



CITY OF BURLINGTON, VERMONT
CITY COUNCIL COMMUNITY DEVELOPMENT &
NEIGHBORHOOD REVITALIZATION COMMITTEE
c/o Community & Economic Development Office
City Hall, Room 32 • 149 Church Street • Burlington, VT 05401
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Councilor Brian Pine, Chair, Ward 3
Councilor Sarah Carpenter, Ward 4
Councilor Zoraya Hightower, Ward 1

Wednesday, July 15th, 2020
5:30 – 7:00 PM

You are invited to a Zoom webinar.
When: Jul 15, 2020 05:30 PM Eastern Time (US and Canada)
Topic: CDNR Committee Meeting

Please click the link below to join the webinar:
<https://us02web.zoom.us/j/81296803282>

Telephone: +1 929 205 6099
Webinar ID: 812 9680 3282

To participate in public forum please email Christine Curtis before or during the meeting: ccurtis@burlingtonvt.gov. Comments can also be made during the meeting by using the raise hand function or the chat function.

Draft Agenda

1. Review Agenda (5 minutes)
2. Public Forum (15 minutes)
3. Just Cause Eviction Discussion continued (60 min)
4. Next Steps (5 min)

The programs and services of the City of Burlington are accessible to people with disabilities.
For accessibility information, call 865-7144. For questions about the meeting,
contact Christine Curtis at ccurtis@burlingtonvt.gov

To: City Councilors

From: CEDO and Department of Permitting & Inspections

RE: Review of and recommendations regarding renter protections

Executive Summary

There is little doubt that Burlington needs more affordable housing and homes for households of all incomes. Increasing rents and chronically low vacancy rates put low- and moderate-income residents and tenants at a particular disadvantage. Much work has been done to advance the 2015 *Housing Action Plan (HAP)*, including efforts to protect tenants' rights, prevent displacement, and ensure fair housing. In April 2019, Mayor Miro Weinberger announced an effort to bring focus, urgency, and resolution to remaining unfinished business from the Plan. Coming out of that announcement, the City hosted two public meetings that it called the "Housing Summit" parts one and two in order to ask for public input on and, later, share initial proposals for five areas of housing policy reform.

During public discussions related to the Housing Summits and related proposals, members of the public made a strong call to action to address the housing difficulties experienced by Burlington renters. In response to these concerns, Mayor Weinberger directed CEDO and the Department of Permitting & Inspections to undertake a review of existing tenant protections in Burlington and Vermont, examine best practices from other communities and states, and identify where the City can improve its policies to better support tenants. This memo contains staff research on these topics in order to facilitate further discussion, as well as seven recommendations.

Vermont is among the best states for tenant protections, and Burlington's ordinances go beyond state requirements.

Federal, state, and local laws together create the landscape of tenant protections, and often cities have more robust protections in place than are required by the states. Vermont offers some of the most thorough tenant protection laws in the nation, which provides a strong foundation for laws that regulate the landlord and tenant relationship here in Burlington. This year, historic tenant protection reform efforts have passed in New York, Oregon, and California in direct response to a growing housing crisis in those states. It is noteworthy that many of the provisions contained in those bills already exist here in Burlington.

Local housing ordinances in Burlington further increase protections for tenants from what is required by the state, first and foremost by requiring landlords to register rentals and undergo inspection to receive a Certificate of Compliance (COC). Furthermore, the Code Enforcement team investigates tenant complaints about violations of the minimum housing standards. Burlington has additional ordinances specific to other aspects of tenant rights, including those relating to: retaliatory evictions, additional eviction notice, security and pet deposits, housing discrimination, tenant relocation, and condo conversion. The Housing Board of Review (HBR), a citizen board, hears appeals regarding security deposit and minimum housing code disputes.

There are opportunities to further strengthen the City's tenant protections.

While Burlington has a strong renter protection landscape, there are opportunities to further expand these efforts, and to evaluate the work of progressive cities and states for their applicability to

Burlington. As such, this report evaluates current practices in Burlington, compares them to best practices from around the country, and identifies seven recommendations for the City to explore further: Improving the accessibility of code enforcement data; Strengthening the City's minimum housing standards; Assessing the capacity of existing tenant advocacy resources to meet demand in Burlington and requiring distribution of educational materials to landlords and tenants; Considering an expanded role for Burlington's Housing Board of Review; Reviewing 'just cause' eviction standards and considering tenant assistance for 'no cause' evictions; Tracking data on evictions and Housing Board of Review decisions; and Evaluating existing tenant support resources and assessing the need for an eviction support fund.

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Overview of Existing Tenant Protections

Federal, state, and local laws together create the landscape of tenant protections, and often cities have more robust protections in place than are required by the states. Vermont offers some of the most thorough tenant protection laws in the nation, which provide a strong foundation for laws that regulate the landlord and tenant relationship here in Burlington. The infographic at right gives a general sense of how Vermont compares to Arkansas, which is the lowest ranked state for basic renter protection metrics. This does not tell the whole story, however, as cities generally have stronger protections than states, and indeed, Burlington's own ordinances are stronger than the state of Vermont's.

This year, historic tenant protection reform efforts have passed in New York, Oregon, and California in direct response to a growing housing crisis in those states. It is noteworthy that many of the provisions contained in those bills already exist here in Burlington. The recent reforms in these states means that state law is catching up to the tenant protections offered in some of the leading U.S. cities.

Burlington ordinances specific to tenant rights include those relating to: retaliatory evictions, additional eviction notice, security and pet deposits, housing discrimination, tenant relocation, and condo conversion.¹ The Housing Board of Review (HBR), a citizen board, hears appeals regarding security deposit and minimum housing code disputes. Rental housing in Burlington must undergo inspection to receive a Certificate of Compliance (COC), and the code enforcement team investigates tenant



Best and worst states' renter protections- rentcafe.com

¹ Burlington Code of Ordinances Ch. 18 Housing, Sections: 29 & 29(a) (retaliation & eviction) ,28 (relocation) ,120 (deposits) , Article IV (discrimination), Article V (condo conversion), 35-43 (HBR)

complaints about violations of these minimum housing standards within 7 days.² The following is a summary of Vermont and Burlington ordinances regarding tenant protections.

Existing Vermont & Burlington Tenant Protections		
	Vermont	Burlington
Security Deposit Maximum	<i>None</i>	<i>1 months' rent (1/2 month pet deposit)</i>
Deadlines for returning security deposits	<i>Postmarked within 14 days</i>	
Rent increase notices	<i>Min. 60 days</i>	<i>3 rental periods</i>
Repair and deduct policies	<i>May deduct up to 1/2 rent amount</i>	
Withholding rent policies	<i>For failure to provide essential services</i>	
Landlord Access (non-emergency)	<i>48 hours</i>	
Tenant termination notice	<i>None</i>	<i>2 rental periods</i>
Eviction notice	<i>Requires notice for just cause³/no cause⁴ with written lease</i>	<i>Requires notice without written lease⁵</i>
Abandoned tenant property	<i>60 days from notice to retrieve</i>	
Application fees	<i>Prohibited</i>	
Retaliatory Conduct	<i>Prohibited</i>	<i>Retaliatory eviction protections</i>

For a more detailed explanation of landlord and tenant law in Vermont and Burlington, CVOEO and VT Apartment Owners Association produced a comprehensive guide for landlords and tenants called "[Finding Common ground: The Definitive Guide to Renting in Vermont.](#)"

Background on Evictions in Vermont

This section draws from the 2019 report by Vermont Legal Aid, "[Eviction in Vermont: A Closer Look,](#)" which examined data on evictions in Vermont (Appendix E). The report identified that reforms to the eviction process can provide additional protections for renters, but noted that the problem with evictions is ultimately rooted in the lack of affordable housing supply and low wages. When a household is "cost-burdened"—defined as spending more than 30% of their income on rent—that household is always on the brink of eviction. In Burlington, roughly 60% of renter-occupied households are cost burdened, with 33% spending more than 50% of their income on rent.⁶ For these households, a single shock to income, or a temporary or unexpected expense, can lead to a missed payment and potential eviction filing.

² Where there is a violation, the order may require the violations to be corrected within sixty (60) days or less or require that the premises be vacated and secured until the dwelling or dwelling unit meets the standards (18-25)

³ Just Cause termination notice: Nonpayment of rent & criminal activity (14 days) Breach of rental agreement & Sale of property (30 days)

⁴ No Cause termination notice (written lease) - 30 (if weekly), 60 or 120 days depending on length of tenancy

⁵ No Cause termination notice (no lease) - 21 (if weekly), 60, or 90 days depending on length of tenancy

⁶ <https://www.housingdata.org/profile/rental-housing-costs/rent-cost-burden>

Eviction in Vermont is primarily a result of alleged nonpayment of rent. The Vermont Legal Aid report found that around 1,700 eviction cases are filed in Vermont every year, and in 70% of the cases studied, unpaid rent was the only issue raised (as opposed to violating the lease, foreclosure, or evicting “without cause”). Evictions were filed against 1 out of every 44 of renting households in Vermont in 2016 (a 2.25% eviction filing rate), with 75% of those cases resulting in an eviction. The national eviction filing rate varies between 6 and 7 percent.⁷ This would indicate that Vermont is not facing a disproportionate amount of evictions relative to the nation; however, more research is needed to understand eviction rates in Burlington. Data is not currently available on any public or private database – records are only available at the county courts where files must be requested and reviewed individually.

Vermont’s Eviction Process

An eviction in Vermont begins with a Notice of Termination, which is a letter from the property owner to the tenant, explaining that the tenancy is being terminated, why, and the date of termination based on the required notice. In Vermont, tenants may be evicted due to falling behind on rent; breaking the terms of their lease; engaging in criminal, drug, or violent activity; or simply for “no cause” at all. If the tenant hasn’t moved by the termination date, the landlord must sue the tenant in court to remove them from the unit. If this occurs, it is customary to take at least two months from the start of the eviction process until a judge’s order is obtained, and the process can often take much longer. A tenant is not “evicted” until the entire court process is completed, a judge issues an order, and the order is delivered to the tenant. The Vermont Legal Aid report found that a program to intervene in the early stages of the process could potentially resolve 70% of evictions before they start, preventing the costs from escalating throughout the legal process.⁸

Review of Recent Reforms and Best Practices

In 2019, historic tenant protection reform efforts have passed in [New York](#), [Oregon](#), and [California](#) in direct response to a growing housing crisis in those states. Recent tenant protection reforms nationally have focused on changing the rules around the eviction process by establishing stricter ‘just cause’ eviction provisions and reforms to the eviction legal process. ‘Just Cause’ eviction protections typically establish notice periods and stipulate the allowable reasons for eviction. Another common element is that they also include regulations on the eviction process, such as regulating security deposits or protecting against retaliatory evictions. Much of those protections already exist in Burlington.

There are instances where these new reforms go further than Burlington’s protections. Eviction protection laws, known as ‘just cause’ laws, are more restrictive in California and Oregon, and New York’s reforms include changes to the eviction adjudication process. New York is also reforming the long-standing rent control provisions applied in New York City, while Oregon’s and California’s legislation both contain an annual cap on rent increases intended to stop very large increases in rent. This section will explore these common protections and recent reforms more fully.

⁷ <https://evictionlab.org/national-estimates/> (or see Appendix E)

⁸ Vermont Legal Aid [“Eviction in Vermont: A Closer Look”](#)

Standards for ‘Just Cause’ Eviction Laws

Historically cities have had ‘just cause’ protections only for apartments subject to rent control, while recent efforts are offering those protections more widely. Establishing ‘just cause’ eviction standards, or, allowable grounds for evictions, varies in its implementation. This is compared to ‘no cause’ evictions, in which no reason for eviction is stated or required. In Vermont, a ‘no cause’ eviction is permitted, but requires more advanced notice to a tenant than a ‘just cause’ eviction.

California and Oregon have adopted prohibitions against ‘no cause’ evictions after one year of tenancy. California applies this prohibition to all leases, whereas Oregon covers only month-to-month leases. In both cases, owner-occupied homes and duplexes (including Accessory Dwelling Units) are exempt from the prohibition.

Relocation Assistance

California and Oregon distinguish ‘no fault just cause’ scenarios that constitute allowable reasons for eviction after one year when ‘no cause’ eviction is prohibited, i.e. substantial rehabilitation of the unit or sale of the property for owner-occupied use. In these cases, where the tenant is not at fault, the property owner must provide one month’s rent to the tenant, or waive the last month’s rent. Oregon exempts property owners managing four or fewer units from this payment.

In the case of Oregon, the prohibition on ‘no cause’ eviction is for month-to-month tenancies after one year of occupancy, and does not apply to fixed-term tenancies, such as a one-year lease. Oregon requires a fixed-term tenancy to convert to a month-to-month lease upon its expiration, unless a new fixed-term is agreed upon. However, Portland, Ore., requires that a property owner that declines to renew or replace an expiring rental agreement with ‘no cause’ be subject to a more substantial relocation assistance payment than those declining to renew with ‘just cause’.⁹

Prohibitions on Retaliatory Conduct and Retaliatory Evictions

Consistent with national best practices, Vermont prohibits retaliatory conduct by a property owner that changes the terms of a rental agreement or brings or threatens to bring an action against a tenant who has made a formal complaint, complained to the property owner about a violation, or has organized or

CALIFORNIA JUST CAUSE EVICTION REASONS SUMMARY

Reasons for ‘Just Cause’ Eviction:

- *Nonpayment of rent*
- *A breach of lease terms*
- *Nuisance violations*
- *Damaging the property*
- *Refusing to renew lease*
- *Criminal activity*
- *Subletting in violation of lease*
- *Refusing owner entry*
- *Illegal use of property*
- *Failure to vacate*

‘No Fault Just Cause’ Reasons:

(Requires 1 month rent relocation payment)

- *Occupancy by owner or immediate family if included in lease*
- *Withdrawal from rental market*
- *Legal order to vacate*
- *Intent to demolish or to substantially remodel*

⁹ (“Relocation Assistance”) in the amount that follows: \$2,900 for a studio or single room occupancy (“SRO”) Dwelling Unit, \$3,300 for a one-bedroom Dwelling Unit, \$4,200 for a two-bedroom Dwelling Unit and \$4,500 for a three-bedroom or larger Dwelling Unit.

become a member of a tenant union.¹⁰ Burlington additionally prohibits retaliatory evictions,¹¹ in order to deter a property owner from issuing a notice to vacate to a tenant who has made a complaint to the Code Enforcement division or as part of a public statement to any governmental body. This is achieved by presuming that any notice to vacate issued within 90 days of the tenant's complaint or statement is presumed to be in violation of this section, with the burden of proof being on the property owner to establish otherwise.

Limits on Security Deposits and Deposit Withholdings

Burlington has a very comprehensive security deposit ordinance¹² that is consistent with best practices elsewhere. New York's state-wide reform is only just now limiting a security deposit to one-month's rent as Burlington does. Among other security deposit regulations, Burlington's ordinance also limits pet deposits to a half-month of rent. Vermont requires a property owner to return a security deposit within 14 days from when the tenant vacates or provide a notice of intent to withhold the deposit. In Burlington, the property owner must include a notice to the tenant of their right to object to a withholding by requesting a hearing before the City's Housing Board of Review.

Rental Registration, Minimum Housing Standards, and Licensing

The City of Burlington has robust rental registration and minimum housing standards that require property owners to register a rental unit and undergo regular inspections in order to receive a Certificate of Compliance. Tenants may file a complaint for any violations of the minimum housing standards, and the City's Department of Permitting and Inspections (DPI) will investigate the complaint. Property owners may appeal any findings upheld by the City's investigation to the Housing Board of Review.

In line with best practices, DPI began implementing a tiered Certificate of Compliance system in 2012. The initial round of inspections under this new system was completed last year, with all rental properties in the city now having a rating relating to a 1 through 5 year Certificate of Compliance re inspection timeline. This has the benefit of making inspections more efficient, enabling the City to target its inspection resources at those properties that consistently have violations, and incentivizing property owners to meet and exceed the minimum housing standards. The rating also allows for tenants seeking housing to see how a property fared in its past inspections, indicated by its CoC rating.

Some communities are considering a licensing system, which takes rental registration a step further. By issuing a license, the municipality has the power to revoke a property owner's ability to conduct business within the municipality. Under the City's current system, property owners can accumulate multiple violations for a specific property. While the City can take them to court for redress, it is specific to a single building or unit, they cannot suspend or revoke their ability to do business in the city generally.

¹⁰ 9 V.S.A. § 4465

¹¹ Burlington Code of Ordinances Ch. 18 - 29

¹² Burlington Code of Ordinances Ch. 18 - 120

There is limited research or cases available where a licensing process has been implemented, but the idea is emerging as a topic of consideration around the country.¹³ While licensing may have the effect of prohibiting property owners who are chronic offenders of local housing ordinances, it can also have the effect of removing units from the housing stock temporarily or for longer periods of time.

Rent Control

There are both benefits and costs to rent control, which are the subject of much debate; this report does not attempt to determine the merits of the policy, nor is it a comprehensive literature review of the research on the topic. While rent control policies are appealing due to the scale of their impact, they have not proven to be a panacea. Due to some well-documented, negative, long-term impacts of rent control on housing affordability, it is a strategy that should only be utilized after, or at least in conjunction with, other policy tools that more broadly address housing production and preservation.

The following is a brief review of recent reforms that include a form of rent control, as well information about Burlington's housing market.

National Context

There is a long history of rent control in cities around the country. Many policies faced a strong backlash that resulted in the rolling back and outlawing of rent control. Despite this trend, the issue has continued to be debated and widely-researched, and it is having a resurgence in the national dialogue due to a growing affordable housing crisis in U.S. cities.

Rent control can take many forms, from setting a limit on how much can be charged for rent, to limiting the year-over-year increases in rent, or even limiting the frequency of when rent can be increased. These are often paired with restrictions on evictions as discussed in previous sections. The recent bills in California and Oregon are aimed at preventing egregious rent increases, while the recent New York City law is focused on preserving the remaining rent-controlled

"WHILE A RENT CAP COULD HELP TO LIMIT STEEP RENT HIKES, GUARDING AGAINST EXCESSIVE RENT INCREASES ALONE IS NOT ENOUGH TO ADDRESS CALIFORNIA'S HOUSING CRISIS...A BROADER SET OF POLICIES THAT TARGET PRODUCTION AND PRESERVATION—FROM STREAMLINING THE PERMITTING AND APPROVAL PROCESS FOR NEW CONSTRUCTION TO CURBING CONSTRUCTION COSTS TO IMPROVING AND EXPANDING FINANCING MECHANISMS—ARE ALSO CRITICAL TO ENSURE THAT THE CRISIS DOESN'T CONTINUE TO WORSEN."

[Curbing Runaway Rents: Assessing the Impact of a Rent Cap in California](#)

COMPONENTS OF RENT CONTROL

- 'JUST CAUSE' EVICTION LAWS: *restrictions on evictions*
- RENT CAP: *cap on rent increases within the duration of a tenancy*
- VACANCY CONTROL: *Rent cap beyond the duration of a tenancy*

¹³ <https://www.sfexaminer.com/opinion/time-for-landlord-licensing-in-san-francisco/>

units in the City through vacancy control (which extends the rent cap a unit is subjected to even after a tenant moves out).

- **California** prohibits a property owner from increasing the gross rental rate for a dwelling or unit more than 5% plus the percentage change in the cost of living, or 10% max.
- **Oregon** limits residential rent increases within any 12-month period to no more than 7% above average change in cost of living.
- **Neither California nor Oregon** has strict vacancy control, so rent can be reset after a tenant leaves. (Oregon has vacancy control in the case of a 'no cause' eviction that takes place within the first year of tenancy).

New research on past rent control efforts has been undertaken as these new measures are being considered. Generally, these studies have shown that rent control helps current tenants stay in place in the short term, reducing the many negative effects of displacement for people with low incomes.¹⁴ However, the long term effects of past rent control efforts, such as Cambridge, Mass., and San Francisco, Calif., have often been the opposite of what is intended—a depressing effect on housing production, reduced incentive to invest in existing housing, and higher-income tenants continuing to occupy rent-controlled units which makes them unavailable to lower-income tenants.¹⁵

Burlington

When considering the merits of rent control in the Burlington context, it is important to consider a few key characteristics about Burlington's housing market. While Burlington has struggled with a chronically low housing vacancy rate, and rising costs of housing, recent data indicate that Burlington is not experiencing a rate of rent increase as acute as other major cities that have enacted emergency rent caps.

Allen, Brooks & Minor, a local real estate advisory and appraisal firm, conducts a yearly survey and analysis of the real estate market. The most recent report determined that the average rent inflation, or annual percent change in rent, for Chittenden County had decreased in the last four years from an annual rate of 2.9% to

2.1%. At the same time, the general rate of inflation rose from 2.4% to 2.5%. The report's authors noted that this data suggests "that landlords have been unable to increase rents in conjunction with rising operating expenses." While we don't have fine-grain data on rent increases in Burlington, the City did commission a vacancy study to evaluate vacancy trends in Burlington separate from the County.

Vacancy is not a proxy for affordability, but it does influence the rate of rent increase. The housing vacancy rate has long hovered around 1% until the last five years when it has ranged between 1.1% and 2.8%. The Burlington study found "a general upward trend in vacancy between 2012 and 2017" that is



BETWEEN 2015 AND 2017, "VACANCY RATES WERE PERSISTENTLY HIGHER THAN THE LONG TERM AVERAGE, WHICH LIMITED LANDLORD'S ABILITY TO INCREASE RENTS, AND IS REFLECTED IN A DECLINE IN ANNUAL RENT APPRECIATION OVER THE SAME TIME FRAME".

Allen, Brooks & Minor Report, December 2018

¹⁴ https://www.policylink.org/sites/default/files/OurHomesOurFuture_Web_08-02-19.pdf

¹⁵ <https://www.brookings.edu/research/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/>

the result of considerable growth in Chittenden County and Burlington. In fact, this report found that the average vacancy rate between 2006-2011 has doubled to 1.5% from 2012-2018. While this number is still far too low, it indicates the early successes that efforts to address availability and affordability of housing have had, and underscores the need for more housing supply for the indefinite future to maintain the trend.¹⁶

Additionally, Burlington has a substantial number of housing units that are permanently affordable. This means that rents are tied to the area median income, and are adjusted for the size and income of a household occupying the unit. Further, Champlain Housing Trust, Cathedral Square Corporation, and Burlington Housing Authority, which utilize income-based affordability standards for rents, alone control approximately 22% of all of the rental housing in the city. In addition, the City's inclusionary zoning ordinance continues to ensure that 15% - 25% of the units in market-rate housing development projects above a certain size are permanently affordable. Finally, while Burlington does not currently limit the amount of annual rent increase, it does require 90-days advance written notice to a tenant before an increase in rent can occur.

Recommendations

The following recommendations are informed by the research summarized on the specific topics in this report, as well as initial ideas put forth and conversations with various tenant & property owner stakeholder groups and other City reports. This report is intended to be a starting point for a further discussion with the community that will be conducted by the Community Development and Neighborhood Revitalization Committee, in order to consider tenant protection measures, determine priorities, and refer any recommended policy changes to the appropriate bodies.

Improve accessibility of code enforcement data, including properties' CoC ratings and complaint history

DPI (i.e., the Code Enforcement Office) worked for several years inspecting and rating properties under the City's new COC ratings system, an effort that was completed in 2018. All properties have now been given a rating from 1 to 5, which reflects the number of years for which the CoC is valid. A CoC is based on the level of deficiencies found, with the lowest rated properties requiring a 1 year re-inspection timeline, and the best requiring re-inspection only every 5 years.

While this system is considered to be a valuable tool for renters to better understand a property's history of compliance with the minimum housing code requirements, the method for making this information available should be improved. CoC ratings, as well as a history of housing code complaints, are available in the City's property database, but they are not easy to discern as they are scattered amongst the permit history. In the short term, this data should be made available in a format that is easier to obtain to improve its usefulness to current and prospective tenants of a property. This could include a search function or report on the City's website, or other methods identified (such as an app). In addition to making this data easier to access, information about how to obtain a full inspection report should be made more transparent as well. Currently, inspection reports are available upon request by property address, and are not posted online.

¹⁶ Allen, Brooks, and Minor, "Apartment Market Vacancy Study for the City of Burlington," July 25 2019

Strengthen the City's minimum housing standards

This review is underway as part of the work happening to implement recommendations from [The Neighborhood Project](#) as part of Action Item #1:

Clarify, simplify, and communicate the City's existing quality of life tools; and review "fair warning" policies

Create a city team to review Burlington's Minimum Housing Standards Ordinance and make recommendations for strengthening same. Review standards for the issuance of certificates and permits and terms of inspection on the 1-5 scale.

Assess capacity of existing tenant advocacy resources to meet demand in Burlington; require distribution of educational materials to landlords and tenants

While Vermont and Burlington have a robust set of tenant protections and a local minimum housing code, it is a complicated system for many people to navigate. Numerous stakeholders have expressed that making resources available for tenants that clearly outline their rights is a high priority. The City should create a landing page for tenants' rights resources, including code enforcement data.

There are great examples of these resources that already exist, such as the CVOEO and VT Apartment Owners Association's booklet *Finding Common Ground: The Definitive Guide to Renting in Vermont*. The City should consider how to make this or another similar resource more widely available. For example, Seattle has a law requiring distribution of tenant education materials to inform tenants of their rights (See Appendix D). Portland, Me., also requires landlords to provide materials regarding tenants' rights.¹⁷

An additional recommendation by DPI staff is to provide information on the retaliatory eviction rules to a tenant when a complaint is filed and/or resolved. This would explain the presumption of guilt for a property owner if an eviction notice is issued within the 90 days following the filing of a complaint.

Consider an expanded role for Burlington's Housing Board of Review

The Burlington Housing Board of Review (HBR) hears disputes regarding security deposits and appeals of minimum housing orders for rental properties in Burlington. The HBR also hears requests for variances from the minimum housing code. While there is not regular data available on the HBR workload or the outcome of decisions, some data was gathered from the HBR for the purpose of this report. Data on the number and type of cases heard by the HBR from 2015-2019 demonstrates that the board is providing a critical role in processing security deposit claims, as well as in some code-related appeals.

The role of the HBR as described in the Municipal Code is broad: "to hear and rule on requests for hearings".¹⁸ As such, the role of the HBR should be considered to determine if additional aspects of tenant/landlord law reviewed in this report could be handled by this board.

¹⁷ <https://www.portlandmaine.gov/DocumentCenter/View/15192/Rental-Housing-Rights-Document>

¹⁸ Burlington Code of Ordinances Ch. 18-42

Year	Sec. Deposit Cases	Min. Hsng. Code Cases	Total Cases
2019 (as of 9/1)	25	0	25
2018	32	1	33
2017	35	4	39
2016	31	9	40
2015	34	6	40

Review ‘just cause’ eviction standards and consider tenant assistance for ‘no cause’ evictions

Currently Vermont and Burlington allow ‘no cause’ evictions but require advanced notice based on how long the tenant has occupied the property. California and Oregon have prohibited ‘no cause’ evictions after one year of tenancy, which requires stipulating a more robust set of definitions for ‘just cause’ eviction reasons, including ‘no fault’ reasons where a tenant relocation assistance payment is required.

Burlington currently requires an owner to cover relocation costs in the event that a tenant is displaced due to an enforcement action, or the suspension or revocation of a Certificate of Compliance.¹⁹ The City could require a tenant relocation assistance payment of one month’s rent (or a waiver one month’s rent) in cases of ‘no cause’ eviction after one year of occupancy by the tenant. The City may consider an exemption for small landlords from this payment as Oregon and California do. The feasibility of making this type of change, and if and how it would affect state law, need to be further researched and discussed.

Track data on evictions, Housing Review Board decisions

VT Legal Aid’s *Eviction in Vermont* report notes that there is no comprehensive eviction data available in the State of Vermont. This is also true of Chittenden County and Burlington. Moving forward, the City should determine the feasibility of tracking eviction data for Burlington, including the reason, the filing rate, the eviction rate, and the costs associated. Further, the City should work with the Housing Board of Review to collect data on its ongoing caseload, relative to the number of cases, the outcome of its decisions, and data on any additional or new types of hearings before the board. This data should be used to inform additional educational materials needed, discuss further changes to laws, or develop other programs for tenant protections.

Evaluate existing tenant support resources, and assess need for eviction support fund

Along with understanding the extent of evictions in the city, a needs assessment in collaboration with tenant support organizations should be conducted to evaluate existing resources for eviction support, and to identify what additional resources may be necessary to help prevent evictions.

¹⁹ Burlington Code of Ordinances Ch. 18-28

APPENDICES

A. New York State Housing Stability and Tenant Protection act of 2019 (S6458)

Effective Date: June 14 2019

- Creates transformational protections for all residential tenants throughout the state.
- Bans the use of so-called "tenant blacklists" which protects tenants who enforce their rights.
- Limits security deposits to one month's rent and provides required procedures to ensure the landlord promptly returns the security deposit.
- Includes a wide variety of protections for tenants during the eviction process, including strengthening protections against retaliatory evictions.
- Creates the crime of unlawful eviction, where a landlord illegally locks out or uses force to evict a tenant, as a Class A Misdemeanor and also punishable by a civil penalty of between \$1,000 and \$10,000 per violation.
- Requires landlords to provide notice to tenants if they intend to increase the rent more than five percent or do not intend to renew the tenants' lease.
- Provides tenants more time in eviction proceedings to get a lawyer, fix violations of the lease, or pay rent owed.
- Expands the ability of the court to stay an eviction for up to one year if the tenant cannot find a similar suitable dwelling in the same neighborhood after due and reasonable efforts or the eviction would cause extreme hardship.

<https://nyassembly.gov/Press/files/20190611a.php> (summary)

<https://www.nysenate.gov/legislation/bills/2019/s6458> (Legislation)

[https://www.rebny.com/content/rebny/en/newsroom/in-the-news/2019/Housing Stability Tenant Protection Act 2019.html/](https://www.rebny.com/content/rebny/en/newsroom/in-the-news/2019/Housing%20Stability%20Tenant%20Protection%20Act%202019.html/)

B. Oregon State Tenant Protections Legislation Summary (SB 608)

Effective Date: February 28 2019

WHAT THE MEASURE DOES: Prohibits termination of month-to-month tenancies without cause after one year of occupancy. Requires the conversion of fixed-term tenancies to month-to-month after a year of occupancy, unless a new fixed term is agreed on, or the landlord has warned the tenant contemporaneously in writing of three separate violations of agreement within the preceding 12 months, as specified, and provided 90 days written notice. Exempts owner-occupied tenancies (no more than two dwellings, in the same building or on the same property as a landlord's primary residence). Allows landlords to terminate tenancies in order to demolish or repurpose the dwelling within a reasonable time; to renovate or repair premises that are or will be unsafe or unfit for occupancy within a reasonable time; or to occupy the premises as a primary residence for self or immediate family when no comparable unit is available at the same location at the same time; or when the landlord has notified the tenant within 120 days of accepting a buyer's offer to purchase the dwelling as a primary residence. Requires notice to specify reason, date, and supporting facts. Requires landlord to pay tenant one month's rent for such terminations unless there are four or fewer dwelling units. Provides tenant defense against action for possession and three months' rent plus actual damages for violations when tenant brings action within one year. Limits residential rent increases within any 12-month period to no more than seven percent above average change in consumer price index, as defined, except when the dwelling has been certified for occupancy less than 15 years, or when rent is reduced pursuant to a government assistance or subsidy program. Provides for actual damages plus three months' rent for violations. Directs the Department of Administrative Services to publish maximum annual rent increase and maintain other information for the public online. Declares emergency, effective on passage

Landlords may evict tenants for a variety of reasons, including for nonpayment of rent and other violations of rental agreements. Oregon law also generally allows both landlords and tenants to terminate month-to-month tenancies without cause, with 30 days' notice (although some localities, like Portland, have different notice requirements).

Fixed-term tenancies can also be terminated without cause by either landlords or tenants at any time during the tenancy with 30 days' notice prior to the end of the term, or with 60 days' notice after the end of the term.

Current law prohibits rent increases in the first year of a month-to-month tenancy and requires 90 days' notice of same. There are no other restrictions on the number or amount of rent increases that may be imposed on a month-to-month tenancy.

Senate Bill 608 prohibits evictions without cause after the first year of occupancy and adds the following circumstances to the existing list of reasons that a landlord may evict for-cause:

- When the premises are sold to a buyer as a primary residence;
- When the premises will be occupied by the landlord or an immediate family member;
- or when the premises are being renovated, or demolished, or removed from residential use. If a landlord uses one of the new reasons to evict, they must provide 90 days' notice and one

month's rent to assist the tenant with relocation (except two-unit or less, owner-occupied properties, and landlords with four or fewer dwelling units).

Senate Bill 608 also provides for fixed-term tenancies to convert to month-to-month unless the parties agree to a new term or a tenant has received at least three written, contemporaneous warnings about violations in the preceding 12 months.

Finally, Senate Bill 608 limits rent increases to no more than seven percent plus the average change in the consumer price index, no more than once in any 12-month period, unless: the premises are considered new construction, or the landlord is resetting rent for a new tenant after a compliant tenant vacated voluntarily, or the rent is subsidized

<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB608>

C. California Tenant Protection Act of 2019 (AB 1482)

Effective Date: October 8, 2019

The Legislature finds and declares that the unique circumstances of the current housing crisis require a statewide response to address rent gouging by establishing statewide limitations on gross rental rate increases.

This bill would, with certain exceptions, prohibit an owner, as defined, of residential real property from terminating a tenancy without just cause, as defined, which the bill would require to be stated in the written notice to terminate tenancy when the tenant has continuously and lawfully occupied the residential real property for 12 months, except as provided. The bill would require, for certain just cause terminations that are curable, that the owner give a notice of violation and an opportunity to cure the violation prior to issuing the notice of termination. The bill, if the violation is not cured within the time period set forth in the notice, would authorize a 3-day notice to quit without an opportunity to cure to be served to terminate the tenancy. The bill would require, for no-fault just cause terminations, as specified, that the owner, at the owner's option, either assist certain tenants to relocate, regardless of the tenant's income, by providing a direct payment of one month's rent to the tenant, as specified, or waive in writing the payment of rent for the final month of the tenancy, prior to the rent becoming due. The bill would require the actual amount of relocation assistance or rent waiver provided to a tenant that fails to vacate after the expiration of the notice to terminate the tenancy to be recoverable as damages in an action to recover possession. The bill would provide that if the owner does not provide relocation assistance, the notice of termination is void.

Prohibit an owner of residential real property from, over the course of any 12-month period, increasing the gross rental rate for a dwelling or unit more than 5% plus the percentage change in the cost of living, as defined, or 10%, whichever is lower, of the lowest gross rental rate charged for the immediately preceding 12 months, subject to specified conditions. The bill would prohibit an owner of a unit of residential real property from increasing the gross rental rate for the unit in more than 2 increments over a 12-month period, after the tenant remains in occupancy of the unit over a 12-month period. The bill would exempt certain properties from these provisions. The bill would require the Legislative Analyst's Office to submit a report, on or before January 1, 2030, to the Legislature regarding the effectiveness of these provisions. The bill would provide that these provisions apply to all rent increases occurring on or after March 15, 2019. The bill would provide that in the event that an owner increased the rent by more than the amount specified above between March 15, 2019, and January 1, 2020, the applicable rent on January 1, 2020, shall be the rent as of March 15, 2019, plus the maximum permissible increase, and the owner shall not be liable to the tenant for any corresponding rent overpayment. The bill would authorize an owner who increased the rent by less than the amount specified above between March 15, 2019, and January 1, 2020, to increase the rent twice within 12 months of March 15, 2019, but not by more than the amount specified above. The bill would void any waiver of the rights under these provisions.

The Legislature finds and declares that the unique circumstances of the current housing crisis require a statewide response to address rent gouging by establishing statewide limitations on gross rental rate increases. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1482

D. Seattle Summary of Landlord and Tenant Rights Requirement

A landlord must distribute a summary of state landlord tenant law and City of Seattle rental housing codes describing the rights, obligations, and remedies of landlords and tenants under these laws. This requirement can be met by distributing the current version of the Seattle Department of Construction and Inspections Publication Information for Tenants. This document must be given to each prospective tenant, to a tenant at the time a rental agreement is offered, and when a rental agreement is renewed. Month-to month tenants must receive the most current version of this document at least once a year. When a rental agreement is renewed, Information for Tenants maybe be distributed electronically. The current version of Information for Tenants can be accessed at:

https://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpdd016420.pdf

If a landlord fails to distribute the summary in accordance with these requirements, a tenant may terminate the rental agreement by written notice. In addition, the tenant may recover, in a civil action against the landlord, actual damages, attorney fees, and a penalty of up to \$500. If a court determines that the landlord deliberately failed to comply with this requirement, the penalty may be up to \$1,000.

E. “Eviction in Vermont: A Closer Look” Report by VT Legal Aid Executive Summary

In Vermont, approximately 1,700 eviction cases are filed every year. The number one cause of eviction is falling behind on rent. In most cases, families lose their housing, leading to increased rates of homelessness, unemployment, mental and physical illness, and financial and housing instability.

On January 16, 2019, Vermont Legal Aid released a report, [Eviction in Vermont: A Closer Look](#), examining the problem and calling for policy solutions to reduce evictions and the deepening poverty caused by them.

This report marks the most comprehensive attempt to date to study evictions in Vermont. Its key findings are as follows:

1. One in 44 (2.25%) renting households had an eviction filed against them in 2016.
2. In 70% of the cases, unpaid rent was the *only* issue (as opposed to violating the lease or evicting “without cause”).
3. In cases where unpaid rent caused the eviction, the median amount of rent due was \$2,000.
4. In three-quarters of the cases, the plaintiff (landlord) had a lawyer, and the defendant (tenant) did not.
5. Three-quarters of households that had an eviction filed against them were evicted.

In the report, the voices of tenants explain how eviction is a kind of accelerant for poverty: it comes out of poverty, and it creates even more. Research has shown that even a year after eviction, parents and children are more likely to suffer from depression, stress, and negative health outcomes than their non-evicted peers. Eviction can significantly damage a tenant’s subsequent employment, housing and credit prospects.

For landlords, evictions reflect a loss in rental income, lost time in court, and a financial cost for court and attorney fees. Evictions also cost Vermont taxpayers resources through additional burden on the court system and, when an eviction leads to homelessness, through funds needed for emergency housing and shelters. Taking a more proactive approach to prevent evictions would save money for landlords and taxpayers.

The report recommends the following policy changes to address this issue:

1. When a tenant falls behind on rent, provide adequate financial supports to help tenants who can maintain the tenancy long-term come current and avoid eviction. We estimate that an annual amount of \$800,000 strategically invested in back rent support could cut Vermont’s eviction rate by over 50%.
2. Once a case is filed, increase legal representation of defendants in eviction cases or make it easier for defendants to capably represent themselves.
3. Expand and develop programs to help tenants manage their rental payments.
4. Reduce the number of tenants who fall behind on rent by addressing the broader housing affordability crisis.

TO: Community Development and Neighborhood Revitalization (CDNR)

FROM: Devon Ayers and Erika Johnson, Housing Discrimination Law Project, Vermont Legal Aid

RE: Why Vermont Legal Aid Supports Just Cause Reform

DATE: July 14, 2020

Introduction

In Chittenden County over the last five fiscal years, there were 1839 filed landlord-tenant cases.¹ With few exceptions, these cases are eviction cases. Vermont Legal Aid's 2019 report Eviction in Vermont: A Closer Look found that approximately 70% of evictions in Vermont are for nonpayment of rent.² Breach of lease accounts for another 10% of filed eviction cases.³ This means that 20% of all filed eviction cases are for no cause at all. "No cause" eviction allows landlords to evict tenants even if the tenants have paid rent on time and have never broken their leases. A landlord does not have to give a reason for evicting a tenant under no cause.⁴

If Chittenden County is consistent with statewide trends, no cause eviction cases comprise approximately 368 of the eviction actions filed in Chittenden County over the last five years. In addition to the number of *filed* eviction cases each year, landlords frequently evict tenants for no cause without ever filing a court case. In Vermont, a landlord must begin an eviction case by giving their tenant notice that their tenancy is ending and a specific move-out date.⁵ Many tenants who receive these notices simply move out by this date. These landlords do not have to file an eviction action, and there is no official record of the termination. These cases and other non-judicial move-outs are often referred to as "informal evictions."⁶ Although there is no available data on informal evictions in Vermont, our experience and studies of other jurisdictions lead us to believe that informal evictions are equal to (and perhaps surpass) filed evictions.⁷

For tenants, the consequences of an eviction can be devastating and have deep and lasting effects. Housing has a major impact on a person's health, economic, and social outcomes.⁸ Renters who experience a forced move relocate to neighborhoods with higher rates of poverty and crime than those

¹ <https://www.vermontjudiciary.org/sites/default/files/documents/Appendix%20II.pdf>.

² Vermont Legal Aid, Eviction in Vermont: A Closer Look 5, 23 n.21 (2019), available at <https://www.vtlegalaid.org/sites/default/files/Eviction-Report-VLA-3.18.19-web.pdf>.

³ Id.

⁴ 9 V.S.A. § 4467(e).

⁵ 9 V.S.A. § 4467.

⁶ See, e.g., Matthew Desmond, Eviction and the Reproduction of Urban Poverty, 18 Am. J. of Sociology 88, 95 (July 2012), available at <https://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>.

⁷ See, e.g., Deena Greenberg et. al., Discrimination in Evictions: Empirical Evidence and Legal Challenges, 51 Harv. C.R.-C.L. L. Rev. 115, 125 (2016) (in study of evictions in Milwaukee, informal evictions comprised 48% of all forced moves, suggesting court records of evictions provide a substantial underestimate of all evictions).

⁸ See Where You Live Matters: 2015 Fair Housing Trends Report, Nat'l Fair Housing Alliance, 1 (2015), available at <https://nationalfairhousing.org/wp-content/uploads/2017/04/2015-04-30-NFHA-Trends-Report-2015.pdf> ("Where you live determines whether or not you have access to a high-performing school, fresh foods, reliable transportation, good job, quality health care, and recreation in a green space. It often determines even how long you will live.").

who move voluntarily, which has particularly harmful effects on children.⁹ Eviction can also lead to job loss; a recent study suggests that tenants who experience evictions or other forced moves are as many as 22 percentage points more likely than similarly situated people to subsequently lose their jobs.¹⁰ And eviction attacks the physical and mental health of the tenants who experience it. In one study, mothers who were evicted the previous year experienced higher levels of material hardship and parenting stress and were more likely to suffer from depression and to report their health and that of their children as being poor.¹¹ These effects lasted for several years.¹²

These reports are a small sample of a rapidly growing body of evidence that evictions deeply injure individuals, families, and communities. As the personal and systemic consequences of our national eviction epidemic have become clear, several cities and states have enacted laws designed to limit opportunities for landlords to use no cause eviction to displace tenants for no fault of their own.¹³ These laws are broadly referred to as “just cause” eviction reforms.

Over the last several months, Burlington residents have joined communities around the nation in demanding just cause reforms to Burlington’s housing ordinances. In 2019, in response to public demand for housing policy reform, CEDO and the Department of Permitting & Inspections conducted a review of existing tenant protections in Burlington and Vermont and issued recommendations for ways Burlington can improve its policies to better support tenants.¹⁴ Their subsequent memorandum dedicated several sections to a summary of just cause provisions in other states and concluded by recommending that the City of Burlington “review ‘just cause’ eviction standards and consider tenant assistance for ‘no cause’ evictions.”¹⁵ Building on these recommendations, in February 2020 the Burlington Tenants Union presented CDNR with a list of demands that included a demand for the City of Burlington to enact just cause eviction reforms to increase housing and community stability.¹⁶

This memo builds on the work of CEDO and the Burlington Tenants Union and lays the groundwork for future conversations about what reforms are needed. Simply put, this memo seeks to

⁹ Matthew Desmond and Tracey Schollenberger, Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences 1752, *Demography* (2015), available at <https://scholar.harvard.edu/files/mdesmond/files/desmondshollenberger.demography.2015.pdf>.

¹⁰ Matthew Desmond and Carl Gershenson, Housing and Employment Insecurity among the Working Poor, *Demography* (Jan. 11, 2016), available at <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>.

¹¹ Matthew Desmond and Rachel Tolbert Kimbro, Eviction’s Fallout: Housing, Hardship, and Health 316, *Social Forces* (Sept. 2015), available at <https://scholar.harvard.edu/files/mdesmond/files/desmondkimbro.socialforces.2015.pdf>.

¹² Id.

¹³ See generally Memorandum from CEDO and the Department of Permitting & Inspections to City Councilors, available at https://www.burlingtonvt.gov/sites/default/files/Agendas/SupportingDocuments/20191031_TenantRightsResearch_Final_1.pdf.

¹⁴ Id. at 1.

¹⁵ Id. at 13.

¹⁶ Proposed Tenant Protections Submitted to the Community Development and Neighborhood Revitalization Committee by Burlington Tenants Union (Feb. 2020), available at https://www.burlingtonvt.gov/sites/default/files/Agendas/SupportingDocuments/CDNR-Burlington-Tenants-Union_2.pdf.

answer two questions: What are the problems associated with no cause in Burlington, and why does Burlington need just cause eviction reform?

To answer these questions, the memo pulls together recent studies of evictions and housing needs in the State of Vermont and emerging research from around the country about how eviction and housing discrimination work together to destabilize housing and undermine long-established housing rights, particularly for tenants of color and other protected classes. The memo's authors rely on our experience as housing discrimination advocates to fill in the gaps left by the currently available research, often referring to recent, anonymized cases and calls as real-life examples of the harmful impact of no cause eviction in Burlington and statewide.

This memo is organized as follows. Section I provides a brief summary of the relevant state housing laws and local ordinances that define no cause eviction in Burlington. Section II discusses how no cause eviction makes it possible (and in some situations, profitable) for landlords to unlawfully discriminate against tenants based on their status as members of protected groups: tenants of color, tenants with vouchers, tenants with disabilities, and tenants with children. Section III discusses how no cause eviction disincentivizes landlords from addressing health and safety issues within their units and discourages tenants from reporting their concerns. Section IV reviews state anti-retaliation protections for tenants who report violations of their housing rights and how these protections fall short of their goal of meaningfully shielding tenants from retaliatory no cause eviction. Section V outlines Vermont Legal Aid's initial recommendations for changes to Burlington ordinances that minimize the negative impacts of no cause and create meaningful access to housing rights. Section VI concludes.

I. Background: No Cause Eviction Law in Vermont and Burlington

The Vermont Residential Rental Agreement Act ("RRAA") allows tenants to be evicted for no cause at the end of a rental term.¹⁷ Landlords must give tenants written notice to terminate a tenancy.¹⁸ When terminating a tenancy for no cause, the amount of notice landlords must give their tenants depends on two things: whether a rental agreement is written or oral and the length of the tenancy. The shortest notice period is just 7 days, while the longest notice period is 90 days.¹⁹

Burlington ordinances mandate longer notice periods than state law, but only in situations where there is no written rental agreement.²⁰ The mandatory notice periods for no cause terminations are currently 90 days for tenancies of less than 2 years and 120 days for tenancies of more than 2 years.²¹ Burlington does not have unique ordinances for no cause evictions where there is a written rental agreement. Burlington landlords must comply with the state law requirements summarized above, but Burlington tenants with written leases do not have additional protections beyond what the state requires. In some situations, tenants may be asked to move out in as few as 7 days.

Once a landlord has filed an eviction action against a tenant for no cause, the tenant has few or no legal defenses. If the termination notice complies with state law, there are only two potential defenses: retaliation and discrimination. But even those tenants who have claims for retaliation or

¹⁷ 9 V.S.A. § 4467 (c)-(e).

¹⁸ Id.

¹⁹ 9 V.S.A. § 4467.

²⁰ Burlington Code of Ordinances Ch. 18 Housing, Section 29(a).

²¹ Id.

discrimination face an uphill battle to prove their cases, as we discuss in more detail later. Practically speaking, there is effectively no defense to a no cause eviction.

II. The Impact of No Cause Eviction on Fair Housing Rights

Vermont Legal Aid's Housing Discrimination Law Project represents individuals and organizations who have suffered violations of their fair housing rights. The Housing Discrimination Law Project frequently hears from people who receive no cause notices or non-renewal letters from their landlords when they attempt to assert their fair housing rights. Unlawful discrimination can happen to anyone, but the Housing Discrimination Law Project gets reports most frequently from people of color, people with housing vouchers, people with disabilities, and people with minor children. This section will discuss how no cause eviction exacerbates, conceals, and incentivizes housing discrimination against members of each of these protected classes.

a. Discrimination against people of color

Although housing discrimination based on race has been illegal for over 150 years, racial discrimination in housing remains a troublingly common problem. An extensive study of the Greater Boston rental market published by The Boston Foundation in July 2020 found evidence of discrimination based on a prospective renter's race in 71% of tests.²² While white testers who were not using vouchers were able to arrange to view apartments 80% of the time, similarly situated black testers seeking to view the same apartments were only able to visit 48% of the time.²³ The landscape is even more dire for black voucher holders, who were only able to view apartments they were interested in renting (and qualified to rent) 18% of the time.²⁴ The impact of this discrimination can be long-lasting; as one prominent study summarizes, discrimination that prevents an individual from living in high-opportunity neighborhoods "lowers the ceiling on that individual's future success."²⁵

Vermont is far from immune to this type of racism. The available data show similar patterns of race discrimination to those uncovered by the tests in Boston. Phone tests conducted by the Housing Discrimination Law Project found discrimination against a black tester of Kenyan origin in 56% of cases.²⁶ In tests involving in-person visits, 36% of Vermont Legal Aid's tests found discrimination against the black testers or preferential treatment of the white testers.²⁷

Race discrimination in housing choice intensifies the challenges that BIPOC tenants in Vermont already face finding safe and affordable housing. HUD uses American Community Survey data to estimate the number of households with housing problems. A household is defined as having a housing problem if it has any one or more of four problems: 1) housing unit lacks complete kitchen facilities; 2)

²² Qualified Renters Need Not Apply: Race and Voucher Discrimination in the Metro Boston Rental Housing Market 7 (July 2020), available at <https://www.tbf.org/-/media/tbf/reports-and-covers/2020/housing-voucher-report-20200701.pdf?la=en>.

²³ Id.

²⁴ Id.

²⁵ See Raj Chetty et al., The Opportunity Atlas: Mapping the Childhood Roots of Social Mobility 1 (Oct. 2018), available at https://opportunityinsights.org/wp-content/uploads/2018/10/atlas_paper.pdf.

²⁶ Rental Discrimination Report: Housing Discrimination in Vermont Rental Markets 11 (May 2014), available at https://www.vtlegalaid.org/sites/default/files/Rental%20Discrimination%20Report%202014_0.pdf.

²⁷ Id. at 18.

housing unit lacks complete plumbing; 3) household is overcrowded; 4) household is cost-burdened. While a little over 33% of white Vermont households have housing problems, around 50% of all BIPOC Vermont households have housing problems.²⁸

While the data clearly show that race discrimination occurs when people of color apply for housing, it is much harder to identify when landlords evict tenants for racially discriminatory reasons. Although testing can catch discriminatory housing practices at the application stage, the wide range of possible reasons for eviction make it nearly impossible to find the equally situated tenants needed to conduct testing at the eviction stage.²⁹ However, an early study suggests that race discrimination is a significant influence on landlords when they decide whether to evict tenants.³⁰

Though we do not yet know definitively whether no cause evictions mask race discrimination, they certainly allow it to flourish. Even if white residents and tenants of color are terminated for no cause at similar rates, white residents will have a much easier time finding new housing than their BIPOC counterparts, who experience discrimination at every stage of the application process.³¹ And if tenants of color are indeed evicted for no cause at higher rates than white tenants, the obstacles to conducting fair housing testing at the eviction stage make it nearly impossible for them to prove that it was because of their race. No cause evictions create an environment where tenants of color can be discriminated against from application to eviction without ever knowing the reason why.

b. Discrimination against voucher holders

Vermont is one of seventeen states that has enacted fair housing laws that prohibit some form of source-of-income discrimination.³² Under Vermont law, it is unlawful for a housing provider to discriminate against a person “because [the] person is a recipient of public assistance.”³³ This law extends fair housing protections to people who rely on vouchers funded and administered by the Department of Housing and Urban Development (“HUD”), Vermont State Housing Authority (“VSHA”), or a local housing authority to pay for a portion or all of their housing. Voucher-holders typically must meet income cutoffs to qualify for the voucher.

Discrimination against voucher holders is an increasingly well-documented form of unlawful housing discrimination.³⁴ In the most recent study on the subject, the Boston Foundation found that in the Greater Boston housing market, voucher holders faced discrimination in a whopping 86% of tests.³⁵

²⁸ Vermont Housing Finance Agency, Vermont Housing Needs Assessment: 2020-2024 (Feb. 2020) 95, *available at* <https://accd.vermont.gov/sites/accdnew/files/documents/Housing/VT%20HNA%202020%20Report.pdf>.

²⁹ Greenberg et al., *supra* note 7, at 120.

³⁰ *See generally id.* (finding that Hispanics living in neighborhoods in Milwaukee where more than two-thirds of residents are white were roughly twice as likely to be evicted as those in predominantly non-white neighborhoods).

³¹ *See generally Qualified Renters Need Not Apply*, *supra* note 22.

³² Robert G. Schwemm, *Source of Income Discrimination and the Fair Housing Act*, 70 Case W. Res. L. Rev. 573, 598 (2020), *available at* <https://scholarlycommons.law.case.edu/caselrev/vol70/iss3/4>.

³³ 9 V.S.A. § 4503.

³⁴ *See* U.S. Dep’t of Housing and Urban Development, *A Pilot Study of Landlord Acceptance of Housing Choice Vouchers* xi (2018), *available at* <https://www.huduser.gov/portal/sites/default/files/pdf/Landlord-Acceptance-ofHousing-Choice-Vouchers.pdf>.

³⁵ *Qualified Renters Need Not Apply*, *supra* note 22, at 6.

Testers who had vouchers, regardless of their race, were prevented from viewing apartments at very high rates. White voucher holders were able to view rental apartments only 12% of the time, while black voucher holders were able to view apartments they were interested in renting only 18% of the time.³⁶

To our knowledge, Vermont currently has no state-specific data on housing discrimination based on receipt of public assistance. However, staff in the Housing Discrimination Law Project regularly hear from tenants with these experiences. Many landlords tell tenants up front that they do not accept vouchers even though this statement itself is a violation of state fair housing law.³⁷ Others claim to accept vouchers in theory but refuse to cooperate with the mandatory inspections and certifications that go along with the programs. Still others “ghost” or lie about their availability when they learn that the applying tenant has a voucher, exhibiting similar behavior to the housing providers studied in the Boston Foundation’s report.³⁸

As with tenants of color, no cause eviction disadvantages voucher holders most clearly during their search for a new home. Like tenants of color, tenants with vouchers face gargantuan rates of housing discrimination at the application stage. Discrimination against voucher holders reinforces the disadvantages faced by tenants who fall into other protected categories, as voucher holders are significantly more likely to be women, people of color, or people with disabilities.³⁹ Moreover, voucher holders have extraordinarily high stakes when they receive a no cause termination. Most programs require that a voucher holder “places their voucher” by finding a new place to live within a certain period of time after their tenancy terminates (varies by program, but 60 days minimum).⁴⁰ If the tenant does not place their voucher by the deadline, the housing authority can take their voucher away. When stacked with rampant discrimination and an expensive rental market that makes most market housing out-of-reach for voucher holders, no cause eviction destabilizes the housing security of those who have the most to lose from an eviction.

c. Discrimination against people with disabilities: Reasonable accommodations and reasonable modifications

Federal and state fair housing laws protect people with disabilities in their housing by requiring landlords to make or allow changes to rules, policies, practices, or structural changes to a property when these changes are necessary to allow tenants with disabilities equal use and enjoyment of their housing.⁴¹ These changes are called reasonable accommodations or reasonable modifications. Each request must be evaluated on a case-by-case basis and is very fact-specific—what is “reasonable” depends on what each tenant needs and what limitations the landlord has.

No cause evictions can provide a shield for landlords to discriminate against their tenants with disabilities. Reasonable accommodation requests create legal obligations for landlords that many would prefer to avoid. They often require landlords to think creatively about solutions and to balance the rights

³⁶ *Id.*

³⁷ 9 V.S.A. § 4503(a)(3).

³⁸ *Qualified Renters Need Not Apply*, *supra* note 22, at 16.

³⁹ Schwemm, *Source of Income Discrimination and the Fair Housing Act* 602, n.157 (citing 2017 HUD Report finding that in the eighteen-month period ending September 30, 2017, voucher-receiving heads-of-households were 48.5% black, 17.3% Latino, 79.3% female, and 43.6% disabled).

⁴⁰ *See, e.g.*, 24 C.F.R. § 982.303(a).

⁴¹ 42 U.S.C. § 3604(f).

of the tenant making the request with other tenants in the building or apartment complex. The law also requires that landlords engage in an interactive process with their tenants if they are unable to grant the initial reasonable accommodation request. Time and time again, we see that it is easier for landlords to evict tenants with disabilities than it is to make the accommodations or modifications required by law. When landlords are inconvenienced by a reasonable accommodation request or need to have hard conversations with other tenants who may be affected by the request, maintaining the status quo by removing the vocal tenant is often the easiest way to solve the problem.

d. Familial status discrimination: Tenants growing their families through adoption, seeking guardianship of a minor, foster care, or pregnancy

Federal and state fair housing law prohibits housing providers from discriminating against households based on their familial status.⁴² These laws include protections for households with minor children, household members who are pregnant, and those seeking to gain custody or guardianship of a child.

The unfortunate reality is that familial status discrimination happens at all stages of renting, from application to move-out. Vermont Legal Aid has recently encountered several cases where the landlord sought to evict a tenant for pursuing guardianship or foster care of a minor, for becoming pregnant, or for attempting to gain custody of their biological children. Landlords also commonly terminate the tenancies of families with young children, who may make unusual noises or engage in play that inconveniences or annoys other tenants. Because these behaviors rarely rise to the level of a lease violation, landlords often prefer to terminate families' tenancies for no cause than to manage kid-related conflicts between neighbors.

III. Habitability

The combination of Burlington's competitive housing market and the risk of no cause termination discourages tenants from reporting health and safety issues in their homes. Vermont Legal Aid's 2018 report Renters at Risk: The Cost of Substandard Housing concludes that fear of eviction is a significant factor that often prevents tenants from reporting housing health code violations.⁴³ Tenants' fear of eviction is exacerbated by their limited options for affordable housing. The U.S. Census Bureau reports that 59% of Burlington tenants are "rent-burdened"—that is, they pay more than 30% of their incomes in rent.⁴⁴ 33% of Burlington tenants spent more than 50% of their income on rent.⁴⁵ Even unaffordable housing is hard to come by; the annual vacancy rate for units in Burlington from 2012-2018 was around 1.5%.⁴⁶ A lack of affordable housing creates even higher stakes for eviction, often leaving tenants to balance the competing stresses of living in an uninhabitable unit with the possibility of homelessness.

Fear of eviction is not unfounded. Vermont Legal Aid frequently encounters tenants whose leases are not renewed because they complained about habitability issues in their units. Many of these tenants have serious concerns like unreliable heating, lack of running water, electrical issues, structural

⁴² 42 U.S.C. §§ 3602(k), 3604; 9 V.S.A. § 4503.

⁴³ Vermont Legal Aid, Renters at Risk: The Cost of Substandard Housing 16 (2018).

⁴⁴ <https://www.housingdata.org/profile/rental-housing-costs/renter-cost-burden>.

⁴⁵ *Id.*

⁴⁶ Allen, Brooks & Minor, Apartment Market Vacancy Study for the City of Burlington (July 25, 2019).

damage, or plumbing and sewage leaks. Although tenants are technically protected from retaliation if they report health and safety violations to a state agency, this statute is difficult to enforce in practice (as the next section will discuss). In short, no cause creates a financial incentive for landlords to evict and replace tenants who complain about safety and habitability issues rather than taking on the expense of making their units livable and safe.

IV. Anti-Retaliation Provisions and No Cause

While state law does prohibit landlords from retaliating against tenants who seek to enforce their rights, in practice it does little to shield tenants from the risks outlined in this memo. State law prohibits landlords from retaliating against tenants who complain to a governmental agency about habitability issues, complain to their landlord about a violation of the RRAA, or organize or join a tenant's union or similar organization.⁴⁷ If a landlord attempts to evict a tenant in violation of this law, the law gives the tenant a defense to the eviction action.⁴⁸ If a landlord terminates a tenant's tenancy for any reason other than nonpayment of rent within 90 days after a local or state agency issues the landlord a report for violations of health or safety regulations, there is a rebuttable presumption that the termination is in retaliation for the tenant having reported the noncompliance.⁴⁹

But these protections are limited in scope and almost impossible for tenants to access in practice. In habitability cases, tenants have a rebuttable presumption that a landlord's termination is retaliatory, but only if a state or local agency issues a report. The statute is silent on whether tenants who simply ask their landlords to repair the conditions in their unit benefit from this presumption. It is also unclear whether the presumption extends to tenants who seek to enforce their right to organize or to report violations of the RRAA or their fair housing rights. Without the presumption, tenants often lack clear proof of retaliation. Landlords rarely discriminate in writing, and they are often repeat players in court who can offer persuasive testimony. And even tenants with strong cases lack the resources to litigate their claims in court. Vermont Legal Aid's 2019 report Eviction In Vermont: A Closer Look reveals that in 75% of eviction cases, the landlord is represented and the tenant is not.⁵⁰ In short, the protections against retaliation afforded by state law do not effectively protect tenants from wrongful eviction when landlords can terminate tenancies for no cause.

V. Recommendations for Just Cause Evictions Ordinance

Vermont Legal Aid strongly supports increasing tenant protections in the City of Burlington through the passage of a Just Cause Ordinance. We believe an effective ordinance achieves the following:

1. Covers as many landlords as possible, including "mom and pop" landlords;
2. Defines "cause" narrowly, limited to material breach of lease and nonpayment of rent;
3. In cases of material breach, requires landlords to give tenants written notice of the breach and an opportunity to cure it (similar to current requirements for nonpayment terminations).
4. Requires landlords to inform their tenants about civil legal such as Legal Services Vermont and Vermont Legal Aid;

⁴⁷ 9 V.S.A. § 4465.

⁴⁸ 9 V.S.A. § 4465(b).

⁴⁹ 9 V.S.A. § 4465(c).

⁵⁰ Vermont Legal Aid, Eviction in Vermont: A Closer Look, *supra* note 2, at 8.

5. Limits landlords' ability to mimic no fault/no cause eviction by raising the rent an unreasonable amount.

VI. Conclusion

Vermont Legal Aid believes that adopting a just cause ordinance is a necessary step to protect and advance the rights of Burlington tenants, prevent and end homelessness by putting an end to informal evictions, fight housing discrimination, and improve the safety of tenants living in Burlington's aging housing stock. Just cause empowers tenants to communicate with their landlords when issues arise in their tenancies without fear of reprisal or retaliation. It ensures that tenants have consistent access to safe, stable and secure housing. And it increases stability for tenants in neighborhoods that are rapidly becoming unaffordable. We recognize that just cause cannot be the answer to all of our housing problems, but we also acknowledge it as a necessary reform in our work of dismantling the systemic barriers to housing that renters in Burlington face.

We urge the Community Development and Neighborhood Revitalization Committee to advance a recommendation to the full City Council requesting a charter change from the legislature that allows Burlington to adopt a just cause ordinance. We thank the City Council for undertaking this urgent and complex work at a moment when our communities face so many crises and for your recognition that housing stability is an issue that can longer be put off.



CITY OF BURLINGTON, VERMONT
CITY COUNCIL COMMUNITY DEVELOPMENT &
NEIGHBORHOOD REVITALIZATION COMMITTEE
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City Hall, Room 32 • 149 Church Street • Burlington, VT 05401
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Councilor Brian Pine, Chair, Ward 3
Councilor Sarah Carpenter, Ward 4
Councilor Zoraya Hightower, Ward 1

Committee members: Chair Brian Pine (BP), Sarah Carpenter (SC), Zoraya Hightower (ZH)

City staff: Christine Curtis, CEDO

Other Attendees: Christie Delphia, Burlington Tenants Union; Tom Proctor; Erika Johnson, Vermont Legal Aid; Larry Miller; Devon Ayers, Vermont Legal Aid; Brenda Rozzio; Sandrine Kibuey, Champlain Valley Office of Economic Opportunity(CVOEO); Jess Hyman, CVOEO, Amy Cornell

Wednesday, July 15th 2020

5:30 PM –7:03PM

Virtual Zoom Meeting

Draft Minutes

Meeting Started 5:30PM

1. Review Agenda

MOTION by Councilor Pine, **SECOND** by Councilor Carpenter, to adopt the agenda as presented

VOTING: unanimous; motion carries.

2. Public Forum

Public forum opened and with no comments presented by the public, forum closed.

3. Just Cause Eviction Discussion continued

The committee continued their previous discussion on just cause eviction with a presentation by Vermont Legal Aid, Erika Johnson and Devon Ayers. Ayers and Johnson presented data and case examples which show that no cause evictions allow discrimination and force tenants into a housing market where further discrimination exists. Their evidence suggests no cause evictions are used by landlords to discriminate

most commonly against familial, disability, and income status, which undermines tenant's rights.

Vermont Legal Aid suggests an effective ordinance which specifically limits the reasons tenants can be evicted to just cause evictions such as material breach of lease and non-payment of rent.

The committee opened the discussion for public comment.

Christie Delphia of the Burlington Tenants Union commented support for removing no cause evictions as they give landlords too much power over tenants' lives and don't allow for the tenants to have any rights.

Tom Proctor presented a few cases of no cause evictions which happened in Burlington.

Brenda Rozzio, Burlington tenant, gave a personal testimony about being evicted for no cause by her landlord. Rozzio said they failed to renegotiate the rent payment after the lease ended after the landlord told Rozzio rent would not increase, which caused the rent to double once the lease lapsed. Due to no cause evictions, Rozzio had no legal recourse and was forced to move out and struggled to find new, affordable housing.

Larry Miller, local landlord, expressed that there was a lack of input from landlords and other views and suggested more groups be invited to the discussion.

Gene Bergman, attorney, gave a personal testimony about having represented many tenants in previous cases where no cause eviction was used by landlords to bypass investigation and evidence required. Bergman suggests that specific ordinance language is not recommended due to the amount of details that would be required. Councilor Carpenter asked Gene Bergman to record and submit their legal language recommendations and suggestions.

Sandrine Kibuey, CVOEO, expressed support for the memo and said they'd like both parties involved to be able to discuss this and come to a resolution to offer tenants protections.

Amy Cornell, Burlington tenant, gave a personal testimony about how an eviction has affected a family close to her for the worse and that forcing families into homelessness causes irreparable mental suffering.

4. Next Steps

The committee discussed the next meeting and agreed to meet on Monday July 27th, at 5:30 with no set end time in order to allow for maximum public inclusion and discussion. It was also agreed upon to invite Eileen Blackwood, city attorney, the Vermont Landlords Association, and any other groups interested in attending.

MOTION by Councilor Hightower, **SECOND** by Councilor Carpenter, to adjourn the meeting at 7:03PM

VOTING: unanimous; motion carries.