

COMMITTEE MEMBERS

Ronald E. Leone, Chair
Carlyn S. Obringer, Member

Civic Center
1950 Parkside Drive
Concord, CA 94519
www.cityofconcord.org



**Special Meeting of the
Housing & Economic
Development
Committee**

Monday, March 6, 2017

5:30 p.m.

City Council Chamber
1950 Parkside Drive

AGENDIZED ITEMS – The public is entitled to address the Committee on items appearing on the agenda before or during the City Council’s consideration of that item. Each speaker will be limited to approximately three minutes.

1. ROLL CALL

2. PUBLIC COMMENT PERIOD

3. REPORTS

- a. **Considering** – recommendations on a proposed Rent Mediation Program.
Report by Laura Simpson, Planning Manager.

4. ADJOURNMENT

ADA NOTICE AND HEARING IMPAIRED PROVISIONS

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Distribution: City Council
Valerie Barone, City Manager
Susanne Brown, City Attorney
Justin Ezell, Director of Public Works
Joelle Fockler, City Clerk



3.a

Staff Report

Date: March 6, 2017

To: Council Committee on Housing & Economic Development

From: Valerie J. Barone, City Manager

Reviewed by: Victoria Walker, Community and Economic Development Director

Prepared by: Laura Simpson, Planning Manager and John Montagh, Housing and Economic Development Manager
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Subject: **Consideration and Recommendations on a Proposed Rent Mediation Program**

Report in Brief

This staff report responds to direction from the Housing and Economic Development (HED) Committee to provide recommendations on the elements of a non-binding Rent Mediation Program. It follows a series of study sessions and reports to the City Council and the HED Committee to address the issue of rising rents in the city. The report incorporates the direction to staff from the HED Committee at their January 30, 2017 meeting in order to present a proposal that can be recommended for consideration by the full City Council.

Recommended Action

Hear the report, take public testimony, provide feedback on the Rent Mediation Program proposal, and direct staff to provide the Committee's recommendations to the City Council.

Background

Between June and November 2016 the City Council and City Council HED Committee held a total of five meetings to discuss rental housing policy in Concord and consider public testimony on this subject. At the November 29, 2016 meeting, Council directed staff to establish a rental housing reporting line and to return to the HED Committee in January 2017 for discussion of a potential non-binding rent

review program. At the January 30, 2017 meeting, the HED Committee provided direction on a number of key questions regarding the scope and structure of such a program. The staff report provides an outline of a proposed non-binding Rent Mediation Program.

As stated in the January 30, 2017 staff report, the current proposal is for non-binding rent review and mediation, and not for rent control. The HED Committee reiterated its preference for a non-binding program at the January meeting, and felt that a Rent Mediation Program was an appropriate strategy to mitigate very large rent increases in the city. Representatives of the California Apartment Association expressed support for a non-binding program at the January 30 meeting, while representatives of Tenants Together, a tenant advocacy group, questioned the effectiveness of such a program and expressed support for rent control.

Overview of Policy Questions Presented on January 30

Staff presented the HED Committee with the following policy questions at its January 30 meeting:

1. Should the program be voluntary or mandatory?
2. Should the City create a 5-member Rent Review Board to consider appeals of large rent increases, or should it direct appeals to a housing counseling agency for mediation?
3. What types of rental housing units should be covered by the program?
4. What should the threshold be for a rent increase to be eligible for an appeal?
5. What other provisions should be included in a rent review ordinance?
6. Should the City seek to recover the cost of the program through a fee on rental units?

To provide a point of reference, the staff provided an overview of rent review/mediation programs in San Leandro, Fremont, Mountain View, and several other jurisdictions at the January 30 meeting, addressing how each of these communities has answered these questions. The HED Committee provided feedback on each of the questions listed above, enabling staff to develop the following proposal.

Analysis **Rent Mediation Program Proposal**

Mandatory, Non-Binding Program. All landlords with buildings meeting the eligibility criteria would be required to participate in the program. Even though the rent review decisions themselves would be non-binding, landlord participation in the program would be mandatory.

Units Covered. The program would cover all properties with three or more rental units, excluding projects in which all units are “affordable.”¹ Single family homes, rented condos, and duplexes would be exempt. Triplexes would be exempt if the owner lived in one of the units. The program would include approximately 8,100 rental units located on approximately 450 properties in Concord.

Mediation-Based Program, with a Hearing Officer. The Council HED Committee expressed a preference for a mediation-based program, rather than a program where a five-member Rent Review Board was convened to conduct hearings. The City would contract with a non-profit housing counseling agency for professional mediation services. The logistics of the proposed mediation program are laid out in the next section of this report (see “Process for Mediation” on page 3).

Threshold for an Appeal. Not all rent increases would be eligible for an appeal. The HED committee indicated its preference that appeals be limited to rent increases exceeding 10 percent in a twelve month period. For perspective, the average rent on a 2-bedroom Concord apartment is \$1,678. An annual rent increase of 10% would be equivalent to \$168 a month. For the average-priced apartment, a rent increase greater than \$168/month would be eligible for an appeal while an increase of less than that amount could not be taken into mediation.

Other Provisions. The HED Committee expressed support for a Rent Mediation ordinance that included:

- A requirement that all landlords apprise their tenants of the opportunity for mediation at the same time they provide the State-mandated 30-day/ 60-day notice of a pending rent increase. This notification would be mandatory for all rent increases in all buildings with three or more rental units. The notice would be printed in English and Spanish. If a landlord fails to include this notification, the proposed rent increase would be null and void.
- A provision that limits annual rent increases to no more than one every twelve months. More frequent increases could be permitted with the written consent of the tenant (for instance, allowing a one-year increase to be phased in over time).
- Anti-retaliation provisions to protect tenants filing mediation requests from being harassed or evicted by their landlords that are consistent with State law. The Committee indicated that those required by State law would be adequate and ordinances typically reflect state law in these areas.

¹ “Affordable” housing projects include developments in which occupancy is restricted to tenants earning less than certain federally-set thresholds, with maximum rents capped by various local, state, and federal programs.

Basic Habitability Issues.

Through the series of public meetings at which rental issues were discussed, the City Council made the decision to make the City's Multifamily Rental Inspection Program a more robust program by shortening the inspection cycle from every three years to every two years, and by adding two new staff to the program. If issues arise as to habitability or repairs, the tenant may report this and it will be handled through the Multi-family Rental Inspection Program. The Committee had suggested that staff evaluate incorporating a requirement for a basic habitability standard in the rent mediation ordinance. However, doing so does not seem necessary given the recent actions of the Council to enhance the City's Multi-family Rental Inspection Program so that it is robust and can proactively perform education and outreach, work on a shorter rotation cycle inspecting units more frequently, and be very responsive to complaints received.

Timing for Filing Mediation Requests. Staff recommends that tenants be given 15 calendar days to request mediation following their receipt of a rent increase notice. This is somewhat shorter than the 21 days offered in San Leandro, but is the same as the time window provided in Fremont. The landlord would be notified of the request for mediation within three business days, which is the same time window provided in Fremont. The landlord would then have three business days to respond to Rent Mediation Program staff by phone or email.² (Rent Mediation Program staff are recommended to be provided by a non-profit housing counseling services provider as discussed below.) Failure to respond would render the proposed rent increase invalid.

Process for Mediation.

A three-step mediation process is proposed. It is presumed that this process would be administered by a non-profit housing counseling services provider retained through a Service Agreement with the City.

Step One: Conciliation. Requests for rent review would go directly to the City's contracted housing counseling service. The housing counselor would notify City staff of the request, and contact the landlord within three business days.³ Conciliation consists of a series of phone calls to the landlord and tenant, with the aim of negotiating a solution informally. Once initiated, the conciliation period would be a maximum of 10 business days. If an agreement is reached, it would be made in writing and be binding on the parties involved (although neither the landlord nor the tenant is obligated to reach an agreement).

Step Two: Mediation. In the event the conciliation process does not result in an agreement acceptable to both parties, the housing counselor would initiate formal

² This staff report presumes that rent review requests would originate from tenants rather than landlords. However, the Ordinance would be structured so that landlords also could file requests for mediation, with tenants receiving notice of the request.

³ See prior footnote. If the request for mediation is made by a landlord, the tenant would be notified.

mediation proceedings. (For example, ECHO is a local housing counseling services provider that has professional mediators on staff.) Both parties would meet face to face at a mutually agreed upon time, with the mediator present. Mediation may go on for up to 30 calendar days, and both parties are required to appear and participate in good faith.

Step Three: Hearing. It is expected that most cases will be resolved through conciliation or mediation. However, in the event that an agreement is not reached, the housing counselor would have the option of convening a public hearing in which additional parties could be engaged. The hearing would be publicly noticed, and open to all interested parties. As with conciliation and mediation, the hearing recommendations would be non-binding.

The HED Committee expressed interest in having the mediation process (Step 2) occur in a public hearing format, noting that the highly visible aspect of a hearing might be a disincentive for landlords to pursue very large rent increases. However, staff subsequently contacted ECHO Housing, an East Bay housing counseling service provider with extensive experience in housing mediation. ECHO recommended against public hearings for mediation, and advised that mediation is most successful when conducted in a private setting. ECHO's executive director observed that mediation is a personal, emotional process for both the landlord and the tenant and that the presence of an "audience" could inhibit or bias the communication process. An alternative is to post results of mediation on the City web site to inform the public of the process and results. This may show a certain rental housing project has experienced more problematic appeals, for example.

Staff proposes that Step Three provide the option of a public hearing for cases where mediation does not resolve a rent dispute. In this instance, the City's housing counselor or other appropriate hearing officer could serve as a hearing officer. Alternately, Concord could follow the City of Fremont's model and create a 3-member panel to conduct the hearing. Fremont's ordinance authorizes the City to convene such a panel, comprised of one landlord, one tenant, and one neutral third party. The three members of the panel are drawn from a pre-selected "pool" of 15 candidates who may be called upon as needed in the event a hearing is needed.

If a hearing is convened, it would take place within 15 business days after it is determined that mediation has not been successful. Any agreement reached by the landlord and tenant to accept the recommendations of the panel (or hearing officer) would be made in writing and signed by all parties.

Cost Recovery Program.

As noted in the January 30 staff report, the Rent Mediation Program would require additional funds to cover the cost of housing counseling services, City staff time, and City Attorney time. Should the Council proceed with a rent mediation program, staff will

recommended creating a “Housing Coordinator” position (equivalent to an Administrative Analyst staff position) in the Community and Economic Development Department. It is estimated that approximately half of this individual’s time would be spent administering the Rent Mediation Program. The Housing Coordinator would also administer other housing programs that the City currently out-sources.

As noted in the January 30 staff report, it is estimated that the City’s costs for the program would be between \$100,000 and \$150,000, including staff and attorney time as well as counseling services. It was previously noted that San Leandro’s contract with ECHO Housing for housing counseling services is approximately \$45,000 annually. These services are provided on a time and materials basis, and are billed hourly.

The HED Committee has indicated an interest in funding the Rent Mediation Program through a fee on rental units. Assuming 8,100 rental units are participating in the program, the fee per unit could be higher than \$20 (recovering the full cost, including City attorney costs and staff), or as low as \$6 per unit (covering the contract with the Housing Counseling service only).

Staff has not yet solicited cost estimates from potential housing counseling service providers, as the parameters of the program are still evolving.

Supplemental Information on Concord Rents.

At the January 30 meeting, staff reported that average rents in the City as of the fourth quarter of 2016 were \$1,635. The HED Committee requested that this information be provided based on unit size.

Based on data provided by Costar, average rents by bedroom as of the fourth quarter were:

- Studio: \$1,184
- 1-bedroom: \$1,331
- 2-bedroom: \$1,678
- 3-bedroom: \$1,959

The above figures are for rental apartments and exclude rented condominiums, single family homes, in-law apartments, and mobile homes.

Financial Impact

The costs associated with the proposed Rent Mediation Program are proposed to be recovered through a collection of an annual fee per unit from landlords and are discussed in more detail above.

Public Contact

This report builds on prior reports to the Council and HED Committee, which were developed through consultation with landlord and tenant advocacy groups, interviews with several cities with rent review programs, and testimony from dozens of tenants and landlords at prior Council study sessions. Staff also interviewed ECHO Housing's Executive Director prior to preparing this report. In addition, the agenda for this meeting was posted and the meeting was noticed in a manner consistent with City requirements. Those who spoke before the City Council at prior meetings on rental housing or who have submitted prior correspondence to the City Council on the topic also received notice. The agenda was posted.

Attachment

1. Correspondence

Simpson, Laura

From: Theresa Karr <TKarr@caanet.org>
Sent: Tuesday, February 07, 2017 5:26 PM
To: Montagh, John; Simpson, Laura; Barry Miller
Cc: Leone, Ron; Carlyn Obringer
Subject: Concord Rent Hot Line and more
Attachments: Concord Rent Reporting Flyer.pdf

We respectfully submit a few observations, comments, suggestions and questions - Thank you.

City of Concord's Rent Hot Line

I have had a few inquiries and concerns regarding the city's rent hotline. Managers receiving calls from the city did not understand exactly what they were being asked to verify. We alerted our members about the city's rent hot line with news article and city's flyer. The attached flyer that the city sent out did not mention if or how they were going to verify rent increases.

Rent information collected from tenant – Tenants can report rent increases given in the last 12 months. Rent verification from owner/manager – In addition to the amount of the rent increase an effective date will need to be included with the inquiry. Large apartment complexes with hundreds of tenants and rent increases spread throughout the year will need to know the amount and the effective date of the rent increase in order to verify. Onsite managers may not be able to verify over the phone depending on company policies. The city may want to develop a request form that can either be electronically sent to the complex to be completed and returned and/or have a form that is secure on the city's website that the manager can complete and return. I understand the city is not asking for personal tenant information but it may be company policy to require all rental inquiries be submitted and answered in writing. Plus, if you implemented a written and/or electronic form from your database it increases efficiencies in identifying and tracking rent information and possible duplications. The later may be more difficult since several tenants could have received the same rent increase effective the same date at the same multi-housing complex.

Mediation program

Limiting one rent increase over a 12-month period. We understand the logic but perhaps you could consider no more than two rent increases in a 12-month period. The logic behind this request is two-fold. Using the 10% threshold to qualify for rent mediation may keep owners/managers from increasing rents 10% or more but by limiting a rent increase to once in a 12-month period may encourage the owner/manager to increase rent every 12-months, if the market allows, by 9% due to unforeseen utility and maintenance increases. Allowing some flexibility may benefit the tenant. Allowing two rent increases in a 12-month period permits the owner/manager to increase rent or not at a lower percentage or if unplanned increased utilities and maintenance issues occur. If two rent increases happen over a 12-month period and the combined increase is 10% or more the tenant still has the option to request a rent mediation.

Public hearings. Although we believe this will be rarely used, this process may need to be more thoroughly vetted. The idea of a public hearing as a means to publicly resolve a rent increase that could not be resolved in mediation will probably have a huge impact on encouraging mediation resolutions. This type of hearing could expose and embarrass the owner/manager and/or tenant by making it a less than desirable last

resort. Our questions are: What if the public hearing doesn't produce an agreement? Is there another recommended solution? What happens next?

Theresa Karr · Vice President of Public Affairs
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