

Chapter 19.40 RESIDENTIAL RENT REVIEW PROGRAM

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19.40.010 Purpose and citation.

(a) The City Council finds that the high cost of rental housing in Concord has created economic hardship for many tenants. Protecting tenants from unreasonable rent increases can encourage community stability, avoid displacement, and protect the health, safety, and welfare of the residents of Concord. This chapter is intended to permit landlords a fair and reasonable return on their property, while at the same time protecting tenants from arbitrary, capricious, or unreasonable rent increases. The City Council encourages property owners to limit rent increases to fair and reasonable amounts, provide well maintained living units, and cooperate with tenants toward resolving rent-related disputes.

(b) This chapter may be referred to as the “residential rent review program” of the City of Concord.

(Ord. No. 17-7, § 3 (Exh. A))

19.40.020 Definitions.

Administrator or *Program Administrator* means the person or entity responsible for implementing the residential rent review program and other administrative duties related to this chapter. Any duty required of the Administrator may be delegated to a third party and any service required to be performed by the Administrator may be provided by a designated service provider as authorized by the Administrator.

Arbitration means nonbinding arbitration.

Base rent means the rental amount to be paid by the tenant to the landlord in the month immediately preceding the effective date of the rent increase.

Conciliation means a confidential telephone call or other contact by the Administrator or designated

service provider with a landlord and tenant for the purpose of resolving a rental housing dispute.

Designated service provider means a party or organization contracted by the city to provide needed services to implement the procedures outlined in this chapter.

Landlord means any person, partnership, corporation or other business entity offering for rent or lease any rental unit in the city. *Landlord* shall include the agent or representative of the landlord, including the property manager; provided, that such agent or representative shall have full authority to answer for the landlord and enter into agreements on the landlord's behalf.

Mediation means a meeting in which the landlord and tenant have the opportunity to communicate with a mediator to resolve a rent increase dispute with confidential and neutral communications.

Mediator means a person who possesses experience in mediating landlord-tenant cases in general and who has mediation experience with at least one of the mandatory dispute resolution processes in the region.

Nonbinding arbitration means a hearing conducted according to generally accepted rules for arbitrating disputes, the outcome of which is not binding upon the parties to the dispute.

Participate in good faith means the mutual obligation of the landlord and tenant to meet on each occasion when notified in conciliation, mediation, and nonbinding arbitration proceedings, provide relevant information, reasonably consider proposals by opposite parties, and engage in meaningful discussion on the subject of proposed rent increases and issues related to the rent increase.

Party means a person who participates in the dispute resolution procedures of this chapter or their agent or representative.

Program or residential rent review program refers to the residential rent review program as established herein.

Rent means a fixed periodic compensation paid by a tenant at fixed intervals to a landlord for the possession and use of property.

Rent increase means any upward adjustment of the base rent amount.

Rent Review Panel or Panel means a panel comprised of three persons, who are nonparties, with one landlord representative, one tenant representative, and one neutral third party, appointed by the City Council.

Service reduction means a reduction in the level of benefits, privileges, or facilities related to the rental unit that have been reduced without a corresponding reduction in rent, including but not limited to repairs, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges,

refuse removal, furnishings, parking, and other rights afforded to tenant as set forth in a lease for the rental unit.

Tenant means any person having the legal responsibility for the payment of rent for a rental unit in the city. *Tenant* shall include the agent or representative of the tenant; provided, that such agent or representative shall have full authority to answer for the tenant and enter into agreements on the tenant's behalf.

(Ord. No. 17-7, § 3 (Exh. A))

19.40.030 Notice of availability of rent review required.

(a) Civil Code Section 827(b) requires that landlords must provide tenants with 30 days' notice prior to a rent increase of 10 percent or less and 60 days' notice prior to a rent increase of more than 10 percent. In addition to the notice of a rent increase required by Civil Code Section 827(b), and at any time when a landlord provides notice of any rent increase, the landlord shall also provide notice of the availability of rent review as provided in this chapter, including the means of obtaining a copy of this chapter. The obligation to include this notice shall extend to rent increases in any amount.

(b) The notice of availability of the residential rent review program shall be provided in Spanish and English and shall be written as follows:

NOTICE: Under Civil Code Section 827(b), a Landlord must provide a Tenant with thirty (30) days' notice prior to a rent increase of ten percent (10%) or less and sixty (60) days' notice of a rent increase greater than ten percent (10%). **In addition, Chapter 19.40 of the Concord Municipal Code requires that a Landlord must at the same time provide this notice of the City's Residential Rent Review Program.** This Program provides a procedure for Landlords and Tenants to communicate when there are disputes over rent increases that exceed 10 percent (10%) in a 12-month period. Information about this Program and a copy of Chapter 19.40 of the Concord Municipal Code are available on the City's website at www.cityofconcord.org. Copies will also be made available in English and Spanish in the City of Concord Permit Center, located at 1950 Parkside Drive, Concord CA 94519.

You are encouraged to contact the owner or manager of your rental unit to discuss the rent increase and any maintenance or repair work that needs to be done. In addition, if you have received notice of a rent increase that is greater than ten percent (10%) above the base rent you paid last month, or greater than ten percent (10%) above the base rent that you paid twelve (12) months prior to the effective date of the rent increase, you may request rent review under Concord's Residential Rent Review Program. To use this Program, you must contact the City's Program Administrator within fifteen (15) calendar days following

receipt of a notice of rent increase. Your Landlord will be notified of your request. You will also be contacted by a housing professional to discuss the rent increase and any issues relating to your request. Petitioning for rent review cannot guarantee a reduction in the rent increase.

Under Civil Code 1942.5, it is illegal for a Landlord to retaliate against a Tenant for lawfully and peaceably exercising his or her legal rights.

Contact information for the Program Administrator is as follows: (insert name, telephone number, and email). You may initiate contact by telephone, but the request for rent review itself must be submitted in writing.

- (c) The city shall make copies of this notice available to landlords in English, Spanish, and any other languages determined necessary by the City Manager or his or her designee.
- (d) Any rent increase accomplished in violation of this chapter shall be void and no landlord may take any action to enforce such an invalid rent increase.
- (e) Any rent increase in violation of this chapter shall operate as a complete defense to an unlawful detainer action based on failure to pay any illegal rent increase. Any tenant required to pay an illegal rent increase may recover all illegal rent increase amounts actually paid by the tenant.
- (f) If a landlord fails to properly notice a tenant pursuant to this chapter, the landlord must re-notice the tenant in accordance with this section prior to demanding or accepting any increase in rent.

(Ord. No. 17-7, § 3 (Exh. A))

19.40.040 Residential rent review program elements.

- (a) The provisions of this chapter shall apply to properties in which three or more dwelling units are being used as rental housing. Duplexes, single-family rental homes, accessory dwellings, junior accessory dwelling units, mobile homes, and rented condominiums are excluded. Triplexes in which one of the units is owner-occupied also are excluded. This chapter shall not apply to hotels, boarding houses, transient accommodations, dormitories, and rental units owned or operated by any government agency or whose rent is subsidized through any government program.
- (b) Participation in the residential rent review program shall be limited to tenants who have received rent increases or notices of rent increases exceeding 10 percent over a consecutive 12-month period and landlords who seek to make rent increases of greater than 10 percent over a consecutive 12-month period.
- (c) Any tenant or landlord may initiate the residential rent review process by filing a written request for resolution of a rental housing dispute within 15 calendar days of the date of the rental increase notice.

A rent review request form shall be made available to the public via the City of Concord website. If the form or an equivalent letter is not submitted within 15 calendar days of the notice, any right by either tenant or landlord to utilize the residential rent review program for the subject rent increase is waived.

(d) Rent review procedures shall consist of three consecutive steps: (1) conciliation with a third party; (2) mediation with a third party; and (3) nonbinding arbitration through the Panel. Procedures must follow this sequence, with the goal of resolving each case during the earliest step possible.

(e) No party shall be obligated to reach any specific agreement as a result of participating in this process. Any such agreement shall be confidential and will not be used for any purpose outside the program unless all parties agree that the agreement can be disclosed or otherwise used.

(f) The parties may also agree that any discussions or information revealed during the course of the conciliation or mediation process may be inadmissible to prove or dispute liability under Evidence Code Sections 1152 and 1154.

(g) The Administrator shall process requests for assistance as indicated below. All of the responsibilities listed herein may be assigned to a designated service provider:

(1) When a party requests general information about the residential rent review program, the Administrator shall provide this information in person, by U.S. mail, or by email within one business day.

(2) When a party requests assistance through the residential rent review program for a specific case, the Administrator shall encourage each party to contact the opposite party to attempt resolution. The Administrator shall provide information on the program to the party within one business day, and notify the opposite party by telephone within three business days that a request for assistance has been made.

(3) When the requesting party does not wish to contact the opposite party, the Administrator shall record the request for assistance, initiate conciliation service, and give written notice to the affected parties within three business days.

(h) The Administrator is authorized to consolidate separate requests for rent review involving the same rent dispute issue. Consolidation shall not affect individuals' desire to be separately represented or to bring a separate legal action.

(i) Failure of a landlord to participate in good faith in the conciliation, mediation, or nonbinding arbitration process shall void the notice of rent increase for all purposes. Failure of a tenant to participate in good faith shall likewise terminate all services under this chapter for the affected tenant for the duration of the subject rent increase and shall make the rent increase effective the date stated in the notice of rent increase. The Administrator shall be responsible for investigating any allegations

of a lack of good faith participation by any party.

(j) The time requirements in this chapter may be extended by mutual written consent of all parties and the Administrator.

(k) The city may collect a fee from landlords of eligible rental units to cover the administrative costs of this program. The fee shall cover program costs only and shall be the same for each eligible rental unit.

(l) By participating in the program, both tenant and landlord agree that the city assumes or incurs no liability or responsibility in connection to any action or outcome of the residential rent review program, including but not limited to the conciliation, mediation, or nonbinding arbitration process.

(Ord. No. 17-7, § 3 (Exh. A))

19.40.050 Conciliation procedures.

(a) The landlord or tenant shall respond orally or in writing to the Administrator within three business days following telephone contact. Failure of a responsible party to respond within three business days shall void the rent increase notice for all purposes.

(b) The Administrator shall attempt conciliation of the rent increase for a period not to exceed 10 business days.

(c) The landlord and the tenant shall have a mutual obligation to participate in the conciliation process in good faith.

(d) One or more tenants affected by a common rent increase may simultaneously participate in the same conciliation proceeding with consent of the landlord. No tenant shall be bound by any conciliation agreement they or their agent and/or representative did not agree to.

(e) Any agreement reached by the parties in conciliation shall:

(1) Be made in writing and signed by the parties to the agreement;

(2) State the specific terms of the agreement including its duration and conditions;

(3) Be binding on the parties identified in the agreement; and

(4) Provide that any agent or representative signing a copy of the agreement on behalf of other persons shall be responsible for promptly providing a copy of the agreement to the parties he or she represents.

(f) If conciliation does not resolve the dispute within the time limit of 10 business days, and one of the

parties requests mediation within three business days of the end of the conciliation period, the Administrator will send a notice to both parties seeking a mediation date within the next five business days of the notice.

(Ord. No. 17-7, § 3 (Exh. A))

19.40.060 Mediation procedures.

(a) When a mediation date is set, the mediator shall give telephone notice of the date, time, and location to each party. The telephone notice shall inform each party of their obligation to appear and participate in the mediation in good faith.

(b) The mediator shall attempt mediation of the rent increase for a period not to exceed 30 calendar days, beginning with the date of the initial telephone notice.

(c) The landlord and the tenant shall have the mutual obligation to participate in the mediation process in good faith, stating their positions on all issues, conferring with the mediator and each other, and providing, at the mediator's request, information and corroboration of their assertion of facts. Parties or their representatives may offer such documents, testimony, written declarations, or other evidence as may be deemed by the mediator to be relevant to the proceedings.

(d) One or more tenants affected by a common rent increase may simultaneously participate in the same mediation proceeding with consent of the landlord. No tenant shall be bound by any mediation agreement they or their agent and/or representative did not agree to.

(e) Any agreement reached by the parties in mediation shall:

(1) Be made in writing and signed by the parties to the agreement;

(2) State the specific terms of the agreement including its duration and conditions;

(3) Be binding on the parties identified in the agreement; and

(4) Provide that any agent or representative signing a copy of the agreement on behalf of other persons shall be responsible for promptly providing a copy of the agreement to the parties he or she represents.

(f) If the parties do not reach agreement, the mediator shall prepare a written summary of the mediation and make it available to the city. The Administrator shall notify the parties that the conciliation and mediation proceedings authorized under this chapter have been completed.

(Ord. No. 17-7, § 3 (Exh. A))

19.40.070 Nonbinding arbitration procedures.

- (a) A request for nonbinding arbitration may be made by either of the parties to the Administrator within 10 calendar days after notice of completion or termination of conciliation and mediation proceedings has been issued. If the request is not submitted within 10 calendar days of the notice, any right by either tenant or landlord to a nonbinding arbitration hearing is waived.
- (b) Nonbinding arbitration shall be conducted through a hearing before the Panel.
- (c) The hearing shall occur within 30 calendar days after receipt of the request for nonbinding arbitration by the Administrator. The Administrator shall provide notice to the parties when a hearing is scheduled.
- (d) Within 10 calendar days of the request for nonbinding arbitration and at least four calendar days prior to the hearing, the Administrator will provide the Panel with all relevant information from the mediator and the parties. Information provided by the Administrator shall include only facts, and not a recommended outcome or discussion of the mediation proceedings.
- (e) Participants in the hearing shall be the parties to the mediation and other persons deemed necessary by the Panel.
- (f) The landlord bears the burden of proving a rent increase in excess of the 10 percent threshold is reasonable.
- (g) The purpose of the hearing shall be to allow the Panel to examine witnesses, review the documents in the record, and make formal findings of fact and a recommendation to resolve the rent dispute. Any hearing that is convened may be continued for the convenience of one of the parties, or if the landlord and tenant are unable to reach resolution during the hearing. The Panel may proceed with a hearing in the absence of one of the parties.
- (h) The Panel shall evaluate the reasonableness of the rent increase, taking into consideration, among other things, the factors listed below. These factors are illustrative and not exclusive; other factors relevant to issue of the reasonableness of the rent increase may be considered.
- (1) Past history of rent increases for the same rental unit, including timing and amount;
 - (2) Past history of landlord costs for capital improvements, rehabilitation, maintenance and operation, debt service, and provision of housing services, including verified expenses;
 - (3) Existing market rents for similarly situated units in Concord;
 - (4) Unanticipated increases in landlord costs for the rental unit within the last 12 months, or verified expenses to be incurred during the 12 months following the proposed date of the rent increase; and

(5) Service reductions for the rental unit during the tenant's occupancy of the unit.

(i) The Panel shall review facts as presented to the Panel by the tenant and landlord and make a determination for the terms of a nonbinding agreement between the parties to resolve a rent increase dispute. The determination of the Panel shall be mailed to the Parties together with written findings supporting the determination within seven calendar days of the hearing.

(j) The determination of the Panel shall be advisory to the parties and shall not be binding. However, if both parties agree to the resolution proposed by the Panel, they may formalize the agreement in a standard form signed by both parties. Neither the city nor the Panel shall be a party to such an agreement, nor shall the city or the Panel assume any responsibility for enforcement of its terms.

(Ord. No. 17-7, § 3 (Exh. A))

19.40.080 Payment of rent increase during rent review program process.

(a) Every tenant shall pay the base rent as it becomes due.

(b) In the event the dispute remains in the residential rent review program past the notice period specified in the valid notice of rent increase, each affected tenant shall pay the landlord the base rent plus 10 percent (the threshold) in order to continue in the program. Landlord shall provide tenant with a receipt acknowledging the payment.

(c) In the event the dispute is resolved by a rent increase less than 10 percent, the landlord shall relinquish the difference between the agreed upon percent increase and the amount in excess of that percent already paid at the time of resolution. This payment shall be due within seven calendar days of the conclusion of proceedings or as otherwise agreed by the parties.

(d) In the event the dispute is resolved by a rent increase greater than 10 percent or in the event the dispute is not resolved, the tenant shall pay the difference between the agreed upon percent increase and the amount already paid at the time of resolution. This payment shall be due within seven calendar days of the conclusion of proceedings or as otherwise agreed by the parties.

(e) A tenant failing to meet the requirements of this section during the dispute resolution process shall be deemed in breach of the obligation of good faith participation, resulting in termination of rent review proceedings.

(Ord. No. 17-7, § 3 (Exh. A))

19.40.090 Landlord retaliation prohibited.

Under California Civil Code Section 1942.5, it is illegal for a landlord to retaliate against a tenant for lawfully and peaceably exercising his or her legal rights. No landlord may take any action increasing any rental amount, reducing any service, causing the tenant to involuntarily quit the premises, or

discriminating against the tenant because of the tenant's use of any remedy provided by this chapter.

(Ord. No. 17-7, § 3 (Exh. A))

19.40.100 Annual review.

The Administrator shall annually prepare a report to the City Council assessing the effectiveness of the residential rent review program established under this chapter and recommending changes as may be appropriate.

(Ord. No. 17-7, § 3 (Exh. A))