

DATE: October 19, 2015

TO: Honorable Mayor and City Council

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TITLE: **Consideration of Rent Relief Program
Options**



PURPOSE

The purpose of this Study Session and community meeting is to hear from a panel of experts representing both landlords and tenants, take community input, discuss a preliminary list of possible rent relief options, and provide direction to staff.

BACKGROUND

Introduction

For the past month, large numbers of Mountain View residents have come to City Council meetings to express their experiences with rising rents and to ask the Council for help. Numerous anecdotes have been told about dramatic and frequent rent increases, as well as evictions of long-term tenants. Little quantitative data is available at this time, although the Mountain View/Los Altos Community Services Agency (CSA) reports providing 28 percent more clients with rent assistance in Fiscal Year 2014-15 than the previous year.

The City Council has requested this Study Session to have the opportunity to hear from housing experts and discuss a range of potential rent relief options. This report presents a preliminary list of options with brief descriptions for the Council's consideration. It should be noted that very little research or analysis of the options has been undertaken at this point. The Council cannot take action on these options at a Study Session. If the Council is interested in pursuing any of these options, it may provide direction to staff to prepare a future agenda item for Council consideration.

Rent Increases

High rent increases are being reported throughout the Bay Area, along with reports of lower-income households having to work multiple jobs, double up in overcrowded apartments, or move to other communities. Fifty-eight (58) percent of Mountain View residents rent their homes and in the four years from 2011 to 2015, average monthly rents have increased almost 53 percent. As rents have increased, the number of households falling below the poverty line has also increased, compounding the problem. In 2010, 3 percent of families and 6.8 percent of all people in Mountain View lived below the poverty level. By 2013, the number of households below the poverty level had increased to 5.7 percent of families and 8.1 percent of all people.¹ In 2010, 2,945 extremely low-income and 1,970 very low-income renters lived in Mountain View. Today for a family of four, the maximum affordable rent for a very low-income household earning 50 percent of the Area Median Income (AMI) would be \$1,329 per month and for an extremely low-income household earning 30 percent AMI it would be \$797 per month.² The average asking rent for apartments in Mountain View was \$2,833 in the second quarter of 2015, compared to \$2,327 two years earlier.

Existing Housing Programs

Mountain View has implemented numerous progressive housing programs and has been at the forefront in adopting affordable housing and tenant initiatives. These initiatives include adoption and increases to three types of affordable housing fees. These fees are required of almost all new development in Mountain View and are used to produce affordable rental units. In the past 10 years, 351 new affordable apartments have been created for seniors, families, workers, and special-needs households. Three new affordable housing projects funded through these fees are in the pipeline and will produce another 240 affordable apartments. There are 13 subsidized, 100 percent affordable housing projects in Mountain View with a total of about 1,200 units. These affordable apartments are a critical source of stable rents for very low- and extremely low-income households in Mountain View. In addition, the City has 16 Below-Market-Rate (BMR) rental units and eight BMR ownership units.

In 2010, the Council adopted a Tenant Relocation Assistance Ordinance to provide financial assistance to displaced tenants and in 2014, increased the amount of assistance and number of households who were eligible. Currently, displaced tenants earning 80 percent AMI or less receive three times the average monthly rent in Mountain View and \$3,000 additional for households with seniors, children, and persons with disabilities.

¹ In 2009, the poverty level was defined as \$22,050 annual income.

² Affordable rent is calculated as 30 percent of the monthly income.

The City also funds free mediation services and tenant/landlord workshops. New General Plan and Precise Plan policies encourage more housing by allowing higher densities near transit and more affordable housing through the public benefit provisions. There are 3,338 market-rate housing units in the pipeline and the Council is currently studying adding a significant number of housing units in North Bayshore study area. A list of all the City's housing initiatives can be found in Attachment 1.

DISCUSSION

Rent Relief Options

Rent relief options range from mandatory programs controlling rent increases to voluntary programs that provide incentives to control rents or mediation to address rent increases. Other possible rent relief programs would provide protection from sudden evictions and limited-term rent subsidies. The options presented in the following list are not exclusive of each other and the Council could consider multiple programs to address rent increases and displacement. There may be other options, but these are the most common programs staff found. A brief description is given in this report for each of the following options.

1. Rent Stabilization Ordinance
2. Just-Cause Eviction/Right to Lease/90-Day Notices
3. Rental Subsidies
4. Fair Rental Practices Program
5. Tenant Relocation Assistance Ordinance Revisions
6. Mandatory Mediation for Rent Disputes
7. Priority in Subsidized Housing for Displaced Tenants
8. Urgency Ordinance Related to Rent Increases

Options

1. **Rent Stabilization Ordinance**

Cities can adopt ordinances imposing limits on rent increases. Thirteen (13) cities in California have rent control or rent stabilization ordinances. Six of those cities are in northern California: Berkeley, Oakland, Richmond, San Francisco, Hayward, and East Palo Alto. In these cities, the permitted annual rent increases are mostly based on a percentage of the increase in the Consumer Price Index (CPI) and range from 60 percent to 100 percent of the CPI increase. These ordinances typically also set a cap on the CPI permitted rent increase that ranges from 5 percent to 10 percent depending on the city. In 2015, the permitted rent increases in these cities ranged from 1.7 percent to 2.0 percent. Rent stabilization ordinances must contain provisions for adjusting the allowable rent to ensure landlords receive a reasonable return on their investment. Many of these ordinances also contain provisions defining the just causes for eviction. Generally, capital improvement costs can be passed on in rent increases.

As a result of the Costa-Hawkins Act passed in 1995, apartments constructed after 1995 are exempt from local rent stabilization laws. Of the six northern California cities, the most recent ordinances are for East Palo Alto, who updated their ordinance in 2010 and Richmond, who passed their ordinance this year (Attachment 2). The Richmond ordinance has been suspended because signatures have been collected to place a referendum on the ballot to challenge the ordinance. The signatures are currently being counted and verified. Approximately 90 percent of the apartment units in Mountain View were built prior to 1995 and would be subject to a rent stabilization ordinance.³ Currently, there are 16,952 apartment units in complexes with four or more units.

The administrative costs for a rent stabilization program can be significant in cities with large numbers of apartments. For example, Santa Monica, with a population of about 92,000 and 73 percent renters, has a rent stabilization program with a \$4.8 million budget and 26 staff. Most of the funding for their program comes from fees paid by the city's landlords. Affordable housing funds are not used for rent stabilization programs because the program applies to all income levels and does not just benefit moderate- and lower-income households as intended with these funds.

³ Based on 2014 U.S. Census Data that indicates there were 18,132 renter-occupied units in Mountain View, including condos and single-family homes.

2. Evictions, Leases, and Notices

Many rent stabilization ordinances include provisions for just-cause evictions. However, just cause for eviction, right to lease, and 90-day notices can be adopted individually or together without a rent stabilization program.

Just Cause for Eviction

In most parts of California, landlords can end a month-to-month rental agreement without reason by serving a tenant with proper notice. Landlords must provide 60 days' written notice to terminate a month-to-month agreement if all tenants residing in the unit have been there for longer than a year. If any of the tenants have lived in the unit for less than a year, California law only requires 30 days' notice. In either case, the landlord is not required to provide a reason for terminating the tenancy.

Some cities have adopted just-cause eviction or termination ordinances. The just-cause provisions restrict landlords' ability to evict tenants to a list of specific causes laid out in the local ordinance such as nonpayment of rent, unapproved subtenant, or breach of the rental agreement (Attachment 3—Sample List). Just-cause ordinances typically require landlords to tell tenants why they are being asked to leave. About 15 California cities have enacted just-cause eviction/ termination ordinances, including San Diego, San Francisco, Oakland, Berkeley, Hayward, East Palo Alto, and Richmond. A copy of San Diego's ordinance is attached (Attachment 4). Often, just-cause provisions are part of a rent stabilization ordinance restricting rents, but can be adopted independently of rent control programs and could apply to units built after 1995.

Right to Lease

Generally, California law recognizes a tenant as a month-to-month tenant in one of two situations. As the State's Department of Consumer Affairs explains, if a tenant entered into a lease, they would continue to abide by its terms when the lease expires, but on a month-to-month basis. If a tenant did not sign a lease, under California law the tenant is under a periodic rental agreement. A periodic rental agreement requires notice equal to the amount of time between rent payments, often 30 days, if either party would like to make changes.

A right to lease program requires landlords to offer a years' lease to tenants. In some programs if tenants choose not to enter into a lease and prefer a periodic rental agreement, they must make this choice in writing. The City of Palo Alto has

a right to lease program that requires landlords to offer tenants in most multi-family units a written one-year lease stipulating the rent requirements. In this program, if both the landlord and tenant wish to continue a rental relationship after the one-year lease expires, the landlord must offer another one-year lease agreement. Although the City of Palo Alto refers to this ordinance as a “Rent Stabilization” ordinance, it is not technically a rent stabilization ordinance as it does not limit the rent increase allowed in multi-family units.

90-Day Notice to Terminate Tenancy

Landlords must provide at minimum 30- or 60-day written notice to terminate a month-to-month rental agreement under California landlord-tenant laws. Cities can adopt ordinances requiring an extended notice. As part of its rent stabilization program, the City of San Jose requires a 90-day notice.

3. Rental Subsidies

The City could provide direct rent subsidies to assist tenants with move-in costs, emergency housing, or monthly rent payments. Not many cities have a direct rental subsidy program because these programs are expensive and typically require extensive administration. The primary rental assistance program in Santa Clara County is the Section 8 Tenant Voucher Program funded by U.S. Department of Housing and Community Development (HUD) and administered by the Housing Authority of the County of Santa Clara (HACSC). However, funding for Section 8 vouchers is limited, applications have not been accepted for many years, and thousands of people are still on the wait list.

One-Time Rental Assistance

The City could use local affordable housing funds to provide one-time financial assistance to low- and moderate-income households. The City of Fremont, in partnership with Echo Housing, provides financial assistance to low- and moderate-income renters to help pay delinquent rent, security deposits, and move-in costs. The City of Santa Cruz also has a program that provides funding for security deposits for low-income renters.

The City currently provides \$36,000 in BMR housing funds annually to CSA to fund emergency rental assistance to lower-income households who are unexpectedly displaced. The assistance is used for emergency lodging (less than 30 days) at local motels.

Temporary Short-Term Rent Subsidy Program

A short-term rental subsidy program could provide a longer period of rental assistance (possibly up to 12 months) to lower-income households who are at risk of losing their apartment or are homeless and in need of housing. The intent of the program would be to help tenants stay in their existing homes until they can find replacement housing or help homeless households access housing and a more stable living situation. The assistance period for this type of program is typically six months to a year, distinguishing it from emergency rental (motel) programs, where assistance is provided for less than a month or rental subsidy programs, which offer longer-term assistance.

In July 2015, the City of Sunnyvale contracted with the Sunnyvale Community Services, a local nonprofit agency, to implement its rapid re-housing program with a budget of \$250,000 to serve 48 households and fund a full-time case manager. The program focuses on the homeless or those at risk of becoming homeless. Since the goals are to quickly re-house and stabilize tenants, program assistance is typically partnered with associated case management services. In addition to rental assistance, households may receive security or utility deposit funding, housing search assistance, and financial and credit counseling, depending on their specific needs. The Sunnyvale program, considered to be in pilot form, is currently serving five households.

CSA is currently considering changes to their one-time rental assistance program to better meet the current needs of the community by providing longer-term rental assistance. If CSA decides to move forward with this kind of program, the City could use affordable housing funds to support CSA's expanded program, either on a one-time or ongoing basis.

City-Sponsored Rental Subsidy Program

Rent subsidies are financial assistance used to help bridge the gap between the amounts lower-income households can afford to pay and market rent. The subsidy amount is typically based on the tenant household's income, usually the difference between the rent and 30 percent of the tenant's gross income. Typically, the subsidy is capped for cost control and is accompanied by eligibility and habitability requirements.

Recently, the County of Santa Clara and the cities of Morgan Hill, Cupertino, Gilroy, and Palo Alto formed a consortium to help fund a Tenant-Based Rental Assistance (TBRA) program for their residents. The City of Sunnyvale has also

established its own TBRA program. The funding source for the TBRA programs is Federal Home Investment Partnership Program (HOME) funds. Similar to the Section 8 program, lower-income tenants receive rent subsidies based on the difference between an established rent standard and 30 percent of the tenant household's income, but there is a four-year limit to the assistance. Unlike Section 8 vouchers that cover a broad applicant pool, the TBRA programs in Santa Clara County are targeted to formerly homeless persons and families who are referred by local and County case management service organizations.

In strong rental markets, property owners have been less willing to accept tenants with rent subsidies. This is one of the biggest obstacles to the success of the TBRA programs. Both the TBRA and Section 8 subsidies are portable, so tenants who may not be able to find property owners willing to accept the assistance in their current cities may relocate. Under HOME regulations, TBRA assistance only can be used in adjacent jurisdictions.

It is also possible to use the City's local housing funds to establish a similar type of rent subsidy program, but without the strict Federal regulations. This option has been briefly considered in the past by the Council, who at that time preferred to focus financial resources on creating more affordable rental units. Subsidized units require less City funding over time than rent subsidies serving the same number of households. Long-term rent subsidies could also be a disincentive for landlords to control rents.

4. **Fair Rental Practices Program**

Under a Fair Rent Practices Program (FRPP), property owners and landlords voluntarily agree to follow certain practices in the management of their rentals. These practices usually include limiting the frequency and amount of rent increases and providing longer noticing periods for rent increases and vacancy requests. Two northern California cities adopted FRPP programs: Healdsburg's Council Rental Advisory Policy and San Rafael's Fair Rent Practices Program (FRPP) (Attachment 5). Healdsburg's Rental Advisory Policy consists of a set of standards adopted by the Council that establishes housing goals for landlords. San Rafael's FRPP, which is more extensive, contains voluntary measures that participating landlords would agree to follow and requires landlords to sign up for the program. Neither the Rental Advisory Policy nor FRPP has enforcement mechanisms. According to San Rafael staff, their program, adopted in 2001, is no longer implemented.

An FRPP like San Rafael's would outline fair rental practices for landlords with the aim of having landlords publicly agreeing to abide by these practices. The landlords who agree to participate in the program would be listed on the City website as participants along with those landlords who decline to participate in the program or who may have agreed to participate but fall out of compliance with the program. It is not defined in the San Rafael ordinance who determines whether landlords are in compliance or how this is determined. The City Council briefly discussed the concept of an FRPP at its October 6, 2015 meeting and directed staff to incorporate this program into the options being discussed at this Study Session. The Council report with a list of potential fair rental practices is attached (Attachment 6).

A program like San Rafael's would require substantial staff resources to conduct landlord outreach, establish and maintain a registry, publish and update participants and nonparticipants on the City website and in the *Mountain View Voice*, and investigate complaints of noncompliance of any registered participants. Based on discussions with San Rafael staff in charge of their program, it required six months and 0.5 full-time employee (FTE) to initially develop and implement the program and 0.25 FTE for ongoing administration. San Rafael has 10,760 renter-occupied units compared with 18,641 renter-occupied units in Mountain View. If Mountain View were to implement a similar program, staff would anticipate needing a consultant to initiate the program and a new part-time employee, possibly up to 0.5 FTE, for ongoing administration. Affordable housing funds probably cannot be used for FRPPs because the program applies to all income levels and does not just benefit moderate- and lower-income households as intended with these funds.

Healdsburg's program would require significantly fewer staff resources. After adoption of the Council policy, Healdsburg staff held one meeting with landlords and there was no landlord registration, monitoring for compliance, and posting of compliant and noncompliant landlords. Healdsburg has approximately 300 rental apartments. This type of program probably could be accommodated with existing staff and would be quicker to implement.

The League of Women Voters for the Los Altos-Mountain View Area also presented suggestions at the October 6 Council meeting as outlined in their attached letter (Attachment 7). The League generally suggested fair rental measures be mandatory rather than voluntary. League members suggested it be mandatory for landlords to pay a rental registration fee, provide a 90-day notice, and offer all tenants a one-year lease. The mandatory 90-day notice, one-year lease, and just cause for eviction are discussed in a previous section of this report.

The City's multi-family inspection program charges annual fees for every apartment complex with three or more units. These fees are based on the number of complaints and code violations at the apartments. Apartments that have a history of few complaints and violations are charged \$5.00 per unit while apartment complexes with more serious or persistent code violations are charged \$15.00 per unit. Any fees charged to support an FRPP would be in addition to the fees charged for the multi-family inspection program.

There is considerable flexibility in how an FRPP could be structured and implemented. Should Council be interested in such a program it would be helpful to get as much clarity as possible at the Study Session concerning Council preferences. For example, is the Council interested in a program such as Healdsburg's or more interested in a program similar to San Rafael's? Should the program include registration of those landlords who pledge to participate in the voluntary program? Should a fee be charged to register as a participant of the FRPP?

5. **Tenant Relocation Assistance Ordinance Revisions**

The Mountain View City Council adopted a Tenant Relocation Assistance Ordinance in February 2010, which provides relocation assistance to tenants who are displaced due to demolition of rental units, condominium conversions, renovations, or a change to a nonresidential use. In June 2014, the Council amended the ordinance to increase the amount of financial assistance and the number of people who were eligible for assistance.

The current ordinance provides the following benefits:

- A full refund of a tenant's security deposit.
- A sixty (60) day subscription to a rental agency.
- The cash equivalent of three (3) months' rent, based on the median monthly rent for a similar-sized unit with the same number of bedrooms and bathrooms.
- Special-circumstances households (seniors, families with children, and persons with disabilities) will be paid an additional three thousand dollars (\$3,000) per rental unit.

The Council could decide to increase the level of financial assistance again or consider other amendments.

6. Mandatory Mediation for Rent Disputes

Mountain View has a voluntary mediation program to assist tenants and landlords in resolving rent disputes. Several Santa Clara County cities require mandatory mediation for disputes between landlords and tenants. Cities requiring mandatory mediation for rent increases include Fremont, Campbell, Palo Alto, and East Palo Alto. A description of Campbell's mandatory mediation program is attached (Attachment 8). The required mediation in these programs can cover a broad range of topics such as security deposits, utility costs, parking disputes, and rent increases.

Typically, the parties are offered conciliation via a conference call with a mediator. If the conference call does not achieve resolution and the dispute is regarding a rent increase, both parties are required to meet with a professional mediator to present documentation supporting the facts. Some cities only require the initial meeting and if no agreement is reached, there is no further action required. In other cities, if an agreement is not reached in mediation, the tenant may request a hearing with a Council-appointed board. After reviewing all the facts and documentation provided, the board makes a written determination whether the proposed rent increase is reasonable. In most programs, the determination is usually not considered binding unless it is accepted by both parties.

7. Priority in Subsidized Housing for Displaced Tenants

The City could adopt a program that would give displaced tenants priority for subsidized housing units and allow these tenants to move to the top of the wait lists. The Council has established a policy to give preference for these units to people who live or work in Mountain View. There are long wait lists for most of these projects and most wait lists are closed to new applications because of the high numbers of people already on the list. Only one senior project has an open wait list and is accepting applications. In addition, especially in family projects, households do not move out often. In two affordable family developments, no one has moved out of one project in two years and the other project in five years. Even if displaced tenants were moved to the top of a wait list, there may be no units immediately available. Affordable housing developments in Mountain View are owned by four different affordable housing developers who would need to be consulted and may have concerns about the equity of a priority program for displaced tenants.

Another option would be to modify the Council's preference policy to give displaced tenants a "resident preference" for units in new affordable housing developments, even if they had moved from Mountain View. A displaced household could then apply for these new units and have the same priority as people who live or work in Mountain View. They would be included with this group in the lottery process for selecting residents for new affordable units. Currently, there are about nine applicants for each available affordable unit.

8. Urgency Ordinance

If the City Council is interested in adopting a regulation to preserve the status quo while it studies rent relief options, the Council could adopt an urgency ordinance. Section 514 of the City Charter authorizes the City to adopt an urgency ordinance as a measure for preserving the public peace, health, or safety of the community provided it contains a statement of the reasons for its urgency. An urgency ordinance may be introduced and adopted at one and the same meeting if passed by at least five affirmative votes. Such an ordinance could regulate rent increases on a temporary basis and/or enact a just-cause eviction provision on a temporary basis. These measures would include an expiration date and be in effect while the Council evaluates options.

In terms of rent regulation, it is important to note that under State law, landlords are entitled to a just and reasonable rate of return. An urgency ordinance would not be drafted to freeze rents but it would establish a permissible rent increase during the term of the urgency ordinance.

Other cities have considered urgency ordinances or moratoriums under State zoning law, Government Code Section 65858, as an interim ordinance. This statute permits cities to prohibit any land uses that may conflict with a contemplated general plan, specific plan, or zoning proposal that the city is considering or studying within a reasonable time. This is also an option available to the City Council and requires many of the same findings as an urgency ordinance described above. If the City were to adopt an urgency ordinance pursuant to Government Code Section 65858, 6 votes are required. Such an ordinance remains in effect for 45 days from its date of adoption. The City can extend the interim ordinance subject to certain reporting requirements and 6 votes are needed for any extension of the ordinance. Unless the proposed regulation involves a prohibition of a land use, it is staff's opinion this State zoning law does not apply to rent regulation.

Study Session Presentations

The Council will be hearing brief presentations from three experts on rental housing and the programs discussed in this report. Biographies of these speakers are attached (Attachment 9) and the speakers include:

- Martin Eicher, former Director of Dispute Resolution Programs for Project Sentinel;
- Melissa Morris, Senior Attorney with the Public Interest Law Firm and the Fair Housing Law Project of the Law Foundation of Silicon Valley; and
- Joshua Howard, Senior Vice President, Local Government Affairs for the California Apartment Association and Executive Director of its Tri-County Division.

RECOMMENDATION

Take public testimony, discuss possible rent relief options, and provide direction to staff on which of the options, if any, Council is interested in pursuing and the relative priority of those strategies.

NEXT STEPS

At the Study Session, the Council will hear from housing experts, Mountain View residents, and other stakeholders and discuss the preliminary rent relief options presented in this report or suggested in the public testimony. Staff seeks clear direction on which, if any, strategies the Council is interested in pursuing and the relative priority of those strategies. Staff would work on those programs with the support of a Council majority in the order of highest priority. The major programs, such as rent stabilization and rental assistance, could require more public outreach and analysis. Other options could be moved on fairly quickly. However, there could be unintended consequences to some of these options that have not been fully analyzed. Other housing-related Council goals will need to be deferred in order to implement any of these programs.

PUBLIC NOTICING

The Council Study Session has been advertised through mailed notices to stakeholders, flyers, ads in the *Mountain View Voice*, and posting of the agenda.

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- Attachments:
1. Mountain View Housing Programs
 2. Rent Stabilization Ordinances for [Richmond](#) and [East Palo Alto](#)
 3. Sample List of Just Causes
 4. San Diego's Just Causes Eviction Ordinance
 5. San Rafael and Healdsburg Fair Rental Practices Programs
 6. October 6, 2015 Council Report and List of Practices
 7. October 4, 2015 League of Women Voters Letter
 8. City of Campbell Mandatory Mediation Program
 9. Biographies of Study Session Presenters