



MEMORANDUM

CSFRA, Community Development Department

DATE: February 11, 2019

TO: Rental Housing Committee

FROM: Karen M. Tiedemann, Special Counsel to the Rental Housing Committee
Justin D. Bigelow, Special Counsel to the Rental Housing Committee
Anky van Deursen, Program Manager

SUBJECT: Draft Regulations Regarding Tenant Buyout Agreements

RECOMMENDATION

Consider the proposed draft regulations of Tenant Buyout Agreements for discussion and potential adoption.

BACKGROUND

At its January 28, 2019 meeting, the Rental Housing Committee ("RHC") provided guidance regarding potential regulation of Tenant Buyout Agreements. The RHC instructed staff to draft regulations and prepare a form notice regarding the CSFRA.

Accordingly, staff has prepared draft regulations for discussion and potential adoption. Attachment 1 provides the proposed text of the regulations, each section of which is described below. Attachment 2 provides the proposed text of the form disclosure document to be provided to tenants. Attachment 3 is a draft resolution adopting the draft regulations.

The purpose of this staff report is to summarize and explain each section of the draft regulations, as proposed, to provide the RHC with adequate information to consider and potentially adopt the draft regulations.

ANALYSIS

A. Purpose

As summarized in the January 28, 2019 staff report regarding tenant protections for buyout agreements, regulating reasons to terminate and limiting rent increases for existing tenancies while allowing market-rate rents for new tenancies, can create an incentive for landlords to pay tenants to end a tenancy. An agreement between a landlord and tenant exchanging money to voluntarily end a tenancy are called "Tenant Buyout Agreements.

Tenant Buyout Agreements may be mutually beneficial. Tenant Buyout Agreements may also be the result of high-pressure negotiation tactics and disingenuous threats of termination. Anecdotally, staff is aware of mutually beneficial and potentially abusive Tenant Buyout Agreements. Because such agreements are currently unregulated, information regarding how often such agreements are used and whether such agreements are the result of unscrupulous activity is unknown. As noted in draft Chapter 8, section A, the purpose of the regulations include gathering data regarding this practice, as well as promoting fair, mutually-beneficial arms-length transactions.

B. Mandatory Disclosure

Draft Chapter 8, section B requires landlords to provide tenants with a disclosure form produced by staff regarding the CSFRA and Tenant Relocation Assistance Ordinance ("TRAO"), to provide tenants the ability to reject a proposed agreement and/or consult with an attorney prior to signing the document. A draft of the disclosure form is included as Attachment 2 to this staff report.

The draft regulations require Landlords to provide a copy of the disclosure form and the Tenant Buyout Agreement itself in the same language as the lease or rental agreement, or the language in which the lease or rental agreement was negotiated. Staff will ensure that copies of the disclosure form are available in English, Spanish, and Mandarin.

C. Requirements for Tenant Buyout Agreements

Draft Chapter 8, section C requires that each Tenant Buyout Agreement be a written, signed document, to help ensure mutual understanding of the impact of the agreement. Likewise, the regulation would require that each Tenant Buyout Agreement identify the amount of money or other benefit to the tenant as well as the date by which the tenant must vacate the rental unit. Finally, the draft regulation would require an additional

paragraph be included in each Tenant Buyout Agreement. The draft paragraph is copied below:

You, the tenant, have a right not to enter into this Tenant Buyout Agreement, as described in the Tenant Buyout Agreement Disclosure Form. You, the tenant, confirm receipt of the Tenant Buyout Agreement Disclosure Form, notwithstanding the rights and responsibilities described in the disclosure form, which include the potential for relocation assistance depending upon your income, and potential additional assistance for persons over the age of 62 and handicapped or disabled persons, and households with school-age children.

D. Notice of Tenant Buyout Agreement to RHC

Draft Chapter 8, section D requires landlords to provide a copy of the form disclosure that is signed and dated by the landlord and tenant to the RHC, as well as a notice to the RHC of a Tenant Buyout Agreement. The notice of the Tenant Buyout Agreement requests identification of the landlord, tenant(s), location of rental unit, and the amount of money exchanged. The draft regulations clarify that the disclosure of locations of Tenant Buyout Agreements would be limited to street and block only, and that the amount of money exchanged would be confidential information. As drafted, landlords must provide a copy of the disclosure form and notice of the Tenant Buyout Agreement within fifteen (15) calendar days after execution of the Tenant Buyout Agreement.

E. Enforcement of Tenant Buyout Agreement Regulations

Draft Chapter 8, section E provides that violation of the proposed regulations would not constitute a substantial violation of the CSFRA for purposes of CSFRA section 1707(f)(1). Accordingly, failure to comply with the regulations would not preclude a landlord from implementing an annual general adjustment or a rent increase pursuant to a petition.

To encourage compliance, the draft regulation propose two enforcement mechanisms. First, draft Chapter 8, section E.2 provides for a minimum cooling-off period, during which period any party to a Tenant Buyout Agreement could rescind or stop the agreement from taking effect. Cooling-off periods are one method of helping to ensure both parties are willful, informed participants in a transaction. During the cooling-off period a landlord or tenant may be able to consult with a family member, friend, financial planner, or attorney to fully assess whether the agreement is in that party's best interest. Cooling-off periods can be particularly beneficial for vulnerable populations and are one means of counteracting high-pressure sales practices. As drafted, the cooling-off period is ten days after execution of the Tenant Buyout

Agreement. The length of a cooling-off period is a policy decision that generally reflects the gravity and impact of the transaction, as well as the differing levels of power or influence one party to the transaction may possess in contrast to the other party.

As noted in the January 28, 2019 staff report, other rent-stabilized jurisdictions in California provide only tenants with the right to rescind a Tenant Buyout Agreement, and tenants may do so within 25, 30, or 45 days from execution of the agreement. It appears this acknowledges that Tenant Buyout Agreements are generally a waiver of the tenant's legal right to continue the tenancy with limited rent increases, as well as landlords' likely greater knowledge based on Tenant Buyout Agreements with other tenants and general bargaining power in the context of landlord-tenant relations.

The second potential enforcement mechanism to encourage compliance with regulations is the ability for a tenant to rescind the agreement prior to moving out of the rental unit if the landlord fails to comply with the regulation. The right to rescind included in draft Chapter 8, section E.3 offers a method of self-enforcement. If a landlord complies with the regulation, then there would be greater legal certainty for the transaction. But if the landlord fails to comply, then the transaction could be rescinded at any time prior to the tenant vacating the rental unit and any written agreement would not be enforced by the courts.

Notably, the cooling-off period in section E.2 and the right to rescind for failure to comply in section E.3 are complementary policies addressing slightly different concerns. Cooling-off periods may help both landlords and tenants by allowing each to re-evaluate their circumstances after agreeing to buyout in the heat of the moment. As drafted, the right to rescission directly encourages compliance with the regulations because it only applies when a landlord fails to adhere to the regulations.

FISCAL IMPACT— Aspects of the proposed regulations may have various fiscal impacts. For instance, collecting notices of Tenant Buyout Agreements will have an incremental impact on RHC finances depending upon the frequency of the practice. Likewise, increasing awareness of the Rental Housing Helpline will likely increase its use, which may increase costs to the Rental Housing Committee.

PUBLIC NOTICING— Agenda posting.

ATTACHMENTS

1. Draft Regulation Chapter 8 - Tenant Buyout Agreements
2. Draft Tenant Buyout Disclosure Form
3. Draft Resolution adopting Attachment 1