



Supervisor Myrna Melgar
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, California 94102
VIA EMAIL AND US MAIL
myrna.melgar@sfgov.org

January 10, 2023

Re: Tenant Enforcement of Habitability Requirements (File No. 231224)

Dear Supervisor Melgar,

On behalf of our members, who collectively own or manage approximately 90,000 rental units citywide, we write to you to express the San Francisco Apartment Association's (SFAA's) opposition to your proposed "Tenant Enforcement of Habitability Requirements" legislation (File Number 231224) as it is currently written.

The proposed legislation enables tenants to file a civil lawsuit against a building owner for potential habitability issues without ever seeking remedy through San Francisco's code enforcement process administered by the Department of Building Inspection and as required by state law.

While SFAA understands the intent behind empowering tenants to pursue legal action in cases involving truly negligent property owners with tenants living in substandard housing, our members are extremely concerned with the broad implications of the proposal as it is currently written.

On a fundamental level, San Francisco's existing code enforcement system as required by the state and enforced by the Department of Building Inspection (DBI) provides due process and offers administrative remedies for rental property owners.

Currently, when a tenant submits a complaint about a violation of the Housing Code, the complaint is verified by a neutral third party that has jurisdiction under state law (a DBI Housing Inspector,) who then initiates the city's enforcement process against the owner through a Notice of Violation (NOV). Following an NOV, DBI offers the property owner a reasonable time to cure the violation, and following reasonable time to cure, the Director of DBI conducts a director's hearing in a public forum. At the director's hearing, DBI's Director issues either: a) An Order of Abatement; b) An advisement period to allow further time for correction of the violation; c) Referral back to staff for further investigation; or d) Abatement of the NOV. Afterwards, the affected property owner retains the right to appeal any Order of Abatement to the City's Abatement Appeal Board.

By substituting civil lawsuits for these code enforcement proceedings, the ordinance as currently written deprives property owners of their existing administrative remedies under state law and the Housing Code, in addition to divesting San Francisco's jurisdiction to enforce its housing laws.



Moreover, authorizing, incentivizing, and encouraging lawsuits for housing code violations upends well-settled procedures for abating these violations and creates potential conflicts between the judgment of the Superior Court and the authority/discretion of Department of Building Inspection and the Abatement Appeals Board. The expertise and independence of building inspectors and the Abatement Appeals Board can be eliminated in favor of deputizing tenants who lack expertise in technical building and housing code enforcement in order to litigate these issues in Superior Court.

Additionally, SFAA has grave concerns that by incentivizing lawsuits, this legislation will further strain the already fragile insurance and lending markets in San Francisco.

Lastly, existing laws currently provide remedies to tenants residing in substandard housing. Tenants can currently pursue civil litigation after an owner has failed to comply with a city's notice of violation process. Additionally, tenants in San Francisco can pursue petitions at the Rent Board seeking financial compensation for an owner's failure to maintain habitability standards as required by the housing code.

SFAA does not object to civil litigation if a tenant has sought to remedy habitability issues unsuccessfully through San Francisco's Housing Code processes. However, we must oppose legislation that incentivizes litigation while circumventing statutory code enforcement procedures.

As we understand, you have expressed frustration with the length of time San Francisco's abatement process currently takes. If this is the case, SFAA urges you to instead focus this legislation towards expediting timelines under the existing code enforcement and abatement processes.

Otherwise, we respectfully ask that you amend the legislation to:

- Clarify that the legislation shall not apply to a habitability issue caused by a tenant's actions or negligence.
- Enable a tenant to notify the City Attorney's office of their intent to file a civil action only after the Department of Building Inspection has referred the habitability violation for a director's hearing.

We appreciate your meeting with us in December to hear about some of our concerns, and we look forward to continuing this discussion with your office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Janan New', is written over a light blue horizontal line.

Janan New

Director