



**DATE:** June 6, 2017

**CATEGORY:** Consent

**DEPT.:** City Attorney's Office/Community Development Department

**TITLE:** **Introduce an Ordinance Repealing the Right-To-Lease Ordinance and Rental Housing Dispute Resolution Program**

### **RECOMMENDATION**

1. Introduce an Ordinance Repealing the Right-To-Lease Ordinance and the Rental Housing Dispute Resolution Program, Mountain View City Code Sections 43.1-43.6 and 43.20-43.32, and set a second reading for June 13, 2017.
2. Direct staff to eliminate the Rental Housing Dispute Resolution Program Fee from the Master Fee Schedule for Fiscal Year 2017-18.

### **BACKGROUND**

On December 18, 2015, the City Council adopted the Right-To-Lease Ordinance ("RTLO") to address reports from tenants regarding escalating rents. The RTLO required landlords to offer new and existing tenants a fixed-term lease of either six months or one year. The written lease requirement was intended to stabilize rents and decrease no cause evictions for the duration of the lease term. The RTLO does not require landlords to renew the lease once it expires. If both the landlord and tenant wish to continue the rental relationship, then the landlord must offer a written lease with the six-month and one-year options.

On April 26, 2016, the City Council adopted an ordinance establishing a Rental Housing Dispute Resolution Program ("RHDRP"). The broad purpose of the RHDRP is to protect tenants from unreasonable rent increases; assure a fair and reasonable return to property owners; and to maintain a safe, habitable, and stable housing environment in the City. Specifically, the ordinance established a detailed dispute resolution process to resolve rental housing disputes involving: rent increases greater than 7.2 percent; security deposits; 30-day and 60-day notices to vacate; maintenance, repairs, and service reductions; and disputes regarding a tenant's termination of the lease prior to the end of the lease term. A complaint is filed to initiate the process, which includes conciliation

and mediation. Disputes regarding rent increases and service reductions may escalate to mandatory but nonbinding arbitration.

Following the adoption of these ordinances, the voters approved an amendment to the City Charter entitled the Community Stabilization and Fair Rent Act (“CSFRA”) on November 8, 2016. The California Apartment Association filed a lawsuit challenging the CSFRA in December. On April 5, 2017, the court declined a request by the California Apartment Association and other landlord plaintiffs for a preliminary injunction. The TRO expired once the judge issued the order and the CSFRA is now effective. Both plaintiffs have now dismissed the lawsuit.

Section 1717(a) of the CSFRA provides: “[t]his Article supersedes any ordinance passed by the City Council covering the area of rents or evictions.” Both the RTLO and the RHDRP contain provisions that address rent and evictions. The purpose of this agenda item is to provide the City Council with an opportunity to review these two ordinances and consider the best method to conform to the CSFRA.

## **ANALYSIS**

The RTLO is superseded by the CSFRA because it requires that the rent for a rental unit with a written six-month or one-year lease not exceed the rental rate for the same unit for month-to-month tenancy.

Under the RHDRP, landlords are limited to two rent increases in any consecutive 12-month period. This provision conflicts with the CSFRA which permits only one rent increase per 12-month period. In addition, the disputes covered by the RHDRP include rent increases in excess of 7.2 percent per year. The CSFRA governs and allows a different annual rent increase based on the Consumer Price Index. The RHDRP provides a defense to tenants in unlawful detainer actions should the rent be increased in excess of the 7.2 percent.

To address the conflicts created by the overlapping statutory schemes, the City Council could either repeal both ordinances or amend one or both of the ordinances so they do not conflict with the CSFRA. Staff has analyzed both of these options and recommends the ordinances be repealed for the reasons set forth in this Council report.

Staff’s primary reason for its recommendation is the desire for certainty and clarity in the regulations. Even if the ordinances were amended to remove the provisions related to rent and evictions, it would be confusing for both the landlords and the tenants to determine which regulations would apply to a particular rental unit. For example, the

RTLO and RHDRP define “rental unit” in the same manner as the City’s multi-family housing inspection program. In large part, the CSFRA covers the same rental units but the definition of rental unit is different. Under the CSFRA, all rental units that received a Certificate of Occupancy prior to the effective date of the Charter Amendment are subject to the Just-Cause for Eviction provisions. This includes the nine apartment complexes built after February 1, 1995 and before the effective date of the Charter Amendment—approximately 1,500 rental units. Rental units with a Certificate of Occupancy prior to February 1, 1995 are subject to the rent stabilization provisions because of the *Costa-Hawkins Act* and the Just-Cause for Eviction provisions—approximately 13,000 rental units. From a staff perspective, separate regulatory schemes create confusion in terms of applicability and enforcement.

While staff considered whether the repeal of the ordinances would create any gaps, the just-cause protections may address the issues covered by the RTLO because a lease provides a period of stability for tenants as they can remain in a particular rental unit for the term of the lease unless the tenant breaches the lease. The RTLO does not require a landlord to renew the lease once the initial term expires. Now that the CSFRA is effective, a landlord can only evict a tenant in a rental unit that received a Certificate of Occupancy up to the effective date of the CSFRA for just-cause.

As to the RHDRP, the CSFRA determines the applicable annual allowed rent increase and provides a petition process for both landlords and tenants to seek adjustments in the rent. While the RHDRP could be amended to address those issues not covered by the CSFRA, such as security deposits and terminations by tenants prior to the end of their lease term, any such disputes can be addressed through the City’s voluntary mediation program. To provide some context, the program has received 225 calls since the inception of the RHDRP in May 2016. One hundred fifty-four (154) of these calls related to rent increases, service reductions, or terminations, topics now covered by the CSFRA. Eighty-three (83) cases were actually opened, 16 of which were related to security deposits or terminations of leases. These issues are not covered by the CSFRA but can be addressed through the voluntary mediation program.

#### *RHDRP Fee*

The City Council adopted a \$7.00 per rental unit fee to support the RHDRP. This fee was invoiced on January 2017 for Fiscal Year 2016-17 and would be invoiced in January 2018 for Fiscal Year 2017-18. This fee cannot be used for the CSFRA implementation. The Rental Housing Committee will establish a budget for the administration and enforcement of the CSFRA and, based on this budget, collect a Rental Housing Fee from landlords of the rental units covered by the CSFRA. If the City Council repeals or

amends the RHDRP, it will also want to direct staff to eliminate the RHDRP Fee from the Master Fee Schedule amended as part of the budget process.

### **FISCAL IMPACT**

The Rental Housing Dispute Resolution Program (RHDRP) Ordinance became effective March 23, 2016 and the RHDRP Fee took effect 30 days later on April, 22, 2016. The first billing of the fee occurred in January 2017 and a total of \$112,007 was received by the City. During the time period of April 22, 2016 through May 23, 2017, the City incurred expenses in excess of the \$112,007 in fee revenue. These expenses were related to implementation of the RHDRP, including, but not limited to, numerous public meetings and workshops; mediation services; design, translation, and printing of brochures, website postings, and presentations; development of processes and forms; database design and setup and on-line payment setup; and responding to landlord and tenant inquiries.

Repeal of the RHDRP Ordinance and elimination of the RHDRP Fee will remove the authority to assess the fee resulting in a reduction of \$110,000 in revenue to the General Operating Fund for Fiscal Year 2017-18.

### **ALTERNATIVES**

Provide other direction to staff, such as amending one or both ordinances.

**PUBLIC NOTICING** – Agenda posting.

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Attachment: 1. Ordinance