



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing and consider introducing Ordinance No. 302 relating to a rent review program and tenant protections, Approve Related Budget Amendment, and prepare and execute a Professional Services Agreement with Project Sentinel (Staff Contact: Sharon Goei, 408-586-3260)
Category:	Public Hearings-Community Development
Meeting Date:	9/17/2019
Staff Contact:	Sharon Goei, 408-586-3260; Robert Musallam, 408-586-3275
Recommendations:	<ol style="list-style-type: none">1. Open the public hearing; hear testimony, then move to close the public hearing.2. Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 302 to add Chapters 2 and 3 to Title XII of the Milpitas Municipal Code relating to the adoption of a rent review program and tenant protections.3. Approve a Budget Amendment to appropriate funds from the Affordable Housing Fund to the FY 2019-20 Housing Operating Budget for Project Sentinel to manage the Rent Review program.4. Authorize the City Manager to prepare and execute a Professional Services Agreement with Project Sentinel ending December 31, 2021 to manage the Milpitas Rent Review Program.

Background:

On February 20, 2018, the City Council approved the formation of the Tenant Protection Task Force. The Task Force was established in September 2018, consisting of tenant and landlord representatives, to develop recommendations that would address tenant challenges experienced in Sunnyhills and similar communities. Representatives of the tenant community serving on the Task Force included Project Sentinel, Law Foundation of Silicon Valley, the President of the Sunnyhills Apartment Tenants Association, and Silicon Valley Independent Living Center. Representatives of the landlord community serving on the Task Force included California Apartment Association, an apartment property manager, a landlord representative, and Santa Clara Association of Realtors.

The Task Force meetings spanned from September 2018 through February 2019. The landlord and tenant groups met separately from each other in October, November, and December. Subsequent joint meetings in January and February were held to identify any commonalities the groups shared including core values. The results of the Tenant Protection Task Force were presented to the City Council on April 2, 2019.

On May 7, 2019, the City Council met to consider Council/Mayor requests for an urgency ordinance for rent control and an urgency ordinance for just cause eviction. While Council did not approve moving forward on the urgency ordinances, it did approve the establishment of a new City Council Housing Subcommittee to continue to address the needs of the community based on the community feedback the Council received. Councilmembers Montano and Nuñez were appointed to serve on this newly formed subcommittee.

On May 21, 2019, the City Council Housing Subcommittee held its first meeting. The Subcommittee acknowledged the May 7 Council decision to not pursue rent control and just cause ordinances, and sought alternatives to provide tenant assistance by brainstorming ideas, which included the implementation of a rent review ordinance to be modeled similarly to the Rent Review Ordinance adopted by the City of Fremont. From May through September 2019, the Subcommittee held eleven Subcommittee meetings that were open

to the public to discuss and direct City staff on their vision for the Rent Review Ordinance. While no other specific Ordinances were considered as a model, the Subcommittee took into account pending state legislation, such as pending AB 1482 - a statewide rent control bill - which would be relevant to the proposed Rent Review Ordinance.

During Subcommittee meetings, the following community input was heard. Some members of the public voiced the need for rent control, while the Subcommittee acknowledged the May 7 Council decision to not pursue such. Some expressed a desire to see a threshold below 5% to trigger rent review. Concerns were raised regarding tenants' fear of landlord retaliation if a landlord is forced to go through rent review. At the recommendation of the Subcommittee, a landlord retaliation policy is included in the proposed Ordinance under Chapter 3, Tenant Protections.

On September 11, 2019, Assembly Bill 1482 overwhelming passed the Assembly and the Governor is expecting to sign the bill shortly. The bill is set to limit rent increases across the state to 5 percent plus cost of living inflation, up to 10 percent.

The staff recommendations reflect the direction provided by the City Council Housing Subcommittee. To stay up-to-date on the progress and work being accomplished by the Housing Subcommittee for the Milpitas community, visit the [Housing Subcommittee website Latest News and Updates](#).

Analysis:

Fremont Rent Review Ordinance

In October 2017, City of Fremont established the Rent Review Ordinance, which took effect on January 1, 2018. Fremont added one new full-time staff member to manage the time-intensive administrative load of enforcing the ordinance. Additionally, the City Council adopted an ordinance creating the rent review board whose members are appointed by the City Council. The board is comprised of five members and one alternate and is made up of two landlord representatives who own rental property in Fremont, two tenant representatives who reside in Fremont, one neutral third party who is neither a landlord or tenant but does live in Fremont, and one alternate who is neither a landlord or tenant but does live in Fremont.

Per the ordinance, a landlord is encouraged to provide at least a 90-day notice of any rent increase in order to allow for the rent review procedures to occur. Any notices seeking an increase exceeding 5% shall also include a statement identifying the reason for the rent increase. Any notices in violation of these ordinance requirements are considered void. The ordinance applies to all residential rental units in the city, including single family homes, condos, and townhomes, but does not apply to properties where the tenant is receiving a rent subsidy (e.g., Section 8 voucher).

The rent review steps are as follows: (1) within 15 days of the date of the increase notice, a landlord or tenant may request a rent review; (2) the City then verifies that the rent increase is valid; (3) the City schedules a consultation phone call and/or in person non-binding mediation; (4) if no resolution is determined in step three, and the increase is over 5%, a rent review board hearing may be requested.

The Fremont City Council receives an annual report on the Rent Review Ordinance. The 2018 report indicates that the City received a total of 71 requests for services, however, 24 were for issues that were exempt from the ordinance. Of the 47 remaining cases, 21 were resolved prior to the consultation phone call, 18 were resolved after the consultation phone call, and the final 7 were resolved with in-person mediation. Only one case was scheduled for the rent review board but was not heard because both parties reached an agreement just prior.

The tenants were mixed in their review of the program. When asked how the rent review program can be improved, two of the top responses were to (1) make the decision binding and (2) require a more descriptive reason for the rent increase above 5%. As noted in the report, 71% of the rent increase notices received by the City cited the desire to bring the units up to market rent as the reason the landlord was asking for an increase above 5%.

Per Fremont's annual report, 45% of cases were resolved with a lowered rent increase. The average rent increase after the rent review was 8.7%, down from 11.5%. However, it should be noted that in the 24 cases cited earlier that did not apply to the ordinance, the average rent increase was 19.6%. If one were to isolate the 12 cases that were exempt due to the tenant living in subsidized or Below Market Rate housing, the average increase was 28.9%. While the increase would not fall completely on the tenant, since the Housing Authority would contribute subsidy up to a certain point, tenants are still at risk of displacement if the increase surpassed what the subsidizing body can afford to pay.

In April 2019, Fremont adopted amendments to the Rent Review Ordinance, which went into effect on May 16, 2019. Among the amendments are provisions prohibiting source of income discrimination. An amendment that became effective July 1, 2019 is that rental units subsidized by a government agency are no longer exempt from the ordinance.

Proposed Milpitas Rent Review Ordinance

While the Housing Subcommittee requested that the ordinance be modeled after the Fremont Rent Review Ordinance, the proposed Milpitas Rent Review Ordinance would deviate in the following ways:

1. The Housing subcommittee has requested that the Milpitas Rent Review Ordinance rent threshold be set at 7%. This means that in order to trigger a rent review, a proposed rent increase would need to exceed 7% in any 12-month period. As noted above, the City of Fremont has set their threshold at 5%.
2. Project Sentinel would implement the Rent Review Ordinance and program for Milpitas. The City of Fremont utilized Project Sentinel to manage their program from 1997 to 2017 and hired an additional staff person in 2018 to manage the program. For the City of Milpitas, Project Sentinel proposes to manage the Rent Review program for \$50,000 per year. As there is an existing \$50,000 contract, the total contractual services would be \$100,000 for FY 2019-20.

The breakdown of FY 2019-20 contractual services with Project Sentinel is as follows:

- \$10,000 for serving as the City's fair housing provider that provides fair housing case work and tenant-landlord counseling and dispute resolution services, including four (4) educational outreach that are funded through the Community Development Block Grant (CDBG) fund.
- \$40,000 to provide tenants with two quarterly landlord/tenant educational workshops, monthly drop-in clinic services at the City Hall, and a pilot data collection program so the City can begin to identify areas within the City requiring more time and resources. This will be funded through the Housing Authority Fund as approved during the FY 2019-20 budget process.
- \$50,000 to manage the proposed Milpitas Rent Review Ordinance, which will be funded through the Affordable Housing Fund.

In order to initiate program implementation, continue to collect data, prepare an annual report, and maintain continuity of services, the contractual term with Project Sentinel to manage the Rent Review Program is proposed to span approximately two years at \$50,000 per year, commencing November 1, 2019 and ending December 31, 2021, for a total sum of \$100,000.

3. The ordinance will include language on prohibition of source of income discrimination. California law prohibits discrimination based on source of income. However, Housing Choice Voucher income is not considered tenant income under California law. Therefore, currently a landlord can legally refuse to accept a Housing Choice Voucher applicant. The proposed ordinance would prevent a landlord from denying a Housing Choice Voucher applicant solely based on the fact that they are a Housing Choice Voucher holder.
4. The ordinance will include language to prevent landlord retaliation. A landlord will be in violation of Chapter 3 of the ordinance if s/he retaliates against the tenant because the tenant requested a rent review. Any person who violates any provision of this Chapter or who aids in the violation of any provision of this Chapter may be liable for damages of up to three times the amount of one month's rent that the landlord charges for the unit in question.

5. The City of Fremont assesses owners of residential rental units administration fees that reflect a full cost recovery for the administration of the rent review program. The annual per unit rent review program fee was set at \$14 in May 2019. In contrast, the City of Milpitas is proposing to provide the rent review program at no cost. However, the proposed ordinance includes a clause allowing the City to consider establishing a cost recovery fee at a later date with Council's approval.
6. Landlords will be required to include informational materials about the Milpitas Rent Review process to each tenant with every new lease agreement and with every rent increase request.

Similar to the Fremont Rent Review Ordinance, the Milpitas City Council will need to establish a Milpitas Rent Review Board consisting of two (2) landlord representatives, (2) tenant representatives, (1) resident of the City who is neither a landlord or a tenant, and one (1) alternate. The Rent Review Board will hear cases that could not be resolved by tenant-landlord mediation. With the Subcommittee's direction, the ordinance will include language that expresses that the members of the rent review board must have a demonstrated interest in the issues considered by the board, and will be selected based on prior experience which would qualify them for such an appointment. The Subcommittee would provide the Mayor with recommendations for appointments to the Rent Review Board.

Policy Alternative:

Alternative: The City Council does not introduce a rent review ordinance.

Pros: The City would save \$100,000, plus staff time and resources. The landlord community would not be impacted by the rules of the ordinance.

Cons: The tenant community will not have a rent review program that adds tenant protections for Milpitas residents.

Reason for Not Recommending: The Housing Subcommittee has developed the rent review ordinance with respect to both landlord and tenant concerns. The ordinance will create a more fiscally equitable solution for both landlord and tenants and provide tenants the additional protections they need.

Fiscal Impact:

The fiscal impact to the City would be \$50,000 per year for Project Sentinel to manage the Rent Review program. At the proposed contractual term of approximately two years ending December 31, 2021, the total fiscal impact would be \$100,000. Additionally, there could be a fiscal impact to the City should the Rent Review Board be granted a \$1000 budget per year, similar to other commissions or committees in the City, which can be absorbed into the Department's FY 2019-20 operating budget. There is also a fiscal impact in the form of City staff administrative time in creating the program and working with Project Sentinel and the Rent Review Board on various items. Staff will monitor these costs and evaluate if additional budget will be needed in the current FY 2019-20 operating budget. A budget amendment to appropriate \$50,000 will be needed from the Affordable Housing Fund to the FY 2019-20 Housing Operating Budget for Project Sentinel to manage the Rent Review program. \$50,000 will also be incorporated in the FY 2020-21 Housing Operating Budget for Project Sentinel to manage the Rent Review Program for the second year.

California Environmental Quality Act:

The action being considered has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

Recommendations:

1. Open the public hearing; hear testimony, then move to close the public hearing.
2. Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce Ordinance No. 302 to add Chapters 2 and 3 to Title XII of the Milpitas Municipal Code relating to the adoption of a rent review program and tenant protections.
3. Approve a budget amendment to appropriate \$50,000 from the Affordable Housing Fund to the FY 2019-20 Housing Operating Budget for Project Sentinel to manage the Rent Review program.
4. Authorize the City Manager to prepare and execute a Professional Services Agreement with Project Sentinel ending December 31, 2021 to manage the Milpitas Rent Review Program.

Attachments:

- a. Ordinance No. 302 relating to the adoption of a rent review program and tenant protections
- b. Budget change form