

ORDINANCE NO. 841-17

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
UNION CITY ADDING CHAPTER 5.55 "RENT REVIEW" TO THE UNION CITY
MUNICIPAL CODE**

WHEREAS, there is an increasing demand for rental housing in the City of Union City leading to rising rents; and

WHEREAS, the average rent for market-rate units in the City of Union City has increased significantly in the last five years; and

WHEREAS, rent increases can cause significant financial hardship for tenants and potentially displacement; and

WHEREAS, secure and stable shelter is a basic necessity of life; and ds

WHEREAS, on May 17, 2016, the City Council held a study session to review possible tenant protection measures to address rising rents and displacement; and

WHEREAS, on July 12, 2016, the City Council formed a Rent and Tenant Taskforce ("Taskforce") to assist with the consideration of possible tenant protection measures; and

WHEREAS, on September 13, 2016, the City Council appointed fifteen (15) members to the Taskforce and the Taskforce convened seven (7) public meetings from October 2016 to January 2017; and

WHEREAS, on January 31, 2017, the City Council considered the Taskforce's recommendations; and

WHEREAS, on February 14, 2017, the City Council directed staff to develop a rent review ordinance; and

WHEREAS, on March 28, 2017, the City Council provided direction regarding proposed provisions for a rent review ordinance; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City Council desires to create a non-binding rent review process to encourage landlords and tenants to reach mutually agreed to outcomes to disputes related to rent increases; and

WHEREAS, the rent review process will increase cooperation and fairness within the residential rental market; and

WHEREAS, the rent review ordinance is consistent with City policies; and

WHEREAS, the amendments to the Municipal Code propose to add Chapter 5.55 as shown in Exhibit A, which exhibit is attached and incorporated herein by reference.

THE CITY COUNCIL OF THE CITY OF UNION CITY DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 3. Findings. The City Council makes the following findings in support of approving this Ordinance, based on the whole of the record before it.

1. The City has a substantial government interest in regulating the relations between residential landlords and tenants in order to increase certainty, stability, and fairness within the residential rental market.
2. The amendments are neither overbroad nor vague, and are consistent with the City's efforts to protect the public health, safety and the general welfare.

SECTION 4. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, adding Chapter 5.55 as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

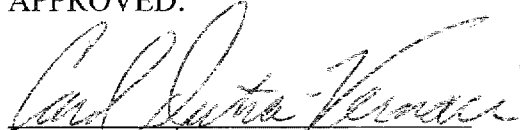
SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on June 27, 2017, by the following vote:


AYES: Councilmembers Ellis, Duncan, Singh, Vice Mayor Gacoscos, Mayor Dutra-Vernaci
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:



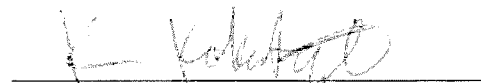
Carol Dutra-Vernaci
Mayor

ATTEST:



Anna Brown
City Clerk

APPROVED AS TO FORM:



Kristopher K. Kokotaylo
Interim City Attorney

EXHIBIT A

Chapter 5.55

RENT REVIEW

5.55.010 Short Title.

This chapter shall be known as the “Rent Review Ordinance.”

5.55.020 Definitions.

A. “Base Rent” means the rent paid to the landlord for occupancy of the residential property required to be paid by the tenant to the landlord in the month immediately preceding the effective date of the rent increase. Base rent excludes pass through costs and ancillary costs paid separately to the landlord for parking, storage, utilities, water, garbage or any other similar fee or charge associated with a residential property.

B. “City” means the City of Union City.

C. “City Manager” means the City Manager of the City of Union City, or his or her designated representative.

D. “Director” means the Director of the Economic and Community Development Department of the City of Union City, or his or her designated representative. A designated representative may include a party or organization contracted by the City to provide the necessary services to implement the procedures contained in this Chapter.

E. “Council” means the City Council of the City of Union City.

F. “Landlord” means any person, partnership, corporation, or other business entity offering for rent or lease any residential property in the City. “Landlord” shall include the agent or representative of the landlord, provided that such agent or representative shall have full authority to answer for the landlord and enter into binding agreements on the landlord’s behalf.

G. “Party” means a person who participates in the rent review program of this chapter or his or her agent or representative.

H. “Rent” means a fixed periodic compensation paid by a tenant at fixed intervals to a landlord for the possession and use of residential property as defined by the rental agreement between the landlord and tenant. Rent excludes pass through costs and ancillary costs paid separately to the landlord for parking, storage, utilities, water, garbage, or any other fee or charge associated with a residential property.

I. “Rent Increase” means any upward adjustment of the rent from the base rent amount.

J. “Rent Review Officer” means the officer designated by the Director to conduct mediation pursuant to Section 5.55.040(E).

K. “Residential Property” means any housing unit offered for rent or lease in the City. Mobile homes are subject to this Chapter only if a tenant rents the mobile housing unit itself. Residential property shall exclude any housing unit that is subject to a recorded regulatory agreement that requires that the housing unit be rented to a tenant at specified income levels as defined by the regulatory agreement.

L. “Tenant” means any person having the legal responsibility for the payment of rent for residential property in the City. “Tenant” shall include the agent or representative of the

tenant, provided that such agent or representative shall have full authority to answer for the tenant and enter into binding agreements on the tenant's behalf.

5.55.030 Notice of Availability of Rent Review.

A. Notice of Availability of Rent Review Required. In addition to the notice of a rent increase required by Civil Code Section 827(b), and at the time when a landlord provides notice of any rent increase, the landlord shall also provide notice of the availability of the rent review procedure established by this chapter. The notice of availability of rent review required by Section 5.55.030(C) shall be provided by the landlord at the time when a landlord provides notice of any rent increase in the three predominant languages spoken in the City. The City Manager or his or her designee shall determine the predominant languages spoken in the City and shall ensure that copies of the notice of availability of rent review required by Section 5.55.030(C) are made available to landlords by the City in those three languages. Any rent increase accomplished in violation of this chapter shall be void, and no landlord may take any action to enforce such an invalid rent increase. Any rent increase in violation of this chapter shall operate as a complete defense to an unlawful detainer action based on failure to pay any illegal rent increase. Any tenant required to pay an illegal rent increase may recover all illegal rent increase amounts actually paid by the tenant. If a landlord fails to properly notice a tenant pursuant to this chapter, the landlord must re-notice the tenant in accordance with this section prior to demanding or accepting any increase in rent.

B. Contents of Notice. All notices of the availability of rent review shall be in writing, shall provide the name, address and phone number of the landlord and shall be personally delivered to the tenant or mailed to the tenant at the address of the tenant's residential property. Service by mail shall be presumed complete within five (5) calendar days of mailing. This presumption may be rebutted by the tenant.

C. Text of Notice. In addition to all other information provided in the notice of the availability of rent review required by this chapter, each such notice shall substantively state:

NOTICE: Under Civil Code Section 827(b) a landlord must provide a tenant with thirty (30) days' notice prior to a rent increase of ten percent (10%) or less and sixty (60) days' notice of a rent increase of greater than ten percent (10%). Under Chapter 5.55 of the Union City Municipal Code, a landlord must, at the same time as a notice of a rent increase, provide this notice of the City's rent review procedure, before demanding or accepting any increase in rent. You are encouraged to contact the owner or manager of your rental unit to discuss the rent increase. However, if you have received notice of a rent increase that: 1) will increase your rent more than 7% above the base rent you paid last month; or 2) follows one or more prior rent increases within the past year where the combined rent increases are more than 7% than the base rent paid prior to the first rent increase over the past year, you may request rent review, which includes conciliation and mediation, of your rent increase. Such a request must be submitted in writing within fifteen (15) calendar days of your receiving notice of the rent increase or post marked within 15 calendar days of receipt if mailed. You must submit a copy of the notice of rent increase at the same time you submit the rent review request. For more information regarding the rent review procedure, please visit www.unioncity.org/rent-requirements. To request review of your rent increase, please contact the Economic and Community Development Department of the City of Union City, 34009 Alvarado-Niles Road, Union City, California

94587. Under Civil Code Section 1942.5, it is illegal for a landlord to retaliate against a tenant for lawfully and peaceably exercising his or her legal rights.

5.55.040 Rent Review.

A. Request for Rent Review. A tenant may seek rent review when the proposed rent increase: 1) raises the rent to an amount more than 7% than the base rent; or 2) follows a prior rent increase or rent increases imposed within the previous twelve-month period where the combined rent increases are more than 7% than the base rent paid prior to the first rent increase of the twelve-month period. The tenant seeking rent review must submit the request in writing to the Director and the request must be received by the Director, or post marked (if submitted by mail), within fifteen (15) calendar days of the tenant's receipt of the notice of rent increase. The request must include a copy of the landlord's notice of rent increase.

B. Conciliation and Mediation. The rent review shall consist of conciliation pursuant to Section 5.55.040(D) and, if required, mediation pursuant to 5.55.040(E). After determining that a proposed rent increase meets the criteria for initiation of rent review set forth in Section 5.55.040(A) above, the Director shall attempt to contact the landlord to initiate conciliation procedures pursuant to Section 5.55.040(D)(1) below within three (3) business days.

C. Impact on Rent Increase. A request for rent review shall not delay the effective date of a rent increase. If appropriate, the parties may enter into a mutual private agreement to delay the effective date of a rent increase or reach any other agreement to effectively reimburse rent increases paid by the tenant.

D. Conciliation.

1. Duration of Conciliation. After the Director contacts the landlord pursuant to Section 5.55.040(B), the Director shall provide the landlord with a copy of the tenant's rent review request form and the landlord shall respond to acknowledge the rent review request either orally or in writing within ten (10) business days. Failure of the landlord to respond to the Director within ten (10) business days, absent a finding of good cause by the Director, shall void the rent increase. Good cause for failure to respond shall include, but not be limited to, illness, unanticipated absence from the office, emergency situations, and other similar circumstances. The Director shall attempt conciliation, which may include peer-to-peer counseling, of the rent increase for a period not to exceed ten (10) business days following acknowledgement of the rent review request by the landlord.

2. Participation. The landlord and tenant shall participate in conciliation and shall provide relevant information, exchange proposals, reasonably consider proposals by opposite parties and engage in discussion(s) regarding the rent increase and issues related to the rent increase. One or more tenants affected by a common rent increase may simultaneously participate in the same conciliation proceeding with consent of the landlord.

3. Failure to Participate. Failure of the tenant to participate in conciliation of the rent increase at issue shall bar the tenant from seeking mediation pursuant to Section 5.55.040(E) and shall bar the tenant from seeking any further remedies under this Chapter for such rent increase. Failure of the landlord to participate in conciliation shall void the rent increase.

4. Agreement During Conciliation. If the parties agree to a resolution during conciliation, they may formalize the agreement in a standard form signed by both parties. The City shall not be a party to such an agreement, nor shall the City assume any responsibility for enforcement of its terms.

5. Failure to Resolve. If the parties do not resolve the rent dispute during conciliation, the Director shall inform the parties that the conciliation process is concluded and the tenant shall be entitled to seek mediation, pursuant to Section 5.55.040(E), within five (5) business days. Failure of the tenant to seek mediation shall bar the tenant from pursuing any further remedies under this Chapter for the rent increase at issue.

E. Mediation.

1. Notice and Date. Upon request for mediation, the mediation shall be scheduled and held before the rent review officer within sixty (60) calendar days of the Director's receipt of the rent review request, or as soon thereafter as the mediation may be scheduled. The City Manager shall establish a specified date and time each month for mediations to be held. The City Manager may schedule a special mediation date and time in addition to the established mediation date and time, if the City Manager determines, in his or her discretion, that a special mediation is appropriate for a particular rent review. The Director shall provide the landlord and the tenant notice of the mediation date and location at least ten (10) calendar days prior to the mediation.

2. Factors. The rent review officer will afford the landlord and the tenant an opportunity to explain their respective positions at the mediation of a rent dispute. After hearing from both parties, and taking into consideration such factors as the hardship to the tenant, the frequency and amount of prior rent increases, the landlord's mortgage payments and other costs associated with owning and maintaining the property, the landlord's interest in earning a reasonable rate of return, and any other factors that may assist the rent review officer in determining a fair resolution to the dispute, the rent review officer will make a recommendation to the parties for the resolution of their dispute. One or more tenants affected by a common rent increase may elect to simultaneously participate in the same mediation proceeding with consent of the landlord.

3. Agreement. If the parties agree to a resolution proposed by the rent review officer they may formalize the agreement in a standard form signed by both parties. Neither the City nor the rent review officer shall be a party to such an agreement, nor shall the City or rent review officer assume any responsibility for enforcement of its terms.

4. Failure to Appear. If the tenant requesting rent review appears at a mediation, but the landlord who has been given notice of the mediation as required by Section 5.55.040(E)(1) fails to appear before the rent review officer without good cause, the rent increase shall be void, and the landlord may not take any action to enforce such an invalid rent increase. If a tenant who has been given proper notice of rent review as required by Section 5.55.040(E)(1) fails to appear for the mediation without good cause, or if both the tenant and landlord fail to appear without good cause, the rent review officer shall dismiss the case and the tenant will be barred from subsequently challenging such increase pursuant to this chapter. Good cause for failure to appear shall include, but not be limited to, illness, death, vehicle malfunction, and other similar circumstances. If either party fails to appear for good cause, the mediation shall be rescheduled as soon as reasonably possible.

F. Retaliatory Eviction. Commencement of eviction proceedings against a tenant for exercising his or her rights under this chapter shall be considered a retaliatory eviction. Under Civil Code Section 1942.5, it is illegal for a landlord to retaliate against a tenant for lawfully and peaceably exercising his or her legal rights.

5.50.050 Miscellaneous.

A. Annual Review. The Director shall annually prepare a report to the Council assessing the effectiveness of the rent review program established under this chapter and recommending changes as may be appropriate.

B. Property Registration and Fees.

1. A landlord shall register each residential property within the City. The registration shall be on forms provided by the City and shall include the name and mailing address of the owner or owners of the residential property as well as any other information deemed necessary by the City.

2. For the sole purpose of reimbursing the City for the reasonable costs of implementing this chapter, including costs associated with conciliation and mediation, the landlord of each residential shall pay a fee in an amount to be set by the City for each residential property.

C. Operative Date. This chapter shall be operative on October 2, 2017.