

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2016-002

**ORDINANCE AMENDING TITLE 4, CHAPTER 32 OF THE SAN LEANDRO
MUNICIPAL CODE RELATING TO THE RENT REVIEW ORDINANCE**

WHEREAS, the City of San Leandro adopted the Rent Review Ordinance in 2001 in response to rapidly rising rents; and

WHEREAS, the Rent Review Ordinance established the Rent Review Board to review proposed rent increases and encourage landlords and tenants to come to mutually satisfactory resolutions of proposed rent increases; and

WHEREAS, certain aspects of the Rent Review Ordinance are outdated and require clarification; and

WHEREAS, City staff received input from a variety of stakeholders, including the City's Rent Review Board, and directly from the City Council which has led to the proposed amendments to the Rent Review Ordinance; and

WHEREAS, the City of San Leandro desires to clarify the provisions in the Rent Review Ordinance and revise existing provisions in response to the rapidly transforming rental market in San Leandro as well as in the San Francisco Bay Area as a whole and to modernize and more effectively administer the Rent Review Program and Rent Review Board hearings.

NOW, THEREFORE, the City Council of the City of San Leandro does **ORDAIN** as follows:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 3. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, those amending Title 4, Chapter 32 as shown in attached Exhibit A with red-lined amendments, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

SECTION 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 5. Publication and Effective Date. This Ordinance shall take effect thirty (30) days after adoption. The title thereof shall be published once and a complete copy thereof shall be posted on the City Council Chamber bulletin board for five (5) days prior to adoption.

Introduced by Councilmember Thomas on this 1st day of February, 2016, and passed to print by the following called vote:

Members of the Council:

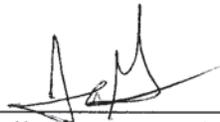
AYES: Mayor Cutter, Councilmembers Cox, Lee, Lopez, Thomas (5)
NOES: Councilmembers Prola, Reed (2)
ABSENT: None (0)

Passed and adopted this 16th day of February, 2016, after publication on February 9, 2016, by the following called vote:

Members of the Council:

AYES: Mayor Cutter, Councilmembers Cox, Lee, Lopez, Thomas (5)
NOES: Councilmembers Prola, Reed (2)
ABSENT: None (0)

ATTEST:



Tamika Greenwood, City Clerk

CHAPTER 4-32 RENT REVIEW

ARTICLE 1. GENERAL

4-32-100 SHORT TITLE.

This Chapter shall be known as the “Rent Review Ordinance.”

4-32-105 DEFINITIONS.

Unless the context otherwise requires, the terms defined in this Chapter shall have the following meanings:

(a) **BASE RENT** means the rental amount, including any amount paid to the landlord for parking, storage, utilities, water, garbage or any other fee or charge associated with a residential property required to be paid by the tenant to the landlord in the month immediately preceding the effective date of the rent increase.

(b) **BOARD** means the Rent Review Board, as defined in this section.

(c) **CITY** means the City of San Leandro.

(d) **CITY MANAGER** means the City Manager of the City of San Leandro, or his or her designated representative.

(e) **COMMUNITY DEVELOPMENT DIRECTOR** means the Director of the Community Development Department of the City of San Leandro, or his or her designated representative.

(f) **COUNCIL** means the City Council of the City of San Leandro.

(g) **LANDLORD** means any person, partnership, corporation, or other business entity offering for rent or lease any residential property in the City. “Landlord” shall include the agent or representative of the landlord, provided that such agent or representative shall have full authority to answer for the landlord and enter into binding agreements on the landlord’s behalf.

(h) **PARTY** means a person who participates in the rent review program of this chapter or his or her agent or representative.

(i) **RATIO UTILITY BILLING SYSTEM** means a billing system paid to a third party that allocates the property’s actual utility bill to the tenant based on an occupant factor, square footage factor, or any other similar factors.

(j) **RENT** means a fixed periodic compensation paid by a tenant at fixed intervals to a landlord for the possession and use of residential property, including any amount paid to the landlord for parking, storage, utilities, water, garbage, or any other fee or charge associated with the tenancy. Additionally, rent includes costs associated with the initial conversion to a Ratio Utility Billing System.

(k) **RENT INCREASE** means any upward adjustment of the rent from the base rent amount. Rent increase includes costs associated with the initial conversion to a Ratio Utility Billing System.

(l) **RENT REVIEW BOARD** means the board established under Article 4 of Chapter 1-3 of this Code.

(m) **RESIDENTIAL PROPERTY** means any housing unit offered for rent or lease in the City, provided that such housing unit is in a parcel that contains two or more tenant-occupied housing units, and mobile homes. Mobile homes are subject to this Chapter only if a tenant rents the mobile housing unit itself.

(n) **TENANT** means any person having the legal responsibility for the payment of rent for residential property 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 binding agreements on the tenant's behalf.

ARTICLE 2. NOTICE OF AVAILABILITY OF RENT REVIEW

4-32-200 NOTICE OF AVAILABILITY OF RENT REVIEW REQUIRED.

In addition to the notice of a rent increase required by Civil Code Section 827(b), and at the time when a landlord provides notice of any rent increase, the landlord shall also provide notice of the availability of the rent review procedure established by this Chapter. The notice of availability of rent review required by Section 4-32-210 below shall be provided by the landlord at the time when a landlord provides notice of any rent increase in the three predominant languages spoken in the City. The City Manager or his or her designee shall determine the predominant languages spoken in the City and shall ensure that copies of the notice of availability of rent review required by Section 4-32-210 are made available to landlords by the City in those three languages. 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. 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.

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.

4-32-205 CONTENTS OF NOTICE.

All notices of the availability of rent review shall be in writing, shall provide the name, address and phone number of the landlord and shall be personally delivered to the tenant or posted and mailed to the tenant at the address of the tenant's residential property by first class mail, postage pre-paid. Service by mail shall be presumed complete within five (5) days of mailing. This presumption may be rebutted by the tenant.

4-32-210 TEXT OF NOTICE.

In addition to all other information provided in the notice of the availability of rent review required by this Chapter, each such notice shall state:

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 of greater than ten percent (10%). Under Title 4, Chapter 32 of the San Leandro Municipal Code, a landlord must at the same time as a notice under Civil Code 827(b) and other qualifying rent increases under the Municipal Code, provide this notice of the City's rent review procedure before demanding or accepting any increase in rent. 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 your rental unit. However, if you have received notice of a rent increase that 1) will increase your rent more than seven percent (7%) above the base rent you paid last month or 2) follows one or more prior rent increases within the past twelve months, you may request that the San Leandro Rent Review Board review the increase. Such a request must be submitted in writing within twenty one (21) calendar days of your receiving notice of the rent increase (or post marked within 21 calendar days of receipt if mailed). You must submit a copy of the Notice of Increase at the same time you submit the Hearing Request. If you request review of the rent increase, you and your landlord will be required to appear before the Board for a hearing on your rent dispute. After hearing from you and your landlord the Board will make a non-binding recommendation for resolution of the rent dispute. To request review of your rent increase, please contact the Board through the Community Development Department of the City of San Leandro, 835 East 14th Street, San Leandro, CA 94577. Under 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.

ARTICLE 3. RENT REVIEW

4-32-300 REQUEST FOR RENT REVIEW.

A tenant may seek to have a rent dispute heard before the Board when the proposed rent increase: 1) raises the rent to an amount more than seven percent (7%) greater than the base rent or 2) follows a prior rent increase imposed within the previous twelve-month period. The tenant seeking a rent review must submit the hearing request in writing to the Community Development Director within twenty one (21) calendar days of the tenant's receipt of a notice of rent increase. The hearing request must be received by the Community Development Director, or post marked (if submitted by mail) within twenty one (21) calendar days of receipt of the notice of rent increase. The request must be accompanied by a copy of the Landlord's Notice of Increase.

The Community Development Director shall provide the landlord with a copy of the tenant's rent review hearing request form, which shall be accompanied by a hearing response form. A landlord must submit a completed hearing response form to the Community Development Director within ten (10) calendar days of the landlord's receipt of a tenant's rent review hearing request form. A rent increase shall be void, and the landlord shall be required to properly re-notice the tenant in accordance with Section 4-32-200 of this Code if the landlord

does not submit a hearing response form pursuant to this section. The Community Development Director shall provide notice of the requirements of this section in a conspicuous location on the hearing response form.

The hearing shall be scheduled before the Board within sixty (60) days of the receipt of the hearing request, or as soon thereafter as the hearing may be scheduled.

A request for rent review shall not delay the effective date of a rent increase. If appropriate, the parties may enter into a mutual private agreement to delay the effective date of a rent increase or reach any other agreement to effectively reimburse rent increases paid by the tenant.

4-32-305 NOTICE TO PARTIES.

After determining that a proposed rent increase meets the criteria for initiation of rent review set forth in Section 4-32-300 above, the Community Development Director shall schedule a rent review hearing of the rent dispute before the Board. The Community Development Director shall provide the landlord and the tenant notice of the hearing date and location at least ten (10) days prior to the hearing. The notice to the landlord shall encourage him or her to contact the tenant directly to seek a mutually satisfactory resolution of the rent dispute prior to the Board hearing.

4-32-310 HEARING AND DETERMINATION.

At a hearing of a rent dispute, the Board will afford the landlord and the tenant an opportunity to explain their respective positions. After hearing from both parties, and taking into consideration such factors as the hardship to the tenant, the frequency and amount of prior rent increases, the landlord's mortgage payments and other costs associated with owning and maintaining the property, the landlord's interest in earning a reasonable rate of return, and any other factors that may assist the Board in determining a fair resolution to the dispute, the Board will make a recommendation to the parties for the resolution of their dispute. If the parties agree to a resolution proposed by the Board, they may formalize the agreement in a standard form signed by both parties. Neither the City nor the Board shall be a party to such an agreement, nor shall the City or the Board assume any responsibility for enforcement of its terms.

4-32-315 CONTINUANCE.

If the landlord and tenant are unable to reach a resolution of their dispute during a hearing before the Board, the Board may in its discretion continue the hearing to the next scheduled regular meeting or special meeting of the Board and require the parties to return for a second and final Board hearing of their dispute. Whenever the Board continues a hearing of a rent dispute, the Board will provide notice of the continuance to a mailing list of interested organizations that annually submit to the City Clerk a request to be included on such mailing list.

4-32-320 FAILURE TO APPEAR.

If the tenant requesting a rent review hearing appears at a noticed Board hearing, but the landlord who has been given notice of the Board hearing as required by Section 4-32-305 above fails to appear before the Board without good cause, the rent increase shall be void, and the landlord may not take any action to enforce such an invalid rent increase. If a tenant who has been given proper notice of a Board hearing as required by Section 4-32-305 of this Code fails to appear before the Board without good cause, or if both the tenant and landlord fail to appear without good cause, the Board shall dismiss the case and the tenant will be barred from subsequently challenging such increase before the Board.

4-32-325 RETALIATORY EVICTION.

Commencement of eviction proceedings against a tenant for exercising his or her rights under this Chapter shall be considered a retaliatory eviction. Under 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.

ARTICLE 4. CITY MANAGER REVIEW

4-32-400 REFERRAL TO CITY MANAGER

If the parties to a rent dispute are unable to mutually agree to a resolution of the dispute before the Board after a first hearing and a second and final continuance hearing, the Board may, in its discretion, refer the rent dispute to the City Manager for review. Whenever the Board recommends that the City Manager review a rent dispute, the Board will provide notice of its action to a mailing list of interested organizations that annually submit to the City Clerk a request to be included on such mailing list. In the event that a landlord and tenant mutually agree to a resolution of their rent dispute prior to review by the City Manager, the rent dispute will no longer be forwarded to the City Manager for review.

4-32-405 CONSIDERATION BY CITY MANAGER.

Upon referral from the Board, the City Manager may request a meeting with the tenant and landlord in an effort to resolve the rent dispute. However, the City Manager shall have no authority to require the tenant and landlord to meet or take any further actions pursuant to this Chapter.

ARTICLE 5. MISCELLANEOUS

4-32-500 ANNUAL REVIEW.

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