



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Conduct a Public Hearing, consider adopting an Urgency Ordinance, or consider introducing amended Ordinance No. 302 relating to a rent review program and tenant protections (Staff Contact: Sharon Goei, 408-586-3260)
Category:	Public Hearings-Community Development
Meeting Date:	10/15/2019
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. Adopt an Urgency Ordinance enacted pursuant to California Government Code Section 36937 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; or3. Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce amended 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.

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, and the results of the 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 included discussion and direction to City staff related to 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 passed the Legislature and the Governor was expected to sign the bill. The bill is set to limit rent increases across the state to 5 percent plus cost of living inflation, or 10 percent, whichever is lower. The bill would also prohibit an owner from terminating a tenancy without just cause. After AB 1482 is signed by the Governor and becomes effective, the rent increase restrictions will apply to all rent increases occurring on or after March 15, 2019, but the prohibitions on eviction without just cause will not go into effect until January 1, 2020.

On September 17, 2019, following the City Attorney's reading of the title, the City Council waived the first reading beyond the title and introduced 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. Staff was directed to schedule a special study session of the Housing Subcommittee and City Council to discuss topics that may include AB 1482, the Rent Review Ordinance, and any ordinance related to just cause eviction protection.

On September 24, 2019, the study session was held, and members of the Housing Subcommittee and City Council provided input on the Rent Review Ordinance as well as a related just cause eviction ordinance. The discussion for the rent review threshold involved either 5% or 7%, and there was discussion to lower the threshold for rent review from 7% to 5%. Additionally, the discussion involved whether to mirror AB 1482 and to exempt residents living in single family homes, subsidized homes, and units built in the last 15 years from the Ordinance. The general preference was to have the Rent Review Ordinance mirroring AB 1482 in the range of applicable units. There was discussion to possibly include subsidized housing in the Ordinance. Direction was provided to staff to prepare the revised draft ordinance for the October 15, 2019 Council meeting that would include these two amendments.

On October 8, 2019, the Housing Subcommittee met to debrief from the September 24 discussion regarding the Rent Review Ordinance revisions and an ordinance for just cause eviction protection.

On the same day, Governor Newsom signed AB 1482 into law.

Staff recommendations reflect the direction of the City Council Housing Subcommittee. Current progress and work accomplished by the Housing Subcommittee for the Milpitas community can be found at [Housing Subcommittee website Latest News and Updates](#).

Ordinance Effective Date

For the rent review program, both an Urgency Ordinance and a regular Ordinance (amended Ordinance No. 302), have been prepared for the City Council's consideration. The differences between the ordinances are the effective date and urgency findings. The codified portion of the ordinances is the same.

An urgency ordinance must be passed by a four-fifths vote of the City Council and takes effect immediately. Findings for the urgency need to be made for the immediate preservation of the public peace, health, or safety, and such findings are incorporated in the ordinance. If at least four Councilmembers vote to pass the Urgency Ordinance on October 15, 2019, it would take effect immediately.

For regular Ordinance No. 302, it would take effect 30 days after its final passage. Council action would require a Council majority, which is at least three Councilmembers. If following the City Attorney's reading of the title, at least three Councilmembers voted to move to waive the first reading beyond the title and introduce amended Ordinance No. 302, the Ordinance would return for adoption at a second reading. This must take place at a regular Council meeting, making the November 5, 2019 Council meeting the soonest date for the second reading to adopt Ordinance No. 302. As a result, December 5, 2019 would be the soonest effective date for Ordinance No. 302.

Analysis:

The first two sections below, the Fremont Rent Review Ordinance and the Proposed Milpitas Rent Review Ordinance, have been carried over from the September 17, 2019 agenda report to serve as reference.

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 originally did 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 and Council have provided input that the Milpitas Rent Review Ordinance rent threshold be set at 5% or 7%. The study session had Council discussion to lower the threshold for rent review to 5% and the proposed ordinance reflects such. This means that in order to trigger a rent review, a proposed rent increase would need to exceed 5% in any 12-month period.
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 2012 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.

Assembly Bill 1482

AB 1482 implements two concurrent protections on applicable units: (1) a cap on rent increases and (2) just cause eviction protection. A discussion on each follows.

Rent Cap

AB 1482 introduces a cap on rent increases that would allow a landlord to raise the rents by 5% per year plus the percentage change in the cost of living, or 10%, whichever is lower. To provide historical context, staff researched the annual percentage change for the Bay Area Consumer Price Index (CPI) for the last five years. In 2018, 2017, 2016, 2015, and 2014, the CPI increase was approximately 3.9%, 3.2%, 3.0%, 2.6%, and 2.8%, respectively. The latest forecast for 2019 is a CPI increase of approximately 3.9%, which under AB 1482 would have allowed a maximum rent increase of 8.9%.

Just Cause Eviction Protection

AB 1482 includes just cause eviction protection for tenants. Just cause eviction protection would require a landlord to have a valid reason for terminating a tenancy. Some examples of just cause include non-payment of rent, violation of a lease term, and nuisance. AB 1482 does not apply to tenants who have been residing in the unit for under 12 months. However, on average, tenants are more likely to sign a one-year lease agreement versus a month-to-month agreement. Additionally, those tenants who sign a one-year lease are guaranteed protection under that lease agreement unless they substantially violate the terms of the lease. Under current California law, in leases from month to month, a landlord must provide a tenant with 30 days' notice prior to a rent increase of 10% or less, and 60 days' notice prior to a rent increase greater than 10%. Under AB 1482, the exclusion of tenants who have lived in units for under 12 months may not have much impact on unjust evictions.

Range of Applicable Units

AB 1482 applies to all housing units except single family homes (except those owned by real estate investment trusts or corporations), owner occupied duplexes, subsidized housing units or units receiving other sources of state/federal assistance, and units built in the last 15 years. Therefore, owners of these unit types would be permitted to raise the rent without being subject to the statewide cap.

Rent Review Program and Applicable Units

On September 17, 2019, staff presented the first version of the Rent Review Ordinance. The ordinance was written to apply to more unit types than AB 1482 and would allow all single family homes, subsidized housing units, and units built in the last 15 years to be subject to rent review. On September 24, 2019 during a study session, the Housing Subcommittee and City Council asked staff to provide further data on subsidized housing units, single family homes owned by corporations or real estate investment trusts (REITs), and to discuss the potential impact of including or excluding certain unit types from the ordinance.

Single Family Homes

Currently, the City estimates there are approximately 2,000 non-owner occupied single family homes in the City. Of those, approximately 86% are owned by individuals, while 14% are owned by real estate investment trusts and corporations. Under AB 1482, the 14% not owned by individuals is subject to a cap on rent increase and just cause evictions. With the Rent Review Ordinance, the City Council may choose to mirror AB 1482 by including rent review for single family homes owned by a corporation or REIT only.

Subsidized Units

There are approximately 1,400 subsidized units in Milpitas. Approximately 494 of those are units for Section 8 voucher holders. Tenants in these units could receive increases that could negatively impact them if the landlord requests a rent increase that goes above what the Housing Authority is authorized to pay. The remaining 900+ units are below market rate rental units that the City has authority over via regulatory agreements. These units receive direction from City staff on the maximum allowable rental rates based on household size and income. Thus, this subset of subsidized units is less likely to be subject to large,

unexpected increases. With the Rent Review Ordinance, the City Council may choose to mirror AB 1482 by not including subsidized units for rent review.

As discussed above, per Fremont's annual report, the 12 rent review cases that were exempt due to the tenant living in subsidized or Below Market Rate housing experienced an average increase of 28.9%. As a result, Fremont amended its Rent Review Ordinance effective July 1, 2019 to no longer exempt rental units subsidized by a government agency.

Units Built in the Last 15 Years

The City has built approximately 2,000 new housing units in the past 15 years, most of which have been built in the last four years. These units would tend to be class A apartment buildings with higher-priced units. Should the Council choose to exclude these units from the rent review ordinance, the impact to lower income residents would likely be minimal.

Policy Alternatives:

Alternative 1: Do not adopt a Rent Review Ordinance.

Pros: The City would save funds, 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. Council input has also been obtained. The ordinance will create a more fiscally equitable solution for both landlord and tenants and provide tenants the additional protections they need.

Alternative 2: Introduce the Rent Review Ordinance, and do not adopt as an urgency ordinance.

Pros: Tenants would have a recourse to seek rent review through the City for rent increases that exceed the defined threshold.

Cons: The effective date of the ordinance would be delayed until 30 days after adoption. The earliest effective date would be December 5, 2019. Rent increases may be levied before the effective date that exceed the threshold without potential rent review.

Fiscal Impact:

The fiscal impact for adopting a rent review program was addressed in the September 17, 2019 agenda report. The fiscal impact to the City would be \$50,000 per year for Project Sentinel to manage the rent review program. On September 17, 2019, Council approved 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.

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. Adopt an Urgency Ordinance enacted pursuant to California Government Code Section 36937 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;
or
3. Following the City Attorney's reading of the title, move to waive the first reading beyond the title and introduce amended 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.

Attachments:

- a. Urgency Ordinance
- b. Regular Ordinance No. 302 (amended)