Office of the City Manager

02

CONSENT CALENDAR
January 29, 2013

To: Honorable Mayor and Members of the City Council

From: Christine Daniel, City Manager

Submitted by: Zach Cowan, City Attorney

Subject: Enact Chapter 13.79, Automatically Renewing Leases

RECOMMENDATION

Adopt first reading of an Ordinance enacting Berkeley Municipal Code Chapter 13.79 Automatically Renewing Leases Ordinance.

FISCAL IMPACTS OF RECOMMENDATION

Unknown.

CURRENT SITUATION AND ITS EFFECTS

Staff drafted a proposed ordinance for the City Council's consideration on November 27, 2012 in response to the City Council's July 24, 2012 referral to the City Manager to draft an ordinance prohibiting deceptive practices relating to automatically renewing leases.

On November 27, 2012, the Council continued consideration of the proposed ordinance and directed staff to modify the ordinance to address the concerns expressed by the Rent Stabilization Board in its November 30, 2012 communication to the Council from the Executive Director.

BACKGROUND

On July 24, 2012, the City Council approved a request by Councilmember Wozniak to direct the City Manager to: 1) review the practice of automatically renewing leases and to determine whether the practice was permitted under state or local law; and 2) develop, in conjunction with the Rent Board, an ordinance prohibiting deceptive practices that automatically renew a lease without the tenant's consent.

There are several landlords in Berkeley who include automatic lease renewal language in their standard written leases. These landlords often rent units to college students who are more likely to vacate their rental units at the termination of the initial lease term. Tenants often lose their security deposit or pay the landlord for several months' rent when they vacate the rental property for fear of being sued to compel performance on the terms of the renewal.

The proposed ordinance clarifies that a tenant's written notice that he or she does not intend to renew the lease agreement shall release the tenant from any obligations associated with the lease renewal and requires that the landlord provide an acceptable form "notice of intent not to renew" to his/her tenants at the inception of a tenancy, so that the tenant has access to a document which, if executed and provided to the landlord, can release them from an automatic renewal.

The proposed ordinance further requires that all landlords who include automatic renewal clauses in their leases notify the Rent Board at the inception of a tenancy, so that the Rent Board is able to communicate with tenants and landlords regarding their rights and responsibilities as they relate to lease renewals. If the landlord is required to file a Vacancy Registration Form, then that landlord is required to notify the Rent Board of the lease provision at the same time the Form is filed. If the landlord is not required to file a Vacancy Registration Form, then the landlord is required to notify the Rent Board within 10 days of lease execution.

RATIONALE FOR RECOMMENDATION

In response to Council's referral, staff consulted with Rent Board staff to determine whether automatically renewing leases were permissible under state or local law. California Civil Code section 1945.5 regulates automatic renewal lease terms for residential lease agreements. Under this provision, an automatically renewing lease provision is enforceable if it is printed in 8-point boldface type and a recital of the fact that the lease contains such a provision appears immediately before the lessee's signature line and the lessee either remains in possession after the expiration of the lease or fails to give notice of his/her intent not to renew before the expiration of the lease.

A city may not enact local laws that conflict with state laws. Cal. Const. art. XI, § 7. A local law conflicts with state law if it (1) duplicates, (2) contradicts, or (3) enters a field which has been fully occupied by state law, whether expressly or by legislative implication. (*Candid Enterprises, Inc. v. Grossmont Union High School District* (1985) 39 Cal.3d 878, 886.)

A local law contradicts state law when its purpose is inimical to the purpose of the state law, prohibits what the legislature intends to authorize, or otherwise fails to follow state mandates.

Since Civil Code section 1945.5 permits automatically renewing lease terms under prescribed circumstances, the City is preempted from adopting an ordinance which would prohibit such terms in residential leases. It is further preempted from adopting an ordinance which would require the tenant's consent since doing so would negate the "automatic" nature of the renewal term which is permitted when the tenant protections delineated by section 1945.5 are met.

Councilmember Wozniak's referral described the situation of a tenant who had provided written notice to the owner of his intent to not renew the lease, but because the lease required notice of the non-renewal be provided via a form supplied by the landlord at specific time during the lease term, the landlord rejected the prior written notice as insufficient.

The proposed ordinance requires landlords to provide their tenants with a form "notice of intent not to renew or extend" at the time the lease is executed to enable tenants to provide notice of their intent not to renew on a form created by the landlord specifically for that purpose. The proposed ordinance would also allow *any* written notice of intent not to renew provided by the tenant to the landlord at any time prior to 30 days before the expiration of the lease to be considered a valid notice of that tenant's intent not to renew the lease under Civil Code section 1945.5 and, therefore, would prohibit the landlord from enforcing an automatic renewal clause contrary to the tenant's written notice of intent not to renew.

Such an ordinance is not preempted because Civil Code section 1945.5 does not specify the type of notice a tenant may provide in order to not be subject to an automatic renewal clause and, therefore, there is no conflict with this provision.

In addition, the proposed ordinance requires a landlord to notify the Rent Board that the tenancy is subject to an automatic renewal provision whether or not the unit is subject to rent registration. This change was made in response to the Rent Board's concerns that requiring notification only from landlords who are subject to the rent registration requirements could potentially exclude units rented pursuant to an automatic renewal clause from the notification requirement.

The provision is designed to allow the Rent Board to communicate with tenants whose leases include an automatic renewal clause and educate them about the ramifications of such a clause. It will also allow the Rent Board to provide these tenants with an additional form notice of intent not to renew in order to satisfy the requirements of Civil Code section 1945.5 and BMC Chapter 13.79 and, therefore, not be inadvertently subject to an automatically renewing lease clause.

ALTERNATE ACTIONS CONSIDERED
See discussion under Rationale for Recommendation.

CONTACT PERSONS
Zach Cowan, City Attorney 981-6998

Attachments:
1: Ordinance
2: California Civil Code Section 1945.5

ORDINANCE NO. -N.S.

ENACTING CHAPTER 13.79 OF THE BERKELEY MUNICIPAL CODE, AUTOMATICALLY RENEWING LEASES

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

AUTOMATICALLY RENEWING LEASES

Sections:

13.79.010 Owner provision of notice of intent not to renew.
13.79.020 Notice of intent not to renew or extend the lease.
13.79.030 Rent Board notification of automatically renewing lease.
13.79.040 Remedies-Civil penalty-Not exclusive.

13.79.010 Owner provision of notice of intent not to renew.

A landlord of residential rental property who has leased a residential rental unit pursuant to a written lease which provides for the automatic renewal or extension of the lease for all or part of the lease term shall provide the lessee(s) a form notice of the lessees' intent not to renew or extend the lease at the time the lease is executed.

13.79.020 Notice of intent not to renew or extend the lease.

Where a lessee has leased residential rental property pursuant to a written lease that provides for the automatic renewal or extension of the lease for all or part of the lease term and the lessee provides written notice of his or her intent not to renew or extend the lease to the landlord either on the form provided by the landlord pursuant to Section 13.79.010 or any other writing at any time prior to 30 days before the expiration of the lease, the lessee shall not be subject to the automatic renewal clause.

13.79.030 Rent Board notification of automatically renewing lease.

A. A landlord of residential rental property who has leased a residential rental unit pursuant to a lease which provides for the automatic renewal or extension of the lease for all or part of the lease term and who is subject to the registration requirements of Section 13.76.080 shall notify the Rent Stabilization Board at the time the landlord files a Vacancy Registration Form for a new tenancy that the lease includes an automatic renewal provision.

B. A landlord of residential rental property who has leased a residential rental unit pursuant to a lease which provides for the automatic renewal or extension of the lease for all or part of the lease term and who is not subject to the registration requirements of Section 13.76.080 shall notify the Rent Stabilization Board within 10 days from the date of lease execution that the lease includes an automatic renewal provision.

13.79.040 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 person aggrieved by the landlord's failure to comply with this Chapter may bring a civil action against the landlord 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 landlord's failure to comply with this Chapter.

C. In any action to recover damages resulting from a violation of this Chapter, 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.

Attachment 2

CIVIL CODE

Division 3. Obligations

Part 4. Obligations Arising from Particular Transactions

Title 5. Hiring

Chapter 2. Hiring of Real Property

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Civ Code § 1945.5 (2012)

§ 1945.5. Required printing of renewal provision

Notwithstanding any other provision of law, any term of a lease executed after the effective date of this section for the hiring of residential real property which provides for the automatic renewal or extension of the lease for all or part of the full term of the lease if the lessee remains in possession after the expiration of the lease or fails to give notice of his intent not to renew or extend before the expiration of the lease shall be voidable by the party who did not prepare the lease unless such renewal or extension provision appears in at least eight-point boldface type, if the contract is printed, in the body of the lease agreement and a recital of the fact that such provision is contained in the body of the agreement appears in at least eight-point boldface type, if the contract is printed, immediately prior to the place where the lessee executes the agreement as against public policy. In such case, the presumption in Section 1945 of this code shall apply.

Any waiver of the provisions of this section is void as against public policy.