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CITY OF EAST PALO ALTO
COUNCIL OFFICE

February 24, 2010

East Palo Alto City Council
2277 University Avenue
East Palo Alto, CA 94303

Dear Honorable Members of the City Council:

Eric Oberle and I have devoted some time over the past week to carefully review the draft of the Revised RSO that will be the subject of the public hearing on March 2nd. I am pleased to say that we think the Council and City staff have done a good job of working with the community to arrive at a draft that we happily support.

There are, however, a few places where we think that the Council should consider correcting errors that occurred in editing, or adjusting the wording in order to provide greater clarity or make the ordinance more enforceable and defensible.

Typographical Errors

7.P (Conflict of Interest) - contains a garbled clause and incorrect section reference (highlighted in bold):

However, a Board Member shall be disqualified from ruling on a petition for an **individual rent adjustment of a rent maximum allowable rent under Section 10**, where the Board Member is either the landlord of the property or a tenant residing in the property that is involved in the petition.

suggested correction:

However, a Board Member shall be disqualified from ruling on a petition or an appeal conducted under Section 14 where the Board Member is either the landlord of the property or a tenant residing in the property that is involved in the petition.

Dates

The City Council should consider whether any of the dates that govern starting point for applicability of the revised RSO need to be updated to refer to 2010 instead of 2009:

4.J (Maximum Allowable Rent): July 15, 2009 threshold for applying AGA calculations specified by the prior ordinance vs. the revised RSO

5.B.2 (Ellis Act Notices): June 1, 2009

8.A (Annual Registration): initial date of March 1, 2010 will have already passed by the June election

Changes in wording

1. Change title of Section 14 to "Procedures for Hearings and Petitions"

"Procedures for Hearings and Petitions" better describes the actual scope of Section 14 as it appears in the draft. Section 14 already provides for more than just rent adjustment petitions, and it is important to clarify that intent.

2. Update 17.B to include refusal to lawfully paid rent among the listed forms of harassment

Over the past two years, refusal of rent was a form of harassment reported by tenants in East Palo Alto, but they had no recourse. San Francisco's ordinance has such a provision, and if the Council were to adopt their phrasing, the subsection would be (emphasis added to highlight phrase):

B. HARASSMENT. No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit the unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services, **refuse to accept or acknowledge receipt of a tenant's lawful rent payments**, or interfere with the tenant's quiet enjoyment of the rental unit and common areas as part of an attempt to increase the rent above the maximum allowable rent permitted under this Ordinance, either by obtaining such excessive rent from the tenant or by creating a vacancy and increasing the rent to a new tenant. Such harassment shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. The Board may address harassment issues further in its rules and regulations

3. Change section 18.F (Attorney's Fees) to apply to all of the Section 18 remedies available to tenants.

We're not sure why the draft failed to enumerate 18.A. Perhaps it was a mistake in editing? Private enforcement remains an important concept, and the Court of Appeal acknowledged that in their published decision in favor of the City in *Woodland Park Management v. City of East Palo Alto*.

We suggest 18.F be modified to state:

F. ATTORNEY'S FEES. A prevailing tenant in a civil claim for damages based on a violation of Sections 16 or 17, or seeking a remedy under Section 18, shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

4. In Section 21, give the court more latitude with criminal penalties for subsequent violations.

The draft appears to cap criminal penalties at \$1,000 regardless of the number of violations or the length of time that the violation continued unabated. This creates a perverse economic incentive for a landlord to violate the ordinance and risk a small fine simply because it's cheaper than complying with the law.

We suggest adding "per count" as a way of providing the court the latitude to impose a penalty commensurate with the violation. This is especially important for systematic violations and repeat offenders. With such a change the RSO is not requiring a large penalty but providing the court that option:

Any landlord who is found by a court of appropriate jurisdiction to be guilty of a willful violation of this Ordinance shall be subject to up to a \$1,000 fine and/or 90 days in jail for a first offense and up to a \$1,000 fine and/or six months in jail **per count** for any subsequent offenses.

AGA CPI percentage

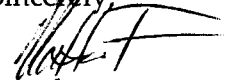
The 65% of CPI AGA authorized by the revised ordinance is likely to be a sore spot for landlords and perceived as means of challenging the RSO.

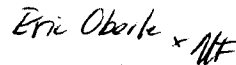
While the Council has a sound argument in support of why 65% is fair, both on economic grounds and legal precedents established by successful defenses in other jurisdictions, if there is need to find a middle ground between the 65% and 100% of CPI, we suggest that the Council consider modifying 10.B to grant the Rent Stabilization Board the authority to set the percent of CPI in this range each year. Subsection 10.B could be modified as follows:

B. ANNUAL GENERAL ADJUSTMENT BASED ON CPI. Before July 1 of each year, the board shall establish the percentage rent increase for Annual General Adjustments. This percentage increase will be set based on a majority vote of the Board, and it shall be at least 65% and shall not exceed 100% of the percentage increase in the CPI as defined in Section 4 of this Ordinance. On or after July 1 of each year, owners shall be permitted to increase the current rent of each tenancy by this annual general adjustment amount. The current rent here means the rent being charged to the tenant, unless the allowable rent pursuant to this Ordinance is lower, in which case the permissible increase shall be calculated from the lower rent.

In closing, let us again express our thanks to the City Council and City staff for guiding the community through the process of updating our RSO and bringing it to the ballot.

Sincerely,


Matthew Fremont


Eric Oberle