



**Jesse Arreguín**  
District 4

CONSENT CALENDAR  
July 13, 2010

To: Honorable Mayor and Members of the City Council  
From: Councilmember Jesse Arreguín  
Subject: Referral to City Manager and 4x4 Committee: Anti-Harassment Policy

RECOMMENDATION:

Refer to the City Manager and to the 4x4 City Council/Rent Board Joint Committee on Housing the creation of an Anti-Harassment Ordinance, to define and prohibit the harassment of tenants in the City of Berkeley.

BACKGROUND:

Other cities such as San Francisco, Santa Monica and New York City have already passed similar laws that protect tenants from harassment that coerce many to leave their units which are then re-rented at higher rents or converted to condominiums. This item is necessary to preserve affordable housing and to protect lawful tenants throughout the city.

FINANCIAL IMPLICATIONS:

Unknown.

CONTACT PERSON:

Jesse Arreguín, Councilmember, District 4

981-7140

Attachments:

1. San Francisco's Tenant Harassment Ordinance
2. Santa Monica's Tenant Harassment Ordinance
3. New York City's Tenant Harassment Law

# **San Francisco Tenant Harassment Ordinance**

## **Section 37.10B Tenant Harassment**

### **Sec. 37.10B Tenant Harassment.**

[Added by Proposition M, effective December 19, 2008]

(a) No landlord, and no agent, contractor, subcontractor or employee of the landlord shall do any of the following, in bad faith or with ulterior motive or without honest intent:

(1) Interrupt, terminate or fail to provide housing services required by contract or by State, County or local housing, health or safety laws;

(2) Fail to perform repairs and maintenance required by contract or by State, County or local housing, health or safety laws;

(3) Fail to exercise due diligence in completing repairs and maintenance once undertaken or fail to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead, paint, mold, asbestos, or other building materials with potentially harmful health impacts;

(4) Abuse the landlord's right of access into a rental housing unit as that right is provided by law;

(5) Influence or attempt to influence a tenant to vacate a rental housing unit through fraud, intimidation or coercion;

(6) Attempt to coerce the tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation;

(7) Continue to offer payments to vacate after tenant has notified the landlord in writing that they no longer wish to receive further offers of payments to vacate;

(8) Threaten the tenant, by word or gesture, with physical harm;

(9) Violate any law which prohibits discrimination based on actual or perceived race, gender, sexual preference, sexual orientation, ethnic background, nationality, place of birth, immigration or citizenship status, religion, age, parenthood, marriage, pregnancy, disability, AIDS or occupancy by a minor child;

(10) Interfere with a tenant's right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;

(11) Refuse to accept or acknowledge receipt of a tenant's lawful rent payment;

(12) Refuse to cash a rent check for over 30 days;

(13) Interfere with a tenant's right to privacy;

(14) Request information that violates a tenant's right to privacy, including but not limited to residence or citizenship status or social security number;

(15) Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy.

(b) Nothing in this Section 37.10B shall be construed as to prevent the lawful eviction of a tenant by appropriate legal means.

(c) Enforcement and penalties.

(1) Rent Board. Violation of this Section 37.10B is a substantial and significant decrease in services as defined in Section 37.2(g) and tenants may file a petition with the Rent Board for a reduction in rent.

(2) Criminal Penalty. Any person who is convicted of violating this Section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not greater than one thousand dollars or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment.

(3) Civil Action. Any person, including the City, may enforce the provisions of this Section by means of a civil action. The burden of proof in such cases shall be preponderance of the evidence. A violation of this Chapter may be asserted as an affirmative defense in an unlawful detainer action.

(4) Injunction. Any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates this Section 37.10B may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this subsection may be brought by an aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represent the interest of the protected class.

(5) Penalties and Other Monetary Awards. Any person who violates or aids or incites another person to violate the provisions of this Section is liable for each and every such offense for money damages of not less than three times actual damages suffered by an aggrieved party (including damages for mental or emotional distress), or for statutory damages in the sum of one thousand dollars, whichever is greater, and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of Section 37.9, 37.10A, or 37.10B herein. In addition, a prevailing plaintiff shall be entitled to reasonable attorney's fees and costs pursuant to order of the court. The trier of fact may also award punitive damages to any plaintiff, including the City, in a proper case as defined

by Civil Code Section 3294. The remedies available under this Section shall be in addition to any other existing remedies which may be available to the tenant or the City.

(6) Defending Eviction Lawsuits. In any action to recover possession of a rental unit subject to the Chapter, unless the sole basis of the notice to quit is Section 37.9(b), the court shall award the tenant reasonable attorney fees and costs incurred in defending the action upon a finding that the tenant is the prevailing party under Code of Civil Procedure Section 1032(a)(4).

(d) Severability. If any provision or clause of this Section 37.10B, or Section 37.2(g), or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this Section 37.10B or Section 37.2(g) and all clauses of these Sections are declared to be severable.

## **Santa Monica Municipal Code**

### **Chapter 4.56 TENANT HARASSMENT**

#### **4.56.010 Definitions.**

(a) **Fraud.** Intentional misrepresentation, deceit or concealment of a material fact.

(b) **Housing Service.** Housing services include, but are not limited to, hot and cold water, heat, electricity, gas, refrigeration, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishings, telephone, parking, effective waterproofing and weather protection, painting, and any other benefit, privilege or facility that has been provided by the landlord to the tenant with use or occupancy of any rental housing unit. Services to a rental housing unit shall include a proportionate part of services provided to common facilities of the building in which the rental housing unit is contained.

(c) **Landlord.** An owner, lessor, sublessor, or any other person entitled to receive rent for the use and occupancy of any rental housing unit, or an agent, representative or successor of any of the foregoing.

(d) **Malice.** An intent to vex, annoy, harass or injure another person.

(e) **Rental Housing Agreement.** An agreement, oral or written or implied, between a landlord and tenant for use or occupancy of a rental housing unit and for housing services.

(f) **Rental Housing Unit.** A housing unit in the City that constitutes a controlled rental unit pursuant to City Charter Section 1800 et seq. including a room in a single-family home, hotel or motel, roominghouse or apartment, single-family home, mobile home or mobile home space, trailer or trailer space.

(g) **Tenant.** A tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a rental housing agreement to the use or occupancy of any rental housing unit. (Added by Ord. No. 1817CCS § 1 (part), adopted 10/10/95; amended by Ord. No. 1859CCS § 2 (part), adopted 7/30/96; Ord. No. 1943CCS § 1, adopted 5/25/99)

#### **4.56.020 Prohibition.**

No landlord shall, with respect to property used as a rental housing unit under any rental housing agreement or other tenancy or estate at will, however created, do any of the following with malice:

(a) Interrupt, terminate or fail to provide housing services required by contract or by State, County or local housing, health or safety laws;

(b) Fail to perform repairs and maintenance required by contract or by State, County or local housing, health or safety laws;

(c) Fail to exercise due diligence in completing repairs and maintenance once undertaken;

(d) Abuse the landlord's right of access into a rental housing unit as that right is specified in California Civil Code Section 1954;

(e) Abuse the tenant with words which are offensive and inherently likely to provoke an immediate violent reaction;

(f) Influence or attempt to influence a tenant to vacate a rental housing unit through fraud, intimidation or coercion;

(g) Threaten the tenant, by word or gesture, with physical harm;

(h) Violate any law which prohibits discrimination based on race, gender, sexual preference, sexual orientation, ethnic background, nationality, religion, age, parenthood, marriage, pregnancy, disability, AIDS or occupancy by a minor child;

(i) (1) Take action to terminate any tenancy including service of any notice to quit or other eviction notice or bring any action to recover possession of a rental housing unit based upon facts which the landlord has no reasonable cause to believe to be true or upon a legal theory which is untenable under the facts known to the landlord. No landlord shall be liable under this subsection for bringing an action to recover possession unless and until the tenant has obtained a favorable termination of that action.

(2) This subsection shall not apply to any attorney who in good faith initiates legal proceedings against a tenant on behalf of a landlord to recover possession of a rental housing unit;

(j) Interfere with a tenants right to quiet use and enjoyment of a rental housing unit as that right is defined by California law;

(k) Refuse to acknowledge receipt of a tenant's lawful rent payment;

(l) Interfere with a tenant's right to privacy. (Added by Ord. No. 1817CCS § 1 (part), adopted 10/10/95; amended by Ord. No. 1859CCS § 2 (part), adopted 7/30/96; Ord. No. 1943CCS § 2, adopted 5/25/99; Ord. No. 2005CCS § 1, adopted 4/24/01; Ord. No. 2239CCS § 1, adopted 10/10/07)

#### **4.56.030 Lawful evictions.**

Nothing in this Chapter shall be construed as to prevent the lawful eviction of a tenant by appropriate legal means nor shall anything in this Chapter apply to occupancies defined by subdivision (b) of Civil Code Section 1940. (Added by Ord. No. 1817CCS § 1 (part), adopted 10/10/95; amended by Ord. No. 1859CCS § 2 (part), adopted 7/30/96)

#### **4.56.040 Enforcement and penalties.**

(a) **Criminal Penalty.** Any person who is convicted of violating this Chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not greater than one thousand dollars or by imprisonment in the County Jail for not more than six months, or by both such fine and imprisonment.

(b) **Civil Action.** Any person, including the City, may enforce the provisions of this Chapter by means of a civil action. The burden of proof in such cases shall be preponderance of the evidence. A violation of this Chapter may be asserted as an affirmative defense in an unlawful detainer action.

(c) **Injunction.** Any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates Section 4.56.020 may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represent the interest of the protected class.

(d) **Penalties and Other Monetary Awards.** Any person who violates or aids or incites another person to violate the provisions of this Chapter is liable for each and every such offense for the actual damages suffered by any aggrieved party or for statutory damages in the sum of one thousand dollars, whichever is greater, and shall be liable for such attorney's fees and costs as may be determined by the court in addition thereto. The court may also award punitive damages to any plaintiff, including the City, in a proper case as defined by Civil Code Section 3294. The burden of proof for purposes of punitive damages shall be clear and convincing evidence.

(e) **Nonexclusive Remedies and Penalties.** The remedies provided in this Chapter are not exclusive, and nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law. (Added by Ord. No. 1817CCS § 1 (part), adopted 10/10/95; amended by Ord. No. 1859CCS § 2 (part), adopted 7/30/96; Ord. No. 1943CCS § 3, adopted 5/25/99; Ord. No. 2005CCS § 2, adopted 4/24/01)

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2008**

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**No. 7**

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Introduced by Council Members Garodnick, Mark-Viverito, The Speaker (Council Member Quinn), James, Comrie, Mendez, Jackson, Lappin, Gerson, Palma, Liu, Brewer, Yassky, Recchia Jr., Gioia, DeBlasio, Eugene, Addabbo Jr., Gentile, Gonzalez, Koppell, Monserrate, Sanders Jr., Sears, Stewart, Martinez, Arroyo, Foster, Vann, Baez, Mealy, Avella, Barron, White Jr., Gennaro and The Public Advocate (Ms. Gotbaum). Passed under a Message of Necessity from the Mayor.

**A LOCAL LAW**

**To amend the administrative code of the city of New York in relation to the duty of an owner to refrain from harassment of tenants and remedies for the breach of such duty.**

*Be it enacted by the Council as follows:*

Section 1. Subdivision a of section 27-2004 of the administrative code of the city of New York is amended by adding a new paragraph 48 to read as follows:

*48. Except where otherwise provided, the term "harassment" shall mean any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and (ii) includes one or more of the following:*

*a. using force against, or making express or implied threats that force will be used against, any person lawfully entitled to occupancy of such dwelling unit;*

*b. repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit;*

*c. failing to comply with the provisions of subdivision c of section 27-2140 of this chapter;*

*d. commencing repeated baseless or frivolous court proceedings against any person lawfully entitled to occupancy of such dwelling unit;*

*e. removing the possessions of any person lawfully entitled to occupancy of such dwelling unit;*

*f. removing the door at the entrance to an occupied dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying a key to the new lock to the persons lawfully entitled to occupancy of such dwelling unit; or*

*g. other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit and that cause or are intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy.*

§2. Section 27-2005 of the administrative code of the city of New York is amended by adding a new subdivision d to read as follows:

*d. The owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy of such dwelling as set forth in paragraph 48 of subdivision a of section 27-2004 of this chapter.*

§3. Subdivision h of section 27-2115 of the administrative code of the city of New York is amended by numbering the existing section as paragraph 1 and by adding a new paragraph 2 to read as follows:

(h)(1) Should the department fail to issue a notice of violation upon the request of a tenant or group of tenants within thirty days of the date of such request, or if there is a notice of violation outstanding respecting the premises in which the tenant or group of tenants resides, *or, if there is a claim of harassment pursuant to subdivision d of section 27-2005 of this chapter*, the tenant or any group of

tenants, may individually or jointly apply to the housing part for an order directing the owner and the department to appear before the court. Such order shall be issued at the discretion of the court for good cause shown, and shall be served as the court may direct. If the court finds a condition constituting a violation exists, it shall direct the owner to correct the violation and, upon failure to do so within the time set for certifying the correction of such violation pursuant to subdivision (c) of this section, it shall impose a penalty in accordance with subdivision (a) of this section. *Nothing in this section shall preclude any person from seeking relief pursuant to any other applicable provision of law.*

*(2) (i) Notwithstanding the provisions of paragraph one of this subdivision, where one or more allegations of harassment pursuant to subparagraphs b, c and g of paragraph 48 of subdivision a of section 27-2004 of this chapter is made, to the extent that any such allegation is based on physical conditions of a dwelling or dwelling unit, such allegation must be based at least in part on one or more violations of record issued by the department or any other agency. Where any allegation of harassment is based on more than one physical condition, the existence of at least one violation of record with respect to any such physical condition shall be deemed sufficient to meet the requirements of this paragraph.*

*(ii) The provisions of subparagraph i of this paragraph shall apply to any counterclaim or defense presented by a tenant in any proceeding in the housing part of the civil court if such counterclaim or defense is based on one or more allegations of harassment. In the event there is no violation of record with respect to at least one physical condition alleged by such tenant such counterclaim or defense shall be dismissed without prejudice.*

§4. Section 27-2115 of the administrative code of the city of New York is amended by adding new subdivisions m and n to read as follows:

*(m) (1) Notwithstanding any other provision of law, a violation of subdivision d of section 27-2005 of this code shall be a class c immediately hazardous violation and a penalty shall be imposed in accordance with this section, provided, however, that such violation shall not be deemed a continuing class c violation of record beyond the time that the conduct constituting such violation occurred.*

*(2) If a court of competent jurisdiction finds that conduct in violation of subdivision d of section 27-2005 of this chapter has occurred, it may determine that a class c violation existed at the time that such conduct occurred. Notwithstanding the foregoing, such court may also issue an order restraining the owner of the property from violating such subdivision and direct the owner to ensure that no further violation occurs, in accordance with section 27-2121 of this chapter. Such court shall impose a civil penalty in an amount not less than one thousand dollars and not more than five thousand dollars for each dwelling unit in which a tenant or any person lawfully entitled to occupancy of such unit has been the subject of such violation, and such other relief as the court deems appropriate. It shall be an affirmative defense to an allegation by a tenant of the kind described in subparagraphs b, c and g of paragraph forty-eight of subdivision a of section 27-2004 of this chapter that (i) such condition or service interruption was not intended to cause any lawful occupant to vacate a dwelling unit or waive or surrender any rights in relation to such occupancy, and (ii) the owner acted in good faith in a reasonable manner to promptly correct such condition or service interruption, including providing notice to all affected lawful occupants of such efforts, where appropriate.*

*(3) An owner may seek an order by the court enjoining a tenant from initiating any further judicial proceedings against such owner pursuant to this section claiming harassment without prior leave of the court if (i) within a ten-year period such tenant has initiated two judicial proceedings pursuant to this section against such owner claiming harassment that have been dismissed on the merits and (ii) a third or subsequent proceeding initiated by such tenant against such owner pursuant to this section claiming harassment during such ten-year period is determined at the time of its adjudication to be frivolous. Except for an order on consent such order may be sought by such owner simultaneously with the adjudication of such third or subsequent judicial proceeding.*

*(4) Where the court determines that a claim of harassment by a tenant against an owner is so lacking in merit as to be frivolous, the court may award attorneys fees to such owner in an amount to be determined by the court.*

*(5) Nothing in paragraphs three or four of this subdivision shall be construed to affect or limit any other claims or rights of the parties.*

*n. The provisions of subdivision d of section 27-2005 of this chapter, subdivision m of this section and subdivision b of section 27-2120 of this chapter shall not apply where a shareholder of record on a proprietary lease for a dwelling unit, the owner of record of a dwelling unit owned as a condominium, or those lawfully entitled to reside with such shareholder or record owner, resides in the dwelling unit for which the proprietary lease authorizes residency or in such condominium unit, as is applicable, or to private dwellings.*

§5. Section 27-2120 of the administrative code of the city of New York is amended by renumbering the first paragraph as subdivision a, and adding a new subdivision b to read as follows:

a. The department may institute an action in a court of competent jurisdiction for an order requiring the owner of property or other responsible person to abate or correct any violation of this code, or to comply with an order or notice of the department, or for such other relief as may be appropriate to secure continuing compliance with this code. An action for injunctive relief hereunder may be brought in addition to other sanctions and remedies for violations of the code, or may be joined with any action for such other sanctions and remedies except criminal prosecution.

*b. Any tenant, or person or group of persons lawfully entitled to occupancy may individually or jointly apply to the housing part of the civil court for an order restraining the owner of the property from engaging in harassment. Except for an order on consent, such order may be granted upon or subsequent to a determination that a violation of subdivision d of section 27-2005 of this chapter has occurred.*

§6. If any sentence, paragraph, section or part of this local law shall be adjudged invalid by a court of competent jurisdiction such judgment shall not impair or invalidate the remainder thereof but shall be confined to that part deemed invalid.

§7. This local law shall take effect immediately.

The City of New York, Office of The City Clerk, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on February 27, 2008 and approved by the Mayor on March 13, 2008.

Hector L. Diaz, City Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed Local Law (Local Law 007 of 2008, Council Int. No. 627-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on February 27, 2008:  
46 For, 0 Against, 0 Not Voting

Was signed by the Mayor on March 13, 2008

Was returned to the City Clerk on March 13, 2008.

Jeffrey D. Friedlander, Acting Corporation Counsel.

