



ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

33 February 15, 2022

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Economic & Workforce Development

February 15, 2022

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

ORDINANCE AMENDING LOS ANGELES COUNTY CODE TITLE 8 BY ADDING CHAPTER 8.45 TO PROTECT COMMERCIAL TENANTS AGAINST HARASSMENT AND RETALIATION IN THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY

(ALL SUPERVISORIAL DISTRICTS) (3 VOTES)

SUBJECT

Pursuant to the Board's direction on June 22, 2021, the Department of Workforce Development, Aging and Community Services (WDACS) recommends the Board introduce and set for adoption the attached Commercial Tenant Protections Ordinance (Ordinance), which protects commercial tenants against harassment and retaliation within the unincorporated areas of Los Angeles County (County), and directs WDACS to take necessary steps to implement the Ordinance.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that these actions are exempt from the California Environmental Quality Act (CEQA), for the reasons stated in this letter and in the record.
2. Introduce, waive reading, and set for adoption the attached Commercial Tenant Protections Ordinance (Ordinance), that amends the Los Angeles County Code Title 8 – Consumer Protection, Business and Wage Regulations, Chapter 8.45 - Commercial Tenant Protections.

GET IN TOUCH

510 S. Vermont Avenue
Los Angeles, CA 90020
wdacs.lacounty.gov

info@wdacs.lacounty.gov

**Aging & Adult Information &
Assistance Line:**

(800) 510-2020

Report Elder Abuse:

(877) 477-3646

Report Hate: 211

America's Job Centers:

(888) 226-6300

Community & Senior Centers:

(323) 260-2003

Office of Small Business:

(800) 432-4900



3. Authorize the Acting Director of WDACS, or his designee, to identify funding and resources necessary to implement the Ordinance and to execute agreements with consultants as necessary to implement the Ordinance.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On June 22, 2021, the Board directed County Counsel, in consultation with the Director of the Department of Consumer and Business Affairs, to draft an ordinance to permanently extend the anti-harassment and anti-retaliation protections under the current County's COVID-19 Tenant Protections Resolution with respect to commercial tenants with nine (9) employees or fewer.

After further discussions with County departments, WDACS will oversee the protections set forth in the Ordinance, which provides harassment and retaliation protections for commercial tenants, with nine (9) employees or fewer, in the unincorporated areas of the County to:

- 1) Deter harassing behavior by landlords;
- 2) Encourage landlords to uphold their responsibility to provide safe and suitable commercial rental properties; and
- 3) Give the County legal recourse as well as institute a private right of action where small commercial tenants are subjected to harassing behavior by landlords.

The County's latest COVID-19 Tenant Protections Resolution, approved by the Board on January 25, 2022, provides countywide protections related to anti-harassment and retaliation for commercial tenants through December 31, 2022. This Ordinance would make these protections permanent for commercial tenants with nine (9) employees or less in unincorporated areas of the County once the COVID-19 Tenant Protections Resolution is lifted.

It is therefore recommended that the Ordinance be adopted to protect commercial tenants within the unincorporated areas of Los Angeles County from harassment and retaliation.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The recommended actions support the County's Strategic Plan Goal II: Foster Vibrant and Resilient Communities, particularly Strategy II.1. Drive Economic and Workforce Development in the County by enhancing opportunities and equitable support for the business community, including small businesses and micro-businesses, who were disproportionately impacted by the COVID-19 pandemic.

FISCAL IMPACT/FINANCING

The proposed Ordinance has no fiscal impact on the County. WDACS will work with the Chief Executive Office to determine the level of staffing and resources needed to enforce the Ordinance and pursue potential funding through either the American Rescue Plan and/or other funding available.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

There are approximately 33,000 small businesses in the unincorporated area of the County, and 30,000 of those ninety percent (90%) have nine (9) employees or less. The proposed Ordinance protects commercial tenants who employ nine (9) employees or less, which means most of the small businesses in the County who hire locally and serve in their local community will benefit.

Although the County and State have taken steps to support and provide relief to small businesses and their employees, it will take sustained support to enable many businesses to fully recover financially. This Ordinance aims to reduce small business harassment and retaliation from landlords.

Exemptions

This Ordinance shall not apply to commercial tenants that are multi-national or publicly-traded as well as commercial tenants of commercial property located at airports within the County.

Harassment and Retaliation Protections

Retaliation against tenants for exercising their rights under the Ordinance is prohibited. The Ordinance specifically prohibits actions meant to harass tenants for failure to perform repairs and maintenance required by the rental agreement or by federal, State, or local laws; conduct elective renovation or construction on commercial property for the purpose of harassing tenants, or otherwise exercising their rights under the Ordinance or other applicable federal, state, and local laws. Harassment and retaliation claims may only be brought in court and may not be addressed administratively. A court may consider the protections afforded by the Ordinance in evaluating a claim of retaliation.

Enforcement

Any tenant, or any other person or entity acting on behalf of the commercial tenant who will fairly and adequately represent the tenant's interest, including the County, may choose to enforce provisions of this Ordinance. This Ordinance also imposes civil and criminal penalties for violations as well as an increased penalty if the aggrieved tenant is sixty-two (62) years or older or disabled. The County's decision to pursue or not pursue enforcement of any kind shall not affect an individual's right to pursue civil remedies.

Outreach

Once adopted and in effect, WDACS' Economic and Workforce Development Branch will design a robust and expansive outreach and education plan, focusing on immigrant-owned small businesses, with nine (9) employees or less, in unincorporated areas as well as develop a plan for enforcement of the protections provided by the Ordinance. Specifically, the following business services will be provided to commercial tenants to support legal enforcement of the Ordinance through private right of action:

- Conduct education and outreach among qualified commercial tenants through our Office of Small Business;

- Inform tenants about the Ordinance and its harassment and retaliation protections and offer a referral service to free legal providers and one-on-one counseling to support use of a private right of action, among other strategies, for self-directed ordinance enforcement;
- Receive complaints from commercial tenants, including through a portal on the WDACS website, and document business needs in its database;
- Refer commercial tenants to legal providers for one-on-one counseling on their complaints;
- Provide support in leveraging their private rights of action, via referrals for additional support and enforcement of the Ordinance; and
- Provide ongoing, relevant business services to businesses engaged through this initiative.

County Counsel has reviewed and approved the proposed Ordinance.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Adoption of the Ordinance will protect commercial tenants, with nine (9) employees or less, against harassment and retaliation by landlords and uphold their responsibility to provide safe and suitable commercial rental properties.

ENVIRONMENTAL DOCUMENTATION

By adoption of this Ordinance, the Board finds that the implementation of this Ordinance is exempt from the provisions of CEQA, pursuant to State CEQA Guidelines 15061(b)(3) in that the Board finds there is no possibility that the implementation of this Ordinance will have significant effects on the environment.

CONCLUSION

Upon Board approval, please return one (1) adopted copy of this letter to WDACS. Should you have any questions, you may contact me directly, or your staff may contact Mr. Kevin Anderson, Special Assistant, at kanderson@wdacs.lacounty.gov.

Respectfully Submitted,



Otto Solórzano
Acting Director

OS:KL:AEC:KA:EB:ML:ag

Enclosure

c: Chief Executive Office
Executive Office, Board of Supervisors
County Counsel
Supervising Administrator

ANALYSIS

This ordinance amends Title 8 – Consumer Protection, Business and Wage Regulations, Division 2 – Business Regulations, of the Los Angeles County Code, relating to harassment and retaliation protections concerning the rental of commercial property located within the unincorporated areas of the County of Los Angeles by adding Chapter 8.45 to: (1) prohibit harassment and retaliation of commercial tenants; (2) establish penalties for violations; and (3) institute a private right of action.

RODRIGO A. CASTRO-SILVA
County Counsel

Behnaz Tashakorian

By

BEHNAZ TASHAKORIAN
Principal Deputy County Counsel
Government Services Division

BT:eb

Requested: 07/19/2021
Revised: 08/24/2021

ORDINANCE NO. _____

An ordinance amending Title 8 – Consumer Protection, Business and Wage Regulations, of the Los Angeles County Code, relating to harassment and retaliation protections concerning the rental of commercial property located within the unincorporated areas of the County of Los Angeles.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 8.45 is hereby added to read as follows:

Chapter 8.45 Commercial Tenant Protections.

8.45.010 Short Title.

This Chapter shall be known as "Commercial Tenant Protections."

8.45.020 Purpose and Findings.

A. The Board of Supervisors finds that the commercial rental debt owed by many businesses due to the impacts of the COVID-19 pandemic in Los Angeles County is a major source of tension between commercial tenants and landlords; in many cases, smaller commercial tenants face pressure and desperation similar to that of residential tenants. Many small businesses face the challenge of trying to negotiate with uncooperative landlords due to the months of accumulated back rent owed.

B. This unpaid rental debt owed by many small businesses, in light of the significant economic fallout from the COVID-19 pandemic, has exacerbated an already competitive commercial rental market in Los Angeles County. This creates an incentive for some landlords to engage in harassing behavior or to fail to make necessary repairs

in order to pressure existing tenants to move so that new tenants can move in and landlords can raise rents.

C. Accordingly, on March 4, 2020, the Board of Supervisors approved an Executive Order implementing a temporary Eviction Moratorium that offers protection against eviction to commercial tenants with fewer than one hundred (100) employees in unincorporated areas of Los Angeles County, with additional protections for small commercial tenants with less than ten (10) employees. On September 1, 2020, the protections under the Eviction Moratorium for commercial tenants became a baseline level of protection across the entire County that extended to all incorporated cities. Additionally, on February 23, 2021, the Board of Supervisors approved an amendment to the Eviction Moratorium that provided protections against harassment and retaliation to residential and commercial tenants who exercise their rights under the Eviction Moratorium. These protections have been critical in ensuring that thousands of small businesses did not have to close their doors for good due to the crippling financial impacts of the pandemic.

D. The combined impact of unpaid commercial rental debt and a competitive commercial rental market creates an imbalance of bargaining power between landlords and tenants, which has resulted in many small commercial tenants being unwilling or unable to assert their legal rights under the County's Eviction Moratorium. Furthermore, when the Eviction Moratorium is eventually lifted, commercial tenants will lose protections that have been paramount in maintaining the stability, security, and quality

of the small businesses that are the backbone of many communities across in the County of Los Angeles.

E. The purposes of this Chapter are to deter harassing behavior by landlords, to encourage landlords to uphold their responsibility to provide safe and suitable commercial rental properties, and to give the County of Los Angeles legal recourse where small commercial tenants are subjected to harassing behavior by landlords.

8.45.030 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- A. "Board" means the County of Los Angeles Board of Supervisors.
- B. "Code" means the Los Angeles County Code.
- C. "Commercial Property" means a Commercial Unit and the land on which it and other buildings and common areas are located, including, parking facilities, streets, alleyways, stairwells, yard, roofs, and elevators, and that is not a dwelling unit, as defined in Chapter 8.52 of the County Code, provided for rent by the Landlord.
- D. "Commercial Unit" means any part, portion, or unit thereof, and any related facilities, space, or service, that is rented or offered for rent for commercial uses only, not residential use, on the Commercial Property.
- E. "County" means the County of Los Angeles.
- F. "Landlord" means an owner, lessor or sublessor (including any person, firm, corporation, partnership, or other entity) of Commercial Property provided for commercial rental purposes.

G. "Rent" means the consideration paid for the commercial use or occupancy of a Commercial Unit on Commercial Property.

H. "Rental Agreement" means a lease or other oral or written agreement between a Landlord and tenant establishing the terms and conditions of the Tenancy.

I. "State" means the State of California.

J. "Tenancy" means the legal right of a Tenant or any other original occupant who took possession of Commercial Property for the use or occupancy of a Commercial Unit, subject to the terms of a Rental Agreement. This includes a lease or a sublease.

K. "Tenant" means a renter of Commercial Property, as defined in subdivision (c) of section 1162 of the California Code of Civil Procedure, for commercial purposes, lessee, subtenant, and sublessee that has its principal offices in the County and meets all of the following criteria:

1. The Tenant rents a Commercial Unit in the County that is not a dwelling unit, as defined in California Civil Code section 1940, or a mobilehome, as defined in California Civil Code section 798.3.

2. The Tenant employs no more than nine (9) employees.

3. The Tenant operates an independently owned and operated business or nonprofit organization.

8.45.040 Exemptions.

The following Tenants are excluded from the protections of this Chapter:

A. Tenants that are multi-national or publicly-traded.

B. Tenants of Commercial Property located at airports within the County.

8.45.050 Anti-Harassment and Retaliation.

No Landlord, or any person, acting as a principal or agent, or any contractor, subcontractor or employee acting on the Landlord's behalf or direction, with respect to Commercial Property used as a Commercial Unit under any Rental Agreement or other Tenancy, however created, shall do any of the following:

A. Interrupt, terminate, or fail to provide all services required by the Rental Agreement or under federal, State, County, or local health or safety laws.

B. Take any of the following actions in bad faith:

1. Fail to perform repairs and maintenance required by the Rental Agreement or by federal, State, or local laws;

2. Fail to exercise due diligence in completing repairs and maintenance once undertaken;

3. 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. Conduct elective renovation or construction of Commercial Property for the purpose of harassing Tenant;

5. Refuse to acknowledge or accept receipt of a Tenant's lawful Rent payment as set forth in the Rental Agreement, by usual practice of the parties, or in a notice to pay Rent or quit;

6. Refuse to cash or process a Rent check or other form of acceptable Rent payment for over thirty (30) days after it is tendered;

7. Fail to maintain a current address for delivery of Rent payments;

8. Violate a Tenant's right to privacy, without limitation, by requesting information regarding residence or citizenship status, protected class status, or social security number, except as required by law or in the case of a social security number, for the purpose of obtaining information for the qualifications for a Tenancy;

9. Release information protected by the Tenant's right to privacy, except as required or authorized by law; or

10. Request or demand an unreasonable amount of information from Tenant in response to a request for reasonable accommodation.

C. Threaten the Tenant, by word or gesture, with physical harm, or abuse Tenant with words, either orally or in writing, which are offensive and inherently likely to provoke an immediate violent reaction. This includes words used during in-person conversations, through social media postings or messages, or other communications.

D. Influence or attempt to influence a Tenant to vacate Commercial Property through fraud, intimidation or coercion, which shall include threatening to report a Tenant or Tenant's employees to the United States Department of Homeland Security or any other governmental or law enforcement agency.

E. Violate any law which prohibits discrimination based on race, gender, sexual preference, sexual orientation, ethnic background, nationality, religion, age,

parenthood, marriage, pregnancy, disability, or Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS).

F. Take action to terminate any Tenancy including service of any notice to quit or notice to bring any action to recover possession of the Commercial 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.

G. Remove from the Commercial Unit furnishings, personal property, or any other items without the prior written consent of a Tenant, except when done pursuant to enforcement of a legal termination of Tenancy or as otherwise authorized by federal, State, or local law.

H. Offer payments to:

1. A Tenant to vacate more than once in six (6) months, after the Tenant has notified the Landlord in writing that the Tenant does not desire to receive further offers of payments to vacate.

2. Attempt to coerce a Tenant to vacate accompanied with threats or intimidation. This shall not include settlement offers in pending eviction actions made in good faith and not accompanied by threats or intimidation.

I. Commit 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 Commercial Unit and that cause, are likely to cause, or

are intended to cause any person lawfully entitled to occupancy of a Commercial Unit to vacate such Commercial Unit or to surrender or waive any rights in relation to such occupancy.

8.45.060 Lawful Evictions.

Nothing in this Chapter shall be construed as to prevent the lawful eviction of a Tenant by appropriate legal means.

8.45.070 Remedies.

A. Civil Remedies. Any Tenant, or any other person or entity acting on behalf of the Tenant who will fairly and adequately represent the Tenant's interests, including the County, is authorized to bring a civil action and/or proceeding in a court of competent jurisdiction for violation of this Chapter, for civil penalties, injunctive, declaratory and other equitable relief, restitution and reasonable attorneys' fees and costs and may take such other steps as necessary to enforce this Chapter. No administrative remedy need be exhausted prior to filing suit to enforce this Chapter. The court may award reasonable attorneys' fees and costs to a Landlord who prevails in any such action if the court determines that the Tenant's action was frivolous.

B. Civil Penalty. Any person violating any of the provisions, or failing to comply with any of the requirements of this Chapter, may be liable for a civil penalty of no less than Two Thousand Dollars (\$2,000), per violation, and no more than Five Thousand Dollars (\$5,000), per violation, at the discretion of the court. If the aggrieved Tenant is sixty-two (62) years or older or disabled, the court may award an

additional civil penalty of up to Five Thousand Dollars (\$5,000) per violation, at the discretion of the court.

C. Criminal Penalty. Any person violating any of the provisions or failing to comply with any of the requirements of this Chapter, shall be guilty of a misdemeanor and punished by a fine of not more than One Thousand Dollars (\$1,000), or by imprisonment in the County jail for a period of not more than six (6) months, or by both.

D. Each violation of any provision of this Chapter, and each day during which any such violation is committed, permitted or continued, shall constitute a separate offense.

E. The above remedies are not exclusive and do not preclude the County or any Tenant from seeking other remedies or penalties provided by applicable law.

8.45.080 Waiver Prohibited.

Any waiver of rights under this Chapter shall be void as contrary to public policy.

8.45.090 Severability.

If any provision of this Chapter or the application thereof to any person, property, or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this Chapter that can be given effect without the invalid provision(s) or application, and to this end, the provisions of this Chapter are declared to be severable.

[CH845BTCC]