



City Council Report

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April 16, 2019

Consent Item 01

Title: (Pass for Publication) Ordinance Adding Chapter 5.156 to the Sacramento City Code Relating to a Residential Rental Mediation Program

Location: Citywide

Recommendation: 1) Review an Ordinance adding Chapter 5.156 to the Sacramento City Code relating to establishing a Residential Rental Mediation Program; and 2) pass for publication the ordinance title as required by Sacramento Charter section 32(c) for consideration on April 23, 2019.

Contact: Carl Simpson, Code and Housing Enforcement Chief, (916) 808-8183, Community Development Department

Presenter: None

Attachments:

- 1-Description/Analysis
- 2-Ordinance Summary
- 3-Ordinance

Description/Analysis

Issue Detail: Over the past year, the City Council has sought to address significant increases in rent levels. Sacramento is one of the fastest growing cities in the state and construction of new rental units has not kept pace with the demand. In 2017, the median rent increased by 8.2%, the highest in the nation for a metropolitan area. Over 50% of renters pay more than 30% of their income on housing. When renters are displaced due to excessive rent increases, studies show a corresponding increase in the number of people experiencing homelessness. At the same time, landlords have increasing costs to maintain, operate, and develop rental units.

To resolve landlord and tenant disputes related to rent increases, a Residential Rental Mediation Program is proposed. The program would require landlords to participate in a mediation process with their tenants if they increase rent by more than 6% over a 12-month period. The mediation process would involve initial conciliation by phone and then in-person mediation. It is expected that the mediator would ask landlords to address why the rent needs to be increased more than 6% and tenants could negotiate for a lower rent increase. Any changes in the rent increase would be subject to a mutual agreement of the tenant and landlord. The mediation process is non-binding and the mediator cannot require the landlord to accept a different rental rate. Landlords would be required to notify the tenant of their right to request mediation with the rent increase notice. With the landlord's consent, other tenants in the same complex receiving an annual rent increase of more than 6% could participate in the mediation. The tenant(s) would not be required to pay the rent in excess of 6% until the mediation process is completed. However, the process is expected to be completed within 30 days.

Also, under the program, landlords would have to offer existing and new tenants an 18-month lease. The purpose is to provide some stability for the renter and a longer-term tenant for the landlord. The landlord could at the same time offer the tenant a shorter lease term. If the rental rate offered in an 18-month lease was fixed at not more than a 6% increase, the landlord would not be subject to mediation.

These requirements would only apply to multi-family rental units, such as apartment complexes, where there are more than five units on a lot or on contiguous lots under the same ownership.

The ordinance effective date is October 1, 2019 to allow time for education and establishment of the mediation services. The ordinance would sunset on September 30, 2022, with the expectation that within three years the housing market will become more stable as more housing units are developed.

The Community Development Department Code Compliance division would administer the Residential Rent Mediation Program. To assist with implementing the program, the City would execute an agreement with an organization experienced in mediation. The agreement scope of work would include assisting with outreach to educate landlord and tenant organizations of the program requirements and fees; addressing inquiries about the mediation process; providing referrals for tenant assistance; processing rent mediation requests; providing conciliation and mediation services; assisting with development of a rent adjustment agreement between the landlord and tenant if requested; and providing monthly and annual reports.

Landlords would be subject to payment of two program fees, one per unit for recovery of the operational and administrative costs and an additional fee if mediation services are requested.

Policy Considerations: This ordinance is part of a multifaceted effort to implement the “Sacramento Tenant Protection and Relief Act,” an initiative developed by Council Members Guerra, Hansen and Jennings to provide immediate tenant protection and long-term relief regarding excessive rent increases, and to spur construction of new rental units and affordable housing.

Economic Impacts: Numerous academic studies show that artificially restricting rents of units within a city can chill housing unit production and economic investment necessary to reducing the cost of housing. The mediation approach outlined in the Residential Rental Mediation Program ordinance will provide accountability and a check on rental increases around the City, without drastically impacting the economics of new construction.

Environmental Considerations: The ordinance adoption is an administrative activity that does not result in a direct or indirect physical change to the environment and is therefore exempt from environmental review under CEQA per the CEQA Guidelines section 15378(b)(5).

Sustainability: Not applicable.

Commission/Committee Action: On October 23, 2018, the Law and Legislation Committee reviewed the proposed ordinance and passed a motion forwarding it to the City Council for adoption.

Rationale for Recommendation: The City Council needs to act to assist renters facing excessive rent increases to minimize tenant displacement, to stabilize the rental market, and to encourage new housing production by assuring housing developers that rents for new housing developments will not be arbitrarily restricted along with providing other incentives. The proposed Residential Rental Mediation Program strikes a balance between the interests of landlords and tenants.

Financial Considerations: Fees would be utilized to recover operational and administrative costs and the mediation services. Staff will return to City Council to establish program fees and adopt program operating and revenue budgets.

Local Business Enterprise (LBE): Not applicable.

Summary of Residential Rental Mediation Program Ordinance

1. **Term:** Ordinance in effect for 3 years, commences on October 1, 2019 and expires on September 30, 2022.
2. **Units Covered:** Only rental properties with 5 or more units.
3. **Annual Rent Limit/Mediation Process Triggered:** If landlord increases rent by more than 6% over 12 month period, tenant has right to seek mediation. Landlord to address need for increase of more than 6% through the conciliation and mediation process.
4. **Notice:** Landlord must provide tenant with notice of his/her right to request mediation with the notice of a rent increase. Failure to provide such notice invalidates a rent increase higher than 6%.
5. **Long Term Lease:** Landlord has to offer tenant an 18 month lease, but can also offer shorter term lease options. The 18 month lease is to be at a fixed rate for the term in the amount as agreed to by the landlord and tenant. If the landlord offers an 18 month lease that does not increase the rent by more than 6% for the full term, then the landlord is not subject to the mediation process.
6. **Mediation Process:** Tenant must request mediation within 10 business days of receipt of rent increase notice. Both landlord and tenant must participate in good faith, but non-binding if either party disagrees with the resolution proposed by the mediator. Conciliation then mediation under short time periods.
7. **Payment of Higher Rent:** Payment of the rent amount that exceeds the annual rent limit not due until mediation process completed. Thereafter, payment of excess due within 30 days unless there is a mediation agreement which provides for different rent rate or payment due date.
8. **Unlawful detainer:** If filed (for any reason), then mediation process stayed. Mediation process resumes only if tenant prevails (not evicted) and tenant requests resumption of process. Landlord can't retaliate against a tenant for requesting mediation.
9. **Mediation Fee:** Landlord pays mediation costs.
10. **Program Fee:** Landlords subject to the ordinance pay an annual per unit fee to cover program administration cost.
11. **Penalties:** Rent increase higher than 6% void if no mediation notice provided to tenant. Court determines if Landlord has to rebate rent if new rate higher than 6%.
12. **Other Tenants' Participation in Mediation.** Only if also subject to rent increase higher than 6%, seeks mediation within 10 business days, and landlord consents to joint tenant proceedings.

ORDINANCE NO. 2018-

Adopted by the Sacramento City Council

AN ORDINANCE ADDING CHAPTER 5.156 TO THE SACRAMENTO CITY CODE
RELATING TO A RESIDENTIAL RENTAL MEDIATION PROGRAM

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1. Findings.

The City Council finds and declares as follows:

A. Rents have increased significantly over the past decade, making rental units unaffordable for a majority of the tenants in the city. Rents have increased primarily because the city is one of the fastest growing cities in the state and construction of new rental units has not kept pace with the demand for such housing.

B. In-migration and low housing stock have contributed to the upward pressure on rent levels. According to industry sources, in 2017 the Sacramento metropolitan area experienced a median rent increase of 8.2%--the highest rent increase in the nation's 35 largest metropolitan areas.

C. Sacramento's 21.4% poverty rate is significantly higher than the average statewide rate of 14.3% and national rate of 12.7%. (US Census, QuickFacts). The Comprehensive Housing Affordability Strategy (CHAS) Data, 2011-2015 Five-Year Survey found that 51% of renters in Sacramento are "cost burdened" because they pay more than 30% of their income on housing.

D. Renters are being displaced because of their inability to afford excessive rent increases, contributing to an increase in the number of homeless persons and families. The 2017 Point in Time Count of homeless persons in Sacramento County found a 30% increase from the 2015 count.

E. Providing tenants with options for an 18-month lease and to mediate disputes over rent increases will help stabilize the rental housing market and reduce displacement and eviction rates.

F. In combination with other measures to support renter-assistance programs, streamline the permit process for construction of new housing units, and reduce costs for affordable housing projects, the increased supply of housing for all income levels will help prevent excessive rent increases in the future.

G. A program to help renters mediate disputes with their landlords regarding rent increases is needed until the expansion of rental and affordable housing units can be achieved to stabilize the rental market.

H. Nothing in this ordinance prevents landlords from receiving a fair and reasonable rate of return of their financial investment in rental units.

SECTION 2.

Chapter 5.156 is added to the Sacramento City Code to read as follows:

Chapter 5.156 RESIDENTIAL RENTAL MEDIATION PROGRAM

5.156.010 Purpose.

The purposes of this chapter is to provide tenant protection and prevent displacement by establishing a mediation process to address disputes over rent increases and offering tenants long-term leases.

5.156.020 Definitions.

As used in this chapter, the following words or phrases have the following meanings:

“Annual rent adjustment” means the percentage by which the rent for an existing tenancy in a rental unit is increased within a 12-month period.

“Base rent” means the reference point from which the Annual Rent Adjustment shall be determined. For tenancies commencing on or before the effective date of this chapter, the base rent is the monthly Rent in effect on July 1, 2019. For tenancies commencing after July 1, 2019, the base rent is the initial monthly rent set forth in the lease or if there is no lease the amount charged by the landlord upon initial occupancy.

“Conciliation” means the consultation, which may be by phone, prior to commencement of mediation with the conciliator, the landlord, and tenant to address an increase in Rent above the amount of the annual rent adjustment.

“Conciliator” means the person designated by the program administrator to conduct conciliation.

“Landlord” means a person that either has more than 50% ownership of a rental unit or is entitled to receive rent for the use and occupancy of the rental unit, and the agent or representative of the landlord.

“Lease” means the written agreement between a landlord and a tenant for use or occupancy of a rental unit for at least 30 days.

“Mediation” means the in-person consultation with the mediator, the landlord, and tenant to address an increase in rent above the amount of the annual rent adjustment.

“Mediation fee” means the fee established by section 5.156.100 for a landlord to fund the cost of the conciliation and mediation.

“Mediation program” means the conciliation and mediation process as established in the mediation program administrative procedures.

“Mediation program administrative procedures” means the requirements and procedures for the mediation program.

“Mediation program fee” means the fee established by section 5.156.090 to fund the costs of the mediation program.

“Mediator” means the person designated by the program administrator to conduct the mediation.

“Notice of the availability of mediation” means the written notice of the mediation program as specified in the mediation program administrative procedures.

“Notice to increase rent” means a written notice provided by a landlord to a tenant that sets forth the amount of the increase in the monthly rent. The notice to increase rent must include the notice of the availability of mediation.

“Program administrator” means the person designated by the city manager to implement the mediation program.

“Rent” means the monthly monetary payment for the use and occupancy of a rental unit.

“Rental property” means five or more rental units located on a parcel or lot or on contiguous parcels or contiguous lots under common ownership.

“Rental unit” means a building, structure, or part thereof that is located on a rental property and offered for use or occupancy for residential purposes under a lease.

“Request for mediation” means the written notice to initiate the mediation program as specified in the mediation program administrative procedures.

“Tenancy” means the right or entitlement of a tenant to the use or occupancy of a rental unit under the terms of a lease.

“Tenant” means one or more persons who are entitled under a lease to the use or occupancy of a rental unit.

5.165.030 Exemptions.

The following rental units are exempt from all provisions of this chapter:

A. A rental unit in a hotel, motel, inn, tourist home, or rooming and boarding house which is rented primarily to transient guests for a period of less than 30 days; and other transient occupancies as defined in California Civil Code section 1940(b).

B. A rental unit in a residential hotel governed by chapter 18.20.

C. A rental unit in an institutional facility, including a hospital, medical care facility, residential care facility, asylum, group home for seniors or the disabled that is owned and operated by a non-profit entity; a convent or monastery owned and operated by a religious organization; a fraternity or sorority house affiliated with a college or university; and a dormitory owned and operated by an accredited institution of higher education.

D. A rental unit that is either owned, operated, or subsidized by a government entity or subject to a covenant imposed by a government entity restricting the occupancy to extremely-low-, very-low-, low-, or moderate-income families; and the Rent amount paid by a tenant is restricted based on the tenant’s income.

E. A rental unit in a mobile home park as defined in California Civil Code section 798.4 or a recreational vehicle park as defined in California Civil Code section 799.30.

F. A rental unit in which the tenant shares a bathroom or kitchen with the property owner.

5.156.040 Eighteen-month lease requirement.

Unless the Landlord has issued the tenant a notice to vacate, at least 30 days prior to the expiration of a lease for an existing tenancy and at the time a lease is offered for a new tenancy, a landlord that owns rental property is required to offer the tenant a lease for the rental unit with a minimum term of 18 months. A landlord may also offer a tenant a lease for the rental unit for a shorter term.

5.156.050 Annual rent adjustment; Notice of rent increase.

A. The annual rent adjustment is 6%.

B. If a landlord offers a tenant an 18-month lease for a rental unit with a rent amount that does not exceed the base rent plus the annual rent adjustment for the full term of the lease, the landlord is not subject to mediation as provided in section 5.156.060.

C. If a landlord offers a tenant a lease for a rental unit with a rent amount that exceeds the base rent plus the annual rent adjustment, the landlord is required to comply with section 5.156.060.

D. The content of the notice to increase rent provided to a tenant shall include the conciliation and mediation information as prescribed in the mediation program administrative procedures.

5.156.060 Mediation program.

A. The landlord and tenant are required to participate in good faith in the conciliation and mediation process if the landlord increases the base rent by more than the annual rent adjustment and the tenant files a request for mediation with the program administrator not later than 10 business days from the date of tenant's receipt of the landlord's notice to increase rent and in accordance with the mediation program administrative procedures.

B. With the landlord's consent, other tenants occupying a rental unit on the same rental property may also participate in the conciliation and mediation process initiated under subsection A if the other tenant also filed a request for mediation in accordance with the mediation program administrative procedures.

C. If a tenant that initiated the conciliation and mediation process under subsection A, or participates in the conciliation and mediation process under subsection B, fails to comply with the mediation program administrative procedures, the program administrator may terminate the proceedings.

D. If the landlord files for an unlawful detainer to evict a tenant from a rental unit, the program administrator may suspend the conciliation and mediation process for that tenant. The conciliation and mediation process for that tenant may be resumed by the program administrator if the unlawful detainer is not issued by the court and the tenant files a request to resume the process in accordance with the mediation program administrative procedures.

E. Neither the landlord nor the tenant is required to comply with the recommendation of the conciliator or mediator.

F. A landlord is prohibited from retaliating against a tenant because the tenant submitted a request for mediation or failed to participate in good faith in the conciliation and mediation process.

5.156.070 Limit on rent increase.

A. If a landlord fails to provide the tenant with a notice to increase rent as provided in section 5.156.050.D, an increase in the base rent is limited to the annual rent adjustment. In any unlawful detainer action, the court may determine if reimbursement for the excess rent collected by the landlord is owed to the tenant.

B. If the mediation process is initiated under section 5.156.060.A, the tenant is not obligated to pay the landlord rent in excess of the base rent plus the annual rent adjustment until the mediation process is completed. After the mediation process is completed, the tenant is required to pay the landlord within 30 days the difference between the amount of rent set forth in the notice to increase rent and the amount actually paid for each month that the underpayment of rent occurred, unless there is a mediation agreement which provides for different rent rate or payment due date.

5.156.080 Mediation program administrative procedures.

The city manager may adopt administrative procedures to implement the provisions of this chapter.

5.156.090 Mediation program fee.

All landlords with rental units that are subject to this chapter shall pay the mediation program fee as established by the city council on an annual basis. The mediation program fee is to fund the city's cost to implement and enforce the provisions of this chapter.

5.156.100 Mediation fee.

A landlord subject to mediation under section 5.156.060.A shall pay the mediation fee for the costs of the conciliation and mediation as established by the city council. The mediation fee is to fund the city's cost to provide conciliation and mediation services for the landlord and tenant.

5.156.110 Non-waiver.

Any provision of a lease that purports to waive any provision of this chapter is void as against public policy.

5.156.120 Remedies.

In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.

5.156.130 Effective date.

This ordinance takes effect on October 1, 2019.

5.156.140 Sunset date.

This chapter shall remain in effect until September 30, 2022 and on that date this chapter is repealed.

SECTION 3. Severability.

If any provision of this ordinance or its application to any person or circumstance is held invalid or ineffective by any court of competent jurisdiction, or by reason of any preemptive legislation, that invalidity shall not affect the validity of the remaining provisions of this ordinance. The city council declares that it would have passed this ordinance and each section, subsection, subdivision, sentence, clause and phrase, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or words be declared invalid.