Agenda Report Review by:
City Manager _____

CITY OF SEBASTOPOL
CITY COUNCIL
STAFF REPORT

Meeting Date:	November 1, 2016
To:	Honorable Mayor and City Councilmembers
From:	City Manager Larry McLaughlin City Council Sub-Committee (Vice Mayor Glass and Councilmember Jacob)
Subject:	Discussion and Action of Urgency Rent Moratorium Ordinance: An Urgency Ordinance of the City of Sebastopol Imposing a Temporary (45-Day) Moratorium on Certain Residential Rent Increases in the City of Sebastopol
Recommendation :	That the City Council Discuss and Provide Direction
Funding:	Currently Budgeted: ____(YES) ___(NO) __XXX__ **(N/A)** Net General Fund Cost: $ If Cost to Other Fund(s):

INTRODUCTION: This item is to request that the City Council Discuss and Act on An Urgency Ordinance of the City of Sebastopol Imposing a Temporary (45-Day) Moratorium on Certain Residential Rent Increases in the City of Sebastopol

BACKGROUND:
At the October 18, 2016 City Council Meeting, the City Council approved and authorized City staff to come back by December 20th meeting with long term options for rent control, rent stabilization, and just cause evictions; and directed staff to return to the November 1st meeting with a proposed moratorium. As discussed at this meeting, staff informed the Council that outside counsel would be retained to help with the drafting of this ordinance.

DISCUSSION:
A city council may adopt an interim urgency ordinance pursuant to Government Code Section 65858, prohibiting a use in conflict with a city's contemplated zoning proposal, in order to protect the public safety, health, and welfare. Notice and public hearing are not required for adoption of such an urgency ordinance. Adoption of an urgency ordinance does, however, require a four-fifths (4/5) affirmative vote of the City Council. If adopted, the ordinance would be effective immediately and would remain in effect for forty-five (45) days. Government Code section 65858 further provides that subsequently, after notice and a public hearing on the matter, the City Council may initially extend the interim ordinance for an additional 10 months and 15 days and then extend it again for an additional year, although each extension would require a four-fifths vote of the City Council. In all, with

extensions, an interim ordinance may remain in force for up to two years. If approved tonight, City staff would return with a request for extension of the interim ordinance at the December 6, 2016 City Council Meeting.

City staff has retained the services of Meyers-Nave who will be in attendance to answer any questions the council or public may have on this item.

RECOMMENDATION:

Staff recommends that the City Council the City Council Discuss and Act on An Urgency Ordinance of the City of Sebastopol Imposing a Temporary (45-Day) Moratorium on Certain Residential Rent Increases in the City of Sebastopol.

Attachments:

Memo from Steve Mattas, Meyers-Nave
Urgency Ordinance

575 Market Street, Suite 2080
San Francisco, California 94105
tel (415) 421-3711
fax (415) 421-3767
www.meyersnave.com

Steven T. Mattas
Senior Principal
smattas@meyersnave.com

meyers | nave

MEMORANDUM

DATE: October 27, 2016

TO: Mayor, Vice Mayor and City Councilmembers

FROM: Steven T. Mattas

COPY: Lawrence McLaughlin, City Manager/City Attorney

RE: **Ordinance Regarding a Moratorium on Rental Rate Increases**

I. Background

The Sebastopol City Council, at its October 18, 2016 regular meeting, at the request of Councilmember Jacob, discussed the possibility of enacting rent stabilization and other rental tenant protection policies in the City of Sebastopol ("City"). After hearing public testimony and discussing this issue in depth, the City Council requested that the City Attorney prepare a draft ordinance which would put in place a temporary moratorium on rental rate increases within the City. Below is a brief summary of the law governing rent stabilization ordinances and temporary moratoriums. Additionally, a draft 45-day interim ordinance has been prepared for City Council consideration.

II. California Law Regarding Rent Control/Stabilization and Moratoriums

A. *California Rent Control Law*

General law cities, such as Sebastopol, have those powers conferred by the California Constitution and state law. The California Constitution provides that any city may make and enforce within its limits all local, police, and other ordinances and regulations not in conflict with general state laws.[1] California Civil Code Section 827, subsection (b) requires that landlords who rent property on week to week or month to month basis provide a minimum of thirty days advance written notice for rent increases that do not exceed ten percent and a minimum of sixty days advance written notice for rent increases that exceed ten percent.

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[1] California Constitution, art. XI, § 7.

Although residential rent control is deemed to be within a city's general police power, general law cities are restricted in their ability to impose rent control, based upon the 1995 Costa-Hawkins Rental Housing Act, California Civil Code sections 1954.50 et seq. (the "Act"). The Act authorizes owners of residential real property alone to establish the initial and all subsequent rental rates for all dwelling units that were issued a certificate of occupancy after February 1, 1995; or that were previously exempt from a local residential rent control ordinance in place as of February 1, 1995.[2] Thus, any rent control ordinance enacted by the City could only apply to residential rental units in structures issued a certificate of occupancy on or before February 1, 1995. In addition, the Act prohibits regulation of rental rates of single-family homes and condominiums,[3] and in most instances where a tenant leaves and is replaced by a new tenant.

A city's rent control ordinance may create a separate rent control board to administer it, or the city council and city departments may do so. However, even if the City desires to control rents for applicable units in the community, regulation of rent control is complex. A rent control ordinance must be constitutional, as evidenced by both a legitimate governmental purpose (such as protection of tenant welfare and from excessive rents) and the ability for a landlord to earn a just and reasonable return. Specifically, as provided by the California Supreme Court, rent control provisions "are within the police power if they are reasonably calculated to eliminate excessive rents and at the same time provide landlords with a just and reasonable return on their property."[4] Therefore, failure to allow for a just and reasonable return could result in a taking.[5] Much of the rent control litigation and disputes from other communities related to rent control regulations center around the assessment of a just and reasonable rate of return. Before enacting any permanent rent control regulations in the City, it is recommended that the City conduct a comprehensive study to determine the factors that may be considered if a property owner petitions for relief from the rent control regulations due to the fact that they believe they will not be able to obtain a just and reasonable return.

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[2] Civ. Code, § 65858, subd. (a); See also *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396.

[3] The Act provides specifically that rent control shall not apply where the dwelling unit is alienable separate from the title to any other dwelling unit or is a subdivided interest in certain specified types of subdivisions. (Civ. Code, § 1954.52, subd. (a)(3)(A).) In order to determine whether rent control could be imposed on duplexes, triplexes, or granny units and the like, the City would need to examine how title is held to each property.

[4] *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 165.

[5] See, for example, *Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 962.

An additional concern faced by communities considering the adoption of rent control provisions is that of potential tenant evictions based on a desire to set new base rent. California Civil Code section 1946.1 requires landlords to provide at least 30 days' notice to tenants who might be evicted prior to the termination of any lease. Additionally, if all of the tenants in a certain rental unit have resided there for a year or longer, the required notice period is increased to 60 days prior to the proposed date of the lease termination and eviction.[6]

B. *California Law Regarding Rental Rate Increase Moratoriums*

Pursuant to California Government Code sections 36934, 36937, and 65858, a city council may adopt an interim urgency ordinance and in the case of section 65858 an urgency ordinance prohibiting a use in conflict with a city's contemplated zoning proposal, in order to protect the public safety, health, and welfare. Notice and public hearing are not required for adoption of such an urgency ordinance. Adoption of an urgency ordinance does, however, require a four-fifths (4/5) affirmative vote of the City Council. If adopted, the ordinance would be effective immediately and would remain in effect for forty-five (45) days. Government Code section 65858 further provides that subsequently, after notice and a public hearing on the matter, the City Council may initially extend the interim ordinance for an additional 10 months and 15 days and then extend it again for an additional year, although each extension would require a four-fifths vote of the City Council. In all, with extensions, an interim ordinance may remain in force for up to two years.

Both sections 65858 and 36937 require any urgency ordinance to contain specific findings and facts demonstrating that there is a current and immediate threat to the public health, safety, or welfare and the ordinance is "necessary to mitigate or avoid the specific, adverse impact identified," before it may be adopted.[7] Additionally, ten days prior to the expiration of the urgency ordinance and any and all subsequent extensions, section 65858 requires that the City Council "issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance."

III. Rent Control/Stabilization in Other California Communities

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[6] Civ. Code, § 1946.1, subds. (b) & (c).

[7] Gov. Code, §§ 65858, subd. (c) & 36937, subd. (b).

Several other California communities are considering enacting or have recently enacted rent control/stabilization ordinances. Those that have tenant protection policies in place include Berkeley, Los Angeles, Oakland, San Francisco, San Jose, Santa Monica, West Hollywood, and East Palo Alto, several of which are charter cities. Others considering or in the process of enacting rental tenant protection measures, such as rent control and just cause eviction statutes, include Santa Rosa, Richmond, and Concord. Each of these cities have adopted or are expected to adopt specific annual percentage rental rate increase allowances, just cause eviction protections, and a provision that allows owners to petition to seek relief from the regulations in order to yield a fair return. Many of these ordinances are extensive and touch on a wide variety of tenant protection policies, including eviction notice requirements, relocation assistance for evicted tenants, options for tenants to apply to the city for a rent reduction, and condominium conversion limits, among others.

As discussed at the City Council's October 18th meeting, communities are split about the necessity of rent control regulations. The City of Richmond adopted a rent control measure in 2015. Following an effort to repeal this ordinance, however, the ordinance's enforcement had to be suspended. Richmond's rent control ordinance has since been placed on the November ballot to be voted upon by the residents of the City. If a majority of the voters approve it, an annual rent adjustment of approximately 2% would be established, as well as a Rent Board, and extensive just cause for eviction protections.[8]

In Alameda, two rent control ordinances are on the November ballot, one authored by the City and another by a renters' group. The city's ordinance would cap annual rental rate increases at 5% subject to additional review by an advisory committee for larger increases. The renters' ordinance sets the limit at approximately 1.7% for this coming year, and 65% of the Consumer Price Index going forward. Both ordinances would establish detailed eviction protections and mandatory relocation fees as well.[9] In Concord, after conducting three workshops since June to discuss rising rents and hear public testimony, on Monday, October 24th, a city council housing subcommittee discussed possible rent stabilization and tenant protection approaches for that city. The staff report for that meeting provided detailed answers to many questions related to possible rent control and

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[8] *See* http://www.fairandaffordablerichmond.com.

[9] For an official comparison between the measures, see https://alamedaca.gov/sites/default/files/document-files/files-inserted/rent_measure_comparisons.pdf.

other tenant protections, including costs to landlords related to just cause eviction protections, and cost comparisons for cities in implementing a rent control program.[10]

IV. The Draft Ordinance Enacting a Moratorium on Rental Rate Increases

The attached draft urgency ordinance provides recitals that are set forth to demonstrate the immediate threat to the public health, safety, and welfare which the ordinance is intended to address. The ordinance allows a property owner to raise rental rates on an annual basis by a specific to-be-determined percentage. Based on a survey of other California communities with rent stabilization ordinances in place and based on existing CPI data, we would recommend a percentage of between 2% and 5% during the period of the moratorium as a reasonable annual rental rate increase amount calculated to provide a just and reasonable return. Many of the California communities with rent stabilization ordinances base the available annual increase on the annual change in the Consumer Price Index (CPI) for the relevant market area, as issued by the U.S. Bureau of Labor Statistics. For the San Francisco-Oakland-San Jose market, the CPI in the past five years has remained around 2%. However, most of these communities also set a maximum percentage increase amount in their permanent ordinance which ranges from 7% to 10%. As a further reference, Chapter 9.28 of the Sebastopol Municipal Code establishes a rent stabilization program for mobile homes. In section 9.28.050, it provides for an annual mobile home rental rate increase limit of 100% of the annual change in the CPI, up to a maximum of 6%. A similar limit could be instituted in the current moratorium ordinance.

Additionally, as requested by the City Council committee, the draft ordinance also provides an option for a property owner to submit a petition to the City requesting a rate increase in excess of the limit upon a showing that a larger increase is necessary to allow the owner a just and reasonable return on that rental unit. This provision allows the City to review a landlord's individual circumstances on a case-by-case basis when extenuating issues, such as unforeseen but necessary capital improvements on an apartment building, or other significant changes in the operating costs of that landlord necessitate a larger annual increase in the rental rate charged than what is allowed under the interim ordinance. Relief provisions of this sort are found in most other cities' permanent rent control ordinances.

Enclosure: Draft Rental Rate Increase Moratorium Ordinance

STM:pt 2723283.2

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[10] The full staff report can be found on Concord's website here: http://www.ci.concord.ca.us/citygov/agendas/committees/hed/2016/102416.pdf.

ORDINANCE NUMBER: _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL IMPOSING A TEMPORARY (45-DAY) MORATORIUM ON CERTAIN RESIDENTIAL RENT INCREASES IN THE CITY OF SEBASTOPOL

WHEREAS, on October 18, 2016, the City Council of the City of Sebastopol ("City Council") directed City of Sebastopol ("City") staff to prepare an ordinance enacting a moratorium on residential rent increases in excess of three percent (3%) for multi-family residential units that are subject to rent regulation; and,

WHEREAS, California Government Code sections 36934 and 36937 authorize adoption of urgency ordinances and section 65858 authorizes a city, to adopt, as an urgency measure, an interim ordinance for the immediate preservation of the public health or safety without following the procedures otherwise required prior to adoption of a zoning ordinance; and,

WHEREAS, such an urgency measure requires a four-fifths (4/5) vote of the City Council for adoption and any such ordinance adopted pursuant to section 65858 shall be of no further force and effect forty-five (45) days from its date of adoption; and,

WHEREAS, Government Code section 36937 authorizes the adoption of an urgency ordinance for "the immediate preservation of the public peace, health or safety," as long as the ordinance contains a declaration of the facts constituting the urgency and it is passed by a four-fifths (4/5) vote of the City Council; and,

WHEREAS, City staff plan to present recommendations regarding permanent rent stabilization and other tenant protection policies no later than December 6, 2016; and,

WHEREAS, according to the U.S. Census Bureau, 2010-2014 American Community Survey 5-year estimates ("2014 Census estimates"), approximately half of the units in the City are renter-occupied, totaling more than 1,800 units; and,

WHEREAS, according to the 2014 Census estimates, approximately 65% of Sebastopol renter households, totaling more than 1,160 units, are "overpaying households," meaning a household which pays 30% or more of its household income on housing costs; and,

WHEREAS, according to the 2014 Census estimates, the rental vacancy rate in the City of Sebastopol is less than 1% and the homeowner vacancy rate is approximately 3%; and

WHEREAS, according to the 2014 Census estimates, 10% of families in Sebastopol have income below the poverty level, and the number of persons living below the poverty rate in Sebastopol has increased since 2010; and,

WHEREAS, according to the 2011 through 2014 Census estimates, the median household income in the City has decreased by nearly 13% since 2011; and,

WHEREAS, increasing poverty, decreasing median household incomes, and increasing rents in the City have created a growing "affordability gap" between incomes and rents demonstrated by the significant numbers of "overpaying renter households;" and,

WHEREAS, given this increased housing cost burden and poverty faced by many Sebastopol residents, excessive increases in rental rates threaten the public health, safety, and welfare of Sebastopol residents, including seniors, those on fixed incomes, those with very low, low, and moderate income levels, and those with other special needs, to the extent that such persons may be forced to choose between paying rent and providing food, clothing, and medical care for themselves and their families; and,

WHEREAS, excessive increases in rental rates could result in increased homelessness in the City and the displacement of low income families; and,

WHEREAS, public testimony has been provided to the City regarding the impact of the excessive rent increases and their potential impact on Sebastopol residents; and,

WHEREAS, the City currently does not restrict increases in rental rates for residential properties other than mobile homes; and,

WHEREAS, the City has multi-family residential rental units that would be subject to this ordinance and that are necessary to provide housing for all residents of all levels of income; and,

WHEREAS, certain aspects of public health, safety and welfare are not adequately protected by the lack of rental rate control in the City, and it is in the interest of the City, of owners and residents of rental units, and of the community as a whole that City staff undertake a comprehensive study to consider potential regulations to protect affordable rental housing options within the City, including but not limited to, rent stabilization regulations; and,

WHEREAS, in light of the numerous concerns noted herein, including but not limited to the current and immediate threat to the health, safety, and welfare of the City's residents and the adverse impacts that would result from a potential decrease of affordable housing within the City given that a significant portion of the population is already classified as overpaying households, the City Council determines that it is in the immediate interest of preserving the public health, safety, and general welfare of the City to adopt this urgency ordinance in order to allow staff to, among other related tasks, proceed with a comprehensive study to consider regulations to protect affordable rental housing options within the City, and bring forward proposed regulations related to, for example, rent stabilization, just cause for eviction policies, residential rent mediation or arbitration, and/or establishment of rent review board; and,

WHEREAS, the City Council finds and determines that, if a temporary moratorium on residential rental increases above three percent (3%) were not imposed and effective immediately, the public health, safety, and welfare will be threatened because landlords in the City may increase rent rates before the City Council could implement rent stabilization or other related tenant protection regulations, and such increases would defeat the intent and purpose of any potential future regulation and substantially impair its effective implementation; and,

WHEREAS, it is the intent of the City Council to consider and possibly to adopt permanent rent stabilization and other tenant protections, within a reasonable period of time; and,

WHEREAS, for reasons set forth above, this ordinance is declared by the City Council to be necessary for preserving the public welfare, health, and safety and to avoid a current, immediate and direct threat to the health, safety, and welfare of the community, and the recitals above taken together constitute the City Council's statements of the reasons constituting such necessity and urgency; and,

WHEREAS, adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines section 15183 (this ordinance, in preventing excessive rent increases that might decrease affordable housing stock in the City, is consistent with the City's general plan and zoning program); section 15378 (this ordinance is not a project but an administrative action that will not result in direct or indirect physical changes to the environment); and section 15061(b)(3) (this ordinance only regulates residential rental rates and thus, there is no potential for it to cause a significant effect on the environment), and,

WHEREAS, by the staff report, public testimony, and documentary evidence presented at the October 18, 2016 and November 1, 2016 City Council meetings, the City Council has been provided with information upon which the findings and actions set forth in this ordinance is based; and,

WHEREAS, ten days prior to the expiration of this interim ordinance and any extension thereof, the City Council is required by Government Code section 65858, subsection (d) to issue a written report describing the measures taken to date to alleviate the condition which led to the adoption of this ordinance; and,

WHEREAS, this ordinance authorizes up to a three percent (3%) annual increase in rental rates during the moratorium period, and such a figure, which is based, in part, upon the percent change in the Consumer Price Index for the Bay Area of California, is found and determined to provide a just and reasonable return, and has been calculated to encourage good management, reward efficiency, and discourage the flight of capital, to be commensurate with returns on comparable investments, but not so high as to defeat the purpose of preventing excessive rents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEBASTOPOL does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby incorporates them into this ordinance.

SECTION 2. From the effective date of this urgency ordinance and continuing for a period of forty-five (45) days, unless extended, or until such time as the City adopts permanent regulations relating to rent stabilization, just cause for eviction, or other tenant protection policies, whichever occurs first, no landlord shall increase rental rates in any multi-family residential unit governed by this ordinance by more than three percent (3%) per twelve month time period.

SECTION 3. Petition for Relief from Moratorium. This moratorium, without extension, is only effective for a period of forty-five (45) days. Given that a three percent (3%) percent annual increase is allowed, the City Council finds that this moratorium will not generally deny any owner a fair and reasonable return. However, during this moratorium's forty-five day period and any subsequent extensions to this moratorium, a rental property owner may submit a written petition to the City Manager demonstrating why the moratorium's permitted annual rental rate increase is insufficient to provide a just and reasonable return to that owner for that rental unit and to request relief from the moratorium by way of an additional rental increase in excess of the moratorium's allowed three percent (3%) annual rental rate increase. The City Manager shall analyze each petition for an additional rental rate increase on a case-by-case basis and may consider evidence submitted by both the owner and affected tenants regarding the potential rate increase when determining whether an additional rent increase is justified in a particular case. If it is determined that an owner will not earn a just and reasonable return on a rental unit based on the three percent (3%) increase authorized herein, the City Manager shall authorize an increase in that unit's rental rate to provide for such a just and reasonable return. An appeal of the City Manager's decision may be taken to the City Council by a rental property owner, or a tenant of a rental dwelling unit affected by the administrative determination made by the City Manager, pursuant to Section 17.320.020 (C) of the Municipal Code. Any appeal under this Chapter shall be filed within five working days of the issuance of a written administrative determination by the City Manager. Working days shall not include Saturdays, Sundays, or municipal holidays.

SECTION 4. Exceptions and Exemptions. The following are exempt from the moratorium established under this urgency ordinance: (1) government-owned housing units; (2) housing units whose rents are controlled, regulated (other than by this chapter), or subsidized by any governmental unit, agency or authority; (3) accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for thirty (30) or more days; (4) units that were issued a certificate of occupancy after February 1, 1995; (5) units that are separately alienable from the title of any other dwelling (single-family homes and condominiums); (6) commercial units; (7) housing accommodation in any hospital, convent, monastery, extended care facility, convalescent home, nonprofit home for the aged, or

dormitory operated by an educational institution; (8) mobile home units subject to regulation under Sebastopol Municipal Code chapter 9.28; and (9) any other units exempt pursuant to the Costa-Hawkins Act (California Civil Code Section 1954.50 et seq.), or any other applicable state or federal law.

This moratorium does not regulate the initial rent at which a unit is offered at the outset of a new tenancy.

SECTION 5. Enforcement. In any action by a landlord to recover possession of a rental unit, the tenant may raise as an affirmative defense any violation or noncompliance with the provisions of this chapter.

SECTION 6. Extension. This moratorium may be extended by the City Council in accordance with the provisions of California Government Code section 65858.

SECTION 7. Authority. This ordinance is enacted pursuant to the City of Sebastopol's general police powers, section 7 of Article XI of the California Constitution, and Government Code sections 65858, 36934 and 36937.

SECTION 8. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 9. Effective Date. All increases to rental rates of multi-family residential units subject to regulation pursuant to this Ordinance on or after the date of final passage and adoption of this Ordinance shall be subject to this Ordinance. As an urgency ordinance, this Ordinance becomes effective immediately upon its introduction and adoption following a four-fifths vote of the City Council.

IN COUNCIL DULY APPROVED FOR INTRODUCTION, READING, AND ADOPTION on the 1st day of November, 2016.

VOTE: _____

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

APPROVED: _____

Sarah Gurney, Mayor

ATTEST: _____

Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM:

_____

Larry McLaughlin, City Attorney

DRAFT

2723161.2