

**URGENCY**

**NUMBER:** \_\_\_\_\_

**TITLE:** **AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937 ADDING CHAPTERS 2 AND 3 TO TITLE XII OF THE MILPITAS MUNICIPAL CODE RELATING TO THE ADOPTION OF A RENT REVIEW PROGRAM AND TENANT PROTECTIONS**

**HISTORY:** This Ordinance was introduced and adopted by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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Mary Lavelle, City Clerk

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Rich Tran, Mayor

APPROVED AS TO FORM:

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Christopher J. Diaz, City Attorney

## **RECITALS AND FINDINGS:**

**WHEREAS**, on February 20, 2018, the City Council approved the formation of the Tenant Protection Task Force, and in September 2018, the Task Force was established, consisting of tenant and landlord representatives to develop recommendations to address challenges experienced by renters in the City of Milpitas; and

**WHEREAS**, the Tenant Protection Task Force met from September 2018 through February 2019, and the results of the Tenant Protection Task Force were presented to the City Council on April 2, 2019; and

**WHEREAS**, following the presentation, on May 7, 2019, the City Council approved a new City Council Housing Subcommittee; and

**WHEREAS**, the Housing Subcommittee directed City staff to prepare a rent review ordinance, that would provide a process for non-binding mediation between landlords and tenants regarding proposed rent increases, and a process for a hearing regarding any rent increases; and

**WHEREAS**, the City Council finds that the high cost of rental housing in Milpitas has created economic hardship for many tenants. Protecting tenants from unreasonable rent increases can encourage community stability, avoid displacement, and protect the health, safety, and welfare of the residents of Milpitas. This ordinance is intended to permit landlords a fair and reasonable return on their property, while at the same time protecting tenants from arbitrary, capricious, or unreasonable rent increases. The City Council encourages property owners to limit rent increases to fair and reasonable amounts, provide well maintained living units, and cooperate with tenants toward resolving rent-related disputes; and

**WHEREAS**, failure to address such potential rent increases can create housing instability and anxiety amongst tenants which threatens the public peace, health, and safety. Loss of one's home due to unmanageable rent increases can lead to prolonged homelessness; increased residential mobility; loss of community, strain on household finances due to the necessity of paying rental application fees and security deposits; stress and anxiety experienced by those displaced; increased commute times and traffic impacts if displaced workers cannot find affordable housing within the city in which they work; and interruption of the education of children in the home; and

**WHEREAS**, there is an immediate need to implement a rent review program in order to address increasing housing instability amongst residents of the City of Milpitas, and provide tenants in the City a means to address rent increases without concern for retribution from landlords, while at the same time allowing landlords a fair and reasonable return on their property.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

## **SECTION 1. INCORPORATION OF RECITALS**

The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

## **SECTION 2. FINDINGS**

The City Council hereby finds, determines and declares that this Urgency Ordinance adopted pursuant to California Government Code Section 36937 is necessary because:

A. Housing, particularly affordable housing, is difficult to procure in the San Francisco Bay Area, including in Milpitas. Significant rent increases destabilize the housing market and can result in the loss of affordable housing.

B. For the immediate preservation of the public peace, health and safety, the City Council finds that it is necessary to adopt an ordinance establishing a rent review program, for all of the reasons set forth in the recitals above, which are hereby incorporated by reference.

C. Without the imposition of this Urgency Ordinance, tenants in the City of Milpitas do not have an established mechanism to address significant rent increases without fear of retribution, creating increased anxiety and housing instability amongst tenants in the City of Milpitas.

D. There is a current and immediate threat to the public peace, health, and safety of the City and its community due to the increased housing anxiety and instability arising from the lack of a rent review program, thereby necessitating the immediate enactment of this Urgency Ordinance in order to ensure that tenants have a viable means to address significant rent increases.

### **SECTION 3. URGENT NEED**

Based on the foregoing recitals and findings, all of which are deemed true and correct, this ordinance is urgently needed for the immediate preservation of the public peace, health, and safety. This Urgency Ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code Section 36937.

### **SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XII**

Chapter 2 is hereby added to Title XII of the Milpitas Municipal Code to read as follows:

#### **Title XII – HOUSING**

##### **Chapter 2 - RENT REVIEW ORDINANCE**

###### **Section 1 - Citation.**

This Chapter shall be known as the “Rent Review Ordinance.”

###### **Section 2 - Definitions.**

XII-2-2.00

As used in this Chapter, each of the following terms shall be defined as follows:

XII-2-2.01

“Base rent” means the rental amount required to be paid by the tenant to the landlord in the month immediately preceding the effective date of a rent increase.

XII-2-2.02

“Consultation” means either (1) a confidential telephone call or other informal contact by the designated service provider or director with a landlord/responsible party and tenant for the purpose of resolving a proposed rent increase issue, or (2) mediation in which the landlord/responsible party and tenant meet with a neutral mediator for the purpose of resolving a proposed rent increase issue.

XII-2-2.03

“Designated service provider” or “service provider” means a party or organization contracted by the city to provide needed services to implement the procedures contained in this Chapter.

XII-2-2.04

“Director” means the City’s Director of Building and Housing, who is the person designated by the City Manager to direct and manage the rent review program. Any duty required of the director may be delegated to a third party by the

director and any service required to be performed by the director may be provided by a designated service provider as authorized by the director.

XII-2-2.05

“Landlord” means any person, partnership, corporation, or other business entity offering for rent or lease any residential property in the city. “Landlord” shall include the agent or representative of the landlord.

XII-2-2.06

“Participate in good faith” means the mutual obligation of the landlord and tenant to meet on each occasion when notified in consultation, mediation or rent review board proceedings, provide relevant information, exchange proposals, reasonably consider proposals by opposite parties and engage in meaningful discussion on the subject of proposed rent increases and issues related to the rent increase. Good faith participation includes the duty of the landlord to refrain from any unlawful detainer proceeding due solely to a withholding of rent while the parties are engaged in proceedings under this Chapter.

XII-2-2.07

“Party” or “parties” means a person or persons who participate in the rent review procedures of this Chapter or their agent or representative.

XII-2-2.08

“Program” or Rent Review Program” is the program and procedures for review of rent increases in the City of Milpitas as established by this Chapter.

XII-2-2.09

“Rent” means a fixed periodic compensation paid by a tenant at fixed intervals to a landlord for the possession and use of property.

XII-2-2.10

“Rent increase” means any upward adjustment of the base rent amount specified by the original contract.

XII-2-2.11

“Rent Review Board” means the board established as described in Section XII-2-5.00 of this Chapter.

XII-2-2.12

“Residential property” means any housing unit offered for rent or lease in the City consisting of one or more units whether attached or detached, single- or multiple-family, and mobile homes. Mobile homes are subject to this Chapter only to the extent of the mobile housing unit itself, not the underlying real property pad.

XII-2-2.13

“Responsible party” means the person with the final legal authority to adjust rent increases without limitations and resolve tenant issues on behalf of the residential landlord. “Responsible party” shall include the agent or representative of the responsible party.

XII-2-2.14

“Responsible party declaration” contains the signature of the legal owner of the residential property certifying that the person authorized to represent him/her during consultation, mediation or rent review board proceedings has the authority to adjust rent increases and resolve tenant issues on behalf of the residential landlord.

XII-2-2.15

“Retaliatory conduct” means those acts prohibited by Cal. Civ. Code § 1942.5 and Section 3 of Chapter 3 of Title XII of the Milpitas Municipal Code.

XII-2-2.16

“Shared housing unit” means a habitable space that a homeowner rents to one or more individuals that is located in the home where the homeowner is currently residing as his or her primary residence.

XII-2-2.17

“Tenant” means any person having the legal responsibility for the payment of rent for residential property in the City. “Tenant” shall include the agent or representative of the tenant.

### **Section 3 – Notice of rent increase requirements.**

XII-2-3.00

Every landlord of residential property shall provide a rent increase notice that follows the procedure in Cal. Civ. Code § 827(b) regardless of the length of the tenancy and any other State law requirements before demanding or accepting any increase in rent. All landlords are strongly encouraged to provide at least 90 calendar days’ notice of any rent increase in order to allow for orderly operation of the rent review procedures of this Chapter. Rent increase notices seeking an increase of rent exceeding five percent shall also include a statement setting forth the reason for the rent increase.

XII-2-3.01

All rent increase notices shall be in writing, shall show the name, address and phone number of the responsible party and shall be personally delivered to the tenant or mailed first-class to the tenant at the address of the tenant’s rental unit by first-class mail, postage prepaid. Service by mail shall be presumed complete within five calendar days of mailing. This presumption may be rebutted by the tenant.

XII-2-3.02

Any rent increase notice issued in violation of this Chapter shall be void.

### **Section 4 - Notice of availability of rent review required.**

XII-2-4.00

In addition to any rent increase notice required by State law, landlord shall also provide tenants written notice of the availability of rent review as provided in this Chapter and provide information regarding how a tenant can obtain a copy of this Chapter. This obligation shall apply at the time that landlord and tenant enter into a new lease agreement, and shall further apply at the time of any rent increase in any amount and to all affected tenants.

1. At the time of execution of a new lease agreement, this notice shall be provided to the tenant by personal delivery, first-class mail or email, and landlord shall secure written acknowledgment from the tenant that such notice was received.

2. At the time of a rent increase, this notice may be provided by personal delivery, first-class mail, text or email. No rent increase shall be valid for any purpose whatsoever without full compliance with this section.

#### XII-2-4.01

The notice of availability of rent review shall be provided in English and the most commonly used languages within the City as determined by the director based upon the American Community Survey, the most recent census or other reputable source data and shall read as follows:

##### NOTICE:

Under California Civil Code Section 827(b), a Landlord must provide a Tenant with 30 days' notice prior to a rent increase of 10 percent (10%) or less and 60 days' notice of a rent increase greater than 10 percent (10%). In addition, Chapter 2 of Title XII of the Milpitas Municipal Code requires that a Landlord must at the same time provide and serve this written notice of the City's Rent Review Program. This program provides a procedure for Landlords and Tenants to meet to discuss issues related to rent increases. Information about this program and a copy of Chapter 2 of Title XII are available on the City's website at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov), at City Hall located at 455 E. Calaveras Blvd. in Milpitas, California, the Milpitas Public Library located at 160 N. Main St. in Milpitas, California, and other locations designated by the City's Director of Building Safety and Housing. Copies are also available in English and the most commonly used languages within the City as determined by the Director of Building Safety and Housing.

You are encouraged to contact the owner or manager of your rental unit whose name is \_\_\_\_\_ (landlord to insert the name of the Responsible Party) at \_\_\_\_\_ (landlord to insert email address and telephone number) to discuss this rent increase for your rental unit.

In addition, if you have received notice of a rent increase of more than five percent (5%) in the last 12 months, you are also entitled to review by the City's Rent Review Board. To initiate the rent review process, you must request rent review by contacting the Department of Building Safety and Housing (landlords will be advised of the name and contact information for the service provider designated by the director that is to be inserted in this notice) within 15 days of the date of the notice of rent increase. Your Landlord will be notified of your request and you will be contacted by a housing professional to discuss the rent increase. Please note that petitioning for rent review does not guarantee a reduction in the rent increase.

At the hearing, the Rent Review Board will make a decision concerning the rent increase. You and your Landlord may agree to accept the Board's decision. The Rent Review Board's decision as to the rent increase is non-binding on you and your Landlord.

Under California Civil Code Section 1942.5 and Chapter 2 of Title XII of the City's Municipal Code, it is illegal for a Landlord to retaliate against a Tenant for lawfully exercising his or her legal rights.

#### XII-2-4.02

The City shall make copies of this notice available to landlords in English and the most commonly used languages within the City as determined by the director.

#### XII-2-4.03

Any rent increase in violation of this Chapter shall operate as a complete defense to an unlawful detainer action based on failure to pay any illegal rent increase. Any tenant required to pay an illegal rent increase may recover all illegal rent increase amounts, actually paid by the tenant, in a civil action.

#### XII-2-4.04

Rent increases shall be limited to one increase in any consecutive 12-month period. If the parties agree to more than one rent increase in a 12-month period, it must be documented in a separate written agreement (not the rental agreement) and identify the agreed upon rental increases and the effective dates for each increase.

## **Section 5 – Rent Review Board.**

### XII-2-5.00

The Rent Review Board is hereby created consisting of five regular members and one alternate. Two members shall be landlord representatives who own rental units in the City of Milpitas, two members shall be tenant representatives who are residents of the City of Milpitas, and one member and one alternate shall be a neutral third party who is a resident of the City of Milpitas and is neither a landlord nor a tenant. The alternate will only serve in the absence of the regular neutral member. The Rent Review Board members shall have a demonstrated interest in the issues considered by the Rent Review Board and will be selected based on their relevant experience.

### XII-2-5.01

The Rent Review Board will evaluate the reasonableness of proposed rent increases at the request of either a landlord or tenant pursuant to the rent review program set forth in Section 6 of this Chapter.

### XII-2-5.02

For the first members appointed to the Rent Review Board following the adoption of this Chapter into the Municipal Code, the terms of one tenant representative and one landlord representative shall be two years so that the appointment of members can be staggered. The member serving a two-year term will be eligible to be re-appointed to serve two full terms. The selection of the representatives who will be limited to two-year terms will be determined by lot. The terms of all other members shall be four years. There is no term limit for the alternate member.

### XII-2-5.03

No meeting of the Board shall occur unless there are three members present with one person from each of the required representation categories in attendance.

## **Section 6 – Rent review program.**

### XII-2-6.00

The provisions of this Chapter shall apply to all residential rental units in the City, except for the following categories of units, which shall be exempt from this Chapter:

1. Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.
2. Dormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution.
3. Housing that has been issued a certificate of occupancy within the previous 15 years.
4. Residential real property that is alienable separate from the title to any other dwelling unit, provided that both of the following apply:
  - (a) The owner is not any of the following:

- (i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.
  - (ii) A corporation.
  - (iii) A limited liability company in which at least one member is a corporation.
- (b) (i) The tenants have been provided written notice that the residential real property is exempt from this section using the following statement:
- “This property is not subject to the rent review program enacted by Title XII, Chapter 2 of the City of Milpitas Municipal Code. This property meets the requirements of Section XII-2-6.00(4) of the City of Milpitas Municipal Code and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; or (3) a limited liability company in which at least one member is a corporation.”
- (ii) For a tenancy existing before July 1, 2020, the notice required under clause (i) may, but is not required to, be provided in the rental agreement.
  - (iii) For a tenancy commenced or renewed on or after July 1, 2020, the notice required under clause (i) must be provided in the rental agreement.

5. A duplex in which the owner occupied one of the units as the owner's principal place of residence at the beginning of the tenancy, so long as the owner continues in occupancy.

#### XII-2-6.01

The Rent Review Board hearing process may be initiated by either an affected landlord or an affected tenant requesting assistance with a rent increase exceeding five percent in any 12-month period by contacting the designated service provider within 15 calendar days of the date of the notice of rent increase and providing a copy of the notice of rent increase to the designated service provider.

#### XII-2-6.02

The rent review procedures shall consist of consultation with the designated service provider which could result in an informal mediation with a third party followed by non-binding review by the rent review board of rent increases that exceed five percent in any 12-month period.

#### XII-2-6.03

The designated service provider shall process requests for assistance as follows:

1. General Information Requests. When a party requests general information about the Rent Review Program, the designated service provider shall provide the rent review information brochure to all parties in person or by mail or email, as may be appropriate, within one business day.
2. Tenant Initiation of Rent Review. A party requesting initiation of the rent review process shall be encouraged by the designated service provider to contact the opposite party to attempt resolution of the rent increase dispute. When such a request is made, the requester and all other parties shall be provided the rent review information brochure in person or by mail or email, as may be appropriate, and the designated service provider shall notify the opposite party by phone or email, as may be appropriate, within three business days that a request for assistance has been made.
3. Designated Service Provider Initiation of Rent Review. When a requesting party does not wish to contact the opposite party, the designated service provider shall record the request for assistance, initiate the consultation process, and give written notice to the affected parties within three business days.

## XII-2-6.04

The director is authorized, to the extent consistent with all the time limits and procedures in this Chapter, to consolidate separate requests for consultation and rent review involving the same rent dispute issue. Consolidation shall not affect an individual's desire to be separately represented or to bring a separate legal action.

## XII-2-6.05

In the event the parties do not reach written agreement resolving a rent increase issue, the director is authorized and shall have the duty to determine when proceedings under this Chapter have been completed and to notify the parties of the termination of proceedings under this Chapter.

## **Section 7 - Consultation/mediation procedures.**

### XII-2-7.00

The affected landlord/responsible party or tenant shall respond either orally or in writing to the designated service provider within two business days following phone contact. If the landlord designates a responsible party, the landlord shall also provide a responsible party declaration to the designated service provider within the same timeframe or within a time established by the designated service provider. Failure of either the landlord or the responsible party to respond to the designated service provider within two business days, or additional time if provided by the designated service provider, shall void the rent increase notice for all purposes.

### XII-2-7.01

The designated service provider shall attempt informal consultation in an attempt to reach an amicable resolution of the rent increase dispute for a period not exceeding 10 business days. Alternatively, the matter may be submitted to a neutral mediator at the discretion of the designated service provider. Any agreement reached during mediation shall have the same force and effect as a consultation agreement as set forth in subsection XII-2-6.03, below.

### XII-2-7.02

The responsible party and the tenant shall have the mutual obligation to participate in the consultation or mediation process in good faith.

### XII-2-7.03

Any agreement reached by the parties in consultation or mediation shall:

1. Be made in writing and signed by the parties to the agreement;
2. State the specific terms of the agreement including the duration and conditions of the agreement;
3. Be binding on the parties identified in the agreement;
4. Provide that the parties agree to binding arbitration by a City-appointed arbitrator to resolve any future dispute as to the interpretation or application of the agreement; and
5. Provide that any agent or representative signing a consultation or mediation agreement on behalf of other persons shall be responsible for promptly providing a copy of the agreement to the parties he or she represents.

### XII-2-7.04

A party to a consultation or mediation agreement may not initiate a rent review procedure concerning any rent increase covering the same time period included in the consultation or mediation agreement.

#### XII-2-7.05

One or more tenants affected by a common rent increase may simultaneously participate in the same consultation or mediation proceeding with consent of the landlord. No tenant shall be bound by any consultation or mediation agreement they or their agent and/or representative did not agree to.

#### XII-2-7.06

Failure of a responsible party to appear and participate in good faith in the consultation or mediation process shall void the notice of rent increase for all purposes. Failure of any affected tenant to appear and participate in good faith shall terminate all services under this Chapter for the affected tenant for the duration of the subject rent increase and shall make the rent increase effective the date stated in the notice of rent increase.

### **Section 8 - Rent Review Board procedures.**

#### XII-2-8.00

Following completion of the consultation or mediation procedures, either party may submit a written request for review by the Rent Review Board within five business days of completion of consultation or mediation if the rent increase notice seeks an increase of rent of more than five percent in the last 12-month period.

#### XII-2-8.01

One or more tenants affected by a common rent increase may simultaneously participate in the same rent review proceeding with the consent of the landlord.

#### XII-2-8.02

A hearing before the rent review board shall be held no more than 45 calendar days from the date of receipt of the request for hearing. The director shall provide notice to the parties when a hearing is scheduled. Participants in the hearing shall be the parties to the consultation or mediation and other persons deemed necessary by the director or rent review board.

#### XII-2-8.03

The purpose of the hearing shall be to allow the Rent Review Board to examine witnesses, review the documents in the record and make formal findings of fact and a decision regarding the rent increase. In the discretion of the Rent Review Board, any hearing that is convened may be continued for the convenience of a party. The Rent Review Board may proceed with a hearing in the absence of the landlord/responsible party.

#### XII-2-8.04

The landlord/responsible party shall present evidence to explain the rationale or reason for a rent increase in excess of five percent of the base rent.

#### XII-2-8.05

The Rent Review Board shall evaluate the reasonableness of the rent increase, taking into consideration the factors listed below. These factors are illustrative and not exclusive. The rent review board is free to consider any factors relevant to the issue of the reasonableness of the rent increase as between the parties.

1. Past history of rent increases for the same rental unit, including timing and amount;

2. Impact of the rent increase on the affected household;
3. Past history of landlord costs for capital improvements, maintenance and operation, debt service, rehabilitation and provision of housing services;
4. Existing market value of rents within the same rental complex or for similarly situated units;
5. Return on investment to the landlord;
6. The San Francisco-Oakland-San Jose All Urban Consumer Price Index; and
7. Service reductions for the rental unit or rental complex during the tenant's occupancy of the unit.

XII-2-8.06

The Rent Review Board shall issue a written decision and shall mail the findings and recommendation to the parties within five business days following completion. If the parties mutually agree to a resolution at any time prior to the conclusion of the hearing, their agreement may be memorialized in a binding written agreement at the hearing.

XII-2-8.07

Failure of a responsible party to appear and participate in good faith in the rent review process shall void the notice of rent increase for all purposes and the landlord shall be prohibited from serving a new notice of rent increase for a period of 90 calendar days. Failure of any tenant to appear and participate in good faith in the rent review process shall terminate all services under this Chapter for the affected tenant for the duration of the subject rent increase and shall make the rent increase effective on the date stated in the notice of rent increase.

### **Section 9 – Review of the Rent Review Board decision**

XII-2-9.00

If the parties agree with the Rent Review Board's decision, the landlord and all tenants who have financial responsibility for the rent shall formalize and sign an agreement, in a form to be provided by the City, to that effect. Neither the City, the designated service provider nor the Rent Review Board shall be a signatory to such an agreement and neither the City, the designated service provider nor the Rent Review Board shall assume any obligation or responsibility to enforce the terms of the agreement, except as provided in this Chapter.

XII-2-9.01

The Rent Review Board's decision is non-binding on the parties and the rent increase shall be effective as provided in the notice of rent increase but subject to subsection XII-2-6.06 (a landlord's failure to appear renders the increase void), unless the parties enter into an agreement pursuant to subsection XII-2-9.00 of this Chapter.

### **Section 10 – Rent increase deposit obligation.**

XII-2-10.00

Every tenant shall pay the existing base rent as it becomes due.

XII-2-10.01

In the event the rent review process exceeds the rent increase notice period, each affected tenant shall deposit with the landlord 50 percent of the rent increase amount, as it becomes due, in the customary form practiced by the landlord and tenant or in any agreed form. The landlord shall retain this deposit in the landlord's operating account. "Fifty percent

of the rent increase amount" shall mean 50 percent of the amount which exceeds the existing base rent. The landlord shall provide the tenant with a receipt acknowledging the delivery of the deposit and agreeing to relinquish the deposit if required by this Chapter.

#### XII-2-10.02

In the event the parties reach an agreement pursuant to this Chapter reducing the amount of the proposed rent increase:

1. The landlord shall immediately credit to the tenant the difference between the agreed rent increase and the deposit if the deposit exceeds the amount of the agreed rent increase.
2. The tenant shall immediately pay to the landlord the balance of the rent increase amount if the agreed rent increase exceeds the deposit amount.
3. All payments shall be in the customary form practiced by the landlord and tenant or in any agreed form.

#### XII-2-10.03

If the parties fail to reach any agreement, the landlord shall retain the full amount of the deposit and the tenant shall pay the full balance of the rent increase amount immediately following notice by the director.

#### XII-2-10.04

If the director finds that a landlord did not participate in the rent review process in good faith, the full amount of the rent increase deposit shall be released to the tenant within 30 days following the final good faith determination.

#### XII-2-10.05

If the director finds that a tenant did not participate in the rent review process in good faith, the full amount of the rent increase deposit shall be retained by the landlord and the remaining balance of the rent increase amount shall be paid by the tenant to the landlord within 30 days following the final good faith determination and notification by the director. In addition, any pending proceedings before the rent review board shall be dismissed and the tenant will be barred from subsequently challenging that rent increase before the Rent Review Board.

#### XII-2-10.06

A tenant failing to make a rent increase amount deposit when due shall be deemed in breach of the obligation of good faith participation and the rent increase will be considered valid.

#### XII-2-10.07

In the event the landlord fails to retain any deposit in the operating account, the rent increase shall be void for all purposes and the landlord shall be liable to the tenant in a civil action for the amount of the deposit.

### **Section 11 - Good faith participation review.**

#### XII-2-11.00

Any party to a rent review proceeding under this Chapter may request the director to investigate a claim of failure to participate in good faith by another party to the proceeding. The director shall be responsible for investigation of allegations of a lack of good faith participation by any party. The director may not delegate this duty to a person other than a City employee.

#### XII-2-11.01

Any determination that a party has failed to participate in good faith in a proceeding under this Chapter shall only be made after a five-business-day notice of hearing to all affected parties, a fair hearing by a hearing officer appointed by the City Manager and the rendition of factual findings supported by the record. Following the fair hearing, the director shall give prompt notice of the good faith determination by first-class mail, postage prepaid, to the affected parties.

**Section 12 - Annual review.**

XII-2-12.00

The director shall annually prepare a report to the City Council assessing the effectiveness of the rent review program established in this Chapter and recommending changes to the program as may be appropriate.

**Section 13 – Enforcement.**

XII-2-13.00

Civil enforcement action: A civil action to enforce the provisions of this Chapter may be filed by any aggrieved person, by the City Attorney or by any person or entity that will fairly and adequately represent the interests of that person or a protected class.

XII-2-13.01

Civil injunctive relief: Any person who commits, or proposes to commit, an act in violation of this Chapter may be enjoined therefrom by any court of competent jurisdiction.

XII-2-13.02

Civil liability: 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. All damages shall be awarded to the person whose rights were violated. The court may also award punitive damages in an amount of not less than \$200.00 and not more than \$400.00 per violation, as well as attorneys' fees and costs. In any action brought by the City Attorney, all attorneys' fees and costs, shall be awarded to the City to reimburse its legal expenses and deposited in the City Treasury.

XII-2-13.03

Separate civil liability for each violation: Any person who violates any provision of this Chapter or who aids in the violation of any provision of this Chapter shall be liable for a separate civil violation for each provision of this Chapter that he or she violates, and for each instance in which he or she violates a provision of this Chapter.

XII-2-13.04

Criminal enforcement and liability: Any person who violates any provision of this Chapter or who aids in the violation of any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than \$1,000.00, or by imprisonment in the county jail for a period not exceeding six months, or both.

XII-2-13.05

Administrative citation: In addition to any other remedy available at law, the City may enforce any violation of this Chapter by administrative citation pursuant to Title I, Chapter 21 of the Milpitas Municipal Code.

XII-2-13.06

Statute of limitations; remedies cumulative: Any actions filed pursuant to this Chapter must be filed within two years of the alleged violation. The remedies and penalties provided for by this Chapter shall be cumulative and not exclusive and shall be in addition to such other remedies or penalties as are provided by law.

## **Section 14 – Administration fee.**

XII-2-14.00

The City Council may by resolution adopt an administration fee to recover the costs incurred in the administration of the provisions of this Chapter, which fee shall be paid by residential rental unit owners to the City. The fee shall be determined by the City from all the costs incurred in the administration of this Chapter, in the prior calendar or fiscal year, based on (1) the general costs of administration, including the costs of defending this Chapter and (2) the direct costs incurred in the rent review process, including the costs of hearing. The general costs shall be apportioned equally to all residential rental units in the City as allowed pursuant to state law.

## **SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE XII**

Chapter 3 is hereby added to Title XII of the Milpitas Municipal Code to read as follows:

### **Title XII – HOUSING**

#### **Chapter 3 – TENANT PROTECTIONS**

##### **Section 1 – Purpose and intent**

In enacting this Chapter, the City Council intends to help alleviate the housing crisis in Milpitas and throughout Santa Clara County by ensuring that all persons with the ability to pay for housing are considered for housing, regardless of whether they receive a housing subsidy or housing assistance of any kind, and by ensuring that tenants in Milpitas are not subject to retaliation from landlords as a result of asserting their rights under the Milpitas Municipal Code or federal and State law.

##### **Section 2 - Income discrimination prohibited.**

XII-3-2.00

For purposes of this section, “source of income” means all lawful sources of income, including but not limited to any rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program, including, but not limited to, Housing Choice Voucher Program (Section 8) assistance. “Source of income” includes any requirement of any such program or source of income or rental assistance.

XII-3-2.01

It is unlawful for any person to do any of the following as wholly or partially based on source of income:

1. To interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real property, including, but not limited to, the rental thereof; to require different terms for such transaction; or falsely to represent that an interest in real property is not available for transaction;
2. To include in the terms or conditions of a transaction in real property any clause, condition or restriction;
3. To refuse or restrict facilities, services, repairs or improvements for any current or prospective tenant or lessee;
4. To make, print, publish, advertise or disseminate in any way, or cause to be made, printed or published, advertised or disseminated in any way, any notice, statement or advertisement with respect to a transaction in real

property, or with respect to financing related to any such transaction, which unlawfully indicates preference, limitation or discrimination based on source of income. For purposes of this subsection, "source of income" means all lawful sources of income or rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program. "Source of income" includes any requirement of any such program or source of income or rental assistance. "Person" means any individual, firm, corporation, or other organization or group of persons however organized.

#### XII-3-2.02

It is unlawful for any person to use a financial or income standard for the rental of housing that does either of the following:

1. Fails to account for any rental payments or portions of rental payments that will be made by other individuals or organizations on the same basis as rental payments to be made directly by the tenant or prospective tenant;
2. Fails to account for the aggregate income of persons residing together or proposing to reside together or an aggregate income of tenants or prospective tenants and their cosigners or proposed cosigners or proposed cosigners on the same basis as the aggregate income of married persons residing together or proposing to reside together.

### **Section 3 - Landlord retaliation prohibited.**

#### XII-3-3.00

No landlord may take any action increasing any rental amount, reducing any service, causing the tenant to involuntarily quit the premises (constructive eviction) or discriminating against any tenant or household members of a tenant because of the tenant's use of any remedy provided by federal, State or local law, including but not limited to Chapter 2 of Title XII of the Milpitas Municipal Code.

#### XII-3-3.01

Adverse retaliatory actions suffered by a tenant within 180 days of the tenant's exercise of any right or process under Chapter 2 of Title XII of the Milpitas Municipal Code shall be presumed to be retaliatory conduct under this Chapter. This presumption may be rebutted by the landlord, in which case the landlord shall carry the burden of persuasion to prove the adverse action was not in retaliation for the exercise of any right or process under Chapter 2.

#### XII-3-3.02

Any rent increase in violation of this section shall be void and shall be rolled back to the prior rental amount. The landlord shall not be allowed to notice a new rent increase for a period of six months following the retaliatory conduct.

#### XII-3-3.03

Retaliatory conduct by a landlord in violation of this section shall be a defense to an unlawful detainer or eviction action.

### **Section 4 – Enforcement.**

#### XII-3-4.00

Civil enforcement action: A civil action to enforce the provisions of this Chapter may be filed by any aggrieved person, by the City Attorney or by any person or entity that will fairly and adequately represent the interests of that person or a protected class.

#### XII-3-4.01

Civil injunctive relief: Any person who commits, or proposes to commit, an act in violation of this Chapter may be enjoined therefrom by any court of competent jurisdiction.

#### XII-3-4.02

Civil liability: 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. All damages shall be awarded to the person whose rights were violated. The court may also award punitive damages in an amount of not less than \$200.00 and not more than \$400.00 per violation, as well as attorneys' fees and costs. In any action brought by the City Attorney, all attorneys' fees and costs, shall be awarded to the City to reimburse its legal expenses and deposited in the City Treasury.

#### XII-3-4.03

Separate civil liability for each violation: Any person who violates any provision of this Chapter or who aids in the violation of any provision of this Chapter shall be liable for a separate civil violation for each provision of this Chapter that he or she violates, and for each instance in which he or she violates a provision of this Chapter.

#### XII-3-4.04

Criminal enforcement and liability: Any person who violates any provision of this Chapter or who aids in the violation of any provision of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than \$1,000.00, or by imprisonment in the county jail for a period not exceeding six months, or both.

#### XII-3-4.05

Administrative citation: In addition to any other remedy available at law, the City may enforce any violation of this Chapter by administrative citation pursuant to Title I, Chapter 21 of the Milpitas Municipal Code.

#### XII-3-4.06

Statute of limitations; remedies cumulative: Any actions filed pursuant to this Chapter must be filed within two years of the alleged violation. The remedies and penalties provided for by this Chapter shall be cumulative and not exclusive and shall be in addition to such other remedies or penalties as are provided by law.

### **SECTION 6. AUTHORITY**

This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Milpitas by Government Code 36937, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council.

### **SECTION 7. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

### **SECTION 8. CERTIFICATION**

The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.