

Attachment A



RENT STABILIZATION DEPARTMENT

June 26, 2024

TO: Pasadena Rental Housing Board

FROM: Phillip Leclair, Interim Director *PL*
Karen Tiedemann, General Counsel to the Board
Nazanin Salehi, General Counsel to the Board

SUBJECT: UPDATE ON RECOMMENDED AMENDMENTS TO ARTICLE XVIII OF THE PASADENA CITY CHARTER

RECOMMENDATION: It is recommended that the Pasadena Rental Housing Board approve the following:

1. Find that the proposed contract amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3), the "common sense" provision that CEQA only applies to projects that may have an effect on the environment; and
2. Receive a report about Staff's presentation of the Rental Housing Board's ("Board") report on proposed amendments to Article XVIII of the City Charter to the City Council of the City of Pasadena ("City Council") at the June 17, 2024 City Council meeting; and
3. Review new recommendations submitted by Landlord stakeholders for proposed amendments to Article XVIII of the City Charter, and provide staff with direction about whether and how the Board would like to proceed with consideration of these new recommendations; and
4. Adopt a resolution of the Pasadena Rental Housing Board recommending to the City Council an additional amendment to Article XVIII of the City Charter for inclusion on the ballot for the November 5, 2024 General Municipal Election.

BACKGROUND:

On November 8, 2022, the voters of the City of Pasadena (the "City") voted to adopt Measure H, which added Article XVIII to the City Charter thereby imposing rent control and just cause eviction protections. The City Council adopted a resolution certifying the results of the

November 8, 2022, election on December 12, 2022, and the charter amendment was thereafter filed with the California Secretary of State and took effect on December 22, 2022.

Earlier this year, the City Council began discussing potential measures to put on the ballot for the November 5, 2024 General Election that would amend and revise certain other provisions of the City Charter. At its April 24, 2024 meeting, the Board formally decided to consider recommendations for minor changes to the Charter Amendment that could be added to the City Council's ballot measure and thereafter adopted a resolution establishing a purpose and procedures to facilitate and guide the review and recommendation process.

In accordance with the schedule established in the Board's resolution, the Policy & Programs Ad Hoc Committee (the "Committee") received and reviewed all suggested amendments received by Board members and the public to the Charter Amendment. The Committee compiled its recommendations into a report for review by the full Board. At its May 8, 2024 meeting, the Board reviewed the initial draft of the report from the Committee summarizing the Committee's recommendations for changes to the Charter Amendment. The Board received significant public comment on the item, largely in support of the recommendations made by the Committee. The remaining members of the Board not on the Committee provided feedback.

In accordance with the feedback received from the Board and arising from further discussions with relevant City departments (including the Department of Housing and the City Attorney's Office), the Committee revised its report. At its May 22, 2024 meeting, the Board adopted a resolution to recommend to the City Council six (6) amendments to Article XVIII for placement on the ballot for the November election.

DISCUSSION

A. Report from June 17, 2024 City Council Meeting

The Interim Director of the Rent Stabilization Department ("Department"), along with the Board's outside general counsel (collectively referred to herein as "Staff"), appeared at the City Council's regular meeting on June 17, 2024. The Director presented the Board's six (6) proposed amendments to Article XVII, as well as three (3) additional proposed amendments from Staff. In summary, the following proposed amendments were presented and recommended to the City Council for inclusion on the November ballot:

1. Revise Section 1812 by removing the language in subsection (b) regarding the deadline for implementation for the rental registry and by replacing the annual April 1st registration deadline in subsection (c).
2. Revise Section 1806(a)(10) to comply with the requirements of the Ellis Act regarding adoption of Ellis Act regulations, minimum of 120 days' notice and the definitions for "senior" and "Disabled."
3. Revise Section 1806(b) to provide an alternate timeline for the disbursement of relocation assistance payments to Tenants who are only entitled to a 30-day written termination notice under state law.
4. Revise Section 1806(f)(1) to provide that the Board will announce the security deposit interest rate on November 1, rather than October 1, each year.

5. Add paragraph (3) to subsection (b) of Section 1804 to provide a partial exemption (from the rent stabilization provisions of Article XVIII) to Rental Units that are occupied by government subsidized tenants.
6. Revise Section 1811(d) to create an alternate process by which the Board may initiate, and the City Council may approve, a petition to remove a member of the Board for repeated or significant violations of the Board's Code of Conduct.
7. Revise Section 1808(a)(3) to change the date of the first annual general adjustment announcement from September 1, 2022 to no later than 90 days after the Board's first regular meeting.
8. Correct the reference in Section 1811(m) to the location of the City Attorney's duties from "Article II, Chapter 2.30 of the Pasadena City Charter" to "Article II, chapter 2.30, Section 2.30.020 of the Pasadena Municipal Code."
9. Revise Section 1811(d) to include language authorizing the City Council to adopt an ordinance outlining the procedures for processing a voter-initiated petition for removal of a Board member.

After the Director's presentation, the City Council received public comment on the above recommendations as well as new recommendations from the public (which are addressed more thoroughly in subsection (B) below). In total, there were approximately fifty-three (53) public comments; tenants/tenant advocates and landlords/landlord advocates were pretty evenly represented among the commenters. There was no opposition to the Board's recommendations and Staff's recommendations; nearly all of the commenters expressed support for these recommendations.

Subsequently, the City Council asked clarifying questions to Staff regarding the recommendations and briefly deliberated the recommendations. The City Council unanimously voted to approve both the Board's recommendations and Staff's recommendations and to direct City staff to prepare and return with necessary resolutions of the recommended changes to Article XVIII on the November 5, 2024 General Municipal Election ballot. The City Council's motion included one minor amendment to the recommendation in #6 above to require a two-thirds, rather than simple, majority vote of the Board members to advance a petition to remove a Board member.

B. Additional Landlord Recommendations

After approval of the Board's and Staff's recommendations, the City Council also discussed the additional recommendations from the Pasadena Housing Providers ("PHP"). PHP's recommendations fully outlined in the June 13, 2024 letter from their attorney, Loren Naiman. (See **Attachment A**). To summarize, PHP recommended amendments to:

1. Create a more diverse, inclusive and equitable Rental Board by expanding it with addition of landlords and other Pasadena voters.
2. Exclude from the measure, governmentally subsidized units (such as Section 8), single family homes (including condominiums and co-op units), accessory dwelling units, and all properties with four or fewer units.

3. Allow for the pass-through of one-half of the annual Rental Housing Fees to tenants.
4. Modify the penal provisions to provide a more workable enforcement mechanism.
5. Adequately provide for the constitutionally protected "right of fair return" through the removal of language which is unfair, hard to understand, and which has the potential to breed unnecessary litigation.

The City Council did not take action on any of these recommendations, but it did request that Staff present these recommendations to the Board at its next regular meeting to gauge the Board's interest in exploring these recommendations further.

With the exception of #4 (which is explained further in subsection (C) below), at this time, Staff does not recommend that the Board refer any of PHP's proposed changes back to the City Council for inclusion on the November 5, 2024 ballot. (It is worth noting that the next City's municipal election is currently scheduled for March 2026.) Rather, Staff requests direction from the Board, on #1 through 3 and #5, as follows:

- Does the Board have interest in exploring any further?
- If yes, what should be the next step(s)? Options include:
 - Direct staff to schedule a study session at a future Board meeting
 - Direct staff to host stakeholder meeting(s)
 - Refer to an existing ad hoc committee for further discussion
 - Refer to a new ad hoc committee for further discussion
 - Any combination of (a) through (d)
 - Any other variation, as directed by the Board

Staff intends to report back to the City Council the direction provided by the Board on each of these recommendations.

C. Proposed Amendment to Sections 1817(g) and (h)

As explained above, one of PHP's recommendations was to modify the penal provisions in Article XVIII to provide a more workable enforcement mechanism. Specifically, PHP recommended that the language in Section 1817(g) be revised to provide that a violation of the Rental Housing Board's properly promulgated regulations, rather than of the provisions of Article XVIII, shall be punishable as an infraction by way of a fine. PHP also recommended the removal of Section 1817(h) which provides for criminal penalties for a Landlord's violation of Article XVIII. Staff does not recommend that the Board accept and recommend PHP's recommended language.

However, Staff does recommend that the Board adopt a resolution recommending to the City Council an amendment to Sections 1817(g) and (h) for inclusion on the November 5, 2024 ballot as follows:

Revise 1817(g) and (h) to read as follows:

In addition to any other remedies provided by law, Landlords and Tenants covered by this Article shall have the following remedies for violations of this Article.

- (g) Administrative Penalties for Violations. In addition to the any affirmative defense or any other rights of a tenant under law, a violation of ~~the provisions of this Article shall be punishable as an infraction by way of a fine administratively by way of a fine.~~ The Rental Board may establish, and periodically modify, a schedule of fines for violations of various provisions of this article as they see fit, provided these amounts are reasonable, and are chosen in accordance with applicable law.

- (h) Criminal Penalties. In addition to the administrative penalties in subsection (g) above, any Landlord person that violates this Article shall be guilty of a may be prosecuted for a misdemeanor or an infraction and shall be punished in accordance with Section 1.24.010 of the Pasadena Municipal Code, in the discretion of the city attorney or city prosecutor, or their assistants.

The proposed revisions to Sections 1817(h) and (h) were drafted by Staff in collaboration with City Attorney's Office, including the Chief Assistant City Prosecutor. In drafting the language, the Chief Assistant City Prosecutor expressed concern that, as currently written, subsection (g) may be ineffective as a remedy because an infraction is a criminal penalty whereas any fee adopted by the Board would be an administrative penalty. Therefore, the "infraction" language in subsection (g) could be moved into subsection (h) which establishes criminal penalties for violations of the Article. The language of subsection (g) should also be revised to mirror Section 1.24.010 of the Pasadena Municipal Code, which provides that any violation of the Code may be prosecuted as a misdemeanor, as an infraction, or as a civil administrative action in the discretion of the City Attorney, City Prosecutor, or their assistants. Finally, the language in the two subsections was modified to as closely mirror each other as possible, clarifying that either or both administrative and criminal penalties may be imposed on any person who violates Article XVIII.

For the foregoing reasons and in accordance with the Board's adopted criteria for the charter amendment recommendation process, Staff believes that this change will (1) clarify an area of ambiguity in Article XVIII that cannot be resolved via regulation, (2) bring the requirements of Article XVIII into alignment with the existing practices of the City Attorney's (and City Prosecutor's) Office, and (3) reduce legal liability.

FISCAL IMPACT:

Receipt of the report from the June 17, 2024 City Council meeting, discussion to consider new proposed changes to City Charter Article, and the adoption of a resolution recommending one additional amendment to Article XVIII are not expected to have any fiscal impact.

ATTACHMENTS:

Attachment A – CORRESPONDENCE FROM LOREN NAIMAN, DATED JUNE 13, 2024, TO THE CITY COUNCIL OF THE CITY OF PASADENA, ON BEHALF OF THE PASADENA HOUSING PROVIDERS POLITICAL ACTION COMMITTEE

Attachment B – A RESOLUTION OF THE PASADENA RENTAL HOUSING RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF PASADENA ONE ADDITIONAL AMENDMENT TO THE PASADENA FAIR AND EQUITABLE HOUSING CHARTER AMENDMENT (ARTICLE XVIII) FOR INCLUSION ON THE BALLOT FOR THE NOVEMBER 5, 2024 MUNICIPAL GENERAL ELECTION