



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO HOUSING AND HUMAN SERVICES COMMISSION

#### **SUBJECT**

Consider Requirements for a Tenant Protections and Right to Lease Ordinance (Study Issue)

#### **BACKGROUND**

On October 12, 2020, City Council approved the Housing Strategy (RTC No. 20-0809), which resulted from a cumulation of many workshops, outreach meetings and several public hearings. The Housing Strategy identified areas for improvement to current programs as well as new programs to consider for Sunnyvale's growing population and housing needs. Two items from the Housing Strategy that emerged as Tier 1 and 2 items were a relocation assistance requirement for no-fault just cause evictions and a right to lease requirement for landlords to offer tenants a longer-term lease rather than just month-to-month tenancy. The right to lease component of this ordinance was also a 2019 Study Issue (CDD 18-0710). City staff realized an opportunity to combine both projects into one and named it Tenant Protections. If approved, the resulting Ordinance will become part of Sunnyvale's Municipal Code.

The Housing and Human Services Commission (HHSC) was originally scheduled to review this item on August 24, 2022; the HHSC continued the discussion to the meeting of September 21, 2022. At this point only the main provisions of the ordinance will be considered. Staff will return to the HHSC with an ordinance. The Planning Commission continued their scheduled September 12, 2022 hearing on this topic to September 26, 2022. Ultimately the City Council will consider an ordinance addressing tenant protections and right to lease.

#### **EXISTING POLICY**

##### **Sunnyvale General Plan, Housing Element**

**GOAL HE-1** Adequate Housing: Assist in the provision of adequate housing to meet the diverse needs of Sunnyvale's households of all income levels.

**GOAL HE-2** Enhanced Housing Conditions and Affordability: Maintain and enhance the conditions and affordability of existing housing in Sunnyvale.

**Goal HE-5** Equal Housing Opportunities: Promote equal housing opportunities for all residents, including Sunnyvale's special needs populations, so that residents can reside in the housing of their choice.

#### **ENVIRONMENTAL REVIEW**

The action being considered is exempt from the provisions of the California Environmental Quality Act ("CEQA") under CEQA Guidelines Section 15061(b)(3) in that the City Council finds there is no possibility that the implementation of this ordinance may have a significant effect on the environment.

## **DISCUSSION**

Housing in Sunnyvale and the greater Bay Area is marked by high home values and rents. At a minimum, the cost of housing is driven by both the high demand from strong employment growth and the limited housing supply. Unfortunately, a limited supply of housing can result in changes in land use that may leave renters with fewer options for housing. During the Housing Strategy outreach meetings and community workshops in 2019, renters in the community expressed concerns about the rental housing market; specifically, affordability, lack of affordable units, and tenant protections. Although there are current State Laws to address some of these items, renters were looking for increased protections and stability.

### **Existing State Law - AB 1482**

Governor Newsom signed Assembly Bill (AB) 1482, which added Section 1946.2 to the California Civil Code, to address and create a number of rental housing policies including maximum annual rent increases for certain properties, just cause eviction protections for those evicted due to no-fault of the tenant, and relocation assistance for those displaced. AB 1482 went into effect on January 1, 2020, and sunsets on January 1, 2030. AB 1482 is the basis for the City's proposed Tenant Protections Ordinance. Below is a summary of AB 1482:

- **Rent Cap**
  - Places an upper limit on annual rent increases: five percent (5%) plus cost-of-living inflation based on the Consumer Price Index (CPI) up to a maximum of 10 percent (10%) increase each year.
  - Allows only one rent increase over a 12-month period.
  - Rent cap is only applicable to existing tenants, and landlord may increase rent as needed in between tenancies.
  - Exemptions from this rent cap include:
    - Properties issued a Certificate of Occupancy within last 15 years.
    - Single family homes, townhouses, and condominiums, unless owned by investment trust, corporation or LLC.
    - Owner occupied duplexes.
    - Properties subject to more restrictive local rent control ordinances.
- **At-Fault Just Cause Eviction Protection**
  - Landlords who evict tenants for an at-fault eviction are not required to pay the tenant any type of relocation assistance. Examples of at-fault just causes include:
    - Non-payment of rent.
    - Criminal activity.
    - Breach of material lease term.
    - Commission of nuisance, waste, or criminal acts.
    - Subletting unit.
    - Failure to vacate after providing notice.
- **No-Fault Just Cause Eviction Protection**
  - For events of eviction that are not the fault of the tenant (no-fault) but are a legal cause for eviction are referred to as "no-fault just cause". In these instances, AB 1482 requires the landlord to provide 30 days' notice to the tenant and the landlord is required to pay

an amount equal to one-month's rent as relocation assistance. No-fault just causes include:

- Compliance with a government order or a local ordinance that requires vacation of the unit (e.g., red tag).
- Removal of the rental unit from the marketplace.
- Intent to demolish or substantially remodel the unit.
- Intent to occupy the residential property or for specified family members of the landlord to occupy the property (only if the tenant agrees to such termination or if the lease allows for unilateral termination).

## **Outreach**

### **Surveys**

Housing staff conducted three surveys to gather input on the tenant protection topics.

#### 1. Local Jurisdictions:

Staff used internal county-wide housing working group meetings to discuss the proposed ordinance and learn more about neighboring jurisdictions. Attachment 2 provides the results from the survey. The four cities that have existing tenant protections programs (either through Rent Control or other) include Mountain View, Palo Alto, San Jose and Milpitas.

#### 2. Stakeholders:

Staff surveyed landlords, property managers, and owners of multifamily rentals to gauge concerns regarding enhanced protections. In all, 714 responses were received. Attachment 3 provides informational results gathered from the survey (see pages 1-3). Attachment 3 also includes merged stakeholder/general comments that staff felt were important to show together (see pages 7-8). Overall, main themes from respondents included:

- One-year lease is preferred and offered the majority of the time.
- Requiring a right to lease could have a negative impact on their rental property, including loss of flexibility, loss of the unit from the market place and in some cases could result in an increase in rent.
- Respondents have not evicted a tenant for a no-fault just cause reason.
- Requiring relocation assistance over and above State Law will have a negative impact on their rental, including an unfair economic burden placed on landlords, and more specifically smaller landlords. It may also result in an increase in rents and may result in some units being removed from the rental market.

#### 3. General Public/Tenants:

The City received 261 responses from renters in Sunnyvale and/or members of the public. Attachment 3, pages 4-6, provides informational results gathered from the survey. As stated above, pages 7-8 of Attachment 3 are merged stakeholder/general comments that staff felt were important to show together. Overall, main themes of responses included:

- They are currently in a one-year lease and that is their preferred term.
- They did not see many negative impacts to a landlord being required to offer a one-year lease. A small amount of survey respondents did think that it could result in an increase in rent.

- They have not been evicted for a no-fault just cause reason.
- They thought it would have a positive impact on their household if the landlord was required to pay over and above the relocation requirements of State Law.

### *Outreach Meetings*

Staff held three outreach meetings: two for stakeholders and one for the general public/tenants. Feedback from the stakeholders' outreach meeting includes:

- Current State Law provides adequate protection for tenants.
- Smaller property owners generally charge rents below market rates and that having to pay two or three times the fair market rent for Santa Clara County for a no-fault just cause eviction would create a financial burden.
- Smaller property owners are already assisting the community by not charging market rate rents.
- Sunnyvale's new Ordinance should keep the State's requirement regarding relocation after the initial 12 months of residency.
- Only moving cost support should be considered if a landlord or property owner can provide a "like unit" within a reasonable distance of the current property.
- It could be overly burdensome on landlords and property owners by creating additional steps in the leasing process.
- It would create an issue for renters and owners who are looking to rent a room(s) in their home for a short period, typically three months and who are not in the short-term rental business, similar to Airbnb and VRBO.

The feedback from the general public/tenants outreach meeting was that:

- Increased protections for renters are needed.
- More than one month's rent would be needed to pay for relocation assistance.
- It may be difficult to find a similar type of rental at the same rate in Sunnyvale.
- It should be the City's responsibility to educate property owners and landlords on any new right to lease requirements.

Attachment 4 contains all correspondence received by the public as a result of the surveys and outreach meetings.

### **Proposed Ordinance Requirements**

Staff considered many options to craft an ordinance (Attachment 5) to ensure that the requirements are not overly burdensome to landlords and property owners while ensuring enhanced protections to renters. Main considerations included:

- How many months of rent should relocation assistance be?
- Should the City consider Fair Market Rent (FMR) for Santa Clara County, a set amount that is

indexed annually, or use the contract base rent being charged for the unit?

- Should these requirements apply to the rental mobile home parks in Sunnyvale and those renting a park-owned mobile home?
- Should household income be a consideration for determining relocation amounts over and above State Law?
- Should enhanced tenant protections apply to all developments as expressly outlined in State Law or should they apply to all properties regardless of when the Certificate of Occupancy was issued?
- Should the City allow tenants currently renting on a month-to-month basis to request a 12-month lease?

Using AB 1482 as the basis for the City's ordinance (Attachment 5), and considering what neighboring jurisdictions offer in terms of tenant protections, the City is proposing the ordinance differ from AB 1482 in only the following ways:

1. All subject rental units, including those that received a certificate of occupancy (COO) within the last fifteen (15) years, shall be subject to the City's ordinance.
  - *Current state law exempts units that have been built within 15 years.*

The City ordinance will parallel all the other state exemptions which are:

- *Homes NOT owned by a corporation, real estate investment trust (REIT), or an LLC where one member is a corporation,*
- *Any duplex where the owner occupied the unit before the other unit's tenancy and continues to occupy the unit.*
- *Housing restricted by a deed, regulatory restrictions, or other recorded document limiting the affordability to low or moderate income households.*
- *Rental property subject to local ordinances that restrict rent increases to less than 5% plus CPI. (rent cap exemption only)*
- *Single family homes where the owner occupies and rents at least 2 bedrooms or units (ADUs and JADUs). (just cause exemption only)*
- *Owner occupied rental properties where tenant shares bathroom or kitchen facilities with the owner. (just cause exemption only)*
- *Hotels*
- *Rental property provided by non-profit hospitals, organizations such as churches, extended care for the elderly, adult care facilities etc. (just cause exemption only)*

2. Relocation assistance for tenants residing in a subject rental unit shall receive relocation

assistance equal to two months of rent.

- *Current state law is one (1) month rent.*

The right to lease portion of the ordinance would include:

3. Landlords shall be required to offer a one (1) year lease to all new tenants. If tenant rejects a one-year lease, the landlord may then offer a shorter-term lease, including month to month.
4. Tenants with leases in place prior to the effective date of the Tenant Protections Ordinance shall have 120 days from the effective date of the Ordinance to request a one (1) year lease from their landlord.
5. Leases offered by landlords for a one (1) year term shall be substantially similar to all shorter-term lease offerings.

Tenants may use a city adopted ordinance as the basis of a private civil action or a defense to a wrongful detainer action. The City would not issue citations or bring legal action to enforce the ordinance on behalf of tenants.

### **FISCAL IMPACT**

There would be no direct impact to the General Fund with adoption of the proposed Ordinance. The Housing Division will continue to use federally funded tenant/landlord mediation and fair housing services to support Sunnyvale residents impacted by this new Ordinance.

### **PUBLIC CONTACT**

Public contact was made by posting the Housing and Human Services Commission agenda on the City's official-notice bulletin board outside City Hall and by making the agenda and staff report available on the City's website. Notice of a public hearing was published in a legal advertisement in the *Sunnyvale Sun* newspaper on August 12, 2022.

### **ALTERNATIVES**

Provide feedback to staff on desired ordinance:

1. Approve the requirements listed in Attachment 5 to the report and return to the Commission with an ordinance to add Chapter 19.71 (Residential Tenant Protections Ordinance) to Title 19 ("Zoning") of the Sunnyvale Municipal Code to create enhanced tenant protections.
2. Approve the requirements listed in Attachment 5 to the report and return to the Commission with an ordinance to add Chapter 19.71 (Residential Tenant Protections Ordinance) to Title 19 ("Zoning") of the Sunnyvale Municipal Code to create enhanced tenant protections, with modifications.
3. Provide other direction to staff if major modifications are desired.

### **RECOMMENDATION**

Alternative 1. Provide feedback to staff on desired ordinance and approve the requirements listed in Attachment 5 to the report and return to the Commission with an ordinance to add Chapter 19.71 (Residential Tenant Protections Ordinance) to Title 19 ("Zoning") of the Sunnyvale Municipal Code to create enhanced tenant protections.

Alternative 1 meets the City's goal of providing enhanced tenant protections while ensuring that we

are also cognizant of the landlords and property owners who already provide affordable housing in terms of affordable market rate rent. Additionally, the proposed ordinance requirements provide tenants and landlords/property owners with the stability and clarity that was identified in the Study Issue. After receiving feedback on the requirements for the ordinance, staff will prepare an ordinance that is easily understood by tenants and landlords and meets legal requirements.

Prepared by: Ernie Defrenchi, Affordable Housing Manager

Reviewed by Jenny Carloni, Housing Officer

Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Reserved for Report to Council
2. Survey Results - Surrounding Jurisdictions
3. Survey Results - Stakeholders/General Public
4. Correspondence Received from the Public
5. Comparison of State Law and Staff Recommended Requirements