

Oakland Tribune

ACLU calls eviction law 'illegal'

ACLU calls

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Monday, March 22, 2004 - OAKLAND -- Police say the Eastlake apartment building "serves as a storefront for a bustling street bazaar of illegal drug sales," and neighbors say they're relieved the city is finally attempting to shut it down.

Owned by a retired Oakland cop, the black-painted Kaibab Apartments on East 17th Street also could become a poster child for Oakland's new ordinance, which allows city officials to evict alleged drug dealers from their homes.

Civil rights and tenants advocates say they understand Oakland's desire to clean up build-ings such as the Kaibab and rid city neighborhoods of both the drug scourge and the violence that accompanies it. But the Nuisance Eviction Ordinance, they say, is unconstitutional and conflicts with the voter-approved Just Cause Eviction law.

"It's really thwarting the purpose of constitutional safeguards -- that defendants are innocent until proven guilty," said Julia Harumi Mass, an attorney with the Northern California chapter of the American Civil Liberties Union. "It's in conflict with the basic due-process rights that are the hallmark of our criminal justice system."

City officials say they will not abuse the new law and promise they won't evict innocent people.

Dubbed NEO, the eviction law is merely another tool in the city's ongoing effort to stem violence and transform drug-infested neighborhoods into safe harbors for families, they say.

"The ACLU doesn't live in East Oakland. If they did, they'd know we have a real problem," said City Councilmember Larry Reid (Elmhurst-East Oakland), a chief backer of NEO. "This law is designed to go after individuals who may be living next to you selling drugs in their apartment or storing drugs there. One person can really make a block bad."

Modeled after a 1997 Los Angeles city ordinance, NEO was approved by the Oakland City Council on Tuesday on a 6-0 vote. Councilmember Nancy Nadel (West Oakland-Downtown) abstained and Councilmember Desley Brooks (Eastmont-Seminary) was absent. A second vote on NEO is scheduled for April 6.

This excerpt is provided by the Rental Housing Association of Northern Alameda County. www.rhanac.org 510-893-9873

If the council gives final approval to the new ordinance, Oakland will become the second city in the state with a law on the books that empowers government to force private landlords to evict tenants allegedly involved in criminal activity.

One key difference between Los Angeles and Oakland's ordinances is that, in practice, Los Angeles does not begin eviction proceedings unless police make an arrest, said Eric Moses, spokesman for the Los Angeles City Attorney's Office. Los Angeles issued about 1,300 notices under its eviction ordinance last year, he added.

By contrast, NEO specifically states "a tenant need not be arrested, cited or convicted ... to justify removing the tenant from the rental unit."

Civil rights and tenants advocates worry Oakland, which has struggled with a rising homicide rate partly attributed to the drug trade, will deploy NEO as a weapon against people police suspect are drug dealers but do not have enough evidence to arrest, let alone convict them of any crime.

"It's our strongest concern. We believe there should be safety nets," said Jorge Aguilar of the Eviction Defense Center. "Police officers are very competitive. All it would take is some bad act by a city official" for someone to lose their home.

Some of NEO's critics also are concerned the new law may spur feuding neighbors or landlords in disputes with tenants to make false allegations, prompting wrongful evictions that have the city's blessing.

But Oakland Deputy City Attorney Richard Illgen, the primary author of NEO, said the city will conduct thorough investigations before issuing any eviction notices.

"We're not going to operate on rumors, innuendo and hearsay," Illgen said. "We're going to demand sufficient evidence. One person's say-so is not enough."

Arturo Sanchez, an attorney who works in Oakland's City Manager's Office, will oversee implementation of NEO and will decide when the city will demand an eviction. Sanchez, who is becoming known around City Hall as the "Nuisance Czar," said he would not comment on his new role until the City Council adopts the ordinance.

Police Sgt. Bob Crawford, head of Oakland's Beat Health Unit, which will be working with Sanchez and targets alleged nuisance properties such as the Kaibab, said the police department only plans to concentrate on buildings where bona fide drug-dealing has occurred and arrests have been made.

"We're not in the business of evicting people," Crawford said. "However, if (landlords) won't do it, we are in the business of stopping drug dealing. But we're not going to evict innocent people."

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Crawford's team has identified about 130 nuisance properties that are home to alleged illegal activity throughout the city (Councilmember Reid's district has the most).

Included in the 130 is the Kaibab. The city filed suit against the Kaibab's owner in January in an attempt to shutter the building. According to the lawsuit, police records showed 14 arrests had been made at the Kaibab since 1996. And a 2003 police video surveillance "revealed that the property served as a storefront for a bustling street bazaar of illegal drug sales," the suit alleges.

"There's heavy, heavy drug use there," said Sandra Johnson, who lives not far from the Kaibab, which straddles the corner of 6th Avenue and is surrounded by homes and apartments with iron-grated windows and doors. "Right in front of the building is a hot spot."

Michael Sims, an attorney for the Kaibab's owner, Michael Horesji of Castro Valley, did not return a phone call seeking comment. Horesji is a retired Oakland police officer, Crawford said.

In court documents filed earlier this month, Horesji denied the city's allegations that he continually rents to drug dealers. And he blamed police for allegedly "failing to carry out proper policing activities" in the area.

Crawford scoffed at Horesji's assertions and said NEO could help the city target specific tenants in buildings such as the Kaibab in an attempt to clean them up.

Under the ordinance, the city can fine landlords up to \$1,000 a day if they fail to evict tenants within 25 days of the city's order. Landlords also must pay the city's costs of investigating each occurrence.

Despite the demands placed on them, landlords are among NEO's strongest supporters. Steven Edrington, executive director of the Rental Housing Association, a landlord advocacy group, said one of the main reasons is the Just Cause Eviction law, also known as Measure EE, "made it very, very difficult to evict someone."

Under EE, landlords must take tenants to court to evict them in proceedings known as "unlawful detainer actions." A significant deterrent to evictions, Edrington said, is a clause in EE that lets tenants sue landlords if the tenant wins the unlawful detainer. These wrongful eviction proceedings under EE allow tenants to seek triple damages against landlords.

But NEO absolves landlords from wrongful eviction actions and the fear of damages. If the city orders a landlord to evict a tenant, NEO deems it as "not wrongful," even if the tenant wins the unlawful detainer action and the court says that person cannot be evicted.

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Some tenants advocates allege landlord groups that opposed EE are trying to gut it with NEO. If a landlord wants to avoid a wrongful eviction suit, he or she under NEO would simply request an eviction order from the city, they said.

Wrongful eviction proceedings, tenant's groups say, are the only recourse tenants have against landlords who try to evict them on trumped-up charges.

In addition, some civil rights groups believe the City Council may have overstepped its legal authority by obviating a section of law approved by voters.

"They're trying an end-run around EE," said Judy Appel, an attorney for the Drug Policy Alliance. "But legislative bodies (such as the city council) can't remove rights created under an initiative."

Illgen argued that NEO does not amend Just Cause, and he said the city "is not trying to insulate landlords." NEO allows tenants to sue if landlords lied about a tenant's behavior or purposely withheld evidence that would exonerate the tenant, he noted.