Points in Opposition to
Los Angeles City Council
[Council File 22-0265] (**[text]**)

Summary: Council File 22-0265 directed the City Attorney to draft a Rental Access Ordinance that would, if implemented as described in the motion, could raise the cost of housing and make housing less accessible to tenants across the city. The unintended consequences of the Rental Access Ordinance could fall most harshly on those that can afford it the least.

The motion included a provision that would prohibit landlords, or their agents, from asking about or using a prospective tenant's failure to pay rent or utility bills during the COVID-19 emergency period in the evaluation of a rental application.

- The COVID-19 pandemic caused physical, emotional, and financial pain across Los Angeles, California, and beyond. While most tenants were able to pay most or all of their rent throughout the pandemic, through no fault of their own, many tenants had a harder time paying rent.[1] Since about half of all rental units is the U.S. are owned by small businesses, often family-owned, the inability of a tenant to pay rent also fell harshly on these small businesses.[2]
- When a landlord takes a loss, that loss is spread to other tenants in a multifamily building. Or, in the case of a small landlord that may have one or two units, the inability to collect might put that landlord in her own financial straits, for which there is less relief available compared to tenants.
- A tenant's inability to pay rent is often an indicator to subsequent landlords that debts are owed and that impact's a subsequent landlord's ability to get paid.
    - In 2016, TransUnion analysis found that prior evictions and rental-related collection records are highly predictive of future evictions. This finding comes as involuntary turnover – due to residents skipping out on payments or other evictions causes – continues to impact property managers. Eviction losses average $3,500 per unit, which includes court costs, lost revenue and other operating expenses.
    - The TransUnion analysis also found that evicted residents have nearly three times as many prior eviction and rental-related collection records than non-evicted residents. The analysis examined the records of individuals who were evicted compared to those who were not

[1] In April 2020, the National Multi-housing Council ("NMHC") "published the first NMHC Rent Payment Tracker results. Those first results, measured through payments made during the first five days of April, showed 69.2% of renters in the dataset had made a full or partial payment. Given how quickly conditions were changing, [an NMHC-led] coalition produced the data weekly at first, a move that allowed the data tool to also capture late payments.

For example, the data then showed that by the end of that first month, the percentage of residents who made a rent payment moved from 69.2% to 94.6% by the end of the month.
Eventually, the coalition settled into a monthly reporting cadence given the consistency of the data results and made a small tweak to the reporting period, moving it to the sixth day of every month.

The last report from December 2021 found that 92.0% of renters made a full or partial payment, based on 11.8 million renters nationwide. This compared with 93.8% in 2020 and 95.9% in 2019.

https://www.nmhc.org/research-insight/nmhc-rent-payment-tracker/.

[2] Landlords May be Stocking Up at the Same Food Pantries as their Tenants.

evicted from nearly 200 properties. In the "not evicted" group, 5.5% of residents had prior evictions. For those who were ultimately evicted, that number rose to 21.7% of residents with a prior eviction. According to the analysis, evicted residents have twice as many prior rental-related collection records than non-evicted residents.[3]

The motion included a provision that would prohibit landlords, or their agents, from asking about or using a prospective tenants prior or ongoing participation in a rental assistance program in the evaluation of a rental application

- While well intentioned, this provision could have significant unintended consequences. A rule preventing the landlord from "asking about or using a prospective tenant's prior or ongoing participation in the evaluation of the rental application" could result in landlords not being able to consider the program support/benefits consumers receive, which could result in applicants being disqualified for lack of income.

The motion included a provision that would prohibit landlords, or their agents, from asking about or using a prospective tenant's history of one or more eviction notices served or cases having been filed against the tenant, regardless of the outcomes of the case(s), in the evaluation of a rental application.

- The problems associated with blinding a landlord to past non-payment during COVID-19 are applicable also to prohibitions on asking about evictions. Yet, the risks for tenants and landlords by this provision are far greater than the blinding of non-payment during the pandemic.
- Tenants with evictions are a far higher risk for future nonpayment. That future nonpayment raises costs to landlords, especially small landlords, and adds costs to rent to tenants that have not been evicted. Evicted residents have nearly three-times as many prior eviction and rental-related collection records than non-evicted residents.[4]
- Efforts to restrict the use of eviction history data during the resident application process could have unintended consequences that hurt the very population policymakers are trying to serve. Housing providers generally consider several factors—including rental, criminal and financial history—to comprehensively evaluate potential residents and mitigate financial and security risks to apartment communities and their residents. Limiting access to this information could necessitate alternative risk mitigation strategies, disproportionately harming low-income renters.

The motion included a provision that would prohibit landlords, or their agents, from using algorithmic or automatd tenant screening or evaluation services, including tenant screening or approval scores, in the evaluation of a rental application.

- An algorithm or a score is nothing more than a mathematical computation of a prospective tenant's risk in a way that might have been done by people. Sadly, even the most well-intentioned people have inherent biases and latent impartiality.
- One of the benefits of algorithms or scores is that they can help remove biases that may exist and can help reverse long-standing discrimination that has pervaded American housing for centuries.
- To further minimize the risk of disparate impact in rental housing, to get renters into housing more efficiently, and to lower the cost of housing by reducing turnover time, tenant screeners have developed a range of objective scores and other decision tools. These tools aid landlords in making rental decisions and complying with applicable laws, including the FCRA and FHA.

[3] TransUnion Analysis: Collection Records are Highly Predictive of Resident Behavior, Feb. 22, 2016.

[4] Andrea Collatz, *The True Cost of an Eviction*, Nov 2, 2018.

- Tenant screening scores are similar to credit scores, in that they are used as an objective assessment of risk. The scores for tenant screening are based on race-neutral data, and so they also facilitate fair housing compliance by enabling consistent and non-subjective decision-making. The use of scores by landlords is just one part of the application process; landlords typically do not make decisions whether to rent solely based on scores. Instead, they are but one helpful piece of information, along with an applicant's disclosed rental history, references, and current income status.

The motion included a provision that would prohibit landlords, or their agents, from using credit checks and/or asking about credit history (including bankruptcy) in the evaluation of a rental application.

- As noted above, a credit check is an indication to a landlord that she will be paid on time and every month. Without the ability to check a credit history, the landlord is blinded to past debts that a tenant may have.
- When a tenant does not pay rent, the landlord must either absorb that cost or must pass that cost along to other tenants. Higher rent caused by blindness to credit problems can make housing less accessible and more expensive to those tenants that can pay their rent.
- Housing providers must fulfill financial obligations, including, but not limited to, maintenance, capital improvements, mortgage payments, utilities, insurance premiums, payroll and property taxes. They must meet these obligations even if a resident fails to pay rent or fulfill other responsibilities under a lease. Landlords may find it harder to fulfil their legal and moral obligations of safe and sound housing if they cannot keep up their property.