

Creating A Local Right To Organize Tenants In Texas Cities

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This document sets out best practices for creating a local right to organize for tenants in Texas cities as well as organizations working to support tenants in the creation and operation of a tenants' association. Currently, tenants and nonprofit groups supporting tenants have very few organizing protections in Texas, particularly in apartment complexes that are not federally subsidized. Many tenants are afraid to participate in organizing activities, and tenant organizing activities are often blocked by landlords. On several occasions, police officers have even stepped in to block tenant organizers.

Across the country, states and cities have adopted laws to create strong tenant organizing protections in rental properties. By looking at the best practices from these other jurisdictions, we have developed a model ordinance for Texas cities that would better protect tenants and nonprofit groups working to establish and operate tenant organizations. Together, these protections would empower tenants to make their voices heard and advocate with their landlords for improvements to their housing.

I. The Importance of Tenant Organizing

Since the dawn of tenant rights activism in the United States in the late 1800s and early 1900s, tenant organizing has been vital to securing better housing conditions for this country's most vulnerable residents.

Tenant organizing is a form of community organizing that enables tenants to advocate collectively for themselves and creates a more even distribution of power between tenants and their landlords. Tenants typically mobilize initially in response to severe problems at their complexes, such as substandard living conditions, harassment and intimidation by landlords, and the threat of mass displacement. By taking collective action through a tenant association, tenants have a far greater capacity to address problems with their landlords. Over time, tenant associations often develop the capacity to also get involved in neighborhood and community-wide issues impacting tenants.

Trained organizers with nonprofit organizations are a critical component of successful tenant organizing and the formation and operation of tenant associations. Organizers assist with conducting outreach to tenants, identifying potential tenant leaders and common issues, educating tenants about their rights, and supporting tenants in developing their leadership and advocacy skills. The support of trained organizers is especially important in the early stages of forming a new tenant association, when tenants are usually too intimidated by the threat of landlord retaliation to canvass other tenants by themselves.

As an example of successful tenant organizing in Texas, in September 2016, when residents of 5020 Manor Road in East Austin received notices of lease termination stating that they must move out within 30 days, they got organized with the support of trained organizers. As a result of the residents' organizing activities, they were ultimately able to obtain more time to secure affordable replacement housing. And in the winter of 2020, residents of Oaks on Lamar

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were able to secure multiple space heaters when their HVAC system, which had failed repeatedly over the previous years, went out. In the spring of 2020, a new, working HVAC system was operationalized after over a year of tenant association advocacy supported by trained tenant organizers, just in time for an expected triple-degree summer.

II. Current State of the Law in Texas

Texas provides very few protections for organizing activities, making it much harder to successfully form and operate tenants' associations. The Texas Property Code bars landlords from retaliating against tenants within six months of the tenant establishing, attempting to establish, or participating in a tenant organization. Tex. Prop. Code, Sec. 92.331(a)(4). But after six months, a landlord can retaliate against a tenant for engaging in organizing activities, such as through not renewing the tenant's lease or raising the tenant's rent.

Even when retaliation occurs within the six-month ban period in violation of the Property Code, the retaliatory action often quashes any organizing efforts underway at the property because of its intimidating impact on tenants. Tenants also need access to lawyers to defend against the retaliation, which can be very hard to prove in court. Another issue with relying on the state's retaliation protections is that calling the police to the property is not a prohibited retaliatory activity under the Property Code.

Furthermore, trained organizers have no protections whatsoever to support tenants in Texas with organizing activities at private apartment complexes. Organizers face conviction for criminal trespassing when engaging in organizing activities at apartment complexes if they have received notice from the landlord that they are not allowed on the property.

In manufactured home parks, the Texas Property Code provides tenants with slightly stronger organizing protections than in other residential properties. Landlords are prohibited from interfering with tenant meetings related to manufactured home living, but landlords may place limitations on meetings by tenants in common area facilities. Tex. Property Code, Sec. 94.006(a). Tenant organizers also face arrest from manufactured home parks for supporting organizing activities.

In the absence of strong tenant organizing protections, landlords in Texas thus have several avenues to thwart organizing activities. Landlords have harassed and otherwise retaliated against tenants for participating in tenant organizations. And landlords have, on multiple occasions, kicked organizers off their properties and threatened to file criminal trespass complaints. Landlords have also called police out to their properties, who have then ordered tenant organizers (and multiple city council staffers) to leave the property permanently or else face arrest for criminal trespass.

III. Examples of State and City Laws Protecting Tenant Organizing

At least 24 states and D.C. have adopted retaliation protections for tenants who establish or participate in a tenant's organization that exceed Texas's retaliation protections. Unlike Texas, in these jurisdictions, landlords can never retaliate against tenants for participating in a tenant organization.² Additionally, several states, including California and New York, and several cities, including East Palo Alto and Seattle, as well as Washington, D.C., provide even more expansive protections for tenant organizing by providing tenants with an explicit right to organize, and, in several instances, protecting the activities of tenant organizers to assist tenants with outreach and forming and operating a tenant association. Exhibit A summarizes key features from some of these state and local laws. Outside of protecting tenants' right to organize, Minnesota has protected the rights of tenants to access political information by passing a law prohibiting landlords from denying political candidates' access to multiple-unit dwellings. M.S.A. § 211B.20.

² These jurisdictions include Alabama, Alaska, Arizona, California, Colorado, Connecticut, D.C., Delaware, Florida, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, and Virginia.

IV. Federal Protections

In several types of federally-subsidized properties—such as project-based Section 8 and Section 811 apartments—tenants and tenant organizers have substantial organizing protections. See 24 C.F.R. Sections 245.100-245.135. Tenants in these properties have an affirmative right to establish and operate tenant organizations, and owners must make community rooms and other appropriate spaces available for tenant organizations. Owners must also “recognize legitimate tenant organizations” and “give reasonable consideration to concerns raised by legitimate tenant organizations.” 24 CFR § 245.105.

Additionally, HUD has enumerated various protected activities for tenants and tenant organizers in their work to establish and operate a tenant organization at these covered properties. 24 CFR Sec. 245.115(a). These activities include distributing leaflets in common areas; placing leaflets at or under tenants’ doors; conducting door-to-door canvassing to ascertain tenants’ interest in establishing a tenant organization; and convening regularly scheduled tenant organization meetings in a space on site and accessible to tenants, in a manner that is fully independent of management representatives. Owners of these federally-subsidized properties must allow tenant organizers to assist tenants in establishing and operating tenant organizations, but if the development has a consistently enforced, written policy against canvassing, then a tenant organizer must be accompanied by a tenant while on the property.

V. A Model Tenant Organizing Ordinance for Texas Cities

Building off of the best practices from other tenant organizing laws, in Exhibit B we present a model city ordinance for Texas cities to protect tenant organizing. The model ordinance creates a uniform standard for organizing protections at multifamily rental properties across the city. The ordinance would be allowable under Texas cities’ broad home rule powers and authority to protect the health, safety, and welfare of the city’s citizens. There should be no grounds for preemption of such an ordinance.

In envisioning a model ordinance, it is useful to think about two populations who need protections: tenants and tenant organizers (that is, nonprofit staff and volunteers who are not tenants but work to support tenants in the creation and operation of tenants’ associations). Successful tenant organizing would not be possible without also protecting the work of this latter group—tenant organizers—who provide tenants with the critical outreach support, leadership training, and other support needed to launch and operate a new association. Tenant organizers are especially critical in the early stages of forming a tenant association, when tenants are usually too afraid to participate by themselves in any organizing activities on the property.

The model ordinance protects both tenants and tenant organizers by (1) providing tenants with the affirmative right to establish, attempt to establish, and participate in a tenant organization, and (2) providing tenant organizers with the right to enter onto private complexes to support protected tenant organizing activities. The ordinance delineates specifically protected organizing activities, such as initiating contact with residents and distributing leaflets in common areas. Federal regulations governing HUD-assisted properties and D.C.’s similar ordinance include these protections for tenant organizing. This ordinance also gives landlords the right to adopt written canvassing policies that require tenant organizers to be invited onto the premises by a tenant.

VI. Conclusion

Building off of best practices from other governmental entities, Texas cities have the tools available to create strong protections to support tenant organizing. In adopting such protections, cities can help empower tenants to tackle poor living conditions and speak out for a better quality of life.

Exhibit A: Key Features of Exemplary State and Local Laws Protecting Tenant Organizing

Washington, D.C.

In Washington, D.C., tenants and tenant organizers have rights that essentially mirror the HUD regulations for federally-subsidized properties. Tenants have an affirmative right to “1) self-organization; 2) form, join, meet or assist one another within and without tenant organizations; 3) meet and confer through representatives of their own choosing with an owner; 4) engage in other concerted activities for the purpose of mutual aid and protection; and to 5) refrain from such activity.”

D.C. has also enumerated various protected activities for tenants and tenant organizers in their work to establish and operate a tenant organization. These protected activities include:

- distributing literature in lobby areas;
- placing literature at or under tenants’ doors;
- posting information on all building bulletin boards;
- assisting tenants to participate in tenant organization activities;
- convening tenant or tenant organization meetings at any reasonable time and in any appropriate space that would reasonably be interpreted as areas that the tenant had access to under the terms of their lease;
- formulating responses to various owner’s requests, including rent increases, proposed changes in the housing accommodation’s facilities and services, etc.;
- proposing that the owner or management modify the housing accommodation’s facilities and services; and
- other reasonable activities related to establishment or operation of a tenant organization.

If a multifamily housing project has a consistently-enforced written policy against canvassing, then a tenant organizer who is not a tenant must be accompanied by a tenant while on the property of the multifamily housing project. If a multifamily housing project does not have such a policy or has a written policy favoring canvassing, then any tenant organizer must be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations.

Source: Code of the District of Columbia, Section 42-3505.06.

Seattle

The City of Seattle has enumerated various protected activities for tenants and tenant organizers in their work to establish or operate a tenant organization. Tenant organizers may engage in the activities as long as they are accompanied by a tenant. These activities include:

- distributing leaflets in a lobby and other common areas and at or under tenants’ doors;
- posting information on bulletin boards;
- initiating contact with tenants;
- assisting tenants to participate in tenant organization activities; and
- holding meetings in any community room or recreation room if these rooms are open for the use of the tenants (meetings may also take place in common areas, including a laundry room, hallway, or lobby).

Source: Seattle Municipal Code, Section 22.206.180.G.

East Palo Alto

East Palo Alto had adopted the following protections for tenant organizing activities:

- Tenants have an affirmative right to “form, join and participate in the activities of a tenant organization for the purpose of addressing issues related to their living environment.”
- Tenant organizers have the affirmative right “to contact and communicate with tenants on the rental premises,” including within a rental unit or in a tenant common area, to assist tenants in establishing, operating, and participating in a tenant’s organization.
- Both tenants and tenant organizers have the right to use common areas and community facilities for tenant meetings.
- Tenants may distribute literature to other tenants in common areas, as long as the literature relates to issues of common interest or concern to the tenants. Literature may be placed on the door of tenant units or slipped under the door. Literature must clearly include the name and contact information from the distributor, so tenants can opt out of future distributions if they desire.
- Tenants have the right to refuse to join or participate in the activities of tenant organizations.

Source: East Palo Alto Municipal Code, Section 14.02.050

Florida

In Florida, tenants of mobile home parks have the right to peaceably assemble in open public meetings in mobile home park common areas. These meetings may be for the purpose of discussing any problems relative to the mobile home park, and mobile home park owners may not restrict the use of any facility when requested for this purpose. Mobile home park tenants also have the right to canvas mobile home owners for the purpose of discussing problems related to a mobile home park. Canvassing includes “an oral or written request; the distribution, circulation, posting, or publication of a notice; or a general announcement requesting the payment of membership dues or other matters relevant to the membership of the park association.” Furthermore, mobile home park tenants have the right to invite representatives of a tenant organization to appear and speak upon matters of public interest in their meetings.

Source: Florida Statutes, Section 723.054.

California

California has adopted broad protections for tenant organizers. Specifically, a person who enters onto residential property for the purpose of providing information regarding tenants’ rights or to participate in an association that advocates for tenants’ rights is not liable in any criminal or civil action for trespass, as long as the person has been invited onto the property by an occupant during reasonable hours or because of emergency circumstances.

Source: California Civil Code, Section 1942.6.

Exhibit B: Model Ordinance Protecting Tenants and Tenant Organizers

1. Right of tenants to organize.

Tenants shall have the right at multi-family properties where they reside to:

- a. Self-organization;
- b. Form, join, meet, or assist one another within and without tenant organizations;
- c. Meet and confer through representatives of their own choosing with an owner;
- d. Engage in other concerted activities for the purpose of mutual aid and protection; and
- e. Refrain from such activity.

2. Entry on property for purpose of tenants' rights.

- a. "Tenant organizer" means a person who:
 - i. Works or volunteers for a nonprofit organization that assists tenants in establishing and operating a tenant organization; and
 - ii. Is not an employee or representative of the current or prospective owner, the current or prospective manager, or an agent of such persons.
- b. If a multi-family property has a consistently enforced, written policy against canvassing, then a tenant organizer who is not a tenant must be invited by a tenant to participate in protected tenant organizing activities. Upon the invitation of a tenant, a tenant organizer has the right to enter the multi-family property and communicate with tenants on the rental premises, including within a rental unit or in a tenant common area, to assist tenants in establishing and operating a tenant organization and to participate in protected tenant organizing activities.
- c. If a multi-family property has a written policy favoring canvassing, any tenant organizer who is not a tenant may participate in protected tenant organizing activities without an invitation from a tenant. A tenant organizer has the right to enter the multi-family property and communicate with tenants on the rental premises, including within a rental unit or in a tenant common area, to assist tenants in establishing and operating a tenant organization and to participate in protected tenant organizing activities.
- d. If the multi-family property does not have a written policy on canvassing or does not have a consistently enforced, written policy against canvassing, then the multi-family property shall be treated as if it has a policy favoring canvassing. In these multi-family properties, any tenant organizer who is not a tenant may participate in protected tenant organizing activities without an invitation from a tenant. A tenant organizer has the right to enter the multi-family property and communicate with tenants on the rental premises, including within a rental unit or in a tenant common area, to assist tenants in establishing and operating a tenant organization, and to participate in protected tenant organizing activities.

3. Protected tenant organizing activities.

No owner or agent of an owner of a multi-family property shall interfere with a tenant or tenant organizer conducting one or more of the following activities related to the establishment or operation of a tenant organization:

- a. Distributing literature in common areas, including lobby areas;
- b. Placing literature at or under tenants' doors;
- c. Initiating contact with tenants;
- d. Conducting door-to-door surveys of tenants to ascertain interest in establishing a tenant organization and to offer information about tenant organizations;
- e. Posting information on all building bulletin boards;

- f. Assisting tenants to participate in tenant organization activities;
- g. Convening tenant or tenant organization meetings at reasonable times and in an orderly manner in any appropriate space that is open for the use of the tenants and would reasonably be interpreted as areas that the tenant had access to under the terms of their lease, including any tenant's unit, a community room, a common area including lobbies, or other available space; provided, that an owner or agent of owner shall not attend or make audio recordings of such meetings unless permitted to do so by the tenant organization, if one exists, or by a majority of tenants in attendance, if a tenant organization does not exist;
- h. Formulating responses to owner actions, including:
 - i. Rent increases or requests for rent increases;
 - ii. Proposed increases, decreases, or other changes in the housing accommodation's facilities and services; and
 - iii. Conversion of residential units to nonresidential use or condominiums;
- i. Proposing that the owner or management modify the housing accommodation's facilities and services; and
- j. Any other activity reasonably related to the establishment or operation of a tenant organization.