



COMMUNITY DEVELOPMENT AGENCY
HOUSING AND FEDERAL GRANTS DIVISION

December 5, 2017

Board of Supervisors
County of Marin
3501 Civic Center Drive
San Rafael, California 94903



SUBJECT: First Reading of an ordinance to establish a Rental Housing Dispute Resolution (i.e., “Mandatory Mediation”) program and consideration of other Housing Subcommittee recommendations.

Dear Board Members:

RECOMMENDATIONS:

1. Conduct First Reading of an ordinance to establish a Rental Housing Dispute Resolution program for Rent increases of more than five percent within a twelve-month period and/or changes to Housing Services commensurate to a Rent increase of greater than five percent within a twelve-month period; schedule Merit Hearing for December 12, 2017 at 5:30 p.m.
2. Defer consideration of a Residential Landlord and Tenant Relations (i.e., “Just Cause for Eviction”) ordinance for a period of twelve months to allow for implementation review of the Mandatory Mediation program.

SUMMARY:

On August 1, 2017, the Board of Supervisors received a progress report on a set of policy options identified in the work plan to preserve housing affordability and prevent displacement. It referred two policy options — Rental Housing Dispute Resolution (previously referred to as “Mandatory Mediation”) and Residential Landlord and Tenant Relations Ordinance (previously referred to as “Just Cause for Eviction”) — back to the Board Subcommittee with direction to further consider the topic and to develop recommendations to be presented to the full Board of Supervisors later this year.

Housing Subcommittee Recommendations

Based on further exploration, the Board Subcommittee recommends that the Board conduct a First Reading to consider the adoption of Rental Housing Dispute Resolution Ordinance. The Subcommittee also requests the Board’s concurrence to explore additional approaches intended to preserve housing affordability and prevent displacement. The Subcommittee recommends that the Board consider directing staff to explore the feasibility of these additional approaches:

1. Pursue potential enhancement of multi-unit housing inspection program managed by CDA’s Environmental Health Services.



- The formation of a performance-based inspection program, in which a landlord/property with consecutive violation-free inspections would graduate to a less frequent schedule of inspections, while those with recently identified violations or a history of reoccurring violations would be subject to more regular inspections.
 - Increased coordination and collaboration with San Rafael and Novato code enforcement staff to discuss program constraints and opportunities, best practices, and ways to work together.
 - Increased education and outreach to tenants regarding tenants' rights and access to local enforcement.
2. Consideration of data collection from landlords for rent increases and tenant evictions.
 3. Work with the District Attorney's Office to expand awareness of the mediation services available through their Consumer Protection Unit. This could be done through establishing a website and/or a hotline which could have available resources for renters and property owners.

BACKGROUND:

The rental market in Marin continues to be extremely tight with a vacancy rate (in the rental market)¹ of 2.8 percent (both unincorporated areas and Countywide). A healthy rental market typically has vacancy rates of between six and seven percent², more than double Marin's current vacancy rate. Another indicator of an imbalanced rental market is the number of families who are rent burdened³ (paying more than thirty percent of their income for rent and utilities), which can often lead to financial strain in meeting other basic living needs. Approximately thirty-six percent of renter household in unincorporated Marin pay more than forty percent of their income on rent and almost twenty-seven percent pay more than fifty percent of their income on rental costs (more than one in four renter households).

As proposed, the Rental Housing Dispute Resolution Ordinance would apply to over 8,000 renter households in unincorporated Marin as illustrated in Table 1 below.

Table 1. Number of occupied housing units by tenure				
	Unincorporated Marin Co.		Marin Co. (Countywide)	
	No. of Units	Percent (%) of Total Units	No. of Units	Percent (%) of Total Units
Total	25,864	100.00%	103,670	100.00%
Owner-occupied housing units:	17,523	67.75%	64,729	62.44%
Renter-occupied housing units:	8,341	32.25%	38,941	37.56%

¹ U.S. Census Bureau (2015). *Vacancy Status, 2011-2015 American Community Survey 5-year estimates.*

² Kasulis, K. (April 20, 2016). [How Vacancy Rate Points to an Unaffordable Housing Market.](#) *Ruggles Media.*

³ U.S. Census Bureau (2015). *Gross Rent as a Percentage of Household Income in the Past 12 Months, 2011-2015 American Community Survey 5-year estimates.*

In accordance with the Board's directive, the Board Subcommittee met several times earlier this year to receive presentations from, and consultation with, interagency staff and community partners regarding services available to tenants in Marin and the Bay Area. These meetings also included legal experts on landlord-tenant relations and housing and community planning law, including representatives from the [District Attorney's Consumer Protection Unit](#), [Environmental Health Services' Housing Inspection program](#), [Legal Aid of Marin](#), and the Community Development Agency's (CDA) outside legal counsel, Goldfarb & Lipman. In addition, the Board Subcommittee members met with tenants and landlords at an event at St. Raphael Church in San Rafael on August 9, 2017 and hosted a meeting with representatives of the landlord community at the Civic Center on August 23, 2017.

The Board Subcommittee considered three potential frameworks for the establishment of Mandatory Mediation and/or Just Cause policy options:

- (1) Rental Housing Dispute Resolution program only;
- (2) Residential Landlord and Tenant Relations ordinance only; and
- (3) An integrated ordinance or coordinated ordinances that draw upon features of both Rental Housing Dispute Resolution and Residential Landlord and Tenant Relations policies.

Potential provisions associated with each framework are described below and in greater detail in the attachments (A-C).

Mandatory Mediation

Overview

Mediation is a process in which a neutral third party facilitates the negotiation of a mutually acceptable resolution to a dispute between two parties. Like the mediation services offered by the District Attorney's Consumer Protection Unit, mediation programs commonly apply voluntary, private and informal processes.

Mandatory Mediation is distinguished by a requirement to participate in good faith for the entirety of the mediation process, even if the landlord and tenant do not settle their dispute through mediation. Various mandatory mediation policies treat the decision to accept the outcome of the mediation differently. Some jurisdictions require participation in mediation but do not require that the parties settle the matter. If the mediation fails to resolve the dispute, either party may litigate the matter. Other jurisdictions require participation coupled with a binding outcome from the mediation; the proposed resolution of the dispute is final unless one of the parties successfully challenges the resolution in court.

Benefits

Mandatory Mediation has been used in the Bay Area to address escalating rent increases in jurisdictions that seek to promote community accountability and support housing stability, but that do not wish to pursue rent stabilization. Such programs are designed to achieve these goals through the facilitation of constructive conversations in a neutral and accountable environment.

Limitations

In jurisdictions where the results of Mandatory Mediation are binding on participants, the Costa Hawkins Act (California Civil Code 1954.50 *et seq.*) prohibits mandatory limitations on rent for single family homes, condominiums, and all units constructed after 1995. For units subject to the Costa Hawkins Act, a landlord's compliance with Mandatory Mediation results would be voluntary if the County chose to create a Mandatory Mediation process resulting in binding resolutions.

Some tenants and landlords resist mediation programs because the results are not binding. For example, the City of Mountain View adopted a Mandatory Mediation program, but did not receive any claims for resolutions in the first six months the program was active. Shortly thereafter, the Mandatory Mediation program was preempted by a voter-adopted charter amendment imposing a traditional rent stabilization system.

Policy Considerations

When does Mandatory Mediation apply?

Mandatory Mediation can be tailored to address rapid increases in rental housing costs by requiring mediation for rental increases over a specified threshold (e.g. increases of more than five percent (5%) over a twelve-month period could be subject to Mandatory Mediation). In the alternative, Mandatory Mediation can be triggered by any rent increase, or by request from either a landlord or tenant for capital expenses or improvements (e.g. if a landlord replaces the roof and passes the cost through to the tenant, or if a tenant wants to permanently install new laundry facilities).

What issues are subject to Mandatory Mediation?

In addition to rent increases, a Mandatory Mediation program can facilitate the constructive resolution of disputes involving "service reductions," which result when a reduction in the level or amount of tenant benefits or privileges occur without an accompanying fair and corresponding decrease in rent. Examples of common service reductions include the cutback of parking privileges, maintenance or repairs, utilities, or elevator service.

Are the results of Mandatory Mediation binding?

Subject to the limitations discussed above, a Mandatory Mediation program can result in a binding or a non-binding determination.

What are the Mandatory Mediation program parameters?

Mandatory Mediation programs can be customized to vary the length of time the Mandatory Mediation process lasts or how long the good faith participation requirement continues. In addition, Mandatory Mediation programs may specify what happens if the participants fail to reach an agreement or reach an agreement but fail to honor its terms.

For instance, the City of Fremont has a three-step Mandatory Mediation program resulting in non-binding determinations: 1) A dispute is first subject to informal conciliation; 2) If conciliation does not result in a voluntary resolution, then the dispute is the subject of formal mediation; and 3) If mediation does not resolve the dispute, a hearing is held after which a written determination is provided to the parties. Landlords and tenants must participate in good faith with all three steps, but the written determination is nonbinding. Notably, if any of the three steps results in resolution of

the dispute, the parties must write-out and sign the resolution, and the Mandatory Mediation program requires that any disputes about the written resolution are subject to binding arbitration.

Are participants required to pay for mediation services?

Mandatory Mediation programs can be funded from a jurisdiction's budget, or jurisdictions can impose a fee for the cost of providing the service.

Are anti-retaliation provisions desired?

Many jurisdictions also craft anti-retaliation policies to encourage the use of mediation services and prohibit activities that could circumvent the mediation process.

Examples

Additional examples of Mandatory Mediation programs include:

Palo Alto (Adopted December 3, 2001): The "[Mandatory Response Program](#)" requires a mandatory response in many types of disputes involving rental housing properties. By filing a petition form, the mediation process may be initiated by a tenant, owner, or property manager. Issues such as rent increases, repairs and maintenance, and deposits are eligible for mediation services if the landlord owns two or more rental units within Palo Alto's jurisdiction. The Mandatory Response Program requires disputing parties to engage in conciliation or mediation if one party initiates a formal request for services. The ordinance requires covered landlords to participate, but does not require any specific outcome. Any resulting resolution remains the voluntary choice of the parties. There is no cost to any party.

Concord (Adopted July 25, 2017): Following a debate over rent control, the City of Concord established a "[Residential Rent Review Program](#)" for tenants to seek mediation and appeal large rent increases. Tenants that reside in buildings with three or more units who receive a rent increase of more than ten percent (10%) in a twelve-month period are eligible to request mediation services. If the landlord and tenant fail to reach agreement, either party may request a public hearing before a three-member panel comprised of a landlord, a tenant and a "neutral party," which is defined as someone not involved in the rental housing market. The panel hears the dispute and delivers a nonbinding decision. Participation in the program is mandatory for landlords. In residential rental scenarios wherein a tenant has a signed lease agreement, the establishing ordinance specifies that the rental rate may only be increased once per twelve-month period. Tenants may elect to rent month-to-month rather than sign a lease. In that scenario, property owners are permitted to issue more frequent increases. The ten percent (10%) eligibility threshold for participation in the mediation program applies to both period and fixed-term tenancies.

Union City (Adopted June 27, 2017): The "[Rent Review](#)" program is intended to increase cooperation and fairness within the residential rental market. The non-binding rent review process encourages landlords and tenants to reach mutually agreeable outcomes to disputes related to rent increases. Failure of a landlord to participate in conciliation or mediation voids a rent increase. The ordinance provides for civil remedies; if a landlord retaliates against a tenant, the tenant may institute civil proceeding for monetary damages, injunctive relief, or both. The tenant may also contest the validity of a notice for termination, however, the landlord is entitled to recovery of costs and reasonable attorney's fees if they can demonstrate compliance.

Union City requires landlords to provide concurrent notices of rent increases to the tenant and the City before an increase may be deemed valid.

Just Cause for Eviction

Overview

Just Cause ordinances have existed in California and the Bay Area since the late 1970s and have recently reemerged as a tool to provide security and stability for households that rent by preventing the termination of residential leases without specific, pre-defined justification. Just Cause ordinances typically identify acceptable reasons that a landlord may terminate a tenancy, or they may list specific unacceptable reasons for which a landlord could not terminate a tenancy.

Benefits

Just Cause ordinances fully retain the rights of landlords to terminate a lease for valid reasons. Just Cause ordinances can also help prevent evictions of responsible tenants, providing them with greater security and stability.

Limitations

Without rent stabilization policies, Just Cause ordinances do not prevent landlords from raising rents. Accordingly, Just Cause ordinances alone generally do not protect tenants from displacement caused by a landlord raising the rent to an unaffordable level.

In addition, such ordinances generally rely on the judicial system for enforcement, so programs require education and outreach for both landlords and tenants to be effective.

Finally, the Ellis Act (California Government Code sections 7060 through 7060.7) places limitations on both the ability of local governments to require a landlord to continue to rent units as well as tenant protections. A landlord is always entitled to permanently remove a rental unit from the housing market, but a Just Cause ordinance can provide a tenant with a right to return to the unit if the property owner decides to rent it again in the future.

Policy Considerations

What constitutes Just Cause?

Acceptable reasons for eviction under Just Cause are often divided into two categories: "For Cause" and "No Fault." Examples of eviction For Cause include failure to pay rent, illegal activity in the unit, nuisance activities, or other material violations of a rental agreement. Examples of No Fault evictions include situations when an owner or relative moves into the unit or removes the unit from the rental market under the Ellis Act.

Some jurisdictions specify events that are not grounds for eviction, such as an owner undergoing foreclosure proceedings.

Can relocation assistance be required in connection with No Fault evictions?

Just Cause ordinances frequently include provisions to help offset relocation costs for tenants in certain scenarios, for example, when an owner decides to move into or renovate a unit, which requires tenants to move out. According to input from tenants,

this is a common no-fault eviction that could be ameliorated through a relocation assistance provision.

What data, if any, regarding evictions can be collected?

Data can also be collected on evictions and lease terminations through a Just Cause ordinance. Some jurisdictions require notice prior to every eviction while others require notices only for specific No Fault evictions. To better understand the local rental market, some jurisdictions also require landlords to provide notice of the applicable monthly rent at the time of eviction or applicable rents charged over some course of the tenancy.

What, if any, requirements and exemptions apply?

In some Bay Area jurisdictions, Just Cause protections are triggered only by code violations; they prevent a landlord from evicting a tenant without cause for a period following the submission of a formal tenant complaint to the local agency code enforcement staff. The City of San Jose originally adopted a Just Cause ordinance with tenant protection based on code violations, but found it was difficult to enforce and had limited impact, therefore, they opted to revise and expand the scope of their ordinance to reflect more typical penalty mechanisms for enforcement.

Other alternatives include exemptions for specific units (e.g., single family and duplex units) or prerequisites for enrollment in Just Cause protections (e.g., tenancy in the same unit for two consecutive years).

Examples

Examples of Just Cause for Eviction ordinances without rent stabilization include:

Emeryville (Adopted December 6, 2016): Known as the "[Eviction Harassment Ordinance](#)," this ordinance broadly regulates most residential rental units, limits the reasons why landlords may terminate a tenancy in accordance with State law, prohibits harassment of residential tenants, requires that tenants are provided with notices of tenant rights under the ordinance, and mandates that landlords use a form notice of termination of tenancy and provide a copy of the completed notice and applicable rental agreement to the city. Certain residential units are exempt, including owner-occupied units where the owner is renting two or fewer bedrooms, housing units owned by a nonprofit hospital, convent, monastery or similar type of development, government-owned units, units owned by a nonprofit cooperative that is controlled by the residents, and units subject to state or federal regulations that are already subject to a form of Just Cause eviction protections. When an Emeryville landlords chooses to evict a tenant, they must provide a reason for the eviction and a record of rental rates charged throughout the tenancy.

Union City (Adopted April 4, 2017): The "[Residential Landlord and Tenant Relations Ordinance](#)" was adopted in accordance with the recommendation of Union City's [Rent and Tenant Taskforce](#), which was established to "[provide] recommendations to the City Council on options that [it] could consider to address rent and tenant issues in a legal, fair, and equitable manner." The Taskforce and Council both affirmed that: secure and stable rental housing is important for the maintenance and protection of the public health, safety, and general welfare; the city desires to prohibit residential landlords from terminating the tenancy of a residential tenant without a good, just, non-arbitrary, non-discriminatory reason; and that the city further desires to prohibit residential landlords from engaging in harassing behavior. The Ordinance requires

specific noticing of rent increases and tenants' rights to request mediation of rent increases over seven percent in a twelve-month period.

San Diego (Adopted March 30, 2004): San Diego's "[Tenants' Right to Know Regulations](#)" was intended to "promote stability in the San Diego rental housing market and limit adverse impacts on long-term residential tenants displaced and forced to find replacement housing in the expensive and limited San Diego housing market." The regulations protect the rights of long-term residential tenants by limiting grounds for their eviction and by requiring landlords to provide notice of such grounds. The ordinance provides that a residential tenancy of more than two years' duration shall not be terminated, nor shall its renewal be refused, except for a permissible cause.

Integrated Mandatory Mediation and Just Cause for Eviction policies

Overview

The two policies described above address different issues for landlords and tenants: Mandatory Mediation helps alleviate disputes regarding significant rent increases, while Just Cause protections identify acceptable and unacceptable reasons for eviction. Because each policy addresses different issues, the Board could consider a more comprehensive alternative by combining elements of both frameworks.

Benefits

Mandatory Mediation for rent increases could offer more protection if a tenant using the program were also protected from an arbitrary or retaliatory eviction action. Likewise, tenants with Just Cause protections could benefit from mediation to limit the chances that they were displaced from their unit by a significant rent increase.

Accordingly, Mandatory Mediation and Just Cause protections address different concerns but offer complimentary protections and are often combined to regulate landlord and tenant relations. If the Board chose to consider both programs, it would provide enhanced tenant protection and address most of the issues under consideration, including:

- Prohibitively steep rent increases,
- Housing instability from capricious lease terminations,
- Unsafe or unsanitary rental housing conditions,
- Harassment and retaliatory evictions,
- Retaliatory rent increases, and
- Insufficient data collection.

Limitations

Limitations would be the same as the issues discussed individually for Mandatory Mediation and Just Cause individually, except that some of the concerns around displacement caused by a landlord raising the rent to an unaffordable level could be ameliorated by combining Mandatory Mediation with Just Cause, which may have the effect of discouraging rent increases over five percent.

CONCLUSION:

The Subcommittee recommends that the Board conduct a first reading to consider the adoption of a Rental Housing Dispute Resolution Ordinance. The proposed Rental

CONCLUSION:

The Subcommittee recommends that the Board conduct a first reading to consider the adoption of a Rental Housing Dispute Resolution Ordinance. The proposed Rental Housing Dispute Resolution (i.e., "Mandatory Mediation") program is triggered for all rent increases above five percent (5%) and for service reductions.

FISCAL/STAFFING IMPACT: Staff is not recommending fees for these services. Depending on the demand for mediation services, the program may be able to be implemented within existing resources. Extrapolating from the limited number of requests currently reported by the Consumer Protection Unit, staff does not anticipate that the proposed expansion of the District Attorney's mediation services will produce a significant budgetary impact. However, if the volume of requests exceeds existing staffing capacity, staff will work with the CAO to develop potential program funding opportunities and report back to the Board of Supervisors.

REVIEWED BY:

- | | |
|--|---|
| <input type="checkbox"/> Auditor Controller | <input checked="" type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> County Counsel | <input type="checkbox"/> N/A |
| <input type="checkbox"/> Human Resources | <input checked="" type="checkbox"/> N/A |

Respectfully submitted,



Leelee Thomas
Planning Manager



Brian C. Crawford
Director

ATTACHMENTS:

1. Ordinance to establish a Rental Housing Dispute Resolution (i.e., "Mandatory Mediation") program for rent increases above five percent and service reductions.
2. Sample provisions which could be included in a Mandatory Mediation or Just Cause for eviction ordinance.
3. A list of 'just causes' for evictions commonly used in Just Cause ordinances, these can be revised to address any local issues of concern.
4. Administrative Record (comments received).