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ORDINANCE NO. 2018-02

**AN ORDINANCE OF THE ALBANY CITY COUNCIL ESTABLISHING A
RENT REVIEW PROGRAM**

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

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

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

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

WHEREAS, on October 6, 2016 the City Council received a presentation by the Social and Economic Justice Commission on the feasibility of a rent review program and directed staff to conduct additional research regarding the establishment of a rent review program; and

WHEREAS, on November 16, 2016, a public workshop on policy questions associated with a rent review program was facilitated by staff; and

WHEREAS, on December 5, 2016, the City Council expressed support for the development of a rent review ordinance; and

WHEREAS, on January 8, 2018, the City Council directed staff to draft a rent review ordinance for review by a task force comprised of two representatives each from the Diverse Housing Working Group, Albany Property Rights Advocates and the Social and Economic Justice Commission; and

1 **WHEREAS**, on March 20, 2018, the Task Force met to review and provide input on the
2 draft Rent Review Ordinance; and

3
4 **WHEREAS**, Article XI, Section 7 of the California Constitution provides that a city
5 may make and enforce within its limits all local police, sanitary and other ordinances and
6 regulations not in conflict with general laws; and

7
8 **WHEREAS**, the City Council desires to create a non-binding rent review process to
9 encourage landlords and tenants to reach mutually agreed upon outcomes to disputes related to
10 rent increases; and

11
12 **WHEREAS**, the rent review process will increase cooperation and fairness within the
13 residential rental market; and

14 **WHEREAS**, the Rent Review Ordinance is consistent with City policies.

15 **NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS**
16 **FOLLOWS:**

17
18 **SECTION 1: RECITALS.**

19 The above recitals are true and correct and made a part of this Ordinance.

20 **SECTION 2: CHAPTER V OF THE ALBANY MUNICIPAL CODE, SECTION**
21 **5-25 TITLED “RENT REVIEW” IS HEREBY ADDED AND ENACTED TO READ AS**
22 **FOLLOWS:**

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25 **5-25 RENT REVIEW**

26
27 **5-25.0 Title**

28 Section 5-25 shall be known as Rent Review.

1
2 **5-25.1 Findings**

3 The City Council makes the following findings in support of approving this Ordinance:
4

5 A. The City has a substantial government interest in regulating the relations between
6 residential landlords and tenants in order to increase certainty, stability, and fairness within the
7 residential rental market.

8 B. The amendments are neither overbroad nor vague, and are consistent with the
9 City's effort to protect the public health, safety and the general welfare.
10
11

12 **5-25.2 Definitions**

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

18 B. "City" means the City of Albany.

19 C. "City Manager" means the City Manager of the City of Albany, or his/her
20 designated representative.
21

22 D. "Director" means the Director of the Community Development Department of the
23 City of Albany, or his/her designated representative.

24 E. "Council" means the City Council of the City of Albany.

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

1 G. "Party" means a person who participates in the Rent Review Program of this Section
2 or his/her agent or representative.
3

4 H. "Rent" means a fixed periodic compensation paid by a tenant at fixed intervals to a
5 landlord for the possession and use of residential property as defined by the rental agreement
6 between the landlord and tenant. Rent excludes pass through costs and ancillary costs paid
7 separately to the landlord for parking, storage, utilities, water, garbage, or any other fee or charge
8 associated with a residential property.
9

10 I. "Rent Increase" means any upward adjustment of the rent from the base rent amount.
11

12 J. "Rent Review Officer" means the officer designated by the Director to conduct
13 mediation pursuant to Section 5-25.4E.

14 K. "Residential Property" means any housing unit offered for rent or lease in the City.
15 Residential property shall exclude any housing unit that is subject to a recorded regulatory
16 agreement that requires that the housing unit be rented to a tenant at specified income levels as
17 defined by the regulatory agreement.

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

22
23 **5-25.3 Notice of Availability of Rent Review**

24 A. Notice of Availability of Rent Review Requirement. In addition to the notice of
25 rent increase required by Civil Code Section 827(b), and in the time when a landlord provides
26 notice of any rent increase, the landlord shall also provide notice of the availability of the rent
27 review procedure established by this Section. The notice of availability of rent review required
28 by Section 5-25.3.C shall be provided by the landlord in the three predominant languages spoken

1 in the City, at the time when a landlord provides notice of any rent increase. The City Manager
2 or his/her designee shall determine the predominant languages spoken in the City and shall ensure
3 that copies of the notice of availability of rent review required by Section 5-25.3.C are made
4 available to landlords by the City in those three languages. Any rent increase accomplished in
5 violation of this Section shall be void, and no landlord may take any action to enforce such an
6 invalid rent increase. Any rent increase in violation of this Section shall operate as a complete
7 defense to an unlawful detainer action based on failure to pay any illegal rent increase. Any tenant
8 required to pay an illegal rent increase may recover all illegal rent increase amounts actually paid
9 by the tenant. If a landlord fails to properly notice a tenant pursuant to this Section, the landlord
10 must re-notice the tenant in accordance with this Section prior to demanding or accepting any
11 increase in rent.
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15 B. Contents of Notice. All notices of the availability of rent review shall be in
16 writing, shall provide the name, address and phone number of the landlord and shall be personally
17 delivered to the tenant or mailed to the tenant at the address of the tenant's residential property.
18 Service by mail shall be presumed complete within five (5) calendar days of mailing. This
19 presumption may be rebutted by the tenant.

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

22 NOTICE: Under Civil Code Section 827(b) a landlord must provide a tenant with
23 thirty (30) days' notice prior to a rent increase of ten percent (10%) or less and sixty (60) days'
24 notice of a rent increase of greater than ten percent (10%). Under Chapter V, Section 5-25 of the
25 City of Albany Municipal Code, a landlord must, at the same time as a notice of a rent increase,
26 provide the City's notice of the availability of rent review before demanding or accepting any
27 increase in rent. You are encouraged to contact the owner or manager of your rental unit to discuss
28 the rent increase. However, if you have received notice of a rent increase that:

1
2 1. will increase your rent more than 7% above the base rent you paid last
3 month; or

4 2. follows one or more prior rent increases with the past year where the
5 combined rent increases are more than 7% than the base rent paid prior to the first rent
6 increase over the past year, you may request rent review, which includes conciliation and
7 mediation, of your rent increase. Such a request must be submitted in writing to the
8 Director within fifteen (15) calendar days of your receiving notice of the rent increase or
9 post marked with 15 calendar days of receipt if mailed. You must submit a copy of the
10 notice of rent increase at the same time you submit the rent review request. To request
11 review of your rent increase, please contact the Community Development Department of
12 the City of Albany, 1000 San Pablo Avenue, Albany, California 94706. For more
13 information regarding the rent review procedure, please visit [www](#). Under Civil Code
14 Section 1942.5, it is illegal for a landlord to retaliate against a tenant for lawfully and
15 peaceably exercising his or her legal rights.
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19 **5-25.4 Rent Review**

20 A. Request for Rent Review. A tenant may seek rent review when the proposed rent
21 increase:

22 1. raises the rent to an amount more than 7% than the base rent; or
23 2. follows a prior rent increase or rent increases with the previous twelve-
24 month period where the combined rent increases are more than 7% than the base rent paid
25 prior to the first rent increase of the twelve-month period. The tenant seeking rent review
26 must submit the request in writing to the Director and the request must be received by the
27 Director, or post marked (if submitted by mail), within fifteen (15) calendar days of the
28

1 tenant's receipt of the notice of rent increase. The request must include a copy of the
2 landlord's notice of rent increase.
3

4 B. Conciliation and Mediation. The rent review shall consist of conciliation pursuant
5 to Section 5-25.4.D and, if required, mediation pursuant to Section 5-25.4.E. After determining
6 that a proposed rent increase meets the criteria for initiation of rent review set forth in Section 5-
7 25.4.A above, the Director shall attempt to contact the landlord to initiate conciliation procedures
8 pursuant to Section 5-25.4.D.1.
9

10 C. Impact on Rent Increase. A request for rent review shall not delay the effective
11 date of a rent increase. If appropriate, the parties may enter into a mutual private agreement to
12 delay the effective date of a rent increase or reach any other agreement to effectively reimburse
13 rent increases paid by the tenant.
14

15 D. Conciliation.

16 1. Duration of Conciliation. After the Director contacts the landlord pursuant
17 to Section 5-25.4.B, the Director shall provide the landlord with a copy of the tenant's
18 rent review request form and the landlord shall respond to acknowledge the rent review
19 request either orally or in writing within fifteen (15) calendar days. Failure of the landlord
20 to respond to the Director within fifteen (15) calendar days, absent a finding of good cause
21 by the Director, shall void the rent increase. Good cause for failure to respond shall
22 include, but not be limited to, illness, unanticipated absence from the office, emergency
23 situations, and other similar circumstances. The Director shall attempt conciliation, which
24 may include peer-to-peer counseling, of the rent increase for a period not to exceed ten
25 (10) business days following acknowledgement of the rent review request by the landlord.

26 2. Participation. The landlord and tenant shall participate in conciliation and
27 shall provide relevant information, exchange proposals, reasonably consider proposals by
28 opposite parties and engage in discussion(s) regarding the rent increase and issues related

1 to the rent increase. One or more tenants affected by a common rent increase may
2 simultaneously participate in the same conciliation proceeding with consent of the
3 landlord.
4

5 3. Failure to participate. Failure of the tenant to participate in conciliation of
6 the rent increase at issue shall bar the tenant from seeking mediation pursuant to Section
7 5-25.4E and shall bar the tenant from seeking any further remedies under this Section for
8 such rent increase. Failure of the landlord to participate in conciliation shall void the rent
9 increase.
10

11 4. Agreement During Conciliation. If the parties agree to a resolution during
12 conciliation, they may formalize the agreement in a standard form signed by both parties.
13 The City shall not be a party to such an agreement, nor shall the City assume any
14 responsibility for enforcement of its terms.
15

16 5. Failure to Resolve. If the parties do not resolve the rent dispute during
17 conciliation, the Director shall inform the parties that the conciliation process is concluded
18 and the tenant shall be entitled to seek mediation, pursuant to Section 5-25.4.E, within ten
19 (10) calendar days. Failure of the tenant to seek mediation shall bar the tenant from
20 pursuing any further remedies under this Section for the rent increase at issue.

21 E. Mediation.

22 1. Notice and Date. Upon request for mediation, the mediation shall be
23 scheduled and held before the Rent Review Officer within sixty (60) calendar days of the
24 Director's receipt of the rent review request, or as soon thereafter as the mediation may
25 be scheduled.

26 2. Factors. The Rent Review Officer will afford the landlord and the tenant
27 an opportunity to explain their respective positions at the mediation of a rent dispute. After
28 hearing from both parties, and taking into consideration such factors as the hardship to the

1 tenant, the frequency and amount of prior rent increase, the landlord's mortgage payments
2 and other costs associated with owning and maintaining the property, the landlord's
3 interest in earning a reasonable rate of return and any other factors that may assist the Rent
4 Review Officer in determining a fair resolution of the dispute, the Rent Review Officer
5 will make a recommendation to the parties for the resolution of their dispute. One or more
6 tenants affected by a common rent increase may elect to simultaneously participate in the
7 same mediation proceeding with consent of the landlord.
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11 3. Agreement. If the parties agree to a resolution proposed by the Rent
12 Review Officer, they may formalize the agreement in a standard form signed by both
13 parties. Neither the City nor the Rent Review Officer shall be a party to such an agreement,
14 nor shall the City or the Rent Review Officer assume any responsibility for enforcement
15 of its term.

16 4. Failure to Appear. If the tenant requesting rent review appears at a
17 mediation, but the landlord who has been given notice of the mediation as required by
18 Section 5-25.4.E.1 fails to appear before the Rent Review Officer without good cause, the
19 rent increase shall be void, and the landlord may not take any action to enforce such an
20 invalid rent increase. If a tenant who has been given proper notice of the Rent Review
21 mediation as required by Section 5-25.4.E.1 fails to appear for the mediation without good
22 cause, or if both the tenant and landlord fail to appear without good cause, the Rent Review
23 Officer shall dismiss the case and the tenant will be barred from subsequently challenging
24 such increase pursuant to this Section. Good cause for failure to appear shall include, but
25 not be limited to illness, death, vehicle malfunction, and other similar circumstances. If
26 either party fails to appear for good cause, the mediation shall be rescheduled as soon as
27 reasonably possible.
28

1 F. Retaliatory Eviction. Commencement of eviction proceedings against a tenant for
2 exercising his or her rights under this Section shall be considered a retaliatory eviction. Under
3 Civil Code Section 1942.5, it is illegal for a landlord to retaliate against a tenant for lawfully and
4 peaceably exercising his or her legal rights.
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8 **5-25.5 Miscellaneous**

9 A. Annual Review. The Director shall annually prepare a report to the Council
10 assessing the effectiveness of the Rent Review Program established under this Section and
11 recommending changes as may be appropriate.
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13 B. Property Registration and Fees.

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

18 2. For the sole purpose of reimbursing the City for the reasonable costs of
19 implementing this Section, including costs associated with conciliation and mediation, the
20 landlord of each residential shall pay a fee in an amount to be set by the City for each
21 residential property.
22

23 **5-25.5 Severability**

24 If any provision of this Ordinance of the application thereof to any person or circumstance is held
25 invalid, the remainder of the Ordinance, including the application of such part or provision to
26 other persons or circumstances shall not be affected thereby and shall continue in full force and
27 effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares
28 that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or

1 phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions,
2 paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.
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5 **SECTION 3: CEQA.**

6 Approval of the amendments is exempt from further environmental review under the
7 general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061 (b)(3)
8 that CEQA only applies to projects that have the potential for causing a significant effect on the
9 environment. As a series of text amendments and additions, it can be seen with certainty that
10 there is no possibility that the ordinance will have a significant effect on the environment.
11

12 **SECTION 4: PUBLICATION AND EFFECTIVE DATE.**

13 This ordinance shall be posted at three public places within the City of Albany and shall
14 become effective one hundred and fifty (150) days after the date of its posting.
15

16 **PASSED AND ADOPTED** by the City Council of the City of Albany at its meeting on
17 the ____ day of _____ 2018, by the following vote:

18 AYES:

19 NOES:

20 ABSENT:

21 ABSTAIN:

22 _____
23 PEGGY MCQUAID, MAYOR
24
25
26
27
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