

URGENCY ORDINANCE NO. 828

AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 36937 ADDING CHAPTER 5.54 ENTITLED "JUST CAUSE EVICTIONS" TO FAIRFAX MUNICIPAL CODE TITLE 5, REQUIRING CAUSE TO TERMINATE A RESIDENTIAL TENANCY

WHEREAS, This Ordinance is adopted as an urgency ordinance pursuant to Government Code Section 36937. The facts constituting the urgency are as follows:

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, increasing rental prices combined with the constrained supply of rental housing in the Town can result in displacement of Town residents beyond the Town and region if a household's tenancy is terminated without a cause, with impacts particularly affecting very low-, low- and moderate-income households; and

WHEREAS, a 2018 research project by the California Housing Partnership and U.C. Berkeley's Urban Displacement Project regarding Rising Housing Costs and Re-segregation showed that displaced households experienced greater housing costs after displacement, whether they moved within their county of origin, to a new county in the Bay Area, within the region, or out of state; and

WHEREAS, just cause for eviction policies continue to allow landlords to terminate tenancies and evict tenants based on a tenant's failure to pay rent or illegal activities, a landlord's desire to withdraw the property from the rental market, and other specified reasons, while providing tenants with more stability and security; and

WHEREAS, just cause for eviction policies advance fair housing policy by: increasing transparency and reducing the chance that a termination of tenancy or eviction is motivated by unlawful discrimination or retaliation; specifically protecting existing tenants who are statistically more likely to be members of protected classes than homeowners in Fairfax due to historical housing policies; and

WHEREAS, the Town Council has identified seven specific causes for which a tenancy may be terminated that balance the needs of property owners, market conditions, and protections for the renter population in the Town; and

WHEREAS, the Town Council finds and determines that regulating the reasons for terminating a tenancy between certain residential landlords and residential tenants will increase certainty and fairness within the residential rental market in the Town 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 on December 18, 2018; and

WHEREAS, Chapter 5.54 is adopted and added to the Fairfax Town Code pursuant to the Town's police powers, afforded by the state constitution and state law, to protect the health, safety, and welfare of the public.

NOW THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

Section I. INCORPORATION OF RECITALS

The Town Council hereby finds that all of the foregoing recitals are true and correct and are hereby incorporated and adopted as findings of the Town Council.

SECTION II: FINDINGS

The Town Council hereby finds, determines and declares that this Urgency Ordinance adopted pursuant to California Government Code Section 36937 is necessary due to the following facts:

A. Housing, particularly affordable housing, is difficult to procure in the San Francisco Bay Area, including in the Town of Fairfax. No-cause evictions destabilize the housing market and can result in the loss of affordable housing; and

B. Without the imposition of this urgency ordinance, no cause evictions may result in the displacement of residential tenants who would be forced to find new housing; and

C. There is a current and immediate threat to the public peace, health, and safety of the Town and its community, thereby necessitating the immediate enactment of this urgency ordinance in order to ensure that tenants are not turned out of their homes without just cause; and

D. For the immediate preservation of the public peace, health and safety, the Town Council finds that it is necessary to adopt an ordinance regulating just cause evictions, for all of the reasons set forth in the recitals above, which are hereby incorporated and adopted by reference.

SECTION III: URGENT NEED

Based on the foregoing recitals and findings, all of which are deemed true and correct, this ordinance is urgently needed for the immediate preservation of the public peace, health, and safety. This Urgency Ordinance shall take effect immediately upon adoption in accordance with the provisions set forth in Government Code Section 36937.

SECTION IV: ACTION

The Fairfax Town Council ordains as follows: Chapter 5.54 Requiring Cause to Terminate a Residential Tenancy shall be codified in the Fairfax Town Code in the form attached as Exhibit "A" to Ordinance No. 828.

SECTION V: CEQA DETERMINATION

The Town Council finds that 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 VI: 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 VII: NOTICE.

The Town Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code.

SECTION VIII: EFFECTIVE DATE

This ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Section 36937 and therefore shall be passed immediately upon its introduction and shall become effective immediately, and shall be posted in three public places in the Town, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club.

PASSED AND ADOPTED at a regular meeting of the Town Council on the 6th day of March 2019 by the following vote, to wit:

AYES: ACKERMAN, COLER, GODDARD, LACQUES, REED
NOES: NONE
RECUSED: NONE



BARBARA COLER, Mayor

ATTEST:



Michele Gardner, Town Clerk

EXHIBIT "A" TO FAIRFAX TOWN COUNCIL URGENCY ORDINANCE NO. 828
Fairfax Town Code Chapter 5.54
Requiring Cause to Terminate a Residential Tenancy

Section: 5.54.010 Purpose and intent.

- (a) It is the purpose and intent of this Chapter to increase certainty and fairness in the residential rental market within Fairfax in order to promote the health, safety, and general welfare of residents and property owners within the Town. This Chapter regulates the reason(s) for and defines certain minimum term(s) under which certain residential tenancies may be terminated by Landlords of rental Dwelling Units located within the Town of Fairfax .
- (b) The Fairfax Town Manager or his/her designee has the authority to issue interpretations of and Guidelines to implement this Chapter.

Section: 5.54.020 Applicability.

- (a) General Application. Except as provided in Section 5.54.020(b) below, the provisions of this Chapter 5.54 shall apply to all properties in Fairfax that contain at least: (1) Dwelling Units which contain a separate bathroom, kitchen, and living area in a multifamily or multipurpose dwelling; (2) Dwelling Units in Single Room Occupancy residential structures; or (3) units in a structure that is being used for residential uses whether or not the residential use is a conforming use permitted under the Fairfax Town 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.
- (b) Exceptions. Notwithstanding anything to the contrary above, the provisions of this Chapter 5.54 shall not apply to the following types of Dwelling Units:
 - (1) Any Dwelling Unit for which one of the following is true: (A) the Dwelling Unit is owned or operated by any government agency; or (B) the Rent is directly subsidized by a government agency such that the Tenant's portion of the Rent does not exceed 30% of household income; or
 - (2) Any Dwelling Unit located in a development where no fewer than forty-nine percent (49%) of the Dwelling Units are subject to legally binding restrictions enforceable against and/or governing such units that limit the Rent to no more than an affordable rent, as such term is defined in California Health & Safety Code Section 50053; or
 - (3) Any Dwelling Unit occupied by a Tenant employed by the Landlord for the purpose of managing the property.

- (4) Any Junior Accessory Dwelling Unit as Defined in Fairfax Town Code §17.048.230.
- (5) A room or rooms in a single-family home where the landlord also lives in the home.

Section: 5.54.030 Definitions.

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

- (a) "Town" means the Town of Fairfax.
- (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 the Fairfax Town Code.
- (c) "For Cause" termination has the meaning provided in subsection (b) of Section 5.54.040.
- (d) "Guidelines" means any written regulations for the administration and implementation of this Chapter adopted by the Town Manager or his/her designee.
- (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) "No Fault" termination has the meaning provided in subsection (c) of Section 5.54.040.
- (g) "Notice of Termination" means a written notice that includes all of the components identified in Section 5.54.050.
- (h) "Primary Residence" means a Dwelling Unit that an owner occupies as a primary residence, as evidenced by the Dwelling Unit qualifying for a homeowner's property tax exemption.
- (i) "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
- (j) "Tenant" means a person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Dwelling Unit.
- (k) "Tenant Household" means all Tenant(s) who occupy any individual Dwelling Unit, and each minor child, dependent, spouse or registered domestic partner of any Tenant whose primary residence is the Dwelling Unit.

Section: 5.54.040 Cause required to terminate tenancy.

- (a) Prerequisites to terminate. No Landlord may terminate a residential tenancy of a Dwelling Unit unless the Landlord can demonstrate:
- (1) the Landlord possesses a valid Business License, if applicable, in accordance with Town Code; and
 - (2) the Landlord can demonstrate timely, good faith substantial compliance with the noticing requirements listed herein; and
 - (3) the Landlord served a Notice of Termination to the Tenant, in the form required by this Chapter; and
 - (4) the Landlord has not accepted and will not accept rent or any other consideration in return for the continued use of the Dwelling Unit beyond the term of the terminated tenancy in compliance with California Civil Code sections 1945, 1946, and 1946.1; and
 - (5) the termination qualifies as a For Cause or No Fault termination, as defined in this Section; and
 - (6) the Landlord has complied with the requirements listed in this Chapter.
- (b) For Cause Terminations. If a Landlord can show any of the following circumstances with respect to a termination of tenancy, the termination will qualify as "For Cause." Nothing in this section shall abrogate the protections afforded to survivors of violence consistent with the California Code of Civil Procedure Section 1161.3, as amended, and the Violence Against Women Act, Public Law 102-322, as amended.
- (1) Failure to Pay Rent. Tenant failed to pay Rent within three days of receiving written notice from the Landlord demanding payment as provided in subsection 2 of California Code of Civil Procedure section 1161.
 - (2) Breach of Rental Contract. Tenant violated a material term of the rental agreement as provided in subsection 3 of California Code of Civil Procedure section 1161.
 - (3) Tenant Illegal Activities. Tenant has been convicted for using the Dwelling Unit for an illegal purpose as provided in subsection 4 of California Code of Civil Procedure section 1161, including but not limited to the unlawful distribution of a controlled substance as contemplated by California Civil Code section 3486, the unlawful use, manufacture, or possession of weapons and ammunition as contemplated by California Civil Code section 3485, or for of a serious crime or violent felony as defined by

applicable law, which occurred during the tenancy and within 1,000 feet of the Dwelling Unit. For purposes of this subsection, Tenant Household, after receiving a written notice, may cure the violation by removing, and demonstrating such removal, of the offending Tenant.

- (4) Threat of Violent Crime. Any statement made by a Tenant, or at his or her request, by his or her agent to any person who is on the property that includes the unit or to the Landlord, or his or her agent, threatening the commission of a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, when on its face and under the circumstances in which it is made, it is so unequivocal, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety.
 - (5) Nuisance Behavior. The Tenant, after written notice to cease and the passage of a reasonable period of time to abate or cure, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Dwelling Unit. Such nuisance or disorderly conduct includes, without limitation, violations of applicable local, state and federal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Dwelling Unit, or the creation or maintenance of a dangerous or unsanitary condition in violation of applicable local, state, and Federal law, and may be further defined in the Guidelines adopted by the Town Manager or his/her designee.
 - (6) Causing damage to, or trespass to, any property or possessions of any other tenant or the landlord, or otherwise committing waste to the Dwelling Unit or premises.
 - (7) Notwithstanding the limitations of California Code of Civil Procedure Section 1161.3, as amended, act or acts constituting domestic violence or sexual assault or stalking against the Tenant or a member of Tenant's household cannot form the substantial basis of a For Cause reason to terminate the tenancy of the victim of such acts. A member of a Tenant household may raise such facts as an affirmative defense to an action terminating the tenancy.
- (c) No Fault Terminations. If a Landlord can show any of the following circumstances with respect to a termination of tenancy, the termination will qualify as "No Fault."

- (1) Landlord Will Permanently Remove Unit from Rental Market. Landlord will imminently demolish the Dwelling Unit or otherwise permanently remove the Dwelling Unit from any residential rental use or purpose, in accordance with California Government Code sections 7060 – 7060.7.
 - (2) Landlord Will Move in to Dwelling Unit. Landlord, or one of Landlord's parents, grandparents, brothers, sisters, aunts, uncles, nieces, nephews, or child(ren), intend to move into and reside in the Dwelling Unit as his, her, or their Primary Residence. The Dwelling Unit must be occupied as the Primary Residence within three months of the Tenant household vacating the Dwelling Unit, and the Dwelling Unit must continue to be occupied as the Primary Residence for at least one year.
 - (3) Substantial Rehabilitation for Health and Safety. Landlord has obtained permits to undertake substantial repairs to the Dwelling Unit that cannot be completed while the Dwelling Unit is occupied. To qualify, such substantial repairs must be for the primary purpose of making the Dwelling habitable or bringing the Dwelling Unit into compliance with applicable health and safety codes.
- (d) Buy-Out Agreements. Nothing in this Chapter shall expand or limit a Landlord and Tenant's ability to negotiate or agree to end a tenancy voluntarily in exchange for money or other consideration.

Section: 5.54.050 Notice of Termination.

- (a) Contents of Notice of Termination. In addition to any information required by state or federal law, each Notice of Termination subject to this Chapter must include the following information.
 - (1) The name and address of the Landlord where the Landlord will accept service of process; and
 - (2) The location of the Dwelling Unit; and
 - (3) The total length of the notice prior to termination of tenancy (expressed as number of days from delivery of notice until the anticipated final date of tenancy); and
 - (4) The intended final date of occupancy under the tenancy; and
 - (5) At least one applicable cause for which the tenancy will be terminated, in accordance with Section 5.54.040.
- (b) Language of Notice of Termination. If the Tenant's rental agreement was negotiated in a language other than English, then the Landlord is obligated to

provide an accurate translation of the Notice of Termination in the language in which the rental agreement was negotiated.

- (c) Delivery of Notice. Each Notice of Termination must be delivered to the Tenant Household in accordance with Civil Code sections 1946 and 1946.1, as applicable.

Section: 5.54.055 Copy of Notice to Town.

Landlords must provide a copy of the Notice of Termination to the Town of Fairfax Attn: Town Manager within ten days of delivery to the Tenant(s). In the event that the Landlord has identified a breach of a rental contract as a cause for the Termination as provided in Section 5.54.040 (b), the Landlord must attach a copy of the applicable rental agreement or contract to the Notice of Termination when submitting the Notice of Termination to the Town. Notices of Termination may be submitted as specified in the Guidelines.

Section: 5.54.060 Extended notice for certain No Fault terminations.

Each Tenant household whose tenancy is terminated pursuant to subsection (c)(1) of Section 5.54.040 (Landlord will permanently remove unit from rental market) must receive notice of the termination at least one hundred twenty (120) days prior to the intended final date of occupancy under the tenancy.

Section: 5.54.070 Civil remedies.

- (a) Affirmative Defense. A Landlord's failure to comply with this Chapter, including but not limited to the identification of an applicable cause for termination described in Section 5.54.040 and delivery of a completed Notice of Termination in accordance with Section 5.54.050, shall be an affirmative defense to an unlawful detainer action by Landlord.
- (b) Civil Liability. Whenever a Landlord attempts to prevent a tenant from acquiring any rights under this chapter, retaliates against a Tenant or Tenant Household for the exercise of any rights under this chapter, or engages in activities prohibited under this chapter, the Tenant or Tenant Household, may institute a civil proceeding for money damages or injunctive relief, or both. This section creates a private right of action to enforce all terms, rights, and obligations under this chapter. Whoever is found to have violated this chapter shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees, and whatever other relief the court deems appropriate. In the case of an award of damages, said award may be trebled if the trier of fact finds that the Landlord acted in knowing violation, reckless disregard, or otherwise willfully failed to comply with this chapter. The court may award the defendant attorney's fees and costs as the prevailing party in cases where plaintiff's claim is deemed unreasonable, frivolous, meritless or vexatious.

- (c) Civil Action to Determine Liability. Any Tenant may bring a civil action to determine the applicability of this chapter to the tenancy.
- (d) Other Private Rights of Action. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

Section: 5.54.100 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.