



Jesse Arreguín
Councilmember, District 4

CONSENT CALENDAR
April 26, 2011

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguin
Subject: Tenant Screening Fees Ordinance, Adding BMC Chapter 13.78

RECOMMENDATION:

Adopt the first reading of an Ordinance adding Berkeley Municipal Code Section 13.78, requiring property owners to disclose to applicants for rental housing, information regarding California state law requirements on the collection of apartment screening fees.

BACKGROUND:

At the September 28, 2010 meeting, the Berkeley City Council unanimously referred proposed guidelines and disclosures for rental application screening fees to the City Manager for the creation of a Tenant Screening Fee ordinance. The attached Tenant Screening Fees Ordinance is a result of discussions with the City Manager’s Office, City Attorney, and the Rent Stabilization Program and was drafted by the City Attorney’s office. The proposed ordinance does not conflict with state law and does not change the requirements or legal rights that tenants and owners have under state law. Rather it advances implementation of state law by requiring a copy of California Civil Code Section 1950.6 (the state tenant screening fee law) and information regarding the current maximum allowable fee as set by state law, be given to all applicants who pay an application fee for rental housing. The ordinance also provides a private right of action for individual tenants if an owner is found to be in violation of the ordinance.

“Tenant screening fees” are fees that are charged to applicants for rental housing by a property owner or their agent to be used to purchase a consumer credit report and to validate, review, or process an application for rental property. There have been cases, including in Berkeley, where owners have charged more than what is required to conduct a credit check or rental history background check or cover the administrative costs to process the application and the fees have been used as a way to generate additional income.

In response to the improper use of apartment application fees, in 1996 the California State Legislature added California Civil Code Section 1950.6 to provide tenant screening fee protections, which set a limit on the total amount of apartment application fees that can be charged. The maximum allowable fee that can be charged by state law is currently \$40.73 and the fee must be adjusted every year based on the increase in

the Consumer Price Index. The law also requires that fees only be used to cover actual out-of-pocket costs to conduct a credit or rental history background check and that unused portion of the fees must be returned, and that landlords provide and itemized receipt of those costs upon request.

Though California Civil Code Section 1950.6 provides comprehensive tenant screening fee protections, they are ineffective for the following reasons:

1. Most tenants are unaware of such protections
2. The enforcement of Section 1950.6 requires the tenant to file in small claims court, a process requiring a filing fee that costs nearly as much as the screening fee
3. There is no penalty to the landlord for non-compliance with the law prescribed in Section 1950.6

The proposed Tenant Screening Fees Ordinance would advance implementation of current state law by creating a local requirement for disclosure of state law requirements to all tenants who pay fees to apply for an apartment in Berkeley. Additionally, the Ordinance provides penalties for non-compliance with the new city disclosure requirements. Also, based on concerns raised by the City Manager regarding limited financial and staff resources, this Ordinance **does not require any City staff resources or the expenditure of any City funds for implementation**. It is up to the individual tenant to seek judicial relief in order to seek penalties for non-compliance.

Providing a tenant who applies for an apartment in Berkeley a copy of California Civil Code Section 1950.6 and information on the maximum allowable fee not only educates tenants about their existing rights in state law, but also encourages property owners to abide by state law and gives tenants the ability to seek judicial relief if an owner is not in compliance with the City law.

Other State and Local Laws

Other states have already taken similar steps to better provide tenant screening fee protections. For example, Oregon and Washington require written notice to the renter providing information about their rights as applicants and the screening process.

FINANCIAL IMPLICATIONS:

NONE

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4 981-7140

Attachments:

1. Proposed Ordinance
2. California Civil Code Section 1950.6

ORDINANCE NO. -N.S.

ADDING CHAPTER 13.78 OF THE BERKELEY MUNICIPAL CODE, TENANT
SCREENING FEES

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

Section 1. That Berkeley Municipal Code Chapter 13.78 is added to read as follows:

Chapter 13.78

TENANT SCREENING FEES

Sections:

13.78.010 Notification of state law limitation on tenant screening fees.

13.78.020 Remedies-Civil penalty-Not exclusive.

Section 13.78.010 Notification of state law limitation on tenant screening fees.

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 and he or she charges that applicant a fee to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property, he or she shall provide such applicant, at the time the fee is demanded, a disclosure of the current maximum allowable application screening fee set forth by state law and a copy of California Civil Code Section 1950.6, which regulates the amount of the fee an owner may charge and the circumstances under which the fees may be assessed or must be returned.

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 if the owner fails to comply with Section 13.78.010 above.

C. Any person aggrieved by the owner's failure to comply with Section 13.78.010 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 13.78.010.

D. In any action to recover damages resulting from a violation of Section 13.78.010, 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.

California Civil Code, Section 1950.6

(a) Notwithstanding Section 1950.5, when a landlord or his or her agent receives a request to rent a residential property from an applicant, the landlord or his or her agent may charge that applicant an application screening fee to cover the costs of obtaining information about the applicant. The information requested and obtained by the landlord or his or her agent may include, but is not limited to, personal reference checks and consumer credit reports produced by consumer credit reporting agencies as defined in Section 1785.3. A landlord or his or her agent may, but is not required to, accept and rely upon a consumer credit report presented by an applicant.

(b) The amount of the application screening fee shall not be greater than the actual out-of-pocket costs of gathering information concerning the applicant, including, but not limited to, the cost of using a tenant screening service or a consumer credit reporting service, and the reasonable value of time spent by the landlord or his or her agent in obtaining information on the applicant. In no case shall the amount of the application screening fee charged by the landlord or his or her agent be greater than thirty dollars (\$30) per applicant. The thirty dollar (\$30) application screening fee may be adjusted annually by the landlord or his or her agent commensurate with an increase in the Consumer Price Index, beginning on January 1, 1998.

(c) Unless the applicant agrees in writing, a landlord or his or her agent, may not charge an applicant an application screening fee when he or she knows or should have known that no rental unit is available at that time or will be available within a reasonable period of time.

(d) The landlord or his or her agent shall provide, personally, or by mail, the applicant with a receipt for the fee paid by the applicant, which receipt shall itemize the out-of-pocket expenses and time spent by the landlord or his or her agent to obtain and process the information about the applicant.

(e) If the landlord or his or her agent does not perform a personal reference check or does not obtain a consumer credit report, the landlord or his or her agent shall return any amount of the screening fee that is not used for the purposes authorized by this section to the applicant.

(f) If an application screening fee has been paid by the applicant and if requested by the applicant, the landlord or his or her agent shall provide a copy of the consumer credit report to the applicant who is the subject of that report.

(g) As used in this section, "landlord" means an owner of residential rental property.

(h) As used in this section, "application screening fee" means any nonrefundable payment of money charged by a landlord or his or her agent to an applicant, the purpose of which is to purchase a consumer credit report and to validate, review, or otherwise process an application for the rent or lease of residential rental property.

(i) As used in this section "applicant" means any entity or individual who makes a request to a landlord or his or her agent to rent a residential housing unit, or an individual who agrees to act as a guarantor or cosigner on a rental agreement.

(j) The application screening fee shall not be considered an "advance fee" as that term is used in Section 10026 of the Business and Professions Code, and shall not be considered "security" as that term is used in Section 1950.5.

(k) This section is not intended to preempt any provisions or regulations that govern the collection of deposits and fees under federal or state housing assistance programs.