

Rent Control Summary

The Town Council of the Town of Fairfax is considering adopting a Rent Stabilization Ordinance and strengthening its Just Cause Evictions Ordinance protections. Seniors on fixed incomes, young people, people of color, immigrants, and working people of all backgrounds increasingly cannot afford to buy a house in Fairfax or elsewhere in Marin County and depend on stable rents to live here. Stabilizing rents will protect existing affordable housing stock, enabling local residents to live where they work, thereby shortening commutes, improving traffic and air quality, and lowering local carbon emissions.

Important provisions related to Rent Control in a model Rent Stabilization and Just Cause Evictions ordinance provided to the Town by ACCE are listed below:

- Establishment of a local Rent Control Board to ensure local enforcement
- Assure broad community education about the program for both tenants and landlords, including information that can be downloaded from the Town's website
- Landlords of eligible units shall be required to register their units and pay a business license fee and a Rental Housing Registration Fee
- A base rent for eligible units shall be the rent in effect at a previous date to adoption, or, if tenancy started after that date, the rent at the start of the tenancy
- There will be an Annual General Adjustment of rent established by the Rent Board; the rent adjustment stated in the model ordinance is equal to approximately 60% of the percentage increase in the Consumer Price Index for the local region; the Annual General Adjustment shall not be less than zero percent or more than 5%
- Landlords and Tenants can petition for adjustments up or down to the Annual General Adjustment
- A hearing officer process, and appeal process to the Rent Board, are cited for considering and acting on the petitions; a 30-day notice requirement by a landlord to a tenant is required for actions involving increases upwards of Maximum Allowable Rents before the increased rent becomes effective
- Landlords must maintain properties in a specified "habitable condition" for tenants
- Landlords have the right to a Reasonable Return on their Investment – considerations include, but are not limited to, increases in property taxes; unavoidable increases in maintenance and operating expense; etc.
- The Rent Board shall establish rules, regulations, and penalties for enforcement of the Rent Control provisions

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

MODEL ORDINANCE

MODEL ORDINANCE FOR THE TOWN OF FAIRFAX ADDING CHAPTER 5.57, ENTITLED “RENT STABILIZATION AND JUST CAUSE EVICTIONS” TO FAIRFAX MUNICIPAL CODE TITLE 5, ESTABLISHING RENT CONTROL AND STRENGTHENING JUST CAUSE EVICTION PROTECTIONS

SECTION I: FINDINGS

The Town Council of the Town of Fairfax finds that:

WHEREAS, more than 1,200 Fairfax households rent their homes, constituting approximately 37% of total town households, as identified in the 2021-04-02 Housing Needs Data Report: Fairfax; and

WHEREAS, approximately 24% of Fairfax rental households are low income, which is defined as earning between 51 and 80 percent of the county’s area median income, as identified in the 2021-04-02 Housing Needs Data Report: Fairfax; and

WHEREAS, approximately 12% of Fairfax rental households are very low income, which is defined as earning between 30 and 50 percent of the county’s area median income, as identified in the 2021-04-02 Housing Needs Data Report: Fairfax; and

WHEREAS, approximately 36% of Fairfax rental households are extremely low income, which is defined as earning between 0 and 30 percent of the county’s area median income, as identified in the 2021-04-02 Housing Needs Data Report: Fairfax; and

WHEREAS, approximately 48% of Fairfax renters were estimated to be rent-burdened, which is defined as paying more than 30 percent of household income on rent, with 28% of renters estimated to be severely rent-burdened, which is defined as paying more than 50 percent of household income on rent, as identified by the U.S. Census Bureau, 2019: American Community Survey 5-Year Estimates; and

WHEREAS, an estimated 530 renter-occupied lower income households in Fairfax are paying more than 30% of their annual income on rent, including 335 who are paying more than 50% on rent, as identified in Appendix H-B: Housing Needs Assessment of the Town’s Housing Element Update 2015-2023; and

WHEREAS, according to the National Low Income Housing Coalition's "Out of Reach 2021" study, a renter household would need to earn \$55.77 an hour to afford an average one-bedroom apartment or \$67.69 an hour to afford an average two-bedroom apartment in Fairfax without being rent-burdened, although the average real wage for Marin renters is just \$23.23 an hour; and

WHEREAS, according to the Elder Index developed by the Gerontology Institute at the University of Massachusetts Boston, the average Marin senior renter spends \$2,695 per month on housing, constituting between 64-68% of their total monthly expenses; and

WHEREAS, 87% of Fairfax householders under the age of 35 are renters, as identified by the U.S. Census Bureau, 2019: American Community Survey 5-Year Estimates; and

WHEREAS, 68% of Fairfax householders who identify as Hispanic or Latino are renters, as identified in the 2021-04-02 Housing Needs Data Report: Fairfax; and

WHEREAS, 66% of Fairfax householders who identify their race as something other than white are renters, as identified in the 2021-04-02 Housing Needs Data Report: Fairfax; and

WHEREAS, the rising costs of rents are forcing people out of their homes and out of our community; and

WHEREAS, seniors on fixed incomes, young people, people of color, immigrants, and working people of all backgrounds increasingly cannot afford to buy a house in Fairfax or elsewhere in Marin and depend on stable rents in order to live here; and

WHEREAS, stabilizing rents will protect existing affordable housing stock, enabling local residents to live where they work, thereby shortening commutes, improving traffic and air quality, and lowering local carbon emissions; and

WHEREAS, the right to adequate housing is an internationally recognized human right, sanctioned by the United Nations and enumerated to include protection against forced evictions, security of tenure, and non-discriminatory access, as identified by the Office of the United Nations High Commissioner for Human Rights, The Right to Adequate Housing, Fact Sheet No. 21/Rev.1; and

WHEREAS, the State Of California Tenant Protection Act of 2019 establishes an annual allowable rent increase of 5 percent plus inflation, far exceeding that of all municipal rent control districts in the Bay Area; and

WHEREAS, the State Of California Tenant Protection Act of 2019 is not proactively enforced by the state and depends on renters knowing their rights and pursuing legal remediation when they are violated; and

WHEREAS, Chapter 5.54 (Just Cause Evictions) of the Fairfax Town Code does not include protections commonly found in other Bay Area rent control and just cause eviction ordinances, such as relocation payments for renters evicted due to no fault of their own, securing the right of return/first right of refusal for renters who are evicted due to no fault of their own, and special protections against eviction for seniors, the disabled, and for educators and students during the school year; and

WHEREAS, in accordance with Civil Code Section 1946.2(g)(1)(B), the Fairfax Town Council finds that this ordinance is more protective than the provisions of Civil Code Section 1946.2 for the following reasons:

- (1) The just cause for termination of a residential tenancy under this Chapter is consistent with Civil Code Section 1946.2; and
- (2) This Chapter further limits the reasons for termination of a residential tenancy, provides for relocation assistance, and provides additional tenant protections that are not prohibited by any other provision of law.

WHEREAS, there are an estimated 699 multi-family rental units in Fairfax, constituting approximately 57% of total renter-occupied housing units, as identified in the 2021-04-02 Housing Needs Data Report: Fairfax; and

WHEREAS, an estimated 97% of all Fairfax housing units are in structures built before 1995, as identified in Appendix H-B: Housing Needs Assessment of the Town's Housing Element Update 2015-2023;

SECTION II: ACTION

The Town of Fairfax therefore ordains as follows: Ordinance # is hereby adopted and Chapter 5.57 Establishing Rent Control and Strengthening Just Cause Eviction Protections shall be codified in the Fairfax Town Code in the form attached hereto as Exhibit "A" to Ordinance #.

SECTION III: 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 the Ordinance may have a significant effect on the environment, in that this ordinance applies residential tenant protection 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 be 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; Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club.

SECTION VI: VOTE

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the _____ day of _____ 2022 and duly adopted at the next regular meeting of the Town Council on the _____ day of _____ 2022, by the following vote, to wit:

AYES:

NOES:

ABSENT:

EXHIBIT “A” TO FAIRFAX TOWN COUNCIL ORDINANCE NO. #
Fairfax Town Code Chapter 5.57
Rent Stabilization and Just Cause Evictions

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Section: 5.57.010 Purpose and Intent.

(A) The purpose of this Chapter is to promote neighborhood and community stability, healthy housing, and affordability for renters in Fairfax by controlling excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring landlords a fair and reasonable return on their investment.

Section: 5.57.020 Definitions.

The following words or phrases as used in this Chapter shall have the following meanings:

(A) **Annual Allowable Rent Adjustment:** Annual Allowable Rent Adjustment refers to the limit on the Maximum Allowable Rent increase, which a Landlord may charge on any Controlled Rental Unit each year without an order from a hearing officer.

(B) **Board:** The Fairfax Rent Control, Just Cause, and Community Stability Board established by this Chapter.

(C) **Disabled:** The term “Disabled” is defined in Government Code Section 12955.3.

(D) **Controlled Rental Units:** All Rental Units in the Town of Fairfax except those rental units exempt under one or more of the following provisions:

(1) Rental Units in hotels, motels, and inns, which are rented primarily to transient guests for a period of fewer than thirty (30) days.

This exemption does not apply (1) to a Tenant who has resided at the Property for more than thirty continuous days (2) a Tenant who has entered into an agreement to lease a Rental Unit for 30 days or more, or (3) where a Landlord has violated California Civil Code 1940.1 with regard to the Tenant.

(2) Rental Units in any hospital, convent, monastery, extended medical care facility, non-profit home for the aged, or dormitory as defined in California Building Code Section 202 that is solely owned and operated by an accredited institution of higher education.

(3) Rental Units which a government unit, agency or authority fully owns, operates and manages. This exemption applies only if applicable federal or state law or administrative regulation specifically exempt such units from municipal rent control.

(4) A Rental Unit that is the Primary Residence of the Landlord and has been since the inception of the tenancy, and where the Landlord shares a bathroom or kitchen with the Tenant.

(5) Rental Units exempt pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50—1954.535).

If this Section 5.57.020(D)(5) is repealed by operation of law, new Rental Units shall be exempt per this subsection only if newly constructed within

Controlled Rental Unit was previously demolished shall not be exempt as new construction.

- (E) **Creditworthiness**: Any standard of determining suitability to receive credit or reliability to pay money owed, including any financial or income standard.
- (F) **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.
- (G) **Housing Services**: Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, access to exterior doors, entry systems, and gates, utilities (unless separately metered and billed to the Tenant by the utility company since the inception of the tenancy, as provided in the lease), refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants or Tenants, the right to have pets, utility infrastructure, and any other benefit, privilege or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.
- (H) **Landlord**: An owner, lessor, sublessor or any other person entitled to receive rent for the use and occupancy of any Rental Unit, or an agent, representative or successor of any of the foregoing.
- (I) **Maximum Allowable Rent**: The maximum allowable rent which may be legally charged on any Controlled Rental Unit covered by this Chapter.
- (J) **Primary Residence**: Occupancy of a Primary Residence does not require that the individual be physically present in the unit at all times or continuously, but the unit must be the individual's usual place of return.

(1) Indicia of Primary Residence include:

- (a) The individual carries on basic living activities at the subject premises for extended periods;
- (b) The subject premises are listed with other public agencies, including Federal, State and local taxing authorities as the individual's primary residence;
- (c) Utilities are billed to and paid by the individual at the subject premises;
- (d) A homeowner's tax exemption for the individual has not been filed for a different property;
- (e) The occupant is not registered to vote at any other location;
- (f) All or most of the individual's personal possessions have been moved into the subject premises;
- (g) The subject premises are the place the individual normally returns to as their home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, incarceration, or other reasonable temporary periods of absence;
- (h) Other relevant factors illustrating Primary Residence.

(2) In order for a housing unit to qualify as a Primary Residence, ownership must be held in the name of the natural person claiming Primary Residence and cannot be held by a limited liability corporation, limited partnership, or other corporate structure. A housing that is owned by a living trust may qualify as a Primary Residence if the trust beneficiary meets the above criteria, so long as the Landlord provides documentation to the Board of the name and address of all trust beneficiaries.

(K) **Property**: All rental units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

(L) **Rent**: All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord under a Rental Agreement, as defined in this Section, concerning the use or occupancy of a Rental Unit and premises,

including all payment and consideration demanded or paid to the Landlord for parking on or near the Property, utilities, pets, furniture, and subletting.

- (M) **Rental Agreement**: An agreement, oral, written or implied, between a Landlord and Tenant for use or occupancy of a Rental Unit and for Housing Services.
- (N) **Rental Housing Fee**: The fee described in Section 5.57.070 of this Chapter.
- (O) **Rental Unit**: Any building, structure, or part thereof, or land appurtenant thereto, or any other rental property rented or offered for rent for residential purposes, together with all Housing Services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by a Tenant, regardless of zoning or permitting status. A room or rooms rented separately from other rooms at the same property shall constitute a single Rental Unit, even if Tenants share other common spaces or amenities.
- (P) **School Year**: The first day of instruction for the Fall Semester through two weeks after the last day of instruction for the Spring Semester, as posted on the Ross Valley Elementary School District website for each year.
- (Q) **Tenant**: A tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a Rental Agreement to the use or occupancy of any Rental Unit.
- (R) **Tenant Organization**: Any group of Tenants who organize collectively for their shared interest(s) as Tenants, including concerns regarding repairs and maintenance, rent amounts or rent increases, evictions, discrimination, or harassment, regardless of whether they share the same Landlord or management company.
- (S) **Utility Charges**: Any charges for gas, electricity, water, hot water, sewer, refuse removal, cable or internet.

Section: 5.57.030 Just Cause for Eviction Protections.

- (A) **Exemptions**. The following Rental Units shall be exempt from this Section, except that all exempt units must comply with the requirement of Section 5.57.030(C).
 - (1) Rental Units in hotels, motels, and inns, which are rented primarily to transient guests for a period of fewer than thirty (30) days.

This exemption does not apply (1) to a Tenant who has resided at the Property for more than thirty continuous days (2) a Tenant who has entered into an agreement to lease a Rental Unit for 30 days or more, or (3) where a Landlord has violated California Civil Code 1940.1 with regard to the Tenant.

(2) Rental Units in any hospital, convent, monastery, extended medical care facility, non-profit home for the aged, or dormitory as defined in California Building Code Section 202 that is solely owned and operated by an accredited institution of higher education.

(3) Rental Units which a government unit, agency or authority fully owns, operates and manages. This exemption applies only if applicable federal or state law or administrative regulation specifically exempt such units from municipal rent control.

(4) A Rental Unit that is the Primary Residence of the Landlord and has been since the inception of the tenancy, and where the Landlord shares a bathroom or kitchen with the Tenant.

(B) No Landlord shall take action to terminate any tenancy, including but not limited to making a demand for possession of a Rental Unit, threatening to terminate a tenancy verbally or in writing, serving any notice to quit or other eviction notice, bringing any action to recover possession or be granted recovery of possession of a Rental Unit, including by seeking the entry of an eviction judgment or by causing or permitting a writ of possession to be entered unless the Landlord is able to prove the existence of one of the following grounds as stated in the termination notice that the court action is based on:

(1) **Failure to Pay Rent.** The Tenant has failed to pay the Rent to which the Landlord is legally entitled under the Rental Agreement, this Chapter, federal, state, and any other local law.

(a) In any action to recover possession of a Rental unit filed under this subsection it shall be a defense if the Landlord impeded the Tenant's effort to pay Rent by refusing to accept Rent paid on behalf of the Tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the Tenant to receive rental assistance from a government agency, non-profit organization, or other third party. 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.

(b) **COVID-19 state law preemption.** This Chapter shall not apply to unlawful detainer action for nonpayment of rent originally due from March 1, 2021 through March 31, 2022, where prohibited by Code of Civil Procedure Section 1179.05 or successor statute.

(2) **Breach of Lease.** The Tenant has continued, after written notice to cease, to substantially violate any of the written material terms of the Rental Agreement, except the requirement to surrender possession on proper notice as required by law.

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 Rental Agreement; and provided further that, where such term was accepted by the Tenant or made part of the Rental Agreement subsequent to the initial creation of the tenancy, the Landlord must have first notified the Tenant in writing that they need not accept such terms or agree to their being made part of the Rental Agreement.

(a) Notwithstanding any lease provision to the contrary, a Landlord shall not take any action to terminate a tenancy based on a Tenant's sublease of the Rental Unit if the Landlord has unreasonably withheld the right to sublease following written request by the Tenant. The following requirements must be met:

- i) The Tenant continues to reside in the Rental Unit as their primary residence.
- ii) The sublease replaces one or more departed Tenants under the Rental Agreement on a one-for-one basis or the sublease adds additional occupants up to the maximum amount of occupants legally allowed under Section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- iii) A Landlord's refusal of a subtenant must state the reason for the refusal. If the Landlord fails to respond to the Tenant's

request to sublease in writing within fourteen (14) days of receipt of the Tenant's request, the Tenant's request shall be deemed approved by the Landlord.

iv) A Landlord's reasonable refusal of the Tenant's written request may not be based on the proposed additional occupant's lack of Creditworthiness, if the occupant will not be legally obligated to pay some or all of the Rent directly to the Landlord. A Landlord's reasonable refusal of the Tenant's written request may be based on the ground that the total number of occupants in a Rental Unit exceeds the maximum number of occupants under Section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922.

(b) Before endeavoring to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the Rental Unit, the Landlord shall serve the Tenant a written notice of the violation that provides the Tenant with a minimum of fourteen (14) days' opportunity to cure the violation. The Tenant may cure the violation by making a written request to add occupants referenced in Subsection iii of Section 5.57.030(B)(2)(a) or by using other reasonable means to cure the violation.

(c) **Protections for Families**. Notwithstanding any contrary provision in this Section, a Landlord shall not endeavor to recover possession of a Rental Unit as a result of the addition to the Rental Unit of a Tenant's child, parent, grandchild, grandparent, brother or sister, or the spouse or domestic partner (as defined in California Family Code Section 297) of such relatives, or as a result of the addition of the spouse or domestic partner of a Tenant, so long as the number of occupants does not exceed the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922.

(3) **Nuisance**. The Tenant has continued, after the Landlord has served the Tenant with a written notice to cease, to commit or expressly permit a nuisance in, or cause substantial damage to, the Rental Unit and, after written notice, has refused to cease damaging the premises, or has

refused to either make satisfactory correction or to pay the reasonable costs of repairing such damage over a reasonable period of time. The fact that a tenant has been arrested or convicted of a crime, been the victim of a crime, or contacted the police, in and of itself, is not evidence of nuisance for purposes of this SubSection

(4) **Failure to Give Access.** The Tenant has continued to refuse, after the Landlord has served the Tenant with a written notice, to grant the Landlord reasonable access to the Rental Unit for the purposes of showing the unit to prospective purchaser or mortgagee or making necessary repairs or improvements required by the laws of the United States, the State of California or any subdivision thereof. The Board shall promulgate regulations for the repair and improvement of Rental Units to ensure the least amount of disruption for the Tenant. Unless due to a documented emergency affecting a Tenant's health and/or safety, all repair or improvement work will be scheduled in compliance with applicable Board regulations. To terminate a tenancy under this Subsection, a Landlord must show that written notice was provided to the Tenant in compliance with Civil Code Section 1954 and all necessary repair or improvement work was scheduled in compliance with all applicable Board regulations.

(5) **Temporarily Vacate in Order to Undertake Substantial Repairs.** The Landlord, after having obtained all necessary permits from the Town of Fairfax and a Tenant Habitability Plan approved by the Planning Department as specified in Section 5 of this Chapter on or before the date the notice of termination is given, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of Tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of Tenants of the building, and where such repairs while the Tenant resides on the premises and require the Tenant to temporarily vacate for at least 30 days.

(a) Where such repairs can be completed in a period of 60 or fewer days, and the Tenant agrees in writing to vacate the premises during the period required to complete the repairs, the Landlord may not recover possession pursuant to this Subsection unless the Tenant shall fail or refuse to vacate the premises in accordance with such agreement.

(b) Where the Landlord owns any other residential Rental Units in the Town of Fairfax of the same number of bedrooms or fewer, and any such unit is vacant and available at the time of service of the written notice terminating the tenancy, or at any time thereafter until the earlier of the Tenant's vacating the premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the Landlord, the Landlord shall, as a condition of obtaining possession pursuant to this Subsection, notify the Tenant in writing of the existence and address of each such vacant Rental Unit and offer the Tenant the right, at the Tenant's option, to enter into a rental agreement (to be designated as a "temporary rental agreement") for the available Rental Unit which the Tenant may choose, at a Rent not to exceed the lesser of the lawful Rent which may be charged for such available Rental Unit or the lawful Rent in effect at the time of the notice of termination of tenancy on the unit being vacated. Said rental agreement shall be for a term of the lesser of ninety days or until completion of repairs for the Rental Unit being vacated by Tenant.

(c) A notice terminating tenancy under this Subsection must include the following information:

- i) A statement informing Tenants as to their right to relocation payments under this Chapter.
- ii) The statement, "When the needed repairs are completed on your unit, the Landlord must offer you the opportunity to return to your unit with a rental agreement containing the same terms as your original one and with the same rent."
- iii) A description of the repairs to be completed and the approximate expected duration of the repairs.

(d) Where the Landlord recovers possession under this Subsection either prior to or after an unlawful detainer judgment, the Tenant must be given the right of first refusal to re-occupy the unit. The Landlord shall notify the Tenant household at least sixty (60) days in advance of the availability of the unit or room. Within thirty (30) days of receipt of the notice of availability, a Tenant household must notify the Landlord if it wishes to reoccupy the unit or room. The Landlord must hold the unit or room vacant at no cost to the Tenant

for sixty (60) days from the date the Tenant household's written notice of its intent to reoccupy the Rental Unit or room is received.

(6) **Owner Move-In**. The Landlord seeks to recover possession in good faith for use and occupancy as a Primary Residence by the Landlord or the Landlord's spouse, child, parent or grandparent.

(a) A Landlord, as used in this Subsection, shall only include a Landlord that is a natural person who has at least a fifty-one (51) percent recorded ownership interest in the Property.

(b) No eviction may take place for an "owner move-in" if the same Landlord or enumerated relative already occupies a Rental Unit on the Property, or if a vacancy already exists on the Property. Only one specific unit per building may undergo an "Owner Move-in" eviction. Once a Landlord has successfully recovered possession of a Rental Unit pursuant to this Subsection, no other Landlords may recover possession of any other Rental Unit at the Property under the SubSection Any future evictions taking place at the same Property under this Subsection must be of that same Rental Unit. At all times, a Landlord may request a reasonable accommodation if the Landlord or enumerated relative is Disabled and a different unit is necessary to accommodate the person's disability.

A Landlord who has terminated a tenancy for a Rental Unit under this Subsection may not terminate a tenancy for a Tenant who subsequently reoccupies a Rental Unit after termination of tenancy under this Subsection or relocates to a comparable Rental Unit on the same Property for a period of four years commencing from the date of the latest notice to vacate.

(c) The notice terminating tenancy shall contain the name, address of Primary Residence, and relationship to the Landlord of the person intended to occupy the Rental Unit, a list of all property owned by each intended future occupant, and the address of the real property, if any, on which each intended future occupant claims a homeowner's property tax exemption.

(d) The Landlord or enumerated relative must intend in good faith to move into the Rental Unit within ninety (90) days after the Tenant

vacates and to occupy the Rental Unit as a Primary Residence for at least thirty-six (36) consecutive months.

- (e) If the Landlord or relative specified on the notice terminating tenancy fails to occupy the Rental Unit within 90 days after the Tenant vacates, the Landlord shall:
- i) Offer the unit to the Tenant who vacated it at the same rent in effect at the time the Tenant vacated; and
 - ii) Pay to said Tenant all reasonable expenses incurred in moving to and from the unit, include lease termination fees. This subsection does not limit any other remedies a Tenant may have under this Chapter or applicable law.
 - iii) If the Landlord or enumerated relative fails to occupy the Rental Unit within 90 days after the Tenant vacates or does not occupy the Rental Unit as a Primary Residence for at least 36 months, the Landlord shall have the burden of producing evidence that the failure to occupy did not occur in bad faith. The Board may adopt regulations governing the determination of good faith.
- (f) If the Landlord or relative specified on the notice terminating tenancy fails to occupy the Rental Unit within ninety days and the previous Tenant declines to move back into the Rental Unit, any new Tenant moving into the Rental Unit will have as the original base rent the Rent in effect at the time the previous Tenant vacated.
- (g) **Eviction Protection for Elderly, Disabled, or Terminally Ill Tenants.** A Landlord may not evict a Tenant pursuant to this Subsection 5.57.030(B)(6) if (1) the Tenant has resided in the Rental Unit for at least three (3) 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. For the purposes of this Subsection, notwithstanding the above, a Landlord may evict a Tenant who qualifies for the exemption if the Landlord or enumerated relative who will occupy the Rental Unit is also Disabled and no other units are available at the Property
- (h) Within 30 days after the effective date of a written notice of termination under this Section 5.57.030(B)(6) is filed with the

Board, the Board shall record a notice of constraints with the County Recorder identifying each Rental Unit on the property that is the subject of the subsection 5.57.030(B)(6) notice to vacate, stating the nature and dates of applicable restrictions under Sections 5.57.030(B)(6)(e), 5.57.030(B)(6)(f), and 5.57.030(D), and any other restrictions per applicable regulations. The Board shall also send a notice to the Rental Unit that states the maximum Rent for that unit, and shall send an updated notice to the unit 12 months, 24 months, 36 months, 48 months, and 60 months thereafter, or within 30 days of such date. If a notice of constraints is recorded but the Tenant does not vacate the Rental Unit, the Landlord may apply to the Board for a rescission of the recorded notice of constraints. The Board shall not be required to send any further notices to the Rental Unit pursuant to this subsection if the constraints on the unit are rescinded.

- (i) A Landlord may not evict a Tenant under this Subsection if there is a comparable Rental Unit occupied by a Tenant who moved onto the Property more recently than the Tenant from whom the Landlord seeks to recover possession.

(7) **Withdrawal from Rental Market.** The Landlord seeks in good faith to recover possession of all Rental Units on a parcel of land to permanently withdraw the units from the rental market or for demolition so long as the withdrawal is permitted by the Ellis Act (Government Code Section 7060 et seq.). The Landlord must have fulfilled all requirements of Section 5.57.060 of this Chapter and all regulations passed by the Board initiating the procedure for withdrawing Rental Units from rent or lease, with the intention of completing the withdrawal process and going out of the rental business or demolishing. Tenants shall be entitled to a minimum of 120-day notice or one year in the case a Tenant is at least 62 years of age or Disabled. Notice times may be increased by regulations if state law allows for additional time.

(8) **Termination of Temporary Tenancy.** The Landlord seeks in good faith to recover possession of a separately alienable Rental Unit for their occupancy as a Primary Residence. This shall apply only where the Landlord has previously occupied the Rental Unit as their Primary Residence and has the right to recover possession of the unit for their occupancy as a Primary Residence under an existing written rental

agreement for a term of no more than 12 consecutive months that was executed with the current Tenants. The temporary Tenant must be provided, at the inception of the tenancy, with a written statement that includes the length of the tenancy and that the tenancy may be terminated at the end of the temporary tenancy period. No relocation is required under this Subsection 8.

- (C) In any action to recover possession of a Rental Unit pursuant to this Section 5.57.030, a Landlord must allege and prove that the Landlord seeks to recover possession of the unit with good faith, honest intent and with no ulterior motive for the reason stated in the termination notice.

If a Landlord claims the Rental Unit is exempt from this ordinance, the Landlord must allege and prove that the unit is covered by one of the exceptions enumerated in Subsection 5.57.030(A) of this Chapter. Such allegations must appear in the notice of termination of tenancy. Failure to make such allegations in the notice shall be a complete defense to any unlawful detainer action.

- (D) **Right of Return and First Right of Refusal.** All Tenants that are displaced based on Sections 5.57.030(B)(5) or (B)(6) or shall have the first right of refusal to return to the unit if it should ever be returned to the market by the Landlord or 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 gave notice of basis listed in Sections 5.57.030(B)(5) or (B)(6) plus any lawful adjustment under Section 5.57.080 of this Chapter. All notices of termination of tenancy served under Sections 5.57.030(B)(5) or (B)(6) shall state the lawful rent in effect at the time of termination of tenancy.

- (E) **School Year Protections for Educators and Students.** It shall be a defense to an eviction under Sections 5.57.030(B)(5) or (B)(6) 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.

- (F) **Written Warning Notice Requirements.** Any written warning notice as described in Subsections 5.57.030(B)(2)-(4) shall be served by the Landlord on the Tenant within a reasonable period prior to serving a notice to terminate tenancy and shall inform the Tenant that a failure to cure may result in the initiation of eviction proceedings, of the right to request a reasonable

accommodation for disability, and the contact number for the Board. A reasonable period shall be presumed to be seven days. The notice shall also include sufficient details allowing a reasonable person to comply. The notice shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reason for the notice.

- (G) **Retaliation is Barred.** Notwithstanding the above provisions, possession shall not be granted if it is determined that the eviction is knowingly in retaliation for the Tenant reporting violations of this Chapter, for exercising rights granted under this Chapter or other law, or for forming or participating in a Tenant Organization.
- (H) **Additional Notice Requirements.** In any notice purporting to terminate tenancy, the Landlord shall state the cause for the termination, and in any action brought to recover possession of a Rental Unit, the Landlord shall allege and prove compliance with this Section. All notices described in Subsections 5.57.030(B)(2), (B)(3), or (B)(4) shall be attached to any notices that purport to terminate a tenancy for which they correspond. The Landlord shall file with the Board a copy of any notice terminating tenancy within three (3) days after serving the notice on the Tenant.
- (I) **Failure to comply.** Failure to comply with any requirement of this Chapter or any implementing regulation may be asserted as an affirmative defense in an action brought by the Landlord to recover possession of the Unit.

Additionally, any attempt to recover possession of a Rental Unit or recover of possession in violation of this Chapter shall render the Landlord liable to the Tenant in a civil action for wrongful eviction for damages of not less than three times actual damages, including damages for emotional distress. The Tenant or the Board may seek injunctive relief, equitable relief, and money damages. In any action for equitable relief, it shall be presumed that a Tenant suffers irreparable harm through violation of this Chapter. A Tenant prevailing in an action brought under this Chapter that is not an unlawful detainer action shall recover costs and reasonable attorney's fees. The statute of limitations for all remedies in this section shall be three years. The remedies under this Section are cumulative, and may be used in addition to any other remedies in this Chapter or at law, statute, or ordinance.

Section: 5.57.040 Tenant Habitability Plan and Short-term Relocation Plan.

- (A) No landlord shall undertake a renovation that displaces a tenant for thirty days or more without first receiving a permit from the Planning Department.
- (B) The Department shall approve a landlord's application for a permit for renovation work if both of the following conditions have been met:
 - (1) The landlord has submitted a Tenant Habitability Plan which, in accordance with this Section, the Department finds to adequately mitigate the impact of the renovation upon affected tenants; and
 - (2) The landlord has submitted a declaration documenting service to affected tenants of both a Notice of Primary Renovation Work and a copy of the non-confidential portions of the Tenant Habitability Plan.
- (C) Tenant Habitability Plan. At a minimum, a Tenant Habitability Plan shall provide the following information, together with any other information the Department deems necessary to ensure that the impact of the renovation upon affected tenants is adequately mitigated:
 - (1) Identification of the landlord, the general contractor responsible for the renovation, and any specialized contractor responsible for hazardous material abatement, including but not limited to lead-based paint and asbestos
 - (2) Identification of all affected tenants including the current rent each tenant pays and the date of each tenant's last rent increase. In accordance with California Civil Code Section 1798 et seq., information regarding tenants shall be considered confidential.
 - (3) Description of the scope of work covering the renovation. Such description shall address the overall work to be undertaken on all affected units and common areas, the specific work to be undertaken on each affected unit, an estimate of the total project cost and time, and an estimate of the cost and time of renovation for each affected unit.
 - (4) Identification of the impact of the renovation on the habitability of affected rental units, including a discussion of impact severity and duration with regard to noise, utility interruption, exposure to hazardous materials, interruption of fire safety systems, inaccessibility of all or portions of each

affected rental unit, other potential health hazards such as exposure to infectious diseases, and disruption of other Housing Services.

- (5) Identification of the mitigation measures that will be adopted to ensure that tenants are not required to occupy an untenable dwelling, as defined in California Civil Code Section 1941.1, outside of the hours of 8:00 am through 5:00 pm, Monday through Friday, and are not exposed at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos. Such measures may include the adoption of work procedures that allow a tenant to remain on-site and/or the temporary relocation of tenants.
- (6) Identification of the impact of the renovation on the personal property of affected tenants, including work areas which must be cleared of furnishings and other tenant property, and the exposure of tenant property to theft or damage from hazards related to work or storage.
- (7) Identification of the mitigation measures that will be adopted to secure and protect tenant property from reasonably foreseeable damage or loss.

(D) Tenant Habitability Plan Acceptance

- (1) The Department shall make a determination regarding the adequacy of a landlord's Tenant Habitability Plan within five working days of the Department's receipt of the plan for review. The Department shall accept those plans which meet the requirements of this section and which it determines, with reference to the standards set forth in California Civil Code Section 1941.1, applicable local codes, and in accordance with any regulations or guidelines adopted by the Board, will adequately mitigate the impacts of renovation upon tenants. The Tenant Habitability Plan may allow for the temporary disruption of major systems during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, without requiring the relocation of tenants in order to adequately mitigate the impacts upon the affected tenants. However, tenants should not be exposed at any time to toxic or hazardous materials including, but not limited to, lead-based paint and asbestos.

Section: 5.57.050 Relocation.

- (A) A Landlord seeking to recover possession under Sections 5.57.030(B)(5), (B)(6), or (B)(7) of this Chapter must make relocation payments to the Tenant household

of the Rental Unit. The amount of the relocation benefit is \$7,000 for a studio unit; \$9,000 for a one-bedroom unit; \$11,000 for a two-bedroom unit; \$13,000 for a unit with three or more bedrooms. Relocation benefits are based on the number of bedrooms in a rental unit in order to reflect the higher costs associated with relocating the increased number of occupants and volume of belongings in larger units. Relocation payment amounts are based on the expected costs tenant households incur from moving, including first and last months' rent, security deposit, moving and packing expenses, storage costs, and applicable taxes. Relocation payments shall be paid at the time of the service of the notice of termination of tenancy. If the Tenant fails to vacate the unit, the relocation payment must be returned to the Landlord.

(B) Notwithstanding Subsections 5.57.050(A) any Tenant household that, at the time the notice of intent to withdraw Rental Units is filed with the Board, includes a Tenant who is 62 years of age or older, 17 years of age or younger, Disabled, or certified as being terminally ill by the Tenant's treating physician shall be entitled to receive an additional payment of \$3,000.

(C) Every year following the date of passage, the relocation payments specified in Subsections 5.57.050(A) and 5.57.050(B) shall 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, as that data is made available by the United States Department of Labor and published by the Board.

(D) Short-Term Tenant Relocation Plan

(1) Where a Tenant shall be displaced from their Rental Unit for renovation work for a period of thirty days or less, the Landlord shall immediately make short-term relocation payments to the Tenant as set out in subsection 3, below, or the Tenant may elect not to receive short-term relocation payments. If the Tenant receives short-term relocation payments, the Tenant remains obligated to pay the lawful Rent in effect when the Tenant vacated. If the Tenant has elected not to receive short-term relocation payments, the Tenant shall not be obligated to pay rent until the Tenant re-occupies the Rental Unit.

(2) Should a Tenant be displaced for a greater time than originally notified, the Landlord shall pay additional short-term relocation expenses for each

additional day of displacement, to be paid on a weekly basis prior to each additional week.

(3) The following amounts shall be paid by the Landlord to the Tenant for each day of displacement:

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

(4) Replacement amounts shall be adjusted yearly based on the CPI increase. The Board shall publish the new relocation amounts each year following the increase.

(E) If a Landlord fails to provide relocation payments in accordance with this section, in addition to any other remedy under this Chapter, or at law, the Tenant may pursue a civil action for three times the amount of relocation payments they would have been entitled to, costs of suit, and reasonable attorney's fees. The statute of limitations for all remedies in this Section shall be three years. The remedies of this section are cumulative, and may be used in addition to any other remedy in this Chapter, at law, statute or ordinance.

(F) A Landlord's failure to properly allege and prove a permissible ground for eviction under Sections 5.57.030(B)(5)-(7) is not a defense to failing to provide relocation payments when a Landlord recovers the Rental Unit in violation of Section 5.57.030. Further, where a Tenant vacates a Rental Unit within one year of receiving a termination notice pursuant to Sections 5.57.030(B)(5)-(7), the reason for vacating shall be presumed to be the termination notice.

Section: 5.57.060 Units Withdrawn from the Rental Market Pursuant to the Ellis Act.

The following shall apply a unit where possession is recovered pursuant to Section 5.57.030(B)(7) of this Chapter.

(A) Re-rental within two years

If the Rental Unit is offered again for rent or lease for residential purposes within two years of the date the Rental Unit was withdrawn from rent or lease, the following provisions shall govern:

- (1) The Landlord of the Rental Unit shall be liable to any Tenant who was displaced from the property by that action for actual and exemplary damages. Any action by a Tenant pursuant to this paragraph shall be brought within three years of the withdrawal of the Rental Unit from rent or lease. However, nothing in this paragraph precludes a Tenant from pursuing any alternative remedy available under the law.
- (2) The Board may institute a civil proceeding against any Landlord who has re-offered a Rental Unit for rent or lease subject to this subdivision, for exemplary damages for displacement of Tenants. Any action pursuant to this paragraph shall be brought within three years of the withdrawal of the Rental Unit from rent or lease.
- (3) Any Landlord who offers a Rental Unit again for rent or lease shall first offer the unit for rent or lease to the Tenant displaced from that unit by the withdrawal pursuant to this Chapter, if the Tenant has advised the Landlord in writing within 30 days of the displacement of the Tenant's desire to consider an offer to renew the tenancy and has furnished the Landlord with an address to which that offer is to be directed. That Tenant or former Tenant may advise the Landlord at any time during the eligibility of a change of address to which an offer is to be directed.

If the Landlord re-offers the Rental Unit for rent or lease pursuant to this subdivision, and the Tenant has advised the Landlord pursuant to this subdivision of a desire to consider an offer to renew the tenancy, then the Landlord shall offer to reinstate a rental agreement or lease on terms permitted by law to that displaced Tenant.

This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced Tenant at the address furnished to the Landlord as provided in this subdivision, and shall describe the terms of the offer. The displaced Tenant shall have 30 days from the deposit of the offer in the mail to accept the offer by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid.

(B) Re-rental of Rental Units within five years

- (1) For all tenancies commenced during the time periods described in Section 5.57.060(B)(2), the Rental Unit shall be offered and rented or leased at the lawful Rent in effect at the time any notice of intent to withdraw the Rental

Unit is filed with the Board, plus annual adjustments available under Section 5.57.080.

- (2) The provisions of paragraph (1) shall apply to all tenancies commenced during either of the following time periods:
 - (a) The five-year period after any notice of intent to withdraw the Rental Unit is filed with the Board, whether or not the notice of intent is rescinded or the withdrawal of the Rental Unit is completed pursuant to the notice of intent.
 - (b) The five-year period after the Rental Unit is withdrawn.
 - (3) This subdivision shall prevail over any conflicting provision of law authorizing the Landlord to establish the rental rate upon the initial hiring of the Rental Unit.
- (C) **Re-rental within ten years.** A Landlord who offers a Rental Unit again for rent or lease within 10 years from the date on which it is withdrawn, and which is subject to this subdivision, shall first offer the unit to the Tenant displaced from that unit by the withdrawal, if that Tenant requests the offer in writing within 30 days after the Landlord has notified the Board of an intention to offer the Rental Unit again for residential rent or lease. The Landlord of the Rental Unit shall be liable to any Tenant who was displaced by that action for failure to comply with this paragraph, for punitive damages in an amount which does not exceed the contract rent for six months, and the payment of which shall not be construed to extinguish the Landlord's obligation to comply with this subdivision.
- (D) **Demolition Restrictions.** If the Rental Unit(s) are demolished, and new Rental Unit(s) are constructed on the same property, and offered for rent or lease within five years of the date the Rental Unit(s) were withdrawn from rent or lease, the newly constructed Rental Unit(s) shall be subject to the system of control established in Section 5.57.080 at which they would be offered on the basis of a fair and reasonable return on the newly constructed Rental Unit, notwithstanding any exemption from the system of controls for newly constructed Rental Unit.
- (E) **Applicability to Successors in Interest.** This Section 5.57.060 shall apply to all successors in interest of a Landlord who has withdrawn Rental Units from rent or lease. The Board shall record a notice with the county recorder which shall specifically describe the real property where the Rental Unit is located, the dates

applicable to the constraints and the name of the Landlord of record of the real property. The notice shall be indexed in the grantor-grantee index.

(F) A person who acquires title to the real property subsequent to the date upon which the Rental Unit thereon have been withdrawn from rent or lease, as a bona fide purchaser for value, shall not be a successor in interest for the purposes of this Chapter if the notice prescribed by this section has not been recorded with the county recorder at least one day before the transfer of title.

(G) **Notice of Withdrawal.** A Landlord who seeks to demolish or withdraw a Rental Unit from the rental market under Section 5.57.030(A)(7) of this Chapter must provide the Board with a notice, that states under the penalty of perjury:

- (1) the number of Rental Units withdrawn;
- (2) the address or location of those Rental Units;
- (3) the name or names of the Tenants of the Rental Units;
- (4) the lawful Rent applicable to each Rental Unit.

(H) The name or names of the Tenants, the Rent applicable to any residential Rental Unit, and the total number of Rental Units, is confidential information and for purposes of this Chapter shall be treated as confidential information for purposes of the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(I) The Landlord must record with the county recorder a memorandum summarizing the provisions, other than the confidential provisions, of the notice in a form which shall be prescribed by the regulation from the Board, and will require a certification with that notice that actions have been initiated as required by law to terminate any existing tenancies.

(J) The Landlord must notify the Board in writing of their intention to re-offer the Rental Unit for rent or lease.

(K) The date on which the Rental Unit is withdrawn from rent or lease for purposes of this Chapter is 120 days from the delivery in person or by first-class mail of the notice of withdrawal to the Board. However, if the Tenant is at least 62 years of age or Disabled, and has lived in their Rental Unit for at least one year prior to the date of delivery to the Board of the notice of intent to withdraw, then the date of withdrawal of the Rental Unit of that Tenant shall be extended to one year after the date of delivery of that notice to the Board, provided that the Tenant gives

written notice of their entitlement to an extension to the Landlord within 60 days of the date of delivery to the Board of the notice of intent to withdraw

(L) **Extension of tenancy for elderly or disabled Tenants.** If a Tenant notifies a Landlord in writing within 60 days of the Board receiving the notice of intent to withdraw the Rental Unit, the following provisions shall apply:

- (1) The tenancy shall be continued on the same terms and conditions as existed on the date of delivery to the Board of the notice of intent to withdraw, subject to any adjustments otherwise available under this Chapter.
- (2) No party shall be relieved of the duty to perform any obligation under the lease or rental agreement.
- (3) The Landlord may elect to extend the tenancy on any other Rental Unit within the rental property up to one year after date of delivery to the Board of the notice of intent to withdraw, subject to paragraphs (1) and (2) of this Subsection.
- (4) Within 30 days of the notification by the Tenant to the Landlord of their entitlement to an extension, the Landlord shall give written notice to the Board of the claim that the Tenant is entitled to stay in their Rental Unit for one year after date of delivery to the Board of the notice of intent to withdraw.
- (5) Within 90 days of date of delivery to the Board of the notice of Intent to withdraw, the Landlord shall give written notice of the Landlord's election to extend a tenancy under paragraph (3) and the revised date of withdrawal to the Board and any Tenant whose tenancy is extended.
- (6) The date of withdrawal for the Rental Unit as a whole, for purposes of calculating any time-periods in this Chapter, shall be the latest termination date among all Tenants within the Rental Unit, as stated in the notices required by paragraphs (4) and (5). A Landlord's further voluntary extension of a tenancy beyond the date stated in the notices required by paragraphs (4) and (5) shall not extend the date of withdrawal.

(M)The Landlord must notify any Tenant displaced pursuant to Section 5.57.030(B)(7) of this Chapter of the following:

- (1) That the Board has been notified pursuant to subdivision 5.57.060(G).

(2) That the notice to the Board specified the name and the amount of Rent paid by the Tenant as an occupant of the Rental Unit.

(3) The amount of Rent the Landlord specified in the notice to the Board.

(4) Notice to the Tenant of their rights under Subsection 5.57.060(A)(3).

(5) Notice to the Tenant of the following:

(a) If the Tenant is at least 62 years of age or disabled, and has lived in their Rental Unit for at least one year prior to the date of delivery to the Board of the notice of intent to withdraw, then tenancy shall be extended to one year after date of delivery to the Board of the notice of intent to withdraw, provided that the Tenant gives written notice of their entitlement to the Landlord within 60 days of date of delivery to the Board of the notice of intent to withdraw.

(b) The extended tenancy shall be continued on the same terms and conditions as existed on date of delivery to the Board of the notice of intent to withdraw, subject to any adjustments otherwise available under Section 5.57.080 of this Chapter.

(c) No party shall be relieved of the duty to perform any obligation under the lease or rental agreement during the extended tenancy.

(N) Not later than the last day of the third and sixth calendar months following the month in which notice is given to the Board, and thereafter not later than December 31 of each calendar year for a period of five years, beginning with the year in which the six-month notice is given, the Landlord of any property which contains or formerly contained one or more Rental Units which a Tenant or Tenants vacated pursuant to Section 5.57.060(A)(7) of this Chapter shall notify the Board, in writing, under penalty of perjury, for each such Rental Unit:

(1) Whether the unit has been demolished;

(2) If the unit has not been demolished, whether it is in use;

(3) If it is in use, whether it is in residential use;

(4) If it is in residential use, the date the tenancy began, the name of the Tenant(s), and the amount of Rent charged.

If the Rental Unit has been demolished, and one or more new units constructed on the lot, the Landlord shall furnish the information required by items (2), (3) and (4) for each new unit. The Board shall maintain a record of the notices received under this section and all notices received under this Section for each Rental Unit withdrawn from the rental market pursuant to Section 5.57.030(B)(7) of this Chapter.

- (O) The Board shall notify each person who is reported as having become a Tenant in a vacated or new Rental Unit subject to the reporting requirements of Subsection 5.57.060(N) that it maintains the records described in Subsection 5.57.060(N), and that the Rent of the Rental Unit may be restricted pursuant to Section Seven of this Chapter.
- (P) The Board shall maintain a register of all Rental Units withdrawn from rent or lease under Section 5.57.030(B)(7) and the Rent applicable to each unit at the time of withdrawal. The Board shall inform Tenants displaced from units withdrawn from rent or lease at the address provided by the Tenant, when the Landlord notifies the Board that the Rental Unit or replacement unit will again be offered for rent or lease within ten years of the date of withdrawal.
- (Q) The Board may investigate whether a Rental Unit that was withdrawn from rent or lease has been again offered for rent or lease, and whether the Landlord has complied with the provisions of this Section

Section: 5.57.070 Rent Control, Just Cause, and Community Stability Board.

- (A) **Composition.** There shall be in the Town of Fairfax a Rent Control, Just Cause, and Community Stability Board. Local enforcement is the most effective way to create stability for tenants, homeowners, and landlords. Protection shall be overseen by an appointed Board. The Board shall consist of five members. The Board shall elect annually as chairperson one of its members to serve in that capacity.
- (B) **Eligibility.** All residents of the Town of Fairfax who are at least eighteen years of age are eligible to serve as Members of the Board. There shall be no more than two members that own or manage any rental property or are realtors. Any Landlords or managers of residential rental property elected to this Board must make a showing that they are in compliance with this Chapter and all other local, state and federal laws regulating the provision of housing. This showing must be

provided in writing with any necessary documentation and provided on the Town of Fairfax website.

(C) **Full Disclosure of Holdings**. Candidates for the position of Board Member shall submit a verified statement listing all of their interests and dealings in real property, including but not limited to its ownership, sale or management, during the previous three (3) years. This documentation shall be made available to the public.

(D) **Interim Board**: The Fairfax Town Council shall function as the Board from the time this Chapter goes into effect until a Board is appointed.

(E) **Term of Office**. Board Members shall serve terms of two (2) years and may be reappointed for a total of four (4) full terms for a maximum service of 10 years.

(F) **Powers and Duties**. The Board shall have the following powers and duties:

(1) Establish a Base Rent under Section 5.57.080(A).

(2) Make adjustments in the Rent Increase and Decreases in accordance with Section 5.57.080.

(3) Set Rents at fair and equitable levels in order to achieve the intent of this Chapter.

(4) Issue orders, rules and regulations, conduct hearings and charge fees as set forth below.

(5) Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.

(6) Report annually to the Fairfax Town Council on the status of rental housing covered by this Chapter. This shall include a summary of the numbers of notices served, the basis upon which they were served, the amount of the Rent increases and the addresses for which they were served. A searchable database will be created so that service of notice may be determined as well as the summaries. A Rent increase, termination, or change in terms of tenancy is not valid if not served on the Board.

(7) Administer oaths and affirmations and subpoena witnesses.

- (8) Establish rules and regulations for deducting penalties and settling civil claims under Section 5.57.110.
- (9) Seek injunctive and other civil relief under Sections 5.57.110 and 5.57.120.
- (10) Charge and collect the Rental Housing Fee, including penalties for late payments.
- (11) Make available on a contract basis legal assistance services for low-income residents of Fairfax related to evictions and Board petitions, hearings and appeals.
- (12) Collect and/or receive copies of notices of termination of tenancy, rent increase, and changes in terms of tenancy.
- (13) Any other duties necessary to administer and enforce this Chapter.

(G) **Rules and Regulations**. The Board shall issue and follow such rules and regulations, including those which are contained in this Chapter as will further the purposes of the Chapter. The Board shall publicize its rules and regulations prior to promulgation on its website and any other appropriate medium. All rules and regulations, internal staff memoranda, and written correspondence explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and made available online to the public for inspection, download and copying or any other future appropriate technology.

(H) **Community Education**. The Board shall publicize this Chapter so that all residents of Fairfax will have the opportunity to become informed about their legal rights and duties under this Chapter. The Board shall prepare a brochure which fully describes the legal rights and duties of Landlords and Tenants under The Fairfax Rent Control, Just Cause for Eviction Protection, and Community Stabilization Ordinance. The brochure shall also include helpful information for homeowners. The brochure will be available to the public and each Tenant of a Rental Unit shall receive a copy of the brochure from their Landlord. Landlords shall provide the brochure at the commencement of the tenancy and with each notice of rent increase. This brochure will be made available for download from the Fairfax website and/or other appropriate technology. Information about the Ordinance shall be made available in all other languages that are requested by the community.

(I) **Meetings**. The Board shall hold such regularly scheduled meetings as are necessary to ensure the timely performance of its duties under this Chapter. All regular and special meetings shall be called and conducted in accordance with state law. There shall be minimally one (1) meeting a year so that the Board may comply with Section 5.57.080.

(J) **Quorum**. Four (4) Members shall constitute a quorum for the Board.

(K) **Voting**. The affirmative vote of three (3) Members of the Board is required for a decision, including all motions, regulations, and orders of the Board.

(L) **Financing**. The Board shall finance its reasonable and necessary expenses by charging Landlords annual Rental Housing fees in amounts deemed reasonable by the Board.

(M) **Rental Housing Fee**. All Landlords shall pay the minimum license fee required by the Fairfax Town Code Section 5.16.010, unless the Town Council removes the requirement, plus the Rental Housing Fee. The Town shall charge the Rental Housing Fee at the same time as the minimum license fee. The Board may collect the Fee if in its discretion it determines that it is more effective to have the Board collect instead of the Town. The amount will be determined by the Town Council after a recommendation by the Board is provided to the Town Council. The Board and staff to enforce this Chapter shall be funded by the Rental Housing Fee. However, the Town shall front any necessary funds until the Town has collected such fees.

(1) From the time that this Chapter goes into effect until the first Board is elected and determines the first fee amount, the amount shall be \$120 per Controlled Rental Unit per year (\$10 per month) and \$84 per unit (\$7 per month) for Units that are only covered by Section 5.57.030 of this Chapter and are not Controlled Rental Units.

(2) This fee shall become due within thirty (30) days of the inception of a new tenancy if no fee was paid the prior year. Ongoing tenancies shall have fees collected at the same time as the Fairfax minimum license fee each year.

(N) **Integrity and Autonomy of Board**. The Board shall be an integral part of the government of the Town of Fairfax, but shall exercise its powers and duties under this Chapter independent from the Town Council, except by request of the Board. The Fairfax shall provide infrastructural support on an ongoing basis as it would with any other department. During the transition period before the Board Members

are elected and an Executive Director is hired, the Fairfax shall take whatever steps necessary to perform the duties of the Board and implement the purpose of this Chapter.

- (O) **Budget.** The Board shall, prior to July 1 of each year, hold a public hearing on a proposed budget and adopt an annual budget for the ensuing fiscal year that is reasonably necessary to accomplish the purposes of this Chapter. At least thirty-five days prior to the beginning of each fiscal year, the Board's Director shall submit to the Board the proposed budget as prepared by the Executive Director. After reviewing the same and making such revisions as it may deem advisable, the Board shall determine the time for the holding of a public hearing thereon and shall publicize such meeting in compliance with the Brown Act and [Applicable Local Sunshine Ordinance]. Copies of the proposed budget shall be available for inspection by the public in the office of the Board at least ten days prior to said hearing. The Town Council and the Town Manager shall have no authority to oversee, supervise, or approve this budget. Upon final adoption, the budget shall be in effect for the ensuing fiscal year and the amounts stated therein shall be and become appropriated by the Board for the respective objects and purposes therein specified. At any meeting after the adoption of the budget the Board may amend or supplement the budget by the affirmative votes of at least three members. Copies of the adopted budget and any amendments or supplements shall be filed with the Town Clerk and Town Manager. Necessary adjustments to local administrative procedures shall be made.
- (P) **Personnel.** The Board shall review and assess yearly that sufficient number of staff are employed, including an Executive Director, hearing examiners, housing counselors and legal staff, as may be necessary to perform its function efficiently in order to fulfill the purpose of this Chapter. Except for the elected or appointed Board Members and the Executive Director, all employees of the Board are within the classified civil service of the Town of Fairfax. The Board shall appoint an Executive Director to administer and supervise the exercise of its powers and duties who shall be directly responsible to the Board.
- (Q) **Board Legal Work.** Legal staff hired by the Board shall represent and advise the Board, its Members, and its staff in any civil matters, actions, or proceedings in which the Board, its Members, or its staff, in or by reason of their official capacity, are concerned or are a party. The Board may, in its sole discretion, and without approval of the Town Council, retain private attorneys to furnish legal advice or representation in particular matters, actions or proceedings.

(R) **Contracts and Purchases.** The Board shall procure goods and services as do other Fairfax agencies using existing support services within the Town as would any other department, i.e., Finance, Information Technology, and Public Works, among others. However, the Board shall have sole and final authority to employ attorneys, legislative lobbyists, and other professionals, and to approve contracts for such professional services.

(S) **Conforming Regulations.** If any portion of this Chapter is declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by state or federal legislation, the Board and not the Town Council shall have authority to enact replacement regulations consistent with the intent and purpose of the invalidated provision and applicable law. Such replacement regulations shall supersede invalidated or unenforceable provisions of this Chapter to the extent necessary to resolve any inconsistency. The subject matter of such replacement regulations shall be limited to rent control matters as enumerated in this Chapter.

(T) **Reporting and Fee Payment Requirements.**

(1) Within sixty (60) days after the adoption of this Chapter, all Landlords shall be required to file a copy of all rental increase notices, change of terms of tenancy and tenancy termination notices with the Board before serving the Tenant the notice. A proof of service with time and date of service of notice shall be included with notice filed with the Town.

(2) If the Board, after the Landlord has proper notice and after a hearing, determines that a Landlord has willfully and knowingly failed to properly report, as described above, any rental increase notices, change of terms of tenancy or tenancy termination, or pay the Rental Housing Fee, the Board may authorize the Tenant of such a non-reporting or fee paid Unit to withhold all or a portion of the Rent for the Rental Unit until such time as the Rental Housing Fee is paid or notice filed. After a notice is properly filed or fee paid, the Board shall determine what portion, if any, of the withheld Rent is owed to the Landlord for the period in which the notice is not properly filed or fee paid. Whether or not the Board allows such withholding, no Landlord who has failed to properly report or pay the fee shall at any time increase Rents for a Controlled Rental Unit until such fee or notice is reported. This shall go into effect thirty (30) days after determination of the Board.

- (3) Failing to pay the fee or file a timely copy of a notice before the filing of an unlawful detainer lawsuit is a complete defense to an unlawful detainer. No Board action is required for this defense to be alleged or litigated in an unlawful detainer action.

Section: 5.57.080 Stabilization of Rents; Right of Reasonable Return for Landlords.

- (A) **Establishment of Base Rent.** Beginning the effective date of this Chapter, no Landlord shall charge Rent for any Controlled Rental Unit in an amount greater than the Rent in effect on March 4th, 2022 except for increases expressly allowed under this Chapter. The Rent in effect on that date is the Base Rent. If there was no Rent in effect on March 4th, 2022 the Base Rent shall be the Rent that was charged on the first date that Rent was charged following March 4th, 2022. For tenancies commencing after the adoption of this Chapter, the Base Rent is the initial rental rate in effect on the date the tenancy commences. As used in this Subsection, the term “initial rental rate” means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy. The Base Rent is the reference point from which the Maximum Allowable Rent shall be adjusted upward or downward in accordance with Section 5.57.080(C).
- (B) **Posting.** As soon as the Landlord is aware of the Annual General Adjustment the Landlord shall post it in a prominent place in or about the affected Controlled Rental Units. The Board may require that other information it deems relevant to also be posted.
- (C) **Annual General Adjustment.** No later than June 30 each year, the Board shall announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year.
 - (1) The Annual General Adjustment shall be equal to sixty-five (60%) percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-Hayward region, or any successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics) as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the 12-month period ending as of March of the current year.

- (2) Subparagraph 1 of this Subsection notwithstanding, in no event shall the Annual General Adjustment be less than zero percent (0%) or greater than five percent (5%).
- (3) For the period between the effective date of this Chapter and the first Annual General Adjustment announced September 1, the Landlord may increase the Maximum Allowable Rent to include one Annual General Adjustment for 2022.
- (D) **Petitions**. Upon receipt of a petition by a Landlord and/or a Tenant, the Maximum Allowable Rent of individual Controlled Rental Units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Section. The petition shall be on the form provided by the Board and shall include a declaration by the Landlord that the Rental Unit meets all requirements of this Chapter. Notwithstanding any other provision of this Section, the Board or hearing examiner may refuse to hold a hearing and/or grant a Rent adjustment if an individual hearing has been held and decision made with regard to the Maximum Allowable Rent within the previous twelve (12) months.
- (E) **Hearing Procedure**. The Board shall enact rules and regulations governing hearings and appeals of individual adjustment of Maximum Allowable Rents which shall include the following:
- (1) **Hearing Examiner**. A hearing examiner appointed by the Board shall conduct a hearing to act upon the petition for individual adjustment of Lawful Rent and shall have the power to administer oaths and affirmations.
 - (2) **Notice**. The Board shall notify the Landlord, if the petition was filed by the Tenant, or the Tenant, if the petition was filed by the Landlord, of the receipt of such a petition and provide a copy thereof.
 - (3) **Time of Hearing**. The hearing officer shall notify all parties as to the time, date and place of the hearing.
 - (4) **Records**. The hearing examiner may require either party to a Rent adjustment hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements. The hearing examiner shall conduct a current building inspection and/or request the city to conduct a current building inspection if the hearing examiner finds good cause to believe the Board's current information does not reflect the current condition of the Controlled Rental

Unit. The Tenant may request the hearing examiner to order such an inspection on or prior to the date of the hearing. All documents required under this Section shall be made available to the parties involved prior to the hearing at the office of the Board. In cases where information filed in a petition for Maximum Allowable Rent adjustment or in additional submissions filed at the request of the hearing examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.

- (5) **Open Hearings**. All Maximum Allowable Rent adjustment hearings shall be open to the public.
- (6) **Right of Assistance**. All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, Tenant Organization representatives or any other persons designated by said parties.
- (7) **Hearing Record**. The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions; orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision, order and/or ruling. All hearings shall be recorded. Any party may receive a copy of the audio that was made. Reasonable costs may be charged. The Board shall not be responsible for transcribing such audio.
- (8) **Quantum of Proof and Notice of Decision**. No individual adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceeding shall also be notified of their right to any appeal allowed by the Board and/or to judicial review of the decision pursuant to this Section and Section 5.57.090 of this Chapter.

- (9) **Consolidation**. All Landlord petitions pertaining to Tenants of the same Property shall be consolidated for hearing, and all petitions filed by Tenants occupying the same Property shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.
- (10) **Appeal**. Any person aggrieved by the decision of the hearing examiner may appeal to the Board. On appeal, the Board shall affirm, reverse or modify the decision of the hearing examiner.
- (11) **Finality of Decision**. The decision of the hearing examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the Board on appeal reverses or modifies the decision of the hearing examiner, the Landlord, in the case of an upward adjustment in Rent, or the Tenant, in the case of a downward adjustment of Rent, shall be ordered to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiner's decision been the same as that of the Board.
- (12) **Time for Decision**. The rules and regulations adopted by the Board shall provide for final action on any individual Rent adjustment petition within a reasonable time.

Decisions decreasing Rents shall remain in effect until the Board finds that the Landlord has corrected the defect warranting the decrease. The Board shall, by regulation, establish procedures for making prompt compliance determinations. Upon a determination of compliance, the Landlord shall be entitled to reinstatement of the prior Rent level, retroactive to the date that the Landlord corrected the defect which warranted the decrease. This shall be in compliance with California Civil Procedure Section 1942.4. If the Landlord is found to be in violation of California Civil Procedure Section 1942.4 then no rent shall be charged for the period during which the Landlord was in violation.

- (F) **Individual Adjustment Rent Increase**. In making individual adjustments of the Annual Adjustable Rent Increase, the Board shall consider the purposes of this Chapter and the requirements of law, including state law. In making an individual downward adjustment, the Board may consider decreases in Housing Services; substantial deterioration of the Controlled Rental Unit other than as a result of ordinary wear and tear; or failure on the part of the Landlord to provide adequate

Housing Services or to comply substantially with applicable housing, health and safety codes.

(G) A Landlord may not charge a Tenant for Utility Charges indirectly. In order to be paid by a tenant, the utility service must be separately or individually metered and the utility account must be registered to the Tenant and not the Landlord.

(H) **Landlords have the right to a Reasonable Return on their Investment.** In making individual adjustments of the Maximum Allowable Rent, the Board or hearing examiner shall consider the purposes of this Chapter and shall specifically consider all relevant factors, including (but not limited to):

- (1) Increases or decreases in property taxes;
 - (2) Unavoidable increases or any decreases in maintenance and operating expenses;
 - (3) The cost of planned or completed capital improvements to the Rental Unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement;
 - (4) Increases or decreases in the number of Tenants occupying the Rental Unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules;
 - (5) Substantial deterioration of the Rental Unit other than as a result of normal wear and tear;
 - (6) Failure on the part of the Landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement; and
 - (7) The pattern of recent rent increases or decreases.
- (I) No upward adjustment of an individual Maximum Allowable Rent shall be authorized by the board under this Section if the Landlord:

- (1) Has continued to fail to comply, after order of the Board, with any provisions of this Chapter and/or orders or regulations issued thereunder by the Board, or
 - (2) Has failed to bring the Rental Unit into compliance with the implied warranty of habitability.
- (J) Allowable Rent increases pursuant to an individual upward adjustment of the rent ceiling shall become effective only after the Landlord gives the Tenant at least a thirty (30) day written notice of such Rent increase and the notice period expires. If the Board makes a downward individual adjustment of the rent ceiling, such Rent decrease shall take effect no sooner than thirty (30) days after the effective date set by the Board for the downward adjustment.
- (K) No provision of this Chapter shall be applied so as to prohibit the Board from granting an individual Rent adjustment that is demonstrated by the Landlord to be necessary to provide the Landlord with a fair return on investment. Necessity shall be defined in regulations promulgated by the Board. Limits on the total increase per month and length of monthly increase shall be promulgated by the Board through regulations.

Section: 5.57.090 Non-waiverability.

Any provision, whether oral or written, whereby any provision of this Chapter for the benefit of the Tenant is waived, shall be deemed to be against public policy and shall be void.

Section: 5.57.100 Judicial Review.

A Landlord or Tenant aggrieved by any action or decision of the Board may seek judicial review by appealing to the appropriate court within the jurisdiction. No action or decision by the Board shall go into effect until thirty (30) days have expired to allow for such appeal.

Section: 5.57.110 Remedies.

- (A) Any Landlord who demands, accepts, receives, or retains any payment of Rent in excess of the maximum lawful Rent, in violation of the provisions of this Chapter or any rule, regulation or order hereunder promulgated, including the provisions ensuring compliance with habitability standards and registration fee requirements, shall be liable in a civil action to the Tenant from whom such payments are demanded, accepted, received or retained, for reasonable

attorney's fees and costs as determined by the court, plus damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the maximum lawful Rent. A civil penalty of treble the amount by which the payment or payments demanded, accepted, received or retained exceeds the maximum lawful Rent shall be awarded against the Landlord upon a showing that the Landlord has acted willfully or with oppression, fraud or malice. No administrative remedy need be exhausted prior to filing suit pursuant to this Subsection. The statute of limitations for all remedies in this subsection shall be three years. The remedies of this subsection are cumulative, and may be used in addition to any other remedy in this Chapter, at law, statute or ordinance.

(B) In lieu of filing a civil action for violation of Section 5.57.060 of this Chapter, a Tenant may file an administrative complaint. The Board shall establish by rule and regulation a hearing procedure similar to that set forth in Section 5.57.080(E).

(1) The rules and regulations adopted by the Board shall provide for final Board action on any complaint for excess Rent within one-hundred twenty (120) days following the date of filing of the complaint.

(2) In any administrative hearing under this Section, a Landlord who demands, accepts, receives or retains any payment of Rent in excess of the maximum lawful Rent shall be liable for damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the maximum lawful Rent and may be liable for an additional amount not to exceed Five Hundred Dollars (\$500), for costs, expenses incurred in pursuing the hearing remedy, and damages. The Tenant shall bear the burden of proving entitlement to this amount. The Tenant may deduct the \$500 costs payment and award of damages from future Rent payments in the manner provided by the Board. An order authorizing Rent withholding under this Chapter shall survive the sale or other transfer of the Rental Unit and shall be binding upon successors of the Landlord against whom the order was made. If a Tenant authorized to withhold Rent under this Chapter vacates the Rental Unit, the Landlord shall pay to such Tenant a sum equal to the balance of the Rent that the Tenant could have withheld.

(C) If the Tenant from whom such excessive payment is demanded, accepted, received or retained in violation of the foregoing provisions of this Chapter or any rule or regulation or order hereunder promulgated fails to bring a civil or

administrative action as provided for in this Section within one hundred twenty (120) days from the date of occurrence of the violation, the Board may settle the claim arising out of the violation or bring such action. Thereafter, the Tenant on whose behalf the Board acted is barred from also bringing an action against the Landlord in regard to the same violation for which the Board has made a settlement or brought action. In the event the Board settles said claim, it shall be entitled to retain the costs it incurred in settlement thereof, and the Tenant against whom the violation has been committed shall be entitled to the remainder.

(D) The appropriate court in the jurisdiction in which the Rental Unit affected is located shall have jurisdiction over all actions brought under this Section

Section: 5.57.120 Injunctive and Other Civil Relief.

The Board, and Tenants and Landlords of Rental Units, may seek relief from the appropriate court within the jurisdiction within which the affected Rental Unit is located to enforce any provision of this Chapter or its implementing regulations or to restrain or enjoin any violation of this Chapter and of the rules, regulations, orders and decisions of the Board.

Section: 5.57.130 Partial Invalidity.

If any provision of this Chapter or application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable. This Chapter shall be liberally construed to achieve the purposes of this Chapter and to preserve its validity.