



Landlords Get Ready: San Diego Residential Tenant Protection Ordinance Will Exceed AB 1482 Requirements

By: Jennifer Chavez and Kiersten Ahrens

More than 3 years ago, the State legislature adopted the Tenant Protection Act of 2019, commonly referred to as Assembly Bill (“AB”) 1482, which – among other things – generally prohibits landlords from terminating residential tenancies in the absence of “just cause.”¹ While AB 1482 created strong tenant protections, those protections were not applicable in the City of San Diego due to the City’s own “just cause” eviction ordinance. The City ordinance, which was adopted in 2004, was considerably weaker than AB 1482, but nevertheless took precedent over the State statute.² All this is about to change, however. The City is presently poised to adopt the “Residential Tenant Protections Ordinance to Prevent Displacement and Homelessness”³ (“[SD Tenant Protection Ordinance](#)”).

If adopted as anticipated, the SD Tenant Protection Ordinance will provide more robust tenant protections than AB 1482. Specifically, the City’s ordinance will: (1) require more generous relocation assistance in the case of no-fault “just cause” evictions; (2) require specific disclosures in leases, termination notices and so-called “buyout agreements”; (3) provide additional hurdles for landlords in instances where leases are terminated due to substantial renovation or demolition projects; and (4) eventually require landlords to send the San Diego Housing Commission (“Housing Commission”) a copy of all tenant termination notices – even if leases are being terminated for failure to pay rent or other “at fault” justifications.

In many key respects, the SD Tenant Protection Ordinance tracks AB 1482. For example:

- It provides the same exemptions from “just cause” eviction rules allowed under AB 1482, including for hotels, short-term residential occupancies, housing for which a certificate of occupancy was obtained within the previous 15 years, residential care facilities, dormitories, owner occupied residential rental property, duplexes where the landlord occupies 1 unit, and deed restricted affordable housing. There is also an exemption for rental housing where the landlord is not a REIT, corporation, or a limited liability company in which at least 1 member is a corporation, if certain disclosures about the exemption are provided to tenants by January 1, 2024.

1 A prior article on AB 1482 can be found [here](#).

2 AB 1482 does not apply where a local just cause eviction ordinance was in effect as of September 1, 2019. (Civil Code Section 1946.2(g)(1)(A).)

3 Prior to becoming effective, the SD Tenant Protective Ordinance will be subject to a second City Council vote, which is anticipated to occur on May 16, 2023.

- It allows for “at fault” just cause evictions on the same grounds applicable under State law, including, failure to pay rent, material breach of a lease, commission of waste, commission of a nuisance, criminal activity on the property, criminal threats against the landlord, unpermitted assignments or subletting, refusal to allow a landlord to enter the property as authorized by law, refusal to renew the lease on similar terms, and failure to vacate upon termination of a lease.
- It allows for “no fault” just cause evictions on the same grounds applicable under State law, including, where a landlord wants to occupy the residential rental property or allow certain family members of the landlord to occupy the property, to withdraw the rental unit from the marketplace, to comply with a government order or a local ordinance that requires vacation of the unit, or to demolish or substantially remodel the unit (see additional requirements described below).

While similar in some regards, the SD Tenant Protection Ordinance also goes beyond AB 1482 in several key respects:

- Immediate Protections. Tenants are entitled to protections under the SD Tenant Protection Ordinance the minute their tenancy commences. AB 1482, on the other hand, does not confer benefits unless a tenant has occupied his or her unit for at least 12 months.
- Exemptions for Short-Term Rentals. Short-term leases of 3-months or less are exempt from the SD Tenant Protection Ordinance. This exemption applies even if there are extensions or renewals of the short-term lease, as long as each extension/renewal term is also 3 months or less. This is a rare instance where the City’s ordinance is arguably less protective than AB 1482.⁴
- Lease Disclosures/Tenant Protection Guide. Landlords must provide tenants with a prescribed notice in 12-point font stating as follows:

“California law limits the amount your rent can be increased. See California Civil Code section 1947.12 for more information. Local law also provides that a landlord shall provide a statement of cause in any notice to terminate a tenancy. In some circumstances, tenants who are seniors (62 years or older) or disabled may be entitled to additional tenant protections. See Chapter 9, Article 8, Division 7 of the San Diego Municipal Code for more information.”

Landlords are also required to provide tenants with a copy of a “Tenant Protection Guide” that will be prepared by the Housing Commission. The Tenant Protection Guide will contain educational information and resources for tenants to understand their rights under local and state law, including rights to quiet enjoyment and habitability. The Tenant Protection Guide will eventually be available on the Housing Commission’s website, but it has not yet been released for public review.

- 2- or 3-Months Tenant Relocation Assistance For No-Fault Evictions. For “no fault” just cause evictions, tenants are entitled to relocation assistance in the amount of 2 months’ rent, paid in cash within 15-days of a notice of lease termination or via waiver of the last 2 months’ rent. Where senior citizens or disabled tenants are displaced, the relocation assistance is increased to 3 months’ rent. AB 1482, on the other hand, only requires relocation assistance in the amount of 1-month’s rent.
- Right to Renew Tenancy For No-Fault Evictions. Tenants are also entitled to receive an offer to renew their tenancy if the rental property is offered again for rental within 5 years of eviction, so long as the tenant informs the landlord that it desires that right and provides a mailing or email address to receive the offer in the future.⁵
- Limits on Eviction for Habitability Order. A no-fault eviction to comply with an order issued by a government agency or court

4 San Diego City Councilmembers expressed concern that landlords would abuse this exemption to avoid providing the benefits otherwise required by the SD Tenant Protection Ordinance and intend to propose amendments to the ordinance in the future if that becomes an issue.

5 This is distinct from the right of first refusal that low income tenants must receive to lease an affordable housing unit following reconstruction of a demolished unit under Government Code section 66300(d) and San Diego Municipal Code sections 143.1201 *et seq.*

relating to habitability is only allowed if the order requires vacation of the unit for at least 30 days. A landlord cannot terminate a lease if the order relating to habitability requires vacating a unit for fewer than 30 days. AB 1482 does not have this 30-day limitation.

- Additional Procedures for Substantial Remodel/Demolition Projects. Consistent with AB 1482, the SD Tenant Protection Ordinance states a lease can be terminated for a substantial remodel that requires the “replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, state, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential rental property for at least 30 days.” (SD Tenant Protection Ordinance, §98.0704(b)(4).) A landlord is not permitted to terminate tenancies to perform cosmetic improvements alone, such as painting and minor repairs, that can be performed safely without vacating residential rental property for 30 days. SD Tenant Protection Ordinance goes beyond AB 1482, however, by imposing certain procedural requirements that must be satisfied before providing termination notices due to substantial remodel or demolition project:

- The landlord must post the application for necessary permits on the property within 3 business days of submittal of the application.
- The landlord must actually secure the permits necessary for demolition or substantial remodel; and
- The landlord must serve a copy of the necessary permits with a written termination notice, certified under penalty of perjury, stating the reasons for termination, the type and scope of the work to be performed, why the work cannot be reasonably accomplished in a safe manner with the tenant in place, and why the work requires the tenant to vacate the residential real property for at least 30 days.

The requirement to actually have a permit in hand before terminating leases should be accounted for in construction schedules. A landlord won't be able to start renovation/demolition work the day it obtains necessary permits from the City. Receipt of permits will allow the landlord to give termination notices to tenants, but a tenant must receive at least 30 days notice to terminate a tenancy if they have been in occupancy for less than 12 months, and 60 days notice if they have been in occupancy for more than 12 months. As such, a landlord will need to wait between 30 and 60 days after receipt of a construction permit before it can start any work that requires tenants to move out.

Beyond the SD Tenant Protection Ordinance, when demolishing units landlords should note that Government Code section 66300(d) and San Diego Municipal Code section 143.1201 *et seq.* impose additional limitations and tenant protections. For example, when housing is demolished to make way for a new housing or mixed-use development, the new development must replace each unit that was demolished. If income restricted affordable units are demolished, or units that were simply occupied by low income tenants are demolished, comparable replacement units must be provided in the new development (equivalent size and bedrooms) and restricted as affordable housing pursuant to agreements with the Housing Commission. In addition, low income tenants must have the ability to occupy their units until 6 months before the start of construction and low income tenants will be entitled to additional relocation benefits consistent with the requirements of California Government Code sections 7260 through 7277 for public agencies. These benefits include moving expenses, up to \$5,250 in rental assistance to secure comparable housing for 42 months (may be more, if necessary to secure comparable housing, provided that any relocation assistances provided under the SD Tenant Relocation Act counts towards this payment) and assistance finding replacement housing. A low income tenant may also be entitled to a right of first refusal for a comparable dwelling unit at an affordable rent in the new development. Within the City, additional protections apply to projects in the Barrio Logan community.

- Eviction Notices to Housing Commission. Landlords must provide the Housing Commission with a copy of any notice of termination it delivers to a tenant within 3 business days after delivery to the tenant. This notice must be shared with Housing Commission whether termination is for “at fault just cause” or “no fault just cause.” This notice requirement will not take effect until the Housing Commission establishes a submission portal and provides public notice of its creation. The Housing Commission indicated it will be at least a year before a submission portal is ready.

- Lease Termination Notices. The SD Tenant Relocation Ordinance enumerates a number of informational items that must be included in a lease termination notice. Landlords should be familiar with these and craft a form termination notice that complies.
- Buyout Agreements. The SD Tenant Protection Ordinance permits “Buyout Agreements” (e.g., cash for keys arrangements), provided that they not be used to diminish or waive a tenant’s rights under the SD Tenant Protection Ordinance. Prior to making a buyout offer, a landlord is required to make detailed disclosures to the tenant about things such as the tenant’s right to refuse a buyout offer, to consult with an attorney, that a landlord cannot retaliate against a tenant that refuses to enter into a buyout agreement, and that a tenant is eligible for relocation assistance. The ordinance requires the Buyout Agreement itself to include similar disclosures using prescribed language, in bold 14-point font, near the tenant’s signature line. If the Buyout Agreement or lease are primarily negotiated in a non-English language, the Buyout Agreement must be translated into that language.
- Remedies Against Landlords. The SD Tenant Protection Ordinance creates new accountability measures for landlords permitting tenants to recover attorneys’ fees and exemplary damages. For example, tenants now have the right to recover no less than 3 times the actual economic damages for wrongful evictions and no less than 3 times the required location assistance and actual economic damages if a landlord fails to provide financial relocation assistance. Additionally, the prevailing party is entitled to attorneys’ fees in any action other than an unlawful detainer action (i.e., breach of contract). These remedies are intended to make counsel more available to tenants facing unlawful eviction.

The SD Tenant Protection Ordinance, which aims to alleviate housing insecurity, is one more example of the recent burdens being placed on landlords. Property owners should expect this trend to continue.⁶

The SD Tenant Protection Ordinance creates substantial new procedures and burdens on landlords. The ordinance still needs a second reading, expected to occur in mid-May, and then takes effect after expiration of a 30-day referendum period. San Diego landlords should spend the next month or so reviewing and revising their lease forms, termination notices and procedures generally for terminating tenancies. For projects proposing substantial renovations or redevelopment, the landscape is especially complicated because of the need to comply with requirements set forth in various different state and local laws.

Sheppard Mullin is available to help landlords and developers prepare for the implementation of the SD Tenant Protection Ordinance and successfully navigate related laws that may be implicated with the development and operation of housing in San Diego and beyond.

⁶ Recently, Senator Maria Elena Durazo introduced Senate Bill (SB) 567, known as the Homelessness Prevention Act, which would strengthen AB 1482 protections. The measure proposed to cap rent increases at 5% and eliminate the current 12-month residency requirement for no-fault just cause evictions. However, this bill met its demise early last week in the Senate Judiciary Committee.

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