



City of San Leandro

Meeting Date: December 21, 2015

Staff Report

File Number: 15-712

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.D.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for Second Reading and Adoption of Ordinance No. 2015-015 Amending Title 4, Chapter 32 of the San Leandro Municipal Code Relating to the Rent Review Ordinance

RECOMMENDATIONS

Staff and the City Attorney's Office recommend that the City Council review and determine whether to waive a full reading, conduct a second reading and adopt an Ordinance Amending title 4, Chapter 32 of the San Leandro Municipal Code Relating to the Rent Review Ordinance. The City Council conducted a first reading and introduction of the amendments to the Rent Review Ordinance on December 7, 2015 with the following changes: 1) the eligibility threshold for a rent review hearing is an increase in rent of greater than 8%, or greater than \$75, or more than two rent increases within a twelve month period; 2) the definition of residential property is expanded to include all housing units for rent within the City; 3) a tenant shall have thirty days to request a rent review hearing from the date of notice of a rent increase; and 4) landlords are required to provide tenants notice of availability of rent review in the three predominant languages spoken within the City. The Ordinance as amended passed with four votes in favor, two abstentions, and one vote against. If adopted, the Ordinance would become effective in thirty days.

BACKGROUND AND SUMMARY

On December 7, 2015, following staff presentation, public comment and deliberation, the City Council conducted a first reading and introduction of an Ordinance Amending title 4, Chapter 32 of the San Leandro Municipal Code Relating to the Rent Review Ordinance (the "Ordinance").

The Ordinance, as presented by staff and including comments and suggestions from the Rent Review Board as part of the Rent Review Board's annual review, included the following amendments:

- **Assess Ratio Utility Billing System (RUBS) charges, upon initial conversion, as a rent increase and therefore considered as a factor toward eligibility for review by the Board.** RUBS is when landlords subcontract out utility billing to a third party. The tenants pay their utility bills to the third party rather than to the landlord. The 2015-2023 Housing Element recommended that staff evaluate RUBS charges as a rent increase and consider these initial charges as eligible for Board review.
- **Include duplexes as eligible residential properties for rent review.** Under the current Ordinance, only buildings with three or more rental housing units are eligible for rent review. Per the 2009-2013 American Community Survey (U.S. Census Bureau), there are almost 2,000 duplex/triplex/quadruplex housing units in San Leandro, and under the current Ordinance, tenants in these units are not eligible for a rent review because their rental housing units are detached, separate buildings.
- **Clarify that landlords must re-notice tenants with proper rent increase notices if they provided improper rent increase notices.** This clarifies that landlords must properly re-notice a tenant prior to demanding or accepting any increase in rent.
- **Raise the existing \$75 rent increase threshold to \$100 plus annually adjust by the Consumer Price Index (CPI), in considering eligibility for a rent review.** The existing \$75 rent increase threshold is outdated as current rent levels are significantly higher today than in 2001 when the Ordinance was adopted and as current rent increase amounts are exceeding the \$75 rent increase threshold.
- **Require tenants to submit to the City their rent review hearing request forms within 15 calendar days of receiving their rent increase notice.** This provision ensures that the 15-day requirement is not erroneously interpreted as 15 “working” days.
- **Require landlords to submit their response forms within 10 calendar days from their receipt of their tenants’ rent review hearing request forms; otherwise, their rent increase is null and void.** The Ordinance currently only encourages landlords to submit their response forms. This change clarifies that landlords must submit their response forms in a timely manner similarly to the tenants in order for the Board to hear the case.
- **Increase the number of days to schedule a Rent Review Board hearing.** Currently, a Board hearing must be scheduled within 50 days of an application. However, 60 days is a more feasible timeframe particularly for 60-day rent increase notices.
- **Formalize that a rent increase must be paid on its effective date.** The existing Ordinance is silent on the situation when, for example, the Board votes to continue a case to a second and final meeting that goes beyond the noticed rent increase effective date. Tenants will be required to pay the rent increase on the effective date of the rent increase, but could be given rental credit or other consideration by the landlord should a mutually satisfactory resolution result in a reduced rent increase amount.
- **Incorporate the Retaliatory Eviction provision in its own section.** The Retaliatory

Eviction provision of the Ordinance should be set apart and emphasized in its own separate section.

- **Require tenants and landlords to return for a second and final Continuance hearing.** The Board must hold a 1st hearing, then, if needed, a 2nd final Continuance hearing prior to referring a rent review case to the City Manager (see below) to provide more time for the tenant and landlord to negotiate a mutually satisfactory resolution to their rent dispute.
- **Refer unresolved cases to the City Manager instead of the City Council.** The intent of the Ordinance has always been for a mutual resolution of the rent dispute between the tenant and the landlord. The Ordinance clearly states that the City is not “a party to such an agreement nor shall the City or the Board assume any responsibility for enforcement” of any agreement because the Board is a negotiation assistance body that makes non-binding recommendations on cases. The City Manager is a more appropriate authority for additional review of cases because he or she has more flexibility to assist in the negotiation of unresolved cases.

The City Council accepted the amendments as proposed in the Ordinance with the following changes: **1) the eligibility threshold for a rent review hearing is an increase in rent of greater than 8%, or greater than \$75, or more than two rent increases within a twelve month period; 2) the definition of residential property is expanded to include all housing units for rent within the City; 3) a tenant shall have thirty days to request a rent review hearing from the date of notice of a rent increase; and 4) landlords are required to provide tenants notice of availability of rent review in the predominant three languages spoken within the City.**

The City Council conducted a full reading and introduction of the Ordinance with the above changes. Those changes are reflected in Exhibit A to the Ordinance. Upon an affirmative vote of the City Council, the ordinance with the changes in bold above, will be adopted, and effective thirty days from December 21, 2015.

ATTACHMENT

Attachment to Ordinance

- Exhibit A - Proposed Amended Rent Review Ordinance

PREPARED BY: Richard D. Pio Roda, City Attorney, City Attorney’s Office

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City of San Leandro

Meeting Date: December 21, 2015

Ordinance

File Number: 15-583 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE Amending Title 4, Chapter 32 of the San Leandro Municipal Code Relating to the Rent Review Ordinance

WHEREAS, the City of San Leandro adopted the Rent Review Ordinance in 2001 in response to rapidly rising rents; and

WHEREAS, the Rent Review Ordinance established the Rent Review Board to review proposed rent increases and encourage landlords and tenants to come to mutually satisfactory accommodations; and

WHEREAS, certain aspects of the Rent Review Ordinance are outdated and require clarification; and

WHEREAS, City staff received input from a variety of stakeholders and directly from the City Council which has led to the proposed amendments to the Rent Review Ordinance; and

WHEREAS, the City of San Leandro desires to clarify the provisions in the Rent Review Ordinance and revise existing provisions in response to the rapidly transforming rental market in San Leandro as well as in the San Francisco Bay Area as a whole and to modernize and more effectively administer the Rent Review Program and Rent Review Board hearings.

NOW, THEREFORE, the City Council of the City of San Leandro does **ORDAIN** as follows:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a

significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 3. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, amending Title 4, Chapter 32 as shown in attached Exhibit A with red-lined amendments, which is incorporated herein by reference and available for review in the City Clerk’s office during normal business hours.

SECTION 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 5. Publication and Effective Date. This Ordinance shall take effect thirty (30) days after adoption. The title thereof shall be published once and a complete copy thereof shall be posted on the City Council Chamber bulletin board for five (5) days prior to adoption.

Introduced by Councilmember Prola on this 7th day of December, 2015, and passed to print by the following called vote:

Members of the Council:

AYES:	Councilmembers Cox, Lopez, Prola, Reed	(4)
NOES:	Mayor Cutter	(1)
ABSTAIN:	Councilmembers Lee, Thomas	(2)
ABSENT:	None	(0)

EXHIBIT A: PROPOSED AMENDED RENT REVIEW ORDINANCE

Note: underline text represents new text; ~~strike through~~ text represents text to be eliminated

CHAPTER 4-32 RENT REVIEW

ARTICLE 1. GENERAL

4-32-100 SHORT TITLE.

This Chapter shall be known as the “Rent Review Ordinance.”

4-32-105 DEFINITIONS.

Unless the context otherwise requires, the terms defined in this Chapter shall have the following meanings:

(a) **BASE RENT** means the rental amount, including any amount paid to the landlord for parking, storage, utilities, water, garbage or any other fee or charge associated with ~~the~~ tenancy residential property required to be paid by the tenant to the landlord in the month immediately preceding the effective date of the rent increase.

(b) **BOARD** means the Rent Review Board, as defined in this section.

(c) **CITY** means the City of San Leandro.

(d) **CITY MANAGER** means the City Manager of the City of San Leandro, or his or her designated representative.

~~(e)~~ **COMMUNITY DEVELOPMENT DIRECTOR** means the Director of the Community Development Department of the City of San Leandro, or his or her designated representative.

~~(f)~~ **COUNCIL** means the City Council of the City of San Leandro.

~~(g)~~ **LANDLORD** means any person, partnership, corporation, or other business entity offering for rent or lease any residential property in the City. “Landlord” shall include the agent or representative of the landlord, provided that such agent or representative shall have full authority to answer for the landlord and enter into binding agreements on the landlord’s behalf.

~~(h)~~ **PARTY** means a person who participates in the rent review program of this chapter or his or her agent or representative.

(i) **RATIO UTILITY BILLING SYSTEM** means a billing system paid to a third party that allocates the property’s actual utility bill to the tenant based on an occupant factor, square footage factor, or any other similar factors.

~~(j)~~ **RENT** means a fixed periodic compensation paid by a tenant at fixed intervals to a landlord for the possession and use of residential property, including any amount paid to the landlord for parking, storage, utilities, water, garbage, or any other fee or charge associated with

the tenancy. Additionally, rent includes costs associated with the initial conversion to a Ratio Utility Billing System.

(k) **RENT INCREASE** means any upward adjustment of the rent from the base rent amount. Rent increase includes costs associated with the initial conversion to a Ratio Utility Billing System.

(l) **RENT REVIEW BOARD** means the board established under Article 4 of Chapter 1-3 of this Code.

(m) **RESIDENTIAL PROPERTY** means any housing unit offered for rent or lease in the City, ~~provided that such housing unit is in a building that contains three or more housing units, and mobile homes.~~ Mobile homes are subject to this Chapter only if a tenant rents the mobile housing unit itself.

(n) **TENANT** means any person having the legal responsibility for the payment of rent for residential property in the City. "Tenant" shall include the agent or representative of the tenant, provided that such agent or representative shall have full authority to answer for the tenant and enter into binding agreements on the tenant's behalf.

ARTICLE 2. NOTICE OF AVAILABILITY OF RENT REVIEW 4-32-200 NOTICE OF AVAILABILITY OF RENT REVIEW REQUIRED.

In addition to the notice of a rent increase required by Civil Code Section 827(b), and at the time when a landlord provides ~~such~~ notice of any rent increase, the landlord shall also provide notice of the availability of the rent review procedure established by this Chapter. The notice of availability of rent review required by Section 4-32-210 below shall be provided by the landlord at the time when a landlord provides notice of any rent increase in the three predominant languages spoken in the City. The City Manager or his or her designee shall determine the predominant languages spoken in the City and shall ensure that copies of the notice of availability of rent review required by Section 4-32-210 are made available to landlords by the City in those three languages. Any rent increase accomplished in violation of this Chapter shall be void, and no landlord may take any action to enforce such an invalid rent increase. Any rent increase in violation of this Chapter shall operate as a complete defense to an unlawful detainer action based on failure to pay any illegal rent Increase. Any tenant required to pay an illegal rent increase may recover all illegal rent increase amounts actually paid by the tenant.

If a landlord fails to properly notice a tenant pursuant to this Chapter, the landlord must re-notice the tenant in accordance with this section prior to demanding or accepting any increase in rent.

4-32-205 CONTENTS OF NOTICE.

All notices of the availability of rent review shall be in writing, shall provide the name, address and phone number of the landlord and shall be personally delivered to the tenant or posted and mailed to the tenant at the address of the tenant's ~~rental unit~~ residential property by

first class mail, postage pre-paid. Service by mail shall be presumed complete within five (5) days of mailing. This presumption may be rebutted by the tenant.

4-32-210 TEXT OF NOTICE.

In addition to all other information provided in the notice of the availability of rent review required by this Chapter, each such notice shall state:

NOTICE: Under Civil Code Section 827(b) a landlord must provide a tenant with thirty (30) days' notice prior to a rent increase of ten percent (10%) or less and sixty (60) days' notice of a rent ~~increase~~ increase of greater than ten percent (10%). Under Title 4, Chapter 32 of the San Leandro Municipal Code, a landlord must at the same time as a notice under California Civil Code section 827(b) and other qualifying rent increases under the Municipal Code, provide this notice of the City's rent review procedure before demanding or accepting any increase in rent. You are encouraged to contact the owner or manager of your rental unit to discuss ~~the~~ rent increase and any maintenance or repair work that needs to be done in your rental unit. However, if you have received notice of a rent increase that 1) will increase your rent more than ~~ten-eight~~ percent (~~8+10~~%) above the base rent you paid last month, or 2) is greater than \$75 per month, or 3) follows one or more prior rent increases within the past twelve months, you may request that the San Leandro Rent Review Board review the increase. Such a request must be submitted in writing within ~~fifteen-thirty (30+5)~~ calendar days of your receiving notice of the rent increase (or post marked within ~~15-30~~ days of receipt if mailed). You must submit a copy of the Notice of Increase at the same time you submit the Hearing Request. If you request review of the rent increase, you and your landlord will be required to appear before the Board for a hearing on your rent dispute. After hearing from you and your landlord the Board will make a non-binding recommendation for resolution of the rent dispute. To request review of your rent increase, please contact the Board through the Community Development Department of the City of San Leandro, 835 East 14th Street, San Leandro, CA 94577. Under Civil Code Section 1942.5, it is illegal for a landlord to retaliate against a tenant for lawfully and peaceably exercising his or her legal rights.

ARTICLE 3. RENT REVIEW

4-32-300 REQUEST FOR RENT REVIEW.

~~Either a landlord or a~~ A tenant may seek to have a rent dispute heard before the Board when the proposed rent increase: 1) raises the rent to an amount more than ~~ten-eight~~ percent (~~8+10~~%) greater than the base rent, or 2) increases the monthly rent by an amount greater than seventy-five dollars (\$75) per month, or 3) follows a prior rent increase imposed within the previous twelve-month period. The ~~party-tenant~~ seeking a rent review must submit the hearing request in writing to the Community Development ~~Department Director of the City of San Leandro, 835 East 14th Street, San Leandro, CA 94577,~~ within ~~fifteen-thirty (30+5)~~ calendar days of the tenant's receipt of a notice of rent increase. The hearing request must be received by the Community Development Director, (if submitted by mail) within thirty

~~(3045)~~ calendar days of receipt of the notice of rent increases~~such receipt if the request for review is mailed~~). The request must be accompanied by a copy of the Landlord's Notice of Increase.

The Community Development Director shall provide the landlord with a copy of the tenant's rent review hearing request form, which shall be accompanied by a hearing response form. A landlord must submit a completed hearing response form to the Community Development Director within ten (10) calendar days of the landlord's receipt of a tenant's rent review hearing request form. A rent increase shall be void, and the landlord shall be required to properly re-notice the tenant in accordance with Section 4-32-200 of this Code if the landlord does not submit a hearing response form pursuant to this section. The Community Development Director shall provide notice of the requirements of this section in a conspicuous location on the hearing response form.

The hearing shall be scheduled before the Board within ~~fifty-sixty (650)~~ days of the receipt of the hearing request, ~~unless the landlord and the tenant consent to a later date~~ or as soon thereafter as the hearing may be scheduled.

A request for rent review shall not delay the effective date of a rent increase. If appropriate, the parties may enter into a mutual private agreement to delay the effective date of a rent increase or reach any other agreement to effectively reimburse rent increases paid by the tenant.

4-32-305 NOTICE TO PARTIES.

After determining that a proposed rent increase meets the criteria for initiation of rent review set forth in Section 4-32-300 above, the Community Development Director shall schedule a ~~staff facilitation~~rent review hearing of the rent dispute before the Board. The Community Development Director shall provide the landlord and the tenant notice of the hearing date and location at least ten (10) days prior to the hearing. The notice to the landlord shall encourage him or her to contact the tenant directly to seek a mutually satisfactory resolution of the rent dispute prior to the Board hearing.

4-32-310 HEARING AND DETERMINATION.

At a hearing of a rent dispute, the Board will afford the landlord and the tenant an opportunity to explain their respective positions. After hearing from both parties, and taking into consideration such factors as the hardship to the tenant, the frequency and amount of prior rent increases, the landlord's mortgage payments and other costs associated with owning and maintaining the property, the landlord's interest in earning a reasonable rate of return, and any other factors that may assist the Board in determining a fair resolution to the dispute, the Board will make a recommendation to the parties for the resolution of their dispute. If the parties agree to a resolution proposed by the Board, they may formalize the agreement in a standard form signed by both parties. Neither the City nor the Board shall be a party to such an agreement, nor shall the City or the Board assume any responsibility for enforcement of its terms.

4-32-315 CONTINUANCE.

If the landlord and tenant are unable to reach a resolution of their dispute during a hearing before the Board, the Board may in its discretion continue the hearing to the next scheduled regular meeting or special meeting of the Board for up to one month and require the parties to return for a second and final Board hearing of their dispute. Whenever the Board continues a hearing of a rent dispute, the Board will provide notice of the continuance to a mailing list of interested organizations that annually submit to the City Clerk a request to be included on such mailing list.

4-32-320 FAILURE TO APPEAR—~~RETALIATORY EVICTION.~~

If the tenant requesting a rent review hearing appears at a noticed Board hearing, but the landlord who has been given notice of the Board hearing as required by Section 4-32-305 above fails to appear before the Board without good cause, the rent increase shall be void, and the landlord may not take any action to enforce such an invalid rent increase. ~~Commencement of eviction proceedings against a tenant for exercising his or her rights under this Chapter shall be considered a retaliatory eviction.~~ If a tenant who has been given proper notice of a Board hearing as required by Section 4-32-305 ~~above of this Code~~ fails to appear before the Board without good cause, or if both the tenant and landlord fail to appear without good cause, the Board shall dismiss the case and the tenant will be barred from subsequently challenging such increase before the Board.

4-32-325 RETALIATORY EVICTION.

Commencement of eviction proceedings against a tenant for exercising his or her rights under this Chapter shall be considered a retaliatory eviction. Under Civil Code Section 1942.5, it is illegal for a landlord to retaliate against a tenant for lawfully and peaceably exercising his or her legal rights.

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ARTICLE 4. ~~COUNCIL-CITY MANAGER REVIEW~~

4-32-400 REFERRAL TO CITY ~~COUNCIL~~MANAGER

If the parties to a rent dispute are unable to mutually agree to a resolution of the dispute before the Board ~~after a first hearing and a second and final continuance hearing, either party may request that the Board~~ may, in its discretion, refer forward the rent dispute for further consideration by the City Manager for review ~~Council. In its discretion, after either a first or a second hearing, the Board may then request that the Council review the rent dispute.~~ Whenever the Board recommends that the Council-City Manager review a rent dispute, the Board will provide notice of its action to a mailing list of interested organizations that annually submit to the City Clerk a request to be included on such mailing list. In the event that a landlord and tenant mutually agree to a resolution of their rent dispute prior to review by the City Manager, the rent dispute will no longer be forwarded to the City Manager for review.

4-32-405 CONSIDERATION BY CITY MANAGER.