

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.