



**BURLINGAME CITY COUNCIL**  
**Unapproved Minutes**  
**Study Session**  
**Tuesday, November 12, 2019**

**1. CALL TO ORDER**

A duly noticed meeting of the Burlingame City Council was held on the above date in the City Hall Council Chambers at 6:00 p.m.

**2. ROLL CALL**

**MEMBERS PRESENT:** Beach, Brownrigg, Colson, Keighran, Ortiz

**MEMBERS ABSENT:** None

**3. STUDY SESSION**

**a. DISCUSSION OF AB 1482, THE TENANT PROTECTION ACT OF 2019**

City Manager Goldman stated that Governor Newsom signed AB 1482, entitled the Tenant Protection Act of 2019, into law on October 8, 2019. She explained that at the November 4, 2019 Council meeting, after hearing from the public during the Public Comment period, Vice Mayor Beach requested more information about AB 1482 and no-fault evictions.

City Manager Goldman stated that AB 1482 contains two main elements: 1) prohibition on evictions without just cause; and 2) the creation of a rent cap. She explained that the rent cap is 5% plus CPI.

City Manager Goldman explained that during the Public Comment period at the November 4, 2019 Council meeting, the City heard from renters who asked the Council to adopt an urgency ordinance to prohibit evictions without just cause. She noted that members of the public stated that some residents received no-fault eviction notices as a result of AB 1482.

City Manager Goldman explained that staff has not heard from the public concerning AB 1482's rent cap. She speculated that this is because Measure T prohibited the City from imposing local rent controls.

City Manager Goldman stated that Council received a letter from Legal Aid Society attorney Shirley Gibson that discussed AB 1482 and eviction data from the past couple of years in Burlingame. This letter was included in the Council's staff report.

City Manager Goldman stated that Daly City, San Mateo, and Redwood City adopted urgency ordinances that impose just cause eviction requirements. She explained that the adopted urgency ordinances seek to protect tenants whose landlords issued notices of evictions that are effective on or before the legislation went into effect. She noted that the City of Pacifica discussed the matter and opted not to adopt an urgency ordinance.

City Manager Goldman reviewed existing law. She stated that rental property owners who wish to evict their tenants are required to give notice at least 60 days prior to the proposed date of termination, or 30 days prior to the proposed date of termination in cases in which the tenant has resided in the dwelling for less than one year.

City Manager Goldman stated that under AB 1482, rental property owners are prohibited from terminating a tenancy without just cause when the tenant has continuously and lawfully occupied the property for 12 months or more. She noted that AB 1482 doesn't provide protections for the tenants who have occupied a unit for less than a year.

City Manager Goldman stated that AB 1482 states a variety of reasons that would be considered just cause including: non-payment of rent, violation of a lease term, and nuisance. She noted that just cause would not be needed for tenants that have been in their units for less than 12 months.

City Manager Goldman stated that the City has heard that some landlords are issuing 60-day no-fault eviction notices. She explained that the belief is that those landlords are trying to re-rent their properties on or after January 1, 2020 for a higher rent than they previously received. She stated that rental increases for tenants who have continuously lived in their units for more than a year on January 1, 2020, will be based on their March 15, 2019 rent. Therefore, landlords would have had to issue 60-day notices by October 31, 2019 to set a new rental price on January 1, 2020.

City Manager Goldman stated that when this item came up under Future Agenda items at the November 4, 2019 meeting, there was discussion about Governor Newsom's Statewide Emergency Declaration due to the wildfires. She explained that Councilmember Brownrigg asked staff to research the Governor's Declaration and what its effect is on AB 1482.

City Manager Goldman stated that the Governor's Declaration immediately implemented a 10% rent cap statewide for a period of 30 days. She explained that the Declaration relates to Penal Code 396. Penal Code 396 states that when there is a proclamation of emergency by the Governor or President, it is unlawful for a person, contractor, business, etc. during that 30-day period to sell or offer to sell any goods, services, or housing for a price more than 10% greater than what was charged immediately prior to the state of emergency. She stated that Penal Code 396 is known as the price gouging statute.

City Manager Goldman stated that the State Attorney General has a fact sheet on Penal Code 396. The fact sheet states that the statute makes it a separate misdemeanor for a landlord to evict a tenant and then re-rent the unit at a rate that the landlord would have been prohibited from charging the evicted tenant under the price gouging statute. She noted that during the 30-day period, evictions followed by large increases in rent are prohibited.

City Manager Goldman stated that Councilmember Keighran asked staff to include information about Measure R in the staff report. In 2016, Burlingame voters placed an initiative on the ballot (Measure R) regarding imposing rent control and just cause eviction. She stated that the ballot measure was defeated.

Mayor Colson thanked the City Manager for her staff report and thanked the Council for meeting in order to hold a comprehensive discussion.

Mayor Colson opened the study session up for public comment.

Burlingame resident Cindy Cornell stated that the City knows of more than one renter that has received a no-fault eviction notice and that not all renters have reported their eviction notices. She stated that the problems of wrongful evictions won't go away after January 1, 2020 and asked the City to hire a housing officer. She asked that the City pass a retroactive emergency moratorium on no-fault evictions.

Burlingame resident Eileen discussed that she has lived in her apartment for 24 years and recently received a no-fault eviction notice.

Burlingame resident Laura Hinz stated that she is a lifetime resident of Burlingame and asked Council to pass a retroactive emergency moratorium.

Burlingame resident Tim Auran discussed the history of Measure T and stated that Measure T restricts the Council from making any laws that restrict how owners manage their properties. He asked that the Council not enact an emergency moratorium on no-fault evictions.

Burlingame resident Ross Bruce discussed how the City voted down rent control in 2016. He stated that it is not clear what the unintended consequences of AB 1482 will be and asked the City to not further confound the issue with its own legislation. He noted that this could open the City up to legal action.

California Apartment Association Vice President of Public Affairs Rhovy Antonio reviewed AB 1482. She stated that if the Council is concerned about exorbitant rent increases, the Governor's Declaration prevents an increase of more than 10%, and AB 1482 bases rent increases on what the individual's rent was on March 15, 2019. She stated that Penal Code 396 includes eviction protection for tenants during the state of emergency. She noted that the focus should be on educating the public about AB 1482.

Councilmember Brownrigg asked if he was correct that the March 15, 2019 rental price only applies to tenants that continuously lived in their unit for a year or more on January 1, 2020. Ms. Antonio replied in the affirmative.

Burlingame resident Patrick Myers stated that he is a local teacher, and the rent increases would force him to leave. He explained that he would like to see the Council make renters feel supported.

Burlingame resident Paul Beaudreau stated that the emergency measure would set a dangerous precedent and that the tenant rights groups want San Francisco style rent control. He explained that this type of measure will eat away at property rights.

SAMCAR Government Affairs Director Gina Zari stated that the emergency measure wouldn't have an impact on any Burlingame tenants. She discussed the mom and pop property owners in Burlingame that have no choice but to raise rent under AB 1482. She stated that AB 1482 hurts communities and renters and asked the Council not to make it worse by imposing an emergency measure.

Burlingame resident Mike Dunham stated that a lot of the comments discussing the merits of AB 1482 should have been made in Sacramento. He explained that what the Council is being asked to consider is a modest policy concerning how to keep the handful of individuals that have received no-fault eviction notices in their homes. He urged the City to adopt a retroactive moratorium.

Linda Wolin from Supervisor Dave Pine's office stated that the Board of Supervisors will be having a special meeting regarding a possible emergency ordinance on AB 1482. This ordinance would affect landlords and tenants in the unincorporated areas of San Mateo County.

A San Mateo resident who owns a few apartment buildings in Burlingame discussed her family's history of working with the tenants. She asked the Council to not pursue emergency measures which would hurt property owners.

Mayor Colson closed public comment.

Councilmember Ortiz stated that Council's discussion was to focus on a stopgap to cover the period of time from when AB 1482 was signed into law until October 31 (the last day to deliver a 60-day no-fault eviction notice). He noted that the Council is not talking about rent control as rent control was imposed by the State. He explained that the Council stood united against rent control when it was on the ballot in 2016. He added that the discussion was also not about just cause eviction.

Councilmember Ortiz asked if eviction notices delivered after October 31, 2019 are covered under AB 1482. City Manager Goldman replied in the affirmative for tenants that have been in their unit for more than a year. She noted that tenants that have lived in their unit for less than a year do not derive protections from AB 1482.

Councilmember Ortiz stated for transparency purposes that his daughter works for a local property management firm. He noted that he consulted with the City Attorney to ensure that he wouldn't need to recuse himself from the discussion.

Councilmember Keighran asked how many rental units exist in the city. CDD Gardiner stated approximately 6,177.

Councilmember Keighran asked if the City enacted a retroactive ordinance, would it open the City up to liability. City Attorney Kane stated that it is hard to predict how people would react. She explained that it would most likely depend on how far back the ordinance reaches. She explained that trying to unwind an eviction that has already taken place, where the tenant is already out of the unit, is difficult.

Councilmember Keighran asked what would happen if a landlord evicts someone, they move out, and a new tenant moves in, and then the City passes a retroactive ordinance. City Attorney Kane stated if the affected tenant is already out of their unit, it becomes difficult to unwind. She noted that the new tenant would also have rights.

City Attorney Kane stated that no-fault eviction moratoriums are being written as a defense to an unlawful detainer eviction proceeding. She explained that the moratorium allows the tenant to utilize the ordinance as their defense to their eviction.

Vice Mayor Beach stated that she is trying to understand the breadth of the issue. She explained that it sounds like there is a narrow window of people that could be affected going forward. She stated that this narrow window would be for people that have lived in their units for less than a year and therefore can receive a 30-day no-fault eviction notice.

City Attorney Kane stated hypothetically if someone is an 11-month tenant, they could get a 30-day notice and be a 12-month tenant by January. She noted that the City has no way of knowing how many people that would describe.

Mayor Colson stated that under AB 1482, tenants that have been in their unit for less than a year are not covered by the just cause eviction provisions.

Councilmember Brownrigg stated that in February of next year, a tenant who has only been in their place for eight months could be given a no-fault eviction notice.

Vice Mayor Beach asked if the City knows of any other people since the Council's last meeting that have received a no-fault eviction. City Manager Goldman replied that the City received some calls. She noted that she believed these individuals had been in their units for more than a year.

City Manager Goldman asked the City Clerk how many calls she received. City Clerk Hassel-Shearer replied that she had received three calls.

Mayor Colson stated that two of those calls didn't leave contact information for the Council to follow up. She added that she followed up with the other call and was able to negotiate a deal for them.

Vice Mayor Beach stated that potentially there are two tenants other than the ones that came to the November 4, 2019 meeting that have not been assisted.

Mayor Colson stated that there may be more tenants affected, but the data seems to be consistent with the information provided in Legal Aid's letter. She noted that the Legal Aid data stated that on average the City had .8 no-fault evictions per month over the past two years.

Vice Mayor Beach stated that it is not a widespread problem in Burlingame.

Councilmember Brownrigg stated that 99.5% of the City's landlords are great people. However, there are cases where rents have been raised significantly, and he didn't want to diminish the reality that some of the renters face.

Councilmember Brownrigg stated that no matter what the Council decides, they will make half of the community angry and half of the community relieved. He explained that this is the worst type of decision because it affects very few renters, but on the other hand it affects very few dollars for the landlords. He stated that the group of people that the Council is focused on are those that were given no-fault eviction notices from October 8 through October 31. He explained that the liability that the City would face if they pass a retroactive no-fault eviction moratorium would be for damages to the very few landlords in that three-week window that delivered no-fault eviction notices.

Councilmember Brownrigg stated that the only reason to enact a prospective ordinance is symbolic, and it would make no difference.

Councilmember Brownrigg stated that he was reading an article in the LA Times where the Senior Vice President of the California Apartment Association was quoted as saying: "it would be unconscionable for a landlord to evict somebody in a hurry in order to beat the 60-day window of 1482." He explained that this is how he feels.

Councilmember Brownrigg asked on what basis a Council can pass an emergency ordinance. He asked if there was a threshold of harm that had to be shown. City Attorney Kane replied that the urgency ordinance provisions under the State code allow for cities to act quickly when there is a threat to the general welfare. She explained that how a city substantiates the need for an urgency ordinance is the subject of ongoing debate, and there is no final answer in case law. She discussed the situation where there is a legal gap that needs to be filled. She stated that the Council acted as a result of a legal gap in adopting an urgency ordinance concerning marijuana. She explained that cities can't adopt urgency ordinances without showing in the ordinance itself that there is an urgent situation that the city is responding to.

Councilmember Brownrigg asked that the City create a housing officer position.

Mayor Colson stated that this has been discussed. She explained that the City wants to make the Economic Development Specialist position a full-time position and have a quarter of their time be spent as a housing officer. City Manager Goldman stated that this would be brought back to Council for discussion.

Mayor Colson noted that she would not be asking any questions as she spent the past two days asking questions and reading through the material.

Councilmember Keighran clarified that according to Legal Aid, the average is .8 evictions per month out of 6,177 units.

Councilmember Keighran stated that in 2016, the citizens put a measure on the ballot asking for rent control and just cause eviction in Burlingame. She stated that Ms. Cornell followed the procedures to get the measure on the ballot. She noted that 67.6% of the individuals, who voted, voted against the measure. She stated that she doesn't want to overturn the community's decision. She explained that this was a dangerous precedent. She stated that the democratic process was followed, and the City needs to respect that process. She noted that it might be a couple of people that are affected, but the Council has to look at the community's overall decision. She stated that the Council shouldn't enact an ordinance based on a few individuals when this wasn't the norm.

Councilmember Keighran stated that if there is a landlord that isn't following the law, this is a problem and should be brought to the Council's attention.

Councilmember Ortiz stated that he wanted to reiterate that this isn't about rent control. He explained that the State passed rent control and just cause eviction that go into effect on January 1, 2020. However, while rent control is retroactive to March 15, 2019, just cause eviction isn't. He stated that this resulted in a loophole where landlords are able to evict individuals with no-fault evictions between October 8 and October 31 in order to increase their base rent. He stated that the Legal Aid letter, which states eviction data from the past two years, is moot because this is an extraordinary circumstance.

Councilmember Ortiz stated that the question before Council is not if they believe in rent control or just cause eviction. It is if the Council wants to step up and protect the few families that were evicted during the loophole period.

Councilmember Keighran clarified that her point was that Measure R included both rent control and just cause eviction, and that both were voted down.

Vice Mayor Beach stated that the State law has structural problems that failed to protect people it's trying to protect. She noted that she echoed Councilmember Ortiz's comments that this is not a discussion about whether rent control and just cause eviction are good long-term policies for the City. She stated that the community has already made that decision by voting down Measure R.

Vice Mayor Beach stated that there are only a handful of people that have been affected by no-fault evictions since October 8. However, she explained that Council's decision would make a huge difference to both the property owners and the tenants.

Vice Mayor Beach stated that the Council is elected to make a reasonable decision. She explained that three to five people have received no-fault eviction notices and have been told to vacate their units by the holidays

when mental health issues are at a peak. She stated that 99% of Burlingame landlords have not undertaken no-fault evictions since October 8. She noted that from a compassionate human being point of view, this is a hard decision to make, but she would be willing to explore a moratorium.

Mayor Colson stated that the reasons for evictions under AB 1482 are big enough to drive a mack truck through. She discussed the various reasons including owner or family member intends to occupy the unit and intent to demolition or substantially remodel. She stated that AB 1482 has been viewed, talked about, and negotiated between the realtors, the tenant rights groups, Legal Aid, and the Legislature. She stated that Assembly Member Kevin Mullin, State Senator Jerry Hill, and Governor Newsom supported AB 1482. She noted that they all had ample time and resources to review the bill. Therefore, she explained that to say the October 8 through October 31 window is a loophole is not credible. She stated that they had to have known what they were doing by leaving this window open.

Mayor Colson stated that the Governor could put an emergency ordinance in place tomorrow if he wanted to prevent no-fault evictions. She stated that this window affects the 400 plus cities in California. She noted that she was loath to overrule what the State Legislature negotiated and agreed to. She explained that she resented that this window was left as an issue for the 400 plus cities to handle.

Councilmember Brownrigg thanked the Mayor for working behind the scenes to assist in the cases that came to her attention.

Councilmember Brownrigg stated that the City should enact a retroactive no-fault eviction moratorium to cover the period beginning October 8. He stated that it is a limited group of people, and it is the right thing to do. He noted that it would be “unconscionable” not to assist these families.

Councilmember Ortiz stated that he agreed with Councilmember Brownrigg that it should be on the agenda.

Vice Mayor Beach concurred.

Mayor Colson stated that a retroactive no-fault eviction moratorium would be put on the agenda for November 18, 2019.

#### **4. ADJOURNMENT**

Mayor Colson adjourned meeting at 7:11 p.m.

Respectfully submitted,

Meaghan Hassel-Shearer  
City Clerk