



Date: July 27, 2015
To: Members of the Planning, Land Use, and Sustainability Committee
From: Mark Baird, Council Central Staff
Subject: Proposed Renter Protection Legislation

On August 4th, the Planning, Land Use, and Sustainability Committee will discuss draft legislation sponsored by Councilmember Licata that includes new provisions concerning rental agreements and changes to the Tenant Relocation Assistance Ordinance (TRAO) and related codes.

This memo summarizes three key provisions of the proposed legislation: (1) a requirement that a landlord offer a new fixed-term lease to a tenant 60 days prior to the expiration of the term or the tenancy will convert automatically to a month to month tenancy at the end of its term; (2) regulations to prevent the use of rent increases to avoid paying relocation assistance; and (3) a requirement that the TRAO apply to substantial rehabilitation that may not require a permit. This memo also discusses implementation issues associated with the proposed legislation.

1. Automatic Conversion to Month-to-Month Agreements

There are two primary types of rental agreements that landlords can offer tenants.

- **A Month-to-Month Rental Agreement** that does not contain specific time limits on tenancy but is renewed automatically each month for another month unless properly terminated by either party. Under the [City's Just Cause Eviction Ordinance \(JCEO\)](#), a landlord can end a month-to-month tenancy only for one of the 18 reasons listed in the JCEO.
- **A Fixed-Term Lease** that does include a specific time period for tenancy. One-year leases are very common. A lease expires at the end of the lease term and the tenancy ends, unless the contract states otherwise.

Under the proposed legislation, the City's [Rental Agreement Regulation Ordinance](#) is modified to require a landlord to provide a new fixed term lease 60 days prior to the expiration of the term or the tenancy shall convert to a month to month periodic tenancy. If an agreement is converted to a month-to-month agreement, a landlord desiring to terminate a tenancy must comply with the City's JCEO in order to proceed. If a landlord offers a new fixed term lease within the prescribed time and the tenant declines the lease, then the tenancy ends at the end of the original term lease. There is also new language making it clear that the new subsection does not apply to any rental agreement entered into before the effective date of the ordinance.

2. Prohibit Use of Rent Increase to Avoid Tenant Relocation Assistance Ordinance

Under the City's TRAO, a rental property owner is required to pay relocation assistance to low-income tenants (those earning at or below 50% of area median income (\$31,400 for one person household, \$35,850 for two person household) who must move because their rental unit will:

- Be demolished;
- Undergo substantial rehabilitation;
- Have its use changed (for example, from an apartment to commercial use); or
- Have certain use restrictions removed (e.g., rental rate restrictions imposed by a federal program ends).

The TRAO is intended to provide financial assistance to low-income tenants and advance notice to all tenants who will need to move as a result of one of these events. The current amount of tenant assistance provided is \$3,255. The rental property owner is responsible for paying half of the relocation assistance; the City is responsible for the other half. Funds for the City's share of tenant relocation assistance come from the Real Estate Excise Tax.

Currently, a rental property owner must obtain a tenant relocation license from the Department of Planning and Development (DPD) before obtaining a master use, demolition or building permit for an occupied building. DPD is not allowed to issue such a permit until the owner has obtained a relocation license. The rental property owner has many steps to complete in order to obtain the relocation license, including providing relocation information packets to tenants, so that eligible tenants can apply for relocation assistance, and paying assistance to eligible tenants. Generally, it takes about six months to obtain a relocation license.

There is anecdotal information that, prior to applying for a construction permit to perform substantial rehabilitation, some rental property owners have significantly increased rents as a method for getting tenants to leave a building. Once the tenants vacate the building, the owner applies for the appropriate construction permit and avoids payment of relocation assistance.

The proposed legislation modifies the TRAO to allow a tenant who has received a notice of rent increase and believes the purpose of the increase is to circumvent TRAO requirements, to file a complaint with DPD. DPD must investigate the complaint and require an owner to file a certification stating that the rent increase is not for purposes of avoiding the payment of relocation assistance. DPD would decide if the rent increase was made to avoid paying relocation assistance. The bill would establish a rebuttable presumption that the property owner has violated the provisions of TRAO if the following events occur:

- 1) Tenant vacates a dwelling unit within 90 days of a rent increase, and the owner of the unit applies for a permit for substantial rehabilitation, demolition, or change of use within 90 days of the tenant vacating and one or more of the following:

- a. Within 30 days after the tenant vacates a unit, the owner does not list or advertise the dwelling unit for rent at the same rental rate or more in a newspaper of general circulation, or a rental website such as Rent.com, Craigslist, etc.; or
- b. Within 90 days after the dwelling unit is listed or advertised for rent, the owner withdraws the unit from the rental market without renting it; or
- c. The dwelling unit was timely listed or advertised for rent and the listing or advertisement is maintained but the increase in rent is in excess of the amount necessary for a **reasonable return** as measured by:
 - i. the purchase price and terms of the transaction relied upon to establish the cost basis of the rental unit;
 - ii. the increase or decrease since the last rent increase in reasonable and necessary operating and maintenance expenses of the building and rental unit;
 - iii. the costs of capital improvements since the last rent increase;
 - iv. increases or decreases since the last increase in rent in necessary or desirable services furnished by the lessor that affect the vacating tenant or any substantial deterioration of the premises since the last rent increase;
 - v. comparability of the rent with other rents in similar buildings and areas of the City; and
 - vi. reasonable return.
- d. The Director requested the owner to certify that the rent increase was not for the purpose of avoiding the payment of relocation assistance and owner failed to comply with certification or failed to sign a certification.

If DPD finds the rental property owner has violated the TRAO, penalties can be assessed, including an amount that is the same as the amount of relocation assistance that the owner should have paid to the tenant. The rental owner or tenant may appeal DPD's decision to the Hearing Examiner within 10 days of receipt of the DPD Director's decision.

Importantly, the bill would also prohibit DPD from issuing a building permit to the owner until the owner pays any penalties assessed as a result of a violation of the TRAO.

3. Require Compliance with TRAO for Substantial Rehabilitation Without Permit

Currently, an owner of occupied rental property who plans or undertakes substantial rehabilitation that requires a building, electrical, plumbing, or mechanical permit is required to comply with provisions of the TRAO. However, a rental property owner can perform significant

rehabilitation, such as kitchen or bathroom remodels, of a rental unit resulting in the displacement of existing tenants and the work may not require a building, electrical, or other permit. As such, the TRAO does not apply to such situations.

The proposed legislation modifies the definition of substantial rehabilitation in the TRAO as follows:

"Substantial rehabilitation" means extensive structural repair or extensive remodeling that requires displacement of the tenant and either ~~((which))~~ requires a building, electrical, plumbing or mechanical permit, or is valued at \$6,000 or more~~((and which cannot be done with the tenant in occupancy.~~

A rental property owner performing rehabilitation that fits either prong of the definition would be required to comply with the TRAO, including the payment of relocation assistance to eligible tenants.

Implementation Issues and Fiscal Implications of the Proposed Legislation

The changes included in the proposed legislation would create an increased work load for DPD staff to investigate complaints, manage a certification processes, determine if criteria such as "rent reasonableness" are validated, respond to appeals, and process potentially new requests for tenant relocation assistance. DPD has estimated the cost for implementing the new changes at \$321,750 in 2015, including a one-time cost of \$100,000 to upgrade the DPD permit tracking system, and \$356,000 in 2016. The cost estimates include the cost of hiring a consultant economist to assist in assessing the "rent reasonableness" criterion contained in the proposed legislation.

In addition, there may be further requests for tenant relocation assistance payments as a result of the expansion of the TRAO to substantial rehabilitations that do not require a permit. DPD has estimated that the amount of additional payments could equate to \$32,000 in 2015 and \$64,000 in 2016 but admits these are best guess estimates. Currently, there is no firm data on the extent to which landlords are undertaking substantial rehabilitation that results in tenants being displaced.

Finally, there may be increased work load, and associated costs, for the Hearing Examiner as a result of the proposed provisions that allow a tenant or rental owner to appeal a decision of the DPD Director related to the use of rent increases to avoid the TRAO. The Hearing Examiner has assessed the work load and cost implications of the proposed legislation and has no new requirements at this time.

If you have questions about the information contained in this memo or other questions related to the proposed legislation, please contact Mark Baird (4-5509).