



TOWN OF FAIRFAX

STAFF REPORT

July 12, 2022

Continued Adjourned Meeting (from July 6, 2022)

TO: Mayor and Town Council

FROM: Heather Abrams, Town Manager

SUBJECT: Discuss possible amendments to Town Code Chapter 5.54 'Just Cause Evictions' and provide direction to staff

RECOMMENDATION

Discuss possible amendments to Town Code Chapter 5.54 'Just Cause Evictions' and provide direction to staff.

BACKGROUND

Between 2018 and 2019, the Town Council adopted three ordinances intended to provide renter protections in the Town Fairfax:

- Ordinance No. 816 Income-based Rental Discrimination prohibition
- Ordinance No. 829 Just Cause Evictions (Town Code Chapter 5.54)
- Ordinance No. 830 Mandatory Mediation for Rent Increases Exceeding 5%

During the Covid-19 pandemic, the Council has adopted two more ordinances to continue to protect renters from housing instability when State and County protections were scheduled to expire:

- Urgency Ordinance No. 853 Prohibiting Residential Evictions Without Cause
- Urgency Ordinance No. 864 Prohibiting Residential Evictions Without Cause

DISCUSSION

In recent months, the Council has received a number of public comments in support of strengthening the Town's Just Cause Evictions ordinance. The comments included many of the suggestions in the attached list of potential amendments sent by the Marin Democratic Socialists of America. The Council may wish to use the list as a framework for its discussion.

Staff is seeking direction on what, if any, amendments the Council wishes to make to its Just Cause ordinance (Attachment A). Depending on the Council's direction, an amended ordinance could be brought back at a future meeting for the Council to consider.

FISCAL IMPACT

N/A

ATTACHMENTS

- A. Town Code Chapter 5.54 'Just Cause Evictions'
- B. Marin DSA list of potential amendments

CHAPTER 5.54: JUST CAUSE EVICTIONS

Section

- 5.54.010 Purpose and intent
- 5.54.020 Applicability
- 5.54.030 Definitions
- 5.54.040 Cause required to terminate tenancy
- 5.54.050 Notice of termination
- 5.54.055 Copy of notice to town
- 5.54.060 Extended notice for certain no fault terminations
- 5.54.070 Civil remedies
- 5.54.100 Severability

§ 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 or her designee has the authority to issue interpretations of and guidelines to implement this chapter.

(Ord. 828, passed 3-6-2019; Am. Ord. 829, passed 4-3-2019)

§ 5.54.020 APPLICABILITY.

(A) *General application.* Except as provided in § 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 Cal. Civil Code § 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 49 percent 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 Cal. Health & Safety Code § 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.

(Ord. 828, passed 3-6-2019; Am. Ord. 829, passed 4-3-2019)

§ 5.54.030 DEFINITIONS.

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

DWELLING UNIT. 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 Cal. Civil Code § 1940 and the Fairfax Town Code.

FOR CAUSE TERMINATION. The meaning provided in § 5.54.040(B).

GUIDELINES. Any written regulations for the administration and implementation of this chapter adopted by the Town Manager or his or her designee.

LANDLORD. 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.

NO FAULT TERMINATION. The meaning provided in § 5.54.040(C).

NOTICE OF TERMINATION. A written notice that includes all of the components identified in § 5.54.050.

PRIMARY RESIDENCE. 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.

RENT. 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.

TENANT. A person entitled by written or oral agreement, or by sufferance, to the use or occupancy of a dwelling unit.

TENANT HOUSEHOLD. 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.

TOWN. The Town of Fairfax.

(Ord. 828, passed 3-6-2019; Am. Ord. 829, passed 4-3-2019)

§ 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 the 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 Cal. Civil Code §§ 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 Cal. Code of Civil Procedure § 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 Cal. Code of Civil Procedure § 1161(2).

(2) *Breach of rental contract.* Tenant violated a material term of the rental agreement as provided in Cal. Code of Civil Procedure § 1161(3).

(3) *Tenant illegal activities.* Tenant has been convicted for using the dwelling unit for an illegal purpose as provided in Cal. Code of Civil Procedure § 1161(4), including but not limited to the unlawful distribution of a controlled substance as contemplated by Cal. Civil Code § 3486, the unlawful use, manufacture, or possession of weapons and ammunition as contemplated by Cal. Civil Code § 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 division (B)(3), 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 or 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 Cal. Code of Civil Procedure § 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 Cal. Government Code §§ 7060 through 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.

(Ord. 828, passed 3-6-2019; Am. Ord. 829, passed 4-3-2019)

§ 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 § 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 Cal. Civil Code §§ 1946 and 1946.1, as applicable.

(Ord. 828, passed 3-6-2019; Am. Ord. 829, passed 4-3-2019)

§ 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 § 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.

(Ord. 828, passed 3-6-2019; Am. Ord. 829, passed 4-3-2019)

§ 5.54.060 EXTENDED NOTICE FOR CERTAIN NO FAULT TERMINATIONS.

Each tenant household whose tenancy is terminated pursuant to § 5.54.040(C)(1) of (Landlord will permanently remove unit from rental market) must receive notice of the termination at least 120 days prior to the intended final date of occupancy under the tenancy.

(Ord. 828, passed 3-6-2019; Am. Ord. 829, passed 4-3-2019)

§ 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 § 5.54.040 and delivery of a completed notice of termination in accordance with § 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.

(Ord. 828, passed 3-6-2019; Am. Ord. 829, passed 4-3-2019)

§ 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.

(Ord. 828, passed 3-6-2019; Am. Ord. 829, passed 4-3-2019)

Proposed Additions & Changes to Strengthen Fairfax's Just Cause Eviction Protections

1. Right of Return

Tenants who are displaced due to no fault terminations (i.e., removal from the rental market, owner move-in, or substantial rehabilitations/major repairs) have the right to return to the unit if it should ever be returned to the market by the landlord or a successor landlord. The return tenancy shall include the same terms as the original tenancy and the rent shall be the rent lawfully paid by the tenant at the time the landlord served the termination notice.

If the tenant declines to reoccupy the unit after it is returned to the rental market, the lawful base rent for the new tenancy shall be the rent lawfully paid by the former tenant at the time the landlord served the termination notice, plus any lawful adjustment under the Fairfax Rent Stabilization ordinance.

2. Additional Eviction Protections for Elderly, Disabled, or Terminally Ill Tenants

A landlord may not evict a tenant due to a no-fault owner-move if: (1) the tenant has resided in the rental unit for at least three years and is either at least 62 years of age or disabled; or (2) if the tenant is certified as being terminally ill by the tenant's treating physician.

A landlord may evict a tenant who qualifies for the exemption above if the landlord or enumerated relative who will occupy the rental unit is also disabled and no other units are available at the property.

3. Additional School Year Eviction Protections for Educators and Students

A landlord may not evict a tenant due to a no-fault owner-move if: a child under the age of 18 or any educator resides in the unit, the child or educator is a tenant in the unit, or the child has a custodial or family relationship with a tenant in the unit, the tenant has resided in the unit for 12 months or more, and the expiration date of the notice of termination of tenancy falls during the school year.

4. Ellis Act Withdrawal Protections

If a landlord seeks in good faith to recover possession of all rental units on a parcel of land to permanently withdraw them from the rental market or for demolition under the Ellis Act, then they must provide 120 days notice of withdrawal to all tenants. If a tenant is 62 years or older or disabled and has lived in their rental unit for at least one year, then the landlord must provide one year notice of withdrawal. The landlord cannot change the terms of the lease during this period.

5. Relocation Payments

If a landlord seeks to recover possession of a rental unit by means of a no fault termination (i.e., removal from the rental market, owner move-in, or substantial rehabilitations/major repairs), then they must make relocation payments to each tenant of the rental unit. Relocation payments are to be paid at the time of the service of the notice of termination of tenancy.

We propose the following base relocation payment amounts, based on the size of the unit and the expected costs tenant households incur from moving (first and last months' rent, security deposit, moving and packing expenses, etc):

- Studio: \$7,000
- 1 Bedroom: \$9,000
- 2 Bedrooms: \$11,000
- 3+ Bedrooms: \$13,000

If a tenant household includes a tenant who is disabled, 62 years or older, 17 years or younger, or terminally ill, they should receive an additional \$3,000 relocation payment. Relocation payments should increase annually at the rate of increase in the “rent of primary residence” expenditure category of the Consumer Price Index (CPI) for Marin County for the preceding calendar year.

6. Relocation Payments for Temporary Displacement

If a tenant is displaced from their rental unit for renovation work for 30 days or less, the landlord must make short-term relocation payments to the tenant. The tenant may elect not to receive short-term relocation payments. If the tenant receives short-term relocation payments, they must pay their normal rent. If the tenant has elected not to receive short-term relocation payments, they are not obligated to pay rent until they re-occupy the rental unit.

We propose the following amounts be paid by the landlord to the tenant for each day of short-term displacement:

- Hotel or motel accommodations: \$168.15 per household;
- Meal expenses: \$33.85 per occupant;
- Laundry: \$1.12 per household;
- Pet accommodation: \$32.73 per cat and \$58.69 per dog.

Short-term relocation payment amounts should be adjusted yearly based on the CPI increase.

7. Breach of Lease Qualifications

A tenant may be lawfully evicted if, after written notice to cease, they substantially violate any of the written material terms of their lease. However, a tenant may not be evicted for refusing to sign a new lease. To constitute a breach of lease, the substantially violated term must be reasonable and legal and have been accepted in writing by the tenant as part of the lease. If the violated terms are part of a new lease, then the landlord must have first notified the tenant in writing that they need not accept such terms.

8. Failure to Pay Rent Qualifications

A tenant may be lawfully evicted if they fail to pay the rent. However, a tenant may not be evicted if a landlord refuses to accept rent paid on behalf of the tenant by a third party (e.g., a government agency or non-profit organization). Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party

as long as either the landlord or the tenant provide written notice that no new tenancy is intended.

9. Substantial Rehabilitation for Health and Safety

A tenant may be lawfully displaced if their landlord must make substantial repairs for health and safety reasons that cannot be completed while the unit is occupied. However, such evictions are by definition, *temporary*. Section 5.54.040 (C)(3) of the Town of Fairfax Municipal Code should be updated to make this clear and explicit, drawing on Section 5.57.030 (B)(5) of the model ordinance for updated language.

10. Buy-Out Agreements

A landlord and tenant may negotiate or agree to end a tenancy voluntarily in exchange for money or other considerations. All buyout agreements must be in writing. Prior to making a buyout offer, the landlord must provide each tenant in that rental unit a written disclosure that includes:

- A statement that the tenant has a right not to enter into a buyout agreement;
- A statement that the tenant may choose to consult with an attorney before entering into a buyout agreement;
- A statement that the tenant may rescind the buyout agreement for up to forty-five days after it is fully executed;
- A space for each tenant to sign and write the date the landlord provided the tenant with the disclosure.

11. Stages of Eviction

Landlords are prohibited from terminating a residential tenancy without cause. The various stages of termination should be clear and explicitly defined to ensure compliance with this fundamental principle. Section 5.54.040 (A) of the Town of Fairfax Municipal Code should be updated or replaced with Section 5.57.030 (B) of the model ordinance.

12. Applicability

Just cause eviction protections should apply to affordable housing units and junior accessory dwelling units. Sections 5.54.020 (B)(2) and (B)(4) of the Town of Fairfax Municipal Code should be struck to reflect this.

Addendum I: Definitions

1. **Disabled:** The term “Disabled” is defined in Government Code Section 12955.3: “For purposes of this part, “disability” includes, but is not limited to, any physical or mental disability as defined in Section 12926.”
2. **Educator:** Any person who works at a school in Marin County as an employee or independent contractor of the school or of the governing body that has jurisdiction over the school, including, without limitation, all teachers, classroom aides, administrators, administrative staff, counselors, social workers, psychologists, school nurses, speech pathologists, custodians, security guards, cafeteria workers, community relations specialists, child welfare and attendance liaisons, and learning support consultants.
3. **School Year:** The first day of instruction for the Fall Semester through two weeks after the last day of instruction for the Spring Semester for the school at which the educator in question works or the student in question attends.

Addendum II: Elderly Tenants

Elderly tenants are defined as being 62 years or older, with 62 being the age at which people may start receiving Social Security retirement benefits.

Addendum III: Relocation Payment Amounts

The proposed relocation amounts were calculated by taking the rounded average relocation payments of six different California rent control jurisdictions, all of which determine their payments based on the size of the unit. The six jurisdictions are: Alameda, Los Angeles County, Oakland, Richmond, San Jose, and West Hollywood. Santa Monica also determines their relocation payments based on unit size, but was excluded from the average calculation as a particularly high outlier.

Jurisdiction	Studio	1BR	2BR	3BR+
Alameda	\$5,782	\$6,494	\$7,502	\$9,420
Los Angeles County	\$7,654	\$8,662	\$10,797	\$13,115
Oakland	\$6,500	\$6,500	\$8,000	\$9,875
Richmond	\$7,939	\$12,169	\$16,515	\$16,515
San Jose	\$6,925	\$8,400	\$10,353	\$12,414
Santa Monica	\$16,650	\$22,900	\$31,850	\$31,850
West Hollywood	\$7,911	\$11,171	\$15,048	\$19,858
Average (excluding SM)	\$7,118	\$8,899	\$11,369	\$13,533
Rounded Average	\$7,000	\$9,000	\$11,000	\$13,000