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August 13, 2015

Mayor Trish Herrera Spencer
Mayor, City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

Re: Proposed Modification of Alameda Municipal Code
Review of Rental Increases
Amendment Adding Article XIII to Chapter VI

Dear Mayor Herrera Spencer:

This office serves as general counsel to the California Apartment Association and has been forwarded the proposed modification of the current City of Alameda Ordinance relating to the review of rental increases. While our organization generally has been supportive of the past Ordinance and sees the proposed modification as simply an enhancement of that Ordinance, we are concerned about one aspect of the proposed modification which could result in a legal challenge to the Ordinance. Currently, the proposed language of the modification mandates compliance with the Notice provisions of the Ordinance requiring Landlords and/or Property Managers to advise Tenants of the Ordinance itself upon providing rental increases and also provide the option for mediation thereafter and additionally requires Landlords and/or Property Managers to participate in good faith in the mediation process. The proposed Ordinance also mandates that the failure to abide by either process essentially "voids" the rental increase and additionally precludes the Landlord and/or Property Manager from instituting another notice for one year.

While we have experience with other municipalities mandating such a notice requirement and a failure to comply voiding the specific notice of a rental increase, to our knowledge, no other municipality has provided for the suspension of further notices for a period of one year, or for any specific term. As such, we believe that this "freeze-out" may run afoul of California Supreme Court authority which provides that the freezing of rents (which is essentially what the proposed Ordinance is doing for non-compliance) operates as a possible failure to provide a fair and reasonable return of a Landlord's investment in their property. Such was specifically prohibited in *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 140 (1976).

On behalf of the California Apartment Association, in order to avoid the City facing such a challenge to its proposed modification to the Ordinance, we encourage the City of Alameda to



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achieve a better reasoned and more supportable modification to the Ordinance. In short, we suggest that while non-compliance with either the Notice provisions or the duty to participate would render a Notice void, Landlord and/or Property Manager would simply have to "start again" which would circumvent the mandates of the *Birkenfeld* decision.

As you are aware, our industry is facing quite a difficult situation with the demand for housing, including multi-family rental housing, far exceeding the supply and as a result, the pressure on stabilizing market rents is severe. CAA is supportive of the mediation process whereby Landlords and/or Property Managers and their Tenants can work with neutral third parties to achieve a mutually beneficial solution in individual cases and with individual circumstances. We fear however that this aspect to the proposed modification may subject the entire Ordinance to a legal challenge which might frustrate, and at a minimum, delay the implementation of the valuable cooperative mediation process.

The California Apartment Association has asked me to provide whatever assistance we might provide to the City in evaluating and/or implementing this proposed modification to the Ordinance. To that end, if there is anything that we might provide to you in this regard, please do not hesitate to call on us.

Sincerely,

PAHL & McCAY
A Professional Law Corporation

A handwritten signature in black ink, appearing to be 'Stephen D. Pahl', written over a horizontal line.

Stephen D. Pahl

SDP/tm

cc: E. Warmerdam, Interim City Manager (via email)
T. Bannon
M. Bissell
T. Scott

*2341/001 - 00430043.DOCX.1

LARA WEISIGER

From: DEBBIE POTTER
Sent: Thursday, August 20, 2015 11:47 AM
To: LARA WEISIGER
Subject: FW: Sewer Rate increase request
Attachments: alameda sewer rates 1995 to 2015.xlsx; 2010-05-18 4-H Exhibit 2.pdf; 2010-07-06 6-D Presentation.pdf

Hi Lara, I think this e-mail should go in the packet with the item on 2nd reading of the rent review ordinance. I don't think the attachments should be included. Tx dp

From: Doug Smith [<mailto:fullerpm@pacbell.net>]
Sent: Tuesday, August 18, 2015 3:30 PM
To: Catherine Valdez <catherine@rhosource.com>; Paul Russo <paul@americandrape.com>; Trish Spencer <TSpencer@alamedaca.gov>; Frank Matarrese <FMatarrese@alamedaca.gov>; Jim Oddie <JOddie@alamedaca.gov>; Tony Daysog <TDaysog@alamedaca.gov>; Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>; Janet Kern <JKern@alamedacityattorney.org>; DOUGLAS LONG <DLONG@alamedaca.gov>; gardencourtapartments.alameda <gardencourtapartments.alameda@gmail.com>; Erin Smith <ESmith@alamedaca.gov>; John Sullivan <emeraldprop@sbcglobal.net>; Doug Smith <fullerpm@pacbell.net>
Subject: Sewer Rate increase request

Dear Erin Smith, Mayor Spencer and Council Members:

I have been trying to request historical data for past sewer rate increases and I have been told that they are not available before 2010. I find this odd so I contacted a friend in the City and I was provided with the attached. The rates show that sewer rates increased at a rate of over 8.3% per year since 1995 while CPI increased only 2.71% per year.

My reason for this data was to show the Mayor and City Council that trying to limit rate increases for rent to only CPI will only result in sub standard housing and ultimate failure. The City had a practice of limiting sewer fees to CPI until 2010 when they found that the revenue was not nearly enough to maintain the aging infrastructure and in order to make the much needed improvements and to comply with EPA and other regulations, a massive increase was needed. That increase came in 2010 when the City approved a 3 year 42% increase in rates.

Running an aging apartment building is similar to your sewer system. Annual capital spending above CPI is needed in order keep the asset in habitable condition. Your latest rent ordinance is attempting to keep increases at CPI and its even been suggested that the City lock in rent rates at the current level. This will be devastating and we will be unable to sustain the business. The tenants organizations know this and have told me that they wanted no threshold to trigger a rent review because they know owners will not agree and that will result in the failure of the program. That is what they want in order to then demand full rent control in 12 months.

I have provided you all with the historical rent data and as we have seen, even in times like now when rents are increasing 10% to 15% or more, that still does not make up for the years when rent is down or flat (2002-2012 rent did not increase at all).

We too are required to make needed capital improvements per local, State and Federal requirements (earth quake retrofit, title 24 roofs, VGBA pool retrofit) as well as the normal paint, asphalt, pipe replacement, window and door replacement, just to name a few.

By limiting us from reasonable increases, you are only going to cause the aging housing to crumble and become uninhabitable. I agree that "unreasonable" increases should be looked at and that is why we recommended all increases over 10% be reviewed. Again, there are typically only about 3-5 years in a 15 year cycle when rents increase at all so this is very reasonable.

Finally, as a housing provider in the Bay Area, we take great risk due to natural disaster. That risk needs to have some reward beyond CPI or no one will invest in your City. I encourage all of your to reconsider your position on this ordinance and make the following changes.

*Make the trigger to appeal an increase 10% or greater

*Remove the illegal provision that will penalize the owner if he fails to show up for a hearing. Your process will require an out of area owner to come to the area for giving a 2% increase or be penalized by voiding the 2% increase AND BARRING HIM FROM GIVING ANOTHER INCREASE FOR 12 MORE MONTHS.

Thank you for your time and I pray that you do what is right for both tenants (allow us to provide adequate, well maintained housing) and what is right for local business owners and allow them to make a reasonable return based on their risk.

I also encourage you to purchase market rate housing and manage, maintain and rent at a reduced rate to qualified tenants rather than force current owners to do this. The City already owns and manages housing so I am sure that you know that running a multifamily property makes you subject to rising costs much greater than CPI. With our insurance, utility, payroll, construction, etc increasing 2-3 times more than CPI historically, we too need increases just like your sewer rate increases in order to continue the business of providing the much needed housing. Thank you for your time and feel free to contact me if you have any questions. Remember, the facts are the facts, you can hear anonymous allegations, however most have been fabricated in order to further a cause. My information is based on fact, not fiction.

Regards,

Doug Smith
Housing Provider