

### REPORT TO COUNCIL

#### **SUBJECT**

Consider Adoption of an Emergency Ordinance Under Sunnyvale City Charter Section 701 to Implement Tenant Eviction Protections and Limit Large Rental Rate Increases Effective Immediately and Retroactive to October 8, 2019, to Avoid Circumvention of AB 1482

#### **BACKGROUND**

In 2019, the San Jose-Sunnyvale-Santa Clara metropolitan area had the highest overall housing costs in the nation, and the second highest residential rental rates after San Francisco, surpassing even New York City.<sup>1</sup> High rents are a direct cause of housing instability and homelessness. Landlords have strong financial incentives to evict long-term tenants who cannot afford rent increases, and replace them with higher income tenants who can pay market rates. Low and even moderate-income individuals and families can become caught in a cycle of evictions and displacement.

Assembly Bill 1482 was signed by the Governor on October 8, 2019 and becomes effective on January 1, 2020. AB 1482 implements two major tenant protections for renters in California: (1) a cap on rent increases beyond a statutory maximum, and (2) a prohibition on evicting tenants without “just cause.” The state legislation applies to rental apartment units that are more than 15 years old. There are a number of housing types that are exempt from the requirements imposed by AB 1482, including single family homes, condominiums, owner-occupied housing, and mobile homes.

#### **Rent Cap**

AB 1482 imposes a cap on rent increases that would prevent landlords from raising rents by more than 5% per year plus the percentage change in the cost of living, or 10%, whichever is lower. The increase is tied to annual April/April Bay Area Consumer Price Index (CPI). To provide historical context, staff researched the annual April CPI percentage change for the last four years. In 2018, 2017, 2016, and 2015, the CPI increase was approximately 3.2%, 3.8%, 2.7%, and 2.4%, respectively. The April 2019 Bay Area CPI increase was 4.0%, which would result in a maximum rent increase of 9.0% once AB 1482 becomes effective.

#### **Just Cause Eviction**

The “just cause” provisions of AB 1482 protect tenants who have lived in a unit for 12 months or more, or, if additional persons have been added to the lease, at least one tenant must have lived in the unit for 24 months. “Just cause” means that landlords cannot terminate a tenancy except for one of the reasons listed in the statute, such as non-payment of rent, violation of lease terms, creating a nuisance, or criminal activities.

<sup>1</sup> “2019 Silicon Valley Index”, Joint Venture Silicon Valley, p. 68

AB 1482 also creates a category of allowable “no fault” evictions, such as where the owner or a member of the owner’s family member wants to move into the unit, the owner intends to remove the unit from the rental market, or the owner intends to demolish or substantially remodel the property. The legislation requires landlords to pay one month’s rent as relocation assistance whenever a tenant is evicted without fault, regardless of the tenant’s income or other characteristics.

### **Applicability**

AB 1482 applies to most housing units that were constructed in the previous 15 years. Some of the exemptions include college dormitories, deed restricted affordable housing, single family homes and condominiums (unless owned by an investment trust, corporation, or limited liability company), duplexes where the owner lives in one of the units, hotels and transient occupancies, non-profit hospitals and extended care facilities, owner-occupied housing including accessory dwelling units, mobile homes, and units covered by a local “just cause” ordinance adopted before September 1, 2019, that is more protective than AB 1482.

### **Current Statewide Tenant Legal Protections**

Prior to the adoption of AB 1482, state law did not regulate rents or prohibit “no fault” evictions. However, existing state law does provide tenants with certain procedural rights to notice of termination of their tenancy and, ultimately, a court hearing. If a tenant has lived in the rental unit for over one year and is on a month-to-month lease, the landlord must give the tenant a written 60-day notice to end the tenancy. The notice must inform the tenant that the tenancy will expire at the end of the notice period and the tenant must move out of the rental unit by that time. If the tenant refuses to vacate the unit, the landlord must file an eviction lawsuit known as a “unlawful detainer” action. If the court rules in favor of the landlord, the landlord must use a sheriff to perform the eviction. It is illegal in California for a landlord to personally attempt to remove a tenant from the rental unit.

### **Tenant Protections and Assistance in Local Jurisdictions**

Over the past several months, several local jurisdictions in California have enacted rent control, rent stabilization or tenant assistance programs. Most of these actions followed substantial public discussion. These jurisdictions include Culver City, Inglewood, Long Beach, Vallejo, and unincorporated Los Angeles County. Recently, several neighboring cities have enacted urgency ordinances adopting provisions included in AB 1482, including Redwood City, Menlo Park, Palo Alto, Daly City, and Milpitas.

### **Tenant Protections and Assistance in Sunnyvale**

Sunnyvale does not currently have any form of City-adopted rent control, rent stabilization, or anti-eviction related programs. The City’s Housing Strategy is currently nearing completion, which will present a variety of new housing policy and program recommendations for the Council’s consideration. Some of the recommendations may include various tenant protections, mobile home park rent stabilization, and relocation assistance requirements.

State law mandates relocation assistance for tenants displaced through condominium conversions or mobile home park closures; Sunnyvale laws expand on the state minimum requirements for both condominium conversions and mobile home park closures.

## **EXISTING POLICY**

### **SUNNYVALE CITY CHARTER SECTION 701 - EMERGENCY ORDINANCES**

Any ordinance declared by the City Council to be necessary as an emergency measure for preserving the public peace, health or safety, and containing a statement of the reasons for its urgency, may be introduced and adopted at one and the same meeting if passed by at least five affirmative votes.

### **GENERAL PLAN - Community Vision**

**GOAL IV. Safe and Healthy Community:** To maintain Sunnyvale's traditional high level of public health and safety, so all residents, employees and visitors feel safe at all times and in all places in the City.

**GOAL VI. Affordable Housing Options:** To provide a variety of housing options by style, size, density and tenure, so all segments of the population may find appropriate high-quality housing in Sunnyvale that is affordable to them.

**GOAL XIV. Caring Community:** To provide support for those in the community who are not able to fully support themselves, so all residents may enjoy the City's high quality of life.

## **ENVIRONMENTAL REVIEW**

The action being considered does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15320, 15378 and 15061 (b)(3) as it is an organizational structure change and does not have the potential to result in either a direct or reasonable foreseeable indirect physical change in the environment.

## **DISCUSSION**

On November 20, 2019, the Mayor requested placing an emergency ordinance on the agenda to address recent concerns regarding the need for tenant protections in advance of the implementation of AB 1482. The adoption of the proposed emergency ordinance would provide short-term tenant protections until January 1, 2020, the effective date of AB 1482.

To enact an emergency ordinance, the City Council must find that the measure is necessary for preserving the public peace, health, or safety. The factual basis for the findings are included as recitals in the attached Ordinance and Section 1 of the Ordinance states that the City Council is making the required findings based on the Ordinance's recitals. Having a verifiable factual basis for this declaration will help position the City to survive a legal challenge. In Sunnyvale, an emergency ordinance requires five (5) affirmative votes of the City Council for approval and would go into effect immediately.

### **Current and Immediate Threat to the Public Peace, Health, and Safety**

The City Council and staff have received anecdotal evidence from Sunnyvale Community Services (SCS) that some landlords are significantly increasing rents prior to the end of 2019 or sending 60-day no cause eviction notices. There is concern that landlords will attempt to evict tenants during a brief window ahead of the January 1, 2020 effective date of AB 1482. This evidence is summarized in Attachment 2. SCS reports that they received an increase in communications related to evictions leading up to the adoption of AB 1482, peaking in August and September. They also searched their database for communications referencing eviction notices. It should be noted that this data does not reflect all eviction notices received by Sunnyvale residents, but only those individuals who have

contacted Sunnyvale Community Services for assistance. Even with limited data collected, the urgency for this Ordinance stems from the gap created by AB 1482 not taking effect until January 1, 2020, allowing time for landlords to take unjust action against tenants before the effective date of AB 1482.

### **Emergency Ordinance**

Staff has drafted an emergency ordinance that mirrors AB 1482. It includes both the just cause requirements (including the relocation assistance for no fault evictions) and the rent cap. However, because of the statutory limits on local rent control ordinances in the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et seq.), often simply referred to as the Costa-Hawkins Act, the City's rent cap will not apply to units constructed after February 1, 1995. If adopted by a vote of at least five (5) Councilmembers, the emergency ordinance would be in effect immediately, be retroactive to October 8, 2019, and expire on January 1, 2020, when AB 1482 goes into effect.

### **Retroactivity**

The proposed Ordinance would be retroactive to rent increases and pending notices of termination received by tenants since October 8, 2019, which is the date that the Governor signed AB 1482. Under California law, legislation is generally presumed to be prospective only; however, a legislative body may enact legislation that is expressly retroactive, subject to Constitutional limitations of due process. In general, legislation may be retroactive as long as it does not impair vested rights. In the case of pending notices of termination, the landlord's rights have not yet vested. The tenant has simply been given notice of an event (termination) to happen at a future date. Similarly, courts have upheld the authority of cities to enact rental control ordinances that include rolling back rents to an earlier point in time.

### **Enforcement**

The City would not directly enforce the Ordinance. A tenant could raise the Ordinance as a defense to an unlawful detainer action, or file a private civil lawsuit against the landlord to enforce the provisions of the Ordinance.

### **Community Engagement**

Under typical circumstances, the City Council directs staff to conduct research and engage in robust community engagement initiatives to receive input from stakeholders and the public on proposed policies. Given the reports of adverse impacts on tenants have only recently surfaced, there has not been time to conduct substantial research or engagement with tenants or property owners and landlords. This increases the possibility that adopting of one or more interim measures may have unintended consequences or may ultimately be ineffective. Any risk is mitigated, to some extent, by the fact that the proposed ordinances would only be in place through January 1, 2020.

### **FISCAL IMPACT**

No new fiscal impacts are anticipated at this time from the issues discussed in this report. There may be a slight increase in requests for information or referrals to help resolve tenant and landlord issues; it is anticipated that these requests would be handled through the existing operating budget.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of

the City Clerk and on the City's website. In addition, an email message was sent to a list of individuals who have expressed interest in receiving notifications of Planning or Housing related items. The same message was emailed (if available) to apartment owners/managers that have a Business License in Sunnyvale and to apartment associations representing owners, investors and managers.

### **ALTERNATIVES**

1. Adopt an Emergency Ordinance Under Sunnyvale City Charter Section 701 to Implement Tenant Eviction Protections and Limits Large Rental Rate Increases Effective Immediately and Retroactive to October 8, 2019, to Avoid Circumvention of AB 1482.2. Do not adopt the Emergency Ordinance.
2. Adopt an Emergency Ordinance with modifications.
3. Do not adopt the Emergency Ordinance.

### **STAFF RECOMMENDATION**

Staff makes no recommendation.

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Reviewed by: Teri Silva, Assistant City Manager  
Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Draft Emergency Ordinance
2. Correspondence Received