tenancy as a basis for the recovery of possession; 5) require a landlord, prior to seeking recovery of possession, to provide tenants an opportunity to cure the unauthorized addition of the tenant's family members to the tenant's unit; 6) require that if a landlord seeks to recover possession based on a nuisance, substantial damage, or substantial interference with comfort, safety or enjoyment, the nuisance, substantial damage, or substantial interference be severe, continuing or recurring in nature; 7) prevent a landlord from seeking recovery of possession solely because the tenant is occupying a unit not authorized for residency; 8) require landlords to state in notices to vacate for certain good cause evictions the lawful rent for the unit at the time the notice is served; 9) require the Rent Board to prepare a form in English, Chinese, Spanish, Vietnamese, Tagalog, and Russian stating that a notice to vacate may lead to a lawsuit to evict and stating that advice regarding notices to vacate is available from the Rent Board; 10) require landlords to attach a copy of the Rent Board form in the primary language of the tenant to each notice to vacate; and 11) require landlords to plead and prove in any action to recover possession that at least one of the grounds of Administrative Code, Section 37.9(a)-(b) stated in the notice to vacate is the dominant motive for recovering possession.

Existing Law

The City's Residential Rent Stabilization and Arbitration Ordinance (Chapter 37 of the Administrative Code, the "Rent Ordinance") applies to most rental housing built before June 1979. In general, the Rent Ordinance limits annual rent increases, and requires specified good cause for evictions. The Rent Ordinance established the Residential Rent Stabilization and Arbitration Board (the "Rent Board") to safeguard tenants from excessive rent increases and assure landlords fair and adequate rents. Section 37.9 of the Rent Ordinance lists the good cause grounds for eviction and Section 37.3 of the Rent Ordinance states the conditions for which a landlord may seek a rent increase and the process for obtaining the increase.

Section 37.9(a) and (b) lists approximately 15 good cause grounds for evicting tenants. Section 37.9(a)(2) allows a landlord to recover possession if the tenant has violated a lawful obligation or covenant of tenancy and failed to cure the violation after receiving a notice to cure from the landlord. However, Section 37.9(a)(2) essentially prohibits evictions based on increased occupancy (with a limited exception) where the additional occupants consists of certain family members of the tenant. Eviction is prohibited even where a rental agreement or lease otherwise limits the number of occupants, or limits or prohibits subletting. A tenant's written request to the landlord to add occupant(s) is deemed approved if the landlord fails to respond in writing within 14 days. The landlord may not refuse an additional occupant based on that person's creditworthiness if that person would not be legally obligated to pay any rent to the landlord. But the landlord may refuse the additional occupant(s) if the total number of occupants in the unit would exceed the lesser of: (1) two persons in a studio unit, three persons in a one-bedroom unit, four persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four bedroom-unit, or (2) the maximum number of persons allowed in a unit under state or local law.

Additional good cause grounds include Section 37.9(a)(3) and 37.9(a)(4). Section 37.9(a)(3) allows a landlord to recover possession when the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the rental unit, or is creating a substantial interference with the comfort, safety or enjoyment of the landlord or other tenant, and the landlord so informs the tenant in writing on or before serving a notice to vacate. Section 37.9(a)(4) allows a landlord to recover possession if the tenant is using the premises for illegal purposes, but the landlord may not recover possession solely because the tenant has committed the tenant's first violation of Chapter 41A (Residential Unit Conversion and Demolition) if that violation has been cured within 30 days written notice to the tenant.

Section 37.9(c) requires that a landlord not seek to recover possession of a rental unit unless one of the basis for recovery provided in Sections 37.9(a) or (b) is the landlord's dominant motive for recovering possession.

Amendments to Current Law

The proposed ordinance would amend Section 37.3(a)(11) to prohibit rent increases based solely on the addition of an occupant to an existing tenancy. Such rent increases would be prohibited even where a pre-existing rental agreement or lease permits a rent increase. However, a landlord would be able to petition the Rent Board for a rent increase based on increased costs associated with the addition of occupants. Furthermore, the proposed legislation would not limit rent increases permitted by the state Costa-Hawkins Rental Housing Act (California Civil Code §§1954.50 *et seq.*).

The proposed ordinance amends Section 37.9(a)(2) to prohibit evictions based on additional occupants with tenancies greater than 29 days. A tenant who wishes to add an occupant would first have to make a written request to the landlord. The landlord could not refuse the request on the basis that the rental agreement or lease limits the number of occupants or prohibits subletting, or that the proposed occupant is not creditworthy, if that person would not be legally obligated to pay any rent to the landlord. The landlord could not unreasonably refuse the tenant's request. A reasonable basis for refusing the request includes, but is not limited to, the total number of occupants in the unit exceeding the lesser of: (1) two persons in a studio unit, three persons in a one-bedroom unit, four persons in a two-bedroom unit, six persons in a three-bedroom unit, or eight persons in a four bedroom-unit, or (2) the maximum number of persons allowed in the unit under state or local law. If the landlord does not respond to the tenant's request in 14 days, the request would be deemed approved.

The proposed ordinance amends Section 37.3 to include the Costa-Hawkins Vacancy Control of the California Civil Code Section 1954.53(a)(1) by adding subsection (f) to Section 37.3 to require that, for the next five years from the termination of a tenancy, the initial base rent for a subsequent tenancy be no greater than the lawful rent in effect at the time the preceding tenancy ended, if any of the following is true: (1) the preceding tenancy was terminated by a notice of termination issued under California Civil Code Section 1946.1 (for a tenancy for an unspecified term) stating the grounds for recovery of possession under Sections 37.9(a)(8),(9), (10), (11), or (14); (2) the preceding tenancy was terminated by a change in terms of the tenancy noticed under California Civil Code Section 827 (for a tenancy with a term that is month to month or shorter); or (3) where the landlord terminated or did not renew a contract or recorded agreement with a governmental agency that provided for a rent limitation to a qualified tenant. Within 10 days of serving a notice of termination based on a change in terms of tenancy under Section 827 of the California Civil Code or based on the termination of a tenant-based assistance program, the landlord must notify the Rent Board in writing of the monthly rent the tenant was paying before the termination, and provide a copy of the notice to the tenant.

The proposed ordinance amends Section 37.9(a)(2) to require that the tenant's violation of a lawful obligation or covenant of tenancy be a substantial violation for the landlord to seek recovery of possession. Furthermore, the amendment requires that before seeking recovery of possession based on a violation of a covenant regarding subletting or the number of occupants in the rental unit, that the landlord serve the tenant a written notice of the violation that gives the tenant an opportunity to cure in not less than 10 days. The tenant may cure the violation by submitting the written request for additional occupants allowed under Section 37.9(a)(2)(A),(B) or (C) or using any other reasonable means to cure.

The proposed ordinance amends Section 37.9(a)(3) by requiring that the violation that is the basis for seeking recovery of possession from the tenant (causing a nuisance, causing substantial damage to the premises, etc.) be severe, continuing or recurring in nature.

The proposed ordinance amends Section 37.9(a)(4) to prevent a landlord from seeking to recover possession of a unit solely because the illegal use of the unit is the occupancy of a unit that is not authorized for residential occupancy by the City. However, this amendment does not prevent a landlord from seeking recovery of possession under Section 37.9(a)(8) or (10) of the Rent Ordinance.

The proposed ordinance amends Section 37.9(c) to require that a landlord plead and prove in any action to recover possession, that at least one of the grounds that is both enumerated in Section 37.9(a)-(b) and stated in the notice to vacate is the dominant motive for seeking recovery of possession. A tenant may rebut the landlord's allegation that any of the grounds stated is the dominant motive.

The proposed ordinance also amends Section 37.9(c) to require the Rent Board to prepare a form in English, Chinese, Spanish, Vietnamese, and Russian that states that a tenant's failure to promptly respond to a notice to vacate could lead to a lawsuit for the tenant's eviction, and that the tenant may receive advise on the notice from the Rent Board. Landlords are required to attached a copy of the form in the tenant's primary language to a notice to vacate, and to attach a form that is in English if the tenant's primary language is not English, Chinese, Spanish, Vietnamese, or Russian.

Background Information

This legislative digest reflects the following amendments adopted by the Land Use Committee on September 14, 2015: (1) limit the effective period of the Costa Hawkins Vacancy Control requirements added to the Rent Ordinance to five years from the termination of a tenancy; (2) require that a tenant's actions causing a nuisance, substantial damage, or substantial interference with the comfort, safety, or enjoyment of the landlord or tenants, that is the basis for seeking recovery of possession, be severe, continuing or recurring in nature; and (3) clarify that the prohibition against seeking recovery solely because a residential occupancy is not authorized does not prevent a landlord from seeking to recover possession under Section 37.9(a)(8) or (10).

n:\legana\as2015\1500782\01035643.docx