

ORDINANCE 2128

ORDINANCE AMENDING THE LOS GATOS TOWN CODE CHAPTER 14, ARTICLE VIII, RENTAL AND OTHER LANDLORD/TENANT DISPUTES (SECTION 14.80)

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY ORDAIN:

Chapter 14, Article VIII Rental and Other Landlord/Tenant Disputes, of the Town Code is hereby amended to read as follows:

SECTION I

Section 14.80.010 Title.

This article shall be cited as the Town's Rental Dispute Mediation and Arbitration Ordinance.

Section 14.80.015 Declaration of policy and purposes.

- (a) The Council finds that there is a serious and continuous shortage of and increasing demand for housing in the Town. This circumstance, coupled with periodic inflationary pressure, uncertain and changing strength in the surrounding economy, and the rising costs of developing new housing, results in volatile rental rates for residential housing which are often subject to substantial upward pressure.
- (b) This article is necessary in order to protect the health, safety and welfare of the citizens of the Town by meeting the needs created by the housing shortage, including, but not limited to, prevention of excessive and unreasonable Rent Increases, and the assurance to Landlords of a fair and reasonable return on the value of their property.

Section 14.80.020 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Agent*. An individual or organization, or government, designated by the Town Council to administer this article.
- (b) *Affected Tenant*. A Tenant whose terms and conditions of rental relationship with his or her Landlord are changed by a proposed Rent Increase or other change in terms and conditions governed by this article.
- (c) *Arbitrator*. A person designated to act as the hearing officer for the arbitration phase of the dispute resolution process under this article.
- (d) *Duplex*. A building or group of buildings on the same premises, containing not more nor less than two (2) dwellings.

- (e) *Housing Services.* Those services provided and associated with the use of occupancy of a Rental Unit, including but not limited to, repairs, replacement, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, and any other benefits, privileges or facilities.
- (f) *Land.* Real property in the technical sense. The meaning of the word includes, but is not limited to, buildings and parking spaces.
- (g) *Landlord.* The person or entity with the legal right to exercise ownership control over rental housing property governed by this article. An owner, lessor, or sublessor, who receives or is entitled to receive Rent for the use and occupancy of any Rental Unit or portion thereof, and the agent, representative, or successor of any of the foregoing.
- (h) *Landlord/Tenant Dispute.* Any dispute between a Landlord or any agent or employee thereof, and a Tenant, regarding Rent or any other aspect of Housing Services, provided that the Tenant is occupying the premises from which the dispute arises.
- (i) *Lease/Rental Agreement.* An agreement, written, oral, implied in fact, or implied in law, in which a landowner, for compensation, conveys the right to possess *Land* to someone else for a period of time or from period to period.
- (j) *Mediator.* A person designated to conduct the mediation phase of the dispute resolution process under this article.
- (k) *Rent.* The consideration, including any bonus, benefit or gratuity, demanded or received by a Landlord for or in connection with the use or occupancy of a Rental Unit, or the assignment of a lease for such a unit, including Housing Services or subletting.
- (l) *Rental Unit.* Any building or part of a building which is used for residence, or any mobile home owned by a mobile home park owner, and which is rented to a Tenant as a dwelling place, except:
 - (1) A Rental Unit located in a building or group of buildings on the same premises containing only one (1) dwelling unit;
 - (2) A room in an owner-occupied dwelling where under the lease provisions the Tenant does not have the substantially exclusive use of the kitchen;
 - (3) A single house, condominium unit, or planned development (Business & Professions Code § 11003) unit;
 - (4) A hotel room or similar accommodation ordinarily let for occupancy by the same Tenant for periods of less than thirty (30) days;
 - (5) A hospital room, skilled nursing facility, or similar accommodation where the main factor in the rental relationship is the personal care given to the Tenant;

- (6) A dwelling owned, operated, or managed by a government agency or which is exempted by state or federal law from Rent regulation;
- (7) Mobile homes located in mobile home parks and not owned by the mobile home park owner.
- (m) *Rent Increase.* Any additional Rent due or paid by a Tenant for a Rental Unit, including any reduction in Housing Services without a corresponding reduction in the moneys demanded or paid by Rent.
- (n) *Tenant.* A person who is legally entitled to occupy all or part of a rental property subject to this article at the time any issue or right under this article arises.
- (o) *Voluntary Vacancy.* For the purpose of this article, a vacancy is voluntary under any of the following circumstances:
 - (1) A voluntary choice by a Tenant to vacate the Rental Unit.
 - (2) The Tenant is evicted by a court for non-payment, chronically late payment, or other material violation of a written rental agreement.
 - (3) A Tenant moves out pursuant to a three (3) day notice from the Landlord or Landlord's agent to pay Rent or vacate the Rental Unit.
 - (4) A Tenant moves out pursuant to a three (3) day notice from the Landlord or Landlord's agent to comply with a covenant of the rental agreement or move out. If a Tenant moves after receiving a thirty (30) or sixty (60) day notice from the Landlord, it is not a Voluntary Vacancy.
 - (5) A Voluntary Vacancy occurs when one (1) of the roommates gives a notice to vacate and there is a written agreement to the effect between the Tenant and Landlord that a notice to vacate submitted by one (1) Tenant is binding on all of the Tenants, and is a Voluntary Vacancy within the meaning of this article.
 - (6) A Voluntary Vacancy occurs when any one (1) Tenant vacates the Rental Unit without notice and the written agreement between the Tenant and Landlord provides to the effect that a failure to give notice to vacate is a breach of the agreement, is binding on all of the Tenants, and is a Voluntary Vacancy within the meaning of this article.

Section 14.80.025 Regulations.

The Town Council may adopt regulations to assist in implementing this article.

Section 14.80.030 Reasonable Rent Increases.

No Landlord shall increase the Rent of any Tenant in an amount which is unreasonable. The factors to be considered in determining whether a Rent Increase is reasonable are set forth in division 4 of

this article, and may be described in greater detail in regulations adopted pursuant to this article.

Section 14.80.035 Retaliatory Evictions.

- (a) Possession of a Rental Unit shall not be recovered by a Landlord from a Tenant who is not otherwise in default as to the terms of occupancy of such unit if either:
 - (1) The Landlord's predominant reason for seeking to recover possession of such Rental Unit is retaliation against the Tenant for exercising the Tenant's rights pursuant to this article; or
 - (2) The predominant motive of the Landlord in seeking to recover possession of such Rental Unit is to evade the purposes of this article.
- (b) When an eviction occurs within one hundred eighty (180) days of the Tenant's exercise or reasonable attempt to exercise rights provided by this article, and if the Tenant shows that the Landlord knew at the time of eviction of the Tenant's conduct in relation to this article, the eviction is presumed to be retaliatory. This presumption applies in judicial proceedings and is one which affects the burden of producing evidence.

Section 14.80.040 Notice of dispute resolution rights.

- (a) In order for a notice of Rent Increase to be valid, the Landlord must:
 - (1) Serve, with the notice of proposed increase, written advice to the Affected Tenants of their right to petition for dispute resolution under section 14.80.205. Said written advice must include the name and current telephone number of the designated Agent administering this article for the Town; and
 - (2) Respond in writing within thirty (30) days to a written request made by any Affected Tenant for the names and apartment numbers of all Tenants receiving increase notices for the same month as the Tenant making the request by disclosing said information, provided that such request is made by an Affected Tenant within thirty (30) days after the Rent Increase Notice.
- (b) Failure to provide the notice in the form specified above or in a form which provides substantially the same information, or failure to provide a timely response to a request for Affected Tenants, shall render the notice of proposed increase invalid. A notice which fails to meet any remaining requirements which may be established by corresponding regulations that may be adopted waives the sixty (60) day limit herein and permits a petition to be filed within six (6) months of the applicable Rent Increase or other event giving rise to the dispute.
- (c) A reissued notice to correct the notification requirement shall not exceed the amount of the previous Rent Increase notice.

Section 14.80.045 Applicability to Duplexes.

- (a) The provisions of this article shall apply to Duplexes only as follows:
 - (1) Tenants and Landlords of Duplexes are entitled to the resolution services provided in division 3 (sections 14.80.205 and 14.80.210) below; and
 - (2) A regulatory fee shall be imposed on each Rental Unit pursuant to that division.
- (b) Duplexes shall not be eligible for mediation or arbitration services.
- (c) Section 14.80.310 shall not apply to Duplexes.

SECTION II

Section 14.80.105 Retroactive application.

- (a) This article shall apply to all Rent Increases effective on or after July 1, 1980, and to all Landlord/Tenant Disputes arising after July 1, 1980.
- (b) No Landlord shall be required to refund any Rent under this article; however, the mediation agreement or arbitration award may establish a reasonable Rent at a decreased level, which may be effective for up to twelve (12) months from the date of the agreement or award.

Section 14.80.110 Stay.

Filing a petition for dispute resolution of a Rent Increase stays the Tenant's obligation to pay any amount of the increase greater than the limits set forth for annual increases below in section 14.80.310 (c), pending the final outcome of the resulting case under this dispute resolution process. If the final outcome results in approval of an increase greater than the limit set forth in 14.80.310 (c), the Tenant shall pay the resulting retroactive increase due, calculated from the effective date of the proper increase notice to the date of the final outcome. Said payment must be made by the Tenant within thirty (30) days of receiving notice of the final outcome of this dispute resolution process, unless otherwise ordered as part of any arbitration award or voluntary settlement in the case.

Section 14.80.115 Defense; unlawful detainer action.

A finding by an Arbitrator of a violation of this article by a Landlord shall be a complete defense to unlawful detained proceedings by a Landlord against a Tenant not otherwise in default under the lease, and to any action to recover Rents in excess of those found reasonable.

Section 14.80.120 Nonwaiver.

Any waiver or purported waiver by a Tenant of rights granted under this article prior to the time when such rights may be exercised shall be void as contrary to public policy.

Section 14.80.125 Standing to enforce.

The Town may enforce this article by bringing a civil action.

SECTION III

Section 14.80.205 Town service.

When either party to a Landlord/Tenant transaction has a dispute with the other, the party may seek the services of the Town by filing a written petition for conciliation with the Town or its Agent; provided, that in the case of Rent disputes, twenty-five percent (25%) of the units affected must join in the petition, or file timely concurrent petitions. In all other cases an individual may submit a petition. Petitions challenging a Rent Increase in a single unit must be filed within sixty (60) days after the Landlord sends a valid notice of Rent Increase. In the case of Rent Increases for multiple units, an initial petition by at least one Affected Tenant must be filed no later than sixty (60) days after the Landlord sends a valid notice of Rent Increase. If an initial petition is received within the applicable sixty (60) days for a property in which multiple numbers of increases were noticed, additional petitions containing the requisite number of signatures necessary to reach the twenty-five percent (25%) level must be received within thirty (30) days after any Affected Tenant has received a list of the names and unit numbers of the Affected Tenants as required by section 14.80.040 or has otherwise been notified by the Agent that additional petition signatures are necessary. A petition raising an issue other than a Rent Increase must be filed within thirty (30) days of the event giving rise to the dispute.

Section 14.80.210 Conciliation.

The Town or its Agent will provide conciliation service to parties engaged in Landlord/Tenant Disputes arising from the occupancy of Rental Units as defined herein.

Section 14.80.215 Mediation.

When a Landlord/Tenant Dispute arising from the occupancy of a Rental Unit on a property containing three (3) or more Rental Units has not been resolved through conciliation, either party may request mediation by applying therefor on a form provided by the Agent.

Section 14.80.216 Time limit.

A request for mediation is effective only if it is received by the Town or its Agent as prescribed by the regulations adopted pursuant to section 14.80.025.

Section 14.80.220 Subpoenas.

An Arbitrator or Mediator may on his/her own initiative or at the request of a party issue subpoenas, including a subpoena requiring the production of documents, provided however, that a Mediator or Arbitrator shall require a party requesting a subpoena requesting documents to make a showing of good cause supporting such a request. For the purposes of this article, the Town Council's authority to issue subpoenas is delegated to the Mediator or Arbitrator, reserving to the Council full authority

to issue subpoenas for the same or other purposes.

Section 14.80.225 Conduct of mediation.

When a party properly requests mediation, the dispute shall be heard under a process consistent with the basic principles of confidentiality, neutrality, and preservation of the freedom of the parties to decide whether to settle and if so, on terms of their own choosing. No third parties, such as representatives from the media, shall be allowed to attend mediation.

Section 14.80.230 Request for arbitration.

When conciliation or mediation does not result in an agreement, any party to the case may request arbitration by applying therefor on a form provided by the Agent.

If the arbitration request follows a mediation that did not result in an agreement, the arbitration request will be granted. If the arbitration request follows conciliation that did not result in an agreement, the Town, or its Agent, may assign either arbitration or mediation. The Town, or its Agent, will base this decision upon which procedure appears most likely to result in a timely decision that is both fair and acceptable to the parties.

Section 14.80.235 Time limits.

A request for arbitration is effective only if it is received by the Town or its Agent as prescribed by the regulations which may be adopted pursuant to section 14.80.025.

Section 14.80.240 Arbitration.

When a party properly requests arbitration, the dispute shall be administered and conducted according to generally accepted rules for arbitrating disputes in Santa Clara County, California, unless otherwise specified in regulations adopted pursuant to this article.

Section 14.80.245 Regulatory fees.

- (a) For the sole purpose of reimbursing the Town for the costs of administering this article, there is hereby imposed on each Rental Unit, subject to the provisions of this article, a regulatory fee in such amount as the Council may establish by resolution from time to time. The regulatory fee for a Rental Unit in a Duplex shall not exceed fifty percent (50%) of the fee charged to other Rental Units subject to this article. No later than June 1 of each year, the manager will report to the Council on the amount of regulatory fees necessary to recover the costs of the Town in administering the article.
- (b) The regulatory fee shall be due at the same time that the Landlord's business license fee is due. Except, in the case of Duplexes, the regulatory fee is due July 1. A Landlord who fails to pay the fee within thirty (30) days after the Town mails its bill to the Landlord shall pay a twenty-five percent (25%) penalty, plus an additional twenty-five percent (25%) penalty for each thirty (30) days thereafter that the bill remains unpaid. Until such time as the bill including penalties is paid, the Landlord of a Rental Unit shall not be entitled to any Rent Increase.

SECTION IV

Section 14.80.305 General standards.

The purpose of this article is to permit Landlords a fair and reasonable return on the value of their property, while at the same time protecting Tenants from arbitrary, capricious or unreasonable Rent Increases. The determination of reasonableness shall be made with reference to the following standards, unless Arbitrator determines that the overall standard of reasonableness requires other standards to be applied in a given case.

Section 14.80.310 Specific standards.

- (a) *Exemptions.* The first Rent Increase after the following events shall be exempt from this article:
 - (1) Construction of a new unit.
 - (2) A Voluntary Vacancy.
 - (3) Eviction of a Tenant by a court for nonpayment or other violation of a written rental agreement.
 - (4) If the last increase was initiated no less than two (2) years before the current increase and the current increase is ten percent (10%) or less.
- (b) *Frequency of Rent Increases.* Rent shall not be increased more frequently than annually, except that it may be increased:
 - (1) When the fee imposed under section 14.80.245 is increased, it may be passed through at the rate of no more than one-twelfth (1/12) of the fee per month.
 - (2) At any time, with the written consent of all Affected Tenants, which shall be sought through conciliation or mediation.
- (c) *Amount of annual increase.* Annual Rent Increases shall not exceed the seventy percent (70%) CPI ceiling or five percent (5%), whichever is greater, unless the Arbitrator determines that other factors render a larger increase reasonable. CPI is the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland Area. The most recent CPI is the bimonthly figure most recently available from the Bureau of Labor Statistics. The seventy percent (70%) CPI ceiling is an amount arrived at by adjusting the current Rent to reflect seventy percent (70%) of the most recent annual average change in the CPI.

Section 14.80.315 Other factors of reasonableness.

- (a) *Increases deemed reasonable.* Subject to the terms of section 14.80.305, a Rent Increase is reasonable if the Arbitrator determines the following:
 - (1) The Rent Increase consists of no more than five percent (5%) of existing monthly Rent

plus the pass-through of all or some of the amounts of one (1) or more of the following:

- a. The fee imposed under section 14.80.245;
 - b. Documented costs of capital improvements, averaged on a per-unit basis and amortized over a period of not less than sixty (60) months;
 - c. Increased costs of maintenance and operation; or
 - d. *Documented* costs of rehabilitation; averaged on a per-unit basis and amortized over a period of not less than thirty-six (36) months;
- (2) The cost figures are established to the reasonable satisfaction of the Arbitrator.
- (3) Each of the costs proposed for passthrough to Tenants bears a reasonable relationship to the purpose for which such cost was incurred and the value of the real property to which it is applied.
- (b) *When costs of debt service deemed to be reasonable.* Subject to the terms of section 14.80.305, the Arbitrator shall deem as reasonable and allowable to be passed through to Tenants the costs of debt service where the Arbitrator finds the debt is a secured, arms-length transaction in the following instances:
- (1) In the case of increased costs of debt service by new or existing owners, the increase shall be limited to eighty percent (80%) of the increased costs of debt service arising from that proportion of the aggregate amount of debt not exceeding seventy percent (70%) of the value of the property as established by a lender's appraisal or appraisal by some other person or entity in an arm's-length relationship to the Landlord at the time the appraisal is performed. No notice of an increase based on this subsection shall be effective until such an appraisal has been obtained. Appraisals utilized for debt service pass-through calculations shall have been performed within twelve (12) months of the Rent Increase request.
 - (2) Reserved.
- (c) *Standards applicable to Rent Increases which exceed the foregoing.* When the amount of any Rent Increase or portion thereof exceeds any of the foregoing standards under subsection (a) or (b) of this section, the Arbitrator shall determine what is reasonable under the circumstances taking into account any of the following factors on which the Arbitrator has received information:
- (1) In the case of increased costs of debt service due to a sale or refinancing of the Rental Units or the building or property of which the units are a part within twelve (12) months of the increase;
 - a. The arms-length nature of the transaction,

- b. The Landlord's rate of return on the investment,
 - c. The frequency of past resale or refinances, and
 - d. The extent to which prior Rent *Increases* have made provisions for appreciation of asset value.
- (2) The rental history of the unit or the complex of which it is a part, including:
- a. The presence or absence of past increases,
 - b. The frequency of past Rent *Increases*,
 - c. The *Landlord's* response to Proposition 13 savings, and
 - d. The occupancy rate of the complex in comparison to comparable units in the same general area.
- (3) The physical condition of the Rental Unit or complex of which it is a part, including the quantity and quality of maintenance and repairs performed during the last twelve (12) months.
- (4) Any increases or reductions of Housing Services since the last Rent Increase before the effective date of this article.
- (5) Other financial information which the Landlord is willing to provide.
- (6) Existing market value of Rents for units similarly situated.

SECTION V

If any of the provisions of this ordinance or the application thereof to any person or property is held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION VI

Any judicial review of this ordinance shall be by writ of mandate, under Code of Civil Procedure 1085. Any action or proceeding seeking to attack, review, set aside, void or annul this ordinance shall be commenced within 90 days after adoption of this ordinance.

SECTION VII

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on March 1, 2004, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on March 15, 2004. This ordinance takes effect thirty (30) days after it is adopted.

COUNCIL MEMBERS:

AYES: Sandy Decker, Diane McNutt, Joe Pirzynski, Mike Wasserman,
Mayor Steve Glickman.

NAYS: None

ABSENT: None

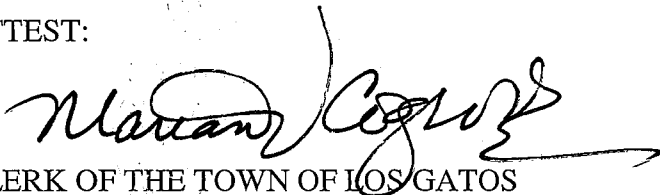
ABSTAIN: None

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:



CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA