

Mayor's Office of Housing and Community Development  
City and County of San Francisco



Mark Farrell  
Mayor

Kate Hartley  
Director

To: Ballot Simplification Committee  
From: Kate Hartley *KH*  
Director, Mayor's Office of Housing and Community Development  
Date: February 22, 2018  
Re: "City-Funded Legal Representation for All Residential Tenants in Eviction Lawsuits"

Pursuant to the letter dated January 30, 2018 from John Arntz, Director of the Department of Elections, we are providing our analysis on the effect of the Measure on current law and practices.

In Section 2, Findings and Declarations, the Measure states that, "...most tenants face eviction without legal representation." This statement is misleading, because there are different levels of legal services currently provided to tenants throughout the many stages of the eviction process. The Mayor's Office of Housing and Community Development (MOHCD) funds local community-based organizations (CBOs) to provide these free and low-cost eviction-related legal services.

- All tenants have access to low-cost assistance for completing a required court form (Answer) after they have been served an eviction lawsuit called an Unlawful Detainer (UD). Failure to file an Answer results in default judgment entered in favor of the landlord.
- All tenants have access to free "limited-scope" legal representation for the pre-trial Mandatory Settlement Conference. Such representation is provided only for this single legal proceeding and is therefore referred to as limited-scope.
- Eligible tenants (an estimated one-third of all eviction cases) have access to free full-scope legal representation for all stages of the eviction process after they have been served a UD, or in the case of certain "no-fault" evictions, such as Ellis Act and owner-move-in evictions, this full-scope legal representation is provided at the time of the pre-UD eviction notice. Eligibility criteria include but are not limited to: low-income status, health status, senior status, a determination of viable legal defenses, a determination that the tenant's rent is sustainable, etc.
  - In cases that involve settlement through a stipulated agreement, the full-scope attorney continues to represent the tenant as the attorney of record in the event the tenant breaches the stipulated agreement, so that they will be ready to intervene in a timely manner to prevent default judgment from being entered against the tenant.
- Additionally, MOHCD funds CBOs to provide essential, non-legal services such as one-on-one counseling and tenants' rights education and outreach, including community organizing and public information campaigns. These tenant counseling CBOs are the first line of defense in eviction prevention. Tenants who have been served with an eviction notice are encouraged to access free one-on-one counseling where they receive assistance in understanding their options and, if necessary, are referred to an attorney. With the exception of certain no-fault evictions, tenants do not have access to full-scope legal representation during the notice stage.

Section 2 states that the City has declared itself a “Right to Civil Counsel City” through a 2012 legislative action. When the City declared itself to be the first Right to Civil Counsel City through Ordinance No. 45-12 on February 16, 2012, it clarified that the declaration is “not intended to immediately establish a right to counsel in civil proceedings, but rather it is a codification of the beginning of a firm commitment to this eventual goal.” The ordinance established a pilot program to provide tenants whom appear at their Mandatory Settlement Conference without legal representation with limited-scope representation (see “limited-scope legal representation” above). The pilot program has since been funded by MOHCD and operated by the Justice & Diversity Center of the Bar Association of San Francisco. In FY17-18, MOHCD awarded \$4,400,000 in eviction-related legal services and \$2,000,000 in tenant counseling and education.

At the conclusion of Section, 2, the Measure cites New York City’s recently enacted legislation regarding the provision of legal services for all tenants in eviction proceedings as a model for San Francisco. It does not, however, elaborate on the details of the legislation, which do not, in the aggregate, amount to universal access to full-scope legal representation. The New York City model includes means testing for full-scope legal representation and brief legal assistance for the balance of tenants in eviction proceedings.

According to Section 3, Provision of Legal Representation for Tenants Facing Eviction, implementation of the Measure would entail “...establish[ing], run[ning], and fully fund[ing] a program to provide [full-scope] legal representation for all tenants [...] faced with legal proceedings to evict them from their residence” that differs significantly from the City’s current provision of legal services for tenants facing eviction as described above. However, it does not establish staffing or funding for this program. The Measure would require that full-scope legal representation “be available to a tenant thirty days after a tenant is served with an eviction notice or upon service of an unlawful detainer complaint, whichever occurs first, and at least until such time that the eviction notice or unlawful detainer complaint is withdrawn, the case dismissed, or a judgment in the matter entered.”

Regarding Section 3(b), Exception for landlord or master tenant who resides in same dwelling unit, tenants who reside in the same dwelling unit with her or his landlord or master tenant currently have access to eviction-related legal services if they meet eligibility criteria. This Measure would prevent such tenants from accessing these services.

Regarding Section 3(c), the Measure would require MOHCD to implement its provisions no later than twelve months after its effective date. Implementation would require the City to appropriate an additional \$9.3 million annually in the budget process to fully fund the program. To MOHCD’s knowledge, there are no existing state or federal programs that would be able to provide funding to cover the additional expenses associated with this program. Even if these resources were readily available on day one, MOHCD anticipates a period much longer than twelve months for CBOs to hire the additional 47 staff attorneys that would be needed to provide full-scope representation to all eligible tenants. As an example, New York City plans to implement its program over the course of five years to overcome staffing and logistical challenges.

MOHCD recognizes the urgency of curbing displacement and preventing the devastating social and economic effects of evictions and homelessness through the fair, effective, and efficient administration of justice.

CC: Jeff Buckley, Brian Cheu, Hugo Ramirez, Amy Chan