



TOWN OF FAIRFAX

STAFF REPORT

April 3, 2019

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager

SUBJECT: Introduce by title only an Ordinance Adding Chapter 5.55, Entitled “Mandatory Mediation for Rental Increases” to Fairfax Municipal Code Title 5, Requiring Mediation for Rental Increases Exceeding Five Percent; exempt from CEQA pursuant to section 15061(b)(3) of the CEQA Guidelines

RECOMMENDATION

Introduce and read by title only “An Ordinance of the Town Council of the Town of Fairfax Adding Chapter 5.55, Entitled “Mandatory Mediation for Rental Increases” to Fairfax Municipal Code Title 5, Requiring Mediation for Rental Increases Exceeding Five Percent.

BACKGROUND

Mayor Coler requested the consideration of this Mandatory Mediation ordinance.

At its March 6, 2019, meeting, the Council introduced a Just Cause ordinance which provides renter protections by identifying acceptable and unacceptable reasons for eviction. Mandatory Mediation helps alleviate landlord-tenant disputes regarding significant rent increases. While the two policies address different issues for landlords and tenants, together they represent a more comprehensive approach for renter protections.

Specifically, mandatory mediation for rent increases could offer more protection if a tenant using the program were also protected from an arbitrary or retaliatory eviction action. Likewise, tenants with Just Cause protections could benefit from mediation to limit the chances that they were displaced from their unit by a significant rent increase. Accordingly, Mandatory Mediation and Just Cause protections offer complimentary protections and are often combined to regulate landlord and tenant relations.

Together the policies provide enhanced tenant protection and address issues including:

- Prohibitively steep rent increases,
- Housing instability from capricious lease terminations,
- Unsafe or unsanitary rental housing conditions,
- Harassment and retaliatory evictions,
- Retaliatory rent increases.

DISCUSSION

This proposed ordinance was modeled after the ordinance adopted by the County of Marin in December 2017. The Mandatory Mediation Ordinance is intended to provide stability and fairness in rental housing. Mediation is a process in which a neutral third party facilitates the negotiation of a mutually acceptable resolution to a dispute between two parties. Like the mediation services offered by the District Attorney’s Consumer Protection Unit, mediation programs commonly apply voluntary, private and informal processes. Mandatory Mediation is distinguished by a requirement

to participate in good faith for the entirety of the mediation process, even if the landlord and tenant do not settle their dispute through mediation.

This ordinance would apply to all dwelling units. A "Dwelling Unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

A tenant residing in a Dwelling Unit may file a request and receive mediation services within ten calendar days of the tenant's receipt of one or more notices from the landlord increasing the rent and/or change(s) to housing services commensurate to a rent increase of more than five percent (5%) within a twelve-month period. Any landlord may file a request and receive mediation services in order to pursue a rent increase greater than five percent within any 12-month period. Although the mediation is non-binding, good faith participation in the mediation is required from both the landlords and tenants. Staff will develop program guidelines, similar to the County of Marin's, to provide to landlords and tenants.

Currently, the District Attorney's office provides the mediation services for the County of Marin's ordinance. Their staff indicates they currently have the capacity to provide similar mediation service to Fairfax landlords and renters. *However, the caveat is that the County's and Town's ordinance need to be relatively the same so the District Attorney's Office can follow the same process.* They have proposed a reasonable service fee of \$50 per application review to determine eligibility and a flat fee of \$500 per mediation conducted. Staff is not recommending that the landlords or tenants be charged a fee for mediation, as this may discourage participation. Based on the County's participation levels, Fairfax may only have 5+/- such requests a year.

In terms of units potentially affected by the ordinance, the Town's 2015-2023 Housing Element indicates that over 35% of the households (1,140 out of 3,185 households) in Town are renters. Approximately 48% of renters are considered very low-income households, meaning they earn 50% percent of the area median income. Approximately 54% of Fairfax renters were estimated to be rent-burdened, which is defined as paying more than 30% percent of household income on rent, with 35% of renters estimated to be severely rent-burdened which is defined as spending more than 50% of household income on rent. Approximately 38% of renters in Fairfax live in detached homes (single family units).

CEQA DETERMINATION

Adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment, in that this ordinance applies residential tenant protection measures to existing residential units in the Town of Fairfax, which is solely an administrative process resulting in no physical changes to the environment. Accordingly, this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures.

FISCAL IMPACT

Minimal impact; staff will propose a budget \$3,500 in the FY19-20 budget for mediations.

ATTACHMENT

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADDING CHAPTER 5.55, ENTITLED "MANDATORY MEDIATION FOR RENTAL
INCREASES" TO FAIRFAX MUNICIPAL CODE TITLE 5, REQUIRING MEDIATION FOR
RENTAL INCREASES EXCEEDING FIVE PERCENT

SECTION I: LEGISLATIVE FINDINGS

WHEREAS, over 35% of the approximately 1,100 households that reside in Fairfax rent their homes, as identified in Appendix H-B: Housing Needs Assessment of the Town's Housing Element Update 2015-2023; and

WHEREAS, it is estimated that 48% of rental households residing in Fairfax have very low incomes, which is defined as earning approximately 50% percent of the area median income, as identified in Appendix H-B: Housing Needs Assessment of the Town's Housing Element Update 2015-2023; and

WHEREAS, approximately 54% of Fairfax renters were estimated to be rent-burdened, which is defined as paying more than 30% percent of household income on rent, with 35% of renters estimated to be severely rent-burdened which is defined as spending more than 50% of household income on rent, as identified in U.S. Census Bureau, 2013-2017 American Community Survey 5-year estimates; and

WHEREAS, approximately 38% of renters in Fairfax live in detached homes (single family units), as identified in U.S. Census Bureau, 2013-2017 American Community Survey 5-year estimates; and

WHEREAS, between 2010 and 2013 home values increased significantly more than area incomes, as identified in Appendix H-B: Housing Needs Assessment of the Town's Housing Element Update 2015-2023; and

WHEREAS, rental prices increased significantly, as identified in Appendix H-B: Housing Needs Assessment of the Town's Housing Element Update 2015-2023; and

WHEREAS, there is a shortage of rental housing, including multi-family, single-family, second units, as identified in Appendix H-B: Housing Needs Assessment of the Town's Housing Element Update 2015-2023; and

WHEREAS, the Town finds and determines that regulating the relations between certain residential landlords and residential tenants will increase certainty and fairness within the residential rental market in Fairfax and thereby serve the public peace, health, safety, and public welfare; and

WHEREAS, the Town has modeled this ordinance after a similar ordinance adopted by the County of Marin in December 2017.

SECTION II: ACTION

The Town Council of the Town of Fairfax ordains as follows: Ordinance No. ____ is hereby adopted and Chapter 5.55 'Mandatory Mediation for Rental Increases' shall be codified in the Fairfax Municipal Code of Ordinances in the form attached hereto as Exhibit "A" to Town of Fairfax Ordinance No. ____.

SECTION III: CEQA DETERMINATION

Adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment, in that this ordinance applies residential tenant protection measures to existing residential units in the Town of Fairfax, which is solely an administrative process resulting in no physical changes to the environment. Accordingly, this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures.

SECTION IV: SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION V: EFFECTIVE DATE AND PUBLICATION

This Ordinance shall become effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax on the __ day of April 2019, and duly adopted at the next regular meeting of the Town Council on the __ day of May 2019, by the following vote, to wit:

AYES:
NOES:
ABSENT:

BARBARA COLER, Mayor

ATTEST: _____
Michele Gardner, Town Clerk

EXHIBIT "A" TO ORDINANCE NO. ____

Fairfax Municipal Code Chapter 5.55
"MANDATORY MEDIATION FOR RENTAL INCREASES"
REQUIRING MEDIATION FOR
RENTAL INCREASES EXCEEDING FIVE PERCENT

Section: 5.55.010 Purpose and intent.

It is the purpose and intent of this Chapter to increase certainty and fairness in the residential rental market within Town of Fairfax, in order to promote the health, safety, and general welfare of residents and businesses within the Town. This Chapter only governs disputes between Landlords and Tenants of rental Dwelling Units located within the Town of Fairfax.

Section: 5.55.020 Applicability.

The provisions of this Chapter 5.55 shall apply to all Dwelling Units in the Town of Fairfax containing a separate bathroom, kitchen, and living area, including a single-family dwelling or unit in a multifamily or multipurpose dwelling, a unit in a condominium or cooperative housing project, or a unit in a structure that is being used for residential uses whether or not the residential use is a conforming use permitted under the Town of Fairfax Municipal Code, which is hired, rented, or leased to a household within the meaning of California Civil Code Section 1940. This definition applies to any dwelling space that is actually used for residential purposes, including live-work spaces, whether or not the residential use is legally permitted.

Notwithstanding anything to the contrary above, the provisions of this Chapter 5.55 shall not apply to the following:

- (a) Any Dwelling Unit that is owned or operated by any government agency; or
- (b) Any Dwelling Unit for which one of the following is true (1) the Rent is limited to no more than affordable rent, as such term is defined in California Health & Safety Code Section 50053, pursuant and subject to legally binding restrictions enforceable against and/or governing such units; or (2) the Rent is directly subsidized by a government agency such that the Tenant's portion of the Rent does not exceed 30% of income.

Section: 5.55.030 Definitions.

For the purpose of this Chapter, the following words and phrases shall mean:

- (a) "Designated Service Provider" means a party, organization, or other governmental agency/department (e.g., County of Marin) selected by the Town Manager to provide Mediation services and other tasks necessary to implement the program and procedures contained in this Chapter and any associated Guidelines.
- (b) "Dwelling Unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household as defined in California Civil Code section 1940 and Town Code.

- (c) "Guidelines" means any written regulations, forms, notices for the administration and implementation of this Chapter adopted by the Town Manager, with review by the Town Attorney, and included in the Guidelines.
- (d) "Good Faith" participation includes the affirmative duty of the Landlord to: (i) refrain from any harassment or other prohibited activity described in Section 5.55.060 and to (ii) refrain from an unlawful detainer proceeding while the parties are engaged in proceedings under this Chapter excepting only those actions authorized by subsections (3) and (4) of California Code of Civil Procedure section 1161 or any successor provisions. Good Faith participation also includes the affirmative duty of the Tenant to abide by the terms of the lease or rental agreement and to pay all lawful Rent owed.
- (e) "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive Rent for the use and occupancy of any Dwelling Unit or portion thereof.
- (f) "Mediation" means one or more meetings in which a Landlord and Tenant have the opportunity to directly communicate with a Mediator and each other in a face-to-face setting at a neutral location in order to resolve a rental housing dispute under ground rules designed to protect the confidentiality and neutrality of the communications.
- (g) "Mediator" means a person who is employed by the Designated Service Provider and who meets any criteria for conducting Mediations that may be established in the Guidelines.
- (h) "Rent" means the consideration, including any funds, labor, bonus, benefit, or gratuity, demanded or received by a Landlord for or in connection with the use and occupancy of a Dwelling Unit and the Housing Services provided therewith, or for the assignment of a rental agreement for a Dwelling Unit.
- (i) "Tenant" means a person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Dwelling Unit.
- (j) "Town Manager" means the Fairfax Town Manager or his/her designee unless otherwise specified.

Section: 5.55.040 Mediation eligibility.

- (a) Tenant-initiated Mediation. A Tenant residing in a Dwelling Unit may file a request and receive Mediation services within either 30 calendar days from the enactment of this Chapter or ten calendar days of the Tenant's receipt of one or more notices in accordance with California Civil Code section 827 that individually or cumulatively increase Rent more than five percent (5%) within any 12-month period.
- (b) Landlord-requested Mediation. Any Landlord may file a request and receive Mediation services in order to pursue a Rent increase greater than five percent within any 12-month period.

Section: 5.55.050 Mediation process.

- (a) Designated Service Provider. The Town Manager shall contract with or designate a Designated Service Provider to provide Mediation services. The Guidelines may include a description of minimum qualifications for the Designated Service Provider and its Mediators.

(b) Mediation Requests.

- (1) Any Tenant or Landlord eligible for Mediation under Section 5.55.040 may request Mediation services from the Designated Service Provider.
- (2) Each Landlord and/or Tenant requesting Mediation services must complete and sign a form under penalty of perjury that demonstrates eligibility for Mediation under this Chapter and includes other information as may be specified in the Guidelines.
- (3) Separate requests for Mediation services that involve one or more of the same parties may be consolidated with the consent of the Landlord and the other Tenant(s), but consolidation is not required and shall not affect individuals' ability to be separately represented or to bring a separate legal action.
- (4) If an eligible Tenant has requested Mediation as a result of receiving one or more notices in accordance with California Civil Code section 827 that individually or cumulatively increase Rent more than five percent (5%) within any 12-month period, unless the parties otherwise agree in writing, such noticed Rent increase will not be effective until the Mediation concludes.

(c) Two-Step Mediation Process. The Designated Service Provider shall assign a Mediator within ten calendar days of receiving a complete request for Mediation services. The assigned Mediator shall offer a two-step Mediation process as follows:

- (1) Within two business days of receiving a Mediation assignment from the Designated Service Provider, the Mediator shall provide notice of the Mediation to the Landlord and Tenant. The Mediation notice shall, at a minimum, inform each party of their obligation to appear at the Mediation and participate in the Mediation in Good Faith. The Mediator shall make reasonable efforts to schedule Mediation sessions at times that are mutually convenient for the Landlord and the Tenant, which may include times that are outside of business hours. The Mediation process shall commence upon notification of the Landlord and Tenant by the Mediator.
 - (A) A Mediator may notify the Landlord and/or Tenant of the Mediation process via telephone, email, or any other form of communication, but at a minimum, the Mediator must notify each party in writing via first-class mail, postage prepaid to each parties' address of record.
 - (B) Following the Mediator sending such notification, both the Landlord and the Tenant have an affirmative obligation to participate in the Mediation in Good Faith until the Mediation concludes.
- (2) The Mediation process shall conclude upon the earlier of: (A) the execution of a legally enforceable, written Mediation agreement signed by all parties to the Mediation service under Section 5.55.050(e); (B) the Mediator's determination that no further progress is likely to result from continued Mediation; or (C) all of the parties to the Mediation indicate in writing that the Mediation has concluded to their satisfaction. In no event shall a Mediation process last longer than 30 calendar days from when the parties are notified unless the parties agree in writing to extend the Mediation term. If no legally enforceable, written Mediation agreement is reached, the Mediator shall prepare and distribute a nonbinding Mediation

statement under Section 5.55.050(f). The Mediator shall send the Mediation statement to each party's address of record via first-class mail, postage prepaid.

(d) Mandatory Participation. Every party to a Mediation is affirmatively obligated to participate in such Mediation in Good Faith until the Mediator determines the Mediation has concluded.

(1) Definition. For purposes of this Section, Good Faith participation includes by reference the definition described in Section 5.55.030 and also means the mutual obligation of the Landlord and Tenant to meet on each occasion when notified of Mediation proceedings, provide relevant information, exchange proposals, timely consider and respond to proposals by opposite parties, and engage in meaningful discussion on the subject of proposed Rent increases and issues related to the Rent increase.

(2) Failure to participate in Good Faith.

(A) No Rent increase will be effective unless or until the Landlord of the Dwelling Unit complies with the provisions of this Chapter by participating in Good Faith as described in Section 5.55.030 and 5.55.050 throughout the entirety of a Mediation process.

(B) If a Tenant fails to participate in Good Faith, the Mediator at his or her discretion may determine that the Tenant has withdrawn their request for Mediation service and conclude the Mediation process, allowing any Rent increase to be implemented in accordance with the notice requirements identified in California Civil Code section 827.

(3) Finding of a failure to participate in Good Faith.

(A) A Mediator or party to the Mediation process may request that the Town Manager investigate a claim of failure to participate in Good Faith by another party. The Town Manager shall be responsible for investigating allegations of a lack of Good Faith participation by any party.

(B) Any determination that a party has failed to participate in Good Faith in a proceeding under this Chapter shall only be made after a fair hearing by a hearing officer appointed by the Town Manager and the rendition of factual findings supported by the record. All parties to such hearing must receive written notice of the hearing at least five business days prior to the hearing date. Following such a hearing, the Town Manager shall give prompt notice of the determination by first-class mail, postage prepaid, to the affected party. Additional hearing procedures, including procedures for appeals (if any), may be specified in the Guidelines.

(e) Mediation Agreements.

(1) Any agreement reached by the parties in Mediation must:

(A) Be made in writing and signed by the parties;

- (B) State the specific terms of the Mediation agreement including the duration and conditions of the agreement;
 - (C) State the effective date of any agreed-upon Rent increase and stipulate to the adequacy of notice for any Rent increase in accordance with California Civil Code section 827;
 - (D) Be legally enforceable against the parties to the agreement;
 - (E) Provide that the agreement may be enforced via civil action by any party and by the County or its designee as third-party beneficiaries; and
 - (F) Provide that any agent or representative signing a Mediation agreement on behalf of other persons shall be responsible for promptly providing a copy of the agreement to the parties they represent.
- (2) A Tenant bound by a Mediation agreement may not request further Mediation concerning any Rent increase covering the same time period included in the Mediation agreement but may request Mediation concerning an additional Rent Increase that is first noticed or occurs after the Mediation agreement is signed by both parties.
- (f) Mediation Statements. If a Mediation service does not result in a Mediation agreement, then the designated Mediator shall produce a nonbinding Mediation statement. The Guidelines shall include form Mediation agreements and Mediation statements that include, without limitation, the following information:
- (1) The name of each party that appeared for and participated in Good Faith in the Mediation service; and
 - (2) A concise summary of the dispute including the perspectives of each party that appeared for and participated in Good Faith in the Mediation service.

Section: 5.55.060 Anti-harassment and other prohibited activities.

- (a) No Landlord may do any of the following in bad faith, with ulterior motive, or without honest intent:
- (1) Interrupt, fail to provide, or threaten to interrupt or fail to provide any Housing Service under a lease or rental agreement, including but not limited to utility services and other amenities and services agreed to by contract;
 - (2) Fail to perform repairs or maintenance required by contract or by State, Town, or County housing, health, or safety laws;
 - (3) Fail to exercise due diligence to complete repairs and maintenance once undertaken, including the failure to follow industry-appropriate safety standards and protocols;
 - (4) Abuse or otherwise improperly use Landlord's right to access the property;
 - (5) Remove personal property of the Tenant(s) from the Dwelling Unit;

- (6) Influence or attempt to influence the Tenant(s) to vacate the unit by means of fraud, intimidation, or coercion (including but not limited to threats based on immigration status in violation of California Civil Code section 1940.3);
 - (7) Offer payment or any other consideration, in return for the Tenant(s) vacating the Dwelling Unit, more often than once every six months;
 - (8) Threaten the Tenant(s) by word or gesture with physical harm;
 - (9) Interfere with the Tenant(s) right to quiet use and enjoyment of the Dwelling Unit;
 - (10) Refuse to accept or acknowledge receipt of lawful Rent from the Tenant(s);
 - (11) Interfere with the Tenant(s) right to privacy;
 - (12) Request Information that violates the Tenant(s) right to privacy;
 - (13) Other repeated acts or omissions of such significance as to substantially interfere with or disturb the Tenant(s) comfort, repose, peace, or quiet enjoyment, and that cause, are likely to cause, or are intended to cause the Tenant(s) to vacate the Dwelling Unit; or
 - (14) Retaliate against the Tenant(s) for the Tenant(s) exercise of rights under this Chapter or state or federal law.
- (b) Nothing in this Section 5.55.060 prohibits the lawful eviction of a Tenant in accordance with California Civil Code section 1946.1 or by any other appropriate legal means.

Section: 5.55.070 Civil remedies.

- (a) Injunctive relief. Any aggrieved person may enforce the provisions of this Chapter by means of a civil injunctive action. Any person who commits, or proposes to commit, an act in violation of this Chapter may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this section may be brought by any aggrieved person, by county counsel, the district attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.
- (b) Civil Liability. Any person who violates any of the provisions of this Chapter or who aids in the violation of any provisions of this Chapter is liable for, and the court must award to the individual whose rights are violated, three times the amount of special and general damages. The court may award in addition thereto not less than two hundred dollars (\$200.00) but not more than four hundred dollars (\$400.00), together with attorney's fees, costs of action, and punitive damages. Civil actions filed pursuant to this section must be filed within one year of the events giving rise to the alleged cause of action.

Section: 5.55.080 Notice of Tenant rights.

- (a) Landlords must provide to each Tenant a notice of Tenant rights under this Chapter that describes the Mediation service and how to request service; a form for providing such notice may be issued in the Guidelines.

- (b) Landlords must provide to Tenants the notice of Tenant rights under Section 5.55.080(a) in the following circumstances:
- (1) Within 30 calendar days of enactment of this Chapter;
 - (2) When entering a lease or rental agreement;
 - (3) When renewing a lease or rental agreement;
 - (4) When providing notice of a Rent increase; and
 - (5) At such times as required by the Town, which may include, but is not limited to, when this Chapter is significantly amended.
- (c) All notices provided under this Section shall be provided in the primary language of the Tenant, if reasonably feasible. If the Tenant's rental agreement was negotiated in another language, the Landlord is obligated to provide an accurate translation of the notification in that other language as well. In the event that the Designated Service Provider is unable to provide translation services for the parties, the parties who do not speak or are not comfortable with English must provide their own translators. To participate in Mediation proceedings, the translators will be required to take an oath that they are fluent in both English and the relevant foreign language and that they will fully and to the best of their ability translate the proceedings.
- (d) Failure to comply with the notice provisions described in this Chapter shall render any rental increase notice invalid and unenforceable. The failure to comply with the notice provisions will be cured only after the proper written notice of Tenant's Rights, along with a new rental increase notice, has been properly served on the tenant.

Section: 5.55.090 Severability.

The provisions of this Chapter are declared to be severable. If for any reason, any section, paragraph, clause, or phrase of this Chapter or the application thereof to any person, entity, or circumstance is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.