

ORDINANCE NO.

AN ORDINANCE ADDING ARTICLE II TO CHAPTER 43 OF
THE MOUNTAIN VIEW CITY CODE TO
ADOPT A RENTAL HOUSING DISPUTE RESOLUTION PROGRAM

WHEREAS, as published in a July 2015 Trends Report by RealFacts, a rental market data provider, the average monthly asking rent within the City of Mountain View has risen 52.7 percent from 2011 to 2015,¹ while the median household income in Santa Clara has only risen 1.2 percent during that same period;² and

WHEREAS, almost one-third of Mountain View households (32 percent or 10,155 Mountain View households) have incomes less than 80 percent of the area median income (AMI),³ the low-income threshold as defined and annually published by the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, Mountain View's 2015-2020 Consolidated Plan data, derived from HUD-provided data, indicated that the most common housing problem is that households are cost burdened,⁴ with 36 percent of renter households (6,485 households) paying more than 30 percent of their income toward housing costs. Additionally, 18 percent of renter households (3,265 households) in Mountain View are severely cost burdened, paying more than 50 percent of their income toward rent; and

WHEREAS, high rents could impact the finances of all households, the 2015-2020 Consolidated Plan documents that lower-income renter households are much more likely than higher-income groups to experience cost burden, with 35 percent of low-income renter households (2,250 households) paying more than 30 percent of their income toward their housing costs, compared to 14 percent of lower-income ownership households (580 households). Additionally, 61 percent of renter households (1,980 households) who pay more than 50 percent of their income toward housing costs are lower income compared to 29 percent of owner households (480 households); and

WHEREAS, according to the Cities Association of Santa Clara County and Housing Trust Silicon Valley, the Association of Bay Area Governments (ABAG)

¹ RealFacts July 2015 Trends Report.

² 2012 (\$105,000) and 2015 (106,300) HUD published median incomes for Santa Clara County.

³ 2015-20 Consolidated Plan (Page 11): 13 percent (3,950 households) at 0 percent to 30 percent AMI; 32 percent or 10,155 total households earn less than 80 percent AMI broken down as follows: 13 percent/3,950 households at 0 percent to 30 percent AMI; 11 percent /2,595 households at 30 percent to 50 percent AMI; and 8 percent /2,320 households at 50 percent to 80 percent AMI.

⁴ 2015-20 Consolidated Plan (Page 48).

projects that over the next 25 years, 57 percent of all household growth in the Bay Area, which includes the City of Mountain View, will consist of very low- and low-income households; and

WHEREAS, according to the U.S. Census Bureau 2009-2013 American Community Survey, a majority, 57 percent,⁵ of all units in the City are occupied by renter households; and

WHEREAS, according to U.S. Census Bureau 2009-2013 American Community Survey, in 2010, 3 percent of families and 6.8 percent of all people in Mountain View lived below the poverty level, and by 2013, the number of households that had fallen into poverty had increased substantially with 5.7 percent of families and 8.1 percent of all people living below the poverty level; and

WHEREAS, the implementation of rent relief strategies is supported by the City's adopted 2014-23 Housing Element: Goal 2, to provide assistance to households at different income levels to address their housing needs; Policy 2.1, to assist extremely low-, very low-, low-, and moderate-income households in renting a home in Mountain View; and Program 2.4, promoting anti-displacement strategies; and

WHEREAS, excessive rental increases could result in homelessness and the displacement of low-income families; and

WHEREAS, members of the community have expressed their concerns to the City Council regarding the rental housing situation in the City of Mountain View and reported significant/excessive rental increases and the issuance of eviction notices on September 8, September 15, October 6, October 19, October 27, and December 1, 2015; and

WHEREAS, the City Council studied the rental housing situation and rent relief options on a number of occasions, including October 19, 2015; October 27, 2015; and December 1, 2015; and

WHEREAS, increasing poverty in Mountain View, decreasing AMI, and increasing rents have created a growing "affordability gap" between incomes and rents demonstrated by the increase in "overpaying renter households" and overcrowded households; and

WHEREAS, given this increased housing cost burden and poverty faced by many Mountain View residents, excessive rental increases threaten the public health, safety, and welfare of Mountain View residents, including seniors, children, those on fixed

⁵ 2015-20 Consolidated Plan (Page 81) and 2009-2013 American Community Survey data.

incomes, those with very low- to moderate-income levels, and those with other special needs to the extent that such persons may be forced to choose between paying rent and providing food, clothing, and medical care for themselves and their families; and

WHEREAS, by the staff presentations, testimony, and documentary evidence presented at the October 19 and 27, 2015; December 1, 2015; and March 15, 2016 City Council meetings, the City Council has been provided with additional information upon which the findings and actions set forth in this ordinance are based;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW does hereby ordain as follows:

Section 1. Article II is hereby added to Chapter 43 of the Mountain View City Code to read as follows:

“SEC. 43.20. Purpose.

The city council finds there is currently a growing shortage of residential rental units and a low vacancy rate due to an increasing demand for housing within the City of Mountain View. Due to this imbalance, rents have increased rapidly, resulting in an economic hardship to many tenants residing in the community. In order to protect the health, safety and welfare of the citizens of Mountain View, the council desires to protect such tenants from unreasonable rent increases while promoting and assuring a fair and reasonable return to property owners, and maintaining a safe, habitable and stable housing environment. The city council encourages property owners to limit rent increases to fair and reasonable amounts and provide greater than the required minimum advance notice of increases. The council has determined it is in the best interest of the city to assist tenants and property owners in resolving disputes which may arise from time to time by establishing the Rental Housing Dispute Resolution Program.

SEC. 43.21. Definitions.

For the purpose of this article, the following terms are defined as set forth in this section:

a. “Administrator” means the person or entity responsible for implementing this ordinance and other administrative duties of the Rental Housing Dispute Resolution Program established by this article or regulations adopted pursuant to this article.

b. "Arbitration" means a hearing conducted according to generally accepted rules for arbitrating disputes in Santa Clara County, unless otherwise specified in regulations adopted pursuant to this article.

c. "Arbitrator" means a person who possesses experience in serving as an Arbitrator or hearing officer pursuant to one of the mandatory dispute resolution ordinances related to rental housing in the region and who has completed an orientation and training session for this ordinance.

d. "Base Rent" means the amount of Rent required to be paid by the Tenant to the Landlord in the month immediately preceding the effective date of the Rent Increase.

e. "Conciliation" means a confidential telephone call or other contacts by the Administrator or a Mediator with a Landlord and Tenant for the purpose of resolving a Rental Housing Dispute.

f. "Day" means a calendar day.

g. "Landlord" means a person or entity exercising effective control over the terms and conditions of the tenancy of a Rental Unit, including a person with such control delegated through a durable power of attorney or an owner, lessor or sublessor, or the agent, representative or successor of any of the foregoing persons who receives, or is entitled to receive, Rent for the use and occupancy of any Rental Unit or portion thereof and is authorized to resolve any Rental Housing Disputes, including an owner, lessor or sublessor, or property manager.

h. "Lease" means an agreement, written or oral, implied in fact, or implied in law, in which a Landlord, for compensation, conveys the right to occupy a Rental Unit to the exclusion of others for a period of time or from period to period.

i. "Mediation" means a meeting in which Landlord and Tenant have the opportunity to communicate with a Mediator to resolve a Rental Housing Dispute with confidential and neutral communications, within the meaning of the applicable provisions of the California Evidence Code.

j. "Mediator" means a person who possesses experience in mediating Landlord-Tenant cases in general and who has mediation experience with at least one of the mandatory dispute resolution programs in the region, and who has completed an orientation and training session on this ordinance.

k. "Party" and "Parties" mean Landlord and Tenant collectively and individually.

l. "Rent" means the consideration, including any bonus, benefit or gratuity demanded or received by a Landlord for or in connection with the use or occupancy of a Rental Unit.

m. "Rent Increase" means any additional Rent demanded of or paid by a Tenant for a Rental Unit including any Service Reduction without a corresponding reduction in Rent.

n. "Rental Housing Dispute" means a fact-based grievance raised by any Tenant or Landlord regarding the occupancy or use of a Rental Unit limited to Rent Increases over the Threshold set forth in Mountain View City Code Section 43.24, security deposits, thirty (30) day and sixty (60) day notices to vacate, maintenance and repairs, and Service Reductions, or Tenant's termination of a Lease prior to the end of the Lease term.

o. "Rental Unit" means a dwelling unit (as defined in Mountain View City Code Section 36.60.11) existing in a single structure with three or more dwelling units being used as residential rental housing.

p. "Service Reduction" means a reduction in the level of benefits, privileges or facilities related to the Rental Unit that have been reduced without a corresponding reduction in Rent and includes but is not limited to repairs, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, refuse removal, furnishings, parking and other rights afforded to Tenant as set forth in a Lease for the Rental Unit.

q. "Tenant" means a person or persons entitled by a Lease to occupy a Rental Unit to the exclusion of others.

r. "Tenancy" includes the lawful occupation of a Rental Unit and includes a Lease or Sublease.

SEC. 43.22. Rental Housing Dispute Resolution Program.

a. Applicability. Each Tenant and each Landlord shall have the opportunity to utilize the Rental Housing Dispute Resolution Program. The Rental Housing Dispute Resolution Program includes three Dispute Resolution phases: Conciliation, Mediation and nonbinding Arbitration. All Rental Housing Disputes are subject to Conciliation and mandatory participation in Mediation. Rental Housing Disputes involving Rent Increases and Service Reductions may also be subject to mandatory participation in nonbinding Arbitration.

b. With the exception of disputes regarding security deposits, a Tenant may not participate in the Rental Housing Dispute Resolution Program unless he or she is a current Tenant of the Rental Unit.

c. Any Tenant or Landlord may initiate the Rental Housing Dispute Resolution Program by filing a written request for resolution of a Rental Housing Dispute within twenty-one (21) days of learning the facts giving rise to the dispute. The request must be filed with the Administrator, and must provide enough factual information to outline the basic issue or issues being raised within the definition of a Rental Housing Dispute.

d. Within seven (7) business days of receiving a written request for dispute resolution from a party, the Administrator will notify both Tenant and Landlord in writing that a case has been opened and will provide a copy of the request to the other party. The Administrator will initiate Conciliation and complete the Conciliation process within seven (7) days from the date the Administrator notifies the Parties a case has been opened.

e. If Conciliation does not resolve the dispute within the Conciliation time limit, and one of the Parties requests Mediation in writing within the Conciliation time period described above, the Administrator will send a notice to both Parties setting a Mediation date within fourteen (14) days of the notice. The Administrator shall have the authority to combine different disputes or different parties in the interest of efficiently addressing the disputes, provided that any Party may, for reasons of confidentiality or otherwise, opt out of a combined Mediation involving more than one Tenant or Landlord by notifying the Administrator.

f. No Party shall be obligated to reach any specific agreement, or to reach any agreement at all, as a result of participating in Conciliation or Mediation. If an agreement is reached during Mediation, the Mediator or the Parties will prepare a written agreement. Any such agreement shall be confidential and will not be enforceable or used for any other purpose outside the Rental Housing Dispute Resolution Program, unless the Parties agree the document can be disclosed or otherwise used in other proceedings.

g. If Mediation does not resolve the dispute, either Party may request nonbinding Arbitration in writing within seven (7) business days after the Mediation is completed. Arbitration shall be held within twenty-one (21) days after receipt of the request for Arbitration by the Administrator.

h. After the Rental Housing Dispute Resolution Program is initiated, any subsequent timeline may be extended by mutual consent of the Parties and the

Administrator, or the Arbitrator may continue the Arbitration upon good cause shown in a written request from either Party.

i. Failure of a Landlord to appear and participate in good faith in any of the dispute resolution alternatives in the Rental Housing Dispute Resolution Program for a dispute involving Rent Increase in excess of the Threshold shall void the notice of Rent Increase for all purposes. Failure of the Tenant to appear and participate in any step of the Rental Housing Dispute Resolution Program shall terminate the process for the affected Tenant and if the dispute involves a Rent Increase, the Rent Increase is no longer subject to the Rental Housing Dispute Resolution Program and shall be effective the date stated in the Notice of Rent Increase.

j. The Parties shall exchange copies of all evidence they intend to introduce at arbitration no later than seven (7) days prior to the date of the Arbitration. Any objection to evidence proposed to be introduced by a Party will be considered by the Arbitrator at the Arbitration hearing.

k. The determination of the Arbitrator shall be mailed to the Parties together with written findings of fact supporting the determination within seven (7) days of the hearing. The Arbitrator's decision shall be advisory to the Parties and shall not be binding.

SEC. 43.23. Landlord's Obligation to Provide Notice to Tenants.

a. In addition to any other notice required to be given by law, Landlord shall provide all Tenants with a notice stating the Rental Unit is subject to the city's Rental Housing Dispute Resolution Program and Right-to-Lease Ordinance as provided in this article and that they can receive copies of these ordinances by contacting the city. Landlord shall provide these notices to prospective and/or affected Tenants upon Leasing a Rental Unit, renewing the Lease of a Rental Unit and with any Notice of a Rent Increase. Prior to any Rent Increase, every Landlord shall provide their Tenants a notice of Rent Increase as prescribed in this section. This same language shall be included in a clearly visible location on any lease or other rental agreement.

b. Every Landlord of a Rental Unit shall provide a Rent Increase notice as prescribed in this section before demanding or accepting any Rent Increase. All Rent Increase notices shall be in writing, shall show the name, address and phone number of all responsible parties including the person or entity with authority to respond to a Rental Housing Dispute, and shall be personally delivered to the Tenant(s) or posted and mailed to the Tenant(s) at the address of the Tenant's (s') Rental Unit by first-class mail, postage prepaid. Service by mail shall be presumed complete within five (5) days of mailing. This presumption may be rebutted by the Tenant(s).

c. In addition to all other information provided in a Rent Increase notice, each notice of Rent Increase shall substantially state in bold type:

NOTICE: Article II of Chapter 43 of the Mountain View City Code establishes a Rental Housing Dispute Resolution Program and it provides a procedure for conciliation and mediation of rental housing disputes involving rent increases greater than ____%, security deposits, 30-day and 60-day notices to vacate, maintenance and repairs, and service reductions, and disputes regarding a Tenant's termination of the lease prior to the end of the lease term. Disputes regarding rent increases greater than ____% and Service Reductions may also be subject to binding arbitration. To use the program and secure additional information about the city ordinance, you must contact Administrator [insert name and phone number] within 21 calendar days following receipt of a notice of rent increase or learning the facts giving rise to a dispute regarding a rent increase, a security deposit, 30-day and 60-day notices to vacate, maintenance and repairs, or service reductions or disputes regarding a tenant's termination of the lease prior to the end of the lease term. Further information regarding this ordinance is available on the City of Mountain View's website.

d. No Rent Increase shall be valid for any purpose whatsoever without substantial compliance with this section and any Rent Increase accomplished in violation of this section shall be void. However, a Landlord may cure a violation by serving the Tenant with a notice that complies with this section. No Landlord may take any action to enforce such an invalid Rent Increase.

e. Any Rent increase in violation of this section shall operate as a complete defense to an unlawful detainer action based on failure to pay any invalid Rent Increase. Any Tenant required to pay an invalid Rent Increase may recover all invalid Rent Increase amounts, actually paid by the Tenant, in a civil action.

f. It is the intent of this article that all Landlords are encouraged to provide at least ninety (90) calendar days notice of any Rent Increase in order to allow for orderly operation of the Rental Housing Dispute Resolution Program. At a minimum, all Rent Increases shall meet the notice requirements of state law.

SEC. 43.24. Rent Increases.

a. Rent Increases for Rental Units shall be limited to one increase in any consecutive twelve (12) month period unless otherwise agreed by the Parties in writing.

b. Rent Increases in any twelve (12) month period exceeding [X percent (%) of Base Rent or $Y \times \text{CPI}$],⁶ is subject to the Rental Housing Dispute Resolution Program (“Threshold”). [CPI is the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland Area. The most recent CPI is the bimonthly figure most recently available from the Bureau of Labor Statistics.]

c. If a Landlord has not raised the Rent for a Rental Unit for more than twelve (12) months prior to the latest increase and if the last increase was more than twenty-four (24) months prior to the current increase, Rent Increases of [A]⁷ percent or less shall not be subject to this Rental Housing Dispute Resolution Program.

d. Landlord bears the burden of proving a Rent increase in excess of Threshold is reasonable.

SEC. 43.25. Payment of Rent Increase during Rental Housing Dispute Resolution Program.

a. Every Tenant shall pay the existing Base Rent as it becomes due.

b. In the event the dispute remains in the Rental Housing Dispute Resolution Program past the notice period specified in the valid notice of Rent Increase, each affected Tenant shall pay the Landlord the Base Rent and the Rent Increase up to the Threshold in order to continue in the program. Landlord shall provide Tenant with a receipt acknowledging delivery of the Rent.

SEC. 43.26. Factors Determining Reasonableness of Rent Increases.

The purpose of this article is to permit Landlords a fair and reasonable return on the value of their property, while at the same time protecting Tenants from arbitrary, capricious or unreasonable Rent Increases. If a Rent Increase dispute proceeds to Arbitration, the reasonableness of any portion of the Rent Increase in excess of [X % of Base Rent or $Y \times \text{CPI}$] will be determined by an Arbitrator.

⁶ The city council has not determined the Threshold for Rent Increases that will be subject to the Rental Housing Dispute Resolution Program. Council briefly discussed a percentage or the CPI multiplied by a factor.

⁷ This will be a multiplier of the Rent Increase amount the Council determines is the Threshold, i.e., two (2) times the Threshold.

The determination of reasonableness shall be made with reference to the following standards, unless Arbitrator determines the overall standard of reasonableness requires other standards to be applied in a given case to ensure the above stated purpose is being met:

- a. Past history of Rent Increases for the same Rental Unit, including timing and amounts;
- b. Market rental rates for similar Rental Units in Mountain View;
- c. History of capital improvements, maintenance and repairs, operation and maintenance costs for the Rental Unit, including verified expenses;
- d. Any unanticipated increases in other categories of Landlord costs for the Rental Unit within the twelve (12) months prior to the notice of Rent Increase or verified expenses to be incurred in the twelve (12) months following the date of the Rent Increase notice;
- e. Increases in Landlord costs due to necessary upgrades or verified significant renovations incurred within twelve (12) months prior to the date of the Rent Increase notice for the Rental Unit or projected increases within the twelve (12) months following the date of the Rent Increase notice;
- f. Vacancies in the Rental Unit and whether a vacancy was a Voluntary Vacancy;
- g. Service Reductions for the Rental Unit during the Tenant's occupancy of the Rental Unit;
- h. Any serious health, safety, fire or building code violations as defined by Health and Safety Code § 17920.3.

The Arbitrator shall determine the amount of the allowable Rent Increase in excess of the threshold allowed pursuant to Section 43.24, if any, in accordance with the standards enumerated in this section.

SEC. 43.27. Burden of Proof at Arbitration.

- a. Landlord bears the burden of presenting evidence to the Arbitrator that the Rent Increase in excess of the Threshold is reasonable.
- b. Tenant bears the burden of proving a Service Reduction. Tenant must prove the decrease in service was substantial and the Landlord had notice of the condition but

failed to restore the service within a reasonable time after receiving notice of it. Violations of the Mountain View City Code regarding a Rental Unit must be considered. Upon finding a Service Reduction, an Arbitrator may reduce a Rent Increase, order a credit against Rent paid and/or a reduction in future Rent based on the nature of the Service Reduction, the habitability and usability of the Rental Unit and the duration of the Service Reduction.

SEC. 43.28. Subpoenas.

An Arbitrator may, on his/her own initiative, or at the request of a Party, issue subpoenas, or require the production of documents by a Party, provided the Party requesting the subpoena makes a showing of good cause supporting such a request. For the purposes of this article, the city council's authority to issue subpoenas is delegated to the Arbitrator, reserving to the Council full authority to issue subpoenas for the same or other purposes.

SEC. 43.29. Property registration and fees.

a. A Landlord shall register each residential Rental Unit within the City of Mountain View. The registration shall be on forms provided by the city and shall include the name and mailing address of the owner or owners of the property, the person authorized to effectively resolve Rental Housing Disputes arising under this article as well as the name, address and telephone number of the Landlord, and the number of Rental Units at the address.

b. For the sole purpose of reimbursing the City of Mountain View for the reasonable costs of maintaining property registration records and related administrative systems, and the Rental Housing Dispute Resolution Program, the Landlord of each Rental Unit shall pay a fee in an amount to be set by the City of Mountain View for each Rental Unit.

SEC. 43.30. Retaliation.

No Landlord shall increase Rent, cause a Service Reduction, cause a Tenant to involuntarily quit the Rental Unit, bring an action to receive possession, or threaten to do any of such acts or take any other adverse action against a Tenant because of the Tenant's exercise of the Tenant's rights pursuant to this article.

SEC. 43.31. Enforcement.

a. Violation of provisions of this article shall not constitute a crime.

b. At any time, a Tenant may bring action in the courts of the state alleging a violation by the Landlord of the provisions of this article or may seek a court order directing compliance with the provisions of this article.

c. At any time, a Landlord may bring an action in the courts of the state alleging a violation by the Tenant of the provisions of this article or may seek a court order directing compliance with the provisions of this article.

d. Any Rent increase in violation of this section shall operate as a complete defense to an unlawful detainer action based on failure to pay any invalid Rent Increase. Any Tenant required to pay an invalid Rent Increase may recover all invalid Rent Increase amounts, actually paid by the Tenant, in a civil action.”

Section 2. Nonwaiver. Any waiver or purported waiver by a tenant of rights under this chapter prior to the time when such rights may be exercised, except a rejection of a one (1) year lease offered in accordance with Section 3, shall be void as contrary to public policy.

Section 3. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 4. CEQA. The City Council hereby finds and determines that this ordinance is not subject to the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline 15183 (Action Consistent with General Plan and Zoning); Section 15378 (No Project); and Section 15061(b)(3) (No Significant Environmental Impact).

Section 5. Severability. If any section, subsection, sentence, clause, or phrase of this urgency ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this urgency ordinance. The City Council declares that it would have adopted this urgency ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

Section 6. Effective Date. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

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015-03-15-16o-E-4