



# CITY OF EMERYVILLE

## MEMORANDUM

**DATE:** May 5, 2015

**TO:** Sabrina Landreth, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT: Residential Tenant Protections and Services**

### **RECOMMENDATION**

Staff recommends that the City Council consider and provide direction to staff regarding options for increasing residential tenant protections and services.

### **BACKGROUND**

Residential rents in Emeryville have been increasing for several years. Market rents in the East Bay have been rising in response to job growth in certain sectors. This economic growth puts increased pressure on the residential rental market in technology employment centers such as the Peninsula and San Francisco. As rents increase in those areas, spill over competition raises the rents in the East Bay, and particularly Emeryville, due to the proximity and ease of access to these job centers.

In the past, landlords have raised rents on vacant units to market levels while imposing lesser rent increases on existing tenants such that their rents remained somewhat below market rates. This was particularly true for owners of single units. However, anecdotal evidence suggests that more recently landlords of single units as well as institutional owners of larger buildings are raising the rents of their existing tenants to market rates. This has resulted in annual rent increases on some units of more than 30 percent compared to the previous year. These rent increases are displacing tenants, and those who remain may be paying over 30 percent of their income on housing costs, which is a measure of overpaying for housing according to the U.S. Department of Housing and Urban Development (HUD).

The table below summarizes data on listed rents for vacant units at major rental projects in Emeryville:

**Average Monthly Rental Price by Unit Size, 2010-2013**

| <b>Number of Bedrooms</b> | <b>2010</b> | <b>2011</b> | <b>2012</b> | <b>2013</b> | <b>Percent Increase 2010-2013</b> | <b>Avg. Annual Increase</b> |
|---------------------------|-------------|-------------|-------------|-------------|-----------------------------------|-----------------------------|
| Studio                    | \$1,417     | \$1,655     | \$1,664     | \$1,804     | 26%                               | 8.7%                        |
| 1 bedroom                 | \$1,774     | \$1,894     | \$1,953     | \$2,231     | 26%                               | 8.7%                        |
| 2 bedroom                 | \$2,183     | \$2,489     | \$2,455     | \$2,869     | 31%                               | 10.3%                       |
| 3 bedroom                 | \$3,057     | \$3,190     | \$3,153     | \$3,427     | 12%                               | 4%                          |

*City of Emeryville Housing Element 2015-2023*

A survey of 847 market rate units in six rental complexes in 2014 yielded the following average rents:

**Average Monthly Rental Price in Six Rental Projects by Units Size 2014**

| <b>Number of Bedrooms</b> | <b>2014</b> | <b>Percent Increase 2013-2014</b> |
|---------------------------|-------------|-----------------------------------|
| Studio                    | \$2,163     | 20%                               |
| 1 bedroom                 | \$2,479     | 11%                               |
| 2 bedroom                 | \$3,199     | 11%                               |
| 3 bedroom                 | \$4,079     | 19%                               |

*City of Emeryville Survey Data- Icon at Doyle, Icon at Park, Avenue 64, Artistry (formerly Archstone), Bridgecourt and Bay Street Apartments.*

The above tables illustrate that rents increased steadily from 2010 to 2013 and have had a significant increase in the last year. Rents for designated below market rate (BMR) units are protected from these market trends, as BMR rents may only rise according to annual growth in area median incomes at the county level. The BMR designation is secured by an Affordability Agreement executed between the City and the project developer, and its successors and assigns, which is recorded on the property and typically runs for 35 to 55 years from initial development.

In response to these trends, as well as anecdotal reports of significant rent increases from the community, the City Council directed staff to evaluate tenant protections and services that are, or may be, made available to market rate renters in Emeryville.

**DISCUSSION/ANALYSIS**

Currently, the City of Emeryville does not have specific tenant protections except in the case of condominium conversions. Like all market rate residential renters, Emeryville tenants are covered by State of California tenant protections. Through a Cooperative Agreement with Alameda County, ECHO Fair Housing provides a variety of services related to assistance with landlord/tenant issues for Emeryville residents and property

owners. Information on State tenants' rights and landlord responsibilities and City of Emeryville Fair Housing Assistance can be found in Attachment 1.

State law does not preclude landlords from raising rents, nor does it prescribe limits for the magnitude of rent escalation. The only consideration in California Law is around noticing periods for rent increases. For example, when a landlord raises rents 10 percent or less during a 12 month period the landlord must provide 30 days' notice. If the increase is more than 10 percent, the landlord must give the tenant 60 days' notice of the rent increase.

In addition to the state laws governing rental housing, there are several forms of tenant protections that some jurisdictions in California provide. These include rent control, eviction and harassment protections, rent review, and tenant/landlord mediation. These are discussed below.

#### 1. Rent Control

As a concept, rent control is a system in which local jurisdictions restrict the amount and timing of rent increases. Some California cities have rent control (also known as rent adjustment or rent stabilization) ordinances that govern rent increases. Each community's ordinance is different, and vary widely in terms of purview and enforcement. Some of these ordinances specify procedures that a landlord must follow before increasing a tenant's rent. Some cities have boards that have the power to approve or deny increases in rent. Other cities' ordinances allow a certain percentage increase within each year.

#### *Costa Hawkins Act and Potential for Rent Control in Emeryville*

In 1995, the California Legislature passed, and the Governor signed, the Costa Hawkins Act ("Costa Hawkins"), which severely limits rent control in the state. Only those units that received a certificate of occupancy before February 1, 1995 can be covered by rent control. Later legislation further restricted rent control from applying to all single family and condominium units regardless of their occupancy dates. Subsequent legislation created "vacancy decontrol" wherein a landlord can price a unit at market rate when the tenant moves out voluntarily or when the landlord terminates the tenancy for nonpayment of rent.

Cities in the East Bay that have adopted rent control ordinances are Berkeley, Hayward, and Oakland. Other cities in the Bay Area with rent control regulations include San Francisco, East Palo Alto, Los Gatos, and San Jose. The City of East Palo Alto established a new rent control ordinance in 2010 after their prior rent control ordinance enacted in 1988 was superseded by Costa Hawkins. A summary table of these rent control ordinances can be found in Attachment 2.

Because much of the housing built before 1995 in Emeryville is either single family detached homes or condominiums, most of the housing units in the City would not be covered by rent control due to the restrictions of the Costa Hawkins Act.

The table below provides an analysis of residential structures in Emeryville that might be eligible for rent control. Please note that four of the projects (Emery Glen, Emery Villa Senior Housing, Archstone, and Triangle Court) have income restricted BMR units which are already regulated with regard to rent increases and therefore would not be subject to rent control regulations.

| <b>Pre-1995 Rental Housing In Emeryville</b>               |      |            |
|------------------------------------------------------------|------|------------|
| <b>BMR Units</b>                                           |      |            |
| Emery Glen                                                 | 1983 | 36         |
| Emery Villa Senior Housing                                 | 1992 | 50         |
| Artistry (Archstone)-BMR                                   | 1993 | 52         |
| Triangle Court (BMR)                                       | 1994 | 20         |
| <b>Total rent restricted</b>                               |      | <b>158</b> |
| <b>Market Rate Units</b>                                   |      |            |
| Hollis Street Project                                      | 1986 | 20         |
| Hollis Street Complex                                      | 1980 | 40         |
| Artistry (Archstone) - Market Rate                         | 1993 | 209        |
| Approximate 2 to 19 unit buildings                         |      | 450        |
| <b>Maximum Market Rate Units eligible for rent control</b> |      | <b>719</b> |

Based on the above, there are approximately 700 units that could be subject to rent control if Emeryville were to institute a rent control ordinance, a little over 10% of the current housing stock. Aside from Artistry, this does not include any of the larger apartment projects such as Bridgecourt, the Courtyards at 65<sup>th</sup>, and the Metropolitan, all of which were built after 1995, nor would it be applicable to any of the new apartment units currently under construction or planned. Note that owner-occupied units are not subject to rent control. Thus while the maximum number of market rate units eligible for rent control is 719, the actual number of eligible units may actually be fewer.

### *Implementation of Rent Control*

Cities with rent control enforce the ordinance through activities such as hearing rent increase cases. In some jurisdictions (such as San Francisco, Oakland, and Berkeley) a rent board comprised of tenant and landlord representatives handles this enforcement role. Representatives may be appointed, as in Oakland and San Francisco, or elected, as in Berkeley. Rent boards are typically supported by city staff, either through an existing city agency or a separate department. City staff may provide other services,

such a maintaining a rental unit registry or investigating violations of the rent ordinance prior to consideration by the rent board. Enforcement may also be administered directly by city staff rather than a rent board, such as in Hayward where this function is handled by the City Attorney's office. Enforcement authority varies from requiring a non-binding hearing for a rent increase to imposing permanent reductions or increases in rents.

Cities with rent ordinances generally charge fees to rental owners for administration of the program, and in some cases those fees can be passed on to tenants.

## 2. Eviction and Harassment Protection

In addition to rent control, some cities have eviction protections that allow landlords to evict tenants on a month-to-month lease only for "just cause." Long-term leases typically protect tenants from unfair eviction during the term of the lease in the provisions of the lease. Under these "just cause" eviction ordinances, the landlord must state and prove a valid reason for terminating a month-to-month tenancy. Each city's eviction ordinance specifies what would be considered a valid reason or "just cause", such as engaging in unlawful activities. Such eviction protections could be extended to any unit in the city, without regard to the limitations set forth by Costa Hawkins, although a city could also elect to limit these protections only to units covered by rent control.

In addition, some cities such as Oakland and Berkeley have harassment ordinances that make it illegal for the landlord to harass a tenant into moving out of a rent controlled unit.

In general, these policies provide little protection in the absence of rent control because a landlord can raise rents as a way of removing tenants, which is not prohibited by State law. As such, jurisdictions which have eviction and/or harassment protection ordinances also have rent boards, and staff administers both functions.

### *Approaches to Rent Control*

There are two general approaches to rent control – either to focus only on rent control or to include eviction and/or harassment protections in addition to rent control.

In the Bay Area, all of the cities with rent control have also chosen to include eviction and/or harassment protections in their rent control ordinances. With the exception of Hayward, all cities with rent control have also elected to have use rent boards to enforce their rent control ordinances. As mentioned above, Hayward does not have a rent board, and instead staff directly implements and enforces the rent control ordinance.

Staff did not find any examples in the Bay Area of rent control that did not include eviction and/or harassment protections. However, it would be possible to establish an ordinance that was strictly focused on rent control. Such an ordinance would not address any tenant issues, such as evictions without "just cause".

### 3. Rent Review

Some cities have ordinances that do not control rent increases but provide appointed rent review boards for tenants whose rents have been increased and request mediation. Local cities with rent review boards include Fremont, Alameda and San Leandro. Unlike rent control, there are no restrictions as to which units would be subject to the purview of the rent review board. However, due to the Costa Hawkins Act, rent review ordinances covering non-rent controlled units do not have binding authority on rent increases. Additional staffing is required to implement these ordinances, including administration for the board, managing any contracts, outreach, and tracking. In addition, staff provides annual reports on the program to governing bodies.

The City of San Leandro contracts with ECHO Fair Housing to administer their program while city staff manages the rent review board. The program is complaint driven but mandates landlords who raise the rents either \$75 a month or more than 10 percent a month to give notice to the tenant of their right to file for a rent review by the board. In this model, the landlord is required to negotiate in good faith and to attend, or have a representative attend, the rent review board meeting. If the landlord and tenant cannot reach an agreement, the rent increase still goes into effect. Most complaints are mediated by ECHO and settled before they reach the board. The program in Alameda is essentially the same as in San Leandro except that landlord attendance at the board meeting is voluntary. The Alameda program also is non-binding and any rent increase that is not voluntarily mediated goes into effect.

### 4. Tenant/Landlord Mediation

Most jurisdictions, including Emeryville, contract with a non-profit organization to act as a disinterested party who provides tenant/landlord mediation for disputes that may include rent increases. Emeryville is part of the Alameda County Urban County Consortium and the fair housing and tenant/landlord mediation contractor is currently ECHO Fair Housing. In general, ECHO mediates one to two tenant/landlord disputes a year for Emeryville residents. Some cities supplement the fair housing funds with additional funds for tenant/landlord mediation as well as additional outreach to tenants and landlords regarding their rights and obligations.

## **FISCAL IMPACT**

Any local rent protections for Emeryville residents would require funding that is currently not appropriated. For more detail on costs, please see Attachment 3.

Some of the ongoing cost of administering rent control could be offset by charging a fee to owners of the units under rent control. However, given the small number of units that would be eligible for rent control, preliminary analysis shows that such a fee will not

generate adequate funding to cover administrative costs related to the program or administration of a rent board.

Estimated unfunded staff costs for a tenant protection program are as follows:

|                                                   |                       |
|---------------------------------------------------|-----------------------|
| Rent Control Only                                 | \$184,000 - \$291,000 |
| Rent Control w/Eviction and Harassment Protection | \$410,000 - \$479,000 |
| Rent Review Board                                 | \$110,000             |
| Increased Outreach and Mediation Services         | \$10,000 - \$15,000   |

If the Council directs staff to develop either rent control or a rent review board, staff estimates that costs to research, prepare and adopt such an ordinance, including consulting services, staff time, attorney time, and outreach costs, would range from \$40,000 to \$140,000. In addition, the City would incur the ongoing cost of administering the program based on the estimates in the table above.

A more detailed fiscal analysis would be completed once the City Council has provided direction as to which market rate tenant protections and services to pursue, if any.

## **LEGAL CONSIDERATIONS**

As noted above, the Costa Hawkins Act and subsequent legislation severely limit rent control in the state. Rent control in Emeryville could only legally apply to units in multifamily housing occupied before February 1, 1995. Any adopted rent control ordinance would not apply to single family homes or condominium units, regardless of when those units were first occupied; nor would rent control apply to owner-occupied units. As noted above, the maximum number of market rate units eligible for rent control is approximately 719. Due to the Costa Hawkins Act, rent review ordinances covering non-rent controlled units do not have binding authority on rent increases.

## **ADVISORY BODY RECOMMENDATION**

At its meeting on October 1, 2014, the Housing Committee considered the various types of tenant protections discussed above. The Committee approved a motion recommending that the City contract with a landlord/tenant mediation provider to work directly with Emeryville tenants facing rent increases and to look further into a rent mediation board such as those in the cities of San Leandro and Alameda.

## **NEXT STEPS**

Staff requests that the City Council consider and give direction on the following options, and any of the other measures discussed above that the Council deems appropriate:

- Increasing funding to the landlord/tenant mediation contractor and adding evening hours in which Emeryville tenants and landlords can meet with mediators in Emeryville, if needed.
- Developing a rent review ordinance that covers all Emeryville tenants and encourages voluntary negotiations between landlords and tenants related to rent increases. The ordinance may include protections related to tenant harassment, and could provide for a rent review board.
- Hiring a consultant to analyze the issues related to the development of a rent control ordinance for those units that are legally eligible for rent control. The ordinance could also include protections related to eviction control and/or tenant harassment.

**PREPARED BY:** Catherine Firpo, Housing Coordinator  
Community Development Department

**REVIEWED BY:** Michelle De Guzman, Acting Manager  
Economic Development and Housing Division

**APPROVED AND FORWARDED TO THE  
EMERYVILLE CITY COUNCIL**



Sabrina Landreth  
City Manager

Attachment 1: Tenant Rights and Landlord Responsibilities, and City of Emeryville Resources.

Attachment 2: Summary of Existing Bay Area Rent Control Ordinances

Attachment 3: Tenant Protection Cost and Revenue Estimates