



City of San Leandro

Meeting Date: September 5, 2017

Staff Report

File Number: 17-458

Agenda Section: ACTION ITEMS

Agenda Number: 10.A.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for an Ordinance Adding a Tenant Relocation Assistance Program to the City of San Leandro Municipal Code to Require the Payment of Tenant Relocation Assistance for Landlord-Caused Terminations of Tenancy and to Require Additional Notice Prior to Termination of Tenancy

SUMMARY AND RECOMMENDATIONS

On July 3, 2017, the City Council voted 5-2 to return the proposed Ordinance to establish a Tenant Relocation Assistance Program to the City Council Rules Committee for further public discussion and refinement. The City Council requested continued discussion by the Rules Committee regarding any impacts on the Ordinance by *Coyne vs City and County of San Francisco*; should landlord be provided additional time to make the final tenant relocation assistance payment; should the Ordinance apply to multiple residential complexes of 4 units or less under single ownership; and, program funding.

On July 24, 2017, the City Council Rules Committee convened to discuss the issues listed above as well as other related matters and receive public comment. The Rules Committee recommended that staff make the following two changes in the proposed Ordinance for City Council review and public input at the September 5, 2017 City Council meeting:

- 1) Decrease the relocation assistance cap from \$10,000 to \$7,000.
- 2) Change the definition of residential property to mean any parcel with two or more tenant-occupied units.

Staff recommends that the City Council adopt the attached Ordinance adding Chapter 4-37 "Tenant Relocation Assistance" to the San Leandro Municipal Code, that includes the City Council Rules Committee's recommendations from its July 24th meeting.

BACKGROUND AND ANALYSIS

Below are notable features of the proposed Ordinance based on the City Council Rules Committee's comments, and public input. Changes to the Ordinance per the July 24 Rules Committee meeting are italicized below.

I. Eligibility

- A. Tenants are entitled to relocation assistance if the termination of tenancy is due to "landlord-caused termination." The Ordinance defines a "landlord-caused termination" as any landlord-caused action, including a rent increase that is 12% or greater than the base rent during a twelve-month period, which causes a tenant to elect to not remain in his/her unit. Exceptions to "landlord-caused termination include the following:
- 1) Tenant failure to pay rent
 - 2) Tenant breach of lease or rental contract
 - 3) Tenant illegal activities
 - 4) Failure to allow landlord access after legal notice
 - 5) Residential property uninhabitable without landlord fault (e.g., tenant's negligence or willful misconduct, earthquake, fire, flood)
 - 6) Lawful termination of employment where such employment by the landlord was a condition of the lease (e.g., apartment property manager)
 - 7) Temporary repairs where the landlord provides the tenant with short-term alternative housing during the renovation period
 - 8) Prior notice of renovations where the landlord notifies the tenant, before entering into a lease, of his/her intent to remodel the property. To ensure completion of the renovations, the landlord must renovate within one year of tenant occupying the rental unit and must submit plans with the City at the time he/she notifies the tenant of the termination of tenancy.
- B. *All parcels containing rental properties that have two (2) or more tenant-occupied housing units fall under the Ordinance. Per the July 24 City Council Rules Committee recommendation, this changes the "residential property definition" back to the Ordinance's original definition that was presented to Council at its June 19, 2017 meeting. Therefore, detached single family homes and individual condominium/townhome units would be exempt from the Ordinance, while duplexes (where both units are rented out), tri-plexes and four-plexes would be subject to the Ordinance.*
- C. Tenants with "special-circumstances household" members are entitled to additional tenant relocation assistance (see "Tenant Relocation Assistance" section below). "Special-circumstances household" is defined as "a tenant or anyone else authorized by the landlord" to occupy the rental unit based on the following characteristics: at least one resident is 62 years of age or older, or at least one resident qualifies as a person with disabilities under State law, or at least one or more residents is under 18 years of age.
- D. Rental housing properties with recorded affordability restrictions are exempt from this Ordinance. Such properties typically have entered into long-term affordability agreements with the City, State and/or the federal government (e.g., City subsidy,

State/federal low income housing tax credit program) to serve lower income renters. For clarification purposes only, staff also made minor changes to the definition of affordable rental housing exemption.

II. Relocation Assistance Amounts

- A. Eligible tenants will receive the higher of three times the monthly rent that the tenant is currently paying; or (2) three times the current Fair Market Rent for the Oakland-Fremont metropolitan area. The U.S. Department of Housing and Urban Development (HUD) annually publishes regional FMR limits by bedroom size. The 2017 FMRs are: \$1,435 (Studio), \$1,723 (1-Bedroom), \$2,173 (2-Bedroom) and \$3,017 (3 Bedroom).
- B. A special-circumstance household may receive an additional \$1,000 per rental unit.
- C. Landlord may deduct tenant relocation payment amounts required under California Health and Safety Code Sections 17975-17975.10 from the relocation assistance payment required by the City's proposed Ordinance.
- D. *A landlord shall provide total relocation assistance to an eligible tenant in an amount not to exceed \$7,000. Per the July 24 City Council Rules Committee recommendation, this change reflects a decrease from the \$10,000 cap in prior versions of the proposed Ordinance.*

III. Relocation Assistance Payment Procedures

- A. Landlord shall pay relocation to an eligible tenant in two installments:
 - 1. Half within five days following notice delivered to a tenant of a landlord-caused termination and the other half within 5 days of the tenant's last day of tenancy.
 - 2. Where the landlord-caused termination involves a rent increase greater than 12% and the tenant elects to leave, landlord shall pay half within 5 days of receiving written notice from tenant to vacate the unit and the other half no later than 5 days before the last day of tenancy.
 - 3. Landlords may deduct from the second relocation assistance payment unpaid rent and/or damages in excess of the security deposit.
 - 4. If a tenant receives any relocation payments and opts to return to the apartment, then he/she shall reimburse the landlord for payments received.
 - 5. Landlord and tenant are not prohibited under this Ordinance from coming to their own mutually agreeable relocation terms.
 - 6. Landlord may not unduly influence or negotiate in bad faith with a tenant to agree to relocation assistance different from the requirements under this Ordinance by means of fraud, intimidation, and/or coercion (e.g., threats over immigration status).

IV. Notices

- A. The proposed Ordinance establishes required text in the "notice of entitlement to relocation assistance" that describes the amount of relocation assistance to which a qualified tenant is eligible.

- B. The text notice delivered to the tenant must be in English, Spanish and Chinese.
- C. There are two types of relocation assistance notices under the proposed Ordinance:
 - 1. For landlord-caused terminations not involving rent increases greater than 12%, a landlord must provide a “notice of entitlement to relocation assistance” with the “notice of tenancy termination” at least 90 days prior to the termination of tenancy.
 - 2. For landlord-caused termination due to rent increases greater than 12%, a landlord must provide a “notice of entitlement to relocation assistance” with the rent increase notice at least 60 days prior, per State law.

V. Prohibition of Retaliation

- A. Under California Civil Code Section 1942.5, a landlord may not begin eviction proceedings or other retaliatory actions against a tenant who “lawfully and peaceably exercises his or her legal rights” under the Ordinance.

VI. Miscellaneous

- A. Staff will prepare an annual report to the City Council assessing the Ordinance’s effectiveness, and recommending changes as appropriate.

The implementation and administration of the proposed Ordinance is an outstanding issue. Staff briefed the City Council Rules Committee on the need for part-time City or consultant staff to monitor landlord notices of termination, address inquiries and concerns from both tenants and landlords, develop and distribute outreach materials in multiple languages and provide technical assistance.

Staff estimates the annual cost for Tenant Relocation Program administration is \$50,000. Staff proposed an annual \$10 per rental unit fee charged to landlords on the business license tax to offset administration costs related to the Tenant Relocation Program and the Rent Review Ordinance (which costs approximately \$50,000 annually). Staff assumes that the need for Tenant Relocation Program administration would be similar to administrative needs for the Rent Review Board in that there would be years of significant activity and years when there would be little to no activity. The proposed Rental Unit Fee therefore would need to be evaluated annually, along with the annual program report, and only charged during years when there are costs associated with these programs.

At its July 24 meeting, the Rules Committee discussed program funding sources such as Real Property Transfer Tax revenue or the staff proposed \$10 per rental unit fee to be paid annually, as needed, in conjunction with the Business License Tax. The Committee concurred with the City Manager’s recommendation that program funding be discussed during the mid-year budget review.

Previous Actions

- Staff provided City Council with an update on the status of the Tenant Relocation Assistance Program on September 6, 2016.
- On June 19, 2017, the City Council reviewed and received public comments on the first

reading of the proposed ordinance to create a Tenant Relocation Assistance Program. There were 11 public comments: 3 from renters/renter advocates and 8 from landlords/realtors. The City Council voted 6-1 to revise the Ordinance with the 4 following changes listed below and bring back the Ordinance for first reading on July 3, 2017:

- 1) Decrease the rent increase threshold from greater than 15% to greater than 12% of current rent,
 - 2) Exempt rental properties of 4 units or less from the proposed Ordinance,
 - 3) Allow landlords to deduct tenant relocation assistance payments required under California Health and Safety Code Sections 17975-17975.10 from the relocation assistance payment imposed by the City's Ordinance. The deduction relates to State law that allows local building officials to issue enforcement orders for uninhabitable residential rental properties (e.g., red-tagging), which triggers payment of relocation expenses for the displaced tenants, and
 - 4) Allow landlords to deduct from the final tenant relocation assistance payment the tenant-caused damages not covered by a security deposit.
- On July 3, 2017, the City Council reviewed the proposed Ordinance and received 19 public comments: 4 renters/renter advocates and 15 landlords/landlord advocates/realtors. The City Council voted 5-2 to return the matter to the Rules Committee for further discussion.

Committee Review and Actions

- The City Council Rules Committee was the primary legislative body for the proposed Tenant Relocation Assistance Program. The Rules Committee met on the following dates to initiate and refine the proposed measures and text in the proposed Ordinance:
 - April 13, 2016
 - July 24, 2016
 - February 27, 2017
 - March 27, 2017
 - May 22, 2017
 - July 24, 2017

Applicable General Plan Policies

The proposed Ordinance complies with the following under the current Housing Element component of the 2035 General Plan:

- Policy 56.07 Landlord-Tenant Relations: Provide assistance to landlords and tenants in resolving conflicts...Maintain measures that discourage the displacement of San Leandro renters as a result of sudden or steep increases.

Environmental Review

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 Municipal Code 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.

Summary of Public Outreach Efforts

As noted above, the City held numerous City Council Rules Committee meetings and City Council meetings (as described above) to gather public input on the proposed Tenant Relocation Assistance Program. Notification methods for these public meetings, and tonight's public meeting, included: notices emailed or mailed to over 300 renters (including past and current Rent Review Board applicants), landlords and other interested stakeholders on the City's distribution list; posting on the local online neighborhood forum, Nextdoor; and posting on the City website and at City Hall of the meeting agendas/staff reports/draft Ordinance versions. Since Spring 2016, when discussion of proposed tenant relocation measures began in earnest, staff has taken public input by phone, email, and direct meetings with the public.

Legal Analysis

The proposed Ordinance was prepared and analyzed by the City Attorney's Office and approved as to form.

Fiscal Impacts

The projected annual cost to administer the proposed Ordinance is \$50,000, which could impact the General Fund should revenue sources to offset these costs not be identified.

Attachment to Staff Report

- Exhibit A: Proposed Tenant Relocation Assistance Ordinance (with redline changes)

Attachment to Ordinance

- Exhibit A: Proposed Tenant Relocation Assistance Ordinance (clean version)

PREPARED BY: Tom Liao, Deputy Community Development Director

EXHIBIT A

Chapter 4.37

TENANT RELOCATION ASSISTANCE

Article 1. Purpose

4-37-100 Purpose.

In enacting these regulations the City Council recognizes the need to protect long-term tenants and tenant households in need from the adverse health, safety and economic impacts of displacement. It is the purpose and intent of the City Council to mitigate such impacts on these residents consistent with this Chapter.

Article 2. Definitions

4-37-200 Definitions.

For the purpose of this Chapter, unless otherwise apparent from the context, certain words and phrases used in this Chapter are defined as follows:

(a) **BASE RENT** means the rent for residential property required to be paid by the tenant to the landlord in the month immediately preceding the effective date of the rent increase. Base rent shall not include ancillary services including, but not limited, to pet deposits, storage, additional parking or utility pass-throughs.

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

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

(d) **CITY COUNCIL** means the City Council of the City of San Leandro.

(e) **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.

(f) **LANDLORD-CAUSED TERMINATION** means a landlord taking action to terminate the tenancy of a tenant occupying residential property. A landlord-caused termination also includes the circumstance where a landlord provides the tenant with a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent, to an amount more than twelve percent (12%) greater than the base rent that was in place at any time during a twelve (12) month period, and the tenant elects to not remain in the residential property. This excludes circumstances where the proposed rent increase is rescinded by the landlord and excludes residential properties where landlords may establish the initial and all subsequent rental rates for a residential property pursuant to California Civil Code Section 1954.52. A landlord-caused termination shall not include the following circumstances:

(1) Failure to pay rent. Tenant failed to pay rent within three days of receiving written notice from the landlord demanding payment in accordance with California Code of Civil Procedure Section 1161.

(2) Breach of rental contract. Tenant violated a material term of the rental agreement with the landlord for occupancy of residential property.

(3) Tenant illegal activities. Tenant has used the residential property for an illegal purpose, including but not limited to, the unlawful distribution of a controlled substance as contemplated by California Civil Code Section 3486, or the unlawful use, manufacture, or possession of weapons and ammunition as contemplated by California Civil Code Section 3485.

(4) Failure to allow landlord access. Tenant failed to allow landlord access to the residential property, after receiving due notice as required by California Civil Code Section 1954.

(5) Residential property uninhabitable without landlord fault. The residential property becomes uninhabitable as a result of the tenant's negligence or willful conduct or as a result of an earthquake, fire, flood or other acts of God.

(6) Termination of employment. The lawful termination of the tenant's employment by the landlord, where such employment was an express condition of, or consideration for, the tenancy pursuant to the rental agreement.

(7) Temporary repairs or renovations. The tenant is temporarily displaced from the residential property due to repairs, remodeling or renovations, where the landlord provides the tenant with alternative housing for the duration of the repairs, remodeling or renovations.

(8) Prior notice of renovations. Landlord notified tenant prior to entering into the rental agreement of the landlord's intent to renovate the residential property within one (1) year of tenant occupying the residential property and the landlord files plans with the City to renovate the residential property at the time the landlord notifies the tenant of termination of tenancy.

(g) **RENT** means the amount of fixed periodic compensation paid by a tenant to a landlord, as defined by the rental agreement between the tenant and landlord, for the possession and use of residential property. Rent shall not include ancillary services including, but not limited to, pet deposits, storage, additional parking or utility pass-throughs.

(h) **RENT INCREASE** means any upward adjustment of the rent from the base rent amount.

(i) **RENTAL AGREEMENT** means the legal written agreement, including all changes and addenda governing occupancy of the residential property, between landlord and tenant.

(j) **RESIDENTIAL PROPERTY** means any housing unit offered for rent or lease in the City, provided that such housing unit is in a parcel that contains two (2) five (5) 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. Residential property shall exclude any housing unit that is subject to a recorded affordable housing regulatory agreement that requires that the housing unit be rented at restricted rents to income qualified tenants as defined by the regulatory agreement.

(k) **SPECIAL-CIRCUMSTANCES HOUSEHOLD** means a tenant or anyone else authorized by the landlord to occupy residential property with any of the following characteristics at the time of notice of a landlord-caused termination:

(1) At least one (1) resident of the residential property is sixty-two (62) years of age or older;

(2) At least one (1) resident of the residential property qualifies as disabled as defined by Title 42, United States Code, No. 423 or handicapped as defined by California Health and Safety Code Section 50072; or

(3) One (1) or more minor children (under eighteen (18) years of age) who are legally dependent (as determined for federal income tax purposes) reside in the residential property.

(l) **TENANT** means any person having the legal responsibility for the payment of rent for residential property in the City as identified under a valid lease or rental agreement with a landlord.

Article 3. Requirement to provide relocation assistance

4-37-300 Requirement to provide relocation assistance.

No landlord shall effectuate a landlord-caused termination without paying relocation assistance in accordance with this Chapter.

4-37-305 Relocation assistance.

The landlord shall provide relocation assistance, in a total amount not to exceed ~~Seven~~ ~~Ten~~ Thousand Dollars (~~\$107~~,000), where required by section 4-37-300, to an eligible tenant in the following amounts:

(a) Three times the most current Fair Market Rents as published annually by the U.S. Department of Housing and Urban Development (“HUD”) for the Oakland-Fremont, California HUD Metro FMR Area in the Federal Register, or three times the monthly rent that the tenant(s) is paying at the time the notice of the landlord-caused termination is delivered, whichever amount is greater.

(b) One Thousand Dollars (\$1,000) for special-circumstances households. A tenant is only entitled to claim a special-circumstances household payment of One Thousand Dollars (\$1,000) per residential property.

4-37-310 Procedures for relocation assistance payment.

The landlord shall pay relocation assistance as follows:

(a) The entire relocation assistance amount shall be paid to the tenant or tenants who executed the rental agreement. If the residential property is occupied by two (2) or more individuals, then relocation assistance shall be paid to the individual entitled to occupy the residential property under the rental agreement; provided, however, if the tenant receives, as part of the termination of tenancy, relocation assistance from a governmental agency, then the amount of that relocation assistance shall operate as a credit against any relocation assistance to be paid to the tenant. Landlord may deduct from the relocation assistance payable any and all past due rent owed by tenant during the twelve months prior to termination of tenancy and may deduct from the relocation assistance any amounts paid by the landlord for any damage, cleaning, key replacement, or other purposes served by a security deposit as defined by the rental agreement, to the extent the security deposit is insufficient to provide the amounts due for such costs. To the extent landlord is required to comply with an enforcement order of the City that requires the payment of relocation benefits pursuant to California Health & Safety Code Section 17975, *et seq.*, then the amount of that relocation benefit shall operate as a credit against any relocation assistance paid or to be paid to a tenant under this Chapter.

(b) After taking into account any adjustments in the amount of the relocation assistance under section 4-37-310(a), the landlord shall pay one half of the relocation assistance no later than five business days following service of the notice to a tenant of landlord-caused termination and one half of the relocation assistance no later than the last day of tenancy for which the landlord has received rent. For landlord-caused terminations where a landlord provides a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent, to an amount more than twelve percent (12%) greater than the base

rent at any time during a twelve (12) month period and the tenant elects to not remain in the residential property, the landlord shall pay one half of the relocation assistance no later than five business days following receipt of written notice that the tenant intends to vacate the residential property and one half of the relocation assistance no later than the last day of tenancy for which the landlord has received rent. If the tenant ultimately fails to vacate the residential property following a landlord-caused termination where a landlord provides a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent, to an amount more than twelve percent (12%) greater than the base rent at any time during a twelve (12) month period, the tenant shall reimburse relocation assistance to the landlord.

(c) Nothing provided herein prohibits a landlord and a tenant from agreeing to relocation assistance different than as provided in this section. A landlord shall not attempt to influence a tenant to agree to relocation assistance different than as provided in this section in bad faith by means of fraud, intimidation, or coercion (including, but not limited to, threats based on immigration status).

4-37-315 Notice of termination and notice of entitlement to relocation assistance.

Landlord shall provide a written notice of termination to all tenants subject to termination of tenancy from a residential property required by State law at least ninety (90) days prior to the date a tenant must vacate the residential property for landlord-caused terminations. Written notice of tenant's entitlement to relocation assistance shall be provided by the landlord at the same time that the landlord provides notice of termination of tenancy from a residential property. For landlord-caused terminations where a landlord provides a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent, to an amount more than twelve percent (12%) greater than the base rent at any time during a twelve (12) month period and the tenant elects to not remain in the residential property, the landlord shall provide a written notice of tenant's entitlement to relocation assistance at the same time that the landlord provides notice of a rent increase. Such notice of entitlement to relocation assistance shall be posted on the door to the residential property and sent certified mail or first class mail, or personally served upon tenant, and shall be provided in the three (3) predominant languages spoken in the City. The City Manager or his designee shall determine the predominant languages spoken in the City.

4-37-320 Text of notice.

The notice of entitlement to relocation assistance shall state:

NOTICE: Under Title 4, Chapter 37 of the San Leandro Municipal Code, a landlord must provide tenants that have occupied residential property under a valid lease or rental agreement with a landlord with ninety (90) days' notice prior to termination of tenancy. At the same time the landlord provides a qualifying tenant with notice of termination of tenancy, the landlord must provide this notice of the tenant's entitlement to relocation assistance. Qualifying tenants are entitled to the following forms of relocation assistance: (a) A relocation fee which shall be the cash equivalent of three times the most current Fair Market Rents as published annually by the U.S. Department of Housing and Urban Development ("HUD") for the Oakland-Fremont, California HUD Metro FMR Area in the Federal Register, or three times the monthly rent that the tenant(s) is paying at the time the notice of the landlord-caused termination is delivered, whichever amount is greater; and (b) One Thousand Dollars (\$1,000) for special-circumstances

households. Special-circumstances households include the following: (1) At least one (1) member is sixty-two (62) years of age or older; (2) At least one (1) member qualifies as disabled as defined by Title 42, United States Code, section 423 or handicapped as defined by California Health and Safety Code Section 50072; or (3) Is a household with one (1) or more minor children (under eighteen (18) years of age) who are legally dependent (as determined for federal income tax purposes). 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.

The notice of entitlement to relocation assistance for landlord-caused terminations where a landlord provides a proposed rent increase, or proposed rent increases, that raise the rent to an amount more than twelve percent (12%) greater than the base rent during a twelve (12) month period and the tenant elects to not remain in the residential property 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 37 of the San Leandro Municipal Code, a landlord must at the same time as a notice under Civil Code Section 827(b), provide this notice of the tenant's entitlement to relocation assistance. Qualifying tenants are entitled to the following forms of relocation assistance: (a) A relocation fee which shall be the cash equivalent of three times the most current Fair Market Rents as published annually by the U.S. Department of Housing and Urban Development ("HUD") for the Oakland-Fremont, California HUD Metro FMR Area in the Federal Register, or three times the monthly rent that the tenant(s) is paying at the time the notice of the landlord-caused termination is delivered, whichever amount is greater; and (b) One Thousand Dollars (\$1,000) for special-circumstances households. Special-circumstances households include the following: (1) At least one (1) member is sixty-two (62) years of age or older; (2) At least one (1) member qualifies as disabled as defined by Title 42, United States Code, section 423 or handicapped as defined by California Health and Safety Code Section 50072; or (3) Is a household with one (1) or more minor children (under eighteen (18) years of age) who are legally dependent (as determined for federal income tax purposes). 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.

4-37-325 Retaliation prohibited.

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.

Article 4 Enforcement

4-37-400 Failure to comply.

A landlord's failure to comply with any requirement of this Chapter may be asserted as an affirmative defense in an action brought by the landlord to recover possession of the residential property. Additionally, any attempt to recover possession of a residential property in violation of this Chapter shall render the landlord liable to the tenant for actual and punitive damages, including damages for emotional distress, in a civil action for wrongful eviction. The

tenant may also seek injunctive relief and money damages for wrongful eviction and/or failure to pay relocation assistance. A landlord may seek money damages for a tenant's failure to reimburse relocation assistance if the tenant ultimately fails to vacate the residential property following a landlord-caused termination where a landlord provides a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent, to an amount more than twelve percent (12%) greater than the base rent at any time during a twelve (12) month period. The prevailing party in an action for wrongful eviction and/or failure to pay relocation assistance or reimburse relocation assistance shall recover costs and reasonable attorneys' fees.

Article 5. Miscellaneous
4-37-500 Annual Review.

The Community Development Director shall annually prepare a report to the City Council assessing the effectiveness of the relocation assistance program established under this Chapter and recommending changes as may be appropriate.

2842163.1



City of San Leandro

Meeting Date: September 5, 2017

Ordinance

File Number: 17-459

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 of the City of San Leandro Adding Chapter 4-37 "Tenant Relocation Assistance" to the San Leandro Municipal Code to Require the Payment of Tenant Relocation Assistance for Landlord-Caused Terminations of Tenancy and to Require Additional Notice Prior to Termination of Tenancy

WHEREAS, there is an increasing demand for rental housing in the City of San Leandro leading to rising rents; and

WHEREAS, the demand for rental housing in the City creates an incentive for some landlords to pressure existing tenants to move so that rents can be quickly increased; and

WHEREAS, the City does not currently regulate terminations of tenancy; and

WHEREAS, secure and stable shelter is a basic necessity of life; and

WHEREAS, the City Council Rules Committee considered potential tenant relocation assistance at five public meetings between April 13, 2016 and July 24, 2017; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City Council wishes to regulate the relations between residential landlords and tenants as it relates to termination of tenancy in order to increase certainty and fairness within the residential rental market; and

WHEREAS, secure and stable rental housing is important for maintaining and protecting the public health, safety and the general welfare; and

WHEREAS, the City Council desires to prohibit residential landlords from terminating the tenancy of a residential tenant without providing sufficient notice and relocation assistance; and

WHEREAS, such protections are consistent with City policies; and

WHEREAS, the amendments to the Municipal Code propose to add Chapter 4-37 as shown in Exhibit A, which exhibit is attached and incorporated herein by reference.

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 the 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, adding Chapter 4-37, as shown in the attached Exhibit A, 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 City Clerk of the City of San Leandro shall cause the Ordinance to be published in accordance with section 36933 of the Government Code of the State of California.

EXHIBIT A

Chapter 4.37

TENANT RELOCATION ASSISTANCE

Article 1. Purpose

4-37-100 Purpose.

In enacting these regulations the City Council recognizes the need to protect long-term tenants and tenant households in need from the adverse health, safety and economic impacts of displacement. It is the purpose and intent of the City Council to mitigate such impacts on these residents consistent with this Chapter.

Article 2. Definitions

4-37-200 Definitions.

For the purpose of this Chapter, unless otherwise apparent from the context, certain words and phrases used in this Chapter are defined as follows:

(a) **BASE RENT** means the rent for residential property required to be paid by the tenant to the landlord in the month immediately preceding the effective date of the rent increase. Base rent shall not include ancillary services including, but not limited, to pet deposits, storage, additional parking or utility pass-throughs.

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

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

(d) **CITY COUNCIL** means the City Council of the City of San Leandro.

(e) **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.

(f) **LANDLORD-CAUSED TERMINATION** means a landlord taking action to terminate the tenancy of a tenant occupying residential property. A landlord-caused termination also includes the circumstance where a landlord provides the tenant with a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent, to an amount more than twelve percent (12%) greater than the base rent that was in place at any time during a twelve (12) month period, and the tenant elects to not remain in the residential property. This excludes circumstances where the proposed rent increase is rescinded by the landlord and excludes residential properties where landlords may establish the initial and all subsequent rental rates for a residential property pursuant to California Civil Code Section 1954.52. A landlord-caused termination shall not include the following circumstances:

(1) Failure to pay rent. Tenant failed to pay rent within three days of receiving written notice from the landlord demanding payment in accordance with California Code of Civil Procedure Section 1161.

(2) Breach of rental contract. Tenant violated a material term of the rental agreement with the landlord for occupancy of residential property.

(3) Tenant illegal activities. Tenant has used the residential property for an illegal purpose, including but not limited to, the unlawful distribution of a controlled substance as contemplated by California Civil Code Section 3486, or the unlawful use, manufacture, or possession of weapons and ammunition as contemplated by California Civil Code Section 3485.

(4) Failure to allow landlord access. Tenant failed to allow landlord access to the residential property, after receiving due notice as required by California Civil Code Section 1954.

(5) Residential property uninhabitable without landlord fault. The residential property becomes uninhabitable as a result of the tenant's negligence or willful conduct or as a result of an earthquake, fire, flood or other acts of God.

(6) Termination of employment. The lawful termination of the tenant's employment by the landlord, where such employment was an express condition of, or consideration for, the tenancy pursuant to the rental agreement.

(7) Temporary repairs or renovations. The tenant is temporarily displaced from the residential property due to repairs, remodeling or renovations, where the landlord provides the tenant with alternative housing for the duration of the repairs, remodeling or renovations.

(8) Prior notice of renovations. Landlord notified tenant prior to entering into the rental agreement of the landlord's intent to renovate the residential property within one (1) year of tenant occupying the residential property and the landlord files plans with the City to renovate the residential property at the time the landlord notifies the tenant of termination of tenancy.

(g) **RENT** means the amount of fixed periodic compensation paid by a tenant to a landlord, as defined by the rental agreement between the tenant and landlord, for the possession and use of residential property. Rent shall not include ancillary services including, but not limited to, pet deposits, storage, additional parking or utility pass-throughs.

(h) **RENT INCREASE** means any upward adjustment of the rent from the base rent amount.

(i) **RENTAL AGREEMENT** means the legal written agreement, including all changes and addenda governing occupancy of the residential property, between landlord and tenant.

(j) **RESIDENTIAL PROPERTY** means any housing unit offered for rent or lease in the City, provided that such housing unit is in a parcel that contains two (2) 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. Residential property shall exclude any housing unit that is subject to a recorded affordable housing regulatory agreement that requires that the housing unit be rented at restricted rents to income qualified tenants as defined by the regulatory agreement.

(k) **SPECIAL-CIRCUMSTANCES HOUSEHOLD** means a tenant or anyone else authorized by the landlord to occupy residential property with any of the following characteristics at the time of notice of a landlord-caused termination:

(1) At least one (1) resident of the residential property is sixty-two (62) years of age or older;

(2) At least one (1) resident of the residential property qualifies as disabled as defined by Title 42, United States Code, No. 423 or handicapped as defined by California Health and Safety Code Section 50072; or

(3) One (1) or more minor children (under eighteen (18) years of age) who are legally dependent (as determined for federal income tax purposes) reside in the residential property.

(l) **TENANT** means any person having the legal responsibility for the payment of rent for residential property in the City as identified under a valid lease or rental agreement with a landlord.

Article 3. Requirement to provide relocation assistance

4-37-300 Requirement to provide relocation assistance.

No landlord shall effectuate a landlord-caused termination without paying relocation assistance in accordance with this Chapter.

4-37-305 Relocation assistance.

The landlord shall provide relocation assistance, in a total amount not to exceed Seven Thousand Dollars (\$7,000), where required by section 4-37-300, to an eligible tenant in the following amounts:

(a) Three times the most current Fair Market Rents as published annually by the U.S. Department of Housing and Urban Development (“HUD”) for the Oakland-Fremont, California HUD Metro FMR Area in the Federal Register, or three times the monthly rent that the tenant(s) is paying at the time the notice of the landlord-caused termination is delivered, whichever amount is greater.

(b) One Thousand Dollars (\$1,000) for special-circumstances households. A tenant is only entitled to claim a special-circumstances household payment of One Thousand Dollars (\$1,000) per residential property.

4-37-310 Procedures for relocation assistance payment.

The landlord shall pay relocation assistance as follows:

(a) The entire relocation assistance amount shall be paid to the tenant or tenants who executed the rental agreement. If the residential property is occupied by two (2) or more individuals, then relocation assistance shall be paid to the individual entitled to occupy the residential property under the rental agreement; provided, however, if the tenant receives, as part of the termination of tenancy, relocation assistance from a governmental agency, then the amount of that relocation assistance shall operate as a credit against any relocation assistance to be paid to the tenant. Landlord may deduct from the relocation assistance payable any and all past due rent owed by tenant during the twelve months prior to termination of tenancy and may deduct from the relocation assistance any amounts paid by the landlord for any damage, cleaning, key replacement, or other purposes served by a security deposit as defined by the rental agreement, to the extent the security deposit is insufficient to provide the amounts due for such costs. To the extent landlord is required to comply with an enforcement order of the City that requires the payment of relocation benefits pursuant to California Health & Safety Code Section 17975, *et seq.*, then the amount of that relocation benefit shall operate as a credit against any relocation assistance paid or to be paid to a tenant under this Chapter.

(b) After taking into account any adjustments in the amount of the relocation assistance under section 4-37-310(a), the landlord shall pay one half of the relocation assistance no later than five business days following service of the notice to a tenant of landlord-caused termination and one half of the relocation assistance no later than the last day of tenancy for which the landlord has received rent. For landlord-caused terminations where a landlord provides a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent, to an amount more than twelve percent (12%) greater than the base

rent at any time during a twelve (12) month period and the tenant elects to not remain in the residential property, the landlord shall pay one half of the relocation assistance no later than five business days following receipt of written notice that the tenant intends to vacate the residential property and one half of the relocation assistance no later than the last day of tenancy for which the landlord has received rent. If the tenant ultimately fails to vacate the residential property following a landlord-caused termination where a landlord provides a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent, to an amount more than twelve percent (12%) greater than the base rent at any time during a twelve (12) month period, the tenant shall reimburse relocation assistance to the landlord.

(c) Nothing provided herein prohibits a landlord and a tenant from agreeing to relocation assistance different than as provided in this section. A landlord shall not attempt to influence a tenant to agree to relocation assistance different than as provided in this section in bad faith by means of fraud, intimidation, or coercion (including, but not limited to, threats based on immigration status).

4-37-315 Notice of termination and notice of entitlement to relocation assistance.

Landlord shall provide a written notice of termination to all tenants subject to termination of tenancy from a residential property required by State law at least ninety (90) days prior to the date a tenant must vacate the residential property for landlord-caused terminations. Written notice of tenant's entitlement to relocation assistance shall be provided by the landlord at the same time that the landlord provides notice of termination of tenancy from a residential property. For landlord-caused terminations where a landlord provides a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent, to an amount more than twelve percent (12%) greater than the base rent at any time during a twelve (12) month period and the tenant elects to not remain in the residential property, the landlord shall provide a written notice of tenant's entitlement to relocation assistance at the same time that the landlord provides notice of a rent increase. Such notice of entitlement to relocation assistance shall be posted on the door to the residential property and sent certified mail or first class mail, or personally served upon tenant, and shall be provided in the three (3) predominant languages spoken in the City. The City Manager or his designee shall determine the predominant languages spoken in the City.

4-37-320 Text of notice.

The notice of entitlement to relocation assistance shall state:

NOTICE: Under Title 4, Chapter 37 of the San Leandro Municipal Code, a landlord must provide tenants that have occupied residential property under a valid lease or rental agreement with a landlord with ninety (90) days' notice prior to termination of tenancy. At the same time the landlord provides a qualifying tenant with notice of termination of tenancy, the landlord must provide this notice of the tenant's entitlement to relocation assistance. Qualifying tenants are entitled to the following forms of relocation assistance: (a) A relocation fee which shall be the cash equivalent of three times the most current Fair Market Rents as published annually by the U.S. Department of Housing and Urban Development ("HUD") for the Oakland-Fremont, California HUD Metro FMR Area in the Federal Register, or three times the monthly rent that the tenant(s) is paying at the time the notice of the landlord-caused termination is delivered, whichever amount is greater; and (b) One Thousand Dollars (\$1,000) for special-circumstances

households. Special-circumstances households include the following: (1) At least one (1) member is sixty-two (62) years of age or older; (2) At least one (1) member qualifies as disabled as defined by Title 42, United States Code, section 423 or handicapped as defined by California Health and Safety Code Section 50072; or (3) Is a household with one (1) or more minor children (under eighteen (18) years of age) who are legally dependent (as determined for federal income tax purposes). 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.

The notice of entitlement to relocation assistance for landlord-caused terminations where a landlord provides a proposed rent increase, or proposed rent increases, that raise the rent to an amount more than twelve percent (12%) greater than the base rent during a twelve (12) month period and the tenant elects to not remain in the residential property 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 37 of the San Leandro Municipal Code, a landlord must at the same time as a notice under Civil Code Section 827(b), provide this notice of the tenant's entitlement to relocation assistance. Qualifying tenants are entitled to the following forms of relocation assistance: (a) A relocation fee which shall be the cash equivalent of three times the most current Fair Market Rents as published annually by the U.S. Department of Housing and Urban Development ("HUD") for the Oakland-Fremont, California HUD Metro FMR Area in the Federal Register, or three times the monthly rent that the tenant(s) is paying at the time the notice of the landlord-caused termination is delivered, whichever amount is greater; and (b) One Thousand Dollars (\$1,000) for special-circumstances households. Special-circumstances households include the following: (1) At least one (1) member is sixty-two (62) years of age or older; (2) At least one (1) member qualifies as disabled as defined by Title 42, United States Code, section 423 or handicapped as defined by California Health and Safety Code Section 50072; or (3) Is a household with one (1) or more minor children (under eighteen (18) years of age) who are legally dependent (as determined for federal income tax purposes). 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.

4-37-325 Retaliation prohibited.

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.

Article 4 Enforcement

4-37-400 Failure to comply.

A landlord's failure to comply with any requirement of this Chapter may be asserted as an affirmative defense in an action brought by the landlord to recover possession of the residential property. Additionally, any attempt to recover possession of a residential property in violation of this Chapter shall render the landlord liable to the tenant for actual and punitive damages, including damages for emotional distress, in a civil action for wrongful eviction. The

tenant may also seek injunctive relief and money damages for wrongful eviction and/or failure to pay relocation assistance. A landlord may seek money damages for a tenant's failure to reimburse relocation assistance if the tenant ultimately fails to vacate the residential property following a landlord-caused termination where a landlord provides a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent, to an amount more than twelve percent (12%) greater than the base rent at any time during a twelve (12) month period. The prevailing party in an action for wrongful eviction and/or failure to pay relocation assistance or reimburse relocation assistance shall recover costs and reasonable attorneys' fees.

Article 5. Miscellaneous
4-37-500 Annual Review.

The Community Development Director shall annually prepare a report to the City Council assessing the effectiveness of the relocation assistance program established under this Chapter and recommending changes as may be appropriate.

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