



DATE: August 9, 2016

CATEGORY: Unfinished Business

DEPT.: City Attorney's Office/
City Clerk's Office

TITLE: **Consideration of a Council-Initiated
Ballot Measure Regarding Rent
Regulation, Dispute Resolution, and
Just-Cause Eviction**

RECOMMENDATION

1. Adopt a Resolution and Order of the City Council of the City of Mountain View Calling a General Municipal Election and Ordering Consolidation with the Statewide General Election for the Purpose of Submitting a Ballot Measure Regarding Rent Regulation, Dispute Resolution, and Just-Cause Eviction to the Voters and Authorizing the City Clerk to Contract with the County of Santa Clara for Services to be Performed in Connection with the Statewide General Election to be Held on Tuesday, November 8, 2016, and Related Actions, to be read in title only, further reading waived (Attachment 1 to the Council report).
2. Direct the City Attorney to prepare an impartial analysis of the proposed ballot measure.
3. Determine whether the Council will submit an argument related to the ballot measure and designate Councilmembers to write the argument.
4. Determine whether to print the full text of the ordinance in the voter pamphlet.
5. Direct the City Clerk and the City Attorney to take all necessary actions to submit the proposed ballot measure to the voters.

BACKGROUND

On July 14, 2016, the City Council held a Special Meeting and directed staff to prepare an ordinance modifying the existing Rental Housing Dispute Resolution Program (RHDRP) and present it to the City Council on August 9, 2016, for consideration whether to place a Council-initiated measure on the November 8, 2016 ballot

(Attachment 2 to the Council Report; further background information can be found in Attachments 3 to 6).

Specifically, the Council directed the ordinance be drafted to include mandatory and binding arbitration for disputes involving rent increases in excess of 5 percent of the base rent in any 12-month period and service reductions. The ordinance would establish base rent as of July 15, 2016. The Council directed a just-cause eviction provision based on the proposed Charter Amendment be included in the ordinance. Council also requested a provision allowing landlords to bank rent increases for a period of two years be included and designated a maximum banked rent increase of 8 percent for that period. Finally, the ordinance was directed to be drafted in a manner that would prohibit the City Council from making any changes to the substantive provisions of the ordinance, such as the rent increase threshold, banking, binding arbitration, and just-cause eviction, other than technical changes required for the implementation of the ordinance, for a period of two years. After a period of two years, a supermajority (5 votes of the City Council) would be required in order to amend the substantive provisions of the ordinance. The Council can promulgate regulations to administer and implement the ordinance.

Overview of the Existing Rental Housing Dispute Resolution Program

The RHDRP was discussed and approved by the City Council on March 15, 2016. It took effect on May 26, 2016, and is a program for the conciliation, mediation, and arbitration of rental housing disputes. Rental housing disputes include disputes regarding rent increases over 7.2 percent, service reductions, 30- and 60-day notices to vacate, security deposits, maintenance and repairs, and terminations by a tenant in advance of the lease term. All rental housing disputes meeting the above criteria are subject to conciliation and mandatory mediation. Disputes involving rent increases and service reductions are subject to mandatory but nonbinding arbitration. Both a tenant and a landlord can initiate participation in the program. A third party, Project Sentinel, administers the RHDRP for the City. Single-family homes, condominiums, companion units, and duplexes are not covered by the RHDRP.

Update on the RHDRP

Project Sentinel provided some initial data for the first 60 days of the program. Project Sentinel has reassigned a Spanish-speaking case manager and hired an additional part-time case manager and one new full-time case manager. Since the start of the program (end of May 2016), the RHDRP has received 53 inquiries: 41 from tenants and 12 from landlords. Of these inquiries, 44 percent concerned rent increases. Twenty (20) cases

have been opened. Eleven (11) cases (52 percent) concerned rent increase issues. In 5 of the 11 rent increase cases, assertions of service reductions and maintenance/repair issues were made in conjunction with a rent increase complaint. Of the 11 cases, 6 cases have been resolved, presumably to the satisfaction of both parties. Five (5) of these cases were resolved during conciliation, with the rent increase being lowered below the threshold of 7.2 percent. Three (3) of the 11 rent increase cases went to mediation, with no resolution. One (1) of the unsuccessful mediation cases was resolved after arbitration was requested, with the rent being lowered before arbitration took place. Of the 3 remaining cases, 2 rent increase cases were withdrawn due to fear of retaliation and 1 case is still pending.

No arbitrations have been conducted. In one mediated case, the tenants expressed they did not seek arbitration because they felt the landlord would not comply with an unfavorable nonbinding arbitration award.

ANALYSIS

Overview of Proposed Initiative

The same rental units are covered by the draft ordinance (those units located in a structure containing three or more rented dwelling units). To avoid confusion, mobile home rental spaces have been specifically exempted. However, the dispute resolution program has been modified as directed by the City Council for the ballot measure. First, the dispute resolution component now has a binding outcome, so a party other than the landlord can determine whether a rent increase in excess of 5 percent of the base rent in any 12-month period is reasonable. Consequently, the program regulates rents and is required to comply with the Costa-Hawkins Rental Housing Act, which prohibits rent control of units receiving Certificates of Occupancy after February 1, 1995, with some limited exceptions. As directed by the City Council, rental housing disputes involving those rental units receiving a Certificate of Occupancy after February 1, 1995 would still be subject to mandatory mediation and nonbinding arbitration for rent increases or service reductions. Base rent is established as of July 15, 2016 for those tenancies that commenced prior to that date. A landlord would be required to show a rent increase above this threshold is reasonable. To provide flexibility, two rent increases are permitted within that 12-month period, but the total rent increase for that period may not exceed 5 percent of the base rent. If a landlord does not raise the rent for more than 12 months prior to the latest increase, and if the last increase was more than 24 months prior to the current increase, a landlord may raise the rent by 8 percent. This concept is known as “banking” a rent increase. Service reductions are also subject to binding arbitration.

Arbitration Provisions

Because State law entitles the landlord to a just and reasonable rate of return, a binding dispute resolution procedure involving rent increases must also include objective criteria for the arbitrator to determine the reasonable rate of return in relation to a rent increase (for example, the cost of capital improvements, maintenance, or rehabilitation costs or an amortization period). Those costs are generally allowed to be passed on to tenants, but would be determined by an arbitrator if the rent increase exceeds the amounts established by the ordinance. Debt service is not enumerated as a factor in the current ordinance and it is therefore implied debt service could not be passed through to the tenants. The Council may wish to include an express statement to clarify the treatment of debt service, particularly if the ordinance cannot be changed for two years.

Just-Cause Eviction

Council requested the ballot measure be drafted to require “just cause” for eviction of a tenant and to utilize the provisions contained in the proposed Charter Amendment as a template. When just-cause provisions are in place, a tenant cannot be evicted, except for the reasons specified in the ordinance. The general elements in the proposed Charter Amendment are similar to those found in just-cause provisions throughout the State (for example, failure to pay rent, breach of the lease, nuisance, criminal activity, failure to provide access to the landlord after the landlord has served a written notice to cease, repairs that require a temporary vacancy, an owner decides to move into the rental unit, withdrawal of the rental unit from the market, or demolition of the rental unit).

However, Council direction is sought regarding the more detailed just-cause provisions. First, Council must determine which rental units should be subject to the just-cause eviction requirement. Costa-Hawkins does not apply to this provision so all the rental units covered by the ordinance could be included within the scope of just-cause eviction. The Council could also choose to include only those rental units that are subject to binding arbitration, or those units that received a Certificate of Occupancy before the effective date of the ordinance. For reference, the Charter Amendment includes all rental units that received a Certificate of Occupancy prior to the effective day of the amendment.

Second, staff seeks direction regarding three specific subsections of the Charter Amendment and whether to include the following detailed requirements in a just-cause provision:

1. *Section 1705(a)(2)(A)* prevents a landlord from terminating a tenant who subleases the rental unit if the rental unit is the tenant's primary residence, the tenant replaces a previous tenant, and the landlord unreasonably withheld the right to sublease following a written request from the tenant. It would appear the intent is to include new subtenants who replace existing tenants within the just-cause protections (see Attachment 7).
2. *Section 1705(a)(2)(B)* includes those family members who are added to the tenant's rental unit within the just-cause protection provided the number of tenants living in the rental unit does not exceed the maximum number of occupants permitted under State law (see Attachment 7).
3. *Section 1705(a)(7)(F)* pertains to the right of the landlord to recover possession of a rental unit for use as a primary residence by the landlord or the landlord's spouse, domestic partner, children, parents, or grandparents. If included, this provision would specifically prevent a landlord from evicting a tenant who (a) has resided in the rental unit for at least five years if the tenant is at least 62 years of age or disabled, or (b) is certified as being terminally ill by the tenant's treating physician unless the landlord or relative of the landlord meets these same criteria (see Attachment 7).

It is important to note that the tenant relocation assistance provision contained in the proposed Charter Amendment was not included in the attached ordinance for a few reasons. First, the City has a standalone Tenant Relocation Assistance Ordinance (TRAO). The withdrawal of rental units from the market and demolition is already covered by the existing ordinance. Temporary vacancies due to repairs and owner move-in are not currently covered by the TRAO, but are in the Charter Amendment. Under the proposed Charter Amendment, tenants who earn up to 120 percent of the median income are eligible for relocation assistance, as compared to 80 percent of median income in the City's TRAO. If the City Council wishes to expand the application of relocation assistance to include these circumstances, then staff recommends modifying the TRAO rather than including this provision in a ballot measure.

Future Modifications to the Ordinance

As directed by the Council, the substantial provisions of the ordinance may not be amended for a two-year period. Substantive provisions have been identified as the rent increase threshold, banking, binding arbitration, and just-cause eviction. After two years, a super majority or five votes of the City Council would be required to amend the substantive provisions of the ordinance.

Technical changes are permitted to implement the ordinance and the Council can also adopt regulations to assist in the implementation of the ordinance.

While not specifically directed to draft such a provision, the Council may wish to consider including a provision such as the one contained in the proposed Charter Amendment that allows the Amendment to be suspended if the vacancy rate for rental unit increases to a certain percentage (5 percent in the Charter Amendment).

Ballot Question

Shall an ordinance be adopted providing a tenant and landlord dispute resolution program; regulating rents by requiring binding arbitration for disputes on rent increases exceeding 5% of the base rent per 12-month period and service reductions for most multifamily rental units with a certificate of occupancy before February 1, 1995; prohibiting eviction of tenants without just cause; allowing no substantive changes for two years, and requiring a supermajority City Council vote for substantive changes thereafter?	YES	NO
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Ballot Arguments and Impartial Analysis

In accordance with the Elections Code, the City Clerk has set the ballot measurement argument deadlines as follows:

Argument:	August 15, 2016
End of 10-Day Public Inspection:	August 25, 2016
Rebuttal:	August 22, 2016
Impartial Analysis (City Attorney):	August 22, 2016
End of 10-Day Public Inspection:	September 1, 2016

If the City Council places a question on the ballot, the Council may file a written argument for or against the measure. The arguments would be included in the voter pamphlet. Staff requests guidance whether the Council wishes to draft the language of the argument and select the authors/signers of an argument and/or rebuttal.

The City Council may direct the City Attorney to prepare an impartial analysis of the ballot measure. If drafted, the impartial analysis would be included in the voter pamphlet.

Whether Full Text of Ordinance Should Be Included in Voter Pamphlet

Printing the full text of the ordinance in the voter pamphlet is not required. The Council has the option of directing the full text of the ordinance be printed in the voter pamphlet or including a statement following the impartial analysis that the full text is available by calling the elections official's (City Clerk) office and requesting a copy at no cost. The text of the ordinance will also be posted on the City website. The County Registrar of Voters estimates the cost of printing is \$5,165 per page and the draft ordinance is 16 pages. It would cost approximately \$83,000 to print the text of the ordinance in the voter pamphlet.

Timeline for Ballot Measure

In order for the ordinance to be submitted to the voters on November 8, 2016, the Council must adopt a resolution on August 9, 2016 in order to meet the August 12, 2016 deadline established by the Elections Code.

To be adopted by the voters, a majority vote is required. The ordinance is considered adopted upon the date the vote on the measure is declared by the legislative body. The ordinance would then go into effect 10 days after the date the City Council certifies the results of the November 8, 2016 election. Typically, the City Council takes this action at a meeting in December.

If the proposed Charter Amendment and the proposed ordinance were both approved by the voters, the Charter Amendment would prevail over the ordinance and become the operative law.

FISCAL IMPACT

Staff previously prepared an estimate for the cost of the existing RHDRP. The long-standing Voluntary Mediation Program serves up to 225 cases annually at a cost of

\$88,540. Preliminary estimates were the RHDRP, including nonbinding arbitration, would cost approximately \$110,000 annually in addition to the voluntary mediation program. Based on these estimates, the City Council adopted an RHDRP fee of \$7 per rental unit to recover the cost of the program. The fee will be billed in January 2017 along with the Multi-Family Housing Inspection Fee. Mountain View currently has approximately 15,742 rental units in buildings containing three or more units. About 90 percent of these units were built before 1995 (14,168 units) and would also be subject to mandatory and binding arbitration under the draft ballot measure.

If adopted by the voters, implementation of the expanded ordinance is likely to result in additional expenses due to the binding arbitration and just-cause eviction provisions, as well as a lower rent increase threshold. The RHDRP is already in place and any fees generated by the program could be applied toward the implementation of the ordinance. The fee could be raised to recover all costs once implementation has begun.

The County Registrar of Voters has provided a preliminary estimate of \$21,000 per measure to cover the cost of election if the City Council decides to submit an ordinance to the voters. The printing fee is separate at \$5,165 per page. The question, impartial analysis, and arguments total 6 pages or \$31,000. If the full 16-page draft ordinance is printed, it is estimated to cost \$83,000, for a total of \$135,000. If the full draft ordinance is not printed, the total cost is currently estimated to be \$52,000. Staff will return to the City Council for funding once a final cost is provided when the County invoices the City after the election.

CONCLUSION

As directed by the Council, staff has prepared a draft ordinance for the City Council to consider whether to submit it to the voters as a Council-initiated ballot measure on November 8, 2016. Final wording of any such measure must be concluded on August 9, 2016. If the Council decides to submit a ballot measure to the voters, direction is needed regarding ballot arguments and an impartial analysis.

ALTERNATIVES

1. Submit a ballot measure to voters as drafted.
2. Make minor wording changes to the ballot measure and submit to voters.
3. Take no action.

PUBLIC NOTICING

The meeting agenda and Council report have been posted on the City's website and announced on Channel 26 cable television. Notices have been sent to affordable housing advocates, rent relief advocates, landlords, Tri-County Apartment Association, the Silicon Valley Association of Realtors, and other interested parties. Notices in English and Spanish were also placed in the *Mountain View Voice* and the meeting was promoted using social media.

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010-08-09-16CR-E

- Attachments:
1. Resolution
 2. [July 14, 2016 Council Report](#)
 3. [October 19, 2015 Study Session Memo](#)
 4. [October 27, 2015 Council Report](#)
 5. [December 1, 2015 Council Report](#)
 6. [March 15, 2016 Council Report](#)
 7. Section 1705 of Proposed Charter Amendment