

Dear members of the Albany City Manager's Office, Members of the Mediation Task Force, and Mayor Quaid and Members of the City Council,

Please find the below summary of the major positions of Albany Property Rights Advocates regarding the elements of the planned Albany Rent Mediation Program, currently planned for review and recommendation. Attached with this summary, please also find a detailed sample ordinance (modified from the Union City Program) proposal prepared by our organization that we believe will assist the efficiency of the task force and the presentation of its recommendations.

Before providing our summary and explanatory points as to each critical element, we also wish to take this opportunity to briefly explain to the members what the central purpose of our organization is.

APRA was formed in January, 2017, comprised a group of concerned Albany residents and property owners and business owners in response to what was perceived as an urgent need to provide education, resources and a voice within our city to support and improve the conditions within the rental housing community.

While this of course may be read as a fancy way of saying that APRA was formed to oppose rent control, to come to that conclusion alone would fail to capture the real purpose behind our organization. It is no secret that APRA has and will continue to fight rent control and good cause for eviction in all its forms. Based on the comments and directives of the City Council, it seems clear that they too do not wish to impose any forms of rent control or good cause for eviction.

After-all, rent control is, has been and always will be nothing more than a political tool that does not create affordable housing but rather decreases its availability while mandating that one private group of citizens support the financial welfare of another group of private citizens even if doing so means the creation of a bloated and parasitic bureaucratic system which allows the degradation of the rental housing community as a whole. Eviction for Good Cause creates an adversarial relationship between Property Owners and Residents. It is simply fiction that Property Owners arbitrarily evict residents. The vast majority of Property Owners are very hesitant to displace their residents and would only do it as a last resort as it is extremely costly and disruptive to their business.

However, our organization does not start and stop with rent control, and that is the point of this letter. APRA, like the Social & Economic Justice Commission and like the Affordable Housing Working Group, is an organization that exists to serve and further the interests of the people of Albany and like the other members of the Task Force, we are here because we share the same central vision for not only sustaining but strengthening the rental housing community within our city and making certain that it is available to everyone who would take advantage of it and in so doing become a party of Albany and what makes it great. So, while we may have markedly different views about the most appropriate ways in which this can be achieved, we sincerely hope that the other members of the Task Force will keep our true motivations in mind, much as

we will keep theirs and that in so doing, this group may maximize its effectiveness and serve as a leading example of what can be achieved through healthy debate and cooperative spirit.

### Key Elements for a Successful Rent Mediation Program in Albany

**1. Purpose of the Program:** As was stated, unlike other cities, the Albany City Council is not interested in any form of Rent Control or Good Cause for Eviction. The purpose of the Rent Mediation Program is to provide an objective place for Property Owners and Residents to discuss proposed rent increases in order to hopefully come to an amicable solution without passing judgement on one party or another. While no party is required to agree to any terms, the program does require Rental Property Owners to potentially add an additional hurdle in exercising their legal right to raise the rent. So, it is important that the process is easy, fair, and fast to avoid any undue hardship on Rental Property Owners. The goal is to incentivize all parties to participate.

**2. Threshold for Eligibility:** With regard to the so called ‘trigger’ the real issue here is less about an agreeable percentage point and much more about making certain that the program address situations where a problematic increase or a real need for relief actually exists. This cannot be ensured by a fixed percentage alone, because whether that threshold is 10%, 5%, or 20%, there is no way that this single criterion can guard against unnecessary or inappropriate use of the program. For example, an 11% increase at a 10% threshold trigger could result in a mediation for parties where the increase in question was \$330.00 (for an above market three-bedroom home rented at \$3000 per month) or where the increase is \$93.00 (for an under-market one-bedroom rented at \$850 per month). With such potential for situational disparity, adherence to a percentage only based system will muddy the situation. It is unfair for a Property Owner to be penalized for renting a unit under market. If circumstances change for those Property Owners, then she shouldn’t be treated the same as a Property Owner who is last year rented a unit at Market and is now increasing it.

Accordingly, APRA proposes a dual threshold system that can better protect against the participation of parties for whom the program is not truly intended, thus ensuring that the resources of the program remain concentrated for the interests of those most in need.

The threshold that APRA proposes is as follows: 10% increase trigger but only where the increase is at least \$100 for a studio, \$150 for a one-bedroom, \$250 for a two-bedroom, \$350 for a three-bedroom and \$450 for anything greater than three bedrooms. This amount would be re-evaluated annually and increased by the City Council by increases in CPI and other factors.

**2. Notices and Notice Period:** APRA believes that a key to success of the program is ensuring that the program is accessible and that there is a reliable means for notifications regarding the program and for addressing situations where a lack of notice has occurred. Likewise, the community must have sufficient time to prepare for participation in the program. Accordingly, we recommend the following regarding provision of notices:

- It is important the city notify all Property Owners of any meetings of the Task Force or Public Hearings regarding the Rent Mediation Program. This should include sending

correspondence to all Property Owners with an active business license. It is in the city's interest to have as much input on the program as well as begin the process of informing Property Owners that a Rent Mediation Program is coming.

- Following approval of the program, there must be an implementation period where notices must first go to all Albany landlords of the program and instructions must be provided for dissemination of information to residents. In addition, information about the program should be included on all Business License Tax Forms.
- The City should provide the form of the notices to be distributed to residents. The notice should be fairly simple consisting of one or two paragraphs at most (it should not spell out all the details of the program) but should direct recipients to a website where the full ordinance is available as well as City offices for paper copies and other informational resources regarding the program and general affordable housing information. As it is possible for procedures to change over time, by having the notice be limited to just advising renters of the program and not how to use it, it will prevent Property Owners from using outdated forms.
- Following approval of the ordinance, there should be a delay to its implementation of at least 180 days to allow notices to get to the landlords and to the residents and other further outreach to educate all parties. While landlords may be required to distribute notices to their residents, the City should assume responsibility for disseminating notices as well. Rent increases otherwise qualifying for mediation during this transition period can still be eligible once the program is active.
- In any event where a notice is not received by a resident as to the availability of the program, then that resident should be permitted to request and have a mediation regarding a rent increase even if it falls outside for the normal eligibility period.
- The City should consider producing an approved rent increase notice form that incorporates information regarding the mediation program to eliminate confusion as to whether or not notices have been sent or received.

**3. Participation:** It goes without saying that the program needs active participation to be successful. As stated, there needs to be parameters for who can participate and how and when, as well as reasonable consequences for refusal to participate. These elements should include:

- Rent mediation must be requested no later than 15 days after the issuance of a rent increase notice or an increase in rent, whichever is earlier.
- Participation is mandatory; if a landlord does not attend a noticed mediation, without reasonable cause, then there shall be a fine of \$500 for a first failure to attend and \$1000 for each subsequent failure to attend. Since the ordinance is not meant to implement any forms of rent control or good cause for eviction, the penalty for non-compliance cannot

alter the existing relationship and any Landlord Tenant Laws. In addition, the penalty for a resident requesting a mediation and not showing up should include having their fees not returned and a prohibition of requesting mediation for a period of at least three years.

- There needs to be a limitation on the number of mediations that any one resident can participate in within a given period of time because the resources of the program must be allocated and available to all. Accordingly, once a mediation has occurred, that concerned rent increase may not be mediated again and no mediation session should be available to that resident again for at least three years.

**4. Mediation Application:** A major aspect of implementation of the program is the benefit that can be derived by the City from gathering information on the demographics of participants and associated rental rates and rental situations, thus enabling the better understanding of the actual housing situations in Albany. Accordingly (as is the case with most legal mediation programs), there should be an application form and a response form created that must be completed and submitted for mediation participation. The application completed by the Resident should include:

- A statement of rental history for the unit for at least the last five years of tenancy detailing what rent increases they have received in the past. In addition, the move-in date and move-in rent should be detailed.
- Address, Size and Type of Unit.
- Identification of any other residents living at the premises
- Proposed Rent Increase and Effective Date
- Statement of income and assets from all sources and place of employment
- What steps have been taken prior to resolve the dispute
- A brief narrative as to their position and what they are seeking out of the mediation
- An offer of compromise from the Resident that if accepted by the Property Owner would rescind the request for Mediation.
- General Availability for Mediation.

The response form by the Property Owner should include:

- Confirmation that the rental history and property information is accurate.
- What steps have been taken prior to resolve the dispute
- A brief narrative as to their position and why they have decided to raise the rent.
- Acceptance, Rejection or Counter to their Offer of Compromise.
- General Availability for Mediation.

**5. Additional Important Elements:**

- Funding for the program should come from City funds (for which the community and landlords already pay) and there should be a modest fee required to be paid by residents requesting a mediation (perhaps \$50 or \$100) to ensure that requests made are serious and that participation in the program is taken seriously. This application fee would be

waivable upon meeting fee waiver criteria via the submission of qualifying financial information.

- The mediators must be trained professionals with experience serving for at least one other alternative dispute resolution organization or experience as a private mediator, preferably with a legal background.
- No information submitted for the mediation process, any statements made in the course of the mediation, nor any findings or statements by the mediator, should be usable in evidence or any other legal process.
- At least one City personnel needs to be appointed to review program participation and to organize and report upon information gathered from the program.
- The mediations should have set time limits of no more than four hours and should be required to be scheduled at least 30 days after a request for mediation is made.
- When a request is made, the City should be responsible for notifying the landlord of the request.

Thank you for your consideration. We look forward to a successful series of meetings.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ian Bennett', with a large, stylized flourish at the end.

Ian Bennett  
Board Member & Counsel  
Albany Property Rights Advocates

# **City of Albany**

## **Rent Mediation Program**

*Draft*

**WHEREAS**, the City Council desires to create a non-binding rent mediation program to encourage Property Owners and Renters to reach mutually agreed to outcomes to disputes related to rent increases;

**WHEREAS**, the rent mediation program will increase cooperation and fairness within the residential rental market;

**WHEREAS**, the City Council does not believe that the imposition of extreme restrictions on rental rates or tenant protections will increase the availability of affordable housing;

**WHEREAS**, the City Council does not wish to impose any forms of Rent Control or Good Cause for Eviction; and

**WHEREAS**, the rent mediation program is consistent with City policies;

**THE CITY COUNCIL OF THE CITY OF ALBANY 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 Property Owners and Renters 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 XXXXX 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.** Two notices, once 30 days after adoption and the other 30 days before the ordinance takes effect will be mailed to all property owners with two or more units on a parcel, as well as to all owners of SFR/Condos where the property tax bill is sent to a different address. This Ordinance shall take effect and be enforced one hundred and eighty (180) days after its adoption.

## EXHIBIT A

### Chapter XXX

#### RENT MEDIATION

##### 5.55.010 Short Title.

This chapter shall be known as the "Rent Mediation Program."

##### 5.55.020 Definitions.

A. "Base Rent" means the rent paid to the Property Owner for occupancy of the residential property required to be paid by the Renter to the Property Owner 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 Property Owner for parking, storage, utilities, water, garbage or any other similar fee or charge associated with a residential property.**

B. "City" means the City of Albany.

C. "City Manager" means the City Manager of the City of Albany, or his or her designated representative.

D. "Director" means the Director of the Economic and Community Development Department of the City of Albany, 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 Albany.

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

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

H. "Rent" means a fixed periodic compensation paid by a Renter at fixed intervals to a Property Owner for the possession and use of residential property as defined by the rental agreement between the Property Owner and Renter. Rent excludes pass through costs and ancillary costs paid separately to the Property Owner 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. "Residential Property" means any housing unit offered for rent or lease in the City which is not otherwise exempt from regulation under this Ordinance by Costa Hawkins. Mobile homes are subject to this Chapter only if a Renter 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 Renter at specified income levels as defined by the regulatory agreement.

L. "Renter" means any person having the legal responsibility for the payment of rent for residential property in the City. "Renter" shall include the agent or representative of the Renter, provided that such agent or representative shall have full authority to answer for the Renter and enter into binding agreements on the Renter's behalf.

5.55.030 Notice of Availability of Rent mediation.

A. Notice of Availability of Rent Mediation Program Required. In addition to the notice of a rent increase required by Civil Code Section 827(b), and at the time when a Property Owner provides notice of a rent increase of at least ten percent (10%) and over a minimum dollar amount as determined annually by the City Council, the Property Owner shall also provide notice of the availability of the rent mediation procedure established by this chapter. The notice shall alert Renters of the existence of the program and refer them to a website and phone number where they can receive more information.

At the inception, the Council has made the threshold \$100 for a room or studio apartment, \$150 for a 1-bedroom apartment plus \$100 for each additional bedroom. In subsequent years the Council shall determine new appropriate minimum amounts, which in any case shall constitute an increase of at least the average increase of the CPI and any increases of City fees for property owners (business license tax etc.), or equal to the rates for the previous year if the average of the CPI as well as City fees should not increase. The program's intent is to provide services to those renters who are receiving an increase above current average rents and to not discourage Property Owners from maintaining below market rents.

Any rent increase accomplished in violation of this chapter shall be result in the city imposing a \$500 fine against the Property Owner. This fine will be waived in the event the Property Owner shows reasonable cause and agrees to comply with the ordinance.

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

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

NOTICE: Under Civil Code Section XXXX a Property Owner must provide a Renter within sixty (60) days' notice of a rent increase which is ten percent (10%) or more and which is also

over a minimum dollar amount as shall be determined annually by the City Council. At the inception, the Council has made the threshold minimum dollar amounts to be \$100 for a studio apartment, \$150 for a 1-bedroom apartment, \$250 for a 2-bedroom apartment, \$350 for a 3-bedroom and \$450 for any rental consisting of over 3 bedrooms. In subsequent years the Council shall determine new appropriate minimum amounts, which in any case shall constitute an increase of at least the average increase of the CPI and any increases of City fees for property owners (business license tax etc.), or equal to the rates for the previous year if the average of the CPI as well as City fees should not increase. The program's intent is to provide services to those renters who are receiving an increase above current average rents and if after reasonably attempting to discuss it with the Property Owner feels that Rent Mediation would help to provide resolution. More information is available at [www.albanyrentmediation.com](http://www.albanyrentmediation.com) or at 510.555.5555.

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 mediation request and complete a form providing information as to among other things why the rent increase is not justified and why it would pose a specific hardship, as well as what would be acceptable.

#### 5.55.040 Rent Mediation.

A. Request for Rent Mediation. A Renter may seek rent mediation when a proposed rent increase or aggregate total of rent increases within a 12-month period raises the rent to an amount more than 10% than the base rent and is above the threshold imposed by the city council.

A request for rent mediation may only be requested once every 3 years.

The Renter seeking rent mediation must submit the request in writing to the city or post marked (if submitted by mail), within fifteen (15) calendar days of the Renter's receipt of the notice of rent increase. The request must include a copy of the Property Owner's notice of rent increase. In addition, a form must be completed providing information that can help provide resolution. Failure to complete the form shall void the request.

B. Mediation. After determining that a proposed rent increase meets the criteria for initiation of rent mediation set forth in Section XXXXX above, the Director shall attempt to contact the Property Owner to initiate mediation procedures.

C. Impact on Rent Increase. A request for rent mediation shall not delay the effective date of a rent increase or under any circumstance render said increase or increase notice unenforceable.

D. Mediation.

1. Notice and Date. Upon request for mediation, the mediation shall be scheduled and held before the rent mediation officer within fifteen (15) calendar days of the Director's receipt of the rent mediation 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 mediation. The Director shall provide the Property Owner and the Renter notice of the mediation date and location at least ten (10) calendar days prior to the mediation.

2. Factors. The rent mediation officer will afford the Property Owner and the Renter 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 Renter, the frequency and amount of prior rent increases, the Property Owner's mortgage payments and other costs associated with owning and maintaining the property, the Property Owner's interest in earning a reasonable rate of return, the current market rent as opposed to the prior rent being paid, and any other factors that may assist the rent mediation officer in determining a fair resolution to the dispute, the rent mediation officer will make a recommendation to the parties for the resolution of their dispute. One or more Renters affected by a common rent increase may elect to simultaneously participate in the same mediation proceeding with consent of the Property Owner.

Unless mutually agreed by all parties, mediation shall be limited to a maximum of 4 hours.

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

4. Failure to Appear. If the Renter requesting rent mediation appears at a mediation, but the Property Owner who has been given notice of the mediation as required by Section 5.55.040(E)(1) fails to appear before the rent mediation officer without good cause, the city shall assess a fine of \$500. If a Renter who has been given proper notice of rent mediation as required by Section 5.55.040(E)(I) fails to appear for the mediation without good cause, the rent mediation officer shall dismiss the case and the Renter will be barred from subsequently challenging such increase pursuant to this chapter and shall be prohibited from requesting rent mediation for a period of 5 years. 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.

#### 5.50.050 Miscellaneous.

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

**B. Property Registration and Fees.**

Rent mediation program shall be funded by the general fund and business licenses taxes. The city shall be prohibited from imposing fees on Property Owners to fund the program. However, the Renter will be assessed a nominal fee of \$100 for each rent review request. This fee may be waived if financial hardship is shown.

[end memo]