



Office of the City Manager

INFORMATION CALENDAR
September 18, 2012

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Zach Cowan, City Attorney

Subject: Tenant Immigration Status Ordinance

SUMMARY

In response to the City Council's May 1, 2012 referral to the City Manager to draft an ordinance requiring landlords to provide a copy of California Civil Code Section 1940.3 to applicants for rental housing, staff has drafted a proposed ordinance.

CURRENT SITUATION AND ITS EFFECTS

According to the report of May 1, 2012, "[c]urrently, various property management companies require that applicants provide proof of legal residency as a condition of tenancy and state that applicants without such documentation are ineligible for tenancy (see attachments). Such practices are in violation of Civil Code 1940.3 but continue without effective enforcement to encourage compliance."

BACKGROUND

The City Council approved a recommendation to refer a proposed ordinance drafted by Councilmember Arreguin which requires landlords to provide a copy of California Civil Code Section 1940.3(b) to applicants for rental housing to the City Manager on May 1, 2012.

Staff revised the ordinance drafted by Councilmember Arreguin in order to require that landlords provide a copy of Civil Code Section 1940.3 to applicants for rental housing whether or not they make or intend to make an inquiry regarding the applicant's immigration status, since making such an inquiry is prohibited under Civil Code Section 1940.3 unless it is required to comply with a landlord's legal obligation under federal law or necessary to verify the applicant's financial qualifications or identity.

Staff also revised the ordinance to remove a reference to the ordinance's effect on a landlord's ability to comply with federal law and request information necessary to verify the financial qualifications or identity of an applicant, as that provision is duplicative of state law and, therefore, preempted. In addition, the reference is unnecessary given that the City's ordinance would simply require the landlord to provide a copy of the state law to an applicant for rental housing.

In addition, staff revised the ordinance to require that a landlord provide a copy of the entire Civil Code Section 1940.3 and not just subsection (b), in order to allow both landlords and applicants for rental housing the benefit of the entire Section and thereby reduce any potential ambiguities.

POSSIBLE FUTURE ACTION

The Council may choose to calendar this ordinance for adoption.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown.

CONTACT PERSONS

Zach Cowan, City Attorney 981-6998

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

ENACTING CHAPTER 13.79 OF THE BERKELEY MUNICIPAL CODE, TENANT
IMMIGRATION STATUS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.79 is enacted to read as follows:

Chapter 13.79
TENANT IMMIGRATION STATUS

Sections:

13.79.010 Notification of state law limitation on inquiries regarding tenant immigration status

13.79.020 Remedies-Civil penalty-Not exclusive

Section 13.79.010 Notification of state law limitation on inquiries regarding tenant immigration status

When an owner of residential rental property or his or her agent receives a request to rent residential property in the City of Berkeley from an applicant, he or she shall provide such applicant a copy of California Civil Code Section 1940.3, which regulates the manner in which an owner of residential rental property or his or her agent may make inquiries or require statements regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant, or prospective occupant of residential rental property .

Section 13.78.020 Remedies-Civil penalty-Not exclusive

A. The remedies provided under this Section are in addition to any the City or any person might have under applicable law.

B. Any owner of residential rental property shall be liable to the applicant for a civil penalty of \$500.00 if the owner fails to comply with Section 13.79.010 above.

C. Any person aggrieved by the owner's failure to comply with Section 13.79.010 may bring a civil action against the owner of the residential rental property for all appropriate relief including damages and costs which she or he may have incurred as a result of the owner's failure to comply with Section 13.79.010.

D. In any action to recover damages resulting from a violation of Section 13.79.010, the prevailing plaintiff(s) shall be entitled to reasonable attorneys' fees in addition to other costs, and in addition to any liability for damages imposed by law.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

