NOTE: Comments provided on previous draft of ordinance

City of Austin's Proposed Tenant Relocation Assistance Ordinance
Outline of Issues and Suggested Changes
Presented to the Planning Commission

June 14, 2016

By: Heather K. Way, [redacted]

1. Key Recommendations

There are two over-arching policy issues regarding the scope of the Tenant Relocation Assistance Ordinance:

a. Notice to Tenants: Under the draft ordinance, notice is required only for tenants living in a multifamily property applying for demolition (in addition to separate requirements for mobile home tenants). The draft ordinance should be expanded to extend to all permits that will result in dislocation of tenants, including permits to facilitate a substantial rehabilitation. Property owners should be required to indicate in the city's permit application whether there are tenants residing in the property and whether the tenants will be dislocated as a result of the development arising out of the permit.

b. Relocation Assistance: Under the draft ordinance, only property owners obtaining PUD zoning are required to pay a relocation assistance fee to tenants displaced by the redevelopment. The city (and thus taxpayers) will be paying to assist tenants displaced by other types of redevelopment. The draft ordinance should be extended to all redevelopment, not just PUD properties. At a minimum, the relocation assistance fee requirements should apply to all developments seeking a rezoning or an increase in entitlements.

2. Page 3, Part 3: (6) "Multi-Family Redevelopment" Definition.

a. The definition of "multi-family redevelopment" is limited only to redevelopments that require a discretionary land use approval. The term is used throughout the ordinance, even when the intention is to include redevelopments that do not require a discretionary land use approval, such as in § 25-1-711 (D)(1).
b. "Redevelopment" is not defined in the ordinance even though that term is referenced in the ordinance. It is unclear what types of redevelopment, if any, would trigger the notification or relocation assistance requirements in the ordinance.

Recommendation:

a. Redefine "multi-family redevelopment" to include all development resulting in the displacement of tenants
b. Remove the separate defined term "redevelopment."

3. Page 3, Part 3: (7) "Tenant" Definition.

a. The definition of "tenant" is limited to those who reside in a "dwelling unit." The definition of "dwelling unit" in Title 25 specifically excludes mobile homes. As written, the definition of tenant refers to Chapter 92 of the Texas Property Code, which governs residential tenancies, but does not include Chapter 94 which governs manufactured homes. Although the intention of the Tenant Relocation Assistance Ordinance was to include mobile home tenants, this oversight in the definition of tenant effectively excludes all mobile home residents from the ordinance.

Recommendation:

a. Modify the definition of tenant to the following: "any person occupying a residential unit or mobile home space primarily for living or dwelling purposes under a rental agreement or lease, including those persons who are considered to be tenants under Sections 92.011 and 94.001 of TPC. Tenant does not include owner of a residential unit or owner of a mobile home space or members of the owner's immediate family."

4. Page 3, Part 3: (8) "Tenant Displacement" Definition.

a. The definition of tenant displacement is too narrow. As drafted, "tenant displacement" is limited to instances in which a tenant is required to vacate a multifamily building or mobile home park due to "multi-family redevelopment." In the definition section, "multi-family development" is then limited to instances in which a "zoning, rezone, or other discretionary land use approval is required."

Recommendation:

a. Eliminate the term "tenant displacement" in the definition section or broaden the definition of "tenant displacement" to include any tenant who is required to vacate a multifamily building or mobile home park due to a demolition, change of use, or substantial rehabilitation of a multi-family building or mobile home park.

5. Pages 3 and 5, § 25-1-711 (A) and (D): Tenant Notification Scope.

a. The requirements for when tenants must be notified of a tenant displacement are too narrow. As drafted, the requirements for multi-family developments apply only to applications for demolition permits and do not cover major remodels, which are also a cause of tenant displacement in Austin.
b. In Section 25-7-711(C)(1), the draft ordinance limits the notice requirements to "tenants of the proposed multi-family development." This placement of this clause renders the scope ambiguous. Is notice only required to the tenants moving into the new development versus the old one? Surely this is not the intent of this language.
c. There are a host of other interested parties that should also be notified of the tenant displacement, including the public school district covering the development.

d. In Section 25-7-711(D)(2)(c), the reference to the 120-day notice for tenants in multifamily family developments needs to also include a reference to the 270-day notice for tenants in mobile home parks.

e. As drafted, tenants who move into a property after the 120-day or 270-day notice has already been given are not entitled to notice of the impending demolition application.

Recommendation:

a. Broaden the tenant notification requirements to include substantial rehab of a building in a development and any other permit that will lead to a development displacing tenants from a building. Consider also reworking the language in the ordinance to create a new definition called "displacement action," and then tie the notification requirements to displacement action instead of the application approval.

b. Remove the clause "of the proposed multi-family redevelopment" in Section 25-1-711 (D)(1).

c. Require that notice be sent to the following: the public school district serving the development, the Neighborhood Housing and Community Development Department, and the City Council office in the district of the redevelopment. The property owner should also be required to send the city notice of the names and contact information of all the tenants, along with the amount of rent paid. This information will be essential for the city's delivery of rental assistance. Clarify that City has authority to adopt additional regulations governing the nature of the notice to tenants and to governmental entities.

d. Include in (D)(2)(C) the 270-day requirement for mobile homes.

e. Require that notice be given to any person applying to move into the property, when the application was submitted after the date that notice was given to tenants under Section 25-1-711. Require that a landlord cannot accept an application fee or enter into a lease with a prospective tenant unless the prospective tenant received personal notice of the multi-family redevelopment. The notice should be provided on a form promulgated or approved by the Neighborhood Housing and Community Development Department. The form needs to be in large and bold font, and should be signed by the prospective tenant to ensure that the tenant was actually put on notice.

6. Page 4, § 25-711 (C): Tenant Notification Timing.

a. As drafted, the tenant notification must be provided at least 120 days before the submission of the demolition application. There is no ceiling on the tenant notification requirements, which could lead to notification being provided too far in advance of the tenant displacement.
b. As drafted, the ordinance provides instructions for when an applicant will receive application approval if notice is given: (1) 120 or 270 days before an application is

submitted and (2) notification is provided after an application is submitted, but the proposed ordinance does not provide for what happens when an applicant gives notice *less than* 120 or 270 days before an application is submitted.

Recommendation:

a. Require additional notification to be provided to tenants in the event of a demolition application or building permit renewal, and also require additional notification if at least 150 days (and 300 days for mobile home tenants) have lapsed since the initial notice and tenants are still residing in the complex. Allow for the follow-up notification to be provided by regular mail, in order to reduce the financial impact to developer.

b. Extend Section 25-711(C)(2) to the scenario when an applicant provides notice of less than 120 or 270 days before an application is submitted.

7. Pages 5-6, § 25-1-712: Additional Notification Requirements.

a. The proposed ordinance requires a posting of a sign at the premises regarding the demolition or redevelopment application, presumably to protect prospective and new tenants at the complex who move in after the required individual tenant notices go out. However, new tenants moving into the complex could easily overlook the sign or not understand its significance.
b. The wording “Describe the application for which notification is required” in Section 25-1-712(B)(1) is confusing.

Recommendation:

a. To better protect prospective and new tenants who move into the property after the required 120-day or 270-day notices have gone out, the landlord of the property should be required to give individual notice to those persons when they apply to live at the complex, in addition to the posting of a sign at the complex. The tenants should also be notified in person, as discussed above under item #3.e. The sign should also include a number at the City of Austin that tenants can contact with questions about the demolition or redevelopment application and the relocation assistance process.
b. Strike the language “Describe the application for which notification is required” in Section 25-1-712(B)(1).

8. Pages 6-7, § 25-1-713: Tenant Relocation Program Scope and Eligibility for Relocation Fee.

a. The scope of the tenant relocation program (whereby tenants receive relocation assistance) is too limited. The only type of multifamily redevelopment that is required to pay assistance to displaced tenants is a development obtaining PUD zoning. In Austin, out of all the multifamily redevelopments that have occurred in the past 7+ years, only one has involved PUD zoning.

b. Section 25-1-713(C)(3) limits relocation assistance to the City first completing its nexus study to determine "eligible expenses," and thus limits the City's ability to use city funding to pay for any interim tenant dislocations that occur before the nexus study is completed. And, legally, a nexus study is not required for the City to pay relocation assistance using city funding.
c. Section 25-1-713(C)(2)(b) includes language defining "tenants" that conflicts with the definition of "Tenant" in the definitions Section in Part 3.

Recommendation:

a. All demolitions and substantial rehabilitations resulting in the displacement of a tenant should be required to pay a tenant relocation fee. At a minimum, all developments obtaining an increase in entitlements should be required to pay tenant relocation assistance if a subsequent demolition or substantial rehabilitation results in the displacement of tenants.
b. Allow the City to pay relocation assistance using city funding before the nexus study is completed. Need to split out the provisions in this section of the ordinance into one subsection governing city assistance, and another subsection governing tenant-relocation fees.
c. Modify the language in Section 25-1-713(C)(2)(b) to eliminate the language that conflicts with the definition of "tenant" in Part 3 by striking the language "under the terms of a lease, which may be month-to-month or for a longer duration." The definition of "Tenant" already covers this.

9. Page 8, § 25-1-714. City Tenant Relocation Fund. Subsection (B) allows the City to provide tenant relocation assistance to tenants displaced due to emergency orders to vacant, along with tenants temporarily displaced due to repairs and renovations of multifamily buildings. These are costs, especially for emergency orders arising from code violations, that should be provided by the property owner and are in some instances already required by City ordinance. When and how these requirements apply needs to be clarified, and the other city ordinance provisions need to be aligned with the provisions here. It is important to outline more clearly what expenses tenants are entitled to when displaced temporarily or due to emergency orders, in instances where tenants are entitled to occupy their unit under a lease.

Recommendation:

a. Remove emergency and temporary displacement from Section 25-1-714.
b. Create Section 25-1-715 Emergency and Temporary Displacement, which would apply to tenants: (1) displaced due to emergency orders to vacate based on health and safety concerns; or (2) temporarily displaced due to repair or rehab of their multi-family unit. Tenants should be entitled to the following from the property owner: interim lodging, meal costs, travel costs, and any other reasonable costs caused by the displacement. The City may opt to provide assistance to tenants displaced under this Section, and the City should have the authority to recoup the costs of the assistance from the property owner.

c. Provide direction to city staff to engage in follow-up amendments to this ordinance, addressing in a more comprehensive and integrated manner the tenant relocation assistance requirements for temporary and emergency relocations

10. Page 8, Part 5, 2.3.2. PUDs. This provision requires a development obtaining PUD zoning that "would allow multi-family redevelopment that may result in tenant displacement" to pay a tenant relocation fee. This provision is too narrow in scope in that a PUD zoning without multi-family redevelopment could also result in demolition of an apartment complex, leading to tenant displacement.

Recommendation. Change the scope for when PUD zoning triggers the tenant relocation fees to include "multi-family, retail, commercial, and mixed-use development that may result in tenant displacement."

11. Additional Recommendations.

a. **Tenant enforcement.** Tenants should be given a clear right to enforce the ordinance and to obtain attorney's fees when their rights under the ordinance have been violated. This was a major lesson learned from the Shoreline development, where the developer was required to provide relocation assistance but ignored those requirements, resulting in the need for the tenants to retain legal counsel to attempt to enforce the requirements.

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June 23, 2016

RE: Title 25 Land Development Code Amendment C20-2015-018, Tenant Relocation Assistance Program

Dear Austin City Council Members, City Staff and Appointees:

I am writing on behalf of the Texas Manufactured Housing Association (TMHA). TMHA is a state based trade organization representing the interests of producers and sellers of manufactured and modular homes in Texas. We also represent manufactured home community owners and operators.

Below are various questions and comments regarding the City of Austin's consideration of C20-2015-018, to amend Title 25 of the Land Development Code to establish a tenant relocation assistance program.

First, and more broadly, are city staff and members aware there is a specific state law for manufactured home communities in Texas? The appropriate state law is Chapter 94, Property Code. Several of the proposed items in the city ordinance amendment will create additional confusion and inconsistencies with provisions of state law. For example, the city's proposal would have a "mobile home park" be any site with three or more units, whereas under Chapter 94 a "manufactured home community" is a parcel of land with four or more units. There are several other possible inconstancies, and TMHA would recommend a thorough review of the proposed amendment compared to existing state law.

Under the proposed Tenant Notification provisions in 25-1-711, sections (A) and (C) state that tenants must be notified when five (5) or more units in a mobile home park, since "mobile home park" is included in the definition of "multi-family redevelopment," are demolished or partially demolished. Our question here is if replacement or removal of homes from a park is also covered by (A)(1)? It is common for tenants to move from a park and transport their home to a new location. It is also common for a park owner who also owns homes in his/her park to remove them and replace them with other units. We would ask for specific clarity that under such circumstances the act of replacement of five or more homes would not trigger a notification requirement. We would also ask for greater clarity on what

constitutes “partially demolished.” Many homes are refurbished, improved upon, or “fixed-up” by both the park owner, if they also own the home, and tenant home owners. These types of acts should not be considered “partially demolished.” We would suggest the standard for demolished homes be tied to the state statute defining what a “salvage” home is (see 1201.461, Occupations Code). We would also ask that a specific timeframe be placed on the five unit trigger. Currently written there is no timeline, conceptually meaning that over the course of many years if periodically and sporadically homes are demolished or partially demolished the replacement of which could eventually add up over a long enough timeline to five units, thereby triggering a notice that, in our opinion under such a scenario, would not make sense and is not the intent of the proposed amendment.

Regarding the notice timeline in subsection (C) of 25-1-711, we would like to ask why there is a discrepancy in the timeline for mobile home parks to provide notice with the required timeline in state statute. Chapter 94, Property Code, requires a notice of 180 days when a park “changes use” (see 94.204, Property Code). Additionally, state law requires park owners to provide the exact statutory language for a tenant notice during initial lease signing that includes the 180 day notice provision (see 94.051, Property Code). The legislature changed the previous timeline from 120 days increasing it to 180 days in 2007. The city’s proposed 270 day notice timeline creates confusion and inconsistency with state law and the clear and specific intent of the state legislature for a 180 when a park changes use.

In subsections (D)(2)(e) and (f) is the city planning to facilitate on its form this information or provide resources to find this specific information for an applicant? If not, how does the city propose an applicant obtain this information, and if the information provided by representatives of the school district or Austin Energy are incorrect, or out of date, is this grounds for voiding the notice provided, thus requiring a re-setting of the notice timeline and re-notification?

Additionally, (D)(2)(c) requires a statement in the notice that the application may be approved 120 days following receipt. There is no mention of 270 days or a distinction made between multi-family redevelopment and a mobile home park in this section. As written the reality would be that a tenant would receive a lease disclosure at initial lease signing that says they will be given 180 days’ notice, then if a park is redeveloped they will receive a notice 270 days prior to the redevelopment, but on the notice required by the city on the city’s own form the notice will say 120 days. Now a tenant has two notices and three different timelines.

Addressing the Tenant Relocation Program in 25-1-713, our biggest concern in this section is the uncertainly of fees that will be charged, how they will be calculated, in what form must they be paid, and on what timeline? We would ask that more thought and clarity be provided as to what these fees might be. We would also ask that the methodology of coming to a final amount of the fees maintain parity; meaning the fees associated with a multifamily redevelopment be the same per unit fees or total amount for a mobile home park redevelopment. Our research indicates there are an estimated 50 mobile home parks in Austin with nearly 7,500 total mobile home lots. The average size of a mobile home park in Austin is 147 lots, but some parks exceed 400 or more lots. Considering these types of multipliers the amount of the fees charged could have a significant impact. We are aware under one current scenario an offer of $5,000 per lot was rejected, with some calling for $10,000 per lot or complete home replacement with new manufactured homes. This concerning range of several hundreds of dollars per lot to possible tens of thousands per lot is a significant concern for TMHA. For example, if a 150 space park, approximately the average in Austin, is redeveloped a $1,000 relocation fee per lot is an additional $150,000 to the parks purchase price, but a $10,000 per lot fee is an additional $1.5million. And, of course, these numbers climb significantly when dealing with a possible closure of a larger community in the 400-600 total lots.

Pulling back to a macro level of public policy, TMHA would point out the reality that having an owner, or prospective new owner, pay any amount of fee will be an increase, not decrease, in housing costs. Affordable housing goals will be harmed by such policy for the simple economic reality that one of two things will happen if this proposal is adopted: 1) the current owner will increase rents to begin building a balance to offset the relocation fee for any future property sale; or 2) the new owner of the property will increase their price or rents of the new units they develop to compensate for the additional money they had to spend due to the relocation fees to initially acquire the property. We anticipate the latter is more likely, which will result in future housing unit owners or renters paying the subsidization of the former tenants that are relocated. It seems logical that subsequent buyers would be unhappy to learn that their specific housing unit was more expensive because they are paying a portion of a previous tenant's relocation expense, especially considering in a unit purchase scenario such as a condo where the new buyer is most likely paying this increased cost with a loan for 30 years with interest.

Finally, specifically related to language in the proposed ordinance, TMHA would like to point out an additional confusion and inconsistency within the draft. Under proposed amended 25-1-89(B)(2) the inserted language related to tolling of an application period states that the "applicant has provided a 90

or 270-day notification…as required by Section 25-1-711 (Tenant Notification Required)." However, 25-1-711(C)(1)(a) states the notice is 120 days, not 90 days.

As a matter of public policy, if the City of Austin wants to have a relocation fund for a certain type of displaced tenants then such a program should be funded wholly or to a large degree by the city itself. If the goal is to extend a charitable hand to those Austin citizens facing the personal hardship of economic realities in a growing city that has not been able to match supply of housing with the sharp increase in demand, then such a charitable subsidy should be spread among all city tax payers. To practically impose such a fee on only on a few disproportionally penalizes those future renters and buyers of newly developed housing where previous tenants who satisfied the relocation fund criteria were displaced. Such an inequitable burden will have the effect of discouraging rather than encouraging more development to increase or improve the quality of Austin's housing supply, which is the only means of a permanent solution to further affordable housing goals.

TMHA is also concerned the amendment does not address situations where tenants are not in good standing, nor does it similarly mandate that tenants must continue to pay their rent and expenses during the notification timeline. The amendment also does not address situations were leases, based on their terms in the contract, are set to expire during the notification timeline. TMHA would ask that these concerns be addressed to prevent any future litigation disputes when tenants are in default but use this new amendment to not make payments but remain in the housing unit.

Lastly, TMHA would like to ask for consideration that existing housing and zoning restrictions be more thoughtfully examined by city leaders. Specifically, one of the reasons it is so difficult for mobile home owners to move and relocate their homes to a suitable area within a reasonable proximity to their jobs or job opportunities are the zoning prohibitions of manufactured homes within the vast majority of the city's jurisdiction. Removing zoning prohibitions would allow more affordable homes, like manufactured homes, to be used to increase supply and provide un-subsidized affordable housing.

If the city is serious about helping those displaced and others in need of affordable housing, TMHA recommends that the city look to use city owned land and land trusts to reduce or eliminate the high cost of real property and allow potential Austin qualifying residents to purchase manufactured homes. Programs could be structured under this simple idea that would provide dramatically affordable housing choices while ensuring safe housing and preserving community identity. TMHA would be pleased to work with city officials and staff on any such programs.

We thank you for your time.

Sincerely,

DJ Pendelton

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NOTE: Comments provided on previous draft of ordinance

INTRODUCTION

The Austin Apartment Association (AAA) is very aware that Austin region ranks as one of the top housing markets in the nation. For better or worse, this rank comes with active land use changes and even though most land use changes are smooth transitions the decreasing housing choices available to some of those impacted by development has, understandably, heightened the community's attention on the issue of tenant displacement. The AAA firmly believes that when land use changes involve the closure of rental property the proceedings must always be in keeping with local and state law, and that all sides of the change process be mindful of the impacts that land use changes have on residents and the community at large.

We approve the efforts taken to address tenant displacement and support the creation of a city-operated program to address this issue. In this spirit, we do have concerns about the proposed code amendments drafted in response to City Council resolutions Nos. 2015112-027 and 20160421-035. The AAA concerns are focused on the application and ultimate implementation of the amendments and how they may cause regulatory uncertainty and hamper land use change activities. Is our hope that the comments, concerns and questions outlined below will help advance the creation of a fair and efficient regulatory process to address tenant displacement that the City Council resolutions sought to achieve.

AAA COMMENTS, CONCERNS AND QUESTIONS RELATING TO THE TENANT RELOCATION AND NOTIFICATION DRAFT CODE AMENDMENTS

1) In general the ordinance will place a heavy burden on staff. From verifying notification requirements and signage to verifying tenant eligibility requirement and from distributing displacement funds to crafting the methodology for establishing when fees will be paid into the tenant relocation assistance fund, the post-implementation elements of this ordinance responsible by staff are many and it is unclear if those elements can be completed in short order given current work load and responsibilities.

2) The legislative findings of the ordinance states this ordinance is because the "The rapid pace of development and redevelopment in the City of Austin has substantially reduced, and continues to reduce, the available supply of rental housing affordable to low-and moderate-income tenants. Replacement of low income units has not occurred at a rate sufficient to mitigate the loss of affordable units due to demolition, redevelopment, and change in the use of existing multifamily buildings." When the pace of development changes or when rate of replacement of affordable housing units increases will the ordinance be altered to reflect the new conditions? Could the fees paid by applicants seeking a discretionary land use approval be eliminated under a future "slow growth" scenario?

3) How will the city confirm compliance with notifications and signage? Can any permit application begin without compliance confirmation?

4) The definition of "TENANT DISPLACEMENT" must clearly state that only a tenant in good standing and that is not in default and who is asked to vacate prior the expiration or termination of their lease agreement constitutes tenant displacement. The way it is written it seems possible for any tenant that receives the required 120-day notification can stop all lease payments and continue occupying the unit until they receive displacement funds. The definition should also make clear that only "permanent displacement" is covered by the ordinance and not temporary displacement situations involving major repairs to the unit or building structure.

5) The terms Demolition and Partial Demolition must be defined.

6) When referencing "five or more units" in 25-1-711 TENANT NOTIFICATION REQUIRED, language should be added to further explain that for multifamily properties this means five or more units *in the same building* and not five or more units scattered throughout the apartment community.

7) For the ordinance requirements to apply, as identified in 25-1-711, in all of the three cases listed, it is suggested that the language should be changed to state:

   (1) <u>The demolition</u> or partial demolition <u>that causes TENANT DISPLACEMENT</u>….
   (2) <u>The approval</u> of a site plan or changes of use permit for an existing mobile home park <u>that causes TENANT DISPLACEMENT….</u>
   (3) <u>The rezoning</u> of a property within the Mobile Home…….an existing mobile home park <u>that causes TENANT DISPLACEMENT.</u>

8) With regard to section (C) (1) on page 4 of 10, does the notification have to be given to all residents or just those affected? Who gives the notification - the owner or owner's agent?

9) Can a property owner apply for demolition permit or other discretionary permit application on the same day as the 120 day notification period begins?

10) With regard to the information regarding the availability of fee waivers from Austin Energy (AE), in section 25-1-711 (D) (f), is there "official" information about AE's fee waivers? At the stakeholder meetings it was reported that no formal fee waiver program exists and that AE offers waivers only on a case-by-case basis.

11) Under the § 25-1-713 (A) it states "…. be required if authorized by another provision of this title or upon agreement by an applicant for a discretionary land use approval required for a multi-family redevelopment that is likely to result in tenant displacement." Should the statements "likely to result in tenant displacement" be changed to "<u>*will result*</u> in tenant displacement"

12) Will any fees paid by applicants for discretionary permits be determined on a case-by-case basis or will they be determined up front using a yet to be established formula and remain set for a year?

13) To be eligible for Tenant Relocation Assistance under 25-1-713 (C) (2) (b) it should be made clear that only those tenant in good standing and not in default are eligible.

14) When administering funds under 25-1-714 (B) (3) does the city intend to make payments to residents when their unit is being renovated or, after their lease contract is ended, when the unit undergoes renovation?

15) Under Timing of Application Review for PUD development, as found on page 9 of 10, of the ordinance, can an example be provided to help explain the "….provide that the required notification period does not count towards the expiration period."

The Austin Apartment Association reserves the right to submit additional questions, comments and concerns

Respectfully submitted by:

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NOTE: Comments provided on previous draft of ordinance

Comments on DRAFT Tenant Relocation Ordinance
By
Bob Thompson (Member of SLNA & AAA)
June 28, 2016

- **An exemption should be created for smaller multifamily properties of fewer than 25 units per site. The costs of compliance with the Ordinance present an undue burden upon such smaller multifamily property, which tends to be older property, and tends to already provide affordable housing stock to the community.**

- **It should be clarified that the Ordinance does not trample upon an owner's basic property right to reclaim possession of his property at the end of a lease term, following the proper notices specified in the Lease, and that the provisions of the Ordinance do not apply to this situation. An owner should be free from requirements of this Ordinance to perform whatever renovations or demolitions he desires to vacant and unleased units.**

  –Among other changes, The definition of "tenant displacement" should be expanded to incorporate an exception for tenants who are asked to vacate at the end of their lease in order that owners can recover possession of their property.

- **The Draft Ordinance is far too ambiguous, with crucial terms undefined, and the implied application of the Ordinance to commonplace renovations is unnecessarily broad, harsh, and costly.**

  –For example, the definition of "demolition", "partial demolition" [#25-1-711(A)(1)] and "major repairs or renovations" [#25-1-714(B)(3)] should be provided in the Ordinance, and the actions for which a demolition permit, or a "building permit which authorizes demolition" is required should also be specified in the Ordinance, if not given in the definitions.

  --Clarification is needed of how the Ordinance would apply, if at all, to the situation in which a few units at a time may undergo major renovations, with additional renovations to other units begun as some renovations are completed. Partial demolitions may occur gradually, over a protracted period of time.

- **The notification requirement in #25-1-711 (D)(1) should be amended to only require delivery to "all <u>affected or displaced</u> tenants"–where "affected or displaced" should be inserted. Notification of tenants who will be undisplaced or unaffected is unnecessary and costly overkill.**

NOTE: Comments provided on previous draft of ordinance

TENANT RELOCATION

Stuart Harry Hersh [redacted]

If your goals are to minimize the likelihood that renters in multi-family housing and mobile-home parks will receive assistance when they face displacement due to property improvements and to provoke state legislation similar to what recently occurred with Austin's recent "source of income" ordinance, then approve the staff recommendation before you.

If your goals are to assist tenants being displaced by redevelopment of multi-family sites and mobile-home parks, please recommend to the City Council that the following code changes be adopted:

1. Redefine parks as "manufactured housing parks" since the International Residential Code and federal and state law defines "mobile home" as being built prior to 6/15/76 and all structures built since that date as "manufactured home". The manufacture homes are generally the housing that renters and/or land-lease tenants that need protection, not 40 year old mobile homes that require specific stickers.
2. Require at least 30 day notice to tenants who may be impacted to coincide with the length of time for rentals that are not "short-term" and may be oral contracts extending previous longer-term rental agreements.
3. Prepare an emergency rule notice form for owners who are required to comply with 30 day notice.
4. Require all leases negotiated or extended after 30 day notices are served to comply with the notice provisions.

These changes reduce the likelihood that needed multi-family housing or mobile-home parks will have 9 month vacancies as current or prospective property owners seek zoning changes, site plan approvals, demolition permits, and/or other permits on sites that have no historical buildings. Reducing the supply of available housing by requiring a 9 month tenant notice prior to filing for permits encourages applicants to maximize the number of housing units that are vacant. This is not sound public policy if the goal is to maximize rental housing opportunities in a market where demand is much greater than supply.

NOTE: Some comments based on previous draft of ordinance

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The Austin Apartment Association appreciates the recent decision by the Planning Commission to spend extra time perfecting the language of the proposed Tenant Displacement Ordinance to avoid regulatory uncertainty and unintended consequences when implemented.

Upon review of the document titled "Updates to Draft Ordinance dated June 14, 2016" that was distributed by city staff at the Planning Commission meeting held on June 28, the AAA finds that the minor changes staff offered do not address many of our concerns and questions. In fact, the staff proposal to expand the definition of what constitutes "multifamily development" would seem to trigger the notification requirements mandated by the ordinance for common apartment unit repairs and refurbishing.

In light of the minor changes proposed by staff the AAA comments, concerns and questions regarding the proposed ordinance previously submitted to via email on June 23 still stand, and the listing below contains a revised version of those same points with a few additions. Please again accept these in the effort to help create a workable Tenant Displacement Ordinance and, ultimately, an effective city-operated program to address situations involving the interruption of the a resident's lease contract because of discretionary land use changes approved by the city.

AAA COMMENTS, CONCERNS AND QUESTIONS RELATING TO THE TENANT RELOCATION AND NOTIFICATION DRAFT CODE AMENDMENTS

1) COMMENT:
In general the ordinance will place a heavy burden on staff. As written city staff must develop program guidelines, ensure proper notification signage has been posted, determine what fees (if any) will be will be paid into the tenant relocation assistance fund as well as other oversight obligations. Given current work load and responsibilities it is unclear if those elements can be completed in short order given current work load and responsibilities.

2) QUESTION:
When the pace of development changes or when rate of replacement of affordable housing units increases will the ordinance be altered to reflect the new conditions? Could the fees paid by applicants seeking a discretionary land use change be set at or near zero under a future housing market scenario in which residents have no difficulty finding new housing?

   The legislative findings of the ordinance state the ordinance is needed because "The rapid pace of development and redevelopment in the City of Austin has substantially reduced, and continues to reduce, the available supply of rental housing affordable to low-and moderate-income tenants. Replacement of low income units has not occurred at a rate sufficient to mitigate the loss of affordable units due to demolition, redevelopment, and change in the use of existing multifamily buildings.", but due to fluctuations in the housing market this may not always be the case.

3) CONCERN:
The "TENANT DISPLACEMENT" definition does not address tenants in default and extends to others whose lease term are not interrupted by the property's land use change. The AAA seeks a definition clearly stating that only tenants in good standing and not in default and who are asked to vacate a unit prior the expiration or termination of their lease agreement constitutes tenant displacement.

The way it is written it seems possible that any tenant who receives the required 120-day notification can stop all lease payments and continue occupying the unit until they receive a notice to vacate and any displacement funds due. Although addressed in another provision in the ordinance, the definition should also state that tenant displacement involves only "permanent displacement" and not temporary displacement situations involving major repairs to the unit or building structure.

4) CONCERN:
The ordinance applies to an application to "demolish or partially demolish a multi-family building" but the terms "demolish" "partially demolish" are not defined. The definition of these terms, as currently used by the city for demolition permit applications, should be included in the ordinance for clarity.

The definition should further clarify that it only applies to the demolition or partial demolition of five or more *occupied* units *in the same building* and will not apply when five or more units scattered throughout the apartment community are being updated and remodeled after being vacated.

5) CONCERN:
The application provision of the ordinance does not relate to the definition TENANT DISPLACMENT. For the ordinance requirements to apply, as identified in 25-1-711 (A) 1-3, it is suggested that the language should be changed to:

(A) Except as provided under Subsection (B), the requirements of this section apply to:

(1) The demolition or partial demolition of a multi-family building consisting of five or more residential units, in including a demolition permit or a building permit that authorized demolition, that causes TENANT DISPLACEMENT.
(2) The approval of a site plan or changes of use permit for an existing mobile home park that causes TENANT DISPLACEMENT.
(3) The rezoning of a property within the Mobile Home Residence (MH) District designation that contains and existing mobile home park that causes TENANT DISPLACEMENT.

6) CONCERN:
As written, a property owner cannot apply for demolition permit or other discretionary permit application until the 120 day notification period has expired.

In order to avoid unnecessary delays in the development process, the AAA believes that an applicant should be able to apply for a permit during the notification period but that the city hold the application until the notification requirements have been completed as certified by the applicant.

7) QUESTION:
With regard to the information regarding fee waivers from Austin Energy (AE) in section 25-1-711 (D) (f), is there official information available about AE's fee waivers?

At the stakeholder meetings held during the spring, it was reported that AE does not offer a formal fee waiver program, and that any waivers granted by them are only done so on a case-by-case basis.

8) QUESTION:
Should provision 25-1-713 (A), addressing when the program is required, be changed from "multifamily development that is likely to result in tenant displacement" to "multifamily development that ~~likely~~ *will result* in tenant displacement"?

Delineating that the ordinance applies only when displacement actually will occur eliminates regulatory uncertainty and helps direct city time and displacement funds to apposite land use changes.

9) QUESTION:
Under provision 25-1-713 (C) (1) pertaining to the creation of applicant fees for discretionary permits, will the methodology used to calculate the fees be applied to each and every permit applicant individually based on such variants as the projects location and number of displaced residents, or will the fees be determined once annually and applied equally to all projects that must comply with the ordinance?

There is much uncertainty surrounding the fee. AAA members seek some indication as to the possible fee amount as well as examples of how it will be applied (per unit? per displaced person? paid when?….) prior to enactment of the ordinance.

10) CONCERN:
In order to conserve city resources and the fees paid by permit applicants, eligibility for Tenant Relocation Assistance under 25-1-713 (C) (2) (b), should not be linked simply to residency but rather should be for tenants in good standing and not in default and who are asked to vacate a unit prior the expiration or termination of their lease agreement.

11) COMMENT:
The "Timing of Application Review" provision states that the city is prohibited from approving a permit application prior to the end of the 120-day notification period provided that the "required notification period does not count towards the expiration period". It is unclear what is meant by "expiration period" and the AAA seeks mock examples of the timeline as applied to a discretionary land use change permit application.

12) QUESTION:
If a zoning or rezoning application involving tenant displacement cannot be processed until after a 120 notification period has been completed, and a public hearing on said projects cannot be held until 230 days after the director of Planning posts a public hearing notice on the project(s), does that mean approval of projects involving tenant displacement can take up to 350 days?

It is unclear why additional days are being added to the public hearing notice for projects involving tenant displacement beyond the current 60 day requirement. It also so unclear how staff review and permitting processing times affects the timelines mandated by the ordinance.

13) COMMENT:
A provision should be inserted into the ordinance that allows the director of Planning to waive all notification requirements, fees and affected public hearing timelines upon approval of a tenant relocation plan submitted by the applicant that is in keeping with the spirit and intent of the ordinance and deemed acceptable by a simple majority of affected tenants.

The Austin Apartment Association reserves the right to submit additional questions, comments and concerns during the ordinance apporval

Respectfully submitted July 15, 2016 by:

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