

**MINUTES  
FREMONT CITY COUNCIL MEETING  
FEBRUARY 5, 2019  
FREMONT CITY HALL  
7:00 P.M.**

**1. PRELIMINARY**

- A. Call to Order:** Mayor Mei called the meeting to order at 7:00 p.m.
- B. Flag Salute:** Vice Mayor Salwan led the salute to the flag.
- C. Roll Call:** Present: Mayor Mei, Vice Mayor Salwan, Councilmembers: Bacon, Keng, Jones, Kassan, and Shao.
- D. Announcements by Mayor/City Manager**

Mayor Mei announced the Boards and Commissions vacancies. City Manager Danaj shared information regarding items of Council/community interest.

**2. CONSENT CALENDAR**

- \* **A. Waive Reading of Ordinances:** The City Attorney read the titles of ordinances to be considered.

On a motion by Councilmember Bacon, seconded by Councilmember Jones, the City Council waived further readings of proposed ordinances.

Ayes: Mayor Mei, Vice Mayor Salwan,  
Councilmembers: Bacon, Keng, Jones,  
Kassan, and Shao  
Noes: None  
Absent: None  
Abstain: None

- \* **B. Mayor Mei opened consideration of Approval of Minutes**

On a motion by Councilmember Bacon, seconded by Councilmember Jones, the City Council approved minutes for the Regular Meeting of December 11, 2018, the Special and Regular Meetings of December 18, 2018, and the Regular Meeting of January 15, 2019, as amended.

Ayes: Mayor Mei, Vice Mayor Salwan,  
Councilmembers: Bacon, Keng, Jones,  
Kassan, and Shao  
Noes: None  
Absent: None  
Abstain: None

\*Consent Items

- \* **C. Mayor Mei opened consideration of Second Reading and Adoption of an Ordinance of the City of Fremont Rezoning a 1.19-Acre Site, located at 39392 Blacow Road, from R-1-6 (Single Family Residential) to Preliminary and Precise Planned District P-2018-292, to Allow the Development of Eight Small-Lot Single Family Homes and Related Improvements**

On a motion by Councilmember Bacon, seconded by Councilmember Jones, the City Council adopted Ordinance No. 01-2019.

Ayes: Mayor Mei, Vice Mayor Salwan,  
 Councilmembers: Bacon, Keng, Jones,  
 Kassan, and Shao  
 Noes: None  
 Absent: None  
 Abstain: None

- \* **D. Mayor Mei opened consideration of Second Reading and Adoption of an Ordinance of the City of Fremont Amending Fremont Municipal Code Title 5, Business Licenses and Regulations, Chapter 5.30 Minimum Wage**

This item was removed from the Consent Calendar. Mayor Mei opened the public comment period. Jay Gamez, representing Mission Hope Day Program, spoke in opposition to the minimum wage increase and provided a hand-out. There were no additional speakers. Mayor Mei closed the public comment period. Councilmembers provided comment.

On a motion by Councilmember Bacon, seconded by Vice Mayor Salwan, the City Council adopted Ordinance No. 02-2019. Council also provided direction to staff to look at the non-profits, including the federally and state funded agencies, and bring the item back to the Council prior to the implementation in the June/July time frame for additional review.

Ayes: Mayor Mei, Vice Mayor Salwan,  
 Councilmembers: Bacon, Keng, Jones,  
 Kassan, and Shao  
 Noes: None  
 Absent: None  
 Abstain: None

- \* **E. Mayor Mei opened consideration of An Ordinance of the City of Fremont Amending Section 3.20.130 of the Fremont Municipal Code, Public Project Construction, by Adjusting the Monetary Limits Prescribed for Public Construction Contract Formal and Informal Bidding Procedures, Consistent with Chapter 169 of the Statutes of 2018 (A.B. 2249), Effective January 1, 2019; and a Finding that the Ordinance is Exempt from Review under the California Environmental Quality Act (CEQA) Because It Is Not a Project within the Meaning of CEQA Guidelines Section 15378 (Ordinance Amending City’s Purchasing Code Consistent with A.B. 2249 to Reflect Increased Monetary Limits for Informal Public Construction Project Bidding Procedures)**

On a motion by Councilmember Bacon, seconded by Councilmember Jones, the City Council:

1. Introduced the proposed ordinance and waived the first reading.
2. Directed staff to prepare, and the City Clerk to publish, a summary of the ordinance.
3. Found that the adoption of the ordinance is exempt from review under the California Environmental Quality Act (CEQA) because adoption of the ordinance is not a project within the meaning of CEQA Guidelines Section 15378.

Ayes: Mayor Mei, Vice Mayor Salwan,  
Councilmembers: Bacon, Keng, Jones,  
Kassan, and Shao

Noes: None

Absent: None

Abstain: None

### **3. CEREMONIAL ITEMS**

#### **A. Congenital Heart Defect Awareness Week, February 7-14, 2019**

### **4. PUBLIC COMMUNICATIONS**

#### **A. Oral and Written Communications**

Michael Boman shared concerns with cars not having headlights on after dusk.

### **5. SCHEDULED ITEMS**

#### **A. Mayor Mei opened consideration of a Public Hearing (Published Notice) in Accordance with the Tax Equity and Fiscal Responsibility Act (TEFRA) to Consider the Issuance of Tax-Exempt Bonds by California Statewide Communities Development Authority (CSCDA) for KDF Communities (Bond Issuance for KDF Communities)**

On a motion by Vice Mayor Salwan, seconded by Councilmember Jones, the City Council:

1. Held a public hearing in accordance with TEFRA;
2. Adopted Resolution No. 2019-02 approving the Issuance of Multifamily Housing Revenue Bonds by the California Statewide Communities Development Authority for the purpose of financing an affordable housing project in the City of Fremont to be developed by KDF Communities.

Ayes: Mayor Mei, Vice Mayor Salwan,  
Councilmembers: Bacon, Keng, Jones,  
Kassan, and Shao

Noes: None

Absent: None

Abstain: None

**6. REPORT FROM CITY ATTORNEY – None.**

**7. OTHER BUSINESS**

**A. Mayor Mei opened consideration of Acceptance of the Annual Report on the Implementation and Operation of the Rent Review Ordinance and Recommended Ordinance Changes**

Human Services Director Suzanne Shenfil provided an overview. Rent Review Ordinance Administrator Lucia Hughes and Rent Review Program Manager Nancy Sa gave a presentation. Staff responded to questions from Councilmembers. Mayor Mei opened the public comment period. Annie Koruga requested a binding agreement with landlords. Chunchi Ma & Adelle Fan (w/BAHN), Bill Mulgrew (Rental Housing Association), and Robert Daulton expressed a number of concerns. There were no additional speakers. This was followed by another question and answer period. Councilmembers provided comment on the list of eight potential solutions to the RRO limitations (see list below).

*Ordinance Limitations and Potential Solutions:*

1. Responsible Party (FMC 9.60.020)

Ordinance Limitation: The RRO states that if a landlord does not wish to participate in the rent review process personally, then they may designate a responsible party to participate on their behalf. A responsible party is a person with the legal authority to adjust rent increases and resolve tenant issues on behalf of the landlord. However, the ordinance is vague as to how much authority the responsible party needs to have. For example, a responsible party may have the authority to adjust the rent increase by 2%, but for anything more they will have to receive approval from the landlord. This can be a challenge, because if the responsible party cannot make definitive decisions during rent review, it slows the process and discourages the tenants from continuing with the process.

Potential Solution: Add language to the ordinance to strengthen the definition and role of the responsible party to require the person negotiating the rent increase to have final legal authority to adjust the rent without limitations.

2. Retaliation (Relocation Assistance)

Ordinance Limitation: The RRO states that landlord retaliation is strictly prohibited, what types of action can be presumed to be retaliatory conduct, and lists the remedies for such conduct. However, the City currently does not directly enforce against retaliatory conduct. It is up to the tenant and landlord to resolve disputes around retaliation through civil action. This discourages many tenants from exercising certain rights, like the City's Rent Review Program. Of the forty-seven rent review cases, 23% of the cases ended because the tenants indicated that they feared retaliation.

Potential Solution: Fear of eviction, particularly in a low vacancy environment, is understandable. The City does not currently have a just cause eviction ordinance that prevents landlords from evicting a tenant for no-cause. However, just cause violations are also resolved

in civil action. A potential remedy adopted by some cities is to require a landlord to provide relocation assistance upon eviction. Relocation assistance may act as a financial deterrent against landlord retaliation, because there would be a financial cost to evict a tenant. Some of the jurisdictions that currently have a relocation assistance program are the Cities of San Leandro, Mountain View, and Berkeley.

The Rent Review Board had a robust conversation about relocation assistance at their regular board meeting on January 9, 2019, and brought up the many complex components to it.

If Council directs, staff will review the success of the relocation approach and also consider other approaches that may be available to reduce the fear of retaliation. Staff would then report back to the Board and the City Council.

### 3. Exempt Units (FMC 9.60.050)

**Ordinance Limitation:** Staff received ten rent review requests from tenants that live in rental units that are exempt from the ordinance because they are rental units that are owned and operated by a government agency, or subsidized by a government agency and subject to a regulatory agreement (i.e. Section 8 units). The average rent increase of those ten tenants was 28.9% compared to the overall average of all rent review cases of 11.5%. None of these tenants were able to utilize the City's rent review process to resolve their rent increase disputes.

**Potential Solution:** Change the ordinance so that rental units owned or operated by any government agency and rental units subsidized by a government agency and subject to a regulatory agreement are no longer exempt from the ordinance. However, the Ordinance should clarify that shared housing units and junior accessory dwelling are exempt units. Shared housing units and junior accessory dwelling units often have other agreements in place, such as service in lieu of payment. Due to the nature of shared housing agreements, staff recommends that these rental units be exempt from the RRO.

### 4. Source of Income (Including Section 8) Discrimination

**Ordinance Limitation:** As indicated by the number of calls received in 2018 regarding affordable housing, there is still a big need among renters for housing options that are affordable. One solution to the need for affordable housing is through programs that provide tenants with rental subsidies, such as the federal Housing Choice Voucher program (HCV), commonly referred to as Section 8. However, voucher holders are having trouble finding landlords that will accept their vouchers, and many tenants end up losing their vouchers or moving out of the area to find a landlord that will accept their voucher. The issue is serious enough that over 42 jurisdictions nationwide have adopted policies or ordinances relating to this issue, including several jurisdictions in California, such as San Francisco and San Diego.

**Potential Solution:** Include a section to the ordinance that prohibits landlords from discriminating against applicants based on source of income. California law currently prohibits discrimination based on source of income, which is defined as legal, verifiable income paid directly to the tenant or their representative. Some examples of source of income include Social Security, Supplemental Security Income (SSI), CalWorks, and General Assistance. However, Section 8 HCV and other rental subsidies are not included as source of income. Landlords

today are not prohibited by federal or state law from rejecting a tenant application based solely on the fact that they possess a housing choice voucher or other rental subsidies because rental subsidies do not have to be considered as income. This puts tenants who rely on rental subsidies at a disadvantage when looking for housing, because many landlords do not want to rent their units to a tenant with a voucher or subsidy. A source of income discrimination ordinance would prohibit landlords from rejecting a tenant based solely on the fact that they have a rental subsidy voucher. For example, landlords would no longer be able to advertise that "Section 8 is not allowed." There are currently nine other cities and counties in California that have passed ordinances that prohibit discrimination against a tenant based on source of income.

#### 5. Reason for Rent Increase over 5% (FMC 9.60.030(a))

Ordinance Limitation: The ordinance requires that landlords provide a reason for any rent increases above 5%. A significant number (71%) of rent increase notices received by the City cite bringing the unit up to market rent as the reason for the rent increase. Many tenants have noted that the reasons listed on their rent increase notice often do not provide enough details to explain the reason for the increase above 5%.

Potential Solution: Expand FMC 9.60.060 (c) so that the landlord/responsible party shall present evidence to explain the rationale or reason for rent increase in excess of 5% during the consultation/mediation step.

#### 6. Clarification on Rent Increase Notice Delivery Requirement (FMC 9.60.030(b))

Ordinance Limitation: Currently the ordinance is written so that the rent increase notice shall be personally delivered or posted and mailed to the tenant. This conflicts with State law, which requires that the notice shall be personally delivered or mailed to the tenant.

Potential Solution: Revise ordinance so that rent increase notices shall be personally delivered to the tenant or mailed to the tenant. Also remove the mailing requirements since State law incorporates the mailing process. This would align with California State noticing and mailing requirements.

#### 7. Clarification on Rent Increase Notice Applicability to Rent Terms (FMC 9.60.040(a))

Ordinance Limitation: FMC 9.60.040(a) states that landlords shall provide tenants notice of the availability of rent review in addition to any rent increase notice required by California Civil Code Section 827(b). However, California Civil Code Section 827(b) is applicable only when the tenant's rental term is from week to week, month to month, or other period less than a month. This means that the City's RRO can be interpreted so that the notice of availability of rent review form is to be provided to tenants only if their rental term is week to week or month to month.

However, the City's municipal code is intended to mean that the notice of availability of rent review must follow the noticing procedure referenced in California Civil Code Section 827(b), but must be applied for all notices that include a rent increase adjustment, regardless of the length of tenancy.

Potential Solution: Clarify that the notice of availability of rent review shall be provided to any tenant that receives an increase from their base rent, regardless of the length of tenancy.

8. Rent Review Board Terms (FMC 2.20.650)

Ordinance Limitation: Currently the ordinance is written so that all Rent Review Board member terms will expire at the same time, rather than staggering them. Staggered board terms are beneficial because the remaining Board Members whose terms do not expire can pass on institutional, historical, and procedural knowledge to the incoming Board Members. This also provides for a more seamless transition for the incoming Board Members.

Potential Solution: Revise the ordinance so that the Rent Review Board member terms are staggered.

On a motion by Vice Mayor Salwan, seconded by Councilmember Shao, the City Council:

1. Accept the Rent Review Ordinance Annual Report.
2. Provided feedback and direction to staff on each of the eight potential solutions to the RRO limitations (listed above). The Council voted to support items 1, 3, 6, 7 and 8, and provided additional solutions the Council would like to explore.

Ayes: Mayor Mei, Vice Mayor Salwan,  
Councilmembers: Keng, Jones, and Shao  
Noes: Councilmembers: Bacon and Kassan  
Absent: None  
Abstain: None

**8. COUNCIL COMMUNICATIONS**

**A. Council Referrals – None.**

**B. Oral Reports on Meetings and Events**

Councilmembers reported on their various meetings and activities

**9. ADJOURNMENT:** There being no further business, Mayor Mei adjourned the meeting at 8:35 p.m.

Attest:

Approved:

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Susan Gauthier, City Clerk

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LILY MEI, Mayor