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

**SUMMARY AND RECOMMENDATIONS**

Amendments to the San Leandro Rent Review Ordinance are proposed to update the 2001 ordinance, respond to the current rental market and to more effectively administer the Rent Review Program that coordinates rent dispute hearings between tenants and landlords.

Staff recommends that the City Council adopt the attached Ordinance amending Title 4, Chapter 32 of the San Leandro Municipal Code relating to the Rent Review Board.

**BACKGROUND**

In 2001, the City Council established a Rent Review Program 1) to respond to increasing residential rents in the City and throughout the Bay Area, and 2) to create a public forum for rent disputes between tenants and landlords that is presided over by a balanced Rent Review Board to achieve mutually agreeable rent resolutions. The Rent Review Board consists of five members: 2 tenant, 2 landlord, and 1 non-landlord/non-tenant (e.g., homeowner).

The Ordinance was originally created through input from a variety of local rental housing stakeholders such as the Rental Housing Association of Southern Alameda County (RHA), ECHO Housing (an experienced nonprofit housing agency with expertise in housing law), Davis Street Family Resource Center, and tenants. From its onset, the Ordinance sought to balance the needs of both renters and landlords with an emphasis on a mutually satisfactory resolution. The Ordinance applies primarily to any housing unit for rent in a building with three or more units. The Ordinance provides that:

- All landlords must provide a notice informing each tenant of the City's Rent Review Program with any rent increase notification. If a tenant does not receive the program notice, then the rent increase is nullified until the landlord properly re-notices. The Rent Review Board notice along with the Ordinance and frequently asked questions (FAQ) are available on the City website in English, Spanish and Chinese.
- To be eligible for a Rent Review Board hearing, a rent increase must meet one of the following thresholds: 1) over 10% of the existing rent, 2) over \$75, or 3) two rent increases within a 12-month period. These three criteria are only eligibility criteria to qualify for a Board hearing, and the Board may recommend upholding the proposed rent increase regardless of the amount.
- If an applicant is eligible for a Board hearing, staff sends a letter to the tenant and landlord with the hearing date and location. In addition, the letter encourages both parties to continue working together towards a mutually acceptable solution prior to the hearing. Historically, most cases have been mutually resolved just prior to the start of the hearing and often through the encouragement of RHA, ECHO Housing, and City staff. From July 1, 2014 through June 30, 2015, of the 65 rent review requests received, 17 (26%) were settled without a hearing while 13 of 43 (30%) hearings scheduled were settled prior to a hearing. Staff also prepares an agenda packet, including staff report, for distribution to the Board, and publicly notices the hearing as required under the Ordinance. The Brown Act applies to Rent Review Board hearings.
- During the hearing, the Board reviews presentations from the landlord and tenant and then makes a recommendation to the parties for the resolution of their dispute. The Board, as stated in the Ordinance, uses a wide range of criteria in its review such as economic hardship, frequency and amount of prior rent increases, landlord's mortgage payments and ownership/maintenance costs including water and garbage, and the landlord's reasonable rate of return.
- The Board may continue the hearing for up to one month or request the City Council review the rent dispute after a party requests that the Board forward the dispute for further consideration by the City Council.
- If the landlord fails to appear at the hearing without good cause, then the rent increase is voided. If the tenant fails to appear without good cause, then the tenant's case is dismissed.
- City staff annually prepares a report to the Board and City Council to review current rental housing and Rent Review Program trends and to assess the effectiveness of the program.

Under the Ordinance, City Housing staff serves as the secretary to the Rent Review Board. When the City's Redevelopment Agency was eliminated in February 2012, the capacity to administer the Rent Review Program was significantly diminished. Since FY 2013-14, the City has contracted with ECHO Housing to assist with the administration of the Rent Review Program, including the intake of applicants and rental housing counseling/advice as needed.

## **Current Rental Market in San Leandro**

Like many cities in the San Francisco Bay Area, San Leandro rents are rising. However, they are rising at a lower level than the region. The average rent in the City increased 39% from 2007 through the 3<sup>rd</sup> quarter of 2015, less than the 51% rental growth rate for the Bay Area region (see Attachment A). The City's 39% growth rate over 8  $\frac{3}{4}$  of a year represents a 4.5% increase per year.

Key economic factors affecting the recent increase in rents in the City and the region include:

- **Under-supply of new housing construction.** The San Francisco Bay Area region has not built sufficient new residential units for decades to meet its population growth. Consequently, increased demand causes the rents for the limited housing supply to increase. Many local housing markets, including San Leandro's, have not fully recovered from the 2008 recession and many cities are seeking more investment in residential development. State law mandates that all cities and counties in California provide adequate zoning for the development of their fair share of housing growth. A minimal number of new housing, particularly market rate housing, was built during the prior eight year Regional Housing Needs Allocation (RHNA) period from 2007-2014. The RHNA, as assigned by the Association of Bay Area Governments (ABAG), for the City's recently certified 2015-2023 Housing Element Update is 2,287 units, with the largest income need category being market rate housing. Approximately 800 new rental and for sale units are currently in the planning or development process.
- **High construction costs.** New construction continues to be expensive for developers/property owners, which is a major influence on the growth of residential supply.
- **Spillover of renters from higher cost housing markets.** Unaffordable rents in San Francisco and more recently, Oakland, have caused renters to seek more affordable rental housing, which has increased demand in more traditionally affordable housing markets such as San Leandro.
- **New and existing landlords have been raising rents to make up for past years with minimal to no rent increases (or even rent reductions).** The majority of rent increases that the Rent Review Board reviewed in the last year stemmed from landlords seeking to bring their rents closer to market rate, making up for years of no rent growth and/or rent reductions. The increased rents enable the landlords to catch up with rising operating costs (i.e., utilities), obtain financing for improvements (including deferred maintenance), and meet investor returns.

Despite the recent upward rental trend in San Leandro, the City remains one of the most affordable cities to rent housing in Alameda County. In comparing year over year rent growth rates among Alameda County cities in the 3<sup>rd</sup> quarter of 2015, San Leandro's average rent of \$1,580 is the lowest in Alameda County, and the rent growth rate of 11.9% (see Attachment B) is 9<sup>th</sup> lowest among 13 cities in Alameda County.

The City's occupancy rate increased by 2.3% during the 2007 through 2015 period (see Attachment A). Occupancy levels in San Leandro are higher than the Bay Area region overall, which may reflect a lower renter turnover rate and represent a contributing factor to the rising rents in San Leandro. For the 3<sup>rd</sup> quarter of 2015, year over year occupancy rankings among 13 Alameda County cities, San Leandro has the highest rate at 98.9% (see Attachment B).

Historically, the City has experienced a long-term pattern of sustained rental affordability in comparison to other nearby cities with occasional upward rent increases followed by extended periods of declining or stable rent levels (i.e., post-2008 recession impacts). The Rent Review Board's case review activity since its inception in 2001 follows the rent growth rate pattern of long periods of inactivity and occasional increases in caseload, with the most notable surge (26 cases from 10 properties, though the majority of cases were primarily from two properties) in fiscal year 2014-15. In FY 2015-2016 to date, there have been 52 rent review hearing requests received, 21 of which have been heard by the Rent Review Board (see Attachment C).

## **Analysis**

Over the past 14 years, since the Rent Review Ordinance was adopted, numerous items have arisen and revisions to the Ordinance are recommended to address them. The amendments below are recommendations from the Rent Review Board which were informed by public feedback and the the program implementation experiences of City and ECHO Housing staff. The amendments include new provisions to enhance the Ordinance and revisions to provide better clarity on the intent and requirements of the 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.
- **Clarify that landlords must re-notice tenants with proper rent increase notices if they provided improper rent increase notices.** This clarifies that landlords must properly re-notice a tenant prior to demanding or accepting any increase in rent.
- **Raise the existing \$75 rent increase threshold to \$100 plus annually adjust by the Consumer Price Index (CPI), in considering eligibility for a rent review.** The existing \$75 rent increase threshold is outdated as current rent levels are significantly higher today than in 2001 when the Ordinance was adopted and as current rent increase amounts are exceeding the \$75 rent increase threshold.

The Board recommended the \$100 threshold at its November 17, 2015 meeting. Staff recommends adding the annual CPI adjustment, effective July 1, 2017 to provide a built-in cost of living adjustment.

As new multi-family rental housing has not been developed in San Leandro for 30 years, this \$100 threshold may be low for new projects. The Concord Group, one of the nation's premier

providers of real estate advisory services, projects the average rent of San Leandro's new development to increase to \$3.04 per square foot, an increase of 49% over the 3<sup>rd</sup> Quarter 2015 average rent of \$2.08 per square foot (see Attachment D). The increase in new market rate units may help relieve the pressure on existing, affordable rental units in the City.

The existing thresholds of a rent increase greater than 10% and at least two rent increases in a 12-month period will remain intact.

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

All of the above changes have been included in the attached Ordinance recommended for City Council adoption.

## **Previous Actions**

- The City Council adopted the Rent Review Program Ordinance in 2001 into the Municipal Code and adopted the program into the Administrative Code 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.

## **Board/Commission Review and Actions**

At the August 25<sup>th</sup>, September 22<sup>nd</sup>, October 27<sup>th</sup>, and November 17<sup>th</sup>, 2015 Rent Review Board meetings, Housing staff presented the proposed Rent Review Ordinance amendments to the Rent Review Board for its comments and recommendations.

The Board approved the following four recommendations. Note that Items 1-3 below were approved unanimously by the Board, but Item 4 had a split vote:

- 1) Revise the definition of "Base Rent" to include renter's insurance and implementation of the Ratio Utility Billing System (RUBS) and revised the "Required Notice" to include habitability as required by law.**

The implementation of the RUBS and revision to the "Required Notice" are incorporated as proposed amendments to the Rent Review Ordinance.

However, the inclusion of renter's insurance as part of a rent increase is not being recommended by staff for numerous reasons. From a program administration standpoint, the calculation of a tenant's insurance policy is complex and would vary significantly from tenant to tenant. Additionally, the insurance is not paid to the landlord, required by most landlords nor under the landlord's control. It is also a probable scenario that a renter's insurance requirement would trigger a Rent Review Board hearing, , yet the Rent Review Ordinance will be unable to affect the renter's insurance policy payment amount required by a tenant's insurance carrier.

- 2) Increase the \$75 rent increase threshold to \$100.**

City staff has incorporated the Board's recommendation of a \$100 rent increase threshold, and also recommends incorporating an annual average CPI adjustment to the \$100 threshold beginning on July 1, 2017 and each July 1 thereafter. The CPI, which is published by the U.S. Department of Labor for the San Francisco-Oakland-San Jose Consolidated Metropolitan Statistical Area which includes San Leandro, shall be used to calculate the annual increase.

- 3) Revise the definition of "Residential Property" in order to make duplexes that are tenant**

**-occupied be eligible for rent review.**

**4) Prohibit a landlord from raising rents for a period of one year if the landlord does not appear without good cause at a Rent Review Board hearing.**

Board Chair Thomas Silva, with support from Board Member Sandra Johnson Simon, explained that he does not support this recommendation because he is concerned that such policy will result in potential litigation from landlords for the City. The City Attorney's Office and City staff share this same concern, and consequently, did not incorporate this recommendation. Furthermore, since the Ordinance was adopted in 2001, there has only been one instance when a landlord failed to appear at the rent review board hearing.

The complete discussion of this matter at the November 17th Rent Review Board meeting, and prior Board meetings, can be heard on the City of San Leandro website at <https://sanleandro.granicus.com/Archives.php>.

### **Summary of Public Outreach Efforts**

Copies of the 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 page](http://www.sanleandro.org/depts/cd/housing/rentreview/default.asp) <<http://www.sanleandro.org/depts/cd/housing/rentreview/default.asp>> since August 5<sup>th</sup>, 2015.

Public meetings held to discuss the proposed amendments included a City-sponsored community meeting on August 19<sup>th</sup> at the Senior Center and the August 25<sup>th</sup>, September 22<sup>nd</sup>, October 27<sup>th</sup>, and November 17<sup>th</sup> Rent Review Board meetings. These meetings were well attended with the majority of the attendees at each meeting providing their public comments.

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

The City received the following public comments on the proposed amendments:

#### *August 19<sup>th</sup> Community Meeting:*

- Implement rent control at the annual rate of inflation.
- Use CPI as a rent threshold.
- Rent increases over the long term have actually been below the consumer price index (CPI) and reflect the upturn and downturns in the rental housing market over time.
- Do not eliminate the \$75 rent increase threshold, or increase it to \$92, for eligibility to go before the Rent Review Board.
- Reinstate the \$75 threshold as the 10% threshold by itself would be a burden to renters.
- Supports existing rent increase threshold of greater than 10% (of current rent).
- Impose a 1-year freeze on rent increases.
- Make duplex properties eligible for rent review.
- Existing ordinance allows self-policing for landlords and majority of cases are resolved before going to the Board.

- Challenging for small landlords due to rising utility costs and needed repairs therefore rent increases are needed.
- Prohibit a landlord from raising rents for a period of one year if the landlord does not appear without good cause at a Rent Review Board hearing.

*August 25<sup>th</sup>, September 22<sup>nd</sup>, October 27<sup>th</sup>, and November 17<sup>th</sup> Rent Review Board Meetings:*

- Institute an immediate one-year freeze on rent increases.
- Reinstate the \$75 rent increase threshold so that tenants are not “giving up their seat at the table”.
- Tie rent increases to the cost of living.
- Adopt rent control capped at 5% or at the annual rate of inflation.
- Institute a rent increase percentage threshold rather than a dollar threshold.
- Supports existing rent increase threshold of greater than 10% (of current rent).
- Keep the City Council as the final arbiter and do not change it to the City Manager.
- Add duplexes and in-law units as eligible properties for rent review.
- Do not support rent review for duplex properties.
- Prohibit a landlord from raising rents for a period of one year if the landlord does not appear without good cause at a Rent Review Board hearing.
- Supports RUBS (water/garbage) charges to be assessed as rent increase only at initial implementation of RUBS (i.e., subsequent RUBS increases are not considered as rent increases).
- Adopt a Just Cause Eviction Ordinance to protect tenants.

*Written Comments received from the public, including Rental Housing Association (RHA) and East Bay Rental Housing Association (EBRHA)*

- Implement a 15-day, instead of proposed 10-day, max for landlords to submit response forms.
- Eliminate the \$75 rent increase threshold and maintain existing rent increase threshold of a rent increase greater than 10%.
- Formalize that rent must be paid on its effective date while tenant goes through Rent Review process.
- Formalize that subsequent RUBS increases are not considered as rent increases.
- Include Just Cause Eviction protection for tenants in the new ordinance.

## **Legal Analysis**

The proposed amendments to the Rent Review Ordinance were analyzed by the City Attorney's Office and found to be in conformance with the California Government Code.

## **ATTACHMENTS**

### **Attachments to Staff Report**

- Attachment A - Average Annual Asking Rent & Occupancy Rate for San Leandro from 2007-2015 (Source: RealFacts, 11/11/2015)
- Attachment B - Rent/Occupancy and Rent Growth/Occupancy Rate Rankings by Cities for 2<sup>nd</sup> Quarter 2015 (Source: RealFacts, 11/11/2015)
- Attachment C - Rent Review Board (RRB) Hearing Cases (FY2001-2002 - present)
- Attachment D - Average Rent per Square Footage (Source: RealFacts, 11/11/2015)

**Attachment to Ordinance**

- Exhibit A - Proposed Amended Rent Review Ordinance

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