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MEMORANDUM

DATE: November 24, 2010

TO: Clerk, Board of Supervisors

FROM: Chuck Eckert

RE: Draft of Amendment & Restatement of Chapter 44

To: Board of Supervisors

1. Overall, really good job, and I have only a very few objections and questions, which follow.

2. Section II(1) Findings.

   - The statement in (1)(a) about rents increasing rapidly and vacancies being at historically low levels is, as we know, inaccurate. That language was accurate back when Chapter 44 was originally adopted.

   - The statement in (1)(d) about an overburdened rental housing market is also not longer accurate. That language, too, was accurate back when 44 was originally adopted.

   - That language in the findings is not needed for the findings to support the amendment and restatement.

3. Section II(3)(f). I think the definition of "resident household" might be tuned up to eliminate any misunderstanding. The definition of "resident household" is susceptible to an interpretation that there can be more than one "resident household" per dwelling. And we know that that is not what is meant.

4. Section II(5)(f). It is unclear what the "order" refers to. Angie Hacker told me that it was intended to refer to a red tag order, but (5)(f) is a part of (5) and (5) refers to any time that property owners have to pay relocation benefits, not just the red tag situation, even though (5)(a)(b) & (c) suggest that (5)

is limited to the red tag situation. I suggest that this problem can be cleared up by changing the language of (5) to read: "When this Chapter requires property owners to pay relocation benefits on account of an eligible relocation event that results from a code violation".

5. Section II(7) Private Right of Action. Giving a private right of action to an "organization aggrieved" is not a good idea. Coupled with the attorney's fees and costs to the prevailing party language, a perverse incentive is provided for ideological groups to come forward with "grievances" and to use such suits or threats of suit to "extort" money from property owners. The "extortion" works, because, typically, the amount of money that the grievance organization will accept to "go away" is less than what it will cost the property owner to defend against the manufactured grievance. The bilateral attorney's fees language is really a sham, because the grievance organization rarely, if ever, has any money or assets to pay attorney's fees awarded against it. Eliminating "organization" from the language would not necessarily preclude a suit by an organization, but it would have to be brought based upon an assigned claim of grievance by a real person. Giving a right to bring a lawsuit just to "make a point", rather than to remedy a violation that has actually harmed somebody is not a good idea.

Overall, I will support the ordinance at the hearing. I will urge changes consistent with the above. I hope that HCD will support the changes that I propose, or at least indicate that they may have some merit and don't oppose them.

Sincerely yours,

Chas. V. Eckert, III

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