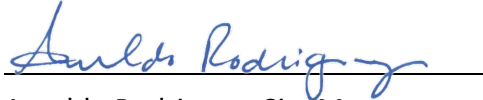


REPORT TO CITY COUNCIL

Approved by:

A handwritten signature in blue ink, reading "Arnoldo Rodriguez", written over a horizontal line.

Arnoldo Rodriguez, City Manager

Council Meeting of: July 6, 2022

Agenda Number: E-1

SUBJECT:

Report Regarding Tenant Protection Rights

RECOMMENDATION:

Receive Report on The California Tenant Protection Act of 2019 (AB 1482), the City's Authority to enforce, and Options for Council Consideration; discuss and provide direction to staff, if any

SUMMARY:

The City Council (Council) has requested a report on AB 1482 and on the City's authority to enforce and other options. Attached is a Report from the City Attorney which will be presented at the Council meeting.

ATTACHMENTS:

1. Report from City Attorney

REPORT FROM CITY ATTORNEY

DATE: July 6, 2022

TO: Mayor and City Council
City of Madera

CC: Arnoldo Rodriguez, City Manager
Alicia Gonzales, City Clerk

RE: Overview of The California Tenant Protection Act of 2019 (AB 1482), the City's Authority To Enforce, and Options for Council Consideration

This report is submitted per the City Council's request to address AB 1482.

I. SUMMARY RESPONSES

A. AB 1482 – Tenant Protections.

Numerous legislative bills have been enacted during the COVID-19 pandemic. AB 1482, The Tenant Protection Act went into effect on January 1, 2020, and is effective through January 1, 2022. However, the State has determined to end certain temporary measures that were in effect during the worst of the pandemic. For example, the state moratorium on evictions upon which the City of Madera relied upon to impose a local moratorium has expired. Many local ordinances with eviction protections such as the City of Fresno's eviction ordinance have expired or have been limited substantially.

The COVID-19 pandemic imposed a heavy burden on an already strained housing market in California and in the City of Madera. With many residents living in tenant housing, a desire to provide relief *via* rent control measures is understandable. Even though there is currently no state prohibition on evictions, AB 1482 does provide tenants with certain protections.

AB 1482 limits evictions to just cause (fault and no-fault), places limits on rent increases, and requires relocation assistance for no-fault evictions, albeit limited in amount. AB 1482 went into effect on January 1, 2020, and sunsets on January 1, 2030.

B. City may not enforce AB 1482.

Members of the community have raised concerns that AB 1482 is being violated by landlords and have asked the City for assistance. Our review reflects that the City of Madera may not enforce the provisions of AB 1482. In an unlawful detainer proceeding, the tenant may raise violation of these statutes as an affirmative defense. In other words, AB 1482 may only be enforced in state court by the tenant.

C. City may adopt a “more protective” ordinance than AB 1482.

Under AB 1482, it is legally permissible for the City to adopt an ordinance if it is “more protective” than AB 1482. We must note that while it may be possible for the City to enact a more protective ordinance, the legal complexities of such measures require significant investments of time and money not only in the crafting of the ordinance but primarily in the administration and enforcement of such an ordinance that would inject the City into litigation on landlord/tenant matters.

D. City has other options to assist tenants.

The City has options other than adoption of an ordinance such as:

- Approval of policies to assist tenants with understanding their rights if they are facing eviction;
- Dedication of funding to assist tenants with relocation assistance;
- Adoption of a resolution calling for additional state action to protect tenants.
- Establishing a process where a tenant may file a Report of Excessive Rent Increase Under the Tenant Protection Act with City. The City would then send a notice to the landlord acknowledging receipt of the tenant’s report and advise the landlord of the applicable law.

The City may direct that any or all of those options or similar options be pursued

II. WHAT IS AB 1482 AND MAY THE CITY ENFORCE IT?

AB 1482 is The California Tenant Protection Act of 2019. Governor Gavin Newsom signed AB 1482 into law to fight a key cause of the state’s housing crisis – rent gouging and evictions. Among other things, AB 1482 caps annual rent increases, imposes new “just cause” protections to protect tenants against eviction, and requires relocation assistance in no-fault just cause evictions. AB 1482 went into effect on January 1, 2020, and has been codified in California Civil Code Section 1946.2.

A detailed summary of AB 1482 is attached to this report.

The basic provisions of AB 1482 are as follows:

- A. AB 1482 requires landlords of certain residential properties to limit increases within a 12-month period to a maximum of 5 percent + the percentage change in the cost of living from April 1 of the prior year to April 1 of the current year (measured by the Consumer Price Index (CPI)), or 10 percent, whichever is lower.
- B. The rent can be raised twice in a 12-month period, as long as the two increases combined do not exceed the rent cap of 5 percent + CPI, or 10 percent, whichever is lower.

C. Landlords may evict tenants only for **Just Cause** which has two components:

1. **At Fault Just Cause** which includes various types of conduct by the Tenant such as (i) non-payment of rent; (ii) breach of a lease, (iii) maintaining a nuisance, (iv) criminal activity, (v) impermissible assignment of the lease
2. **No Fault Just Cause** which includes various types of conduct by the Landlord including (i) the intent to occupy the leased property by the owner, spouse and immediate family; (ii) withdrawal of the leased property from the market; (iii) compliance with a governmental or court order regarding the; (iv) local ordinance and (v) intent to demolish or to substantially remodel the residential leased property.

D. Relocation Assistance for no fault just cause (one month's rent or a waiver of rent for final month.

E. It is not applicable to new tenancies, hotels, dorms, single family residences, duplex where landlord lives in other unit.

F. Various noticing is required including for explaining just cause; for notifying tenant of right to relocation in No-Fault Just Cause cases; and for providing tenant an opportunity to comply with curable lease violations.

G. AB 1482 does not apply to a "more protective" ordinance as defined by AB 1482.

Under article XI, section 7 of the California Constitution, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Here, it would be difficult to enforce AB 1482 because there are no specific penalties listed in AB 1482. Based on the foregoing, AB 1482 can only be enforced in state court by the tenant. The tenant can either sue for damages for wrongful eviction or unlawful business practices based on violations of AB 1482 or allege affirmative defenses in a suit brought by the landlord.

While the City may not enforce AB 1482, it could weigh in by implementing a procedure by which the tenant can file a Report of Excessive Rent Increase Under the Tenant Protection Act. Thereafter, the City can send a notice to the landlord acknowledging receipt of the tenant's report and advise the landlord of the applicable law.

III. MAY THE CITY ENACT A LOCAL ORDINANCE?

Generally, a cities or local authorities may not legally regulate evictions outside of the rent control process or context.¹ In other words, a city ordinance cannot modify statutory eviction procedures.

¹ Cal. Const. art XI, §7 (A city may not enact local laws that conflict with "general" or state laws.)

The ordinance can impose substantive defenses to eviction that are consistent with the purposes of the ordinance. In doing so, however, it cannot impose procedural conditions to an eviction, such as the necessity to obtain a permit to evict as a condition to filing an unlawful detainer proceeding.²

Thus, under existing law, municipalities may by ordinance limit the substantive grounds for eviction in the context of a rent control ordinance by specifying that a landlord may gain possession of a rental unit only on certain limited grounds.³ Cities may not procedurally impair the summary eviction scheme set forth in the unlawful detainer statutes and they may not alter the Evidence Code burdens of proof.⁴

With COVID-19, the state legislature provided opportunities to local government to adopt more protective legislation. However, much of that legislation has expired. AB 1482 provides in Section 1946.2 (g) (2) that it does not apply to “residential real property subject to a local ordinance requiring just cause for termination of a residential tenancy adopted or amended after September 1, 2019.” However, such an ordinance must be “more protective” than AB 1482.

An ordinance is “more protective” if it meets **all of the following criteria**:

- The just cause for termination of a residential tenancy under the local ordinance is consistent with Civil Code § 1946.2;
- The ordinance further limits the reasons for termination of a residential tenancy, provides for higher relocation assistance amounts, or provides additional tenant protections that are not prohibited by any other provision of law;
- The local government has made a binding finding within their local ordinance that the ordinance is more protective than the provisions of Civil Code § 1946.2; and
- a residential real property shall not be subject to both a local ordinance requiring just cause and Section 1946.2.

Additionally, AB 2179 which recently became effective on March 1, 2022 includes detailed limitations on adoption of local ordinances to protect tenants. Code of Civil Procedure Section 1179.05 applies to “Any ordinance, resolution, regulation, or administrative action [“local regulation”] adopted by a city, county, or city and county in response to the COVID-19 pandemic to protect tenants from eviction... .” We note that many of the provisions of Section 1179.05 relate to existing local regulations and are thus not applicable. Key here is the following text in Section 1179.05 (b) regarding adoption of a new ordinance:

This section does not alter a city, county, or city and county’s authority to extend, expand, renew, reenact, or newly adopt an ordinance that requires just cause for termination of a residential tenancy or amend existing ordinances that require just cause for termination of a residential tenancy, consistent with subdivision (g) of

² *Birkenfeld v. City of Berkeley* (1976) 17 Cal. 3d 129, 149–151

³ See *Fisher*, supra, 37 Cal.3d at p. 707; *Birkenfeld*, supra, 17 Cal.3d at p. 149

⁴ *Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009), 171 Cal.App 4th 741, 757-758, citing *Birkenfeld*, supra, at p. 151; *Fisher*, supra, at p. 709

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Section 1946.2, provided that a provision enacted or amended after August 19, 2020, shall not apply to rental payments that came due between March 1, 2020, and June 30, 2022.

Adopting a local ordinance is possible and valid as long as it complies with the parameters discussed above. In addition, the enforcement of local rent control measures can be very difficult to implement with funding being a key issue. In sum, a local ordinance must be “more protective” as described above, because a less protective ordinance may not be enforced under California Civil Code Section 1946.2.

WHAT ARE COUNCIL’S OPTIONS?

1. No Action.
2. Approve policies to assist tenants with understanding their rights if they are facing eviction.
3. Dedicate funding to assist tenants with relocation assistance.
4. Combination of 2 and 3.
5. Adopt Resolution Calling for Additional State Action to Protect Tenants.
6. Combination of 2, 3, and 5.
7. Approve a policy whereby a tenant may file Report of Excessive Rent Increase with the City and the City would follow up with letter to Landlord advising of AB 1482 requirements.
8. Direct that a protective ordinance be adopted that meets the criteria under AB 1482.

Respectfully submitted,



Hilda Cantú Montoya

Enclosure: AB 1482 Summary

**TENANT PROTECTION ACT OF 2019 (AB 1482) SUMMARY
PREPARED BY CITY ATTORNEY**

Governor Gavin Newsom signed AB 1482 into law to fight a key cause of the state's housing crisis – rent gouging and evictions. Among other things, AB 1482 caps annual rent increases and imposes new “just cause” protections to protect tenants against eviction. AB 1482 has been codified in California Civil Code § 1946.2.

The following is a summary of AB 1482.

A. Limits on Rent Increases

- (1) AB 1482 requires landlords of certain residential properties to limit increases within a 12-month period to a maximum of 5 percent + the percentage change in the cost of living from April 1 of the prior year to April 1 of the current year (measured by the Consumer Price Index (CPI)), or 10 percent, whichever is lower.
- (2) The rent can be raised twice in a 12-month period, as long as the two increases combined do not exceed the rent cap of 5 percent + CPI, or 10 percent, whichever is lower.
- (3) If a covered tenant's rent was increased above the allowable amount between March 15, 2019 and January 1, 2020, the landlord must decrease the rent to the allowable amount as of January 1, 2020, which would be the base rent prior to the increase, plus 5 percent + CPI (or 10 percent, whichever is lower). However, the landlord does not have to pay back to the tenant any rent that was paid above the allowable amount between March 15, 2019 and January 1, 2020.

B. Just Cause

AB 1482 limits evictions to only those situations in which landlords have a “just cause” for eviction. “Just cause” includes “at fault” reasons (see below) and “no fault” reasons (see below) for evictions.

C. At-Fault Just Cause

At-Fault Just Cause includes any of the following:

- (1) Default in the payment of rent.
- (2) A breach of a material term of the lease.
- (3) Maintaining, committing, or permitting the maintenance or commission of a nuisance as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

- (4) Committing waste as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.
- (5) The tenant had a written lease that terminated on or after January 1, 2020, or January 1, 2022, if the lease is for a tenancy in a mobilehome, and after a written request or demand from the owner, the tenant has refused to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions, provided that those terms do not violate this section or any other provision of law.
- (6) Criminal activity by the tenant on the residential real property, including any common areas, or any criminal activity or criminal threat.
- (7) Assigning or subletting the premises in violation of the tenant's lease.
- (8) The tenant's refusal to allow the owner to enter the residential real property as authorized by the Civil Code and Health and Safety Code.
- (9) Using the premises for an unlawful purpose.

D. No Fault Just Cause

- (1) Intent to occupy the residential real property by the owner or their spouse, domestic partner, children, grandchildren, parents, or grandparents.
- (2) Withdrawal of the residential real property from the rental market.
- (3) The owner is complying with any of the following: (i) An order issued by a government agency or court relating to habitability that necessitates vacating the residential real property; (ii) An order issued by a government agency or court to vacate the residential real property; (iii) A local ordinance that necessitates vacating the residential real property.
- (4) Intent to demolish or to substantially remodel the residential real property.

Per AB 1482 "substantially remodel" means the replacement or substantial modification of any structural, electrical, plumbing, or mechanical system that requires a permit from a governmental agency, or the abatement of hazardous materials, including lead-based paint, mold, or asbestos, in accordance with applicable federal, state, and local laws, that cannot be reasonably accomplished in a safe manner with the tenant in place and that requires the tenant to vacate the residential real property for at least 30 days. Cosmetic improvements alone, including painting, decorating, and minor repairs, or other work that can be performed safely without having the residential real property vacated, do not qualify as substantial rehabilitation.

E. Relocation Assistance or Rent Waiver

Tenants evicted for “no-fault just cause” are eligible for relocation assistance regardless of a tenant’s income. The relocation assistance must be the equivalent to one month’s rent or a waiver of the rent for the final month of tenancy prior to the rent becoming due.,. If it is determined by any government agency or court that the tenant is at fault for the condition or conditions triggering an order or need to vacate, the tenant shall not be entitled to relocation assistance

F. Law Applicable to:

AB 1482 generally applies to tenancies after continuous and lawful occupation of residential property for 12 months. The law’s tenant protections apply to both month-to-month rentals as well as fixed leases.

G. Law Not Applicable to:

- (1) A new tenancy. If the unit is vacant, the landlord can charge whatever they want, without limit
- (2) Transient/hotels
- (3) School dormitories
- (4) Where tenant share bathroom or kitchen with owner
- (5) Single family owner-occupied residences (including ADU’s and junior accessory dwelling unit and mobilehome)
- (6) a duplex where the landlord lives in the other unit
- (7) rental units built within the past 15 years [i.e. certificate of occupancy issued]
- (8) single family homes and condos, unless the landlord is a REIT, corporation or LLC, and the tenant is advised by a written notice or in the lease that this exemption applies.
- (9) units that are already under a local rent control law
- (10) local ordinance that is “more protective”

H. Effective Date

AB 1482 went into effect on January 1, 2020 and is effective for 10 years. However, the cap on rent is retroactive to March 15, 2019. This means that the law does not apply to any rent increases before March 15, 2019 but does limit recent increases after March 15, 2019.

I. Notices to Tenants.

- (1) Explaining Just Cause. All tenants living in housing covered by AB 1482 must receive a notice explaining the “just cause” and rent cap protections. For tenancies already in existence before July 1, 2020, the tenant must receive a written notice no later than August 1, 2020, or be notified via an addendum to the lease agreement.
- (2) Eviction Notices. If eviction is for No Fault-Just Cause, the Owner shall notify the tenant of the tenant’s right to relocation assistance or rent waiver. If owner elects

to waive the rent, the notice must state the amount of rent waived and that no rent is due for the final month. If the owner elects to make payment, the Owner must pay the relocation assistance within 15 calendar days of the day the eviction notice is served.

- (3) Opportunity to Cure. Before an owner of residential real property issues a notice to terminate a tenancy for just cause that is a curable lease violation, the owner shall first give notice of the violation to the tenant with an opportunity to cure the violation. If the violation is not cured within the time period set forth in the notice, a three-day notice to quit without an opportunity to cure may thereafter be served to terminate the tenancy.