



City of Long Beach
Working Together to Serve

R-15
REVISED

Date: March 20, 2018

To: Honorable Mayor Garcia and Members of the City Council
Daryl Supernaw, Councilmember, Fourth District

From: Suzie Price, Councilmember, Third District
Stacy Mungo, Councilmember, Fifth District
Dee Andrews, Councilmember, Sixth District

Subject: **Review of Proposed Long Beach Rent Control Ordinance**

RECOMMENDATION:

Recommendation to request the City Manager, or designee, and City Attorney, or designee, to review questions regarding a proposed Long Beach ordinance to enact rent control, a rent board and eviction limitations and report back to city council on April 17, 2018 with responses.

DISCUSSION:

Housing advocates recently filed paperwork to begin a rent control ballot initiative process in Long Beach. If enough signatures are collected and verified, then the City Clerk will ask the city council if they would like the Clerk's office to develop a report after 30 days.

However, with the importance of this topic, waiting until after signatures have been collected and verified would delay residents' access to impartial data until very late in the process. We would like to seek more clarification on the proposed ballot measure from the City Manager and/or City Attorney's office by reviewing the attached questions.

FISCAL IMPACT:

There is not a significant financial impact as a result of the recommended action.

ATTACHMENT

Questions Pertaining to the Proposed Long Beach Ordinance To Enact Rent Control, Rent Board and Eviction Limitations

1. Is the text of this Proposed Ordinance a matter of public record?
2. Does this Proposed Ordinance comply with the Costa-Hawkins Act?
3. Does this Proposed Ordinance comply with all existing municipal, state and federal statutes and regulations, and judicial decisions? Please provide citations.
4. How does this Proposed Ordinance deliver on the promise, expressed in the title, to protect homeowners?
5. Should the retroactive provisions of this Proposed Ordinance immediately decrease property values and create specific damages for property owners, under which municipal, state or federal laws, or judicial decisions can Owners recover damages from the City of Long Beach or from Housing Long Beach? Please provide citations. What arguments would the City of Long Beach offer in its defense if Owners were to file inverse condemnation complaints, either individually or collectively? (See Section 12(C)(b)(3)(A))
6. What is the first year in which a property can fall under the new ordinance?
7. Will the Proposed Ordinance force property owners to reverse rent increases that went into effect after January 1, 2017?
8. Would the new law prevent a landlord from issuing a 60-day notice to vacate? When would the Proposed Ordinance affect the ability to issue a 60-day Notice to Vacate? Would landlords have to serve notice prior to September 1, 2018, or could they be issued up until November 1, 2018?
9. Will the Proposed Ordinance nullify existing leases and prematurely end contracts mutually agreed upon by landlord and tenant? If tenants who resided in a unit prior to 2017 choose to sign a new lease under a new rent-control enforced rental amount, does the prior or existing lease become null and void?
10. Will this Proposed Ordinance result in new taxes or fees to support the additional workload for City Staff?
11. Can you give us a detailed description of how the city plans on enforcing this proposed new ordinance? Will the enforcement be done by a 3rd party or the City Attorney's/City Prosecutor's office?
12. Please clarify the dates as it relates to the petition stamped on January 12, 2018:
 - a. Assuming that the rent rollbacks will only apply to tenants that are in place prior to the signed date of the petition, meaning if a landlord evicts or has a vacancy any time after the stamped date, they will not be subject to a rollback if they fill the vacant unit with a new tenant at "market rent". Is that true?
13. Will all landlords be charged annual registration fees? Including those who own exempt units? Is this a blanket tax increase on a specific profession?
14. Written notice to Cease tenant violations must provide tenant a reasonable period of time to cure the violation. However, the term 'reasonable' is undefined in the text. Without a clear definition, can't this term be defined on an inconsistent, case-by-case basis? Can it be easily abused without any sort of standards in place? Who decides the reasons for denial of a replacement tenant?
15. Are there any owner protections if a tenant refuses to execute a new lease? If the tenant refuses, and owners begin eviction – a costly process that includes attorney fees – and the tenant changes his or her mind midway through the lengthy eviction, do owners have any ability to recover expenses?

Section 3: Definitions

(b)(1) *Base Rent*. Does this requirement, which will be applied retroactively, comply with existing law? Can you assure property owners that this provision does not create a requirement that forces them to break the law? Please provide citations and categorize into those indicating compliance and those indicating noncompliance.

Is the "effective date of this Chapter" 01/18/2018 or 11/06/2018 (Election Day)?

(h) *Fair Return*. This calculation doesn't take into account all expenses.

(j) *Housing Services*. Are they included in the rent adjustment or are they stand alone and pass through as presented?

o) *Primary Residence*. What prevents any tenant from "hanging on" to a below-market unit and also occupying another unit elsewhere? Are there any protections in this provision to actually prevent the law from being abused and decreasing housing stock? How does this provision meet the People's declaration of Finding 2(a)?

Section 4: Exemptions

(a) (4) - Are units or buildings with Section 8 Housing Vouchers exempt from Rent Control?

(b)(1) [Do not understand; need to read CCCP 1954.52.] (Please clarify)

Is it true that single-family dwellings, condominiums, and new construction are exempt from rent control under Costa-Hawkins? If so, does Costa-Hawkins supersede the proposed rent control ordinance, leaving those types of properties exempt from rent control?

Are properties exempted under Costa-Hawkins subject to the Just Cause Eviction Protection and Tenant Buyout Notification Program?

Section 5: Additional Homeowner Protections

(b) - Could we change all of our rentals to be roommates to be unregulated?) *Small*,

(c) *Second Units Unregulated*. Does this paragraph mean that granny flats are exempt if Granny occupies it and her child's family lives in the main house? If this section is the "Homeowner Protection" claimed in the Proposed Ordinance's title, this type of housing is actually a type of duplex. Under which municipal, state or federal statutes or regulations is the Proposed Ordinance empowered to distinguish regulation of this type of multi-family housing over other types of multi-family housing, such as two-on-one or apartment-style duplexes, or triplexes, or fourplexes? Please provide citations

Section 6: Just Cause for Eviction

(a)(1) *Failure to Pay Rent*.

Question 1: Under which municipal, state or federal statutes or regulations, or judicial decisions, might a Tenant's failure to pay his/her portion of the Rental Housing Fee not constitute a breach of contract and cause for eviction? Please provide citations.

(a)(2)(B) ref. "The Landlord...has the right to approve or disapprove the prospective additional or replacement Tenant, who is not a minor dependent child, provided that

the approval is not unreasonably withheld.”

Question 1: Does this mean that a Housing Provider needs to provide a reason for disapproving, or does this mean that the Housing Provider needs to provide a response in a timely manner?

Question 2: If Housing Provider needs to provide a reason for disapproving, can the Housing Provider conform to this provision of the Proposed Ordinance by complying with existing applicable rules regarding approval of occupancy? Please provide citations.

Question 3: Does the Rent Board have authority to create its own rules regarding Housing Provider’s authority to approve occupancy? Please provide citations.

Question 4: Which municipal, state or federal statutes or regulations, or judicial decisions would provide limitations on the Rent Board’s authority in this matter? Please provide citations.

(a)(3) ref. “A violent crime under this subsection shall not include a crime that is committed against a person residing in the same Rental Unit as the person committing the crime.”

Question 1: Why would this be exempted as a type of Nuisance which constitutes Breach of Lease, which is a Just Cause for Eviction?

Question 2: Are Tenants within the same Rental Unit to be allowed to commit violent crimes against each other and legally continue their occupancy? Why does the ordinance specifically prohibit landlords from evicting certain violent criminals?

Question 3: Under which municipal, state or federal statutes or regulations, or judicial decisions, could the Proposed Ordinance prevent a Housing Provider from evicting a Tenant who committed a violent crime against another Tenant within the Rental Unit? Please provide citations.

(a)(3) ref. “Immediate family means any spouse, whether by marriage or not...” Please clarify. How can a spouse exist without marriage?

(a)(4) *Illegal Purpose*. Please provide citations proving this section complies with federal law. If it does not comply with federal law, which law are landlords supposed to break?

(a)(6) *Failure to Give Access*. Ref. “The notice shall inform the Tenant that if they are unable to comply based on a disability-related reason, they have the right to request a reasonable adjustment or change in the Landlord’s policies or practices to accommodate the Tenant’s disability.” Presumably, the Housing Provider would already know about a disability at the start of occupancy. This provision appears to provide Tenant with an opportunity to declare a new, or previously undisclosed disability as a means to impede Housing Provider’s reasonable request for access.

Question 1: How shall the Proposed Ordinance provide limitations on the Rent Board’s authority so that it does not enact a new class or classes of disability types?

Question 2: Which municipal, state or federal statutes or regulations, or judicial decisions would empower or limit the Rent Board’s authority to enact a new class or classes of disability types? Please provide and categorize citations both granting and circumscribing such authority.

(a)(8)(D) ref. “The Rent Board may adopt regulations governing the determination of good faith.”

Question 1: How shall the Proposed Ordinance provide limitations on the Rent Board's authority so that it does not enact an unreasonably narrow definition of good faith, or enacts a definition unreasonably favorable to Tenants?

Question 2: Which municipal, state or federal statutes or regulations, or judicial decisions would empower or limit the Rent Board's authority to enact one or more definitions of good faith? Please provide and categorize citations both granting and circumscribing such authority.

(a)(9) *Necessary and Substantial Repairs Requiring Temporary Vacancy*. Why does the Proposed Ordinance provide a relocation subsidy to a tenant who caused substantial damages to their rental unit?

(a)(10) *Withdrawal of Unit Permanently from Rental Market*. Ref. "Tenants shall be entitled to a minimum of 120-day notice or one (1) year in the case Tenants are defined as senior or Disabled." Can Housing Provider commence and complete the eviction process if the Tenant, whether or not classified as senior or Disabled, fails to pay rent or breaches the Residential Housing Agreement? Please provide citations from the Proposed Ordinance, municipal, state or federal statutes or regulations or judicial decisions affecting this question.

(b)(1)(C) ref. "Landlord who terminates a tenancy pursuant to Subsection (a)(8)...shall pay Relocation Assistance..." Does the Proposed Ordinance comply with existing municipal, state and federal statutes and regulations, and judicial decisions when it requires a Housing Provider to pay Relocation Assistance to move into his or her own Property? If not, why would the City force housing providers to break the law? How are housing providers supposed to determine which law they should break?

(j) *Landlord Compliance with this Ordinance*. Meaning vague. Please explain.

Section 7: Rents Stabilized

Question 1: When and how are base rents determined?

Question 2: What other considerations go in to determining base rents?

Question 3: Will the Rent Board prepare a Notice that satisfies the terms of this section or does each landlord prepare his own?

Section 8: Rent Increases Pursuant to Annual General Adjustment:

(a)(1) Consumer Price Index Geographic Revision for 2018

In January 2018, BLS introduced a new geographic area sample for the Consumer Price Index (CPI). As part of the new sample, Los Angeles and Riverside have separate indexes. The first indexes using the new structure are published for the first time this month. Additional information on the geographic revision is available at: www.bls.gov/cpi/georevision2018.htm.

Will the Los Angeles-Long Beach-Anaheim CPI-U be used for determining the rate of increase?

(d) Notice Required to Increase Rent or Change Other Terms of Tenancy

Question 1: Will the Rent Board prepare a Notice that satisfies the terms of this section or does each landlord prepare his own?

Section 9: Restrictions on Initial Rent for New Tenants

Question 1: When a new tenant moves in, how does the new rental rate get calculated?

Question 2: Does the rent remain the same as the previous tenant or does the rent increase based upon the CPI guidelines?

Question 3: As long as Costa-Hawkins is law, can landlords set initial rent to market rent? If this ordinance prohibits landlords from setting initial rent to market, does this violate state law?

Section 10: Tenant Buyout Notification Program

(a), (b), (c) All 3 subsections state that documents related to a Tenant Buyout have to be in the primary language of the tenant. Since a certified translation of non-English documents has to be provided to the court if there is a dispute, this seems to be onerous. If the rental agreement is written in English, should not all other documents related to the tenancy also be in English?

(c)(1) and (c)(2)(C) Buyout Agreement Requirements. Thirty days is an extraordinarily long rescission period. Under which municipal, state or federal statutes or regulations, or judicial decisions, can the Proposed Ordinance offer a rescission period, and to offer one of such extraordinary duration? Please provide citations.

(e) Filing Executed Disclosure Notice and Buyout Agreement)

If Notice and Agreement are in a foreign language (per Section 10(a-c), will the Rent Board provide a certified translator to provide an English language version of the document(s)?

Section 11: Long Beach Rental Housing Board

(a) *Composition*. Ref. "The Board will be comprised of at least three (3) Tenants and two (2) unrestricted positions. If any board position is filled by a person who represents residential rental Property owners, no more than one (1) member may be a Property manager or developer of market rate housing."

(h) *Voting*. Ref. "The affirmative vote of three (3) Commissioners of the Rent Board is required for a decision..."

Question 1: The Rent Board, Which municipal, state and federal statutes and ordinances, and judicial decisions, allow such conflict of interest in a municipal ordinance? Please provide citations.

Question 2: How can the Proposed Ordinance declare that the two unrestricted positions are, in fact, unrestricted, when the same Proposed Ordinance states "no more than one (1) member may be a Property manager or..." Further, how can the Proposed Ordinance make a claim that the two seats are "unrestricted" when the Notice of Intent to Circulate Petition states "No more than two Board members would be permitted to own or manage rental property..."

(d)(15) *Pursue civil remedies as provided by this Ordinance in courts of appropriate*

jurisdiction. Does the Proposed Ordinance empower the Rent Board to form its own department or bureau of the City Attorney's Office? If the Proposed Ordinance does not so empower the Rent Board, under what other municipal, state or federal statutory or regulatory authority could the Rent Board be empowered to form its own department or bureau of the City Attorney's Office? Please provide citations.

(j)(1)(A) *Pass-Through to Tenants.* Ref. "...the pass-through must be in the form of a Rent surcharge prorated over a twelve-month period." Does the Proposed Ordinance enable the Housing Provider to charge interest to recover his/her interest charges to allow the Tenant to pay monthly? If not, under what other municipal, state or federal statutory or regulatory authority might the Housing Provider have recourse to recover his/her interest? Please provide citations. Are there any city/county fees that can be passed through or considered a "rent surcharge". Also, do existing municipal, state or federal statutes or regulations enable a Housing Provider to use the Tenant's security deposit and charge interest against it? Please provide citations.

(Financing) Since the Rent Board will be assessing new taxes (fees, charges), is a 2/3rds supermajority required?

(k) *Integrity and Autonomy of Rent Board.* Ref. "The Rent Board...shall exercise its powers...independent from the City Council, City Manager, and City Attorney except by request of the Rent Board." Doesn't this ordinance create a governing body that has defined itself as operating outside the scope of the City Attorney and limits the City Attorney's ability to do his/her job? Are there any other ordinances on the books that limit the City Attorney's ability to do his/her job? Wouldn't that limitation of power require a revision to the city charter? Under what municipal, state or federal statutes or regulations can the Proposed Ordinance limit the City Attorney's involvement solely at the discretion of the Rent Board? Please provide citations. Under what municipal, state or federal statutes or regulations can the City Attorney file complaints against the Rent Board? Please provide citations. Which municipal, state or federal statutes or regulations might limit the City Attorney's powers to file complaints against the Rent Board? Please provide citations.

(l) *Board Legal Work.* Ref. "The Rent Board may...retain private attorneys..." Please name firms which have aided or advised Housing Long Beach in drafting this Proposed Ordinance? Aid, advice or drafting may come in many possible forms, including formal contract on an hourly or contingency basis, consulting on an hourly or contingency basis, or any of the many possible forms of engaging legal help. What municipal, state or federal statutes or regulations obligate Housing Long Beach to disclose its legal and other advisors in navigating the petition process, drafting the Proposed Ordinance and lobbying elected officials and key members of City Staff.

(m) *Conforming Regulations.* Ref. "If any portion of this Ordinance is declared invalid or unenforceable by decision of a court...or rendered invalid or unenforceable by state or federal legislation, the Rent Board and not the City Council shall have authority to enact replacement regulations..." Do any current municipal, state or federal statutes or regulations limit this power of the Rent Board? Please provide citations.

Section 12: Petitions for Individual Rent Adjustment - Bases

(b)(3)(A) Base Year.

(b)(4) Exceptional Expenses in the Base Year.

Question 1: Under which municipal, state or federal statutes or regulations, or judicial decisions, does the Proposed Ordinance claim that parties not engaged in the activity of Housing Providers are qualified to render judgment on what constitutes Exceptional Expenses? Please provide citations.

Question 2: Under which municipal, state or federal statutes or regulations, or judicial decisions, does the Proposed Ordinance claim power that the Tenant members of the Rent Board are not engaging in conflicts of interest? Please provide citations.

(b)(6)(A), (B) and (C), including all subsections.

Question 1: How will the Proposed Ordinance empower the Rent Board to obtain the expertise to understand operating expenses in its duties to render judgments on these operating expenses?

Question 2: How will the Proposed Ordinance resolve the conflict of interest held by the Tenant Rent Board members, whose sole votes are the only votes required to render judgment against Housing Providers?

Question 3: Under which municipal, state and federal statutes and regulations, and judicial decisions, can a Rent Board operate which has the explicit conflict of interest described above? Please provide citations.

Section 13: Petitions for Individual Rent Adjustment - Procedures

(a) Hearing Officer.

Question 1: What are the qualifications for a Hearing Officer?

Question 2: How is the Hearing Officer compensated?