



California Apartment Association

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Irvine, CA 92612

January 19, 2022

Chair Anna Cabral
Housing Advisory Commission
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

Re: Item 5.1 – Concerns Regarding the Lack of Practical Compliance with Proposed Chula Vista
Tenant Protection Ordinance

Dear Chair Cabral and Members of the Housing Advisory Commission:

The California Apartment Association (CAA) has significant concerns regarding the proposed Tenant Protection Ordinance. CAA is the nation's largest statewide trade group representing owners, investors, developers, managers, and suppliers of rental housing. Our membership is diverse representing individual "mom-and-pop" owners of rental housing to the largest apartment operators throughout San Diego County and California. Our membership provides over 70,000 rental homes across San Diego County.

Chula Vista's Tenant Protection Ordinance would (1) inhibit any substantial investment that improves the quality of life for tenants and updates the City's aging stock and (2) penalize innocent activities often part of normal property management operations with excessive criminal and civil penalties. Adoption of the ordinance would discourage ownership, development, and maintenance of rental housing, putting renters and quality housing at-risk in the long-term.

As you may know, the State of California has been heralded for having the "strongest tenant protections in the nation" through the adoption of AB 1482 (Chiu) in 2019. This legislation established a statewide, consistent standard to protect renters from excessive rent increases and arbitrary evictions. Establishing new laws and policies will only create inconsistencies for landlords and tenants across the state. CAA has had constructive discussions with City staff on methods to enhance a landlord and tenant's understanding of their rights and responsibilities.

The City has an opportunity to educate tenants about the abundance of existing laws and better define the problems being addressed with these policies before moving forward with any new laws. CAA has several concerns and recommendations with the proposed ordinance that are highlighted below:

1. Clarify Define Permissible Activities Under Substantial Remodel

Oversight on Abatement for Hazardous Waste

The Ordinance permits a limited set of circumstances where an Owner can request a tenant to vacate a rental unit. Under “Definitions” X.XX.30(I), permissible activities are only limited to (1) substantial renovation of a major system tied to government permit or (2) substantial renovation of a major system tied to hazardous waste. The current definition is problematic because an Owner may need a tenant to vacate to abate hazardous materials without conducting a major system upgrade (e.g., remediating smoke damage following a fire that didn’t cause structural damage). Moreover, this issue is exacerbated if smoke damaged additional units at no-fault of the Owner. This issue appears to be an oversight and does not align with state law (AB 1482). CAA recommends the addition of permissible activities where an owner may request a tenant vacate the premise for abatement of hazardous waste not tied to a major system upgrade or repair.

Arbitrary Financial Threshold for a Substantial Remodel

The City defines a substantial remodel as improvements that cost at least 75% of the cost of newly constructed residential properties of the same number of units and type of construction. This requirement is arbitrary. An owner would not have access to data of developers such as their pro-forma, financials, or bill of materials. Additionally, nearly every type of business is seeking to contain inflated construction costs that have grown significantly over the past several years. The Ordinance penalizes an owner for implementing the same quality of service or similar materials at a lower price. CAA recommends the removal of this condition because other conditions require a governmental permit for major system improvement.

2. Model State Law’s Bad Faith Clause to Chula Vista Anti-Harassment Preamble

CAA recommends the addition of a bad faith clause that models state law on anti-harassment restraining orders, Code of Civil Procedure Section 527.6. The bad faith clause is a necessary guardrail to deter frivolous lawsuits against property owners who are engaged in legitimate business activities. The addition would read:

No Owner shall, with respect to property used as a Residential Rental Property under any rental agreement or other Tenancy or tenancy at will, however created, do any of the following provided the conduct serves no legitimate purpose, would cause a reasonable person to suffer substantial emotional distress, and does actually cause substantial emotional distress to the tenant...

Adding this clause will align the proposed ordinance with state anti-harassment law and create a level of consistency between state and local laws; providing clarity to landlords, tenants, and the courts.

3. Establish Objective Criteria for Harassment, Eliminate Subjective Provisions, and/or Eliminate Broad Scope

Legitimate Reasons for Unavailability of Housing Services

Sections X.XX.80(A)(1) and X.XX.80(A)(2) punishes an Owner with local criminal and civil penalties for any failure to provide housing services. The provision is overly punitive because it does not take into account many instances where housing services may be temporarily unavailable.

Throughout the COVID-19 pandemic, many apartments closed amenities and common areas to comply with public health orders (e.g. temporary closure of gyms and pools). Other circumstances include repaving of parking facilities, water shut-off to conduct pipe repair, or a laundry room may have its hours limited due to vandalism. If Sections X.XX.080(A)(1) and X.XX.080(A)(2) cannot be removed or clarified, CAA’s strongly recommends for the elimination of these subjective provisions. The alternative is to include the inclusion of a “bad faith” clause to show that an act had malicious intent.

Criminal and Civil Penalties for Misunderstanding

Sections X.XX.080(A)(5) and X.XX.080(A)(7) because a violation is solely contingent on the recipient feeling offended, which is subjective. The Ordinance does not consider an owner or their agents’ intent or state of mind. It would be an unnecessary use of either public and private resources to pursue litigation against an Owner or their agent for a miscommunication or misunderstanding. CAA recommends the removal of these provisions or model state law on anti-harassment. Left unchecked, the ordinance’s expansion of harassment can have a chilling effect on existing positive, professional, and courteous communication with tenants because owners will be extra careful not to invite litigation.

4. Private Right of Action Will Incentivize a Cottage Industry of Frivolous Lawsuits

State and federal law provides damages to aggrieved victims of harassment. Moreover, criminal consequences are a significant deterrent for anyone engaged in harassing behavior. Under the proposed ordinance, an Owner may be subject to multiple trials—once by the city and once by the person who alleges harassment. An Owner may be found innocent in a criminal case brought by the City, but financially penalized under a civil case filed by a tenant under a lower standard of review or with different arguments. And, in some cases, private right of action may also invite parties who are not involved in the dispute to sue at their own will.

If left unaddressed, this loophole will invite lawsuits and feed a cottage industry of litigious attorneys to sue without limits. As a consequence of poor rental housing policy decisions, small mom-and-pop owners will few choices to continue operating. The sale to a new owner more capable of sustaining litigation or redeveloping the property into market-rate for-sale housing may not be in the best interest of the City, tenant, and owner.

CAA recommends more thoughtful guardrails on the penalties and there needs to be allowances for the City to enforce and a detailed procedure for issuing warnings and citations for those instances where it can be proven the Owner acted in bad faith.

City Lacks Justification and Data for the Ordinance

CAA encourages the City to fully investigate and validate its findings with context before adopting citywide policy that could hinder community reinvestment and accelerate a departure of rental housing. The City will find there are agencies responsible for enforcing these measures, the data that has been presented has not been validated, and that city public records do not substantiate a need for a local ordinance.

As reported in the City's 2021-2029 Housing Element, "CSA San Diego County received \$300,000 Fair Housing Initiatives grant from HUD to carry out investigations and other enforcement activities to prevent or eliminate discriminatory housing practices" (page AE-2). The City of Chula Vista provides an additional \$60,000 in annual funding to CSA San Diego County. While CSA San Diego has reported an average of 264 cases annually over the past three years, the City's Housing Element highlights that the U.S. Department of Housing and Urban Development found only 29 harassment cases specific to Chula Vista in a five-year period (2014-2019). To put into context, harassment allegations in Chula Vista amount to less than a fraction of one-percent of its 82,000 households.

Clearly, there is not an epidemic of fair housing issues and appropriate enforcement mechanisms are available. CSA San Diego has funding for investigations, works directly with the City of Chula Vista, and works directly with the California Department of Fair Employment and Housing. Like all San Diego residents, CSA San Diego County and the City of Chula Vista can also refer harassment cases to the San Diego County District Attorney.

CAA will continue to work with staff to identify opportunities to enhance tenant education and provide additional feedback on the proposed ordinance. CAA opposes the ordinance as it is written today and strongly encourages you to vote NO.

Respectfully,

A handwritten signature in black ink, appearing to read "Victor Cao". The signature is fluid and cursive, with a large, sweeping initial "V".

Victor Cao
Senior Vice President, Local Public Affairs