



City of San Leandro

Meeting Date: February 1, 2016

Staff Report

File Number: 16-016

Agenda Section: ACTION ITEMS

Agenda Number: 10.B.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for Proposed Amendments to the City of San Leandro Rent Review Ordinance

SUMMARY AND RECOMMENDATIONS

On December 21, 2015, the City Council tabled the second reading of the Rent Review Ordinance Amendments and requested the Ordinance be scheduled for a City Council meeting in early 2016.

Staff recommends that the City Council waive the full reading and adopt the Ordinance amending Title 4, Chapter 32 of the San Leandro Municipal Code relating to the Rent Review Board. The attached ordinance amendments reflect staff recommendation based upon the City Council's revisions and discussions at the December 7, 2015 and December 21, 2015 City Council meetings.

BACKGROUND

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 public and 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.
- **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 a proposed rent increase between tenant and 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.

On December 7, 2015, the City Council accepted all of the amendments to the Ordinance as proposed and described above, and also approved, after considerable discussion and debate, the following additional amendments:

- 1) The eligibility thresholds for a rent review hearing are 1) an increase in rent of greater than 8%, or 2) greater than \$75, or 3) more than two rent increases within a twelve month period;**
- 2) The definition of residential property is expanded to include all housing units (including duplexes and single family houses) 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 (English, Spanish and Chinese) spoken within the City.**

On December 21, 2015, the City Council reviewed the Ordinance again at its second reading. After discussion and debate, the City Council voted to table the second reading of the proposed Ordinance amendments. The City Council’s action removed the proposed amendments from further consideration, and keeps the Rent Review Ordinance and program status quo. The City Council also directed that amendments be brought back to the City Council in early 2016, accounting for the additional debate and discussion at the December 21, 2015 City Council meeting.

Analysis

Staff prepared a Rent Review Board Frequently Asked Questions memo dated February 1, 2016 (Attachment A) which provides additional background information and responses/clarifications to questions and issues related to the Rent Review Program. Based upon this information as well as input received at multiple public meetings, the Rent Review Board’s recommendation, and the City Council discussions on December 7 and 21, staff recommends the following revisions to the Rent Review Ordinance.

- **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.

Single family homes are not recommended for inclusion for numerous reasons. Single family homes are a different type of housing: owners generally own one unit, these larger units are more expensive to rent because they offer more space/amenities (more bedrooms, backyard, garage/parking) which renters are willing to pay for, and tenants generally pay for their own utilities. There is also a risk that these units could be removed from the rental market if there is increased regulation. Lastly, the number of units, approximately 4,000, would overwhelm the administration of the Rent Review program.

- **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.
- **Establish a lower, 8%, rent increase threshold and maintain the threshold of more than two rent increases within a twelve month period.** City staff recommends the elimination of a dollar threshold and adoption of a lower, 8%, threshold. Having both dollar and percentage thresholds is unnecessarily confusing for both tenants and landlords. Additionally, the \$75 dollar threshold is inequitable as the significance of the increase can range from meaningful to minor based on the monthly rent which can range from \$750 - \$3,000 in the City of San Leandro. A percentage threshold provides greater equity among all rental properties regardless of the renters, rent charged, property amenities, and age and condition of the units. Also, the flexibility of a percentage threshold allows the Ordinance to more appropriately adapt to future fluctuations in the rental market.

An 8% threshold will likely result in additional cases being brought before the Rent Review Board and therefore additional funding of approximately \$20,000 in FY 2016-17 is recommended to cover the increased administrative costs.

- **Require tenants to submit to the City their rent review hearing request forms within 21 calendar days of receiving their rent increase notice.** This provision extends the tenant's deadline to submit a request for a rent review from 15 to 21 days and clarifies calendar days to ensure that the requirement is not erroneously interpreted as "working" days. Extending the deadline to 30 days is not recommended

as it would have the potential to negatively affect tenants who must pay the rent increase when it's effective, according to their lease agreements and State law, prior to their case being heard by the Rent Review Board.

- **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 as the Ordinance cannot legally postpone the effective date of a 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. This requirement also reduces the risk of tenants being unable to pay their landlords multiple months of rent increases thus risking their tenancy.
- **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 a proposed rent increase between tenant and 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.
- **Require landlords to provide tenants notice of availability of rent review in the predominant three languages (English, Spanish and Chinese) spoken within the City.**

Previous Actions

- The City Council adopted the Rent Review Program Ordinance in 2001 and administrative regulations in 2002.
- Amendments to the Ordinance were approved by the City Council in 2003, 2005 and April 6, 2015, the latter to change the landlord representative requirement to allow for two non-resident landlords.
- Staff presented an overview of the Rent Review Program to the City Council on April 20, 2015 including discussion of the recent rising rents and Board hearings. City Council directed staff to gather public and Board input and provide modifications to the Ordinance for future City Council review.
- On December 7, 2015, 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.
- On December 21, 2015, the City Council elected to table further discussion on the proposed amendments to the Rent Review Program rather than conduct the second reading and adopt an Ordinance Amending Title 4, Chapter 32 of the San Leandro Municipal Code Relating to the Rent Review Ordinance.

Board/Commission Review and Actions

At the August 25th, September 22nd, October 27th, and November 17th, 2015 Rent Review Board meetings, staff presented the proposed Rent Review Ordinance amendments to the Rent Review Board for its comments and recommendations. The Rent Review Board's November 17th recommendations to the City Council were:

- 1) implementation of the RUBS
- 2) revisions to the "Required Notice"
- 3) addition of duplexes as rental properties eligible for rent review
- 4) incorporation of an annual CPI adjustment to the \$100 rent increase threshold
- 5) inclusion of renter's insurance as a rent increase
- 6) 1-year prohibition for a landlord to raise rent should he/she fail to appear at a Rent Review Hearing

At its December 7th meeting, the City Council approved Items 1-3, modified Item 4 and did not include Items 5-6.

Summary of Public Outreach Efforts

Copies of the most current proposed amendments to the Rent Review Ordinance have been available for review at the Community Development Department at City Hall and on the City's Rent Review Program website (<http://www.sanleandro.org/depts/cd/housing/rentreview/default.asp>) since August 5th, 2015.

Public meetings held to discuss the proposed amendments included a City-sponsored community meeting on August 19th at the Senior Center; the August 25th, September 22nd, October 27th, and November 17th Rent Review Board meetings; and the December 7th and December 21st City Council meetings. These meetings were well attended.

Outreach efforts for these public meetings and City Council meetings include press releases; flyers posted at City Hall, Main Library, other branch libraries, Senior Center, and Marina Community Center; courtesy notification flyers mailed and/or emailed to interested tenants and landlords; and posting on the City's website in English, Spanish and Chinese.

Legal Analysis

The proposed amendments to the Rent Review Ordinance were analyzed by the City Attorney's Office and approved as to form.

ATTACHMENTS

Attachment to Staff Report

- Attachment A - Memo regarding rent review frequently asked questions

Attachment to Ordinance

- Exhibit A - Proposed Amended Rent Review Ordinance

PREPARED BY: Steve Hernandez, Housing Specialist II, Community Development Department

ATTACHMENT A

CITY OF SAN LEANDRO



MEMORANDUM

To: San Leandro City Council

From: Steve Hernandez, Housing Specialist II
Tom Liao, Deputy Community Development Director
Cynthia Battenberg, Community Development Director

Date: February 1, 2016

Subject: Rent Review Program Frequently Asked Questions

In response to discussion regarding the Rent Review Program Ordinance (Ordinance) by City Councilmembers, staff has prepared the following information to provide a detailed description of administration of the City's Rent Review Program, including program staffing, outreach efforts, and compliance with the City's ordinance.

Overview

There are an estimated 13,630 units of rental housing, including single family homes, in the City, per the 2009-2013 American Community Survey (ACS), a survey conducted by the U.S. Census Bureau. With 30,759 residential units city-wide, this represents a rental housing stock percentage of 44%. For comparison purposes, the rental housing stock percentage in Alameda County is 47%.

Current Renter Population in San Leandro

According to the 2014 American Community Survey (5-Year Estimates), San Leandro currently has 42% of its population as renters. The 2010 Census reflected 39.59% of the City's population are renters.

Existing Rent Review Program Staffing and Funding

In 2012, as a result of the State's elimination of Redevelopment Agencies, the City's Housing Division staff was reduced from four full-time positions to one full-time position. In FY 2014-15, the City contracted with ECHO Housing for \$25,000 for assistance in administering the Rent Review Program and providing landlord-tenant counseling. ECHO Housing is a nonprofit agency that promotes equal access in housing and provides support services which aid in the prevention of homelessness and promotion of permanent housing conditions. The City also annually budgets \$10,000 to ECHO Housing in federal Community Development Block Grant (CDBG) funds for fair housing counseling. Due to the high level of housing activity, the FY 2015-16 and FY 2016-17 budgets include 400 hours of administrative support for housing programs at a cost of approximately \$15,000. This extra staffing was funded on a temporary basis.

Existing Outreach Efforts

Staff has traditionally relied on the numerous marketing methods to advertise the Rent Review Program to local tenants and landlords including:

- Press releases;
- Program flyers attached to the annual business license renewal letter sent to the approximately 3,000 residential landlords;
- Notification of the landlord associations, specifically the Rental Housing Owners Association of Southern Alameda County (RHO), of pending hearings and on-going communication regarding the specifics of each case. RHO plays an active role in educating its members and working with landlords to resolve cases. Staff also works with the East Bay Rental Housing Association (EBHRA) whose members are medium to smaller apartment owners;
- Direct communications, including phone calls, e-mails, walk-ins to City Hall with tenants/landlords; and;
- Distribution of information at community events and festivals such as Farmers' Markets and the Cherry Festival as well as at City facilities such as City Hall, main library, Senior Community Center and Marina Community Center.

All Rent Review Program-related documents are available on the City's [Housing Services Division's website](#). To affirmatively further federal fair housing requirements monitored by the U.S. Department of Housing and Urban Development, the City housing programs key documents, such as the Rent Review Ordinance, requirements regarding noticing, a Rent Review Board Hearing application and general housing information are provided on the City's website. Staff also regularly distributes program materials to tenants and landlords who call, email, or come to the City's One-Stop Permit Center.

According to the 2011 American Community Survey, 27% of the City's population is Limited English Proficient (LEP) as English is not their primary language or they may speak English in limited proficiency or, in some cases, not at all. The two most prominent non-English speaking (LEP) population in the City are Spanish-speaking residents at 14% and Chinese-speaking residents at 12%. Vital Rent Review Program-related documents, including the Rent Review Ordinance, the "Required Notice" about the Rent Review Program, Program Summary, and Frequently Asked Questions, have been translated into Spanish and Chinese. These documents are available by request and are on the City's Rent Review Program webpage. City staff is also able to provide Spanish and/or Chinese translators to those who call, walk in at City Hall or request translation at Rent Review Board meetings.

Noticing Requirements

The Ordinance requires that any rent increase must be accompanied by the required Rent Review Program notice, which describes how a tenant may qualify to have their rent increase reviewed by the Rent Review Board. The responsibility of notifying renters about the Ordinance ultimately rests with the landlords. If this required notice is not provided with the rent increase notice, the rent increase is considered null and void until the landlord properly re-notices. As confirmed by the City Attorney's Office, tenants could pursue a legal civil action on their own should their landlords refuse to properly re-notice them or collect what is considered an illegal rent increase.

City and ECHO Housing staff thoroughly explain the Ordinance requirements to tenants and landlords. Staff responds to a wide range of questions from tenants and works with them to confirm proper/improper notification and, assuming proper notification, takes the tenant step by step through the hearing application process. Staff also contacts all landlords, on the tenants' behalf, regarding improper noticing and informs them that their rent increase cannot take effect until they re-notice properly. Staff's experiences over the years affirm that new and/or smaller apartment owners/landlords more often notice improperly or are unaware of the Ordinance. It is a time intensive process for City and ECHO Housing staff to assess and vet applications to ensure that only cases that are properly noticed and meet one or more of the three rent increase threshold criteria move forward for Board consideration.

Ultimately, the decision to pursue a Rent Review Board hearing is the tenant's choice. Staff explains to tenants that the Ordinance is non-binding and non-enforceable. The Board, with two landlords, two renters and one non-landlord/non-renter facilitates a discussion in order to help both sides come to a mutually agreeable settlement. Staff informs tenants that any of the three thresholds met can make them eligible for a Board hearing, and that the Board may uphold the rent increase or assist in negotiating a mutual resolution. Staff also reminds tenants that if their cases end up unresolved, the rent increases stand so the Board is incentivized to help broker a resolution.

Retaliatory and Illegal Landlord Actions

The existing Ordinance has always noted that retaliatory action by a landlord for a tenant's proceeding with a Rent Review hearing is illegal under State law. As part of the recent Ordinance amendments which City Council approved first reading of on December 7, 2016, the Board and staff recommended that the retaliatory evictions language be placed in its own section of the Ordinance to more emphatically highlight such actions are illegal.

Staff takes tenant claims about retaliatory landlord threats and actions very seriously. Staff listens to each tenant to identify the facts and then refers them to ECHO Housing. ECHO Housing provides landlord/tenant and fair housing counseling and has the expertise to assist tenants to determine whether they have a sound legal case. Tenants reporting slum or blighted conditions and withholding of basic or life safety repairs are also forward to ECHO Housing for assistance. ECHO Housing provides referrals to affordable legal aid. Retaliatory and potentially illegal landlord actions do not fall under the purview of the Rent Review Board as these matters are regarding civil rights and could potentially be criminal in nature.

The City's Housing Inquiries Log documents the wide range of affordable housing inquiries and outcomes handled by the City's Housing staff. The annual log reflects how staff often may field what may seem initially like a rent review call that ends of actually being a landlord/tenant or fair housing issue. The log also provides insight on the variety of rent review questions, including calls from residents of the unincorporated Alameda County areas which staff refers to the County's Rent Review Program.

Existing Resources for Tenants

City and ECHO Housing staff provide valuable resources for tenants who are seeking a rent review, tenant-landlord counseling, or both. ECHO Housing, a HUD-approved housing counseling agency, is able to provide tenants with counseling on tenant-landlord issues that include retaliatory evictions, intimidation, harassment for payment, forceful payment for repairs, illegal entry, habitability issues, foreclosures, etc. Additionally, as a HUD-designated Qualified Fair Housing Enforcement Organization, ECHO Housing staff is also able to provide fair housing counseling and investigation services to renters who allege discrimination. ECHO Housing also provides mediation and counseling on these matters. As appropriate, ECHO Housing makes appropriate referrals to City, State, and/or Federal entities, legal services, or Small Claims Court in the event the landlord remains non-compliant.

Issues Related to the December 7th Council Ordinance

- **Changes to the Rent Review Board Hearing Eligibility Thresholds** - The maintenance of the existing \$75 dollar threshold may slightly increase hearing caseload. More important, however, application of the low dollar threshold may be problematic for future market rate housing developments which are estimated to rent for \$2,500 - \$3,000 per unit as opposed to the current average rental rate of approximately \$1,500. As noted below in the “Future Housing Development” section, there are several proposed residential developments which will supply needed new market rate housing for the City’s new and expanding businesses.

The decrease in the 10% rate increase threshold will likely increase the hearing caseload as more rent increases will qualify for a hearing. The impact of this change on the City’s limited resources should be considered.

- **The Addition of 5,800 Residential Units to the Rent Review Ordinance** The Rent Review Ordinance originally applied to 7,833 multi-unit housing units (buildings with 3 or more rental units). The addition of 877 duplexes, 966 triplexes/fourplexes and 3,954 single-family rental units would increase the number of units eligible for rent review by 74% to 13,630. During the years such as FY 2015-16 when there is significant Rent Review Board activity, the current Housing division staffing of 1.2 FTE positions and the \$25,000 consulting contract to ECHO Housing for rent review and tenant counseling services would be inadequate to handle the increased inquiries, applications and caseload. In order to meet the increased need, staff recommends the ECHO Housing contract for administration of the Rent Review Program be increased at an estimated cost of \$20,000 per year during years with a high level of case activity.
- **Extension of the Tenant Application Deadline** – The extension of the application deadline for a Board hearing for the tenant from 15 to 30 days would impair the ability of any tenant who receives a 30-day rent increase notice to have his/her case heard by the Board prior to the effective date of the rent increase. To date, staff has not received an extension request or complaint on missing the application deadline based on language or translation constraints.

- **Notice of availability of rent review in the predominant three spoken languages in the City** – The Required Notice is currently already available in English, Spanish, and Chinese. The City’s current policy allows San Leandro landlords to provide the Required Notice in the language most appropriate for their tenants. The rent review hearing requests forms submitted to the City indicate that landlords are using all 3 translated versions of the Required Notice.

Concentration of Recent Caseload

As noted during the staff presentations to City Council in Spring 2015 and on December 7th, 2015 there has been a sharp rise in Rent Review Board hearings since FY 2014-15. However, it is important to note that the majority of the hearing cases have come from ten apartment properties and landlords. This concentration of cases in a smaller number of properties may reflect that the Rent Review Program has achieved its purpose of being self-regulatory in nature where both the tenants and landlords are incentivized to work together towards a resolution.

A recent Rent Review case from this year highlights how the Ordinance has assisted tenants. An 81-year old renter who had been residing in her unit for over 20 years called and came to the City in distress to speak several times with City and ECHO Housing staff about two rent increases she received totaling \$400 dollars. She requested a rent review for the \$300 rent increase she received in November 2015, but did not contact the City when she received the \$100 rent increase in July 2015. While the increases were accompanied by the proper notification, this \$300 rent increase met all the rent increase thresholds including two rent increases in a 12-month period. Staff determined that she had an eligible Rent Review Board case as well as potential legal claims against her landlord. Staff processed her application for Board review and also referred her to ECHO Housing to evaluate her legal claims. The Board uniformly and publicly chastised the landlord at the hearing and continued her case for a second hearing. The Board Chair also publicly offered to find her a more affordable unit in one of his properties after the hearing and to assist her in qualifying for a project-based Section 8 unit in one of his properties which would reduce her rent to 30% of her income. Her landlord relented prior to the second continuance hearing and reduced her November 2015 rent increase by \$100. The renter accepted the reduced rent increase and declined the Section 8 housing opportunity due to the difficulty of moving and health concerns around living in a building where smoking is allowed in the common areas.

Future Housing Development

The regional, long-term Plan Bay Area (adopted by the Association of Bay Area Governments and Metropolitan Transportation Commission) acknowledges the need for the 9 county San Francisco Bay Area to increase the supply of new housing for all income levels from market rate to affordable housing. The City’s recently adopted Housing Element Update also emphasizes the need for new affordable housing construction. New housing supply in the region and in San Leandro should help to mitigate the current rising rent issues that existing tenants in the City currently face.

The completion of 115 units of affordable family and workforce housing in Phase 1 of Marea Alta in Spring 2016 along with approximately 800 new housing units proposed by private developers will assist by supplying addition units to meet demand. Of the 800 units, 500 are proposed rental units and 300 are for sale units. About 45 of the 300 for sale units are required to be affordable under the Inclusionary Zoning Ordinance.

Housing Nexus Study

On November 2, 2015, the City Council approved a memorandum of understanding (MOU) with Silicon Valley Community for a Housing Nexus Study. The study is being conducted in coordination with other cities in Alameda and Santa Clara counties and is expected to be completed in Summer 2016. The study will enable the City to establish a stronger basis to amend the Inclusionary Zoning Ordinance. Amendments to the Inclusionary Zoning Ordinance could include the requirement of 15% affordable units in rental properties as well as establishment of an in-lieu fee on new commercial and industrial development. These changes would increase the supply of affordable housing units and could enhance the City's Affordable Housing Trust Fund to be used to help nonprofit and for-profit developers finance new affordable housing construction or substantial rehabilitation.

Future Tenant Protection Actions

Two tenant protection policies, just cause eviction and tenant relocation assistance, have been referred to the City's Rules Committee for discussion.



City of San Leandro

Meeting Date: February 1, 2016

Ordinance

File Number: 16-017

Agenda Section: ACTION ITEMS

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.

EXHIBIT A

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-parcel that contains three-two or more tenant-occupied 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 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 Civil Code 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 (108%) above the base rent you paid last month, or 2) is greater than \$75 per month, or 32 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-twenty one (215) calendar days of your receiving notice of the rent increase (or post marked within 215 calendar 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 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 (108%) greater than the base rent or, 2) increases the monthly rent by an amount greater than seventy-five dollars (\$75) per month, or 23 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-twenty one (215) calendar days of the tenant's receipt of a notice of rent increase. The hearing request must be received by the Community Development Director, (or post marked (if submitted by mail) within twenty one (215) calendar days of receipt of the notice of rent increasesuch 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.

Formatted: Underline

Formatted: Underline

ARTICLE 4. COUNCIL-CITY MANAGER REVIEW

4-32-400 REFERRAL TO CITY COUNCILMANAGER

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 to 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.

Upon referral from the Board, the City Manager may request a meeting with the tenant and landlord in an effort to resolve the rent dispute. However, the City Manager shall have no authority to require the tenant and landlord to meet or take any further actions pursuant to this Chapter.

ARTICLE 5. MISCELLANEOUS

4-32-500 ANNUAL REVIEW.

The Board shall annually prepare a report to the Council assessing the effectiveness of the rent review program established under this Chapter and recommending changes as may be appropriate.

2595307.1

