

**ORDINANCE NO. 1971**

**AN ORDINANCE OF THE CITY OF SAN RAFAEL CITY COUNCIL  
ADDING NEW CHAPTER 10.100 TO THE SAN RAFAEL MUNICIPAL CODE,  
ENTITLED “RENTAL HOUSING DISPUTE RESOLUTION”**

**THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:**

**DIVISION 1. FINDINGS.**

**WHEREAS**, over 57,700 people permanently reside in the incorporated City of San Rafael, which population is projected to grow by approximately 11,000 additional residents by 2040, as identified in Appendix B: Background Report of the 2015-2023 San Rafael Housing Element; and

**WHEREAS**, 48 percent of the 24,000 housing units in the City of San Rafael are occupied by renters, as identified in Appendix B: Background Report of the 2015-2023 San Rafael Housing Element; and

**WHEREAS**, housing overpayment, as defined by the state and federal government, refers to spending more than 30 percent of income on housing; severe overpayment is spending greater than 50 percent of income on housing; and

**WHEREAS**, in 2010, 53 percent of renter households were overpaying for housing and 30% of households were severely overpaying for housing, as identified in Appendix B: Background Report of the 2015-2023 San Rafael Housing Element; and

**WHEREAS**, rental prices increased 25% between 2010 and 2013, as identified in Appendix B: Background Report of the 2015-2023 San Rafael Housing Element; and

**WHEREAS**, in 2011, 87 percent of the 36,000 persons employed within San Rafael commuted in from outside the city limits, indicating a shortage of local affordable housing opportunities for the community’s workforce, as identified in Appendix B: Background Report of the 2015-2023 San Rafael Housing Element; and

**WHEREAS**, the 2013, 2015, and 2017 Homeless Point-in-Time Counts each identify the lack of affordable housing as the leading cause of homelessness in Marin County; and

**WHEREAS**, the 2018-2019 City Council Goals and Objectives includes “exploring protections to increase rental and ownership housing affordability”; and

**WHEREAS**, at the February 4, 2019 City Council Meeting, staff presented potential renter protection policies to address the issue of rental housing affordability; and

**WHEREAS**, the City Council formed an ad hoc Renter Protections Subcommittee to vet these policy options in more detail, solicit feedback from the public, and incorporate the feedback of local stakeholders; and

**WHEREAS**, on May 4, 2019, the Renter Protections Subcommittee recommended that the City establish a Rental Housing Dispute Resolution program with the goal of maintaining rental housing affordability by addressing significant rent increases through the facilitation of constructive conversations between landlords and tenants in a neutral and accountable environment;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:**

**DIVISION 2. AMENDMENT OF MUNICIPAL CODE.**

Title 10 of the San Rafael Municipal Code, entitled “Businesses, Professions, Occupations, Industries and Trades” is hereby amended by adding new Chapter 10.100, entitled “Rental Housing Dispute Resolution” to read in its entirety as follows:

**10.100.010 Purpose and intent.**

It is the purpose and intent of this Chapter to encourage certainty and fairness in the residential rental market within the City of San Rafael, in order to promote the health, safety, and general welfare of residents and businesses within the City. This Chapter only governs disputes between Landlords and Tenants of rental Dwelling Units located within the City of San Rafael.

**10.100.020 Applicability.**

The provisions of this Chapter shall apply to all Dwelling Units in the San Rafael city limits, including a single-family dwelling or unit in a multifamily or multipurpose dwelling, a unit in a condominium or cooperative housing project, or a unit in a structure that is being used for residential uses whether or not the residential use is a conforming use permitted under the San Rafael Municipal Code, which is hired, rented, or leased to a household within the meaning of California Civil Code Section 1940.

Notwithstanding anything to the contrary above, the provisions of this Chapter shall not apply to the following:

- A. Any Dwelling Unit that is owned or operated by any government agency; or
- B. Any Dwelling Unit for which one of the following is true (1) the Rent is limited to no more than affordable rent, as such term is defined in California Health & Safety Code Section 50053, pursuant and subject to legally binding restrictions enforceable against and/or governing such units; or (2) the Rent is directly subsidized by a government agency such that the Tenant's portion of the Rent does not exceed 30% of income.

### **10.100.030 Definitions.**

For the purpose of this Chapter, unless the context clearly requires different meaning, the words, terms, and phrases set forth in this section shall have the meanings given to them in this section:

- A. "City" means the City of San Rafael.
- B. "CDD Director" means the City Community Development Department Director or their designee unless otherwise specified.
- C. "Designated Service Provider" means a party or organization selected by the CDD Director to provide Mediation services and other tasks necessary to implement the program and procedures contained in this Chapter and any associated Guidelines.
- D. "Dwelling unit" for purposes of this Chapter means one or more rooms designed, occupied or intended for occupancy as separate living quarters, with a kitchen, sleeping facilities, and sanitary facilities for the exclusive use of one household, but not including any such unit occupied in whole or in part by the property owner or the property owner's family members, including parents, children, brothers, sisters, aunts, uncles, nieces, and/or nephews.
- E. "Guidelines" means any written regulations and forms for the administration and implementation of this Chapter adopted by the CDD Director.
- F. "Good Faith" participation shall have the meaning given it in Section 10.100.050 below. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive Rent for the use and occupancy of any Dwelling Unit or portion thereof.
- G. "Mediation" means one or more meetings in which a Landlord and Tenant have the opportunity to directly communicate with a Mediator and each other in a face-to-face setting at a neutral location in order to resolve a rental housing dispute under ground rules designed to protect the confidentiality and neutrality of the communications.
- H. "Mediator" means a person who meets any criteria for conducting Mediations that may be established in the Guidelines.
- I. "Rent" means the consideration, including any funds, labor, bonus, benefit, or gratuity, demanded or received by a Landlord for or in connection with the use and occupancy of a Dwelling Unit and the housing services provided therewith, or for the assignment of a rental agreement for a Dwelling Unit.
- J. "Tenant" means a person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Dwelling Unit.

#### **10.100.040 Mediation eligibility.**

- A. Tenant-initiated Mediation. A Tenant residing in a Dwelling Unit may file a request and receive Mediation services within either 30 calendar days from the enactment of this Chapter or ten calendar days of the Tenant's receipt of one or more notices in accordance with California Civil Code section 827 that individually or cumulatively increase Rent more than five percent (5%) within any 12-month period.
- B. Landlord-requested Mediation. Any Landlord may file a request and receive Mediation services in order to pursue a Rent increase greater than five percent (5%) within any 12-month period.

#### **10.100.050 Mediation process.**

- A. Designated Service Provider; Costs. The CDD Director shall contract with or designate a Designated Service Provider to provide Mediation services. The Guidelines may include a description of minimum qualifications for the Designated Service Provider and its Mediators. For the first year during which this Chapter is in effect, the City shall pay the entire cost of any Mediation required under this Chapter to the extent funds are available. Thereafter, the costs of the Mediation shall be allocated among the parties and/or other available funding sources as determined by the CDD Director.
- B. Mediation Requests.
  - (1) Any Tenant or Landlord eligible for Mediation under Section 10.100.040 may request Mediation services from the Designated Service Provider.
  - (2) Each Landlord and/or Tenant requesting Mediation services must complete and sign a form under penalty of perjury that demonstrates eligibility for Mediation under this Chapter and includes other information as may be specified in the Guidelines.
  - (3) Separate requests for Mediation services that involve one or more of the same parties may be consolidated with the consent of the Landlord and the other Tenant(s), but consolidation is not required and shall not affect individuals' ability to be separately represented or to bring a separate legal action.
  - (4) If an eligible Tenant has requested Mediation as a result of receiving one or more notices in accordance with California Civil Code section 827 that individually or cumulatively increase Rent more than five percent (5%) within any 12-month period, unless the parties otherwise agree in writing, such noticed Rent increase will not be effective until the Mediation concludes or 30 calendar days after the request for Mediation services is made to the Designated Service Provider.
- C. Two-Step Mediation Process. The Designated Service Provider shall assign a Mediator within ten (10) calendar days of receiving a complete request for Mediation services. The assigned Mediator shall offer a two-step Mediation process as follows:

- (1) Within two (2) business days of receiving a Mediation assignment from the Designated Service Provider, the Mediator shall provide notice of the Mediation to the Landlord and Tenant. The Mediation notice shall, at a minimum, inform each party of their obligation to appear at the Mediation. The Mediator shall make reasonable efforts to schedule Mediation sessions at times that are mutually convenient for the Landlord and the Tenant, which may include times that are outside of business hours. The Mediation process shall commence upon notification of the Landlord and Tenant by the Mediator.
  - (a) A Mediator may notify the Landlord and/or Tenant of the Mediation process via telephone, email, or any other form of communication, but at a minimum, the Mediator must notify each party in writing via first-class mail, postage prepaid to each parties' address of record.
  - (b) Following the Mediator sending such notification, both the Landlord and the Tenant have an affirmative obligation to participate in the Mediation until the Mediation concludes.
- (2) The Mediation process shall conclude upon the earlier of: (a) the execution of a legally enforceable, written agreement signed by all parties to the Mediation service under subsection (E) of this Section; (b) the Mediator's determination that no further progress is likely to result from continued Mediation; or (c) all of the parties to the Mediation indicate in writing that the Mediation has concluded to their satisfaction. In no event shall a Mediation process last longer than 30 calendar days after the request for Mediation services is made to the Designated Service Provider unless the parties agree in writing to extend the Mediation term.

D. Mandatory Participation. Every party to a Mediation is affirmatively obligated to participate in such Mediation in Good Faith until the Mediator determines the Mediation has concluded.

- (1) Definition. For purposes of this Section, Good Faith participation means the mutual obligation of the Landlord and Tenant to meet on each occasion when notified of Mediation proceedings, provide relevant information, exchange proposals, timely consider and respond to proposals by opposite parties, and engage in meaningful discussion on the subject of proposed Rent increases and issues related to the Rent increase.
- (2) Failure to participate in Good Faith.
  - (a) No Rent increase will be effective unless or until the Landlord of the Dwelling Unit complies with the provisions of this Chapter by participating in Good Faith as described in Section 10.100.050 throughout the entirety of a Mediation process.
  - (b) If a Tenant fails to participate in Good Faith, the Tenant shall be deemed to have withdrawn their request for Mediation, allowing any Rent increase

to be implemented in accordance with the notice requirements identified in California Civil Code section 827.

E. Mediation Agreements.

- (1) Any agreement reached by the parties in Mediation must:
  - (a) Be made in writing and signed by the parties;
  - (b) State the specific terms of the Mediation agreement including the duration and conditions of the agreement;
  - (c) State the effective date of any agreed-upon Rent increase and stipulate to the adequacy of notice for any Rent increase in accordance with California Civil Code section 827;
  - (d) Be legally enforceable against the parties to the agreement;
  - (e) Provide that any agent or representative signing a Mediation agreement on behalf of other persons shall be responsible for promptly providing a copy of the agreement to the parties they represent.
- (2) A Tenant bound by a Mediation agreement may not request further Mediation concerning any Rent increase covering the same time period included in the Mediation agreement but may request Mediation concerning an additional Rent Increase that is first noticed or occurs after the Mediation agreement is signed by both parties.

**10.100.060 Rights Under State and Federal Law Not Affected.**

- A. Nothing in this Chapter shall be deemed to affect any rights or remedies of a Tenant provided by State or Federal law, including but not limited to those related to:
- (1) Tenant's right to quiet enjoyment of the rental premises.
  - (2) The duty of a landlord to make a dwelling unit tenantable and repair all subsequent dilapidations that render it untenable including, but not limited to, providing:
    - (a) Effective waterproofing/weather protection for roof, exterior walls, windows and doors.
    - (b) Plumbing and gas facilities conforming to state and local law at the time of installation, kept in good working order.
    - (c) A water supply providing hot and cold running water and approved under applicable law.

- (d) Heating conforming to applicable law at the time of installation, kept in good working order.
- (e) An electrical system, including lighting, wiring and equipment, conforming with applicable law at the time of installation, kept in good working order. [
- (f) Building grounds kept clean, sanitary and free from accumulations of debris, garbage, rodents and vermin.
- (g) Adequate numbers of garbage/rubbish receptacles kept clean and in good repair.
- (h) Floors, stairways and railings kept in good repair.
- (i) Code compliant locks on certain windows and doors.
- (3) Prohibited Landlord conduct including, but not limited to:
  - (a) Discrimination in housing.
  - (b) Retaliation, threats or other coercive conduct, including threats or discrimination on basis of immigration or citizenship status.
  - (c) Unauthorized entry into Tenant's unit.
  - (d) Unauthorized taking of Tenant's personal property.
- (4) Rights concerning payment and return of rent and security deposits.
- (5) Rights to required notice prior to termination of rental agreement.
- (6) Rights under Unlawful Detainer statutes, including prohibitions against termination based on immigration or citizenship status.
- B. Nothing in Subsection (A) of this Section prohibits the lawful eviction of a Tenant in accordance with California Civil Code section 1946.1 or by any other appropriate legal means.

#### **10.100.070 Civil remedies.**

- A. Injunctive relief. Any aggrieved person may enforce Sections 10.100.050(D) or 10.100.080 of this Chapter by means of a civil injunctive action. Any person who commits, or proposes to commit, an act in violation of Sections 10.100.050(D) or 10.100.080 of this Chapter may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this section may be brought by any aggrieved person, by county counsel, the district attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

- B. Civil Liability. Any person who violates Sections 10.100.050(D) or 10.100.080 of this Chapter or who aids in the violation of Sections 10.100.050(D) or 10.100.080 of this Chapter is liable for, and the court must award to the individual whose rights are violated, three times the amount of special and general damages. The court may award in addition thereto not less than two hundred dollars (\$200.00) but not more than four hundred dollars (\$400.00), together with attorney's fees and costs of action. Civil actions filed pursuant to this section must be filed within one year of the events giving rise to the alleged cause of action.
- C. Attorney's fees sought in connection with Section 10.100.080 shall only be awarded if the party is first given written notice of its failure and an opportunity to cure, which cure may include delaying and re-noticing a proposed rent increase and/or refunding or crediting to Tenant a past rent increase, and such cure is not promptly effected.

**10.100.080 Notice of Tenant rights.**

- A. Notice Requirement. Landlords must provide to each Tenant a notice of Tenant rights under this Chapter that describes the Mediation service and how to request service. The required notice may be printed conspicuously within the lease or rental agreement or Notice of Rent increase or may be provided on a separate form. A form for providing such notice may be issued in the Guidelines, and the use of such form shall be deemed to comply with the substantive requirements of this Subsection (A).
- B. When Notice Required. Landlords must provide to Tenants the notice of Tenant rights under Subsection (A) of this Section in the following circumstances:
- (1) When entering a lease or rental agreement;
  - (2) When renewing a lease or rental agreement; and
  - (3) When providing notice of a Rent increase.
- C. Language of Notice. If the Tenant's rental agreement was negotiated in a language other than English, then the Landlord shall provide the notices required under this Section in the language in which the rental agreement was negotiated.
- D. Delivery of Notice. The notices required by this Section may be served by any of the following methods:
- (1) By delivering a copy to the Tenant personally.
  - (2) If the Tenant is absent from his or her place of residence, and from his or her usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy through the mail addressed to the Tenant at his or her place of residence.
  - (3) If such place of residence and business cannot be ascertained, or a person of suitable age or discretion there cannot be found, then by affixing a copy in a



conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the Tenant at the place where the property is situated. Service upon a subtenant may be made in the same manner.

- E. Failure to Provide Notice. Failure to comply with the notice provisions described in this Chapter shall render any rental increase notice invalid and unenforceable. The failure to comply with the notice provisions will be cured only after the proper written notice of Tenant's Rights, along with a new rental increase notice, has been properly served on the Tenant.

#### **DIVISION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).**

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment, in that this ordinance applies residential tenant protection measures to existing residential units in San Rafael, which is solely an administrative process resulting in no physical changes to the environment.

#### **DIVISION 5. SEVERABILITY.**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

#### **DIVISION 6. EFFECTIVE DATE; PUBLICATION.**

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

  
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GARY O. PHILLIPS, Mayor

ATTEST:

  
LINDSAY LARA, City Clerk

The foregoing Ordinance No. 1971 was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 3rd day of June 2019 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Colin, McCullough & Mayor Phillips

NOES: Councilmembers: Gamblin

ABSENT: Councilmembers: Bushey

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 17th day of June 2019.



LINDSAY LARA, City Clerk