

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: SUE GALLAGHER, CITY ATTORNEY
SUBJECT: POTENTIAL TERMINATION OF THE CITY'S TEMPORARY
PROHIBITION ON RENTAL HOUSING PRICE GOUGING
THROUGH REPEAL OF CHAPTER 10-44 OF THE CITY CODE

AGENDA ACTION: ORDINANCE

RECOMMENDATION

Pursuant to Council request, it is recommended by the City Attorney that the Council consider whether to repeal Chapter 10-44 of the Santa Rosa City Code. Repeal of Chapter 10-44 would terminate the City's temporary prohibition on rental housing price gouging and associated temporary limitations on tenant evictions, originally adopted following the 2017 wildfires.

EXECUTIVE SUMMARY

In response to reports of price gouging following the October 2017 wildfires, the Council adopted Urgency Ordinance ORD-2017-020 adding Chapter 10-44 to the City Code. Chapter 10-44 established a temporary prohibition on rental housing price gouging as well as associated limitations on tenant evictions. By its initial term, the Ordinance was to remain in effect until April 18, 2018. The term of the Ordinance was extended twice, and remains in effect at this time.

In general, the Ordinance places a ten percent cap on residential rental increases over the life of the Ordinance. Specifically, the Ordinance prohibits any person from increasing rent on any dwelling unit, vacation rental, hotel or motel room more than ten percent above the rental price charged on October 9, 2017. In addition, the Ordinance prohibits a landlord from evicting an existing tenant or terminating an existing lease or rental agreement and subsequently renting or leasing the same unit for more than the rental price of the unit in the thirty day period immediately preceding October 9, 2017. A landlord may obtain limited relief from these provisions if he or she can establish that the excess is directly attributable to additional costs resulting from the labor or materials necessary to provide the rental or in certain other defined circumstances.

In November 2018, at the time of Council's last consideration of the price gouging ordinance, it directed that the Ordinance be continued in effect "until at least October 9,

POTENTIAL TERMINATION OF THE CITY'S TEMPORARY PROHIBITION ON
RENTAL HOUSING PRICE GOUGING THROUGH REPEAL OF CHAPTER 10-44 OF
THE CITY CODE
PAGE 2 OF 5

2019, at which time it shall be subject to review by the City Council at a regularly scheduled Council meeting." This agenda item is the opportunity for that review.

BACKGROUND

On October 24, 2017, following the wildfires that devastated broad swaths of the City, City Council adopted Urgency Ordinance ORD-2017-020 adding Chapter 10-44 to the City Code. The Ordinance established a temporary prohibition on rental housing price gouging as well as associated temporary limitations on tenant evictions. The Ordinance mirrored the provisions of State Penal Code Section 396, which prohibit price gouging following a disaster. The Governor had just issued an Executive Order stating that Section 396 would apply in Lake, Mendocino, Napa, Solano and Sonoma County through April 18, 2018, and the City's Ordinance followed suit, adopting that same timeframe.

Both the Governor's Executive Order and the City Ordinance were subsequently extended, such that both continue in effect to this date. The Governor's most recent Executive Order provides that the State price gouging prohibition relative to the 2017 wildfires will expire on December 31st.

With the passage of time and recent changes to state law, questions have now been raised as to the need for, and efficacy of, continuing the City's price gouging ordinance into 2020.

PRIOR COUNCIL ACTION

On October 24, 2017, Council adopted Ordinance No. ORD-2017-020, adding Chapter 10-44 to the City Code to (a) establish a temporary prohibition on any residential rental increase that would cause rents to exceed those charged as of October 9, 2017 by more than ten percent, and (b) place related limits on the eviction of tenants. The Ordinance was to remain in effect through April 18, 2018.

On May 8, 2018, Council adopted Ordinance No. ORD-2018-011, extending the term of City Code Chapter 10-44 through December 4, 2018 or for as long as the City remains under a State declaration of emergency, whichever is later.

On November 27, 2018, Council adopted Ordinance No. ORD-2018-021, further extending the term of City Code Chapter 10-44 through "at least October 9, 2019, at which time it shall be subject to review by the City Council at a regularly scheduled Council meeting."

ANALYSIS

The City's price gouging ordinance was adopted just two weeks after the 2017 wildfires caused destruction of approximately 3000 homes in Santa Rosa alone. The sudden destruction of homes dramatically exacerbated an already difficult

POTENTIAL TERMINATION OF THE CITY'S TEMPORARY PROHIBITION ON
RENTAL HOUSING PRICE GOUGING THROUGH REPEAL OF CHAPTER 10-44 OF
THE CITY CODE
PAGE 3 OF 5

residential rental market. Staff and Council members were receiving reports of price gouging and the eviction of existing tenants in favor of those who might be desperate enough or with enough resources to pay previously unimaginable rents.

The new ordinance added Chapter 10-44 to the City Code. Chapter 10-44 prohibits any person, during the lifetime of the ordinance, from charging residential rent more than ten percent over the rent charged immediately prior to October 9, 2017. The Ordinance also made unlawful the eviction of existing tenants or the termination of an existing lease and the subsequent rental of the unit for more than the unit's rental price during the 30-day period immediately prior to October 9, 2017. The Ordinance applies to any housing units of any kind within the City limits, as well as to any hotel, motel or other short-term rental. Certain limited exceptions apply.

Chapter 10-44 mirrors California Penal Code Section 396, which places the same ten percent cap on residential rental increases immediately following a disaster. The State code has a more narrow application, in that it applies only to (a) rental housing units with initial lease terms of one year or less, and (b) hotels and motels. It contains limited exceptions parallel to those provided in Chapter 10-44. Penal Code Section 396 provides that the price gouging prohibition shall be triggered upon the declaration of emergency at the federal, state or local level and shall continue so long as declaration of emergency remains in effect.

Penal Code Section 396 thus continues to apply within Santa Rosa so long as the City's proclamation of local emergency due to the 2017 wildfires remains in effect. Section 396 continues to be enforced through a strong and effective enforcement program within the Office of the Sonoma County District Attorney. (Section 396 has also been triggered more recently by the proclamations of emergency issued in connection with the Kincaid fire.)

Two years have now passed since the initial urgency adoption of City Code Chapter 10-44. The reconstruction of residential units is well underway, but still far from completed. The rental market remains significantly constrained and tenants continue to fear excessive rental increases. Landlords, on the other hand, express significant concerns about the financial viability of continuing to operate under the flat ten percent rental cap and the fairness of holding to a 2017 baseline.

In addition, state law is evolving and new statewide tenant protections will go into effect as of January 1, 2020. AB 1482, known as the Tenant Protection Act of 2019, was signed into law earlier this fall and provides residential tenant protections generally applicable statewide and not tied to disaster conditions. The Act applies to rental housing units fifteen years of age or older. Single family homes are exempted from its provisions, unless the home is owned by a real estate investment trust, corporation or limited liability company.

POTENTIAL TERMINATION OF THE CITY'S TEMPORARY PROHIBITION ON
RENTAL HOUSING PRICE GOUGING THROUGH REPEAL OF CHAPTER 10-44 OF
THE CITY CODE
PAGE 4 OF 5

The Act has two key provisions. First, it places an annual cap on rental increases on residential rental units subject to its terms. Annual rent increases are limited to 5% plus the percentage change in the Consumer Price Index (CPI), or 10%, whichever is less. The rental cap reaches back to include any increases imposed on or after March 15, 2019. No more than two incremental increases may be imposed in the course of any twelve month period. Rents may be reset to market rate upon re-rental of the unit to a new individual or an entirely new tenant group.

Second, the Tenant Protection Act prohibits the eviction of tenants without just cause. The Act defines just cause to include "at-fault" just cause (including failure to pay rent, breach of the lease, maintenance of a nuisance, etc.) as well as "no-fault" just cause (including withdrawal of the unit from the rental market, intent to occupy by owner or family, etc.).

Given the changing circumstances, and in accordance with the Council's direction from last November, 2018, it is appropriate for the Council now to review the continuation of the City's price gouging ordinance. Chapter 10-44 has provided effective deterrence during its tenure, but no formal enforcement actions have been pursued under the City's auspices. Meanwhile, Penal Code Section 396, although it is more narrow than the City Ordinance, has proven to be an effective enforcement tool and remains in effect. In addition, with the passage of AB 1482, new state residential rental restrictions will soon take effect, providing alternative tenant protections.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

FISCAL IMPACT

If the term of Chapter 10-44 is extended, continued administration and enforcement costs will be funded by the General Fund.

ENVIRONMENTAL IMPACT

Adoption of this ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

ATTACHMENTS

- Ordinance

POTENTIAL TERMINATION OF THE CITY'S TEMPORARY PROHIBITION ON
RENTAL HOUSING PRICE GOUGING THROUGH REPEAL OF CHAPTER 10-44 OF
THE CITY CODE
PAGE 5 OF 5

CONTACT

Sue Gallagher
City Attorney
sgallagher@srcity.org
(707) 543-3040