

# CITY COUNCIL COMMITTEE

## **HOUSING & ECONOMIC DEVELOPMENT**

Ron Leone, Chair  
Dan Helix, Committee Member

**5:30 p.m., Monday, October 24 2016**

**Concord Senior Center's Wisteria Room  
2727 Parkside Circle, Concord**

### **ROLL CALL**

### **PUBLIC COMMENT PERIOD**

1. **UPDATE** – Response to Housing and Economic Development Committee Inquiries on Potential Approaches to Rent Stabilization and Tenant Protection, with a Request for Direction from the Committee. Report by John Montagh, Redevelopment/Housing Manager.
3. **ADJOURNMENT**

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Distribution: City Council  
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## Staff Report

**Date:** October 24, 2016

**To:** City Council Committee on Housing and Economic Development

**From:** Valerie J. Barone, City Manager

**Prepared by:** John Montagh, Economic Development and Housing Manager  
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925 671-3082

**Subject: Response to Housing and Economic Development Committee  
Inquiries on Potential Approaches to Rent Stabilization and Tenant  
Protection, with a Request for Direction from the Committee**

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### Report in Brief

The City Council has convened three workshops to discuss the issue of rising rents in the City. The most recent meeting was convened by the Housing and Economic Development (HED) Committee on September 26, 2016. This report provides responses to specific questions and follow-up requests from the Committee for information made at that meeting. The report also explores the feasibility of a rental housing "hotline," as was suggested at the September meeting. Staff recommends the Committee hear the report, take public testimony, and provide input and direction to staff.

### Recommended Action

Staff recommends that the HED Committee receive the report, hear public comment and provide staff with input and direction on proposed next steps. The HED Committee could convene a subsequent meeting to consider the issue, or make a recommendation for consideration by the full City Council.

### Background

The City Council has convened a series of meetings to take public testimony and discuss potential solutions to address the issue of rising rents and increased tenant hardships. The first meeting was convened by the HED Committee on June 27, 2016 and included presentations by John Montagh (Concord's Economic Development and

Housing Manager), Aimee Inglis (Tenants Together), Joshua Howard (California Apartment Association), and Ken Baar, PhD (an expert on housing policy and real estate issues in California). The second meeting was convened by the full City Council on July 26, 2016 and included a second presentation by each of the groups from the June workshop. The third meeting was convened by the HED Committee on September 26, 2016 and provided data on renter demographics, local rents and rent increases, the number of small vs large landlords, best practices from other cities, and potential ways to strengthen the City's Multi-Family Inspection Program.

A number of specific questions were raised by Council members at the September meeting, including requests for clarification of data, and follow-up on the cost and impacts of Just Cause for Eviction requirements. The Committee also suggested that the City create and administer a rental housing "hotline" for tenants facing large rent increases. This staff report includes responses to the questions raised, organized by key topic areas.

The City has received correspondence from individuals and organizations in support of rent control and urging a temporary moratorium on rent increases over 3%. It has also received correspondence from individuals opposed to rent control.

Last, the Committee considered staff recommended Multi-Family Inspection Program changes that addressed a number of the concerns and comments raised by the public about the current program; the Committee has recommended the proposed changes move forward to Council for consideration.

### **Data-Related Questions**

Councilmembers raised the following questions pertaining to data at the September 26 meeting:

**Question 1:** *Please clarify why Table 26 in the Rental Housing Data Book (September, 2016) shows an increase of 4.4% in average rents between 2015-2016, while Table 29 shows an 8.3% increase during the same period. Shouldn't the numbers be the same? (CM Helix)*

**Response:** Table 26 is based on data obtained earlier in 2016. It compares the average rent for all of 2015 (a 12-month period) with data for just January-March, 2016 (a three-month period). Table 29 reflects data from August 2016. It compares the average rent for the *second quarter* of 2015 with the average rent for the *second quarter* of 2016. It provides a more accurate comparison of "year-over-year" rent increases. It should be noted that both tables only reflect data from projects with more than 50 units.

According to RealFacts, rents increased 14.6 percent between the 2<sup>nd</sup> quarter of 2014 and the 2<sup>nd</sup> quarter of 2015, and 8.3 percent between the 2<sup>nd</sup> quarter of 2015 and 2<sup>nd</sup> quarter of 2016.

**Question 2:** *Why was the rental increase so much higher in 2014-2015 than it was in 2015-16? What specific projects skewed the increase in rents in 2014-2015? (CM Helix)*

**Response:** Data on year-over-year rent increases at specific apartment complexes was not available (or was determined to be unreliable) based on the various industry data sources consulted. It is likely that the greater increase in 2014-2015 was due to the market “catching up” to high levels of demand, with a number of large building owners (60 units or more) raising the rent in response to limited supply. Vacancy rates fell by a full percentage point between 2013 and 2014, from 3.5% to 2.4%, and it is likely that owners may have adjusted prices in response. It is further noted that two large apartment complexes in Concord, with a total of 343 units, were sold in 2013. It is possible that units in these projects were upgraded in 2014, and subsequently rented at higher prices in 2015.

**Question 3:** *What are the most critical tables and charts (in the Data Book) for the City Council to consider in formulating recommendations regarding rent stabilization? (CM Helix)*

**Response:** Staff recommends that particular focus be placed on Table 15 and Chart 7. (Attachment 1)

Table 15 indicates the number of units and the number of properties that could potentially be impacted by rent stabilization measures. Of particular importance is the fact that nearly two-thirds of the City’s rental apartments are located in 86 apartment complexes with more than 25 units each. About 80% of the city’s landlords own buildings with fewer than 12 units, but these properties represent just one-quarter of the rental units in the city. Programs aimed at larger buildings would cover a significant majority of the City’s tenants and a relatively small number of property owners.

Chart 7 indicates rent increases in Concord, Contra Costa County, and the East Bay between 2006 and 2016. The table illustrates the rapid increase that occurred in all three areas between 2013 and 2015, the slight leveling off that occurred at the end of 2015, and the fact that Concord’s rents remain below the County and East Bay averages.

### **Questions Related to Just Cause Evictions**

Councilmembers raised the following questions pertaining to Just Cause Evictions at the September 26 meeting:

**Question 4:** *The presentation stated that one of the “just causes” a landlord may use to evict a tenant is the creation of a “nuisance.” What is the definition of a “nuisance”? It seems like a very broad term to use in this context. (CM Helix)*

**Response:** California Civil Code 3479 defines a nuisance as: “Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.” The State Department of Consumer Affairs defines a nuisance (in the context of an eviction) as “substantial interference with other tenants.”

Staff reviewed ordinances from a number of cities with rent control and observed that “nuisance” was not explicitly defined in their ordinances. For example, San Francisco’s ordinance indicates that eviction is permitted if the tenant is causing “substantial interference with the comfort, safety or enjoyment of the landlord or tenants in the building, the activities are severe, continuing or recurring in nature, and the nature of such nuisance, damage or interference is specifically stated by the landlord in writing.” The term “nuisance” itself is not defined. Santa Rosa’s ordinance indicates that just cause can be established if the “Tenant is committing a nuisance or is creating an unreasonable interference with the comfort, safety, or enjoyment of any of the other residents of the housing complex or the surrounding neighborhood.” Again, the term nuisance is not specifically defined.

Based on a review of case law, the term is most often associated with persistent and excessive noise. It may also be associated with creation of smoke and soot, dumping garbage, disorderly conduct, foul odors, and excessive vibration. The interference with the property must be substantial and continuous to be deemed a nuisance—a single incident would generally not be characterized as such. There are also “illegal nuisances” associated with criminal activities such as drug dealing and prostitution.

Some cities do not use the term “nuisance” in their ordinances, recognizing that it is vague. For example, Berkeley allows just cause evictions if “The tenant continues to disturb the peace and quiet of other occupants after receiving a written request to stop.” In such instances, the owner must demonstrate a persistent pattern of excessive or annoying noise by the tenant before and after the written request.

The City’s Municipal Code also includes a definition of “nuisance,” but this definition is more focused on public nuisances created by a property owner as opposed to private nuisance created by a tenant. For instance, in Section 8.25.010, property that is maintained in such a manner that is “defective, unsightly, or in a state of deterioration, disrepair or neglect whereby the condition causes, or may cause, a health, safety or fire hazard, or diminution of surrounding property values, or a blight upon the aesthetic quality or appearance of the neighborhood, or an attractive nuisance to children.”

**Question 5:** *What is the cost impact of Just Cause on landlords? In the event a tenant must be evicted, how much additional time does it take and what is the cost burden to the landlord? (CM Leone)*

**Response:** Staff presented this question to housing attorneys representing municipal government and to the California Apartment Association (representing landlords) and Tenants Together (representing tenants) for information.

From a legal perspective, a “Just Cause” ordinance does not change the times for an eviction set by state law. A landlord may still terminate **for cause** (for instance, if the tenant has not paid rent) by serving a tenant with an eviction notice and filing an unlawful detainer action. This is a legal measure to evict a tenant in which the landlord is the plaintiff and the tenant is the defendant—if the landlord wins, they get a judgement for possession, which is enforced by the County Sheriff. The County Sheriff can then physically make the tenant leave. Unlawful detainer cases typically take six to eight weeks to resolve—regardless of whether the City has a Just Cause ordinance.

Alternatively, the landlord may also still provide a notice to vacate to a tenant meeting the criteria for a just cause eviction. State law requires a 30-day notice for tenants residing in the unit for less than one year or a 60-day notice for tenants residing in the unit for more than one year. In the event the tenant does not vacate, an unlawful detainer suit may be filed at the end of the notice period. Another six to eight weeks would typically be required to demonstrate cause and resolve the suit. Assuming a 60-day notice to vacate is followed by an unlawful detention suit, the total time to vacate the unit would be three to four months.

The California Apartment Association referred staff to two landlords, each of whom owned properties in cities with Just Cause ordinances (Berkeley and Oakland). Staff contacted both landlords for additional information. Each landlord described specific instances of tenants who had either violated the terms of their lease or not paid rent for extended periods. Both of these would be considered “Just Cause” for eviction in these cities. The cases may not represent typical circumstances but illustrate potential adverse scenarios for landlords.

In the Berkeley case, the landlord owned a fourplex. The building was constructed after 1995 and is not subject to rent control—but it is subject to the City’s Just Cause regulations. During a two-month period, two of the four tenants were served with eviction notices for non-payment of rent. Both tenants sought free legal counsel. One case was settled out of court, with the tenant paying no rent for four months, plus the landlord paying \$4,000 in relocation assistance to the tenant. The other case was settled in court, through three hearings that took place over a three-month period. The tenant, who was disabled, remained in the apartment for eight months without paying rent. The owner estimated the combination of his legal fees, lost income, and repairs for resolving both cases totaled \$40,000.

In the Oakland case, the landlord indicated he had a tenant whose boyfriend had purportedly moved in (a violation of the lease terms specifying occupancy was limited to one person) and furthermore, that the boyfriend was dealing drugs from the apartment. He sought to evict for cause. This required installing security cameras to prove the lease violation and the illegal activity. He indicated the case was settled out of court through a process that took three months from start to finish, and that his total cost was \$12,000 (lost rental income and legal fees). He indicated he had other tenants who had been evicted for non-payment of rent, and that the typical cost in such cases was three months of lost rental income, plus legal fees.

Again, these are anecdotal cases from each city and do not necessarily represent the experiences of all landlords and tenants. There is an additional cost and time requirement associated with eviction where the burden is on the landlord to prove "cause." At the same time, there are benefits to tenants from such requirements, including protection from eviction by landlords who are unable to demonstrate just cause, or who may initiate evictions simply to rent the unit at a higher price (which is permissible for units not under rent control), or to remove a tenant without cause.

As noted above, staff also contacted Tenants Together for their perspective on the monetary impacts of Just Cause. The Tenants Together representative noted that there is also a cost associated with not having Just Cause, including increased homelessness, higher mental health costs, and the loss of community stability. There are also societal costs associated with the disruption caused by mass evictions, disruption of children's lives and impacts on educational performance, and the trauma of losing a home.

### **Questions Related to Administrative Costs**

Councilmembers raised the following question pertaining to administrative costs at the September 26 meeting:

**Question 6:** *What is the estimated administrative cost of Alameda's new rent control program? (CM Helix)*

**Response:** The City of Alameda adopted a Rent Review, Rent Stabilization, and Limitations on Evictions Ordinance in March 2016. Concurrently, the City authorized a Fee Study to determine the cost of administering the program and the amount of the fee that would need to be collected to cover this cost. The study determined the program cost would be \$1.95 million annually. This includes direct and indirect labor costs, contracted services, and supplies. The cost includes six additional FTEs, as well as legal costs and additional staff time for Community Development Department employees.

Based on an inventory of 14,899 rental units in Alameda, the study determined that the cost per multi-family rental unit would be \$131 per year.<sup>1</sup> This amount would be collected through the annual business license fee program, and would be levied on all non-subsidized rental units—including units not subject to rent control such as apartments built after 1995, single family homes, and condominiums (such units are still covered by the City’s Just Cause requirements). The Study recommends that the City allow one-half of the landlord’s cost to be passed on to tenants—equivalent to a rent increase of \$5.46 per month.

Alameda’s Study also establishes a separate fee for landlords seeking to raise their rents above the 5 percent a year allowed under the City’s Ordinance. The cost to the City, which includes staff time and a contracted hearing officer, was estimated at \$4,705 per case. The City recommended that the cost of filing an appeal be 10 percent of this total for landlords (\$471) and 5 percent of this total (\$235) for tenants. The remainder of the cost would be covered by the annual rent stabilization program fee.

In November, Alameda voters will be asked to vote on the current rent control program, and on an alternative program developed by tenant advocates. The tenant advocates’ program would create an elected five-member Rent Board which would be autonomous from the City and have its own administrative and legal staff. The cost of this program has been estimated by Alameda City staff to be \$3.0 to \$3.7 million annually.

Alameda’s currently estimated costs are considered to be “mid-range” among cities with rent control and just cause programs. Table 1 below provides a benchmark analysis for nine cities with rent control, ranging from San Jose’s annual cost of \$12.72 per unit to Berkeley’s cost of \$213 per unit. The lower costs are associated with “complaint-based” systems, where tenants must initiate appeals of rent increases. The higher costs are associated with systems where landlords must certify initial rent amounts, and seek approval to raise the rent above the allowable level.

**Table 1: Comparison of Staffing Cost and Fees in Cities with Rent Control**

City	Staffing per 1,000 units	Housing Units per FTE	Cost/ Fee Per Unit	
			Annual	Monthly
Berkeley	1.1	905	\$234	\$19.50
Santa Monica	.92	1,084	\$175	\$14.58
East Palo Alto	.80	1,250	\$234	\$19.50
Alameda	.68	1,475	\$131	\$10.92
West Hollywood	.50	1,988	\$120	\$10.00
Oakland	.31	3,234	\$30	\$2.50

<sup>1</sup> This figure includes units not subject to rent control, such as single family homes and condominiums being rented, and apartments built after 1995. However, it excludes units that are income-restricted (e.g., “affordable housing” developments), and those occupied by households using Section 8 vouchers. The corresponding figure for Concord would be approximately 15,600 units.

Los Angeles	.17	5,714	\$24.48	\$2.04
San Francisco	.18	5,490	\$36	\$3.00
San Jose	.03	29,533	\$12.72	\$1.06

*Source: San Jose Department of Housing, SCI Consulting, 2016*

**Questions Related to Expedited Development Approval**

At the September 26 hearing, a number of speakers encouraged the Council to seek solutions which increased the supply of housing, in order to address high levels of demand and rising rents. Other speakers countered that increasing supply alone would not be sufficient, due to the urgency of the problem and the number of units that would need to be built before market equilibrium was achieved. The Council raised the following question in response:

**Question 7:** *What steps can the City take to expedite units that are now in the pipeline?*  
 (CM Leone)

**Response:** At the September 26 HED meeting, it was noted that there are 932 units of housing in Concord that are either under construction, approved, or in conceptual design stages. Of this total, 813 units are contained in four multi-family housing developments. The feasibility of accelerating production of these units is noted below.

- Renaissance Phase II (179 Units) broke ground in September 2016 and is now under construction. Initial occupancy is expected by the end of 2017.
- Argent is a proposed 171-unit multi-family project at 2400 Willow Pass (between East Street and Port Chicago Highway). The developer submitted formal application materials in August 2016. The project requires a Use Permit, and could be approved by the Planning Commission as early as January, 2016. Occupancy would be likely in 2018.
- Concord Village is a proposed 230-unit multi-family project at 2400 Salvio Street—across the street from the proposed Argent project. It is presently in environmental review. Upon completion, it will be brought back to the Planning Commission for a Use Permit, potentially in January as well. Occupancy would be likely in 2018.
- Four Corners is a proposed 239-unit multi-family project at Oak Grove and Monument. It requires a General Plan Amendment (GPA) from Regional Commercial to High Density Residential. The City is currently preparing a Fiscal Impact Analysis for the project. The GPA and rezoning would go to City Council for consideration of initiation in early 2017, and, if Council directs staff to move the proposed General Plan, Rezoning and Design Review applications for the project forward, the project would likely be fully entitled by the end of 2017, with construction in 2018.

The City is committed to moving expeditiously in processing all four of these projects and is working with the applicants to the greatest extent possible. Concord Village and Argent have been expedited since the time the applications were deemed complete. Delays have been associated with Early California Architecture Review and a letter challenging the CEQA analysis on Concord Village. The Argent developer is also exploring whether to take advantage of development standard concessions and waivers available through the State density bonus laws by setting aside 5 percent of the units (nine units) for very low income households. Neither Concord Village nor the Argent projects require City Council approval, creating expedited timeframes moving forward.

### **Rental Housing Hotline Proposal**

At the September 26 meeting, Councilmember Helix proposed creation of a rental housing “hotline” to be managed by City staff. He expressed that such a hotline would provide the City with empirical data on the number of landlords imposing very high rent increases on their tenants, which could then help guide potential solutions. He noted that he had established a consumer assistance hotline many years ago for seniors experiencing product malfunctions.

Community & Economic Development Staff is prepared to implement a pilot “hotline” proposal. Components would include a phone number where tenants could report instances of significant rent increases. Information would be provided in both Spanish and English. A staff member in the Community & Economic Development Department would be tasked with verifying the authenticity of each claim, and following up with the tenant and landlord. At this point, the intent of the hotline is not to initiate mediation or to mitigate rent increases, but rather to document and verify the extent of the problem. Landlords and tenants would in effect provide the data needed to determine the extent and magnitude of Concord’s rent issues. From this information, the City could determine whether to pursue or not pursue a rent control program, a rent mediation program, a just cause program, or another remedy.

The hotline could be initiated within the next 30 days once approved by the City Council, with a report back to the HED Committee after three to four months of data collection. In the interim period, the City would publicize the hotline program through advocacy groups, tenants, and landlords. Tenants would be apprised of the opportunity to report rent increases above a certain threshold (such as 5 percent).

The public education component would consist of printed and web-based materials developed by the City, as well as direct outreach through tenant advocates. An address-based data base of complaints and follow-up actions would be created by staff. Data could also be linked to the City’s multi-family housing inspection program data base, which provides a comprehensive inventory of multi-family rental units in Concord---or to the data base of rental apartments compiled in September 2016 using County Assessor’s records.

It is recommended that the “hotline” cover all rental properties in the City, and not just those that would be eligible for rent control in the event the City pursued such a program. However, the focus of the outreach efforts would be on the roughly 8,000 units that could be eligible for rent control—and in particular, the units in complexes with more than 12 units. There are 125 properties and roughly 5,900 units in this category.

### Moratorium Request

During the last meeting, a number of public speakers asked for a Moratorium on rent increases. The following provide information concerning the process for considering a moratorium:

In general, pursuant to Government Code Section 65858, the City Council may adopt as an urgency measure an interim ordinance (or moratorium) that prohibits any uses that may be in conflict with the City’s General Plan, specific plans, or zoning proposal that the City Council is considering or intends to study within a reasonable amount of time. The urgency measure requires a four-fifths vote for adoption and would remain in effect for 45 days from the date of adoption. Thereafter, the City Council may extend the urgency measure for an additional period of time, not to exceed two years post adoption, after a public hearing and a fourth-fifths vote.

In making the necessary findings to adopt the urgency measure, the City Council is required to make findings that there is a current and immediate threat to the public health, safety, or welfare, that the interim measure is necessary to mitigate or avoid the specific, adverse impact, and that there is no other feasible alternative with a less burdensome or restrictive effect to mitigate these impacts.

### **Public Contact**

The agenda item was posted. Those who spoke before the City Council Workshop on Rental Housing or submitted correspondence to City Council on the topic received notice.

### **Attachments**

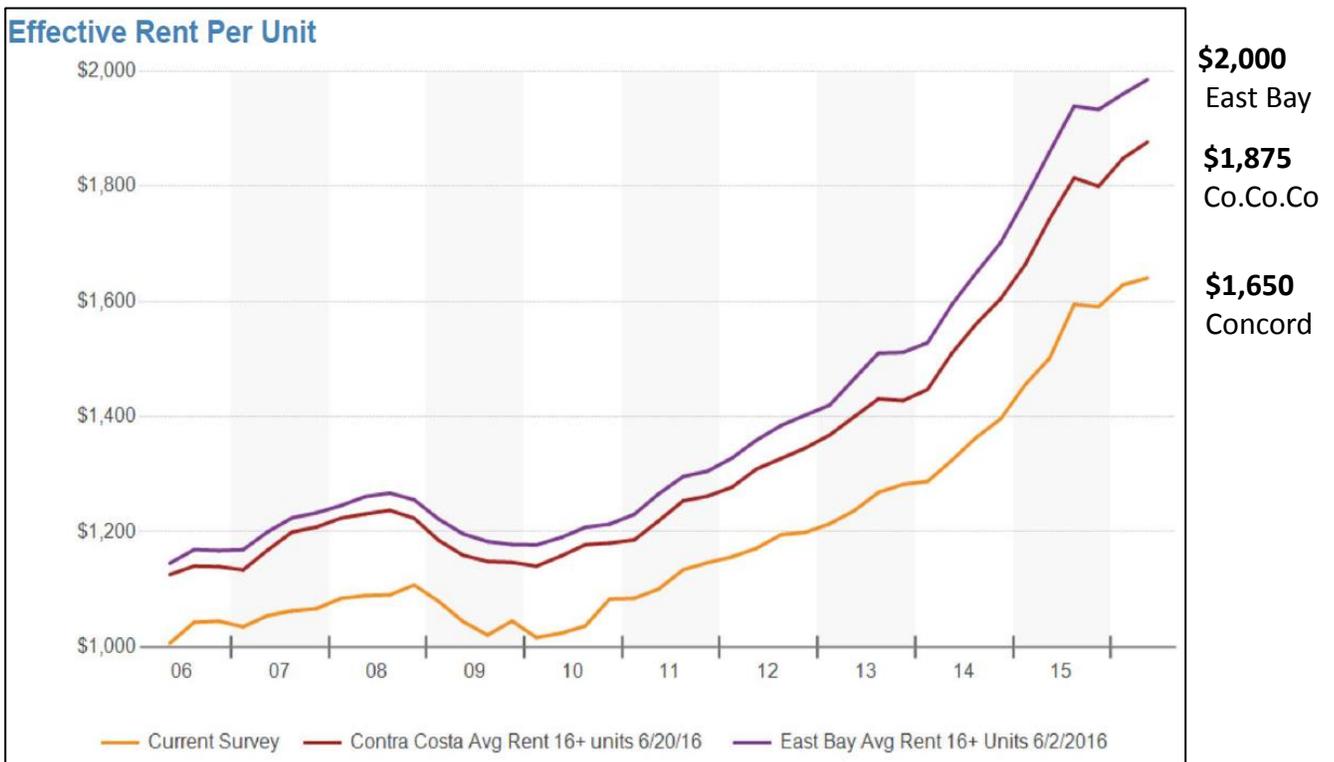
1. Selected Tables from September 2016 Data Book

Table 15 and Chart 7 from the September 2016 Concord Rental Housing Data Book

**Table 15: Potential Units Eligible for Participation in Rent Stabilization**

Building Type	Number of Units (*)
Duplexes, excluding affordable units	428
<i>Built before 1995 (212 properties)</i>	424
3 units and homes with 2-3 rental units on-site, excluding affordable units	98
<i>Built before 1995 (30 properties)</i>	98
4 units, excluding affordable units	651
<i>Built before 1995 (163 properties)</i>	651
5-12 units, excluding affordable units	953
<i>Built before 1995 (121 properties)</i>	933
13-24 units, excluding affordable units	731
<i>Built before 1995 (39 properties)</i>	698
25-59 units, excluding affordable units	2,160
<i>Built before 1995 (59 properties)</i>	2,124
60+units, excluding affordable units	3,456
<i>Built before 1995 (27 properties)</i>	3,065
<b>Total Market Rate, built before 1995 (651 properties)</b>	<b>7,993</b>

Source: Contra Costa County Assessor Data, City of Concord 2016



**Chart 7: Effective Rent Per Unit, Concord, County, and East Bay**