



## CITY ATTORNEY'S OFFICE

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
TELEPHONE: (408) 777-3403 • FAX: (408) 777-3366  
CUPERTINO.ORG

## CITY COUNCIL STAFF REPORT

Meeting: December 17, 2019

### Subject

Consider Adoption of an Urgency Ordinance Under California Government Code section 36937 to Implement Tenant Eviction Protections and Limit Large Rental Rate Increases, Effective Immediately, to Avoid Circumvention of AB 1482 (the Tenant Protection Act of 2019); Find That Adoption of the Ordinance Is Not a Project Under and Exempt from CEQA.

### Recommended Action

Adopt, by a vote of at least four City Councilmembers the Draft Ordinance : “An Urgency Ordinance of the City Council of the City of Cupertino Approving Just Cause Eviction Protections and Rental Rate Limits Effective Immediately”

### Discussion

#### **Background**

In 2019, the San Jose-Sunnyvale-Santa Clara metropolitan area was reported to have the highest overall housing costs in the nation, and the second highest residential rental rates after San Francisco.<sup>1</sup> High rents are a direct cause of housing instability and homelessness. Landlords have strong financial incentives to evict long-term tenants who cannot afford rent increases, and replace them with higher income tenants who can pay market rates. Low and even moderate-income individuals and families can become caught in a cycle of evictions and displacement.

Assembly Bill 1482 was signed by the Governor on October 8, 2019 and becomes effective on January 1, 2020. AB 1482 implements two major tenant protections for renters in California: (1) a cap on rent increases beyond a statutory maximum, and (2) a prohibition on evicting tenants without “just cause.” The state legislation applies to rental apartment units that are more than 15 years old. There are a number of housing types that are exempt from the requirements imposed by AB 1482, including single family homes, condominiums, owner-occupied housing, and mobile homes.

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<sup>1</sup> “2019 Silicon Valley Index”, Joint Venture Silicon Valley, p. 68.

### *Rent Cap*

AB 1482 imposes a cap on rent increases that would prevent landlords from raising rents by more than 5% per year plus the percentage change in the cost of living, or 10%, whichever is lower. The increase is tied to annual April/April Bay Area Consumer Price Index (CPI). To provide historical context, the annual April CPI percentage change for the last four years was 3.2% in 2018, 3.8% in 2017, 2.7% in 2016, and 2.4% in 2015. The April 2019 Bay Area CPI increase was 4.0%, which would result in a maximum rent increase of 9.0% once AB 1482 becomes effective.

### *Just Cause Eviction*

The “just cause” provisions of AB 1482 protect tenants who have lived in a unit for 12 months or more, or, if additional persons have been added to the lease, at least one tenant must have lived in the unit for 24 months. “Just cause” means that landlords cannot terminate a tenancy except for one of the reasons listed in the statute, such as non-payment of rent, violation of lease terms, creating a nuisance, or criminal activities.

AB 1482 also creates a category of allowable “no fault” evictions, such as where the owner or a member of the owner’s family member wants to move into the unit, the owner intends to remove the unit from the rental market, or the owner intends to demolish or substantially remodel the property. The legislation requires landlords to pay one month’s rent as relocation assistance whenever a tenant is evicted without fault, regardless of the tenant’s income or other characteristics.

### *Applicability*

AB 1482 exempts housing units that were constructed in the previous 15 years. Some of the other exemptions include college dormitories, deed restricted affordable housing, single family homes and condominiums (unless owned by an investment trust, corporation, or limited liability company), duplexes where the owner lives in one of the units, hotels and transient occupancies, non-profit hospitals and extended care facilities, owner-occupied housing including accessory dwelling units, mobile homes, and units covered by a local “just cause” ordinance adopted before September 1, 2019, that is more protective than AB 1482.

After AB 1482 becomes effective, the prohibitions on eviction without just cause will go into effect on January 1, 2020 and if rents were increased after March 15, 2019, the rent on January 1, 2020 is reduced to the rent as of March 15, 2019 plus the maximum increase allowed by AB 1482.

### *Current Statewide Tenant Legal Protections*

Prior to the adoption of AB 1482, State law did not regulate rents or prohibit “no fault” evictions. However, existing State law does provide tenants with certain procedural rights to notice of termination of their tenancy and, ultimately, a court hearing. If a tenant has lived in the rental unit for over one year and is on a month-to-month lease, the landlord must give the tenant a written 60-day notice to end the tenancy. The notice

must inform the tenant that the tenancy will expire at the end of the notice period and the tenant must move out of the rental unit by that time. If the tenant refuses to vacate the unit, the landlord must file an eviction lawsuit known as an “unlawful detainer” action. If the court rules in favor of the landlord, the landlord must use a sheriff to perform the eviction. It is illegal in California for a landlord to personally attempt to remove a tenant from the rental unit.

#### *Tenant Protections and Assistance in Local Jurisdictions*

Within the last year, several local jurisdictions in California have enacted rent control, rent stabilization or tenant assistance programs. These jurisdictions include Culver City, Inglewood, Long Beach, Vallejo, and unincorporated Los Angeles County. Recently, several cities have enacted urgency ordinances adopting provisions included in AB 1482, including Redwood City, Menlo Park, and Sunnyvale. Cupertino does not currently have a City-adopted rent control, rent stabilization, or anti-eviction program.

#### **Discussion**

At the Council’s Regular Meeting on December 3, 2019, members of the public commented during oral communications that some landlords in the region are attempting to evict tenants and significantly increase rents during the brief window ahead of the January 1, 2020 effective date of AB 1482. Speakers requested that the City adopt an emergency housing ordinance to address these concerns. The Council directed staff to place an urgency ordinance on the following meeting’s agenda, if possible, to address community concerns regarding the need for tenant protections in advance of the implementation of AB 1482. The adoption of the proposed urgency ordinance would provide short-term tenant protections until January 1, 2020, the effective date of AB 1482.

To enact an urgency ordinance (also known as an emergency ordinance), the City Council must find that the measure is necessary for preserving the public peace, health, or safety. The factual basis for the findings are included as recitals in the attached ordinance and discussed below. An urgency ordinance requires four (4) affirmative votes of the City Council for approval and would go into effect immediately.

#### *Current and Immediate Threat to the Public Peace, Health, and Safety*

The City Council and staff have received anecdotal evidence from members of the public that some landlords are significantly increasing rents prior to the end of 2019 or sending 60-day no cause eviction notices. The *Mercury News* has reported similar occurrences throughout the South Bay. [See Attachment B](#). Roughly 37% of the housing stock in Cupertino is rental housing. It is likely that some landlords in Cupertino will attempt to evict tenants during a brief window ahead of the January 1, 2020 effective date of AB 1482, and evidence suggests that this has already been occurring.

West Valley Community Services (WVCS) has reported to staff that since September 2019, it has received a sharp increase in requests for household financial assistance by

Cupertino residents, including rental-deposit assistance. Household financial assistance requests, which are often to help cover moving costs related to evictions or rent increases, are approximately 40% higher than normal. In particular, deposit assistance requests have doubled. WVCS considers the passage of AB 1482 to be a likely cause of the increase in requests. It should be noted that this data does not reflect all household financial assistance requested by Cupertino residents, but only those individuals who have contacted WVCS for assistance. Even with limited data collected, the urgency for this ordinance stems from the gap created by AB 1482 not taking effect until January 1, 2020, allowing time for landlords to take unjust action against tenants before the effective date of AB 1482.

#### *Emergency Ordinance*

The City Attorney's Office has drafted an emergency ordinance that mirrors the tenant protection measures in AB 1482 to take effect immediately. It includes both the just cause requirements (including the relocation assistance for no fault evictions) and the rent cap.

The proposed ordinance would require a landlord to have just cause in order to serve an eviction notice. To protect tenants who receive rent increase notices after December 17, 2019, the ordinance states that such notices are void as to any rent increases above allowed amounts. The ordinance also provides tenants with a legal defense to an unlawful detainer action, and the right to bring a civil suit for violation of the ordinance, if they are evicted for failing to pay the increased rent.

Because of the statutory limits on local rent control ordinances in the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et seq.), often simply referred to as the Costa-Hawkins Act, the City's rent cap will not apply to units constructed after February 1, 1995.

If adopted by a vote of at least four (4) Councilmembers, the urgency ordinance would be in effect immediately, and expire on January 1, 2020, when AB 1482 goes into effect.

#### *Enforcement*

The City would not directly enforce the ordinance. A tenant could raise the ordinance as a defense to an unlawful detainer action, or file a private civil lawsuit against the landlord to enforce the provisions of the ordinance.

In the event Council approves the ordinance, staff has prepared outreach materials to publicize the tenant protection measures in the ordinance and in AB 1482. This would be distributed publicly on Wednesday, December 18.

#### Sustainability Impact

No sustainability impact. The ordinance provides tenant protection measures during a period when tenants are at a heightened risk of eviction or significant rent increases.

Fiscal Impact

No new fiscal impacts are anticipated at this time from the issues discussed in this report. There may be a slight increase in requests for information or referrals to help resolve tenant and landlord issues; it is anticipated that these requests would be handled through the existing operating budget.

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Prepared by: Joseph Petta, Deputy City Attorney

Reviewed by: Heather M. Minner, City Attorney

Approved for Submission by: Deborah Feng, City Manager

Attachments:

A – Draft Urgency Ordinance

B – “Emergency Measures: Bay Area Cities Scramble to Stop Recent Spike of displaced Renters,” *San Jose Mercury News*, November 18, 2019

C – AB 1482 (enrolled version)