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Staff Report for Overview and Discussion of the City of San Leandro's Rent Review Program

### BACKGROUND

This report is for information only. Rents have been on the rise in San Leandro (and the San Francisco Bay Area) over the last year resulting in a higher volume of Rent Review Board hearings. Key features of the City's Rent Review Program Ordinance are outdated and require clarification. To modernize and more effectively administer the Rent Review Program and Board hearings, staff researched the issue and recommends modifications to enhance the Ordinance. After feedback from City Council tonight and further public input, staff will bring back proposed amendments to the Ordinance for City Council review and/or adoption Fall 2015.

### Current Rental Market in San Leandro

Like many cities in the San Francisco Bay Area region, San Leandro rents are rising. Average rent in the City increased 32.4% from 2006 through 2014 but was still below the rental growth rate of over 50% for the Bay Area region (see Attachment A). Furthermore, the average rent reached a peak in 2008 of \$1,154.00, but then fell in 2010 to \$1,086.00 (which was close to the 2006 level) before trending upwards again to \$1,377.00 in 2014. When annualizing the City's eight year growth rate of 32.4%, the rate reflects a more modest 4% 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.

- **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 the City, the City's average rent of \$1,377.00 in 2014 and annualized rent growth rate of 4% (from 2006-2014) confirms the City's status as 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 4<sup>th</sup> quarter of 2014, San Leandro had the lowest rate at 8.2% (see Attachment B).

The City occupancy rate increased by 1.7% during the 2006 through 2014 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. For 4<sup>th</sup> quarter 2014, year over year occupancy rankings among Alameda County cities, San Leandro had the highest rate at 98.7% (see Attachment B).

Thus, based on current data, San Leandro continues to be one of the most affordable cities to rent housing in Alameda County. 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 (21 cases from 10 properties, though the majority of cases were primarily from two properties) occurring this current fiscal year 2014-15 to date (see Attachment C).

## Rent Review Program Overview

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 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 representatives (e.g., homeowner). Originally, one of the landlord representatives could be a non-City resident who owned rental property in San Leandro, while the other landlord representative had to be a City resident who owned rental property in the City. Due to difficulty filling the resident landlord position over the past two years, the City Council recently approved an amendment to the Ordinance to enable both landlord representatives to live outside the City.

The Ordinance was originally created through input from a variety of local rental housing stakeholders such as the Rental Housing Owners Association of Southern Alameda County (RHO), 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 outcome. 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-notifies. 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 \$75, 2) over 10% of the existing rent, 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 RHO, ECHO and City staff. 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, 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. It is within the Board's discretion, after either a first or a second hearing, to request the City Council's review.
- If the landlord fails to appear at the hearing without good cause, then the rent increase is voided. If the tenant fails to appear, then the rent increase becomes effective.

- 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, but in recent years, the capacity to administer the Rent Review Program has been significantly diminished. Prior to the end of redevelopment statewide in 2012, the City had 3.5 full time employees in the Housing Services Division under the Community Development Department to administer the City's affordable housing programs (which include the Rent Review Program, below market rate housing, first time homebuyer, and housing rehabilitation programs) and federal Housing and Urban Development (HUD) programs such as the Community Development Block Grant (CDBG) and Home Investment Partnership (HOME). Since the dissolution of redevelopment, there is one full time employee in the Housing Services Division to administer these programs, including the Rent Review Program. Beginning in FY 2013-14, the City 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.

### **Recommended Next Steps for the Rent Review Program Ordinance**

Based on the recent increase in Rent Review Board cases along with comments from tenants, landlords/property managers, RHO, and ECHO Housing, it is apparent that the Rent Review Program Ordinance should be reviewed. Most of the Ordinance's language has remained the same since its adoption in 2001.

Below are suggested amendments to the Ordinance. Pursuant to the City Council's direction, staff suggests bringing the proposed amendments back for further direction or approval, after receiving feedback from landlord and tenant stakeholders. The suggested changes below are based on preliminary feedback from landlords and tenants as well as staff, based on day to day experience implementing the Ordinance.

- **Increase existing \$75 threshold to \$100 and adjust for annual Consumer Price Index (CPI).** The CPI index has increased by 28% since 2001, which equals approximately \$100.
- **Clarify when rent increases take effect if cases are pending or during the continuance of hearings.** 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.
- **Streamline the Rent Review Board hearing application process for tenants in circumstances where a landlord submits an improper rent increase notice and subsequently submits a proper rent increase notice.**
- **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.
- **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.

- **Assess the eligibility of Ratio Utility Billing System (RUBS) charges for review by the Board.** RUBS is when landlords subcontract out utility billing to a third party, who tenants then pay their regular utility bills to. The 2015-2023 Housing Element recommends that staff evaluate RUBS as eligible for Board review.
- **Add language to clarify rent increase evaluation criteria for the Board.** Additional criteria should be included in the Ordinance that considers the average annual rent increases for longer term tenants, comparable current market rents for similar units, and reasonable increases to bring units closer to market (e.g., capital improvements, deferred maintenance, investor return, etc.)

Staff is requesting direction from the City Council regarding the above items and proposed process to obtain feedback and return to the City Council in Fall 2015 with revisions to the Ordinance.

### **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.

### **ATTACHMENTS**

- Attachment A - Average Annual Asking Rent & Occupancy Rate for San Leandro from 2006-2014 (Source: RealFacts, March 2015)
- Attachment B - Rent/Occupancy and Rent Growth/Occupancy Rate Rankings by Cities for 4<sup>th</sup> Quarter 2014 (Source: RealFacts, March 2015)
- Attachment C - Rent Review Board (RRB) Hearing Cases (FY2001/2002 - 2014/2015)

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