



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: April 24, 2017

Approved

D. D. S. Y. L.

Date

4/25/17

SUBJECT: EXTENSION OF THE INTERIM AMENDMENT TO THE APARTMENT RENT ORDINANCE AND REMOVAL OF EXEMPTION FOR APARTMENTS WITH GOVERNMENT RENT SUBSIDIES

RECOMMENDATION

Approve an ordinance amending Part 8 of Chapter 17.23 of Title 17 of the San José Municipal Code (Interim Ordinance) to extend the termination date of the Interim Ordinance until the earlier of December 31, 2017 or sixty days after the effective date of an Ordinance amending Chapter 17.23 consistent with Council direction (New Apartment Rent Ordinance) and to add a provision amending the definition of Rental Unit to eliminate the exemption for rental apartments with tenants whose rent is subsidized by a government agency.

OUTCOME

Extending the termination date of the Interim Ordinance will ensure that the requirements established by the Interim Ordinance remain in effect until the New Apartment Rent Ordinance can be adopted and implemented. The existing Apartment Rent Ordinance (Chapter 17.23 of Title 17 of the San José Municipal Code) exempts apartments that are occupied by tenants with government rental subsidies from its requirements, including the requirement that rents not be raised after a no-cause eviction. Eliminating this exemption will remove the incentive for owners to give existing tenants no cause notices and replace them with tenants with government subsidies. It will also allow tenants with government subsidies to receive services from the Housing Department including the ability to submit a petition when services have been reduced or eliminated.

BACKGROUND

On April 19, 2016, the City Council considered changes to the Apartment Rent Ordinance (ARO). City Council directed staff to return with amendments making several permanent modifications to the ARO, including lowering the 8% allowable annual rent increase to 5%, eliminating the debt-service pass-through provision, and implementing a rent registry. Additionally, the City Council directed staff to return on May 10, 2016 with an urgency ordinance that provided a temporary pause in rent increases to apartments subject to the ARO.

On May 10, 2016, the City Council adopted the Interim Ordinance to reduce uncertainty for both tenants and landlords and provide temporary requirements that owners of apartments subject to the ARO must follow. The Interim Ordinance reduced the annual allowable rent increase on tenants from 8% to 5%, eliminated rent increases available through the pass-through provisions (including debt-service, capital improvement, rehabilitation, and operations & maintenance) and implemented a fair return petition process. The Interim Ordinance was approved to be effective until January 1, 2017.

On August 30, 2016, the City Council approved amendments to the existing regulations for the Apartment Rent Ordinance (Interim Regulations) providing procedures for the fair return petition process. On September 27, 2016, the City Council adopted an amendment to the Interim Regulations to provide greater clarity regarding requirements for the fair return petition process. On October 18, 2016, the City Council adopted an ordinance extending the termination date for the Interim Ordinance to June 30, 2017. On April 18, 2017, the City Council directed the staff to return with an ordinance to remove the ARO exemption for rental apartments with tenants whose rent is subsidized by any government agency.

ANALYSIS

Extension of the Interim Apartment Rent Ordinance

When the Interim Ordinance was approved, the Housing Department informed City Council that it intended to return with the New Apartment Rent Ordinance by the end of the current calendar year. The Housing Department recognizes a need to provide additional protections to residents. Therefore, the Department has focused on bringing the Ellis Act Ordinance and Tenant Protection Ordinance for City Council consideration prior to returning with the New Apartment Rent Ordinance.

On February 21, 2017, the City was impacted by the Coyote Creek Floods, displacing many families residing in flood-affected neighborhoods. The Housing Department redirected staffing, resources and services to assist flood survivors. This impacted staff's ability to work on the New Apartment Rent Ordinance and has resulted in a delay in completing outreach and other efforts related to the Ordinance.

The Interim Ordinance is set to terminate on June 30, 2017. However, the Department is recommending that the Interim Ordinance termination date be extended to the earlier of December 31, 2017 or sixty days after the effective date of Modified Apartment Rent Ordinance.

It is the Housing Department's intention to return to the City Council with the Modified Apartment Rent Ordinance in fall 2017. The Department is requesting an extension to December 31, 2017 to ensure that the Ordinance and the regulations are completed prior to the expiration of the Interim Ordinance.

Proposed Modification of Section 17.23.150.C of the Interim Ordinance

Section 17.23.150 of the ARO provides that some apartments that would be otherwise covered are exempt from ARO requirements. Specifically, Section 17.23.150.C exempts apartments "whose rent is subsidized by any government agency. On April 18, 2017, the City Council approved the Housing Department's recommendation to return with an ordinance eliminating this exemption. If this is approved, apartments with tenants that have Housing Choice Vouchers, Veterans Affairs Supportive Housing (VASH) vouchers, or any other government subsidy that is paid on behalf of a tenant will no longer be exempt from ARO requirements.

This modification will eliminate the financial incentive for landlords to displace long-term tenants residing in rent-stabilized apartments for a tenant that has a rent subsidy. Currently, a landlord is allowed to terminate a long term tenant with a 90-day "No-Cause" termination notice. Upon the vacation of the apartment, the landlord could rent to a person with a rental subsidy, such as the Housing Choice Voucher, VASH Voucher, or City-funded rental subsidy, and increase the rent to a rate which could be much higher than the rent that would be allowed under the Interim Ordinance. By removing this exemption, owners will be subject to the 5% annual allowable rent increase. However, if the previous tenant left voluntarily or was evicted for good cause, the landlord would be able to reset the rent to market and could receive the entire financial benefit of the subsidy.

It should be noted that this provision is important for the current implementation of the ARO. Upon the City's Council's approval of full just cause protections, this exemption may not be as important since evictions will be limited to those that meet the good cause termination requirements in the Tenant Protection Ordinance. There are additional benefits that the tenant would be eligible to receive which include being able to petition the Housing Department if there is a service reduction or an increase in rent that exceeds the annual limit. Currently, these services are not provided to tenants who receive government subsidies because their apartments are exempted from the program. It is anticipated that the definition of rental unit will be updated for clarity when the Modified Apartment Rent Ordinance is adopted.

As a final point of clarification, the exemption for apartments owned or operated by a government agency will remain in place. The exemption for apartments subject to recorded affordability covenants that are rented to low income persons at restricted affordable rents, will also remain exempt.

PUBLIC OUTREACH

This item will be posted on the City's Council Agenda website for the May 9, 2017 Council Meeting. The Housing Department will send notices regarding this meeting to ARO apartment owners and residents via its email interest lists.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

The Housing and Community Development Commission (HCDC) held its regularly scheduled meeting on April 13, 2017. As part of its recommendations on the Tenant Protection Ordinance, The HCDC recommended that the City Council "direct the City Manager to instruct staff to return with an amendment to the Interim Apartment Rent Ordinance to remove the exemption for units with rental subsidies and to make that change to the forthcoming revised Apartment Rent Ordinance." The motion passed unanimously (10-0).

CEQA

Exempt, Section 15061(b)(3) No potential for causing a significant effect on the environment.
File No. PP16-051.

/s/
JACKY MORALES-FERRAND
Director, Department of Housing

For questions, please contact Rachel VanderVeen, Program Administrator, at (408) 535-8231.