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Ms. Katy Zamesnik  
*Business Process Consultant*  
Financial Services | City of Austin  
Via Email: [KatyZamesnik@austintex.gov](mailto:KatyZamesnik@austintex.gov)

Re: November 20, 2017 Meeting of Regional Affordability Committee; Comments on Evictions

Dear Ms. Zamesnik:

Following my presentation on November 20, 2017, on evictions, Vice-Chair Charles Chadwell asked that I send my list of proposals on reducing the number of evictions to the Committee in writing. I sent those comments via email on November 21, 2017. I am sending them again today on official letterhead in response to your email.

The following are some proposals that we believe would help reduce somewhat the number of evictions in Austin and Travis County or mitigate the consequences:

- (1) More transparency with the County and the City on the financial assistance programs for tenants and homeowners -- notice to all nonprofit agencies of the guidelines for financial assistance and how to have clients access that assistance to avoid eviction.
- (2) Faster processing of payments to landlords to motivate landlords to participate in the financial assistance program and accept financial vouchers from the city and county.
- (3) Revision of the Direct Financial Assistance form used by Austin/Travis County Health & Human Services to delete language: "I accept this payment and agree not to evict this tenant for at least 30 days based on the pledged rent and/or late fees/charges." Change language to something similar to the following: "I accept this payment, and if an eviction suit is pending, to dismiss it and to not give this tenant a notice to vacate for nonpayment or file an eviction suit for at least 30 days based on the pledged rent and/or late fees/charges."

(4) Adoption of a city ordinance (or seek state legislative change) requiring landlords to give tenants minimum written notice of ten days to cure a late payment of rent before giving notice to vacate, including a provision giving tenants the right to cure and reinstate the tenancy by paying all rent, court costs, and attorney's fees, if any, prior to execution of a writ of possession.

(Note: Many states have opportunity to cure laws -- see e.g., Missouri, Hawaii, Washington, Colorado, Maryland. Texas does not. Some cities such as Baltimore (rent breach) and Chicago (non-rent breach) have ordinances giving tenants a right to cure before the landlord files for eviction. Baltimore also gives tenants the right to redeem the dwelling unit and reinstate the tenancy by paying all sums owed prior to execution of the writ of possession.)

(5) Adoption of a city ordinance (or seek state legislative change) that prohibits landlords from evicting for nonpayment of late fees. Landlord late fees have become exorbitant. The United States Department of Housing and Urban Development has for many years prohibited federally subsidized landlords from evicting tenants for nonpayment of late fees.

Section 92.019 of the Texas Property Code sets forth the formula for calculation of a late fee: a late fee must be "a reasonable estimate of uncertain damages to the landlord that are incapable of precise calculation and result from the late payment of rent." The statute does not prohibit local ordinances that would bar landlords from evicting tenants for nonpayment of late fees. Thus, such an ordinance would not be preempted by state law, although some landlords would certainly challenge the ordinance. Under such an ordinance, the tenant would still owe the late fees, and the landlord could deduct the fees from the tenant's security deposit when the tenant vacates or include the fees in the landlord's credit reporting to the credit reporting agencies. The ordinance would also have to bar landlords from playing a shell game and applying a tenant's payment to late fees and evicting for nonpayment of rent. Such an ordinance could only apply to leases signed after the adoption of the ordinance.

(6) Adoption of a city ordinance (or seek state legislative change) that mandates that landlord late fee have some reasonable relationship to the rent amount paid by Section 8 voucher tenants. Late fees by private landlords in Austin generally begin at anywhere from \$50 to \$100 if rent is not paid in full by the 2nd day of the month, with an additional daily late fee of generally \$10 per day for up to 15 days.

Landlords with voucher tenants receive part of the rent from the local housing authority that administers the program. The tenant's share is based on the tenant's income and family size. But landlords require the tenant to pay the full late fee based on the rent for the unit even though the tenant is responsible for only a percentage of the full contract rent. For example, assume the rent is \$1,200 plus utilities. The tenant share is \$400. The late fee on the rent is \$75, plus an additional \$10 per day for 15 days, or a total of \$225 per month. The landlord holds the tenant responsible for the full late fee of \$225 even though the tenant's rent share is only \$400 of the \$1,200. An ordinance could require that the late fee bear some relationship to the tenant's rent share.

(7) Provide lawyers for tenants in evictions. Studies have shown that when tenants are represented by lawyers in eviction proceedings, they are significantly more likely to retain their tenancy. Both New York and Philadelphia are implementing programs mandating lawyers for tenants facing eviction.

(8) Adopt a program to track and take steps to maintain Low Income Housing Tax Credit (LIHTC) apartment complexes in the affordable housing inventory when the owners opt out of the tax credit program after 15 years. If a LIHTC owner decides to opt out of the program after 15 years, it must first offer the complex for sale for a one-year period to a buyer willing to keep the rents at an affordable level at a "qualified contract" price established by a formula created by Congress. The owner of Country Club Creek, a 212-unit complex at 4501 East Riverside, 78741, gave notice in October 2016 that it was opting out of the LIHTC Program. Similarly, Fort Branch at Truman's Landing, a 250-unit apartment complex, at 5800 Techni Center Drive, 78721, gave notice in September 2017, that it is opting out and is now available for purchase at a qualified contract price for a one-year period. If no one buys the property, the existing owner may increase rents of existing tenants three years after the opt-out date.

(9) With respect to Commissioner Shea's inquiry about protecting a tenant's property when a writ of possession is executed by the constable, the Legislature enacted § 24.0061(d-1) effective September 1, 2015. It provides:

"(d-1) A municipality may provide, without charge to the landlord or to the owner of personal property removed from a rental unit under Subsection (d), a portable, closed container into which the removed personal property shall be placed by the officer executing the writ or by the authorized person. The municipality may remove the container from the location near the rental unit and dispose of the contents by any lawful means if the owner of the removed personal property does not recover the property from the container within a reasonable time after the time the property is placed in the container."

Thus, a city may adopt an ordinance providing for use of this process to avoid the having the tenant's property placed on the street curb.

Thank you for the opportunity to comment. Please let me know if you have additional questions.

Sincerely,

/s/ Fred Fuchs

Fred Fuchs

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