



City of Santa Barbara California

PLANNING COMMISSION STAFF REPORT

REPORT DATE: August 11, 2005
AGENDA DATE: August 5, 2005
PROJECT NAME: Tenant Displacement Assistance Ordinance (MST2005-00401)
TO: Planning Commission
FROM: Planning Division, (805) 564-5470
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I. INTRODUCTION

During the recent Housing Element Update process, the concept of creating a “Tenant Displacement Assistance Ordinance” was raised in response to a proposed condominium project at 1620 Garden Street. This project resulted in tenant displacement that was not covered by the City’s Condominium Conversion Ordinance because the rental units were to be demolished and rebuilt as new condominium units rather than converting the existing units.

The concept of creating tenant protections, along the lines of those found in the City’s Condominium Conversion Ordinance was eventually adopted as an implementation strategy of the Housing Element. To address impacts to residential rental tenants, due to the loss of rental housing from demolition or change of use, the Housing Element included Implementing Strategy 2.2.3:

“Amend the Municipal Code in order to provide tenant protection measures similar to those in the Condominium Conversion Ordinance in connection with the demolition of rental units.”

A Tenant Displacement Assistance Ordinance is being recommended to address tenant protection when residential units are to be demolished or changed to a new non-residential use. It should be noted that due to certain limitations found in State law, the draft recommendations are different in some regards than the City’s Condominium Conversion Ordinance.

II. RECOMMENDATION

Staff is requesting that the Planning Commission discuss this report, hold a public hearing and provide direction and recommendations to Staff regarding the outlined key provisions for a Tenant Displacement Assistance Ordinance (TDAO). Recommendations regarding these key provisions will be forwarded to the City Council Ordinance Committee for further direction.

III. DISCUSSION OF POTENTIAL PROVISIONS FOR A TENANT DISPLACEMENT ORDINANCE

The following provisions were developed from review of the City's Condominium Conversion Ordinance, direction from the Housing Policy Steering Committee, input from a public workshop, and advice from the City Attorney. Sections IV and V of the report contain background information and policy direction that were considered in formulating these draft provisions.

Provision 1: Target Tenants. Displacement assistance should be provided to any residential tenant of a unit that is demolished or changed in use.

Discussion: The Housing Policy Steering Committee (HPSC) discussed "target tenants" as *any* residential tenant that would be displaced. During the public workshop, opinions expressed were that the tenant displacement assistance should be a voluntary program. An opposing opinion stated that the City needs to be sure that mitigation is provided as tenants need assistance to find new housing in a tight and expensive rental market.

While there are various circumstances that can lead to tenant displacement, a narrow interpretation of the implementation strategy would limit the application of the TDAO to only those tenants living in rental units that are demolished. However, given the fact that the implementation measure suggests the adoption of tenant protection measures in circumstances similar to those covered by the Condominium Conversion Ordinance, i.e., *the conversion of rental units to ownership condominium units*, Staff suggests that the TDAO should apply when rental units are removed from the rental market due to demolition or change of use. *In other words, rental units that are demolished and redeveloped with rental housing would not trigger the TDAO.*

Staff did grapple with the problem of creating a class of tenants that would not be compensated, e.g., tenants that live in rental units that will be demolished and redeveloped with rental housing. If the position is to assist *any* displaced tenant, irrespective if the units will be replaced with rental, this would involve further direction from the City Council. Compensating *any* displaced tenant is a much larger effort that has not been thoroughly evaluated as part of this work program and would include substantial tenant improvements that require relocation of the existing tenants

Similarly, HPSC members and public workshop participants were of the position that if a landowner is redeveloping their own rental unit to occupy it, they should be exempt from the TDAO. But again, a tenant is being displaced, so is it appropriate to exempt this class of tenants from compensation?

Staff requests that the Planning Commission discuss this issue, and give direction on whether to compensate tenants of existing rental units being demolished that will be replaced with new rental units¹.

¹There are few incentives for development of rental housing, so perhaps exemption from the TDAO could serve as an incentive for redevelopment with rental.

Provision 2: Threshold Project Applicability. Existing rental units (including non-permitted units) proposed for a change of use and/or demolition², except those that will be replaced with rental units, become owner-occupied by the existing owner named on the deed or an immediate family member (see previous discussion), and units lost in natural disasters. Again, the ordinance would apply to all projects being redeveloped with new condominiums.

Discussion: The HPSC recommended that this section include rental units that are “not permitted” because impacts to tenants in these units is the same as impacts to tenants in permitted units. The HPSC also recommended that the TDAO ordinance should not be applicable to rental units that will become owner-occupied (by the owner named on the deed or an immediate family member).

A community member at the public workshop suggested that projects of four or less units should be exempt. Staff’s research on the rental units that have been demolished over the past five years indicates that only three projects contained four units; the remainder contained one, two or three units out of 86 total units demolished. Exempting projects of four or less would drastically reduce the effectiveness of the ordinance.

Provision 3: Evidence of Tenant Notice Required at Time of Application. At time of application for a demolition permit or building permit to change the use, evidence that the existing or last tenants have been notified regarding the Tenant Displacement Assistance Ordinance shall be required.

Discussion: The HPSC recommended that a notice to terminate tenancy per State law should be included in the ordinance. State law preempts the City from altering the noticing process for the termination of tenancies. However, state law does not prevent the City from requiring an applicant to provide proof that they notified their tenants of the existence of the TDAO as a condition of the application for demolition or change of use.

Provision 4: Lease Termination: Tenants shall have the right to terminate their existing lease early without cause.

Discussion: This provision mimics the requirement in the City’s Condominium Conversion Ordinance.

Provision 5: Relocation Fee. Proposed is a one time variable fee based on three months of the existing rent or three months of the “going rate” rent for the unit size as determined by the City’s Housing Division annual rent study, whichever is higher. The relocation fee would be applicable to each “unit.” It would be the responsibility of the tenants within the unit to divide the fee, if necessary. Evidence that the Relocation Fee has been paid must be provided at issuance of permit for demolition, building permit issuance, sign permit or change of use permit.

Discussion: The relocation fee based on three months rent was suggested by the HPSC. This is higher

² Demolition of a unit includes improvements to the structure(s) that will result in a loss of a rental unit.

than the requirement in the City's Condominium Conversion Ordinance which is one and ½ times the monthly rent or \$2,000.00 whichever is greater. The Committee felt that a higher fee was required due to the higher rents in the rental market today. If a tenant must pay first month rent and last or security deposit, the amount could be more than the tenant could afford. Comments received at the public workshop included concerns that the higher fee would discourage infill development, that the ordinance should be simple and not include options for determining the fee, and that using the existing rent is a better option as it would not "punish" a landlord for keeping the rent low.

Provision 6: Moving Expenses. Compensation would be provided in addition to the relocation fee and would be based on typical average moving expenses per unit size within the South Coast area (Gavotte to Rincon). The moving expense would be calculated annually. Evidence that the moving expense has been paid must be provided at issuance of permit for demolition or building permit for change of use.

Discussion: The HPSC suggested that moving expenses should be provided in addition to relocation fees. The Committee also suggested that the expense be based on typical moving expense per unit size. A comment at the public workshop indicated that the moving expense should be limited to the cost of a move within the South Coast. The City's Condominium Conversion Ordinance does not provide both a relocation fee and moving expenses. It just requires one fee that would cover both expenses.

Provision 7: First Right of Refusal. If new residential units are proposed on the site, tenants would have the first right of refusal for those units. Landlords/developers shall have the burden to notify tenants of this right. Prior target tenants would have the burden to assert the right to first refusal when the new units go on sale.

Discussion: The City's Condominium Conversion Ordinance has a First Right of Refusal clause to allow existing rental tenants to buy condominiums. Under this ordinance, it is most likely that rental units will be demolished for a change of use. However, the HPSC felt that if new rental units were to be built, the prior tenants should have first right of refusal to rent those units, if they qualify. This provision would only be built in to the ordinance if the direction is that a TDAO would also be applicable to projects that redevelop with rental units. Input from the public workshop indicated that this may be a burden on the developer as they may need to locate tenants after an 18 month building period. Therefore, Staff added a requirement that tenants have the burden to assert their right of first refusal. There was also a comment from a member of the public that landlords should be allowed to qualify their new tenants. The ordinance would not prohibit that process.

Provision 8: Retroactive Protections: This proposal would extend the tenant protections to the last tenant that lives in the target unit. The ordinance would establish a rebuttable presumption that if a tenant had been evicted within 6 months prior to the submission of the application for demolition or change of use, the tenant would qualify for the assistance provided in the ordinance. Landlords could rebut the presumption with evidence that the tenant had been evicted for cause. Target tenants would have the burden to assert their right to assistance within 30 days of issuance of a permit.

Discussion: The HPSC had recommended that all tenants that had lived in a target unit in the last 24 months be entitled to compensation. During the public workshop, input was given that 24 months is too long a period to keep track of tenants. Staff recommends a timeframe of six months which is a more realistic length of time. The City would establish a rebuttable presumption that the last tenant (evicted without cause) was evicted in order to facilitate the removal of the unit from the rental market and that the tenant would be entitled to claim the assistance. It does not seem realistic that a landlord would evict a tenant more than 6 months in advance and lose the rental income. The City would establish a new finding for approval of demolitions or changes of use from residential rentals to find that the assistance was properly paid before approving the permit. If a tenant comes in requesting payment and the landlord chooses to rebut the presumption, the City would have to make a decision regarding the presumption based on the evidence presented by the landlord as part of the permit approval process.

IV. POLICY DIRECTION AND PUBLIC INPUT

Housing Element

Rental vs. Ownership: The City's Housing Element, adopted in February of 2004, describes rental housing stock and tenant issues. The Element states that the 2000 census showed that 20,648 or 58% of the City's housing units are renter occupied. The census also reported that only 4% of the City's housing units were vacant. If rental units are lost finding replacement housing for affected tenants will be challenging in a tight rental market.

Affordable Units at Risk: The Housing Element addresses existing affordable rental units that are at risk. Upon expiration of a project's affordability conditions, the units are at risk of substantial rent raises, being converted to condominiums or even sold and demolished for new non-residential development. The Element indicates that 135 units are at risk in the next two to ten years and that affordability conditions have already expired for 57 units. Therefore, a total of 192 rental units could be removed from the rental market. This situation provides another challenge for displaced tenants who need affordable housing.

Special Needs: The Housing Element also reported on special needs groups. Certain segments of the population have more difficulty finding housing due to special circumstances. These circumstances could relate to family type, household size, disability or limited income. If tenants with special needs are displaced from rental housing, they will have an even greater challenge to find replacement housing.

Implementation Strategy: To address impacts to residential rental tenants, due to the loss of rental housing from demolition or change of use, the Housing Element includes Implementing Strategy 2.2.3:

“Amend the Municipal Code in order to provide tenant protection measures similar to those in the Condominium Conversion Ordinance in connection with the demolition of rental units.”

Housing Policy Steering Committee Direction

On March 28, 2005 the HPSC (composed of three City Councilmembers and three Planning Commissioners) reviewed a report from the Planning Division Staff on the issue of a Tenant Displacement Assistance Ordinance. The report provided background information on State and Federal laws related to tenant displacement assistance, sample ordinances from other cities, as well as recommendations from Staff regarding ordinance provisions for the City of Santa Barbara.

After reviewing the information and discussing the issues, the HPSC recommended issues to be addressed in an ordinance. These provisions are outlined in Exhibit A. Many of the suggestions have been incorporated into the Staff recommendation, as permitted by State law.

Public Workshop Input

On April 12, 2005, a public workshop was held by Planning Division Staff to review potential provisions of a TDAO. The purpose was to take input on the issues regarding such an ordinance. Four members of the public attended. The workshop was televised so other members of the public may have viewed the proceedings. The workshop focused on the ordinance provisions developed by the Housing Policy Steering Committee as discussed above.

Members of the public who provided comments included those interested in tenants' rights as well as those interested in landlord/owner rights. The input received was very helpful to Staff in refining the potential provisions of a TDAO. Notes from the workshop are provided in Exhibit B.

V. BACKGROUND

The following is a discussion of all the factors considered in drafting the recommended provisions of a Tenant Displacement Assistance Ordinance. As provided by the Housing Element, a new tenant protection/relocation ordinance should be "similar" to the City's Condominium Conversion Ordinance but must also follow relevant State laws as explained below.

Recent Demolition of Rental Units

In order to determine an estimate of the number of rental units that may have been recently lost from the City's rental market, Staff analyzed residential demolitions associated with new development projects. A database was assessed that included all projects in the past five years with a building permit or a certificate of occupancy that involved demolition of a residential unit(s). This analysis was limited to projects outside the single-family zones. The study included the R-2, R-3, R-4 and commercial zones as the projects in these zones are more likely to include rental units.

The data showed that in the past five years, 86 residential units have been demolished in the duplex, multi-family and commercial zones. Information was not available to determine if these units were owner occupied or rental units. However, it is likely that the majority of these units were rentals.

The data indicated that the demolished units were replaced by 20 commercial projects, 13 residential condominium projects, 2 affordable housing projects, 19 market rate rental projects and 5 single-family homes. Therefore, the replacement projects likely could not provide housing that would meet the needs of all displaced tenants. For up to 86 households to find replacement housing in Santa Barbara's tight and expensive rental market, could be a hardship.

Following the workshop, and at the request of one of the attendees, Staff reviewed the demolition data to determine which units that were demolished had actually been occupied by tenants. As the City has no occupant information for properties, there is no official way to tell if the units were rentals or owner occupied.

Voluntary Tenant Relocation Plan

In February 2004, the City Planning Commission considered an application for a new mixed-use project in the 700 block of Chapala Street that would remove six existing residential units and six existing small commercial businesses. The applicant, BDC, voluntarily offered both a residential and a commercial tenant relocation program. For the relocation programs that were made a part of the project description please refer to Exhibit C.

State Laws/Ellis Act Requirements

Under the State "Ellis Act," Government Code sections 7060-7060.9, no public entity shall compel an owner of residential property to continue to offer the property for rent or lease. The owners have the right to remove residential rental units from the market without government regulations that overburden the right to cease being a landlord.

The Act further states that nothing in the Act either diminishes or enhances any power in a public entity to mitigate any adverse impact on persons displaced by the withdrawal of rental accommodations. *It is within the City's general police power to require relocation assistance for persons displaced by withdrawal of rental units.*

The Ellis Act only allows local ordinances that mitigate the adverse impacts on persons actually displaced, not the community in general. According to the Ellis Act, governmental regulations are prohibited from requiring the landlord to provide mitigation such as replacement units or in-lieu fees for replacement units.

From 1985 until 2003, the Ellis Act limited relocation assistance to low-income households. In 2003, the Legislature deleted this limitation. Cities may consider extending relocation assistance to tenants without limitation based on income.

With respect to noticing requirements, a court interpretation recognized that the notice due a tenant from a landlord/property owner is a matter of State-wide concern not amenable to local variations. Therefore, the City may not alter the termination notice standards specified in Civil Code sections 1946 and 1946.1 without express authority under State law.

Section 1946 applies to leases that specify the term of the lease. This section requires landlords to provide at least 30 days written notice to terminate a tenancy. Section 1946.1 concerns the length of notice required for termination of month-to-month leases where the lease does not specify the term of the lease. This section requires a landlord to give at least 60 days notice before terminating a month-to-month lease. However, landlords may give 30 days notice to residents who have been tenants for less than one year. Landlords are also required by State law (Civil Code section 1950) to carry out a certain procedure for dealing with security deposits paid by tenants. Rent increases, even during a notice period, are also governed by State law (Civil Code section 827).

Santa Barbara's Condominium Conversion Ordinance – Tenant Protection Provisions

Section 28.88.100 of the Municipal Code includes tenant protection provisions when a rental property owner applies to convert rental units to condominiums or hotel units. Some of the provisions are provided by the State Subdivision Map Act and would not apply to tenants that are displaced due to change of use or demolition of the units and replacement with new condominiums. Certain provisions that are included in the Condo Conversion Ordinance, such as lease termination/noticing (Civil Code section 1946), and security deposits (Civil code section 1950) are set by referenced State law and, therefore, cannot be the same in the proposed TDAO.

However, the Condominium Conversion Ordinance does provide a starting point for addressing issues for tenant protection for certain matters. The tenant protection provisions in the City's Condominium Conversion Ordinance are outlined in Exhibit D along with comments that indicate its applicability to a TDAO.

Other Cities' Tenant Protection/Relocation Ordinances

Research on existing tenant protection measures in other cities was conducted. The research concentrated on tenant protection ordinances that were not related to condominium conversion, displacement for code enforcement or displacement related to Redevelopment Projects. The purpose of this research was to locate other city ordinances that provide tenant protection when rental units are demolished or undergo a change of use.

Ordinances from the following cities were reviewed and found to address residential tenant protection/relocation issues: Santa Monica, Los Angeles, Pasadena, Berkeley, and Oakland. All of these cities, except Pasadena have rent control and, therefore, can require longer noticing periods than cities without rent control. Also, some of their ordinances address only low-income tenant protection as they were adopted prior to the Ellis Act amendment that removed the requirement to address only low-income tenants. (Exhibit E contains a chart with a brief outline of each ordinance provision):

Most of the cities' ordinances had the following provisions in common:

- Noticing Procedures
- Provisions for special needs households
- Assistance for tenants residing at the time the unit(s) is proposed for withdrawal
- A relocation fee and often additional moving expenses
- Exemptions for natural disasters
- Relocation fee – Several options were adopted by other cities including: one time flat fee for rental assistance, one time variable fee based on unit size, monthly or long-term fee, or assistance fee for special needs tenants. According to the research, the amount and type of relocation assistance varies from city to city:

Santa Monica: The Relocation Fee is based on the unit size starting at \$3,000 for a studio up to \$5,500 for a four plus bedroom unit. Special needs households receive an extra \$1,000. An additional fee of \$250 is to be paid for counseling/assistance.

Pasadena: The Relocation Fee represents two months rent for unit size based on HUD standards. Moving expense of \$1,000 is added. Special needs households qualify for moving expenses of \$3,000.

Berkeley: A flat Relocation Fee of \$4,500 is required per unit.

Oakland: The Relocation Fee is two months rent based on the tenant's rent at the time they are given notice.

Los Angeles: A flat Relocation Fee of \$3,200 is required per unit. Special need tenants receive \$8,000.

Santa Barbara Rent Levels

To provide information on current rent levels in Santa Barbara, a rent survey was conducted by the City's Housing Division using information from the Santa Barbara News Press collected on one day in April in 2005. The information presented in the table below indicates the median rent for various types and sizes of rental units. This information would help in determine an appropriate relocation fee for tenants that will be displaced.

Apartments (243 listings):

0 BR \$900
1 BR \$1,065
2 BR \$1,525

Houses (97 listings):

0 BR NA
1 BR \$1,400
2 BR \$1,995

3 BR	\$2,475	3 BR	\$2,600
4 BR	NA	4 BR	\$3,000

Condominiums (50 listings): Duplexes (32 listings):

0 BR	NA	0 BR	NA
1 BR	\$1,500	1 BR	\$1,100
2 BR	\$1,850	2 BR	\$1,750
3 BR	\$2,150	3 BR	\$2,075
4 BR	NA	4 BR	NA

VI. NEXT STEPS

1. Council Ordinance Committee w/ Planning Commission Direction
2. Draft Ordinance Language and Complete Environmental Review
3. Planning Commission Recommendation to City Council (Public Hearing)
4. Council Ordinance Committee Review of Ordinance
5. Council Introduction (Public Hearing)
6. Council Adoption (Ordinance Effective 30 days later)

Community Education

Educating the community, including architects, developers and tenants about the TDAO will be important. Once an ordinance is adopted, ways the community can be informed include the following:

1. Provide handouts to real estate agents so that when people purchase property they know of the requirements when considering redevelopment of the site.
2. Include information on Zoning Information Reports
3. Disseminate information in the City's Land Use Bulletin
4. Place information on the City's webpage
5. Provide handouts at the public Planning and Zoning and Building and Safety Counters (In Spanish and English)
6. Disseminate information to Tenant and Landlord Groups
7. Distribute the information at time of application submittal for ABR, PRT or DART
8. Provide handouts to SB Housing and Rental Mediation

VII. EXHIBITS

- A. Housing Policy Steering Committee Recommendations, March 25, 2005
- B. Public Workshop Notes, April 12, 2005
- C. Summary of Tenant Relocation Program for 700 Block of Chapala Street
- D. City of Santa Barbara's Condominium Conversion Ordinance (Excerpt w/Comments)
- E. Chart - Tenant Protection/Relocation Ordinance Provisions from Various Cities.