



Agenda Item

DATE: FEBRUARY 14, 2017

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: ANTONIO E. ACOSTA, CITY MANAGER

SUBJECT: CONSIDER AND PROVIDE DIRECTION REGARDING
POTENTIAL TENANT PROTECTION MEASURES

Staff is seeking direction from the City Council on tenant protection measures that the City Council may wish to implement. This staff report provides the City Council with additional information on the following tenant protection measures: 1) non-binding tenant/landlord mediation, 2) rent stabilization; and 3) binding tenant/landlord mediation. Staff has also included a discussion on just cause eviction and harassment protections, which may be implemented independent of tenant/landlord mediation and rent stabilization measures. Staff recommends that the City Council receive this information, consider the options, and provide direction to staff on the City Council's preferences.

BACKGROUND

On January 31, 2017, the City Council held a special meeting to hear the Rent and Tenant Taskforce ("Taskforce") recommendations (see Attachment 1). The Taskforce put forward three options that received a majority of votes by Taskforce members that were present and voting. The Taskforce recommended the following:

- ***Option C: Rent Stabilization and Just Cause Evictions (as concepts only)***
The Taskforce voted in favor of rent stabilization and just cause eviction protections, as concepts only. The ordinance would include pass through costs, adjustment banking, harassment protections, and just cause eviction protections however the Taskforce expressed that the specifics of the ordinance should be left to the City Council to determine. Option C would **only** apply to multi-family rental units built before February 1, 1995.

- ***Alternative Proposal 3A: Tenant/landlord mediation (non-binding) with optional peer to peer mediation***

The proposal was for non-binding tenant/landlord mediation with the option of the Rental Housing Association (RHA) to provide peer-to-peer (i.e. landlord-to-landlord) mediation. Below are the specifics of the proposal:

- Tenants and landlords required to participate in the process but the recommendations would be non-binding
- Eligible Units: All rental units
- Oversight: a 3rd party mediator
- 7-10% Rent Increase Threshold - Tenants would not be able to request mediation unless their rent increase was above the established threshold.

- ***Alternative Proposal 3B: Creation of a Housing Supply Committee***

Create a committee to investigate and make recommendations for short-term housing supply improvements.

On January 31, 2017, the City Council voted 4-1 to further explore and analyze the following options:

- Alternative Proposal 3A: Non-binding tenant/landlord mediation
- Option C: Rent stabilization
- A combination of non-binding mediation and rent stabilization, which could be binding mediation
- Just cause eviction and harassment protections

DISCUSSION

Staff suggests that the City Council first determine whether there is a preference for non-binding mediation or rent stabilization (which includes binding mediation).

Non-binding Tenant/Landlord Mediation (Rent Dispute Resolution or Rent Review)

A **non-binding** tenant/landlord mediation ordinance requires that tenants and landlords participate in a mediation process for qualifying rent increases. If a tenant and landlord cannot come to an agreement during the mediation, the landlord can institute the proposed rent increase. **Non-binding mediation ordinances can be applied to all rental units.**

The cities of Fremont and San Leandro both have non-binding tenant/landlord mediation ordinances. In general their processes are very similar; however, there are a few differences between the two ordinances: unit eligibility, oversight, and rent increase threshold. Table 1 is an overview of the ordinance parameters for each city and included as Attachment 2 is a summary of the mediation process for each city.

Table 1
Ordinance Parameters - Fremont & San Leandro

Fremont	San Leandro
Enforcement: Non-binding	Enforcement: Non-binding
Participation: Mandatory	Participation: Mandatory
Eligibility: All rental units	Eligibility: 2+ unit properties
Oversight: Third party mediator	Oversight: Rent Review Board*
Rent Threshold: any rent increase	Rent Threshold: 7% or more than one rent increase in a 12 month period
Notification Requirement: Rent increase notice must notify the tenant of the mediation ordinance otherwise the rent increase is null and void	Notification Requirement: Rent increase notice must notify the tenant of the mediation ordinance otherwise the rent increase is null and void

**San Leandro does contract with a third party to provide administration support and conciliation services*

In Fremont and San Leandro, the landlord is required to include a notification about the mediation ordinance as part of the rent increase notice. However, the tenant is responsible for submitting requests for mediation. Additionally, both cities have a multi-step process and in San Leandro the process is open to the public. Having a multi-step and/or public process may help motivate landlords to reach an agreement as landlords may want to avoid having to go through a lengthy and public process. Fremont and San Leandro also informally refer cases to the Rental Housing Association's (RHA) peer to peer (i.e. landlord to landlord) mediation program. RHA's program is volunteer-based and provided as a free service to those cities with mediation ordinances. Fremont and San Leandro do not have formal agreements with RHA.

Tables 2 and 3 are summaries of the mediation outcomes for Fremont and San Leandro and included as Attachments 3 and 4, is a detailed overview of Fremont and San Leandro's outcomes. Through the non-binding mediation process in Fremont, most rents were raised between 5.1% and 10% (14 cases). In San Leandro, through the non-binding mediation process, most rents were raised more than 10% (28 cases), followed by 5.1% to 10% increases (17 cases).

Table 2
Fremont - Mediation Outcomes
July to December 2016

Outcomes	# of Cases	Percent
Increase rescinded	1	3.2%
At or below 5%	7	22.6%
5.1% to 10%	14	45.2%
Above 10%	7	22.6%
Tenant decided to move	0	0%
Case still pending	2	6.5%
Case not eligible	0	0%
Information not available	0	0%
Total	31	100%

Table 3
San Leandro – Mediation Outcomes
July 2015 to June 2016

Outcomes	# of Cases	Percent
Increase rescinded	10	9.3%
At or below 5%	3	2.8%
5.1% to 10%	17	15.9%
Above 10%	28	26.2%
Tenant decided to move	3	2.8%
Case still pending	5	4.7%
Case not eligible	14	13.1%
Information not available	27	25.2%
Total	107	100%

Rent Stabilization (Rent Control)

Rent stabilization ordinances, also known as rent control, place limits on rent increases. Typically, rent stabilization ordinances restrict rent increases to one-time per year and limit rent increases to either a fixed percentage or tie it to inflation rates. The cities of Hayward and San Jose cap rent increases at a flat-rate percentage of 5% of existing rent whereas some cities, such as Oakland, cap rent increases by the percent change in the Consumer Price Index (CPI). Rent stabilization ordinances are intended to protect tenants from excessive rent increases and to provide tenants with greater certainty and predictability regarding housing cost increases.

Costa-Hawkins Act

The Costa-Hawkins Rental Housing Act limits the rental units that are eligible for rent stabilization, as shown in Table 4 below. Additionally, the Costa-Hawkins Act also stipulates that cities cannot regulate the initial rental rate of a unit once the previous tenants have vacated the unit. In Union City, approximately 2,700 units or 43% of all rental units are eligible for rent stabilization (see Table 5 below).

Table 4
Costa-Hawkins Act Eligibility

Units <u>Eligible</u> for Rent Stabilization	Units <u>Not Eligible</u> for Rent Stabilization
Multi-family homes built on or before February 1, 1995 (includes duplexes, triplexes, and fourplexes)	-Single Family Homes -Condos -Any home built after February 1, 1995 (including multi-family)

Table 5
Union City Rental Units

Property Type	# of Units	Percent
Single-Family, Condo, Townhome	3,214	50%
Multi-Family Built BEFORE 1995 (includes duplexes, triplexes, and fourplexes)	2,760	43%
Multi-Family Built AFTER 1995 (includes duplexes, triplexes, and fourplexes)	480*	7%
TOTAL	6,454	100%
*excludes 243 units currently under construction		

Some rent stabilization ordinances provide pass through cost and adjustment banking allowances to landlords, thus permitting landlords to increase rents above the maximum allowed amount.

- ***Pass Through Costs***

Pass through costs allow landlords to raise the rent beyond the maximum allowed amount in order to cover certain costs such as capital improvements or increased taxes and fees. Most cities have an administrative process for reviewing pass through requests and landlords are required to provide backup documentation as part of their request.

- *Capital Improvements* – capital improvements are considered improvements that add value to the property and are not ordinary maintenance or repair. Most cities have specific requirements as to what types of improvements are eligible and how the costs of the improvements should be amortized.
- *Rental Registration Fees* – some ordinances allow landlords to pass through all or a portion of the rental registration fee, an annual per unit fee cities charge in order to offset their enforcement/administration costs.
- *Utility Costs* – some ordinances allow for landlords to recover any cost increases in utilities that the landlord pays for.
- *Property Taxes* – some ordinances allow landlords to pass through property tax increases resulting from the repayment of general obligation bonds

- ***Adjustment Banking***

Adjustment banking allows landlords to "bank" or save their allowable rent increase to be implemented in a future year. Typically, ordinances will allow landlords to bank two to three years worth of increases and some ordinances establish a cap on the total percentage that can be banked.

Combination Binding and Non-Binding Tenant/Landlord Mediation

During the January 31, 2017 special meeting, the City Council also expressed interest in exploring a combination of tenant/landlord mediation and rent stabilization.

The City Council could consider a combination binding and non-binding tenant/landlord mediation ordinance. A **binding** tenant/landlord mediation ordinance would have the same

mediation process as a non-binding mediation ordinance however if the tenant and landlord cannot come to an agreement during the mediation process, then the case would go before an arbitrator or hearing officer. The arbitrator/hearing officer would hear the case and make a binding decision. The binding mediation would only be applied to units that are eligible for rent stabilization (i.e. multi-family units built prior to February 1, 1995) **since binding mediation is considered a form of rent stabilization** and non-binding mediation would be applied to all other rental units (i.e. single family, condo, and multi-family units built after February 1, 1995).

The City of Alameda has a combination binding/non-binding mediation ordinance that also includes just cause eviction protections, relocation assistance, and minimum lease terms. Table 6 is summary of Alameda's ordinance parameters and included as Attachment 5 is an overview of Alameda's mediation process.

Table 6
Ordinance Parameters - Alameda

Eligibility	All rental units
Oversight	Rent Review Advisory Committee (RRAC) / Hearing Officer
Rent Threshold	<p>There can only be one rent increase in a 12 month period</p> <p><u>Rent increases above 5%</u></p> <ul style="list-style-type: none"> ▪ Landlords must file a notice with the City to initiate a mandatory mediation process ▪ Subject to review by the Rent Review Advisory Committee (RRAC) ▪ If a landlord or tenant disagrees with the Rent Review Advisory Committee decision, and the rental unit is a multi-family rental unit built before February 1, 1995, either party may file a petition to have the rent increase determined by a neutral hearing officer whose decision is legally binding on the parties. For all other rental units, the Rent Review Advisory Committee's decision is non-binding. <p><u>Rent increases at or below 5%</u></p> <ul style="list-style-type: none"> ▪ Tenants may request mediation by the Rent Review Advisory Committee. The Committee's decision is non-binding.
Participation	Mandatory
Enforcement	<p>Binding – for multi-family rental unit built before February 1, 1995</p> <p>Non-binding – all other rentals</p>
Notification Requirement	<p>Rent increases above 5%</p> <ul style="list-style-type: none"> ▪ Landlord must notify the tenant of the mediation ordinance, file a notice with the City, and initiate a mandatory mediation process <p>Rent increase at or below 5%</p> <ul style="list-style-type: none"> ▪ Landlord must notify the tenant of the mediation ordinance otherwise the rent increase is null and void

The majority of Alameda's cases are resolved prior to the RRAC meeting as their staff provides conciliation services ahead of the RRAC meetings. Additionally, as of December 2016, no cases have been brought before a hearing officer to provide a binding decision. From April to December 2016, Alameda had 289 cases. Below is a summary of the outcomes and included as Attachment 6 is a more detailed overview of Alameda's cases. As evident in Table 7 below, of

those cases that went through the mediation process, most rent increases were at or below 5% (104 cases).

Table 7
Alameda – Mediation Outcomes
April to December 2016

Outcome	# of Cases	Percent
Increase rescinded	23	8.0%
At or below 5%	104	36.0%
5.1% to 10%	65	22.5%
Above 10%	29	10.0%
Tenant decided to move	46	15.9%
Tenant did not attend RRAC meeting	21	7.3%
Case pending	1	0.3%
Total	289	100%

Just Cause Eviction and Harassment Protections

In addition to the options discussed above, the City Council expressed interest in just cause eviction and harassment protections. Just cause eviction and harassment protections could be a standalone ordinance or layered on top of any of the options discussed above. Additionally, just cause eviction and harassment protection ordinances can be applied to all rental units and they give tenants the right to take civil action against the landlord.

- ***Just Cause Evictions***

Under state law a landlord can terminate a tenancy pursuant to the following noticing requirements:

- *3-Day Notice* – a landlord only has to provide a tenant with a 3-day notice to vacate if the tenant has violated their lease terms or engaged in improper conduct that is specified by state law, such as drug dealing or failing to pay rent
- *30-Day Notice* – a landlord must give a tenant a 30 day notice to vacate if the tenant has lived in the unit for less than one year
- *60-Day Notice* – a landlord must give a tenant a 60 day notice to vacate if the tenant has lived in the unit for one year or more
- *90-Day Notice* – a landlord must give a tenant a 90 day notice to vacate if the tenant receives Section 8 subsidies

Currently, with the exception of the 3-day notice, a landlord does not have to provide the tenant with a reason for the tenancy termination. A just cause eviction ordinance would require the landlord to provide the tenant with a reason for terminating the tenancy and there would be restrictions as to what “reasons” are allowable. However, a just cause eviction ordinance does not change the existing eviction/unlawful detainer process. Examples of typical “just causes” or allowable reasons for terminating a tenancy include the following:

- Failure to pay rent or habitually paying rent late;
- Violation of the rental agreement terms, where a notice and opportunity to correct the violation has been provided;
- Damaging the unit or common areas;
- Illegal activity;
- Owner or family member occupancy;
- Resident manager occupancy;
- Substantial rehabilitation;
- Unauthorized subtenant;

Just cause eviction ordinances are most commonly used in conjunction with a rent stabilization ordinance in order to prevent landlords from terminating tenancies for the purpose of raising the rent to market rate.

- ***Harassment Protections***

Currently, state law does provide tenants protection from discrimination and retaliatory evictions and establishes unit habitability standards. However, there are some known forms of harassment that tenants experience that are not covered under existing state laws, below are some examples:

- Refusing to accept rent
- Refusing to cash a rent check for 30 days unless a receipt is provided
- Abusing the owner's right of access into a rental unit
- Influencing a tenant to vacate through fraud, intimidation or coercion (e.g. threatening to report tenant to Immigrations and Customs Enforcement (ICE))
- Interfering with a tenant's right to quiet use and enjoyment of their unit
- Requesting information that violates the tenant's right to privacy (e.g. citizenship status)
- Removing a housing service for the purpose of causing tenant to vacate (e.g. removing parking knowing that a tenant cannot find alternative parking and must move)
- Coercing a tenant to vacate with payment to vacate accompanied with threats or intimidation

FISCAL IMPACT

There is no fiscal impact as a result of receiving this report. However, if the City Council directs staff to develop one or more of the options discussed above, it would require additional funding that is currently not appropriated. Based on discussions with the City Attorney and reviewing other cities' budgets, staff estimates that the cost to develop an ordinance could be approximately \$25,000 and would include legal services, staff time, and outreach/education costs.

All three options would require additional funding that is currently not appropriated for on-going implementation, enforcement, legal services, and outreach/education. Further, all of the options would require the City to hire new staff and/or a consultant(s). Staff has provided the following annual costs estimates for non-binding mediation, rent stabilization, and combination binding &

non-binding mediation. Additionally included as Attachment 7 are the annual budgets of Bay Area cities that have non-binding mediation, rent stabilization, or binding/non-binding mediation.

Table 8
Annual Cost Estimates

Tenant/Landlord Mediation (Non-Binding)		
Staff Costs	FTE 0.60	\$82,900
3rd Party Mediator		\$80,000
Outreach/Education		\$37,500
Office Equipment / Supplies		\$2,500
Legal Services		\$35,000
Database Software		\$14,400
Administrative Overhead (IT support, utilities, etc.)		\$55,000
Rental Registration Fee Collection/Administration	FTE 0.20	\$22,000
Total Annual Costs		\$329,300
Rent Stabilization & Just Cause Eviction Protections		
Staff Costs	FTE 1.20	\$165,800
Outreach/Education		\$37,500
Office Equipment / Supplies		\$2,500
Legal Services		\$35,000
Training		\$5,000
Database Software		\$14,400
Administrative Overhead (space, utilities, etc.)		\$55,000
Rental Registration Fee Collection/Administration	FTE 0.20	\$22,000
Total Annual Costs		\$337,200
Tenant/Landlord Mediation (Binding & Non-Binding)		
Staff Costs	FTE 0.60	\$82,900
3rd Party Mediator		\$80,000
Arbitrator/Hearing Officer		\$5,000
Outreach/Education		\$37,500
Office Equipment / Supplies		\$2,500
Legal Services		\$35,000
Database Software		\$14,400
Administrative Overhead (IT support, utilities, etc.)		\$55,000
Rental Registration Fee Collection/Administration	FTE 0.20	\$22,000
Total Annual Costs		\$334,300

Rental Registration Fee

A rental registration fee is an annual per unit fee the City could charge landlords in order to offset their enforcement/administration costs. The City would be required to conduct a nexus study to demonstrate the purpose of the fee. It is estimated that it would take 3-6 months to hire a consultant and conduct the nexus study. Staff estimates that a nexus study would cost between \$15,000 and \$30,000 and would require additional funding that is currently not appropriated. Furthermore, the City would need to advance funds to pay for the implementation/administration costs for any of three options until a rental registration fee is put in place. Table 9 below shows what the estimated rental registration fee would be based on the annual costs estimates listed in Table 8. The fee is directly related to the cost of implementing the option and therefore would go up or down depending on the actual implementation costs.

Table 9
Rental Registration Fee Estimates

Option	Eligible Units	# of Eligible Units	Annual Fee Per Unit	Total Annual Revenue
Non-Binding Mediation	All Rentals	6,697	\$49	\$329,300
Rent Stabilization	MFR built before 1995	2,760	\$122	\$337,200
Binding & Non-Binding Mediation	All Rentals	6,697	\$50	\$334,300

Just Cause Eviction and Harassment Protections Costs

Staff anticipates that it would cost approximately \$25,000 to establish a standalone ordinance for just cause eviction and harassment protection and that there would only be minor on-going implementation costs since City staff would not directly enforce the ordinance. Any action by a tenant or a landlord would go through the court system and not the City. Staff anticipates that on-going costs would be around \$10,000 per year for outreach/education expenses. However, if just cause eviction and harassment protections are implemented in conjunction with one of the three options discussed (non-binding mediation, rent stabilization, or binding mediation) it would not add any new costs.

PUBLIC COMMENTS

Staff received the following written correspondence in anticipation of the February 14, 2017 City Council meeting (see Attachment 8).

- Chunchi Ma - Rent and Tenant Taskforce Member, Landlord Representative
 - Mr. Ma expressed opposition to rent stabilization and just cause eviction protections and expressed support for the Taskforce's recommendation of Alternative Proposal 3A.
- Thomas Silva, President of the Rental Housing Association (RHA) of Southern Alameda County
 - Mr. Silva expressed support, on behalf of RHA, for the Taskforce's recommendation of Alternative Proposal 3A.

RECOMMENDATION

Staff requests that the City Council receive the report, discuss the following options, and provide direction to staff on the City Council's preference for non-binding tenant/landlord mediation or rent stabilization (including binding mediation). Should the City Council wish to pursue a rent stabilization option, staff is seeking further direction as to whether the City Council would want to pursue standard rent stabilization (i.e. sets a cap on rent increases) or combination binding/non-binding mediation.

Furthermore, staff is seeking direction on the City Council's preference for just cause eviction and/or harassment protections. As mentioned, this could be a standalone ordinance or layered on top of any of the options discussed above.

The City Council may also consider other approaches that are not listed above or a combination of approaches. Finally, the City Council may decide to not take any action at this time and table the discussion.

Prepared by:

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Submitted by:

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ATTACHMENTS

Attachment 1 – Taskforce Recommendations

Attachment 2 – Fremont & San Leandro Mediation Process

Attachment 3 – Fremont Mediation Outcomes (July to December 2016)

Attachment 4 – San Leandro Mediation Outcomes (July 2015 to June 2016)

Attachment 5 – Alameda Mediation Process

Attachment 6 – Alameda Mediation Outcomes (April to December 2016)

Attachment 7 – Other Cities' Budgets

Attachment 8 – Public Comments

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