



AGENDA REPORT

TO: City Council

SUBJECT: Repeal of Nuisance Eviction Ordinance

FROM: Barbara J. Parker
City Attorney

DATE: 11/21/2024

RECOMMENDATION

City Attorney Barbara J. Parker Recommends That The City Council Adopt the following legislation:

ORDINANCE REPEALING THE EVICTION FOR NUISANCE AND ILLEGAL ACTIVITY ORDINANCE (OAKLAND MUNICIPAL CODE CHAPTER 8.23) IN ITS ENTIRETY

EXECUTIVE SUMMARY

The City Council Adopted the Eviction for Nuisance and Illegal Activity Ordinance (“Nuisance Eviction Ordinance”) in 2004 and expanded it in 2014. The Ordinance authorizes the City to require rental property owners to evict tenants for illegal activity on or near the rental premises, allows the City to impose penalties on landlords who fail to carry out such evictions, and authorizes the City Attorney to file nuisance eviction lawsuits against tenants accused of such criminal conduct.

Over the last five years, analysis of data related to Oakland’s Nuisance Eviction Ordinance and similar ordinances in other cities show that such policies have a discriminatory impact on people of color. Moreover, a new state law, effective January 1, 2024, prohibits cities from enforcing policies that require or encourage a landlord to evict a residential tenant because of the tenant’s unlawful conduct or arrest, or penalize a landlord for failure to do so. The new state law preempts local ordinances inconsistent with the policy.

For the foregoing reasons, The City Attorney recommends that the City Council repeal the Nuisance Eviction Ordinance.

BACKGROUND / LEGISLATIVE HISTORY

Between 1995 and 2020, 104 municipalities in the state of California adopted crime-free housing policies for the stated purpose of reducing crime and improving public safety. The City of Oakland adopted such a policy in 2004 in the Eviction for Nuisance and Illegal Activity Ordinance, 12592 C.M.S (“Nuisance Eviction Ordinance”). This Ordinance established a

procedure whereby rental property owners could be required to evict tenants accused of committing drug, weapon, or gang-related illegal activity on the premises; authorized the City to impose fines on owners who fail to evict tenants accused of engaging in proscribed conduct on the premises, and allowed landlords to assign the right to evict their tenants to the City Attorney.

In 2014, the City Council expanded the Nuisance Eviction Ordinance to increase the range of conduct that could give rise to a required nuisance eviction to include gambling, sex-work, and illegal possession of ammunition, among other conduct (Ordinance No. 13260 C.M.S.). Also in 2014, the City agreed to participate in the Unlawful Detainer Pilot Program, a program created by the California State Legislature in 1998, originally applicable only to the City of Los Angeles. Participating cities agree to implement crime free housing policies allowing City Attorneys to file evictions actions in the name of the people against tenants accused of committing or allowing criminal conduct on or near the premises. Participating cities also agree to provide periodic reports to the state program for the purpose of evaluating the efficacy of the such policies.

Beginning in 2020, several studies have been published indicating that crime-free housing policies such as the Nuisance Eviction Ordinance have a discriminatory impact on people of color and are ineffective at reducing crime. A 2020 analysis in the Hastings Journal of Crime and Punishment found that between 2008 and 2016, African-American tenants made up the majority of tenants who were served notices under Oakland's Nuisance Eviction Ordinance, despite constituting less than 24% of the population¹. An analysis published by the Los Angeles Times in 2020 reviewing five years of eviction data (2015 through 2019) for Los Angeles, Long Beach, Oakland, and Sacramento, found that nearly 80% of the tenants targeted for eviction under their crime-free housing laws were non-white². A study published by the RAND Corporation in 2023 found no statistically meaningful relationship between crime-free housing policies and crime rates, but a strong relationship between such policies and increased evictions in minority and low-income neighborhoods.³

In the last two years, both the State and Federal Justice Departments have called on local governments to re-evaluate their crime-free housing policies as potentially violative of fair housing laws. In April 2023, California State Attorney General Rob Bonta issued guidance to all California Cities and Counties urging them to reconsider their crime-free housing policies, citing that some were intentionally discriminatory, or encouraged intentional discrimination, while others had a discriminatory impact. In August 2024 the Civil Rights Division of the United States Department of Justice, called on local governments to evaluate their crime-free or nuisance housing programs based on DOJ guidance stating that such programs can violate the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Americans' with Disabilities Act, and the Violence Against Women Act.

¹ Ethan Silverstein, Life Liberty, and Rental Property: Oakland's Nuisance Eviction Program. Hastings Journal of Crime and Punishment, Volume 1, Number 1, Winter 2020, Article 5

² <https://www.latimes.com/homeless-housing/story/2020-11-19/california-housing-policies-hurt-black-latino-renters>;

³ https://www.rand.org/pubs/research_reports/RR2689-1.html; An Evaluation of Crime Free Housing Policies, RAND Corporation, 2023,

On October 8, 2023, and Governor Gavin Newsom signed Assembly Bill 1418 into law, making California the first state in the country to prohibit local governments from implementing or enforcing policies that require or encourage a landlord to evict a residential tenant because of the tenant's unlawful conduct or arrest, or that penalize a landlord for failure to do so. The bill is codified at Government Code 53165.1 and became effective on January 1, 2024. It provides, in part, that a local government shall not implement or enforce an ordinance or policy that requires or encourages a landlord to do, or imposes a penalty on a landlord for the failure to do, any of the following:

- (A) Evict or penalize a tenant because of the tenant's association with another tenant or household member who has had contact with a law enforcement agency or has a criminal conviction.
- (B) Evict or penalize a tenant because of the tenant's alleged unlawful conduct or arrest.
- (C) Include a provision in a lease or rental agreement that provides a ground for eviction not provided by, or that is in conflict with, state or federal law.
- (D) Perform a criminal background check of a tenant or a prospective tenant.

Per, Government Code 53165.1(c)(1), this state law explicitly preempts local ordinances inconsistent with the state policy.

Oakland's Nuisance Eviction Ordinance provides a procedure for the City to require landlords to evict tenants based on alleged criminal conduct, whether the allegations are against the tenant, a household member, or a guest. It also provides that the City may penalize a landlord for failure to do so by imposing monetary penalties. Thus, the City may not enforce the Nuisance Eviction Ordinance without violating state law.

ANALYSIS AND POLICY ALTERNATIVES

A landlord may still lawfully evict a tenant under the Just Cause for Eviction Ordinance if "[t]he tenant has used the rental unit or the common areas of the premises for an illegal purpose including the manufacture, sale, or use of illegal drugs". However, the City may not have a policy requiring the landlord to do so.

While the City is not required to repeal the Nuisance Eviction Ordinance, the Ordinance is preempted by state law and may not be enforced. Leaving an unenforceable ordinance in place can cause confusion for members of the public as well as staff. For this reason, the City Attorney recommends that the Council repeal the Ordinance.

FISCAL IMPACT

There is no anticipated fiscal impact on the City associated with adoption of the proposed Ordinance.

PUBLIC OUTREACH / INTEREST

No public outreach was deemed necessary in the development of this proposed ordinance since state law prohibits enforcement of the Nuisance Eviction Ordinance regardless of whether it is repealed.

COORDINATION

This legislation was developed through coordination between the City Attorney's Office and the City Administrator's Office.

SUSTAINABLE OPPORTUNITIES

Economic: The repeal of the Nuisance Eviction Ordinance may reduce displacement of African-Americans and other people of color who are disproportionately impacted by the Ordinance.

Environmental: There are no anticipated environmental opportunities associated with adoption of this Ordinance.

Race & Equity: The repeal of the Nuisance Eviction Ordinance will promote equity because African-American tenants are disproportionately subjected to eviction under the ordinance.

ACTION REQUESTED OF THE CITY COUNCIL

City Attorney Barbara J. Parker recommend(s) that the City Council Adopt the proposed ordinance repealing the Eviction for Nuisance and Illegal Activity Ordinance (Oakland Municipal Code Chapter 8.23) in its entirety

For questions regarding this report, please contact Supervising Deputy City Attorney Laura Lane, at (510) 238-3838.

Respectfully submitted,



BARBARA J. PARKER
City Attorney

Attorney Assigned:
Laura Lane, Supervising Deputy City Attorney