



County of Santa Cruz

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January 29, 2002

Agenda: February 5, 2002

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Anti-Retaliatory Eviction Ordinance

Dear Board Members:

In the context of your Board's recent discussions about affordable housing in our community, members of the public have brought to your Board's attention an issue concerning certain situations where tenants who are demanding improved housing conditions may be subject to retaliatory eviction by landlords who do not want to make the needed repairs.

In response to these concerns, on October 16, 2001, your Board requested County Counsel to review whether the County could develop an anti-retaliatory eviction ordinance. On November 6, 2001, your Board directed County Counsel and the CAO's Office to report back to your Board on February 5, 2002 with a proposed ordinance.

Section 1942 of the California Civil Code currently provides for relief for tenants who are subject to a retaliatory eviction (Attachment 1). Remedies available under this provision of State law allow tenants to recover actual damages sustained by the lessee and punitive damages not more than \$1,000 in the most egregious cases.

While this approach is currently available to County residents who are subject to retaliatory evictions, it is recommended that the County adopt a companion measure in addition to the remedies available under State law. The proposed County ordinance would include more stringent remedies, including enhanced penalties for repeat offenders. The proposed penalties of

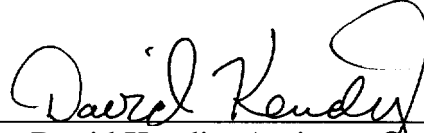
three months' fair market rent, plus treble damages for repeat offenders, are drawn from the penalties levied under the County's Relocation Ordinance to landlords who are forced to vacate their unit due to health and safety concerns.

Staff has discussed this issue with interested parties, including tenant advocates and the Tri-County Apartment Association, and there is general support for a targeted approach to penalize landlords who unlawfully retaliate. Attached to this letter is a letter in support of this proposal from the Center for Community Advocacy.

IT IS THEREFORE RECOMMENDED that your Board approve the attached ordinance in concept and direct the Clerk to place this ordinance on the February 12, 2002 agenda for final adoption.

Very truly yours,

DANA McRAE, COUNTY COUNSEL

By 
David Kendig, Assistant County Counsel

RECOMMENDED:



SUSAN A. MAURIELLO
County Administrative Officer

SM:ES

cc: Center for Community Advocacy
California Rural Legal Assistance Corp.
Tri-County Apartment Association

Enclosures:

California Civil Code Section 1942.5
Proposed County Anti-Retaliatory Eviction Ordinance
Letter of support from the Center for Community Advocacy

**ORDINANCE ADDING CHAPTER 8.43 TO THE
SANTA CRUZ COUNTY CODE REGARDING THE
ESTABLISHMENT OF REMEDIES FOR LESSOR'S RETALIATION**

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Chapter **8.43** is hereby added to the Santa Cruz County Code to read as follows:

- 8.43.010 Intent and purpose.**
- 8.43.020 Remedies for lessor's retaliation.**
- 8.43.030 Severability.**

8.43.010 Intent and purpose.

A. The board of supervisors finds that Santa Cruz County faces ~~an~~ affordable housing crisis in that:

- (1) Studio apartments regularly rent for over \$1,000 per month and modest homes rent for more than \$2,000 per month.
- (2) Low and moderate income residents must compete with Silicon Valley workers and college students for a limited number of rentals.
- (3) The National Low Income Housing Coalition has ranked Santa Cruz County as the fourth least affordable rental housing market in the United States.

B. The board of supervisors finds that due to the lack of affordable housing in the community, landlords have been known to rent substandard units to lessees or fail to maintain rental units in accordance with health and safety requirements. Tenants who lawfully organize to advocate for affordable rents and /or tenants' rights, including, but not limited to, addressing inadequate living conditions, decreased services or evictions, often face the risk of retaliatory eviction which may result in homelessness or other hardships to the lessee.

C. The board of supervisors finds that lessees who are unlawfully evicted from their dwellings confront significant difficulties and expenses in finding other permanent affordable housing. The lack of affordable housing alternatives leads to overcrowding which itself may result in health and safety problems.

D. The board of supervisors finds that the lessors who evict their lessees in retaliation for their exercise of **rights** protected under this chapter should bear responsibility for the hardship their actions create for the lessees.

E. While existing State law provides some protection to a tenant facing a retaliatory eviction, the remedies available may not provide adequate compensation for all of the damages or losses the tenant may suffer.

F. The board of supervisors finds that protecting the efforts of tenants and tenant organizations to lawfully advocate for affordable rents or lessees' rights can be an effective means of preserving the County's affordable housing stock and should be protected.

8.43.020 Remedies for lessor's retaliation.

A. If the lessor retaliates against the lessee because of the exercise by the lessee of his or her rights under this chapter or because of his or her complaint to an appropriate agency as to tenantability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his rent, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days:

- (1) After the date upon which the lessee, in good faith, has given notice pursuant to California Civil Code Section **1942**, or has made an oral complaint to the lessor regarding tenantability; or
- (2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenantability; or
- (3) After the date of an inspection or issuance of a citation, resulting from a complaint described in subsection (2) of which the lessor did not have notice; or
- (4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenantability; or
- (5) After entry of judgment or the signing of **an** arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor. In each instance, the 180-day period shall run from the latest applicable date referred to in subsection (1) to (5), inclusive.

B. A lessee may not invoke the provisions of subdivision **A.** more than once in any 12-month period.

C. It shall be unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of such acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating for affordable rents or lessees' rights or has lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.

D. Nothing in this section shall be construed as limiting in any way the exercise by the lessor of his or her rights under any lease or agreement or any law pertaining to the hiring of property or his right to do any of the acts described in subdivision A. or C. for any lawful cause. Any waiver by a lessee of his or her rights under this section shall be void as contrary to public policy.

E. If notwithstanding the provisions of subdivisions A. to D., inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision A. within the period or periods prescribed therein, or within subdivision C., if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision A. or C. If such statement be controverted, the lessor shall establish its truth at the trial or other hearing.

F. Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for treble the actual damages sustained by the lessee, or three months of the dwelling's actual rent at the time of the violation, whichever is greater. For each additional violation of this section within one year, the lessor or agent of a lessor shall be liable to the lessee for treble the actual damages sustained by the lessee, or nine months of the dwelling's actual rent at the time of the violation, whichever is greater.

G. In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action or in their initial responsive pleading.

H. The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

8.43.030 Severability.

The provisions of this chapter are severable. If any section, paragraph, sentence,

phrase or word of this chapter is declared invalid for any reason, that decision shall not affect any other portion of this chapter, which shall remain in full force and effect.

SECTION II

This ordinance shall take effect on the 31st day after the date of final passage.

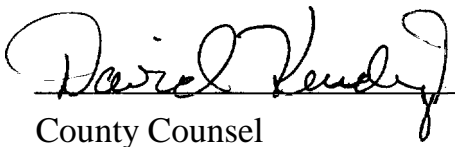
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this ____ day of _____, 2002, by the following vote:

AYES: SUPERVISORS
 NOES: SUPERVISORS
 ABSENT: SUPERVISORS
 ABSTAIN: SUPERVISORS

 Chairperson, Board of Supervisors

ATTEST: _____
 Clerk of said Board

Approved as to form:



 County Counsel

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Service: **Get by LEXSTAT®**TOC: [Deering's California Code Annotated](#) > [/ . . . /](#) > [CHAPTER 2. Hiring of Real Property](#) > **§ 1942.5. Remedies for lessor's retaliation**Citation: **Cal. Civ. Code 1942.5*****Cal Civ Code § 1942.5***

DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS SECTION IS CURRENT THROUGH THE 2002 SUPPLEMENT (2001 SESSION) ***

CIVIL CODE
DIVISION 3. Obligations
PART 4. Obligations Arising from Particular Transactions
TITLE 5. Hiring
CHAPTER 2. Hiring of Real Property

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Cal Civ Code § 1942.5 (2001)

§ 1942.5. Remedies for lessor's retaliation

(a) If the lessor retaliates against the lessee because of the exercise by the lessee of his rights under this chapter or because of his complaint to an appropriate agency as to tenantability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his rent, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days:

(1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942, or has made an oral complaint to the lessor regarding tenantability; or

(2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenantability; or

(3) After the date of an inspection or issuance of a citation, resulting from a complaint described in paragraph (2) of which the lessor did not have notice; or

(4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenantability; or

(5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor.

In each instance, the 180-day period shall run from the latest applicable date referred to in paragraphs (1) to (5), inclusive.

(b) A lessee may not invoke the provisions of subdivision (a) more than once in any 12-

month period.

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(c) It shall be unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of such acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.

(d) Nothing in this section shall be construed as limiting in any way the exercise by the lessor of his rights under any lease or agreement or any law pertaining to the hiring of property or his right to do any of the acts described in subdivision (a) or (c) for any lawful cause. Any waiver by a lessee of his rights under this section shall be void as contrary to public policy.

(e) Notwithstanding the provisions of subdivisions (a) to (d), inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein, or within subdivision (c), if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision (a) or (c). If such statement be controverted, the lessor shall establish its truth at the trial or other hearing.

(f) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following:

(1) The actual damages sustained by the lessee.

(2) Punitive damages in an amount of not less than one hundred dollars (\$ 100) nor more than one thousand dollars (\$ 1,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to such act.

(g) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.

(h) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

HISTORY:

Added Stats 1979 ch 652 § 2.

NOTES:

FORMER SECTIONS:

Former § 1942.5, similar to present section, was added Stats 1970 ch 1280 § 5 and repealed Stats 1979 ch 652 § 1.

HISTORICAL DERIVATION:

Former § 1942.5, as added Stats 1970 ch 1280 § 5.

COLLATERAL REFERENCES:

Cal Forms PI & Practice (Matthew Bender) ch 333 "Landlord and Tenant: Eviction Actions" §§ 333.28(5)(a), (b), (c), (h), (i), (j), (k), (l), (m), (n), (o)(i).

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CCA

DEDICATED TO IMPROVING FARMWORKER HEALTH & HOUSING
BY TRAINING FARMWORKERS TO HELP THEMSELVES
January 29, 2002

CENTER FOR COMMUNITY ADVOCACY
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Board of Supervisors
County of Santa Cruz
701 Ocean Avenue, Room 500
Santa Cruz, California 95060

Re: Anti-Retaliation Ordinance

Dear Members of the Board:


The Center for Community Advocacy (CCA) enthusiastically supports the anti-retaliation draft ordinance that **your** County Counsel has asked you to review.

The proposed ordinance encourages tenants and landlords to engage in realistic, good-faith negotiations to improve housing conditions for working families in Santa Cruz **County**. These negotiations can result only if tenants and **landlords** negotiate **as** equals. Tenants can achieve this equality only if they can organize into tenant committees that can negotiate on behalf of all participating residents of a particular housing site.

The anti-retaliation draft ordinance protects a tenant's right to form and join tenant committees that seek to improve housing conditions at their respective sites. Moreover, the draft ordinance makes clear that tenants can rightfully and legally organize to negotiate over the amount of rent that they should pay for rented premises. In order to make these rights meaningful, the draft ordinance prohibits retaliation against tenants who form and join tenant committees and imposes certain sanctions against landlords who violate that prohibition.

The draft ordinance **represents** a sound way to encourage working families to **themselves** act to maintain and improve the existing stock of **working** family housing in Santa Cruz County. CCA will be working with your County Counsel, and other County agencies to propose other strategies that do the same.

Sincerely,


Juan Uranga
Executive Director and
Attorney at Law