



MEMORANDUM

TO: Mayor and Council Members 

FROM: Rosie Truelove, Director
Neighborhood Housing and Community Development Department

DATE: May 9, 2019

SUBJECT: Response to Resolution No. 20180628-063 relating to updates to the Tenant Notification and Relocation Assistance Ordinance

The purpose of this memo is to respond to [Resolution No. 20180628-063](#), which directed the City Manager to seek feedback from stakeholders on the category of tenants who should be eligible for notification and relocation assistance and submit recommendations to Council to initiate an ordinance change related to this topic.

Neighborhood Housing and Community Development is planning to fund a \$500,000 contract from the Housing Trust Fund this year to provide financial relocation assistance allowed under the Tenant Notification and Relocation Assistance Ordinance to tenants displaced from developments triggering the ordinance. However, ongoing funding will need to be identified to continue these services. Staff recommends City Council create an ongoing public fund for financial assistance to income-eligible tenants who are displaced from properties.

There are also potential code amendments that could be initiated to update the Tenant Notification and Relocation Assistance Ordinance. The code amendment process should also incorporate the ordinance updates that were proposed under CodeNEXT related to enforcement of penalties for non-compliance. Both code amendments and the provision of financial assistance would require updates to the program rules as well, which staff would undertake following the requirements outlined in City Code for updating rules. A complete summary of staff recommendations is attached.

Should you have questions, feel free to contact Rosie Truelove at (512) 974-3064, Gina Copic at (512) 974-3180 or regina.copic@austintexas.gov, or Lauren Avioli (512)974-3141 or lauren.avioli@austintexas.gov.

cc: Spencer Cronk, City Manager
Rodney Gonzales, Assistant City Manager

Attachment

Staff Response to Resolution No. 20180628-063 regarding the Tenant Notification & Relocation Assistance Ordinance

Background on the Tenant Notification & Relocation Assistance Ordinance

The [Tenant Notification and Relocation Assistance Ordinance](#) (Ordinance No. 20160901-050) was approved by Austin City Council in September 2016. It requires property owners seeking to demolish multifamily buildings or to redevelop mobile home parks to provide tenants with advanced notice of their intent to close the units, and allows for financial relocation assistance to be provided to income-eligible tenants. The ordinance applies to permits that allow total or partial demolition of multifamily buildings that contain 5 or more occupied residential units on the day the permit application is filed, and to site plan, rezoning, and change of use applications for mobile home parks of 5 or more units. While the notification requirement has gone into effect, financial relocation assistance has not yet been provided under the ordinance. Two methods of providing financial assistance are allowed by the ordinance: 1) property owners can be charged a tenant relocation fee when they seek a discretionary land use approval that would displace income-eligible households, and 2) a public fund can be created to provide assistance to income-eligible households, regardless of whether the property owner is seeking a discretionary land use approval. The ordinance stipulates that a nexus study must be completed in order for City Council to set the fee. The ordinance has been applied to six cases, providing notification to over 150 households since its adoption.

Through [Resolution 20180628-063](#), City Council voiced a concern that there were redevelopment cases in Austin that were circumventing the spirit and intent of the Tenant Notification and Relocation Assistance Ordinance and directed staff to consider ways to broaden the applicability of the ordinance to address these situations, using stakeholder input. Specifically, the resolution referenced the creation of a lookback period that would apply to tenants who had resided in a property prior to the day that a development permit application triggering the ordinance was filed, citing the City of Santa Barbara, CA as one example of a city where this tactic is employed.

The City of Santa Barbara's Tenant Displacement Assistance Ordinance includes a lookback provision that allows resident households occupying a rental unit within the six months prior to the development permit application being filed to be eligible for financial relocation assistance. However, it is important to note that the households are not eligible for assistance if the property owner can show that the tenant's occupancy ended because his/her lease expired and was not renewed. Therefore, this provision does not apply the ordinance to situations where property owners empty their properties of residents by allowing leases, or month-to-month rental agreements, to end naturally any time prior to filing a permit application. It is also worth noting that California state law may enable municipalities to adopt regulations in this area that Texas law does not enable municipalities to adopt.

Stakeholder Input

NHCD staff reached out to the diverse stakeholder group that had been amassed during the formulation of the Tenant Notification and Relocation Assistance Ordinance in 2016. Staff heard from tenant advocates like the Austin Tenants Council that a main concern with the ordinance was its lack of protection for month-to-month renters, whose tenancies are able to be terminated with one month's notice under state law. Another primary concern shared by tenant advocates and representatives of the development community alike was the need for financial assistance for income-eligible tenants, paired with housing location services to help those tenants relocate successfully. Feedback from stakeholders is summarized in the table below.

Summarized Stakeholder Feedback on Tenant Notification & Relocation Assistance Ordinance

Topic	Notes
Financial assistance and housing location assistance for tenants	<p>All stakeholders felt strongly that financial assistance for income-eligible tenants (as defined in the ordinance) was imperative to successful implementation of the ordinance. Some stakeholders suggested that if the City provided the financial assistance to tenants, property owner compliance with the ordinance would be easier to ensure.</p> <p>All stakeholders recognized that successful relocation would only be possible with wraparound services to help tenants find a new home, in addition to financial assistance. In an August 2016 memo from NHCD to Mayor and Council, NHCD staff proposed a program in which a third party contracted with the City would provide housing location services and technical assistance to income-eligible tenants, and would disburse financial assistance payments on behalf of those tenants (to entities like the new landlord, the moving company, etc.).</p>
Lease agreements	All stakeholders recognized that the City could not interfere with private lease agreements between landlords and tenants, and that to do so would be to invite legal and legislative challenge.
Month-to-month leases	BASTA and Austin Tenants Council stakeholders expressed a main concern with the ordinance being its lack of protection for month-to-month renters in multifamily buildings where demolition permits were being sought by the property owner. Under state law, month-to-month tenancies can be terminated with one month’s notice (TX Prop. Code SS 91.001). The City of Austin would be pre-empted from requiring any longer notice of tenancy termination because of this state provision.
Length of notice period	Developers and property owners who had complied with the ordinance expressed that the length of the notice period (for mobile home parks) was longer than necessary and resulted in an unsafe environment on a property once all residents had been relocated. In that case, because the notice of intent period had not yet expired, even though all residents had moved, redevelopment work could not begin and the property became a site for dumping and illegal activity. The 2011 UT Community Development Law Clinic report on tenant displacement also highlighted safety in vacant (or sparsely populated properties) as a potential issue. Stakeholders agreed that an element should be added to the ordinance that allowed for the notice period to end once all tenants had been relocated, but only if the property owner compiled with a Relocation Plan working in conjunction with NHCD or its contracted third party housing location service.
Lookback period	Tenant advocates would like to see ways to help the ordinance protect tenants whose leases are terminated or not renewed at a site because the site is being redeveloped, even if their occupancy ends prior to the date the permit application is filed with the City. A lookback period was seen as a way to allow for that protection.

Topic	Notes
More MH zoning and land needed	All stakeholders agreed that more land is needed for mobile home parks and mobile home units. Without more sites for people to move to, financial relocation assistance will not be very helpful.
NHCD monitoring	Stakeholders also recommended, along with housing location services and financial assistance, NHCD provide more monitoring and technical assistance to developers/applicants throughout the relocation process. An NHCD-monitored Relocation Plan could be implemented to ensure that tenants were able to relocate successfully; compliance with this plan could shorten the notice of intent period to avoid vacant properties as well. Currently, NHCD provides technical assistance with providing notification, but does not have the capacity to provide additional technical assistance for relocation services.
Permit applications for projects with occupied units	Stakeholders suggested applying the ordinance to any permit application that met the ordinance definition, regardless of whether it was occupied on the date the application was filed.

Staff Recommendations

Financial Assistance

NHCD staff offers the following recommendations in response to Resolution No. 20180628-063:

- Financial relocation assistance for income-eligible households is essential to the implementation of the ordinance.
 - In accordance with stakeholder feedback, NHCD plans to fund a contract with a third party to provide tenant relocation assistance and emergency rental assistance to income-eligible tenants. This fund will be piloted this year with \$500,000 in Housing Trust Fund dollars, as proposed in NHCD’s short term plan to implement the Strategic Housing Blueprint (presented to the [Council Housing & Planning Committee](#) on February 12, 2019). However, ongoing funding will need to be identified to continue these services. Staff recommends City Council create an ongoing public fund for financial assistance to income-eligible tenants who are displaced from properties.
- Housing location assistance for income-eligible households is also essential to the implementation of the ordinance.
 - NHCD also plans to provide housing location assistance to income-eligible tenants as part of the contract described above in addition to the financial assistance. These services were described in [a memo](#) from NHCD provided August 1, 2016 to Mayor and Council. Staff will create a solicitation for the emergency rental assistance and tenant relocation assistance contract that incorporates housing location assistance tailored to the needs of the income-eligible households being relocated.
 - As part of this contract, a Relocation Plan can also be developed to help guide the efforts of the housing locator and property owner in ensuring tenants are relocated successfully to new homes.

Code Amendments

Staff also included recommendations related to potential code amendments below. However, it is important to note that without ongoing financial relocation assistance, none of these amendments will be effective at meeting the goals of the ordinance. While funding has been identified for a short-term

(one- to two-year) contract for financial relocation assistance, additional funding will need to be identified on an ongoing basis. Further, there remain potential challenges with the implementation of these code amendments. These challenges are also discussed below.

- Remove the requirement that a multifamily property have five or more “occupied” residential units at the time the permit application is submitted, applying the ordinance to permits authorizing partial or total demolition at any multifamily building with five or more residential units.
- Add a new subsection to discuss requirements for developments where the units were not occupied at the time the permit application was submitted.
 - Require proof from the applicant that:
 - For a multifamily building, none of the units were occupied within the 180 days preceding submittal of the permit application, and that leases for tenants who most recently occupied the building expired, and were:
 - Not renewed, or
 - Extended to allow the tenant at least 120 days to vacate the unit
 - For a mobile home park, none of the mobile home units or spaces were occupied within the 300 days preceding submittal of the permit application, and that leases for tenants who most recently occupied the park expired, and were:
 - Not renewed, or
 - Were extended to allow the tenant at least 270 days to vacate the property
- Amend the ordinance’s description of tenant households eligible to receive financial assistance from only tenant households that resided at the property on the date that notification required by the ordinance was delivered, to also include tenant households that resided at the property on:
 - The 179th day before the permit application was submitted (for a multifamily building)
 - The 299th day before the permit application was submitted (for a mobile home park)

These amendments would enable households that had been residing at a property during a period before permit application submittal to be covered under the ordinance, and allow income-eligible tenants to receive relocation assistance. However, implementing and enforcing the changes would be challenging. Specifically, 1) we anticipate complications with how a property owner establishes when the property was last occupied or a lease extended to allow notice, and 2) what happens when a property owner circumvents the requirements by vacating the units before the permit application is submitted. Another implementation challenge would be finding former tenants who have already moved. More importantly, without financial assistance, these relocated tenants would be only be entitled to notice, which would be irrelevant to them at that point (because they have already moved from the site). **For these reasons, it is important to identify ongoing funding for tenant relocation assistance beyond the one- to two-year Housing Trust Fund contract. Further, staff recommends that the financial relocation assistance contract be in place prior to the approval of code amendments.**

Staff also recommends the code amendment process include the updates to the ordinance that were recommended during the CodeNEXT process. Part 10 of the [ordinance](#) instructed staff to conduct additional outreach regarding 1) penalties and enforcement and 2) the calculation of a tenant relocation assistance fee. Outreach to stakeholders occurred during the CodeNEXT process related to penalties and enforcement, and the ordinance updates proposed under CodeNEXT address that element of Part 10 - specifically, removal of the requirement for proof of culpable mental state in the enforcement of penalties for non-compliance.

Updates to Program Rules

The code amendment process will necessitate updates to the program rules as well. As the rules are updated to match the updated ordinance, the City will also be able to include new rules surrounding the administration of the public fund for relocation assistance. Per City Code, the code amendment and rulemaking processes will offer additional opportunities for stakeholder input and engagement.

Next Steps

Should City Council decide to move forward on these recommendations, staff will await City Council direction to initiate the code amendment process. Staff will move forward to implement the Strategic Housing Blueprint as presented to the Council Housing & Planning Committee on February 12, 2019, including conducting a solicitation process for the emergency rental assistance and tenant relocation assistance contract. Staff recommends this contract be in place before the passage of code amendments. Staff currently anticipates this contract being in place by the end of the fiscal year.