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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 February 5, 2015, the City Council adopted a Housing Element for the 2015-2023 planning period, including policies supporting resolution of landlord-tenant disputes and avoiding displacement of tenants due to rising rents; and

WHEREAS, Housing Element Program 5.E. calls for the City to evaluate the feasibility of creating a rent review program to provide a neutral procedure for mediating complaints about rapidly rising rents; 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 with non-binding mediation; and

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

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

3
4 **WHEREAS**, on January 8, 2018, the City Council directed staff to draft a rent review
5 ordinance for review by a task force comprised of two representatives each from the Diverse
6 Housing Working Group, Albany Property Rights Advocates and the Social and Economic Justice
7 Commission; and

8
9 **WHEREAS**, on March 20, 2018, the Task Force met to review and provide input on the
10 draft Rent Review Ordinance; and

11
12 **WHEREAS**, Article XI, Section 7 of the California Constitution provides that a city
13 may make and enforce within its limits all local police, sanitary and other ordinances and
14 regulations not in conflict with general laws; and

15 **WHEREAS**, the City Council desires to create a non-binding rent review process to
16 encourage landlords and tenants to reach mutually agreed upon outcomes for disputes related to
17 rapid rent increases; and

18 **WHEREAS**, [on May 7, 2018, a study session was conducted for the City Council to](#)
19 [receive further comments from the community regarding the draft ordinance; and](#)

20 **WHEREAS**, the rent review process will increase cooperation and fairness within the
21 residential rental market.

22
23 **NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS AS**
24 **FOLLOWS:**

25 **SECTION 1: RECITALS.**

26 The above recitals are true and correct and made a part of this Ordinance.
27
28

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1 **SECTION 2: CHAPTER V OF THE ALBANY MUNICIPAL CODE, SECTION**
2 **5-25 TITLED “RENT REVIEW” IS HEREBY ADDED, TO READ AS FOLLOWS:**
3

4
5 **5-25 RENT REVIEW PROGRAM**
6

7
8 **5-25.0 Title**

9 Section 5-25 shall be known as Rent Review Program.
10

11 **5-25.1 Findings**

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

13 A. The City has a substantial governmental interest in continuing and increasing
14 certainty, stability, and fairness within the residential rental market.

15 B. The amendments are neither overbroad nor vague, and are consistent with the
16 City’s effort to protect the public health, safety and general welfare.
17

18 **5-25.2 Definitions**

19 A. “Base Rent” means the amount of rent required to be paid by the tenant to the
20 landlord for occupancy of the residential property in the month immediately preceding the
21 effective date of the rent increase. Base rent excludes pass-through costs paid separately to the
22 landlord for utilities, water, garbage or any other similar fee or charge associated with a residential
23 property which is outside the control of the landlord.
24

25 B. “City” means the City of Albany.

26 C. “City Manager” means the City Manager of the City of Albany, or his/her
27 designated representative.
28

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

3
4 E. "Council" means the City Council of the City of Albany.

5 F. "Landlord" means any person, partnership, corporation, or other business entity
6 offering for rent or lease any residential property in the City for a term of one month or longer.
7 "Landlord" shall include any agent or representative of the landlord, provided that such agent or
8 representative has full authority to answer for the landlord and enter into binding agreements on
9 the landlord's behalf.
10

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

13 H. "Rent" means a fixed periodic compensation paid by a tenant at fixed intervals to a
14 landlord for the possession and use of residential property as defined by the rental agreement
15 between the landlord and tenant.
16

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

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

20 K. "Residential Property" means any housing unit offered for rent or lease in the City.
21 Residential property shall exclude any housing unit that is subject to a recorded regulatory
22 agreement that requires that the housing unit be rented to a tenant at specified income levels as
23 defined by the regulatory agreement. Additionally, residential property shall exclude any housing
24 unit which is outside the scope of the City's regulatory authority, including but not limited to any
25 housing unit owned by the University of California and utilized for student or faculty housing, as
26 well as any housing unit owned by the federal government.

27 L. "Tenant" means any person having the legal responsibility for the payment of rent for
28 residential property in the City. "Tenant" shall include the agent or representative of the tenant,

1 provided that such agent or representative has full authority to answer for the tenant and enter
2 into binding agreements on the tenant's behalf.
3

4
5 **5-25.3 Notice of Availability of Rent Review**

6
7 A. Notice of Availability of Rent Review Requirement. In addition to the notice of
8 rent increase required by Civil Code Section 827(b), the landlord shall also provide notice of the
9 availability of the rent review procedure established by this Section at the time a rental agreement
10 is entered into and at the time the landlord provides notice of any rent increase exceeding five
11 percent (5%). The notice of availability of rent review required by Section 5-25.3.C shall be
12 provided by the landlord in the three predominant languages spoken in the City. The City Manager
13 or his/her designee shall determine the predominant languages spoken in the City and shall ensure
14 that copies of the notice of availability of rent review set forth in Section 5-25.3.C are made
15 available to landlords by the City in those three languages. Any rent increase accomplished in
16 violation of this Section shall be void, and no landlord may take any action to enforce such an
17 invalid rent increase. Any rent increase in violation of this Section shall operate as a complete
18 defense to an unlawful detainer action based on failure to pay any invalid rent increase. Any
19 tenant required to pay an invalid rent increase may recover all invalid rent increase amounts
20 actually paid by the tenant. If a landlord fails to properly notice a tenant pursuant to this Section,
21 the landlord must re-notice the tenant in accordance with this Section prior to demanding or
22 accepting any increase in rent.
23

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

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

3
4 NOTICE: Under Civil Code Section 827(b) a landlord must provide a tenant with
5 thirty (30) days' notice prior to a rent increase of ten percent (10%) or less and sixty (60) days'
6 notice of a rent increase of greater than ten percent (10%). Under Section 5-25 of the City of
7 Albany Municipal Code, a landlord must, at the time a rental agreement is entered into and at the
8 time the landlord provides notice of any rent increase exceeding five percent (5%), provide the
9 City's notice of the availability of rent review before demanding or accepting any increase in rent.
10 You are encouraged to contact the owner or manager of your rental unit to discuss the rent
11 increase. However, if you have received notice of a rent increase that:

12
13 1. will increase your rent more than five percent (5%) above the base rent you
14 paid last month; or

15
16 2. follows one or more prior rent increases within the past year where the
17 combined rent increases are more than five percent (5%) above the base rent paid prior to
18 the first rent increase over the past year, you may request rent review, which includes
19 conciliation and mediation, of your rent increase. Such a request must be submitted in
20 writing to the Director within fifteen (15) calendar days of your receiving notice of the
21 rent increase or post marked within fifteen (15) calendar days of receipt if mailed. You
22 must submit a copy of the notice of rent increase at the same time you submit the rent
23 review request. To request review of your rent increase, please contact the Community
24 Development Department of the City of Albany, 1000 San Pablo Avenue, Albany,
25 California 94706. For more information regarding the rent review procedure, please visit
26 www.albanyca.org. Under Civil Code Section 1942.5 and the Albany Municipal Code, it
27 is illegal for a landlord to retaliate against a tenant for lawfully and peaceably exercising
28 his or her legal rights.

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3 **5-25.4 Rent Review**

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

6 1. raises the rent to an amount more than five percent (5%) above the base
7 rent; or

8 2. follows a prior rent increase or rent increases within the previous twelve-
9 month period where the combined rent increases are more than five percent (5%) above
10 the base rent paid prior to the first rent increase of the twelve-month period. The tenant
11 seeking rent review must submit the request in writing to the Director and the request must
12 be received by the Director, or post marked (if submitted by mail), within fifteen (15)
13 calendar days of the tenant's receipt of the notice of rent increase. The request must
14 include a copy of the landlord's notice of rent increase.
15

16 B. Conciliation and Mediation. The rent review shall consist of conciliation pursuant
17 to Section 5-25.4.D and, if required, mediation pursuant to Section 5-25.4.E. After determining
18 that a proposed rent increase meets the criteria for initiation of rent review set forth in Section 5-
19 25.4.A above, the Director shall attempt to contact the landlord to initiate conciliation procedures
20 pursuant to Section 5-25.4.D.1.
21

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

26 D. Conciliation.

27 1. Duration of Conciliation. After the Director contacts the landlord pursuant
28 to Section 5-25.4.B, the Director shall provide the landlord with a copy of the tenant's

1 rent review request form and the landlord shall respond to acknowledge the rent review
2 request either orally or in writing within fifteen (15) calendar days. Failure of the landlord
3 to respond to the Director within fifteen (15) calendar days shall void the rent increase.
4 The Director shall attempt conciliation, which may include peer-to-peer counseling, of the
5 rent increase for a period not to exceed ten (10) business days following acknowledgement
6 of the rent review request by the landlord.
7

8
9 2. Participation. The landlord and tenant shall participate in conciliation and
10 shall provide relevant information, exchange proposals, reasonably consider proposals by
11 opposite parties and engage in discussion(s) regarding the rent increase and issues related
12 to the rent increase. One or more tenants affected by a common rent increase may
13 simultaneously participate in the same conciliation proceeding with consent of the
14 landlord.
15

16 3. Failure to participate. Failure of the tenant to participate in conciliation of
17 the rent increase at issue shall bar the tenant from seeking mediation pursuant to Section
18 5-25.4E and shall bar the tenant from seeking any further remedies under this Section for
19 such rent increase. Failure of the landlord to participate in conciliation shall void the rent
20 increase. [Any rent increase in violation of this Section shall operate as a complete defense
21 to an unlawful detainer action based on failure to pay any invalid rent increase.](#)

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

26 5. Failure to Resolve. If the parties do not resolve the rent dispute during
27 conciliation, the Director shall inform the parties that the conciliation process is concluded
28 and the tenant shall be entitled to seek mediation, pursuant to Section 5-25.4.E, within ten

1 (10) calendar days. Failure of the tenant to seek mediation shall bar the tenant from
2 pursuing any further remedies under this Section for the rent increase at issue.

3
4 E. Mediation.

5 1. Notice and Date. Upon request for mediation, the mediation shall be
6 scheduled and held before the Rent Review Officer within sixty (60) calendar days of the
7 Director's receipt of the rent review request, or as soon thereafter as the mediation may
8 be scheduled.
9

10 2. Factors. The Rent Review Officer will afford the landlord and the tenant
11 an opportunity to explain their respective positions at the mediation of a rent dispute. After
12 hearing from both parties, and taking into consideration such factors as the hardship to the
13 tenant, the frequency and amount of prior rent increases, the landlord's costs associated
14 with owning and maintaining the property, the landlord's interest in earning a reasonable
15 rate of return on investment, the fair market rental value of the subject residential property,
16 and any other factors that may assist the Rent Review Officer in recommending a fair
17 resolution of the dispute, the Rent Review Officer may make a recommendation to the
18 parties for the resolution of their dispute. One or more tenants affected by a common rent
19 increase may elect to simultaneously participate in the same mediation proceeding with
20 consent of the landlord.
21

22 3. Agreement. If the parties agree to a resolution proposed by the Rent
23 Review Officer, they may formalize the agreement in a standard form signed by both
24 parties. Neither the City nor the Rent Review Officer shall be a party to such an agreement,
25 nor shall the City or the Rent Review Officer assume any responsibility for enforcement
26 of its term.

27 4. Failure to Appear. If the tenant requesting rent review appears at a
28 mediation, but the landlord who has been given notice of the mediation as required by

1 Section 5-25.4.E.1 fails to appear before the Rent Review Officer, the rent increase shall
2 be void, and the landlord may not take any action to enforce such an invalid rent increase.
3
4 Any rent increase in violation of this Section shall operate as a complete defense to an
5 unlawful detainer action based on failure to pay any invalid rent increase. If a tenant who
6 has been given proper notice of the Rent Review mediation as required by Section 5-
7 25.4.E.1 fails to appear for the mediation, or if both the tenant and landlord fail to appear,
8 the Rent Review Officer shall dismiss the case and the tenant will be barred from
9 subsequently challenging such increase pursuant to this Section. If either party fails to
10 appear, but is granted an extension of time upon a finding by the Director of good cause
11 for the failure to appear, the mediation shall be rescheduled as soon as reasonably possible.

12
13 5. Good Cause. Upon a finding of good cause, the Director may grant a
14 reasonable extension of time for a landlord or tenant to carry out any of his or her
15 obligations pursuant to this Section 5-25.4. Good cause shall include, but not be limited
16 to, serious illness, unanticipated absence from the office, emergency, jury duty, non-
17 refundable travel expenses, or other circumstances outside the control of the party seeking
18 an extension of time.

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21 F. Retaliatory Eviction. Commencement of eviction proceedings against a tenant for
22 exercising his or her rights under this Section, including the right to rent review, shall be
23 considered a retaliatory eviction. Under Civil Code Section 1942.5, it is illegal for a landlord to
24 retaliate against a tenant for lawfully and peaceably exercising his or her legal rights.

25 ~~G. Good Cause. Upon a finding of good cause, the Director may grant a reasonable~~
26 ~~extension of time for a landlord or tenant to carry out any of his or her obligations pursuant to this~~
27 ~~Section 5-25.4. Good cause shall include, but not be limited to, serious illness, unanticipated~~

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1 ~~absence from the office, emergency, jury duty, non-refundable travel expenses, or other~~
2 ~~circumstances outside the control of the party seeking an extension of time.~~
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5 **5-25.5 Miscellaneous**

6
7 A. Annual Review. The Director shall annually prepare a report to the Council
8 assessing the effectiveness of the Rent Review Program established under this Section and
9 recommending changes as may be appropriate.

10 B. Property Registration and Fees.

11
12 1. A landlord shall register each residential property with the City. The
13 registration shall be on forms provided by the City and shall include the name and mailing
14 address of the owner or owners of the residential property as well as any other information
15 deemed necessary by the City.

16 2. For the sole purpose of reimbursing the City for a portion of actual and
17 reasonable costs of implementing this Section, including costs associated with conciliation
18 and mediation, the landlord of each residential property shall pay an annual fee in an
19 amount to be set by resolution of the City Council for each residential property.

20 3. For the sole purpose of reimbursing the City for a portion of the actual and
21 reasonable costs of implementing this Section, including costs associated with conciliation and
22 mediation, each tenant who requests rent review shall pay a fee at the time the request is
23 submitted, in an amount to be set by resolution of the City Council.

24 **5-25.5 Severability**

25 If any provision of this Ordinance or the application thereof to any person or circumstance is held
26 invalid, the remainder of the Ordinance, including the application of such part or provision to
27 other persons or circumstances shall not be affected thereby and shall continue in full force and
28 effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares

1 that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or
2 phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions,
3 paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.
4

5
6 **SECTION 3: CEQA.**

7 Approval of the amendments is exempt from further environmental review under the
8 general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061 (b)(3)
9 that CEQA only applies to projects that have the potential for causing a significant effect on the
10 environment. As a series of text amendments and additions, it can be seen with certainty that
11 there is no possibility that the ordinance will have a significant effect on the environment.
12

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

14 This ordinance shall be posted at three public places within the City of Albany and shall
15 become effective one hundred and fifty (150) days after the date of its posting.
16

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

19 AYES:

20 NOES:

21 ABSENT:

22 ABSTAIN:

23 _____
24 PEGGY MCQUAID, MAYOR
25
26
27
28