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To: Elizabeth D. Warmerdam, Acting City Manager

From: Gregory Kats, Rent Stabilization Program Director

Date: June 13, 2018

RE: Management Partners Rent Stabilization Ordinance Review

Background

On November 5, 2015, the City Council adopted an urgency ordinance that imposed a moratorium on residential rent increases at or above 8% for multifamily rental units built prior to February 1, 1995, and on evictions from all residential rental units except in cases of “just cause.” That moratorium was thereafter extended until the Rent Review, Rent Stabilization and Limitations on Evictions Ordinance (Ordinance No. 3148, referred to hereafter as “the Ordinance”) became effective on March 31, 2016. The Ordinance provides a process for resolving disputes concerning rent increases (including a hearing process leading to a binding decision for certain rental units), allows “no cause” evictions (but with significant limitations as to the number of rental units for which tenants may be evicted for “no cause”) and requires payment of relocation fees for “no cause” and “no fault” evictions.

The Housing Authority of the City of Alameda (AHA) has served as the Program Administrator for these rent stabilization policies since their adoption on November 5, 2015. After conducting a competitive Request for Proposals process, on June 6, 2017, the City approved the extension of the service agreement with the AHA through June 30, 2020. The objective of the Program Administrator has been to remain a neutral party

for all stakeholders, which is consistent with AHA's role as a broker between tenants and private landlords.

In response to City Council direction, on April 27, 2018, the consulting firm Management Partners provided the City of Alameda with a report documenting its review of the City's Rent Stabilization Ordinance. The purpose of this report was to review and analyze three specific elements of the Ordinance: 1) the formula used to calculate relocation benefits for permanent and temporary tenancy terminations; 2) the provisions regarding government-ordered terminations; and 3) the role of the Rent Review Advisory Committee (RRAC) in the hearing process set forth in the Ordinance, including the possible use of professional mediators and/or hearing officers in conjunction with or in lieu of the RRAC.

The report included recommendations and proposed modifications to both the Ordinance and the administration of the Rent Stabilization Program. Certain recommendations, along with the Rent Stabilization Program's status updates and staff's feedback on the recommended actions, are provided below.

Recommendations and Staff Feedback

Recommendation 3: Amend Ordinance 3148 to include a temporary relocation benefit that includes moving expenses for tenants displaced due to short-term approved capital improvements that are expected to take less than six months to complete.

City policy already provides a temporary relocation benefit in connection with an approved capital improvement plan, as indicated in City of Alameda Resolution No. 15138, Section E of page A-5. This section of the resolution stipulates that the Program Administrator determines the temporary relocation benefit amount by taking into account the terms and conditions of the situation, including, but not limited to: the length of the displacement, the availability of a comparable vacant unit satisfactory to the tenant, the nature of the displaced tenant's temporary accommodations, as well as reasonable and documented moving costs.

Recommendation 5: Improve the information on the Alameda Rent Program website to make it easier to search and find detailed information about relocation benefits, including temporary relocation benefits, relocation payments and extended time for relocation.

In response to the report's findings, the Rent Stabilization Program website (www.AlamedaRentProgram.org) has recently undergone significant upgrades, including:

- A reorganized menu featuring an option for relocation assistance
- A dedicated page providing information regarding relocation options

- Examples of relocation scenarios designed to clarify the policy

In addition, the website has retained the pre-existing search and translation features, intended to assist users searching for information. Staff will continue to monitor and update the website as necessary.

Recommendation 6: Eliminate the requirement to pay relocation benefits when a governmental order to vacate has been issued due to an emergency that is not the fault of the owner.

Staff agrees with this recommendation. However, staff, with the assistance of the City Attorney's Office, will need to develop a clear process to determine what constitutes "fault" in order to establish such an exemption. In the interim, when such cases arise, staff will flag the case for review in order to determine whether an exemption should be applied.

Recommendation 7: Require landlords to pay the full amount of relocation benefits within three business days of a governmental order to vacate that is issued due to the fault of the landlord.

The Rent Stabilization Program already operates in this manner. Under section 6-58.150.B.2 of the Ordinance, "...the Landlord shall pay one half of the applicable relocation fee when the tenant has informed the Landlord in writing of the date when the Tenant will vacate the Rental Unit and the other half upon certification that the Tenant has vacated the Rental Unit on the date provided in the notice..."

Because the landlord typically does not serve a notice to vacate in connection with a governmental order to vacate, when implementing this provision of the Ordinance, staff has operationally interpreted the provision to mean that the second half of the relocation fee is effectively due immediately upon certification of the tenant vacating the rental unit.

Recommendation 8: Require all parties to use a mediation process involving Housing Authority staff and, if necessary, professional mediators before a case goes to a RRAC hearing.

Staff believes that the current voluntary mediation process is working and does not need to be changed at this time. All rent increase cases which are filed and eligible for a RRAC hearing are currently offered voluntary mediation services, prior to the RRAC meeting, by Housing Authority staff who have received mediation training. Both parties must elect to participate for the mediation to occur and participation is voluntary. For more complex or prolonged cases, a professional mediator may be engaged. Mediation provides the privacy that many parties prefer over the RRAC hearing process.

From March 31, 2016 to April 30, 2018, 376 out of 576 valid rent increase cases (65%) that filed for a RRAC hearing were resolved through mediation or a private agreement.

Only 43 of the total cases (7%) were reviewed by the RRAC. The other 28% of the cases were not heard by the RRAC because the review request was withdrawn, the tenant did not attend the hearing or the tenant vacated the unit.

Staff also has some concerns about requiring participation in mediation. Typically, mediation is voluntary and mandatory mediation is generally required only in situations where it has been court-ordered. The dynamic set up between the participants in a mandatory mediation can be more adversarial; consequently, such mediations do not necessarily result in more productive or successful negotiations.

Other considerations in adding a mandatory mediation requirement include service delivery and convenience. Program participants have already commented that the RRAC process can be time-consuming.

Recommendation 9: Maintain the use of professional mediators with training and experience resolving landlord-tenant contractual disputes to provide ongoing training to staff and RRAC members.

AHA Staff and RRAC members have already received mediation training from SEEDS (www.seedscrc.org). A breakdown of the specific trainings can be provided, upon request.

Please also see the response to Recommendation #11 for additional information regarding training opportunities for RRAC members.

Recommendation 10: Allow RRAC to refer decisions to a hearing officer for highly technical and complex cases involving questions of real estate finance and other facts that are outside the role and beyond the technical expertise of RRAC members.

Staff recommends that it should be the decision of the landlord or tenant if either party would like a formal and technical review by a hearing officer, but only after a RRAC decision has been issued.

The current system allows either the tenant or the landlord to appeal a decision made by the RRAC. Staff believes that the current system works well. From March 31, 2016 to April 30, 2018, 93% of cases were resolved prior to the RRAC hearing. Of those 43 cases (7%) heard by the RRAC, only one has chosen to use the Rent Dispute Hearing Officer process and, thus far, no cases have been reviewed by the City Council.

Staff is concerned that requiring certain cases to appear before a hearing officer, before the RRAC or instead of the RRAC, would open up the information revealed at these hearings to increased public scrutiny, such as the review of documents and other private information, which may prove to be a disincentive to both landlords and tenants. The Ordinance does not require that tenants or landlords submit documents at RRAC

hearings. However, section 6-58.115 (D) specifies that, “Each party shall comply with the Hearing Officer’s request for documents and information and shall comply with the other party’s reasonable requests for documents and information...The Hearing Officer may take into consideration, however, the failure of a party to provide such documents or information.” Therefore, staff recommends that it should be the decision of the landlord or the tenant if either would like a formal and technical review by a hearing officer, after a RRAC decision has been issued.

Furthermore, in order to implement this recommendation, the City Attorney’s Office would need to more clearly define what constitutes “technical and complex” questions.

Recommendation 11: Provide training to RRAC members with a focus on helping them effectively address the privacy concerns of tenants and landlords, make decisions with limited information, and respond to a variety of individual rent increase situations.

For the AHA, training for new and continuing RRAC members is a continuous priority and an on-going process.

In the last two years, staff has provided training on the following:

- Updated RRAC Rules & Procedures amended on September 7, 2016
- Discussion and training regarding the role of the RRAC within the context of Ordinance 3148
- Conflict resolution training
- Written guidance from the CAO regarding the fair rate of return
- Conflict of interest and due process training
- Onboarding packets with informational resources
- Brown Act/Sunshine Ordinance and ethics training

Recommendation 13: Improve the presence of and information about RRAC processes and opportunities for mediation on the Alameda Rent Program’s website.

AHA staff has completed the following updates to the website and other program outreach tools:

Website:

- A mediation guide was uploaded to the website
- The website menu was restructured to clarify rent review information
- Mediation options are now featured in the menu
- A more detailed layout was designed for the section outlining the RRAC process
- Reasonable accommodation procedures for RRAC hearings are more prominently featured

- Forms to request rent review and mediation services are now available for online submission

Other Mediation Resources:

- Application forms now include a mediation option
- A mediation guide and offer of free mediation services are sent to every RRAC participant in advance of the hearing

Conclusion

Staff would like to thank both the City Council and Management Partners for their efforts to assist the Rent Stabilization Program in making the implementation of Ordinance 3148 more effective and equitable for all of the stakeholders involved in the City of Alameda's rental market. The Rent Stabilization Program strives to continually improve its processes and service provision model. In that regard, staff has already implemented certain recommendations contained in the report and will continue to utilize the concepts presented therein to streamline and improve the program for both tenants and landlords. AHA staff looks forward to working with City staff and the City Attorney's Office to implement forthcoming City Council recommendations related to the Management Partners report.

Respectfully submitted,

Gregory Kats
Rent Stabilization Program Director
Housing Authority of the City of Alameda