Communication from Public

Name:	Jackie Zaneri
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Council File No:	14-0268-S18
Comments for Public Posting:	Attached is a letter from Los Angeles legal organizations in support of the amendments to the TAHO, and in response to the letter from the California Apartment Association dated August 5, 2024.

August 22, 2024

Housing and Homelessness Committee
John Ferraro Council Chamber
Room 340, City Hall
200 N. Spring Street
Los Angeles, CA 90012

Re: <u>Los Angeles Tenant Anti-Harassment Ordinance Amendments - Council File No. 14-0268</u>

Dear Housing and Homelessness Committee Members:

As legal organizations who advise Los Angeles tenants and represent them in court, we write in response to the August 3, 2024 letter by landlord lobby group the California Apartment Association (the CAA) about the proposed amendments to the Los Angeles Tenant Anti-Harassment Ordinance (TAHO) in the motion dated June 12, 2024, Council File No. 14-0268. Specifically, we write to oppose the changes that the CAA proposes and explain why its arguments are not legally sound. Rather, their suggested changes will prevent TAHO from becoming effective and fulfilling its original goal of disincentivizing tenant harassment.

Harassment of tenants is still a problem throughout Los Angeles. Tenants continue to report serious intimidation, threats, and acts of physical harm, illegal lockouts, landlords' refusal to make necessary repairs, unilateral reductions in key rental amenities, and abuse of a landlord's legal right to enter a tenant's home. According to the Los Angeles Housing Department (LAHD), more than 13,000 complaints have been filed with the department but only two dozen cases referred to the City Attorney for enforcement.[1] And so far, only four fines are pending and no cases have been criminally prosecuted.[2]

As noted by tenant advocates at the time it was initially passed, the current TAHO is incomplete: it does not contain some key provisions that appear in other cities' more successful ordinances. These missing pieces are not minor – they affect the ability of the law to be an effective deterrent to the serious problem of harassment of tenants by their landlords. The current proposed amendments in the motion are

[1] Paloma Esquivel, *In L.A., 13,000 complaints of tenant harassment led to four fines. Advocates call for stronger laws*, L.A. Times (Aug. 19, 2024), https://www.latimes.com/california/story/2024-08-19/anti-harassment-ordinance.
[2] *Id.*

specifically tailored to make the ordinance more effective for its intended purpose – preventing and responding to harassment. The proposed amendments are thoroughly researched and legally sound.[3]

The Council should reject the CAA's changes and move forward with adopting all of the proposed amendments in the motion. To aid in the City's analysis, we provide a point-by-point response to the CAA's letter.

1. **The CAA misrepresents the proposed amended definition of harassment.**

The current definition of harassment under TAHO is too narrow and makes it easy for landlords to avoid blame by creating post-hoc justifications for their conduct.[4] To fix this, the proposed TAHO amendments redefine tenant harassment to be in line with the definition used by several other jurisdictions.[5] They define certain bad faith behaviors as harassment, where

> "'Bad faith' refers to willful, reckless, or grossly negligent conduct in disregard for legal requirements or in a manner indifferent to the rights of or impact on tenants."[6]

From this proposed definition, the CAA requests that the definition remove conduct "indifferent to the rights of or impact on tenants." The CAA argues that a landlord's conduct could be considered bad faith under TAHO if it is solely indifferent to the landlord's impact on tenants, such as a landlord's decision to close a pool for repairs. This is not how the definition operates, nor is there any legal validity to the CAA's statement that "lawful actions" could be considered bad faith if "simply not something [a tenant] would prefer."

The CAA's suggestion ignores that the proposed amended definition of harassment is multi-part. For a landlord's behavior to be considered in bad faith, it must be considered (1) willful, reckless, or grossly negligent, ***and*** (2) in disregard for legal requirements or committed in a way that is indifferent to the rights of or impact on tenants.

What conduct is considered willful, reckless, or grossly negligent is already well-defined in California law. Willful conduct is where an actor intends for their action to harm a person, or knows that their actions are substantially certain to harm, and then proceeds with that action anyway.[7] Recklessness occurs when a person knows it is highly probable that their conduct is dangerous to others or will cause harm, and then knowingly disregards that risk.[8] Finally, gross negligence "is the lack of any care or an extreme

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[3] *See* Keep LA Housed, Memo on Proposed Amendments to TAHO (Sept. 13, 2023), https://drive.google.com/file/d/1DAZDf2yLGV2SqXPwvmb442cqhA39yX3e/view.
[4] *See* Los Angeles Mun. Code, § 45.33
[5] *See, e.g.,*Oakland Mun. Code Regs., § 640 subd. (A) ("Bad Faith for purposes of the TPO refers to willful, reckless, or grossly negligent conduct in disregard for legal requirements or in a manner indifferent to the rights of or impact on Tenants. The scope and effect of the conduct will be taken into account in determining whether it is in Bad Faith.")
[6] Proposed Los Angeles Mun. Code, § 45.33.
[7] *Gomez v. Acquistapace* (1996) 50 Cal.App.4th 740, 746.
[8] *See Delaney v. Baker* (1999) 20 Cal.4th 23, 31-32; Restatement 2d. of Torts, § 500.

departure from what a reasonably careful person would do in the same situation to prevent harm to oneself or to others."[9] Lawful and well-founded actions are not willful, reckless, or grossly negligent.

The CAA's example of conduct it claims could be penalized under the new definition is not a behavior that would be considered willful, reckless, or grossly negligent under California law, nor does the CAA provide any legal authority to suggest it would be.

The CAA instead suggests that TAHO should continue to use a standard similar to civil harassment restraining order proceedings under Code of Civil Procedure section 527.6. But that process is too narrow for the types of harassment intended to be covered by the TAHO. The section 527.6 process is intended as a short proceeding to enjoin specific conduct; not a means to resolve all claims related to a conflict, like resulting monetary damage.[10] Further, restraining orders are not intended specifically for the problem of landlords' unique access to tenants and ability to destabilize and endanger their lives through the actions specifically enumerated in the TAHO. We urge the Council to reject this suggestion.

2. Harassment is a proper defense to an unlawful detainer action.

The proposed TAHO amendments also clarify that a landlord's harassment of a tenant is a defense to an unlawful detainer action regardless of the factual contentions in the eviction notice. Since the current ordinance is silent as to this point, this amendment is a clarification that would create consistency among different courthouses and judges.

The CAA argues that harassment should not be litigated in the context of an unlawful detainer action because it will "clog court dockets." It also suggests–without citation–that the provision conflicts with state law. But California courts already recognize other affirmative defenses that a tenant may raise in an unlawful detainer action, even when not directly implicated in the cause of action, so long as they are "substantive" rather than procedural defenses.[11] For example, a tenant may raise a landlord's failure to file the registration statement—or any other action explicitly required by the Los Angeles Rent Stabilization Ordinance—as an affirmative defense.[12] This clarifying amendment would therefore allow landlords and tenants to spend less time litigating this issue, and allow for greater certainty when attempting to resolve unlawful detainer cases through settlement. It also encourages landlords to use the legal process rather than resort to self-help eviction tactics through harassment.

3. Stronger penalties and increased damages are vital for deterrence.

Harassment of tenants should not be a business model. Unfortunately, for a number of unscrupulous actors in Los Angeles, harassing tenants out of their homes factors into a cost-benefit analysis. One of the main reasons why TAHO has not had the same success as other California cities' ordinances is that it lags

[9] CACI No. 425.
[10] *Olson v. Doe* (2022) 12 Cal.5th 669, 683.
[11] *Birkenfeld v. Berkeley* (1976) 17 Cal.3d 129, 149; *see also Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 764.
[12] *Yanez v. Vasquez* (2021) 65 Cal.App.5th Supp. 1, 11-12.

behind in its damages provisions and does not require attorneys' fees to be paid to a prevailing plaintiff.[13] This also means that many tenants are unable to find private attorneys to take their cases on contingency, which puts an increased burden of enforcement on the City.

The CAA argues in its letter that mandating these damages would remove judicial discretion. But California law already recognizes an entitlement to treble damages for plaintiffs who meet certain legal requirements in other contexts.[14] In those cases, just like non-treble damages cases, juries (or judges, in case of bench trials) already award damages based on the specific facts of cases.[15] And judges already review the reasonableness of individual attorneys' fees awards and have the ability to adjust them; this amendment would not alter that.[16]

Additionally, this change would bring TAHO in line with other Los Angeles ordinances. Several other provisions of Los Angeles Municipal Code already provide for triple damages and mandatory attorneys' fees, including for unlawful rent increases and certain bad faith evictions under the Rent Stabilization Ordinance.[17] Harassing behavior should also result in similar damages.

4. Tenants should not have to wait for a cure period in the case of a landlord's willful disregard.

The current TAHO has a waiting period for violations based on a landlord's failure to timely complete required repairs and maintenance; tenants cannot sue their landlord, including for an injunction to cease certain behaviors, unless they personally notify their landlord in writing and wait a reasonable time period.[18] This means that even in cases of egregious and intentional behavior, like the landlord removing

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[13] Cities that provide for triple damages in tenant harassment cases include San Francisco, Oakland, and Richmond. San Francisco Admin. Code, § 37.10B subd. (c)(5); Oakland Mun. Code, § 8.22.670 subd. (B)(1)(a); Richmond Mun. Code, § 11.103.110 subd. (c). Cities that provide for mandatory attorneys' fees include San Francisco, Oakland, Richmond, Concord, and Los Angeles County. *Ibid.*; Concord Municipal Code § 19.50.040 subd. (b), Los Angeles County Code § 8.52.130 subd. (C)(2).

[14] Cal Pen. Code, § 496 subd. (c) (civil liability for receiving or concealing stolen property); Cal. Civ. Code, §§ 3346 (wrongful injury to timber during trespass), 1719 subd. (a)(2) (liability after written demand for payment following check passed for insufficient funds), 1738.15 (violation of the Independent Wholesale Sales Representatives Contractual Relations Act); Code Civ. Proc., § 733 (trespass for cutting or carrying away timber without lawful authority); Cal. Bus. & Prof. Code, §§ 17082 (violation of the Unfair Practices Act); 21140.4 (violation of fuel station franchising fair practices).

[15] *See, e.g.*, *Switzer v. Wood* (2019) 35 Cal.App.5th 116.

[16] *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.

[17] *See* Los Angeles Mun. Code, §§ 151.50 subd. A ("Any person who demands, accepts or retains any payment of rent in excess of the maximum rent or maximum adjusted rent in violation of the provisions of this chapter…shall be liable in a civil action to the person from whom such payment is demanded, accepted or retained for damages of **three times the amount** by which the payment or payments demanded, accepted or retained exceed the maximum rent or maximum adjusted rent which could be lawfully demanded, accepted or retained **together with reasonable attorneys' fees** and costs as determined by the court.") (emphasis), 151.30.I.i ""If a landlord acts in bad faith in recovering possession of a rental unit pursuant to the provisions of Subdivision 8. of Subsection A. of Section 151.09, the landlord shall be liable to any tenant who was displaced from the property for **three times the amount** of actual damages, exemplary damages, equitable relief, and **attorneys**' fees") (emphasis); *see also* Los Angeles Mun. Code, § 152.07 subd. E (a landlord who violates the Tenant Habitability Ordinance is liable for compensatory damages, special damages, mandatory attorneys' fees, and in some instances double damages).

[18] Los Angeles Mun. Code, § 45.35 subd. F.

the tenant's bathroom, a tenant cannot take any legal action under TAHO unless they can prove that they notified their landlord in writing and then waited.

The proposed amendment would remove the waiting period requirement if the landlord's conduct was "intentional and demonstrates a willful disregard for the comfort, safety or well-being of the tenant(s)." There is no reason that a tenant whose landlord is acting intentionally should be required to notify the landlord about the landlord's own intentional conduct; this change would remove such a requirement.

The CAA requests that this definition be further pared down to only include conduct that is "malicious and puts the tenant's physical safety at immediate risk"—a much more difficult standard to prove, and one that would mean that actions like a landlord's intentional removal of bathroom facilities could still be subject to a waiting period.

Other cities have also removed waiting periods. A similar requirement to the current TAHO waiting period previously existed in the City of Oakland's tenant harassment ordinance. The Oakland City Attorney personally recommended removing it in favor of a revision identical to the proposed amendment here.[19]

5. Additional Provisions

The CAA also briefly recommends other changes to the amendments with thin policy rationale. Most of these suggestions would have the effect of removing the proposed protections entirely from the TAHO amendments.

The proposed amendments would ban a landlord's unilateral change in terms of a tenant's lease, outside of changes authorized by several explicitly enumerated state statutes or required by federal law, state law, or a regulatory agreement with a government agency. The CAA asks that this amendment be changed to allow lease changes "authorized" by any federal, state, or local law. But absent a contrary local statute, state law already authorizes landlords to make unilateral lease changes.[20] The CAA's proposed change therefore simply appears to be asking to remove the ban on unilateral lease changes. This would mean that several years into a tenant's tenancy, a landlord could change the terms of their lease, such as to no longer allow pets. The Council should keep this amendment.

The proposed amendments also contain clarifications with respect to a landlord's abuse of their legal right to enter a tenant's rental unit. They explain that landlords cannot, in bad faith, fail to tell tenants the exact reason why they are entering their homes, misrepresent their reasons for entering, provide excessively large time windows for entry, or fail to notify tenants waiting for their landlord to enter that the entry has been canceled. The CAA also asks to change these amendments to "align notice requirements with state law." This proposed TAHO amendment was added specifically because state law requirements have not prevented landlord abuses, such as landlords refusing to tell tenants for what repairs they intend to enter

[19] City Attorney Barbara J. Parker, *Tenant Protection, Just Cause, and Rent Ordinance Amendments* (Apr. 21, 2020), https://oakland.legistar.com/View.ashx?M=F&ID=8252496&GUID=C5169777-DA2F-48E2-A2DF-8B4EF76086EA, at p. 6.
[20] Cal Civ. Code, § 827.

their units, or noticing planned entry times which require tenants to take time off from work, only for their landlords not to appear. The CAA's suggested change would remove these important additional protections entirely. The Council should retain this amendment.

Finally, the CAA takes issue with a provision in the amendments that would prevent landlords from failing to accept rent or cooperate with rental assistance programs, including a landlord's failure to accept payment paid on behalf of a tenant from a third-party. The CAA asks for revision that would require third parties to provide signed statements that they are not a tenant before accepting the rent payment. We do not believe that such a statement is required by law, and that requiring its inclusion in every instance might hinder a tenant's timely payment of rent.

Conclusion

The proposed amendments are necessary and urgent improvements to the TAHO to make the law a more effective tool to stop the harassment of tenants. The CAA's opposition letter raises no serious legal concerns with the amendments; it merely reflects the CAA's policy preference for a weaker TAHO to shield from accountability its landlord members, many of whom are the largest landlords and management companies in the state and have been sued for tenant harassment in Los Angeles and elsewhere. Moreover, the CAA has provided no evidence that stronger anti-harassment ordinances in other cities in California have resulted in frivolous lawsuits. The Council should not decline to strengthen the TAHO because of hypothetical fears that have not panned out elsewhere. The motion's goal is not to target all landlords, but actual bad actors who are engaging in clear harassment.

We urge the Council to bring LA's TAHO in line with other cities in the state and adopt all of the proposed amendments in the motion.

Sincerely,

Bet Tzedek Legal Services

The California Center for Movement Legal Services

Inner City Law Center

Legal Aid Foundation of Los Angeles

Public Counsel