

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: DAVID GOUIN, DIRECTOR
HOUSING AND COMMUNITY SERVICES

SUBJECT: REVISION OF POLICY CONCERNING RENT STABILIZATION –
CAPITAL IMPROVEMENT PLANS (RS-CIP) TO INCLUDE
DEMOLITION OF RENTAL UNITS AND IMMEDIATE
RECONSTRUCTION OF RENTAL UNITS ON THE SAME
PROPERTY AND TO CLARIFY WORDING IN THE POLICY
CONCERNING THE PROGRAM ADMINISTRATOR’S
CALCULATION OF AN ASSUMED INTEREST RATE FOR RENT
STABILIZATION-CAPITAL IMPROVEMENTS

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Housing and Community Services Department that the Council, by resolution, approve and adopt the revision of the Policy Concerning Rent Stabilization – Capital Improvement Plans (RS-CIP) to include demolition of rental units and immediate reconstruction of rental units on the same property and to clarify wording in the Policy concerning the Program Administrator’s calculation of an assumed interest rate for Rent Stabilization-Capital Improvements.

EXECUTIVE SUMMARY

Staff assumes most property owners who intend to demolish the rental housing and reconstruct new housing will be motivated to do so as rapidly as possible. By doing so in compliance with an approved RS-CIP, rents for those new units will no longer be regulated by the City. On the other hand, the City’s older housing stock will be replaced with more energy efficient systems to the overall benefit of the community. City Council also requested staff to clarify certain wording in the Policy concerning the Program Administrator’s calculation of an assumed interest rate for RS-CIP.

BACKGROUND

On August 30, 2016, City Council adopted Ordinance No. 4072 (“the Ordinance”) adding Chapter 6-90 to the City Code, the City of Santa Rosa Residential Rent

Stabilization and Other Tenant Protection Ordinance. Previously, on August 16, 2016, City Council passed Resolution No. 28844, adopting a Policy Concerning Rent Stabilization—Capital Improvement Plans (“the RS-CIP Policy”).

In relevant part, the Ordinance sets forth various grounds for which a landlord may terminate a tenancy through “no fault” of the tenant. Subsections G, H, I, J and K of Section 6-90.125. If the requirements under these subsections are met, the landlord is required to pay relocation benefits to displaced tenants. Section 6-90.130.

Subsection H of Section 6-90.125 addresses the demolition of a rental unit where the landlord intends to remove the property permanently from residential rental housing use. That subsection allows a landlord to terminate a tenancy for that reason if the landlord in good faith intends to demolish and remove the property permanently from residential rental housing. A landlord, however, is precluded from taking any action to terminate a tenancy based on this reason until the landlord has obtained from the City all necessary and proper demolition and related permits. By requiring the landlord to have all the permits in hand before the landlord may serve the notice to vacate, tenants and the City are reasonably assured that the landlord actually intends to demolish the building before causing the tenants to be displaced.

Subsection I of Section 6-90.125 addresses Rent Stabilization-Capital Improvement Plans (“RS-CIP”) where the landlord seeks in good faith to carry out an RS-CIP that the City has reviewed and approved and where the City has determined that the capital improvement work cannot be accomplished safely with the tenant remaining in the rental unit. Under the RS-CIP Policy as approved by the Council on August 16, a tenant may be temporarily or permanently displaced, depending on factors such as how long the tenant would need to be out of the unit to accommodate the work and whether there is a comparable rental unit in the building that could temporarily house the tenant while the work is being accomplished. Although Section 1 of the Policy encourages landlords to improve the quality of the City’s rental housing stock and Section 2 of the Policy is broadly worded to include any improvement to property that “appreciably prolongs the useful life [of property] or adapts the property to a new use”, the Policy’s focus is on major long term improvements or repairs to existing rental units.

During Council’s discussion of the Ordinance and the RS-CIP Policy, Council raised the question as to whether the Ordinance or the Policy applied to a landlord who wanted to demolish a building with rental housing units and then immediately construct on the property new residential rental units. A number of property owners with older rental properties located near transit centers have expressed an interest in such redevelopment. As stated above, the Ordinance does address demolition but only when the landlord intends to remove the property permanently from the rental market. As also stated above, the RS-CIP Policy does contemplate improvements that prolong the useful life of property or adapt the property to a new use but, as adopted, the Policy is silent as to demolition of rental units followed by new construction.

Because there is a good possibility that some property owners will want to demolish rental units with the intent of reconstructing new rental units, Council requested staff to craft a solution. As discussed below under Analysis, staff recommends Council adopt a resolution revising the RS-CIP Policy to address this issue.

In addition, City Council had some concerns about the wording in the Policy concerning the Program Administrator's calculation of an assumed interest rate when the Program Administrator was amortizing the cost of the capital improvements. The Council's direction was that the rate should be the sum of the Wall Street Journal's prime rate (Western Edition) plus one percent, which sum is to be divided by two. Council felt the wording in the adopted Policy was not clear enough and directed staff to clarify the language which, as discussed below, is in the revised Policy.

PRIOR CITY COUNCIL REVIEW

On May 3, 2016, following several meetings of a Council committee that considered a number of tenant protection options, the City Council directed City staff to present to the Council legislation that would limit annual rent increases and limit termination of tenancies for "just cause."

On May 17, 2016, in light of numerous concerns about rising rents and other adverse impacts resulting from a substantial decrease of affordable rental housing within the City, the City Council determined that it was in the interest to preserve immediately the public health, safety and general welfare to adopt interim Ordinance No. 4063, imposing a 45 day moratorium on rent increases within the City of Santa Rosa, and directed staff to draft a comprehensive rent stabilization program.

On July 7, 2016, the City Council adopted Ordinance No. 4067, an urgency ordinance enacting a further 90 day moratorium on certain residential rent increases within the City of Santa Rosa, that superseded Ordinance No. 4063, and on July 19, 2016, the City Council adopted Ordinance No. 4069, an urgency ordinance correcting certain clerical errors in Ordinance No. 4067.

On July 19, 2016, the City Council found and determined that the lack of a just cause eviction requirement put some tenants at risk of evictions by landlords seeking to increase rents in the face of the recently adopted moratorium on rent increases and Council determined that it was in the interest to preserve the public health, safety and general welfare to introduce an ordinance to prohibit landlords from terminating the tenancies of certain tenants without just cause to do so. This Ordinance was adopted by the Council on the August 16; it will not take effect for 30 days thereafter.

On August 16, 2016, City Council passed Resolution No. 28844, adopting a Policy Concerning Rent Stabilization—Capital Improvement Plans.

On August 30, 2016, City Council adopted Ordinance No. 4072, adding Chapter 6-90 to the City Code, the City of Santa Rosa Residential Rent Stabilization and Other Tenant

Protection Ordinance and repealing in their entirety ordinance numbers 4067, 4069 and 4070.

ANALYSIS

The revised RS-CIP Policy adds a new section 12 to the Policy that addresses demolition of existing rental units followed immediately by construction of new rental units.

Where a landlord intends in good faith to demolish rental units and immediately construct new rental units on the same property, the Policy provides a landlord must file an RS-CIP with the Program Administrator. The RS-CIP must demonstrate the landlord has obtained from the City and any other regulatory agency all necessary permits not only to demolish the existing unit but also to construct the new units. The RS-CIP must indicate the proposed time frame when the landlord intends to terminate the tenancies, when the landlord intends to begin and complete demolition and when the landlord intends to begin and complete construction of the new rental units. (Subsection A.)

As with other RS-CIP for other purposes, the Program Administrator will review the RS-CIP including the permits and determine whether the documentation is adequate and sufficient to approve the RS-CIP. The Program Administrator will provide the tenants the opportunity to review the documents before making a decision. If the Program Administrator approves the RS-CIP, the Program Administrator will notify the landlord and the tenants. If the Program Administrator does not approve the RS-CIP, the Program Administrator shall advise the landlord in what respects the RS-CIP is deficient. (Subsection B.)

After the Program Administrator has approved the RS-CIP, the landlord may take action to terminate the tenancy as provided by law. The notice to terminate the tenancy shall provide the tenant with at least 120 days to vacate, a statement the tenant is entitled to relocation payments and the amount thereof as provided in the City's Rent Stabilization Ordinance, notice that the tenant has the right of first refusal to rent the new rental unit once built, and advise the tenant of the right to damages if the landlord does not demolish the rental unit and immediately construct new rental units as set forth in the approved RS-CIP. (Subsection C.)

The landlord is to notify the Program Administrator when all rental units to be demolished have been vacated. The landlord must begin demolition within 60 days thereafter. The landlord must begin construction of the new rental unit(s) within 90 days following demolition of the units and, in the reasonable judgment of the Program Administrator, diligently complete construction of the new rental units. (Subsection E.) If these requirements are met, the new rental unit will be considered exempt under the Ordinance, meaning the landlord may set the initial rent and any subsequent rent increases. The landlord must also offer to rent the new unit to the displaced tenants on a right of first refusal basis. (Subsection F.)

But what are the consequences to the landlord if these requirements are not met? The revised Policy provides If the landlord has not started demolition of the rental units within 60 days of the rental units having been vacated, the RS-CIP shall be null and void and the landlord must offer the rental units to the displaced tenants on a right of first refusal basis, at the lawful rent in effect at the time of the tenant's displacement. In addition, the landlord will be liable to the tenant for any reasonable costs incurred in the tenant's re-renting the rental unit, notwithstanding the tenant's earlier receipt of relocation payments. (Subsection G.)

If the landlord has demolished the rental units but did not start construction and/or did not complete construction of the rental units as required under the Policy, the rental unit will not be exempt under the City's Ordinance and the landlord must offer to rent the new rental unit (if constructed) to the displaced tenants on a right of first refusal ; no matter to whom it is rented, the unit shall be rented at the lawful rent in effect at the time of tenant displacement, plus any annual allowable adjustments. The landlord will also be liable to any tenant who was displaced from the rental property for actual and punitive damages. (Subsection H.) These sanctions are consistent with State law where a landlord withdraws a rental unit from the rental housing market "permanently" but then, within a five year period, changes his or her mind.

Section 5 of the Policy addresses the "Calculation of Rent Increases for Capital Improvements". In part, the Program Administrator is to calculate the amount of the rent increase by amortizing the cost of the improvement over a 20 year period. Because actual interest rates to finance the cost of improvements may vary depending on the creditworthiness of the builder, for simplicity, the adopted Policy provides the Program Administrator is to use "one-half of an assumed interest rate of the Wall Street Journal (Western Edition) plus one percent." For sake of discussion, if that interest rate were 4%, Council felt the wording could be read to mean one half of 4% (i.e., 2%) plus 1%, yielding 3% or to mean 4% plus 1% divided by 2, yielding 2.5%. Council's intent was the latter.

Staff has revised the relevant part of Section 5 of the Policy to read that the interest rate is "one half of the sum of an assumed interest rate of the Wall Street Journal (Western Edition) plus one percent." Adding the word "sum" clarifies Council's intent and provides clear direction to the Program Administrator.

FISCAL IMPACT

Approval of this action does not have a fiscal impact on the General Fund.

ENVIRONMENTAL IMPACT

No further review under the California Environmental Quality Act is required because, for independent and separate reasons, (a) adoption of a revised RS-CIP Policy is not a project under the California Environmental Quality Act, title 14, Section 15078 (b)(2) or Section 15078 (b)(5) of the California Code of Regulations (CEQA Guidelines) and (b) if

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adoption of the revised RS-CIP Policy were a project under CEQA, there is no possibility that the adoption of this revised Policy will have a significant effect on the environment. CEQA Guidelines, section 15061 (b)(3).

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

N/A

NOTIFICATION

N/A

ATTACHMENTS

- Attachment 1 – Redline Policy Concerning Capital Improvement Plans
- Resolution
- Exhibit A – Policy Concerning Capital Improvement Plans

CONTACT

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