



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo
Councilmember Chappie Jones

SUBJECT: TENANT PROTECTIONS

DATE: May 5, 2017

Approved

Date 5-5-17

RECOMMENDATION

1. Approve the staff recommendation to adopt an urgency ordinance and approve an ordinance.
2. Identify a clear strategy for educating tenants and landlords of smaller properties to ensure all are well-informed of the requirements of the law, and of its implementation, and return to Council in the Fall with that strategy.
3. Direct the City Manager to identify, through the budget process, a means for funding legal services for low income tenants needing assistance in effectuating their "just cause" rights.
4. Direct the City Attorney to return to Council subsequent to implementation with an amendment to the Ordinance to make changes in the ordinance:
 - a. Amending "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."
 - b. Amending "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.

BACKGROUND

The implementation of a "Just Cause" ordinance invited controversy regarding its propriety and implementation, with strong feelings on all sides, including those who sought to find middle ground with a modified formulation. Regardless of the merits of any position, the Council has spoken, and the question before us relates to the timing of implementation of the measure.

In the week following the Council decision, six tenants in a single building faced no-cause evictions, and three more elsewhere. Given the well-publicized Council decision, considerable risk arises for existing tenants that less savory landlords might seek eviction prior to the effective date of any new ordinance. Accordingly, an urgency ordinance appears in order to avoid anticipatory evictions that will likely result.

Most of the recommendations above appear self-evident, but two require explanation. First, as several have expressed previously, concern exists about the likelihood of witnesses overcoming fears of testifying regarding the criminal conduct—such as drug or gang activity-- of their neighbors.

As currently formulated, the provisions relating to “nuisance” not only require that one prove criminal conduct—which a landlord might try to establish if she is fortunate enough to have a certified conviction document or testimony of an arresting officer—but also prove that the conduct actually constituted a nuisance to neighbors:

Section 17.23.1250 Nuisance Behavior. The Tenant, after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit, and may be further defined in the regulations adopted by the City Manager.

Several other cities provide that violations of state or federal criminal law constitute a separate basis for lawful eviction of a tenant than mere nuisance. The approach of those cities appears more sensible.

This distinction makes a difference: under the current formulation, the landlord must prove in court that the consensual criminal activity (e.g. running gambling salons, or prostitution, or illegal drug sales) would actually “destroy the peace, quite or comfort or safety” of other tenants in the view of the decision-making judge or jury. Simply, nobody will take the stand to testify—in full view of the person committing the criminal conduct-- that their neighbors’ activity is a nuisance to them. The mere evidence of criminal conduct should suffice to justify the eviction. To protect those who might be liable for status offenses—e.g., immigration violations—the law could be readily modified to exclude immigration violations or other status offenses from the basis for which tenants can be lawfully evicted.

Finally, considerable concern has emerged throughout the state that tenants with family members lacking legal status encounter landlords who have used their status to extract additional rent or other concessions, at the risk of eviction. This concern has given rise to state legislation on the matter, including a bill recently introduced by Assemblymember David Chiu. Should that measure fail to pass, it seems sensible to include such protections in this ordinance.