



**Fremont City Council**

3300 Capitol Avenue  
Fremont, CA 94538

**SCHEDULED**

Meeting: 02/05/19 07:00 PM  
Div/Dept: Human Services Department  
Category: Presentations

**STAFF REPORT (ID # 3667)**

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**RENT REVIEW ORDINANCE ANNUAL REPORT - Annual Report on the Implementation and Operation of the Rent Review Ordinance and Recommended Ordinance Changes**

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**Executive Summary:** On October 3, 2017, the City Council adopted the Rent Review Ordinance (RRO) which became effective on January 1, 2018.

Per the RRO, staff has prepared a RRO Annual report for Council. The report provides an update on the status of the RRO implementation and operation since its inception, and an evaluation of the effectiveness of the rent review program.

**BACKGROUND:** In 1997, the City enacted the Residential Rent Increase Dispute Resolution Ordinance (RRIDRO). The RRO replaced RRIDRO to provide enhanced rent review procedures in the following ways:

- \* Establishes a Rent Review Board: Provides tenants the right to present matters to a Rent Review Board in a public meeting if the proposed rent increase exceeds 5% in any 12-month period.
- \* Enhances Rent Increase Notice Requirements: Requires that rent increase notices exceeding 5% include a statement of the reason for the rent increase. All rent increase notices must provide information about the availability of the Rent Review Board.
- \* Increases Retaliation Penalties: Prohibits retaliation by the landlord against any tenant who uses any of the remedies in the RRO and increases the civil penalty from \$1,000 to \$2,000 for retaliatory conduct.
- \* Annual Report to Council: Requires staff to prepare an annual report to the City Council assessing the effectiveness of the Ordinance.

On July 10, 2018 staff presented a RRO Mid-Year report to Council, which provided an update on the activities that had taken place to implement the RRO.

**DISCUSSION/ANALYSIS:** This report serves as the annual report to Council to assess the effectiveness of the rent review program. The report covers the period from January 1, 2018 to December 31, 2018. The City has approximately 235,000 residents and 73,000 households. Of the total housing units in Fremont, about 38% are renter occupied. There are approximately 22,500 rental units in Fremont that are subject to the RRO. Rental units that are not subject to the Rent Review Ordinance include units that are hotels, boarding houses, transient accommodations, dormitories, mobile home space rentals, rental units owned or operated by a government agency, and rental units that are subsidized by a

government agency and subject to a regulatory agreement. The average cost of rent in 2018 for a 2-bedroom rental in Fremont was \$2,820.

The Rent Review office has received a total of seventy-one requests for rent review related services and forty-seven of them qualified as rent review cases. 45% of the rent review cases were resolved with a lowered rent increase. The average rent increase for these cases prior to the rent review process was 11.5%, and decreased to 8.7% after the process.

Staff also received more than 800 inquiries on other housing concerns with the need for affordable housing at the top of the list, an indication that the need for affordable housing remains a priority in Fremont.

There have been challenges that arose last year that illustrate the limitations of the RRO. This report highlights the notable challenges and presents potential solutions for Council consideration. The following is a list of ordinance limitations and potential solutions identified by staff to address some of the challenges of the RRO. Staff is seeking Council feedback and direction on each item listed below.

#### Ordinance Limitations and Potential Solutions

##### 1. Responsible Party (FMC 9.60.020)

**Ordinance Limitation:** The RRO states that if a landlord does not wish to participate in the rent review process personally, then they may designate a responsible party to participate on their behalf. A responsible party is a person with the legal authority to adjust rent increases and resolve tenant issues on behalf of the landlord. However, the ordinance is vague as to how much authority the responsible party needs to have. For example, a responsible party may have the authority to adjust the rent increase by 2%, but for anything more they will have to receive approval from the landlord. This can be a challenge, because if the responsible party cannot make definitive decisions during rent review, it slows the process and discourages the tenants from continuing with the process.

**Potential Solution:** Add language to the ordinance to strengthen the definition and role of the responsible party to require the person negotiating the rent increase to have final legal authority to adjust the rent without limitations.

##### 2. Retaliation (Relocation Assistance)

**Ordinance Limitation:** The RRO states that landlord retaliation is strictly prohibited, what types of action can be presumed to be retaliatory conduct, and lists the remedies for such conduct. However, the City currently does not directly enforce against retaliatory conduct. It is up to the tenant and landlord to resolve disputes around retaliation through civil action. This discourages many tenants from exercising certain rights, like the City's Rent Review Program. Of the forty-seven rent review cases, 23% of the cases ended because the tenants indicated that they feared retaliation.

**Potential Solution:** Fear of eviction, particularly in a low vacancy environment, is understandable. The City does not currently have a just cause eviction ordinance that prevents landlords from evicting a tenant for no-cause. However, just cause violations are also resolved in civil action. A potential remedy adopted by some cities is to require a landlord to provide relocation assistance upon eviction. Relocation assistance may act as a financial deterrent against landlord retaliation, because there would be a financial cost to

evict a tenant. Some of the jurisdictions that currently have a relocation assistance program are the Cities of San Leandro, Mountain View, and Berkeley.

The Rent Review Board had a robust conversation about relocation assistance at their regular board meeting on January 9, 2019, and brought up the many complex components to it.

If Council directs, staff will review the success of the relocation approach and also consider other approaches that may be available to reduce the fear of retaliation. Staff would then report back to the Board and the City Council.

### 3. Exempt Units (FMC 9.60.050)

Ordinance Limitation: Staff received ten rent review requests from tenants that live in rental units that are exempt from the ordinance because they are rental units that are owned and operated by a government agency, or subsidized by a government agency and subject to a regulatory agreement (i.e. Section 8 units). The average rent increase of those ten tenants was 28.9% compared to the overall average of all rent review cases of 11.5%. None of these tenants were able to utilize the City's rent review process to resolve their rent increase disputes.

Potential Solution: Change the ordinance so that rental units owned or operated by any government agency and rental units subsidized by a government agency and subject to a regulatory agreement are no longer exempt from the ordinance. However, the Ordinance should clarify that shared housing units and junior accessory dwelling are exempt units. Shared housing units and junior accessory dwelling units often have other agreements in place, such as service in lieu of payment. Due to the nature of shared housing agreements, staff recommends that these rental units be exempt from the RRO.

### 4. Source of Income (Including Section 8) Discrimination

Ordinance Limitation: As indicated by the number of calls received in 2018 regarding affordable housing, there is still a big need among renters for housing options that are affordable. One solution to the need for affordable housing is through programs that provide tenants with rental subsidies, such as the federal Housing Choice Voucher program (HCV), commonly referred to as Section 8. However, voucher holders are having trouble finding landlords that will accept their vouchers, and many tenants end up losing their vouchers or moving out of the area to find a landlord that will accept their voucher. The issue is serious enough that over 42 jurisdictions nationwide have adopted policies or ordinances relating to this issue, including several jurisdictions in California, such as San Francisco and San Diego.

Potential Solution: Include a section to the ordinance that prohibits landlords from discriminating against applicants based on source of income. California law currently prohibits discrimination based on source of income, which is defined as legal, verifiable income paid directly to the tenant or their representative. Some examples of source of income include Social Security, Supplemental Security Income (SSI), CalWorks, and General Assistance. However, Section 8 HCV and other rental subsidies are not included as source of income. Landlords today are not prohibited by federal or state law from rejecting a tenant application based solely on the fact that they possess a housing choice voucher or other rental subsidies because rental subsidies do not have to be considered as income. This puts tenants who rely on rental subsidies at a disadvantage when looking for housing, because many landlords do not want to rent their units to a tenant with a voucher or subsidy. A

source of income discrimination ordinance would prohibit landlords from rejecting a tenant based solely on the fact that they have a rental subsidy voucher. For example, landlords would no longer be able to advertise that "Section 8 is not allowed." There are currently nine other cities and counties in California that have passed ordinances that prohibit discrimination against a tenant based on source of income.

#### 5. Reason for Rent Increase over 5% (FMC 9.60.030(a))

Ordinance Limitation: The ordinance requires that landlords provide a reason for any rent increases above 5%. A significant number (71%) of rent increase notices received by the City cite bringing the unit up to market rent as the reason for the rent increase. Many tenants have noted that the reasons listed on their rent increase notice often do not provide enough details to explain the reason for the increase above 5%.

Potential Solution: Expand FMC 9.60.060 (c) so that the landlord/responsible party shall present evidence to explain the rationale or reason for rent increase in excess of 5% during the consultation/mediation step.

#### 6. Clarification on Rent Increase Notice Delivery Requirement (FMC 9.60.030(b))

Ordinance Limitation: Currently the ordinance is written so that the rent increase notice shall be personally delivered or posted and mailed to the tenant. This conflicts with State law, which requires that the notice shall be personally delivered or mailed to the tenant.

Potential Solution: Revise ordinance so that rent increase notices shall be personally delivered to the tenant or mailed to the tenant. Also remove the mailing requirements since State law incorporates the mailing process. This would align with California State noticing and mailing requirements.

#### 7. Clarification on Rent Increase Notice Applicability to Rent Terms (FMC 9.60.040(a))

Ordinance Limitation: FMC 9.60.040(a) states that landlords shall provide tenants notice of the availability of rent review in addition to any rent increase notice required by California Civil Code Section 827(b). However, California Civil Code Section 827(b) is applicable only when the tenant's rental term is from week to week, month to month, or other period less than a month. This means that the City's RRO can be interpreted so that the notice of availability of rent review form is to be provided to tenants only if their rental term is week to week or month to month.

However, the City's municipal code is intended to mean that the notice of availability of rent review must follow the noticing procedure referenced in California Civil Code Section 827(b), but must be applied for all notices that include a rent increase adjustment, regardless of the length of tenancy.

Potential Solution: Clarify that the notice of availability of rent review shall be provided to any tenant that receives an increase from their base rent, regardless of the length of tenancy.

#### 8. Rent Review Board Terms (FMC 2.20.650)

Ordinance Limitation: Currently the ordinance is written so that all Rent Review Board member terms will expire at the same time, rather than staggering them. Staggered board terms are beneficial because the remaining Board Members whose terms do not expire can

pass on institutional, historical, and procedural knowledge to the incoming Board Members. This also provides for a more seamless transition for the incoming Board Members.

Potential Solution: Revise the ordinance so that the Rent Review Board member terms are staggered.

**FISCAL IMPACT:** There is no anticipated fiscal impact to the City at this time. Staff is only seeking direction from the Council on potential solutions to the RRO limitations.

**Rent Review Ordinance Annual Report 2018 is available online:**

<https://fremont.gov/DocumentCenter/View/40301/Rent-Review-Ordinance-Annual-Report-2018>

**RECOMMENDATIONS:**

1. Accept the Rent Review Ordinance Annual Report.
2. Provide feedback and direction to staff on each of the eight potential solutions to the RRO limitations presented, and provide any additional solutions the Council would like to explore.