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

SUMMARY AND RECOMMENDATIONS

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

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

BACKGROUND

On December 7, 2015, following staff presentation, public comment, and deliberation, the City Council conducted a first reading and introduction of an Ordinance Amending title 4, Chapter 32 of the San Leandro Municipal Code Relating to the Rent Review Ordinance (the "Ordinance").

The Ordinance, as presented by staff and including comments and suggestions from the public and the Rent Review Board as part of the Rent Review Board's annual review, included the following amendments:

- **Assess Ratio Utility Billing System (RUBS) charges, upon initial conversion, as a rent increase and therefore considered as a factor toward eligibility for review by the Board.** RUBS is when landlords subcontract out utility billing to a third party. The tenants pay their utility bills to the third party rather than to the landlord. The 2015-2023 Housing Element recommended that staff evaluate RUBS charges as a rent increase and consider these initial charges as eligible for Board review.

- **Include duplexes as eligible residential properties for rent review.** Under the current Ordinance, only buildings with three or more rental housing units are eligible for rent review. Per the 2009-2013 American Community Survey (U.S. Census Bureau), there are almost 2,000 duplex/triplex/quadruplex housing units in San Leandro, and under the current Ordinance, tenants in these units are not eligible for a rent review because their rental housing units are detached, separate buildings.
- **Clarify that landlords must re-notice tenants with proper rent increase notices if they provided improper rent increase notices.** This clarifies that landlords must properly re-notice a tenant prior to demanding or accepting any increase in rent.
- **Raise the existing \$75 rent increase threshold to \$100 plus annually adjust by the Consumer Price Index (CPI), in considering eligibility for a rent review.** The existing \$75 rent increase threshold is outdated as current rent levels are significantly higher today than in 2001 when the Ordinance was adopted.
- **Require tenants to submit to the City their rent review hearing request forms within 15 calendar days of receiving their rent increase notice.** This provision ensures that the 15-day requirement is not erroneously interpreted as 15 “working” days.
- **Require landlords to submit their response forms within 10 calendar days from their receipt of their tenants’ rent review hearing request forms; otherwise, their rent increase is null and void.** The Ordinance currently only encourages landlords to submit their response forms. This change clarifies that landlords must submit their response forms in a timely manner similarly to the tenants in order for the Board to hear the case.
- **Increase the number of days to schedule a Rent Review Board hearing.** Currently, a Board hearing must be scheduled within 50 days of an application. However, 60 days is a more feasible timeframe particularly for 60-day rent increase notices.
- **Formalize that a rent increase must be paid on its effective date.** The existing Ordinance is silent on the situation when, for example, the Board votes to continue a case to a second and final meeting that goes beyond the noticed rent increase effective date. Tenants will be required to pay the rent increase on the effective date of the rent increase, but could be given rental credit or other consideration by the landlord should a mutually satisfactory resolution result in a reduced rent increase amount.
- **Incorporate the Retaliatory Eviction provision in its own section.** The Retaliatory Eviction provision of the Ordinance should be set apart and emphasized in its own separate section.
- **Require tenants and landlords to return for a second and final Continuance hearing.** The Board must hold a 1st hearing, then, if needed, a 2nd final Continuance hearing prior to referring a rent review case to the City Manager (see below) to provide more time for the tenant and landlord to negotiate a mutually satisfactory resolution to their rent dispute.
- **Refer unresolved cases to the City Manager instead of the City Council.** The intent of the Ordinance has always been for a mutual resolution of a proposed rent increase between

tenant and landlord. The Ordinance clearly states that the City is not “a party to such an agreement nor shall the City or the Board assume any responsibility for enforcement” of any agreement because the Board is a negotiation assistance body that makes non-binding recommendations on cases. The City Manager is a more appropriate authority for additional review of cases because he or she has more flexibility to assist in the negotiation of unresolved cases.

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

- 1) The eligibility thresholds for a rent review hearing are 1) an increase in rent of greater than 8%, or 2) greater than \$75, or 3) more than two rent increases within a twelve month period;**
- 2) The definition of residential property is expanded to include all housing units (including duplexes and single family houses) for rent within the City;**
- 3) A tenant shall have thirty days to request a rent review hearing from the date of notice of a rent increase; and**
- 4) Landlords are required to provide tenants notice of availability of rent review in the predominant three languages (English, Spanish and Chinese) spoken within the City.**

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

Analysis

Staff prepared a Rent Review Board Frequently Asked Questions memo dated February 1, 2016 (Attachment A) which provides additional background information and responses/clarifications to questions and issues related to the Rent Review Program.

Based upon this information as well as input received at multiple public meetings, the Rent Review Board’s recommendation, and the City Council discussions on December 7 and 21, staff recommends the following revisions to the Rent Review Ordinance.

- Assess Ratio Utility Billing System (RUBS) charges, upon initial conversion, as a rent increase and therefore considered as a factor toward eligibility for review by the Board.** RUBS is when landlords subcontract out utility billing to a third party. The tenants pay their utility bills to the third party rather than to the landlord. The 2015-2023 Housing Element recommended that staff evaluate RUBS charges as a rent increase and consider these initial charges as eligible for Board review.
- Include duplexes as eligible residential properties for rent review.** Under the current Ordinance, only buildings with three or more rental housing units are eligible for rent review.

Per the 2009-2013 American Community Survey (U.S. Census Bureau), there are almost 2,000 duplex/triplex/quadruplex housing units in San Leandro, and under the current Ordinance, tenants in these units are not eligible for a rent review because their rental housing units are detached, separate buildings.

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

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

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

- **Require tenants to submit to the City their rent review hearing request forms within 21 calendar days of receiving their rent increase notice.** This provision extends the tenant's deadline to submit a request for a rent review from 15 to 21 days and clarifies calendar days to ensure that the requirement is not erroneously interpreted as "working" days. Extending the deadline to 30 days is not recommended as it would have the potential to negatively affect tenants who must pay the rent increase when it's effective, according to their lease agreements and State law, prior to their case being heard by the Rent Review Board.
- **Require landlords to submit their response forms within 10 calendar days from their receipt of their tenants' rent review hearing request forms; otherwise, their rent increase is null and void.** The Ordinance currently only encourages landlords to submit their response forms. This change clarifies that landlords must submit their response forms in a timely manner similarly to the tenants in order for the Board to hear the case.
- **Increase the number of days to schedule a Rent Review Board hearing.** Currently, a Board hearing must be scheduled within 50 days of an application. However, 60 days is a

more feasible timeframe particularly for 60-day rent increase notices.

- **Formalize that a rent increase must be paid on its effective date.** The existing Ordinance is silent on the situation when, for example, the Board votes to continue a case to a second and final meeting that goes beyond the noticed rent increase effective date. Tenants will be required to pay the rent increase on the effective date of the rent increase as the Ordinance cannot legally postpone the effective date of a rent increase, but could be given rental credit or other consideration by the landlord should a mutually satisfactory resolution result in a reduced rent increase amount. This requirement also reduces the risk of tenants being unable to pay their landlords multiple months of rent increases thus risking their tenancy.
- **Incorporate the Retaliatory Eviction provision in its own section.** The Retaliatory Eviction provision of the Ordinance should be set apart and emphasized in its own separate section.
- **Require tenants and landlords to return for a second and final Continuance hearing.** The Board must hold a 1st hearing, then, if needed, a 2nd final Continuance hearing prior to referring a rent review case to the City Manager (see below) to provide more time for the tenant and landlord to negotiate a mutually satisfactory resolution to their rent dispute.
- **Refer unresolved cases to the City Manager instead of the City Council.** The intent of the Ordinance has always been for a mutual resolution of a proposed rent increase between tenant and landlord. The Ordinance clearly states that the City is not “a party to such an agreement nor shall the City or the Board assume any responsibility for enforcement” of any agreement because the Board is a negotiation assistance body that makes non-binding recommendations on cases. The City Manager is a more appropriate authority for additional review of cases because he or she has more flexibility to assist in the negotiation of unresolved cases.
- **Require landlords to provide tenants notice of availability of rent review in the predominant three languages (English, Spanish and Chinese) spoken within the City.**

Previous Actions

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

- On December 21, 2015, the City Council elected to table further discussion on the proposed amendments to the Rent Review Program rather than conduct the second reading and adopt an Ordinance Amending Title 4, Chapter 32 of the San Leandro Municipal Code Relating to the Rent Review Ordinance.

Board/Commission Review and Actions

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

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

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

Summary of Public Outreach Efforts

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

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

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

Legal Analysis

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

ATTACHMENTS

Attachment to Staff Report

- Attachment A - Memo regarding rent review frequently asked questions

Attachment to Ordinance

- Exhibit A - Proposed Amended Rent Review Ordinance

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