

7-12-2022 City Council Meeting
Agenda Item 11-B
Attachment - City Council Staff Report Printout



City Council Report

City Council Meeting: July 12, 2022
Agenda Item: 11.B

To: Mayor and City Council
From: Douglas Sloan, City Attorney, City Attorney's Office, Administration
Subject: Adoption of Resolutions for Proposed Ballot Measures on the November 8, 2022 Election Amending Articles XVIII and XXIII of the City Charter

Recommended Actions

Staff recommends that the City Council:

1. Adopt the attached resolution (Attachment A) placing a measure on the November 8, 2022 ballot that would amend Article XXIII of the City Charter to establish a rent registry for Nonrentcontrolled Rental Units; or, alternatively, approve the first reading of an ordinance to establish a rent registry for Nonrentcontrolled Rental Units (Attachment B).
2. If the resolution placing an amendment to Article XXIII of the City Charter on the November 8, 2022, ballot (Attachment A) is approved, authorize City Councilmembers to file written arguments for or against the measure and direct the City Attorney to prepare an impartial analysis.
3. Adopt the attached resolution (Attachment C) placing a measure on the November 8, 2022, ballot that would amend Article XVIII of the City Charter to
 - Revise requirements for owners to evict tenants for owner-occupancy;
 - Revise election procedures;
 - Revise Commissioner term limits; and
 - Authorize the Rent Control Board to impose a rent freeze during a declared emergency.
4. If the resolution placing an amendment to Article XVIII of the City Charter on the November 8, 2022, ballot (Attachment C) is approved, authorize City Councilmembers to file written arguments for or against the measure and direct the City Attorney to prepare an impartial analysis.

Executive Summary

At its April 28, 2022, Board meeting, the Santa Monica Rent Control Board voted to recommend that the City Council place on the ballot for the November 8, 2022, general election amendments to the City Charter, as follows:

- 1) Add new Section 2304.5 to Article XXIII of the City Charter to require the registration of all Nonrentcontrolled Rental Units;
- 2) Modify Article XVIII, Section 1806(a)(8)(iv) and (v) of the City Charter to require that an owner intend to occupy a unit for at least three years instead of one year before evicting a tenant, and occupy the unit within sixty (60) days of vacancy;
- 3) Modify Article XVIII, Section 1803(e) of the City Charter to allow Rent Control Board Commissioners to be elected to a maximum of three full terms to align with City elected officials; and
- 4) Modify Article XVIII, Section 1803(d) of the City Charter to state that an election need not be held if the number of qualified candidates does not exceed the number of open Rent Control Board positions.

At its June 9, 2022 meeting, the Board voted to propose an additional charter amendment giving the Board discretion to modify or suspend the annual general adjustment during declared emergencies.

The Board believes that these amendments are in the public interest because they would provide greater transparency about rental and occupancy rates for all rental units; would strengthen tenant protections from unnecessary displacements; would streamline elections to improve governmental functions; and would protect tenants during a declared state of emergency. The attached Santa Monica Rent Control Board staff reports dated April 28, 2022, (Attachment D) and June 9, 2022, (Attachment E), respectively, explain in greater detail the reasons for these proposals.

Discussion

a. Registration of rental units not subject to the Rent Control Law.

Requiring the registration of all rental units could assist the City in a greater understanding of the scope of the affordable housing crisis in Santa Monica and in

determining more effective ways to mitigate its impact, an impact that is driving housing instability, displacement, and greater numbers of the unhoused population.

i. Existing law

All units subject to the City’s Rental Control Law (Article XVIII of the City Charter, also referenced as “RCCA”) must be registered with the City’s Rent Control agency. Owners must provide information related to unit size, base rent, amenities and other basic information. In addition, units must be re-registered following a vacancy and re-rental. In this way, the agency obtains basic information about each rental unit to allow it to administer and enforce the law more effectively. This information also helps inform the agency about rental rates and trends as well as the loss/gain of controlled units and the effectiveness of measures to maintain and increase the controlled rental housing stock.

Currently, the City Charter does not require registration of Nonrentcontrolled Rental Units. Like the registration requirements for controlled units, registration of uncontrolled units would assist City officials in monitoring and mitigating the affordable housing crisis and ensure that the tenant protections in the City Charter are followed. Moreover, with the state limits on rent increases and eviction protections, tenants would be better informed as to their rights.

To accomplish this, the Rent Control Board recommended that Article XXIII of the Santa Monica City Charter be amended to require owners to register with the City Nonrentcontrolled Rental Units. Article XXIII governs the City’s housing policies, including tenant protections, in non-controlled rental units.

ii. Other jurisdictions

Most jurisdictions with some form of rent control or tenant protections require the registration of rental units. The table below illustrates the requirements of some of these cities.

Jurisdiction	Type of units	Initial registration?	Re-registration?
West Hollywood	Controlled units	Yes	Upon vacancy and re-rental
Los Angeles	Controlled units	Yes	Annual
LA County	Controlled units	Yes	Annual
Culver City	All rental units	Yes	Annual, upon new tenancy and changes in housing services
Berkeley	Controlled and partially exempt units	Yes	Upon vacancy and re-rental; annually for PE units
Beverly Hills	Controlled units	Yes	Upon vacancy and re-rental

iii. Other considerations

The requirement to register rental units and provide basic information such as the rental rate, ownership details, occupancy dates and amenities is not a new concept. In fact, most jurisdictions that provide any tenant protections either in the form of rent limits or just-cause eviction protections require the registration of rental units to gauge the effectiveness of the laws and to aid in enforcement. These requirements have been in place for decades in some jurisdictions, including Santa Monica. The RCCA has required the registration of rent controlled rental units since its enactment.

iv. Potential requirements for a rent registry for Nonrentcontrolled Rental Units in the City Charter, Article XXIII

Article XXIII of the Santa Monica City Charter provides, among other things, eviction protections for tenants living in Nonrentcontrolled Rental Units. Section 2302(a) defines Nonrentcontrolled Rental Units as: “All residential rental units in the City of Santa Monica except those units that are subject to rent control pursuant to Article XVIII of this Charter or are single-family homes.” Section 2305, titled “Implementation”, describes the broad authority of the City Council to “protect community health, safety and welfare by, among other things, adopting ordinances, resolutions or regulations to implement and effectuate the provisions of this Article, including, but not limited to, provisions relating to exemptions, just cause, notices, comparability of units, and good faith. Additionally, the City Council may create any administrative mechanisms it deems necessary for this Article’s implementation.”

Requiring the registration of uncontrolled rental units that are subject to this Article could arguably be accomplished through an ordinance or regulation since it could reasonably be construed as a mechanism to ensure that landlords are adhering to the just cause provisions. An annual registration requirement along with a requirement to explain the reasons for changes in tenancy could greatly enhance these tenant protections.

Alternatively, the City Council could propose an amendment to the City Charter to require registration of these Nonrentcontrolled Rental Units. A new section could be added to Article XXIII requiring that the units subject to this article must be registered as set forth in the section and accompanying regulations. The City could also require that rental units subject to Article XXIII be registered annually to ensure rental rates and vacancy/tenant information is kept current and require registrations to be updated upon a new tenancy or changes in housing services as Culver City has done.

As part of the annual registration, the City could require owners to provide some or all of the following information:

- 1) Occupancy status and commencement date of the current tenancy;
- 2) The amount of rent the current tenant is paying;

- 3) The reason the prior tenant vacated the unit, if known;
- 4) The water/utility metering status of the unit;
- 5) The amenities provided with the tenancy;
- 6) Any changes in ownership information; and
- 7) Any other information the City deems necessary.

To cover the reasonable expenses necessary to administer the rent registry and provide counseling services and enforcement, the City could establish an annual per unit fee that would be charged to property owners.

A new section, 2304.5, could be added to read:

2304.5 Registration of Nonrentcontrolled Rental Units

(a) Registration required. Upon issuance by the City of Santa Monica of a valid written Rent Registration certificate, as set forth in this Section 2304.5, no Landlord shall demand or accept Rent for a Nonrentcontrolled Rental Unit (NRU) without first serving on the Tenant, or displaying in a conspicuous place, such Rent Registration certificate.

(b) Registration Process.

(1) A Landlord shall provide Rent amount and Tenancy information for every Rental unit on a Rent Registration form provided by the City. The Rent Registration form shall be submitted on a date to be determined by the City and on that date each year thereafter. Registration is complete only when all of the following information is provided: ownership information; property information; year built and certificate of occupancy date; number of bedrooms and bathrooms for each NRU; the amount of Rent in effect at the time of registration; a description of housing services; water/utility metering status of the unit; and the property vacancy rate. If any NRU has been vacant for more than 30 days, the Landlord shall provide the date of vacancy and whether the vacancy is due to a buyout agreement.

(2) Every NRU Rent Registration certificate shall be updated annually, as required by Section 2304.5(b)(1), upon a new tenancy, or when there are changes in housing services.

(3) If an NRU is vacant for more than 30 days, the Landlord shall provide a certification to the City of the duration of the vacancy, and that the NRU shall be secured against unauthorized entry.

(4) For every property for which a Landlord is required to procure a Rent Registration certificate pursuant to this section, the Landlord shall post a notice in a form provided by the City, providing information about this Subchapter 2304.5 and City contact information. Notices must be posted in a conspicuous location in the common area, at the entry or entries to the building or units, or other similar location or locations as necessary to provide Tenants a reasonable opportunity to view the notice. If there is no common area or similar location, this requirement may be satisfied by mailing the notice to each Tenant of the building, by certified mail, return receipt requested. The notice shall be written in English and Spanish, and in any other languages as required by the City.

(c) Notice of Rent information deficiencies and opportunity to cure; Appeals; and Final Administrative Decision.

(1) The City shall provide written notification to the Landlord of a failure to comply with this section and allow fifteen (15) calendar days to respond. The City shall not issue a Rent Registration certificate for the NRU until the Landlord has substantially complied by providing the rental information as required by this section.

(2) Any Landlord disputing the City's notification of deficient registration may file a written appeal with the City Manager or designee within ten (10) calendar days of the date of the notice of deficiency. The City Manager or designee shall provide a written notice within thirty (30)

calendar days of its appeal decision, which shall be a final administrative decision.

(d) Registration fee.

(1) A fee for the registration of NRU's may be established by resolution of the City Council. Such fees are intended to recover the City's reasonable costs associated with the administration and enforcement of this section.

(2) A Landlord may pass through to the Tenant fifty percent (50%) of the annual fee for the registration of the Tenant's NRU (the pass-through fee) if such Tenant continuously occupied the NRU during the period covered by the completed registration. The City may establish applicable conditions and procedures governing the pass-through. The pass-through fee is not considered Rent and should appear as a separate line item on the Rent statement. A Landlord may collect a maximum of one-twelfth (1/12) of the pass-through fee per month.

Adopting this registration requirement as an ordinance provides more flexibility in modifying or adding provisions to facilitate implementation which cannot be anticipated at this stage. On the other hand, adding this registration requirement as a charter amendment would make it much more difficult to repeal since it would require voter approval, assuming the measure passed in November 2022.

b. Good faith requirements for owner-occupancy evictions

The RCCA prohibits evictions of tenants except as enumerated in the law. Owners or qualified relatives who wish to move into their units and reside there permanently may evict current tenants to do so, but only if they meet the requirements set forth in the RCCA. One of those requirements is that the owner or relative "intend in good faith to

move into the unit within thirty (30) days after the tenant vacates and to occupy the unit as a primary residence for at least one year.”¹

The Board has heard input from the public on the feasibility of requiring owners or their qualified relatives to intend to occupy the unit for at least three years, instead of one year, upon evicting an existing tenant. The purpose of placing both a requirement to occupy the unit within a certain time frame and a good faith intent to live there for a certain period is to ensure that the eviction is not used as a pretext for the owner to rent the unit to a new tenant paying market rates.

i. Existing tools to prevent sham evictions and their effectiveness.

Currently, if an owner or relative fails to move into the unit within 30 days, the landlord is required to re-offer the unit to the displaced tenant and pay the tenant any expenses incurred in the unlawful displacement.² Moreover, owners cannot set a new initial rent for the first tenancy following an owner-occupancy eviction; the Maximum Allowable Rent (MAR) for this tenancy is the same MAR as the previous tenancy.⁴ Other protections include a requirement that the owner offer to the displaced tenant any unit that becomes vacant within a year of the tenant’s displacement, including the unit from which the tenant was evicted.³ The Board also has the ability to determine whether the first tenancy is a legitimate tenancy or a sham, in which case the landlord cannot set the initial rent for a subsequent tenant.⁶

The table below illustrates the rate of evictions for owner-occupancy in the 5 years preceding the current COVID-19-related eviction moratoria, the current status of the units, and whether they have been re-rented. This information is based upon copies

¹ RCL Section 1806(a)(8)(iv).

² RCL Section 1806(a)(8)(v). ⁴ Regulation 3301(b)(1).

³ Regulations 9002(d)(4) and 9002(g). ⁶ Regulation 3301(k).

of eviction notices filed with the agency, notices of ownership changes and vacancy unit registrations.

Notices by year from 2015 to 2019	Avg property size	Current status	Rent still restricted?	New tenancy?
2019 - 5	4 units	1 sold to new owner	Yes	1 – May 2020
2018 - 7	5 units	1 Ellis, 1 sold to new owner	6 restricted; 1 market	1 – 2020; 2021 (market rate)
2017 - 11	5 units	3 sold to new owners	8 restricted; 3 market	5 new tenancies: 12018, 4-2019
2016 - 7	5 units	6 sold to new owners	3 restricted; 4 market	6 new tenancies: 1-2016; 3-2018; 1-2019; 1-2021
2015 - 5	3 units	3 sold to new owners	Yes	None

There are two instances of the re-rental of a formerly owner-occupied unit at the year mark, but more typical is the re-rental around two years or later. There does not seem to be a pattern as to the frequency of re-rental following an owner-occupancy exemption. The units that were owner-occupied in 2016 have mostly been re-rented while the units owner-occupied in 2015 all remain owner-occupied.

It is important to note that the good faith requirement to intend to live in the unit for a certain period of time serves as evidence of bad faith in an enforcement proceeding if

the owner or relative moves out before the requisite time period is up. Such evidence is typically supported by other evidence to show that the eviction was carried out in bad faith.

ii. Good faith requirements in other jurisdictions

The table below illustrates the requirements for other jurisdictions.

Jurisdiction	Time to occupy unit	Period of residency	Evidence of bad faith	Right to return if vacated within period?
West Hollywood	90 days	12 consecutive months	Rebuttable presumption	Yes, if re-offered for rent
Los Angeles	3 months	2 consecutive years	Yes	Yes, if tenant notified owner
LA County	60 days	3 years unless extenuating circumstances	Yes	Yes
Culver City	3 months	36 months	Yes	No
Berkeley	3 months	36 consecutive months	Yes	Yes

iii. Potential impact of extending length of residency requirement

The residency requirement is a statement of intent before owners can evict a tenant using this section. So, if this change is made, an owner would have to declare an intention to reside in the unit for at least three years. An owner who vacates the unit within that time period would be presumed not to have acted in good faith in evicting the tenant under this section.

Based on past practices, Rent Control staff has found that the agency's most effective tool in deterring sham evictions has been the bar to setting a new initial rent for the first tenancy following an owner-occupancy eviction as well as the tenant's right to re-rent the unit if the owner vacates it within a year. The requirement to re-register the unit when it is re-rented allows the agency to enforce the limits on the MAR as well as to determine whether the tenancy itself is legitimate.

To implement this change, RCCA Section 1806(a)(8)(iv) could be amended to read:

(iv) The landlord or enumerated relative must intend in good faith to move into the unit within ~~thirty (30)~~ *sixty (60)* days after the tenant vacates and to occupy the unit as a primary residence for at least ~~one year~~ *three years*.

To strengthen this requirement, the Board has recommended a requirement that owners re-offer the unit to the displaced tenant if the owner vacates the unit within three years. In addition, currently, owners must move into the unit within 30 days after a tenant vacates. If the owner fails to take possession within 30 days, the owner must re-offer the unit to the displaced tenant. Many owners who genuinely intend to occupy the unit as their primary residence find it difficult to make the transition that quickly. And most jurisdictions allow at least 60 days for owners to move into the unit after the tenant vacates.

To implement these changes, Section 1806(a)(8)(vi) and (v) could be amended as follows:

(iv) The landlord or enumerated relative must intend in good faith to move into the unit within ~~thirty (30)~~ *sixty (60)* days after the tenant vacates and to occupy the unit as a primary residence for at least ~~one year~~ *three years*.

(v) If the landlord or relative specified on the notice terminating tenancy fails to occupy the unit within ~~thirty (30)~~ *sixty (60)* days after the tenant

vacates or fails to occupy the unit as a primary residence for at least three years, the landlord shall:

- A. Offer the unit to the tenant who vacated it.
 - B. Pay to said tenant all reasonable expenses incurred in moving to and/or from the unit.
- c. Election administration

Term limits

RCCA Section 1803(e), Term of Office, states “Commissioners shall serve a maximum of two full terms.” The Santa Monica City Charter also sets term limits for its councilmembers. Article VI, Section 600 allows councilmembers to serve up to three terms. For both agencies, terms are four years. The City Charter also states that term limits apply to appointed terms as well as elected terms. The RCCA does not specify whether appointed terms count toward the term limits.

In order to align with the City Charter and to have greater efficiency and cost reductions in the administration of elections, the Board has proposed that the RCCA be amended as follows:

Section 1803(e) TERM OF OFFICE: Commissioners shall serve a maximum of ~~two~~ *three* full terms. *These term limits shall not apply to appointed terms, only elected terms.*

Election efficiency

Currently, the RCCA requires that an election be held even if there are only as many candidates as open Board positions. The Board has proposed an amendment to the RCCA that an election is not necessary when the number of qualified candidates does not exceed the open positions. To accomplish this, Section 1803(d) could be amended as follows:

Section 1803(d) ELECTION OF COMMISSIONERS:
Commissioners shall be elected at general municipal elections in the

same manner as set forth in Article XIV of the Santa Monica Charter, except that the first Commissioners shall be elected at a special municipal election held within ninety (90) days of the adoption of this Article. The elected Commissioners shall take office on the first Tuesday following their election. *If, upon the City Clerk's determination of the qualified candidates, the number of candidates does not exceed the number of vacant positions, no election will be held and the qualified candidates shall be seated upon swearing in by the City Clerk.*

d. Emergency Authority to Freeze Rents

i. The Board does not currently have the authority to alter or suspend the General Adjustment in an emergency.

It is well-settled that the Rent Control Board derives its authority solely from the language of the Charter. Administrative bodies, such as the Board, do not have general police powers and cannot act in a way that contravenes the instrument from which they were created.⁴

The Board, unlike the Governor, a city, or a county, has not been granted emergency powers. The Board is not the governing body of the City of Santa Monica, and for that reason has no emergency powers under the Emergency Services Act. Nor does any other state law grant emergency powers to a municipal administrative agency; so the Board's emergency powers, if any exist, must be found in the statute that created it, the City Charter. But nothing in the City Charter, from which the Board solely derives its authority, grants it such powers. To the contrary, the Board's powers are circumscribed by the Charter, which lists only 15 things that the Board may or must do.⁵ One of those

⁴ *Ocean Park Associates v. Santa Monica Rent Control Bd.* (2004) 114 Cal.App.4th 1050, 1064, quoting from *Kerr's Catering Service v. Department of Industrial Relations* (1962) 57 Cal.2d 319, 329-330. In *Ocean Park*, the Court struck down the Board's practice, not provided for by the Charter, of allowing the Administrator to file rent decrease petitions on behalf of all tenants in a building when an individual petition revealed the presence of a common-area issue.

⁵ SMMC § 1803(f). See, also, *Westsidiers Opposed to Overdevelopment v. City of Los Angeles* (2018) 27 Cal.App.5th 1079, 1086 ("A charter city may not act in conflict with its charter, and any act that is ...

things is “to make adjustments in the rent ceiling *in accordance with [Charter] section 1805*”, under which the adjustment is made according to a mandatory formula.

Section 1805 sets out the formula by which the Board must “announce” the annual adjustment to rent ceilings to controlled units. Nothing in that section allows the Board to alter that formula or suspend otherwise-allowed rent increases.

ii. Proposed Charter amendment would give the Board authority to suspend rent increases in an emergency.

The global pandemic due to COVID-19 has caused unprecedented hardships, disruptions and long-term impacts that continue to affect Santa Monica’s residents. While there has been some relief in the form of an eviction moratorium, rental assistance and other efforts to prevent displacement, those programs are winding down while the pandemic’s impacts continue to be felt. Inflation rates continue to spike and rising costs are hampering residents’ ability to recover from the loss of income and unexpected expenses that many experienced during the pandemic’s first two years. Meanwhile, COVID-19 cases are increasing even as mitigation measures, such as masking and social distancing, are no longer required.

Other rent stabilization jurisdictions have been able to adjust to these conditions by implementing temporary freezes on rent increases for controlled units.⁶ Because these jurisdictions are not charter cities, they have the flexibility to enact measures through ordinance changes passed by the governing body. By contrast, changes to Santa Monica’s Charter can only be accomplished by a vote of the citizens of Santa Monica.

The proposed amendment would give the Board the discretion to respond to future public health emergencies by suspending otherwise-allowed annual general adjustments if such a suspension is necessary to protect the public’s health and safety.

not in compliance with the charter is void [citation]. A city charter operates as a limitation over all the municipal affairs which the City is assumed to possess; it is not a grant of power.”)

⁶ See, e.g. City of Los Angeles and City of West Hollywood

The proposed amendment is not a blank check; this authority could only be utilized during a declared state of emergency. The Board could also be required to make findings that the public's health and safety is at risk and that implementing a rent increase freeze, or modifying the otherwise-allowed increase, would mitigate the risks of displacement and the attendant public health harms. Moreover, an owner would still be able to petition for a rent increase if the inability to impose the general adjustment would prevent the owner from obtaining a fair and reasonable return.

This amendment would provide the Board with the authority, which the Charter does not currently provide, to address a future public health crisis and its financial impacts.

Proposed language for Board authority to deny rent increases during states of emergency:

Section 1804(a) Temporary Freeze

- (i) Rents shall not be increased during the one hundred-twenty (120) day period following the date of adoption of this Article.
- (ii) *Notwithstanding Section 1805, the Board may, in its discretion and in order to protect the public's health and safety, disallow or, alternatively, modify otherwise-allowed annual general adjustments to rent ceilings during a state of emergency declared by the President of the United States or the Governor, or upon the declaration of a local emergency by the City Council or Director of Emergency Services, unless such individual adjustment is necessary to obtain a fair and reasonable return per the petition process in Section 1805.*

Environmental Analysis

The proposed resolutions and/or ordinance are exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to 15061(b)(3) of the State Implementation Guidelines (common sense exemption). Based on the evidence in

the record, it can be seen with certainty that there is no possibility that the proposed resolutions and/or ordinance may have a significant effect on the environment.

Financial Impacts & Budget Actions

Based on past practice, the Rent Board would reimburse the City for any additional costs incurred by the City as a result of placing the measures and/or ordinance on the November ballot.

Attachment A – Resolution to place an amendment to Article XXIII of the City Charter on the November 8, 2022, ballot to establish a rent registry for Nonrentcontrolled Rental Units

Attachment B – Ordinance to establish a rent registry for Nonrentcontrolled Rental Units

Attachment C – Resolution to placement amendments to Article XVIII of the City Charter on the November 8, 2022, ballot

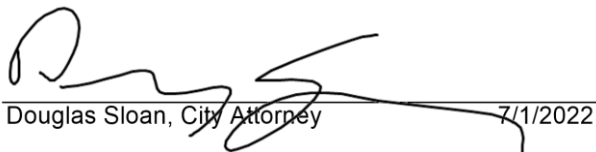
Attachment D - April 28, 2022, Rent Control Staff Report

Attachment E – June 9, 2022, Rent Control Staff Report

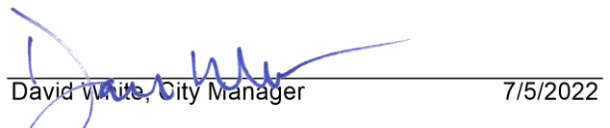
Prepared By: Susan Cola, Assistant City Attorney

Approved

Forwarded to Council



Douglas Sloan, City Attorney 7/1/2022



David White, City Manager 7/5/2022

Attachments:

- A. RC-ExA-Resolution Art XXIII
- B. RC-ExB-Ordinance
- C. RC-ExC-Resolution Art XVIII
- D. RC-ExD-042822 RC staff report
- E. RC-ExE-060922 RC staff report

7-12-2022 City Council Meeting
Agenda Item 11-B
Attachment - a. RC-ExA-Resolution Art XXIII

RESOLUTION NUMBER _____ (CCS)

(City Council Series)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA SUBMITTING TO THE VOTERS A MEASURE TO AMEND ARTICLE XXIII OF THE CITY CHARTER TO ESTABLISH A RENT REGISTRY FOR NONRENTCONTROLLED RENTAL UNITS AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY NOVEMBER 8, 2022, AND AUTHORIZING CITY COUNCILMEMBERS TO FILE WRITTEN ARGUMENTS FOR OR AGAINST THE MEASURE AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE

WHEREAS, State restrictions on a local government's ability to regulate rents across tenancies or to update local ordinances to apply rent control to buildings built after the adoption of the local law (April 1979 in Santa Monica) have substantially hobbled local entities' efforts to ameliorate the worsening affordable housing crisis; and

WHEREAS, most new housing units are market rate units that are exempt from local rent control laws and, therefore, do not improve local housing's affordability; and

WHEREAS, despite the claims of developers, simply increasing the supply of housing has not resulted in lower market rents; and

WHEREAS, rental rates continue to increase even as the market-rate housing supply grows; and

WHEREAS, as rent-controlled units continue to be withdrawn from the rental market through the Ellis process and demolished and replaced with exempt units, the balance continues to shift toward fewer controlled units; and

WHEREAS, state laws have led to a two-tiered system in which some tenants enjoy protections from large, unpredictable rent increases while others' rents are limited only by a one-size-fits-all state law with no local enforcement mechanism; and

WHEREAS, requiring the registration of all rental units could assist the City in a greater understanding of the scope of the affordable housing crisis in Santa Monica and in determining more effective ways to mitigate its impact, an impact that is driving housing instability, displacement, and greater numbers of the unhoused population; and

WHEREAS, in light of the foregoing recitals, the Santa Monica Rent Control Board has recommended that Article XXIII of the City Charter be amended to add new Section 2304.5 to require the registration of all Nonrentcontrolled Rental Units; and

WHEREAS, the City Council has considered and approved the Board's recommendation because this amendment is in the public interest because it would provide greater transparency about rental and occupancy rates for all rental units and would strengthen tenant protections from unnecessary displacements; and

WHEREAS, pursuant to California Elections Code Section 10403, the City Council has previously requested that the County of Los Angeles consent and agree to the consolidation of all aspects of a General Municipal Election with the Statewide General Election scheduled for Tuesday, November 8, 2022, for the purpose of electing

members of the Santa Monica City Council, the Santa Monica Rent Control Board, the Santa Monica-Malibu Unified School District, and the Santa Monica College Community College District.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES RESOLVE AND PROCLAIM AS FOLLOWS:

SECTION 1. At the General Municipal Election called for November 8, 2022, the following measure shall be submitted to the qualified electors of the City of Santa Monica:

PROPOSITION " ": Shall the City Charter be amended to add new Section 2304.5 to Article XXIII of the City Charter to require the registration of all Nonrentcontrolled Rental Units?	Yes _____ No
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SECTION 2. That the City Clerk shall file a certified copy of this resolution with the Board of Supervisors and with the county election department of the County of Los Angeles.

SECTION 3. That the City of Santa Monica recognizes that additional costs may be incurred by the County by reason of the addition of this measure to the ballot and agrees to reimburse the County for any additional costs.

SECTION 4. The City Clerk shall transmit to the City Attorney, in accordance with applicable law, a copy of the proposed measure. The City Attorney shall prepare an impartial analysis of the measure, which shall not exceed 500 words in length. The impartial analysis for the measure shall be filed by the date set by the City Clerk for the

filing of primary arguments. In accordance with applicable law, not less than 10 calendar days before the City Clerk submits the official election materials for printing, the City Clerk shall make a copy of all applicable elections materials available for public examination in the City Clerk's office.

SECTION 5. The City Council authorizes its members, as follows, to file written arguments for or against the measure described above and which is contained in Exhibit 1 to this Resolution, which Exhibit is incorporated by reference herein:

Registration of Nonrentcontrolled Rental Units (Exhibit 1):

FOR: _____

AGAINST: _____

All written arguments filed by any person in favor of or against the measure, including any rebuttal arguments, shall be accompanied by the names and signatures of the persons submitting the argument as required by applicable law, and any names, signatures and arguments may be filed until the time and date fixed by the City Clerk in accordance with applicable law, after which no change may be submitted to the City Clerk unless permitted by law.

SECTION 6. The City Clerk shall cause the text of the measure, which is contained in Exhibit 1, together with the City Attorney impartial analysis, and any arguments for or against the measure, as well as any rebuttals, to be mailed to all qualified voters with the sample ballots. In addition to other notices and publications required by law, the City Clerk, not less than forty (40) days and not more than sixty (60)

days before the General Municipal Election, shall cause the text of the measure to be published once in the official newspaper and in the edition thereof during the day of publication. The City Clerk is authorized to give such notices and to fix such times and dates as are required by law or which are appropriate to properly conduct the election.

SECTION 7. The provisions of Resolution Numbers 11425 (CCS) and 11426 (CCS) are referred to and incorporated into this resolution for more particulars concerning the conduct of General Municipal Election to be held on November 8, 2022, and in all respects the election shall be held and conducted as provided for by applicable law. The City Clerk is authorized and directed to procure and furnish any official ballots, notices, printed materials and all supplies or equipment that may be necessary in order to properly and lawfully conduct the election.

SECTION 8. The City Clerk shall certify to the adoption of this Resolution, and thenceforth and thereafter the same shall be in full force and effect.

APPROVED AS TO FORM:

DOUGLAS SLOAN
City Attorney

Exhibit 1

New section 2304.5 shall be added to Article XXIII of the City Charter to read as follows:

2304.5 Registration of Nonrentcontrolled Rental Units

(a) Registration required. Upon issuance by the City of Santa Monica of a valid written Rent Registration certificate, as set forth in this Section 2304.5, no Landlord shall demand or accept Rent for a Nonrentcontrolled Rental Unit (NRU) without first serving on the Tenant, or displaying in a conspicuous place, such Rent Registration certificate.

(b) Registration Process.

(1) A Landlord shall provide Rent amount and Tenancy information for every Rental unit on a Rent Registration form provided by the City. The Rent Registration form shall be submitted on a date to be determined by the City and on that date each year thereafter. Registration is complete only when all of the following information is provided: ownership information; property information; year built and certificate of occupancy date; number of bedrooms and bathrooms for each NRU; the amount of Rent in effect at the time of registration; a description of housing services; water/utility metering status of the unit; and the property vacancy rate. If any NRU has been vacant for more than 30 days, the Landlord shall provide the date of vacancy and whether the vacancy is due to a buyout agreement.

(2) Every NRU Rent Registration certificate shall be updated annually, as required by Section 2304.5(b)(1), upon a new tenancy, or when there are changes in housing services.

(3) If an NRU is vacant for more than 30 days, the Landlord shall provide a certification to the City of the duration of the vacancy, and that the NRU shall be secured against unauthorized entry.

(4) For every property for which a Landlord is required to procure a Rent Registration certificate pursuant to this section, the Landlord shall post a notice in a form provided by the City, providing information about this Subchapter 2304.5 and City contact information. Notices must be posted in a conspicuous location in the common area, at the entry or entries to the building or units, or other similar location or locations as necessary to provide Tenants a reasonable opportunity to view the notice. If there is no common area or similar location, this requirement may be

satisfied by mailing the notice to each Tenant of the building, by certified mail, return receipt requested. The notice shall be written in English and Spanish, and in any other languages as required by the City.

(c) Notice of Rent information deficiencies and opportunity to cure; Appeals; and Final Administrative Decision.

(1) The City shall provide written notification to the Landlord of a failure to comply with this section and allow fifteen (15) calendar days to respond. The City shall not issue a Rent Registration certificate for the NRU until the Landlord has substantially complied by providing the rental information as required by this section.

(2) Any Landlord disputing the City's notification of deficient registration may file a written appeal with the City Manager or designee within ten (10) calendar days of the date of the notice of deficiency. The City Manager or designee shall provide a written notice within thirty (30) calendar days of its appeal decision, which shall be a final administrative decision.

(d) Registration fee.

(1) A fee for the registration of NRU's may be established by resolution of the City Council. Such fees are intended to recover the City's reasonable costs associated with the administration and enforcement of this section.

(2) A Landlord may pass through to the Tenant fifty percent (50%) of the annual fee for the registration of the Tenant's NRU (the pass-through fee) if such Tenant continuously occupied the NRU during the period covered by the completed registration. The City may establish applicable conditions and procedures governing the pass-through. The pass-through fee is not considered Rent and should appear as a separate line item on the Rent statement. A Landlord may collect a maximum of one-twelfth (1/12) of the pass-through fee per month.

7-12-2022 City Council Meeting
Agenda Item 11-B
Attachment - b. RC-ExB-Ordinance

ORDINANCE NUMBER _____ (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SANTA MONICA ADDING SANTA MONICA MUNICIPAL CODE CHAPTER 4.25:
REGISTRATION OF NONRENTCONTROLLED RENTAL UNITS

WHEREAS, the State is experiencing a severe housing crisis that is driving the cost of living beyond the reach of an increasing share of the population; and

WHEREAS, the City has long been committed to ensuring that Santa Monica is an inclusive and affordable community despite mounting market pressures; and

WHEREAS, through discussions that occurred as part of the adoption process for the City's major policy documents, including the Land Use and Circulation Element ("LUCE") of the City's General Plan in 2010, the current Housing Element in 2013, the City's new Zoning Ordinance, Chapters 9.01 through 9.52 of Article 9 of the Santa Monica Municipal Code ("Zoning Ordinance") in 2015, and the Downtown Community Plan in 2017, and recent amendments to the City's Affordable Housing Production Program, the City has identified the need for a variety of housing types to serve all household sizes at all income levels; and

WHEREAS, with approximately 75% of its residents in rental housing, the City has maintained a long-standing commitment to protecting tenants and existing rental housing stock; and

WHEREAS, increased demand for rental housing in the City, combined with rising housing costs across the City and the State, have made it increasingly difficult for those who live and work in Santa Monica to find rental housing that is available, affordable, and meets their needs; and

WHEREAS, Article XVIII of the City Charter, the City's Rent Control Law, was first adopted in 1979; and

WHEREAS, State restrictions on a local government's ability to regulate rents across tenancies or to apply rent control to buildings built after the adoption of a local law have substantially hobbled local entities' efforts to ameliorate the worsening affordable housing crisis; and

WHEREAS, as rent-controlled units continue to be withdrawn from the rental market through the Ellis process and demolished and replaced with exempt units, the balance continues to shift toward fewer controlled units; and

WHEREAS, as a result, most rental housing units in the City are exempt from the protections of the City's Rent Control Law, and, therefore, do not improve the City's housing's affordability; and

WHEREAS, rental rates for market rate rental housing units within the City continue to increase even as the market-rate housing supply grows; and

WHEREAS, Article XXIII of the Santa Monica City Charter, Housing Policies, provides, among other things, eviction protections for tenants living in rental housing units that are not subject to the City's Rent Control Law ("Nonrentcontrolled Rental Units"); and

WHEREAS, Santa Monica Charter Section 2305 authorizes the City Council to adopt ordinances, resolutions or regulations, and create any administrative mechanisms it deems necessary, to implement and effectuate the provisions of Article XXIII; and

WHEREAS, requiring the registration of all Noncontrolled Rental Units could assist the City in a greater understanding of the scope of the affordable housing crisis in the City and in determining more effective ways to mitigate its impact, an impact that is driving housing instability, displacement, and greater numbers of the unhoused population; and

WHEREAS, the City Council finds and declares that requiring registration of Nonrentcontrolled Rental Units will: allow the City to gauge the effectiveness of the Article XXIII and to aid in enforcement of the tenant protections set forth therein; assist City officials in monitoring and mitigating the affordable housing crisis and ensure that the tenant protections in the City Charter are followed; better inform tenants of Nonrentcontrolled Rental Units as to their rights; and provide greater transparency about rental and occupancy rates for all rental units.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Santa Monica Municipal Code Chapter 4.25 is hereby added to read as follows:

Chapter 4.25 Registration of Nonrentcontrolled Units

4.25.010 Purpose.

The Council finds and declares that requiring the registration of rental housing units not subject to the provisions of Article XVIII of the Santa Monica City Charter, the

City's Rent Control Law, will assist City officials in monitoring and mitigating the affordable housing crisis and ensure that the tenant protections in Article XXIII, Housing Policies, of the Santa Monica City Charter are followed; gauge the effectiveness of the Article XXIII and to aid in enforcement of the tenant protections set forth therein; ensure that tenants are better informed as to their rights under Article XXIII, and to obtain greater transparency about rental and occupancy rates for all rental units.

4.25.020 Definitions.

For purposes of this Chapter, the following words or phrases shall have the same meanings as set forth in Charter Section 2302 as follows:

(a) "Landlord" means an owner, lessor, sublessor or any other person entitled to receive rent for the use and occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

(b) "Nonrentcontrolled Units" or "NRUs" means All residential rental units in the City of Santa Monica except those units that are subject to rent control pursuant to Article XVIII of this Charter or are single-family homes.

(c) "Rent" means all periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods or services rendered to or for the benefit of the landlord under an agreement concerning the use or occupancy of a rental unit and premises including all payment and consideration demanded or paid for parking, pets, furniture, subletting and security deposits for damages and cleaning.

(d) "Rental Housing Agreement" means An agreement, oral, written or implied, between a landlord and tenant for use or occupancy of a rental unit and for housing services.

(e) “Rental Units” means any building, structure, or part thereof, or land appurtenant thereto, or any other rental property rented or offered for rent for living or dwelling house units, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

(f) “Tenant” means a tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a rental housing agreement to the use or occupancy of any rental unit.

(g) “Property” means all rental units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

(h) “Single-Family Home” means a property that has been developed with only one dwelling and any lawful accessory structures, or a lawfully created condominium, stock cooperative or similar unit that is part of a larger residential structure or complex.

4.25.030 Exemptions

(a) Rental units in hotels, motels, inns, tourist homes and rooming and boarding houses which are rented primarily to transient guests for a period of less than fourteen (14) days.

(b) Rental units in any hospital, convent, monastery, extended medical care facility, asylum, non-profit home for seniors, or dormitory owned and operated by an institution of higher education.

(c) Rental units which a government unit, agency or authority owns, operates, manages, or in which governmentally subsidized tenants reside only if applicable

Federal or State law or administrative regulation specially exempt such units from municipal control.

(d) Where a unit is actually used for purposes of providing, on a nonprofit basis, child care or other residential social services in accordance with applicable laws. This exemption shall expire when the use upon which exemption is based ceases. This exemption shall only apply to units as they become vacant. This exemption shall not be construed to authorize the eviction of any tenant. The City may adopt regulations to determine whether a unit qualifies for an exemption under this Section.

4.25.040 Registration required

Upon issuance by the City of Santa Monica of a valid written Rent Registration certificate, as set forth in this Chapter 4.25, no Landlord shall demand or accept Rent for a Nonrentcontrolled Rental Unit (NRU) without first serving on the Tenant, or displaying in a conspicuous place, such Rent Registration certificate.

4.25.050 Registration Process

(a) A Landlord shall provide Rent amount and Tenancy information for every Rental unit on a Rent Registration form provided by the City. The Rent Registration form shall be submitted on a date to be determined by the City and on that date each year thereafter. Registration is complete only when all of the following information is provided: ownership information; property information; year built and certificate of occupancy date; number of bedrooms and bathrooms for each NRU; the amount of Rent in effect at the time of registration; a description of housing services; water/utility metering status of the unit; and the property vacancy rate. If any NRU has been vacant

for more than 30 days, the Landlord shall provide the date of vacancy and whether the vacancy is due to a buyout agreement.

(b) Every NRU Rent Registration certificate shall be updated annually, as required by paragraph (a), above, upon a new tenancy, or when there are changes in housing services.

(c) If an NRU is vacant for more than 30 days, the Landlord shall provide a certification to the City of the duration of the vacancy, and that the NRU shall be secured against unauthorized entry

(d) For every property for which a Landlord is required to procure a Rent Registration certificate pursuant to this section, the Landlord shall post a notice in a form provided by the City, providing information about this Subchapter 2304.5 and City contact information. Notices must be posted in a conspicuous location in the common area, at the entry or entries to the building or units, or other similar location or locations as necessary to provide Tenants a reasonable opportunity to view the notice. If there is no common area or similar location, this requirement may be satisfied by mailing the notice to each Tenant of the building, by certified mail, return receipt requested. The notice shall be written in English and Spanish, and in any other languages as required by the City.

4.25.060 Notice of Rent information deficiencies and opportunity to cure; Appeals; and Final Administrative Decision

(a) The City shall provide written notification to the Landlord of a failure to comply with this section and allow fifteen (15) calendar days to respond. The City shall

not issue a Rent Registration certificate for the NRU until the Landlord has substantially complied by providing the rental information as required by this section.

(b) Any Landlord disputing the City's notification of deficient registration may file a written appeal with the City Manager or designee within ten (10) calendar days of the date of the notice of deficiency. The City Manager or designee shall provide a written notice within thirty (30) calendar days of its appeal decision, which shall be a final administrative decision.

4.25.070 Registration fee

(a) A fee for the registration of NRU's may be established by resolution of the City Council. Such fees are intended to recover the City's reasonable costs associated with the administration and enforcement of this section.

(b) A Landlord may pass through to the Tenant fifty percent (50%) of the annual fee for the registration of the Tenant's NRU (the pass-through fee) if such Tenant continuously occupied the NRU during the period covered by the completed registration. The City may establish applicable conditions and procedures governing the pass-through. The pass-through fee is not considered Rent and should appear as a separate line item on the Rent statement. A Landlord may collect a maximum of one-twelfth (1/12) of the pass-through fee per month.

4.25.080 Administrative Regulations

The City Manager or designee may promulgate administrative regulations to implement the provisions of this Chapter, including, but not limited to, regulations related to additional annual registration reporting procedures and reporting requirements. No person shall fail to comply with any such regulations.

SECTION 2. Any provision of the Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

DOUGLAS SLOAN
City Attorney

7-12-2022 City Council Meeting

Agenda Item 11-B

Attachment - d. RC-ExD-042822 RC Staff Report

SANTA MONICA RENT CONTROL BOARD MEMORANDUM

TO: Santa Monica Rent Control Board

FROM: Rebecca Sherman, Acting General Counsel

MEETING: April 28, 2022

RE: Public hearing on proposed Charter amendments

Subject Matter

The Board will hold a public hearing and consider whether to recommend to the City Council that the City place on the November 2022 ballot certain amendments to the City Charter and the Rent Control Charter Amendment (RCCA).

The first public hearing on this item was held on April 14, 2022. The Board continued the item to April 28, 2022, to allow for additional opportunity for public input. Staff has conducted additional outreach through public notices in the local newspaper, additional email blasts and social media engagement.

Executive Summary

In November 2022, Santa Monica will hold a general municipal election. For such elections, the Rent Control Board may make recommendations that the City Council place proposed amendments to the Santa Monica City Charter, including the Rent Control Charter Amendment, on the general election ballot.

The Board will hold a public hearing on the feasibility of certain amendments to the Charter: 1) that the City of Santa Monica adopt an amendment to the City Charter requiring the registration of all non-rent-controlled rental units; 2) that Section 1806(a)(8)(iv) of the RCCA be amended to require that an owner intend to occupy the unit for at least three years instead of one year; 3) that Section 1803(e) of the RCCA be amended to allow Commissioners to be elected to a maximum of three full terms to align with City elected officials; and 4) that Section 1803(d) of the RCCA be amended to state that an election need not be held if the number of qualified candidates does not exceed the number of open board positions.

The Board will consider whether to recommend an amendment to City Charter Article XXIII, which governs the City's housing policies. Currently, this section of the City Charter does not include a requirement for owners to register rental units not subject to the RCCA. Such a requirement, if recommended, should be

incorporated into the City Charter and city processes since the RCCA already governs rental units subject to the Rent Control Law and requires owners to register those units with the Rent Control Agency.

The Board will also consider whether to recommend an amendment to the RCCA to increase from one year to three years the amount of time that an owner must intend to reside in their unit before being allowed to evict an existing tenant.

Finally, the Board will consider whether to recommend amendments to the RCCA regarding elections to align with term limits of the City Charter and improve election efficiency.

Discussion

a. Registration of rental units not subject to the Rent Control Law.

State restrictions on a local government's ability to regulate rents across tenancies or to update local ordinances to apply rent control to buildings built after the adoption of the local law (April 1979 in Santa Monica) have substantially hobbled local entities' efforts to ameliorate the worsening affordable housing crisis. Most new housing units are market rate units that are exempt from local rent control laws and, therefore, do not improve local housing's affordability. And despite the claims of developers, simply increasing the supply of housing has not resulted in lower market rents. In fact, just the opposite is true: rental rates continue to increase even as the market-rate housing supply grows. Moreover, as rent-controlled units continue to be withdrawn from the rental market through the Ellis process and demolished and replaced with exempt units, the balance continues to shift toward fewer controlled units.

These state laws have led to a two-tiered system in which some tenants enjoy protections from large, unpredictable rent increases while others' rents are limited only by a one-size-fits-all state law with no local enforcement mechanism. Requiring the registration of all rental units could assist the City in a greater understanding of the scope of the affordable housing crisis in Santa Monica and in determining more effective ways to mitigate its impact, an impact that is driving housing instability, displacement, and greater numbers of the unhoused population.

i. Existing law

All units subject to the RCCA must be registered with the agency. Owners must provide information related to unit size, base rent, amenities and other basic information. In addition, units must be re-registered following a vacancy and re-rental. In this way, the agency obtains basic information about each rental unit to allow it to administer and enforce the law more effectively. This information also helps inform the agency about rental rates and trends as well as

the loss/gain of controlled units and the effectiveness of measures to maintain and increase the controlled rental housing stock.

Currently, unlike the RCCA, the City Charter does not require registration of non-controlled units. Like the registration requirements for controlled units, registration of uncontrolled units would assist city officials in monitoring and mitigating the affordable housing crisis and ensure that the tenant protections in the City Charter are followed. Moreover, with the state limits on rent increases and eviction protections, tenants would be better informed as to their rights.

To accomplish this, Article XXIII of the Santa Monica City Charter could be amended to require owners to register with the City non-controlled rental units. Article XXIII governs the City’s housing policies, including tenant protections, in non-controlled rental units.

ii. Other jurisdictions

Most jurisdictions with some form of rent control or tenant protections require the registration of rental units. The table below illustrates the requirements of some of these cities.

Jurisdiction	Type of units	Initial registration?	Re-registration?
West Hollywood	Controlled units	Yes	Upon vacancy and re-rental
Los Angeles	Controlled units	Yes	Annual
LA County	Controlled units	Yes	Annual
Culver City	All rental units	Yes	Annual, upon new tenancy and changes in housing services
Berkeley	Controlled and partially-exempt units	Yes	Upon vacancy and re-rental; annually for PE units
Beverly Hills	Controlled units	Yes	Upon vacancy and re-rental

iii. Other considerations

The requirement to register rental units and provide basic information such as the rental rate, ownership details, occupancy dates and amenities is not a new concept. In fact, most jurisdictions that provide any tenant protections either in the form of rent limits or just-cause eviction protections require the registration of rental units to gauge the effectiveness of the laws and to aid in enforcement. These requirements have been in place for decades in some jurisdictions, including Santa Monica. The RCCA has required the registration of rental units since its enactment.

And courts have consistently upheld these requirements as squarely within the bounds of a local entity's police powers and as Constitutional regulations of the provision of housing. As recently as 2020, the 9th Circuit Court of Appeals in *Hotop v. City of San Jose* unanimously upheld San Jose's ordinance requiring initial and annual registrations of rental units against a challenge on Constitutional grounds.¹ Plaintiffs claimed that the rent registry violated the 4th, 5th and 14th amendments to the Constitution as well as the Contracts Clause. In rejecting the 4th amendment claim, the Court noted that no information was being disclosed that wasn't already provided in other contexts under regulations that hadn't been challenged. The Court also found there was no per se taking and no facts that would plausibly assert a regulatory taking under the 5th amendment. Finally, the Court rejected the contracts clause allegation for failure to state a claim and the 14th amendment claim for the failure to show that the ordinance's distinctions could not survive rational basis review.

Here, the factual and legal landscape is similar to that in the Hotop case. The information sought is the same or similar as that which is already required for controlled units. And as in San Jose, the proposal would require information pertinent to the regulation of rental housing and the enforcement of existing laws. Similarly, in 2019, the federal district court granted the City of Beverly Hills' motion to dismiss against AAGLA, who had brought suit under 42 USC section 1983 for that city's registration requirements.

In the cases cited above, the Courts uniformly rejected challenges to registration requirements based on privacy concerns. *San Francisco Apartment Association v City and County of San Francisco*, 881 F.3d 1169, 1178-1179 (9th Cir. 2018) involved a challenge to a San Francisco ordinance requiring certain disclosures regarding buyout offers. The Court noted that information already publicly available is not protected by the right to privacy under the California Constitution and because information that is routinely submitted to the government, such as the landlord's name and contact information, the property

¹ 982 F.3d 710 (2020); see also *San Francisco Apartment Association v. City and County of San Francisco*, 881 F.3d 1169 (9th Cir. 2018).

address, information about proposed expenditures where applicable, the current rent for each unit, detailed rental history, and the like, is regularly made publicly accessible, there is no reasonable expectation of privacy in such information. *Hoptop v. City of San Jose*, discussed above, reached the same result when considering a local rent registry ordinance. And *AAGLA v. Beverly Hills*, U.S.D.C. Central District, Case No. CV 18-6840 PSG (Ex). addressed the same issue, with the same result.

iii. Potential requirements for a rent registry for non-controlled units in the City Charter, Article XXIII

Article XXIII of the Santa Monica City Charter provides, among other things, eviction protections for tenants living in uncontrolled rental units. Section 2302(a) defines Nonrentcontrolled rental units as: “All residential rental units in the City of Santa Monica except those units that are subject to rent control pursuant to Article XVIII of this Charter or are single-family homes.” Section 2305, titled “Implementation”, describes the broad authority of the City Council to “protect community health, safety and welfare by, among other things, adopting ordinances, resolutions or regulations to implement and effectuate the provisions of this Article, including, but not limited to, provisions relating to exemptions, just cause, notices, comparability of units, and good faith. Additionally, the City Council may create any administrative mechanisms it deems necessary for this Article’s implementation.”

Requiring the registration of uncontrolled rental units that are subject to this Article could arguably be accomplished through an ordinance or regulation since it could reasonably be construed as a mechanism to ensure that landlords are adhering to the just cause provisions. An annual registration requirement along with a requirement to explain the reasons for changes in tenancy could greatly enhance these tenant protections.

Alternatively, the City Council could propose an amendment to the City Charter to require registration of these uncontrolled rental units. A new section could be added to Article XXIII requiring that the units subject to this article must be registered as set forth in the section and accompanying regulations. The City could also require that rental units subject to Article XXIII be registered annually to ensure rental rates and vacancy/tenant information is kept current. The City could also require registrations to be updated upon a new tenancy or changes in housing services as Culver City has done.

As part of the annual registration, the City could require owners to provide some or all of the following information: 1) occupancy status and commencement date of the current tenancy; 2) the amount of rent the current tenant is paying; 3) the reason the prior tenant vacated the unit, if known; 4) the water/utility metering

status of the unit; 5) the amenities provided with the tenancy; 6) any changes in ownership information; and 7) any other information the City deems necessary.

To cover the reasonable expenses necessary to administer the rent registry and provide counseling services, the City could establish an annual per unit fee that would be charged to property owners.

A new section, 2304.5, could be added to read:

2304.5 Registration of nonrentcontrolled rental units

(a) Registration required. Upon issuance by the City of Santa Monica of a valid written Rent Registration certificate, as set forth in this Section 2304.5, no Landlord shall demand or accept Rent for a Nonrentcontrolled Rental Unit (NRU) without first serving on the Tenant, or displaying in a conspicuous place, such Rent Registration certificate.

(b) Registration Process.

(1) A Landlord shall provide Rent amount and Tenancy information for every Rental unit on a Rent Registration form provided by the City. The Rent Registration form shall be submitted on a date to be determined by the City and on that date each year thereafter. Registration is complete only when all of the following information is provided: ownership information; property information; year built and certificate of occupancy date; number of bedrooms and bathrooms for each NRU; the amount of Rent in effect at the time of registration; a description of housing services; water/utility metering status of the unit; and the property vacancy rate. If any NRU has been vacant for more than 30 days, the Landlord shall provide the date of vacancy and an explanation for the vacancy.

(2) Every NRU Rent Registration certificate shall be updated annually, as required by Section 2304.5(b)(1), upon a new tenancy, or when there are changes in housing services.

(3) If an NRU is vacant for more than 30 days, the Landlord shall provide a certification to the City of the duration of the vacancy, and that the NRU shall be secured against unauthorized entry.

(4) For every property for which a Landlord is required to procure a Rent Registration certificate pursuant to this section, the Landlord shall post a notice in a form provided by the City, providing information about this Subchapter 2304.5 and City contact information. Notices must be posted in a conspicuous location in the common area, at the entry or entries to the building or units, or other similar location or locations as necessary to provide Tenants a reasonable opportunity to view the notice. If there is no common area or similar location, this requirement

may be satisfied by mailing the notice to each Tenant of the building, by certified mail, return receipt requested. The notice shall be written in English and Spanish, and in any other languages as required by the City.

(c) Notice of Rent information deficiencies and opportunity to cure; Appeals; and Final Administrative Decision.

(1) The City shall provide written notification to the Landlord of a failure to comply with this section and allow fifteen (15) calendar days to respond. The City shall not issue a Rent Registration certificate for the NRU until the Landlord has substantially complied by providing the rental information as required by this section.

(2) Any Landlord disputing the City's notification of deficient registration may file a written appeal with the Director within ten (10) calendar days of the date of the notice of deficiency. The Director shall provide a written notice within thirty (30) calendar days of its appeal decision, which shall be a final administrative decision.

(d) Registration fee.

(1) A fee for the registration of NRU's may be established by resolution of the City Council. Such fees are intended to recover the City's reasonable costs associated with the administration and enforcement of this section.

(2) A Landlord may pass through to the Tenant fifty percent (50%) of the initial fee for the registration of the Tenant's NRU (the pass-through fee) if such Tenant continuously occupied the NRU during the period covered by the completed registration. The City may establish applicable conditions and procedures governing the pass-through. The pass-through fee is not considered Rent and should appear as a separate line item on the Rent statement. A Landlord may collect a maximum of one-twelfth (1/12) of the pass-through fee per month.

b. Good faith requirements for owner-occupancy evictions

The RCCA prohibits evictions of tenants except as enumerated in the law. Owners or qualified relatives who wish to move into their units and reside there permanently may evict current tenants to do so, but only if they meet the requirements set forth in the RCCA. One of those requirements is that the owner or relative "intend in good faith to move into the unit within thirty (30) days after the tenant vacates and to occupy the unit as a primary residence for at least one year."²

² RCL Section 1806(a)(8)(iv).

The Board will hear input from the public on the feasibility of requiring owners or their qualified relatives to intend to occupy the unit for at least three years, instead of one year, upon evicting an existing tenant. The purpose of placing both a requirement to occupy the unit within a certain time frame and a good faith intent to live there for a certain period is to ensure that the eviction is not used as a pretext for the owner to rent the unit to a new tenant paying market rates.

i. Existing tools to prevent sham evictions and their effectiveness.

Currently, if an owner or relative fails to move into the unit within 30 days, the landlord is required to re-offer the unit to the displaced tenant and pay the tenant any expenses incurred in the unlawful displacement.³ Moreover, owners cannot set a new initial rent for the first tenancy following an owner-occupancy eviction; the Maximum Allowable Rent (MAR) for this tenancy is the same MAR as the previous tenancy.⁴ Other protections include a requirement that the owner offer to the displaced tenant any unit that becomes vacant within a year of the tenant’s displacement, including the unit from which the tenant was evicted.⁵ The Board also has the ability to determine whether the first tenancy is a legitimate tenancy or a sham, in which case the landlord cannot set the initial rent for a subsequent tenant.⁶

The table below illustrates the rate of evictions for owner-occupancy in the 5 years preceding the current COVID-19-related eviction moratoria, the current status of the units, and whether they have been re-rented. This information is based upon copies of eviction notices filed with the agency, notices of ownership changes and vacancy unit registrations.

Notices by year from 2015 to 2019	Avg property size	Current status	Rent still restricted?	New tenancy?
2019 - 5	4 units	1 sold to new owner	Yes	1 – May 2020
2018 - 7	5 units	1 Ellis, 1 sold to new owner	6 restricted; 1 market	1 – 2020; 2021 (market rate)
2017 - 11	5 units	3 sold to new owners	8 restricted; 3 market	5 new tenancies: 1-2018, 4-2019

³ RCL Section 1806(a)(8)(v).

⁴ Regulation 3301(b)(1).

⁵ Regulations 9002(d)(4) and 9002(g).

⁶ Regulation 3301(k).

2016 - 7	5 units	6 sold to new owners	3 restricted; 4 market	6 new tenancies: 1-2016; 3-2018; 1-2019; 1-2021
2015 - 5	3 units	3 sold to new owners	Yes	None

There are two instances of the re-rental of a formerly owner-occupied unit at the year mark, but more typical is the re-rental around two years or later. There does not seem to be a pattern as to the frequency of re-rental following an owner-occupancy exemption. The units that were owner-occupied in 2016 have mostly been re-rented while the units owner-occupied in 2015 all remain owner-occupied.

It is important to note that the good faith requirement to intend to live in the unit for a certain period of time serves as evidence of bad faith in an enforcement proceeding if the owner or relative moves out before the requisite time period is up. Such evidence is typically supported by other evidence to show that the eviction was carried out in bad faith.

ii. Good faith requirements in other jurisdictions

The table below illustrates the requirements for other jurisdictions.

Jurisdiction	Time to occupy unit	Period of residency	Evidence of bad faith	Right to return if vacated within period?
West Hollywood	90 days	12 consecutive months	Rebuttable presumption	Yes, if re-offered for rent
Los Angeles	3 months	2 consecutive years	Yes	Yes, if tenant notified owner
LA County	60 days	3 years unless extenuating circumstances	Yes	Yes
Culver City	3 months	36 months	Yes	No
Berkeley	3 months	36 consecutive months	Yes	Yes

iii. Potential impact of extending length of residency requirement

The residency requirement is a statement of intent before owners can evict a tenant using this section. So, if this change is made, an owner would have to declare an intention to reside in the unit for at least three years. An owner who vacates the unit within that time period would be presumed not to have acted in good faith in evicting the tenant under this section.

Based on past practices, staff has found that the agency's most effective tool in deterring sham evictions has been the bar to setting a new initial rent for the first tenancy following an owner-occupancy eviction as well as the tenant's right to re-rent the unit if the owner vacates it within a year. The requirement to re-register the unit when it is re-rented allows the agency to enforce the limits on the MAR as well as to determine whether the tenancy itself is legitimate.

To implement this change, RCCA Section 1806(a)(8)(iv) would be amended to read:

(iv) The landlord or enumerated relative must intend in good faith to move into the unit within thirty (30) days after the tenant vacates and to occupy the unit as a primary residence for at least ~~one year~~ *three years*.

To strengthen this requirement, the Board could also require owners to re-offer the unit to the displaced tenant if the owner vacates the unit within three years. In addition, currently, owners must move into the unit within 30 days after a tenant vacates. If the owner fails to take possession within 30 days, the owner must re-offer the unit to the displaced tenant. Many owners who genuinely intend to occupy the unit as their primary residence find it difficult to make the transition that quickly. And most jurisdictions allow at least 60 days for owners to move into the unit after the tenant vacates.

To implement these changes, Section 1806(a)(8)(v) could be amended as follows:

(v) If the landlord or relative specified on the notice terminating tenancy fails to occupy the unit within ~~thirty (30)~~ *sixty (60)* days after the tenant vacates *or fails to occupy the unit as a primary residence for at least three years*, the landlord shall:

- A. Offer the unit to the tenant who vacated it.
- B. Pay to said tenant all reasonable expenses incurred in moving to and/or from the unit.

c. Election administration

Term limits

RCCA Section 1803(e), Term of Office, states “Commissioners shall serve a maximum of two full terms.” The Santa Monica City Charter also sets term limits for its councilmembers. Article VI, Section 600 allows councilmembers to serve up to three terms. For both agencies, terms are four years. The City Charter also states that term limits apply to appointed terms as well as elected terms. The RCCA does not specify whether appointed terms count toward the term limits.

In order to align with the City Charter and to have greater efficiency and cost reductions in the administration of elections, the Board proposes that the RCCA be amended as follows:

Section 1803(e) TERM OF OFFICE: Commissioners shall serve a maximum of ~~two~~ *three* full terms. *These term limits shall not apply to appointed terms, only elected terms.*

Election efficiency

Currently, the RCCA requires that an election be held even if there are only as many candidates as open Board positions. The Board could propose an amendment to the RCCA that an election is not necessary when the number of qualified candidates does not exceed the open positions. To accomplish this, Section 1803(d) could be amended as follows:

Section 1803(d) ELECTION OF COMMISSIONERS: *If, upon the City Clerk’s determination of the qualified candidates, the number of candidates does not exceed the number of vacant positions, no election will be held and the qualified candidates shall be seated upon swearing in by the City Clerk. ~~The elected Commissioners shall take office on the first Tuesday following the general municipal election.~~*

Conclusion

Following the public hearing and after consideration of public input, the Board can determine whether to recommend these changes to the City Council. To ensure the City Council has adequate time to consider any recommended changes, they should be forwarded to the City Council no later than mid-May.