



TOWN OF FAIRFAX

STAFF REPORT

October 11, 2022

TO: Mayor and Town Council

FROM: Janet Coleson, Town Attorney
Heather Abrams, Town Manager
David Woltering, Interim Planning and Building Services Director

SUBJECT: Introduction of Ordinances amending Title 5 of Town Code Chapter 5.54, Just Cause Evictions, and Chapter 5.55, Mandatory Mediation for Rental Increases, with a Rent Stabilization Program

RECOMMENDATION

Waive first reading and introduce and read by title only, an ordinance amending Chapter 5.54 Just Cause Evictions and waive first reading and introduce and read by title only, an ordinance amending Chapter 5.55 Mandatory Mediation for Rental Increases.

BACKGROUND

On September 21, 2022, the Town Council reviewed draft ordinances amending Chapter 5.54 Just Cause Evictions and Chapter 5.55 Mandatory Mediation for Rental Increases and directed staff to make substantial changes to both draft ordinances and return to the October 6, 2022 meeting. Subsequently, the item needed to be continued to this October 11, 2022 Special meeting.

DISCUSSION

On September 21, 2022, the Council directed that staff make substantial changes to the draft ordinances amending Chapters 5.54 and 5.55. These changes include the following:

- 1) removal of language establishing a separate Rent Board;
- 2) removal of treble damage provisions;
- 3) modification of provisions related to re-rental of units withdrawn from the rental market;
- 4) moving of designated language in Chapter 5.55 to a more appropriate location in Chapter 5.54;
- 5) removal of the requirement for a Tenant Habitability Plan; and
- 6) general clean-up of internal inconsistencies, cross references and text in the Model Ordinance and as a result of the above listed revisions.

The Council should review and discuss the proposed drafts. Minor modifications to the ordinances may be made after discussion. Major modifications to the ordinances will need to return to a subsequent Council meeting.

The Council will need to decide on an effective date in light of the need to contract for assistance with implementation.

FISCAL IMPACT

Additional contract services will be required to implement the ordinances. Staff has had preliminary discussion with representatives from the City of Berkeley and Legal Aid of Marin. Both organizations have offered to provide contract services to assist with the implementation of these ordinances. The City of Berkeley services would include consultation and training in the areas of technology needed for registration, the registration process itself, other aspects of day-to-day program implementation, the administration of the hearings and petitions process, as well as general counsel/legal and technical assistance with any appeals and drafting of regulations. Legal Aid of Marin (LAM) services would include providing support to tenants needing to complete applications, provide informational workshops and outreach services about the programs and assist the Town staff to prepare and disseminate informational program brochures, and provide legal services to income-eligible tenants. The Town of Fairfax will need to provide the day-to-day staffing services including to provide and support delivery of information to interested citizens, registration, noticing, enforcement, contract administration and management, and support to the Town Manager to fulfill the broad range of responsibilities assigned to the Town Manager not addressed by the City of Berkeley and/or LAM. Additionally, the Town will need to develop the database and online presence to support registration, informational outreach, and other aspects of the programs. The scope, costs, and methods for delivery of this hybrid approach to implementing these ordinances is at an initial stage of development at this time.

ATTACHMENTS

- A. Ordinance ___ amending Chapter 5.54 Just Cause for Evictions
- B. Ordinance ___ amending Chapter 5.55 Mandatory Mediation for Rental Increases

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 5.54 “JUST CAUSE EVICTIONS” OF TITLE 5 OF THE
FAIRFAX MUNICIPAL CODE**

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% 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% 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% of the county’s area median income, as identified in the 2021-04-02 Housing Needs Data Report: Fairfax; 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 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’s Tenant Protection Act of 2019 depends on renters knowing their rights and pursuing legal remediation when those rights are violated; and

WHEREAS, Chapter 5.54 (Just Cause Evictions) of the Fairfax Town Code does not presently include protections found in some other Bay Area rent stabilization 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, and Chapter 5.55 (for which amendments are being adopted through a concurrent ordinance), 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.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The recitals above are each incorporated by reference and adopted as findings of the Town Council.

SECTION 2. Chapter 5.54 Amended. Chapter 5.54, "Just Cause Evictions," is hereby amended in its entirety to read as follows:

"CHAPTER 5.54: JUST CAUSE EVICTIONS

Section

- 5.54.010 Purpose and Intent
- 5.54.020 Definitions
- 5.54.030 Just Cause for Eviction – Protections
- 5.54.040 Remedies
- 5.54.050 Severability

5.54.010 PURPOSE AND INTENT.

The purpose of this Chapter is to promote neighborhood and community stability,

healthy housing, and affordability for renters in Fairfax by regulating arbitrary evictions to the greatest extent allowable under California law, while ensuring Landlords a fair and reasonable return on their investment.

5.54.020 DEFINITIONS.

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CREDITWORTHINESS. Any standard of determining suitability to receive credit or reliability to pay money owed, including any financial or income standard.

DISABLED. The term “disabled” shall have the same meaning as that in Government Code section 12955.3, as may be amended or renumbered from time to time.

DWELLING UNIT. A structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household as defined in Civil Code section 1940 and the Fairfax Town Code.

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.

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.

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.

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. Indicia of a Primary Residence include:

- (1) The individual carries on basic living activities at the subject premises for extended periods;
- (2) The subject premises are listed with other public agencies, including Federal, State and local taxing authorities as the individual's primary residence;
- (3) Utilities are billed to and paid by the individual at the subject premises;
- (4) A homeowner's tax exemption for the individual has not been filed for a different property;
- (5) The occupant is not registered to vote at any other location;
- (6) All or most of the individual's personal possessions have been moved into the subject premises;
- (7) 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;
- (8) Other relevant factors demonstrating a residence is the person's Primary Residence.

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 unit 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 is able to provide documentation to the Town Manager of the name and address of all trust beneficiaries.

PROPERTY. All rental units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

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.

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.

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.

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 School District website for each year.

STABILIZED 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 (a) to a Tenant who has resided at the Property for more than thirty continuous days (b) a Tenant who has entered into an agreement to lease a Rental Unit for 30 days or more, or (c) 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 stabilization.
- (4) Rental Units exempt pursuant to the Costa-Hawkins Rental Housing Act (Civil Code sections 1954.50—1954.535). If this subsection (4) is repealed by operation of law, new Rental Units shall be exempt per this subsection only if newly constructed within ten years prior to such repeal. In such case, pursuant to Government Code § 66300(d)(2)(A), all units built on the same parcel where any Stabilized Rental Unit was previously demolished shall not be exempt as new construction.

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.

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.

TOWN. The Town of Fairfax, California

TOWN MANAGER. The Town Manager of the Town of Fairfax or designee.

UTILITY CHARGES. Any charges for gas, electricity, water, hot water, sewer, refuse removal, cable or internet.

5.54.030 JUST CAUSE FOR EVICTION – PROTECTIONS.

(A) Applicability. Except as provided herein, the provisions of this Chapter shall apply to all properties in Fairfax that are hired, rented, or leased to a household within the meaning of Cal. Civil Code section 1940, including properties that contain any of the following: (1) dwelling units which contain a separate bathroom, kitchen, and living area in a multifamily or multipurpose dwelling; (2) dwelling units in single room occupancy residential structures; or (3) units in a structure that is being used for residential uses whether or not the residential use is a conforming use permitted under the Fairfax Town Code,. This definition applies to any dwelling space that is actually used for residential purposes, including live-work spaces, whether or not the residential use is legally permitted.

(B) Exemptions. The following Rental Units shall be exempt from this section, except that all exempt units must comply with the requirement of section 5.54.030(D).

(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 (a) to a Tenant who has resided at the Property for more than thirty continuous days (b) to a Tenant who has entered into an agreement to lease a Rental Unit for 30 days or more (c) where a Landlord has violated California Civil Code 1940.1 with regard to the Tenant or (d) a Rental Unit used exclusively as a Short-Term Rental as defined in Fairfax Town Code Section 17.008.020.

(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 stabilization.

(4) Any dwelling unit located in a development where the dwelling units are subject to legally binding restrictions enforceable against and/or governing such units that limit the rent to no more than an affordable rent, as such term is defined in Cal. Health & Safety Code section 50053, and as subsequently amended.

(C) 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 on which the court action is based:

(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 the terms 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 (ii) of section 5.54.030(C)(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 a 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. 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.

(5) Temporarily Vacate in Order to Undertake Substantial Repairs. The Landlord, after having obtained all necessary permits from the Town, 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 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 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 51% 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 and relationship to the Landlord of the person intended to occupy the Rental Unit.

(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 one year .

(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 one year, the Landlord shall have the burden of producing evidence that the failure to occupy did not occur in bad 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 if (a) 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 (b) 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 subsection is filed with the Town Manager, the Town Manager shall record a notice of constraints with the County Recorder identifying each Rental Unit on the property that is the subject of the subsection 5.54.030(C)(6) notice to vacate, stating the nature and dates of applicable restrictions under subsections 5.54.030(C)(6)(e), 5.54.030(C)(6)(f), and 5.54.030(E), and any other restrictions per applicable regulations. The Town Manager 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 Town Manager for a rescission of the recorded notice of constraints. No further notices to the Rental Unit pursuant to this subsection are required 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 5.55.060 of this Code and all Town regulations 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) Buy-Out Agreements. Nothing in this Chapter shall expand or limit a Landlord and Tenant's ability to negotiate or agree to end a tenancy voluntarily in exchange for money or other consideration. All buy-out agreements under this section must be in writing, provided in English and translated into any other language at the Tenant's request, and include:

(a) A statement that the Tenant has the right not to enter into a proposed buy-out agreement;

(b) A statement that the Tenant may consult with an attorney of their choosing before entering into a buy-out agreement;

(c) A space for each Tenant to sign and write the date upon which the Landlord provided the Tenant with the agreement.

(9) 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.

(D) In any action to recover possession of a Rental Unit pursuant to this section 5.54.030, 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 5.54.030(B) 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.

(E) Right of Return and First Right of Refusal. All Tenants that are displaced based on sections 5.54.030(C)(5) or (C)(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 termination on a basis listed in sections 5.54.030(C)(5) or (C)(6) plus any lawful adjustment under section 5.55.080 of Chapter 5.55. All notices of termination of tenancy served under sections 5.54.030(C)(5) or (C)(6) shall state the lawful rent in effect at the time of termination of tenancy. If the Tenant declines to reoccupy the Rental 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 Tenant at the time the Landlord served the termination notice, plus any lawful adjustment under this Chapter or Chapter 5.55.

(F) School Year Protections for Educators and Students. It shall be a defense to an eviction under sections 5.54.030(C)(5) or (C)(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.

(G) Written Warning Notice Requirements. Any written warning notice as described in subsections 5.54.030(C)(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 Town Manager. 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.

(H) 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.

(I) 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 5.54.030(C)(2)-(4) shall be attached to any notices that purport to terminate a tenancy for which they correspond. The Landlord shall file with the Town Manager a copy of any notice terminating tenancy within three (3) days after serving the notice on the Tenant.

(J) 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 actual damages. The Tenant 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 or Landlord prevailing in an action brought under this Chapter that is not an unlawful detainer action shall recover costs and reasonable attorney 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.

5.54.040 RESERVED.

5.54.050 RELOCATION.

(A) A Landlord seeking to recover possession under sections 5.54.030(C)(5)-(7) must make relocation payments to the Tenant's household of the Rental Unit. The amount of the relocation benefit shall be equal to two months' Rent, at the rate of Rent applicable at the time of the relocation. 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 5.54.050(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 5.54.050(A) and (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.

(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 Town Manager 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 the amount of relocation payments they would have been entitled to and costs of suit. 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 available in this Chapter or at law.

(F) A Landlord's failure to properly allege and prove a permissible ground for eviction under sections 5.54.030(C)(5)-(7) is not a defense to failing to provide relocation payments when a Landlord recovers the Rental Unit in violation of section

5.54.030. Further, where a Tenant vacates a Rental Unit within one year of receiving a termination notice pursuant to sections 5.54.030(C)(5)-(7), the reason for vacating shall be presumed to be the termination notice.

5.54.060 UNITS WITHDRAWN FROM THE RENTAL MARKET PURSUANT TO THE ELLIS ACT.

The following shall apply to a unit where possession is recovered pursuant to section 5.54.030(C)(7) of this Chapter.

(A) Re-Rental of Rental Unit 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 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 Town Manager may institute a civil proceeding against any Landlord who has re-offered a Rental Unit for rent or lease subject to this subsection, 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 subsection, and the Tenant has advised the Landlord pursuant to this subsection 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 subsection, 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.

(4) For all tenancies commenced during the time periods described below, 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 Town Manager, plus annual adjustments available under section 5.55.080.

(5) The provisions of paragraph (4) shall apply to all tenancies commenced during either of the following time periods:

(a) The two-year period after any notice of intent to withdraw the Rental Unit is filed with the Town Manager, 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 two-year period after the Rental Unit is withdrawn.

(6) This subsection 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) 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 four 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 regulation established in section 5.55.080 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 regulations for newly constructed Rental Unit.

(D) Applicability to Successors in Interest. This section 5.55.060 shall apply to all successors in interest of a Landlord who has withdrawn Rental Units from rent or lease. The Town Manager 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.

(E) 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.

(F) Notice of Withdrawal. A Landlord who seeks to demolish or withdraw a Rental Unit from the rental market under section 5.54.030(C)(7) must provide the Town Manager with a notice, that states, under 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; and
- (4) The lawful Rent applicable to each Rental Unit.

(G) 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).

(H) 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 Town Manager, and will require a certification with that notice that actions have been initiated as required by law to terminate any existing tenancies.

(I) The Landlord must notify the Town Manager in writing of the intention to re-offer the Rental Unit for rent or lease.

(J) 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 Town Manager. 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 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, provided that the Tenant gives written notice of their entitlement to an extension to the Landlord within 60 days of the date of delivery of the notice of intent to withdraw.

(K) 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 Town Manager 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 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 Town Manager of the claim that the Tenant is entitled to stay in their Rental Unit for one year after date of delivery of the notice of intent to withdraw.

(5) Within 90 days of date of delivery to the Town Manager 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 Town Manager 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.

(L) The Landlord must notify any Tenant displaced pursuant to subsection 5.54.030(C)(7) of the following:

(1) That the Town Manager has been notified pursuant to subsection 5.54.060(F).

(2) That the notice to the Town Manager 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.

(4) Notice to the Tenant of their rights under this subsection.

(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 Town Manager of the notice of intent to withdraw, then tenancy shall be extended to one year after date of delivery to the Town Manager 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 Town Manager 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 Town Manager of the notice of intent to withdraw, subject to any adjustments otherwise available under section 5.55.080 of this Code.

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

(M) 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 two 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 5.54.030(C)(7) shall notify the Town Manager, in writing, under penalty of perjury, for each such Rental Unit:

- (1) Whether the Rental Unit has been demolished;
- (2) If the Rental Unit has not been demolished, whether it is in use;
- (3) If the Rental Unit is in use, whether that use is residential;

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

(N) If a Rental Unit has been demolished, and one or more new units constructed on the lot, the Landlord shall furnish the information required by items (M)(2), (3) and (4), above, for each new unit. The Town Manager 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 5.54.030(C)(7).

(O) The Town Manager 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 5.54.060(N) that it maintains the records described in subsection 5.54.060(M), and that the Rent of the Rental Unit may be restricted pursuant to this Chapter.

(P) The Town Manager shall maintain a register of all Rental Units withdrawn from rent or lease under section 5.54.030(C)(7) and the Rent applicable to each unit at the time of withdrawal. The Town Manager shall inform Tenants displaced from units withdrawn from rent or lease at the address provided by the Tenant, when the Landlord notifies the Town Manager that the Rental Unit or replacement unit will again be offered for rent or lease within two years of the date of withdrawal.

(Q) The Town Manager 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.

5.54.070 REMEDIES.

Affirmative Defense. A Landlord's failure to comply with this Chapter, including but not limited to the identification of an applicable cause for termination described in section 5.54.030 and delivery of a completed notice of termination in accordance with the same, shall be an affirmative defense to an unlawful detainer action by Landlord.

(B) Civil Liability. Whenever a Landlord attempts to prevent a Tenant from acquiring any rights under this Chapter, retaliates against a Tenant for the exercise of any rights under this Chapter, or engages in activities prohibited under this Chapter, the Tenant may institute a civil proceeding for money damages or injunctive relief, or both. This section creates a private right of action to enforce all terms, rights, and obligations under this Chapter. Whoever is found to have violated this Chapter shall be subject to appropriate injunctive relief and shall be liable for damages, costs, and reasonable attorneys' fees, and whatever other relief the court deems appropriate. In the case of an award of damages, said award may be trebled if the trier of fact finds that the Landlord acted in knowing violation, reckless disregard, or otherwise willfully failed to comply with this Chapter. The court may award the defendant attorney's fees and costs as the prevailing party in cases where plaintiff's claim is deemed unreasonable, frivolous, meritless, or vexatious.

(C) Civil Actions to Determine Liability. Any Tenant may bring a civil action to determine the applicability of this Chapter to the tenancy.

(D) Other Private Rights of Action. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action."

SECTION 3. Compliance with CEQA. 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 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The Town Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Effective Date and Posting. This Ordinance shall be effective ____ 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.

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:
ABSTAIN:

Stephanie Hellman, Mayor

Attest:

Michele Gardner, Town Clerk

Date

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 5.55 “MANDATORY MEDIATION FOR RENTAL
INCREASES” OF TITLE 5 OF THE FAIRFAX MUNICIPAL CODE**

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% 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% 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% 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 spending more than 30% of household income on rent, with 28% of renters estimated to be severely rent-burdened, which is defined as spending more than 50% 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 spending more than 30% of their annual income on rent, including 335 who are spending 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 State of California's Tenant Protection Act of 2019 establishes an annual allowable rent increase of 5% plus inflation, far exceeding that of all municipal rent stabilization districts in the Bay Area; and

WHEREAS, the Tenant Protection Act of 2019 depends on renters knowing their rights and pursuing legal remediation when those rights are violated; and

WHEREAS, Town staff has identified changes to Chapter 5.55 (Mandatory Mediation for Rental Increases) of the Fairfax Town Code that will streamline and improve the landlord-tenant negotiation process for rental adjustments, and provide clarity regarding relocation procedures, landlords' and tenants' rights, and available remedies to all parties; and

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.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The recitals above are each incorporated by reference and adopted as findings of the Town Council.

SECTION 2. Chapter 5.55 Amended. Chapter 5.55, “Mandatory Mediation for Rental Increases,” is hereby amended in its entirety to read as follows:

“CHAPTER 5.55: RENT STABILIZATION PROGRAM

SECTIONS

- 5.55.010 Purpose and Intent
- 5.55.020 Definitions
- 5.55.030 Applicability
- 5.55.040 Reserved
- 5.55.050 Reserved
- 5.55.060 Reserved
- 5.55.070 Rent Stabilization
- 5.55.080 Stabilization of Rents; Right of Reasonable Return for Landlords
- 5.55.090 No Waiver
- 5.55.100 Judicial Review
- 5.55.110 Remedies
- 5.55.120 Injunctive and Other Civil Relief

5.55.010 PURPOSE AND INTENT.

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

5.55.020 DEFINITIONS.

APPEALS BOARD. The Town Council of the Town of Fairfax.

DWELLING UNIT. A structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household as defined in Civil Code section 1940 and the Fairfax Town Code.

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.

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.

MAXIMUM ALLOWABLE RENT. The maximum allowable rent which may be legally charged on any Stabilized Rental Unit covered by this Chapter.

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. Indicia of a Primary Residence include:

- (1) The individual carries on basic living activities at the subject premises for extended periods;
- (2) The subject premises are listed with other public agencies, including Federal, State and local taxing authorities as the individual's primary residence;
- (3) Utilities are billed to and paid by the individual at the subject premises;
- (4) A homeowner's tax exemption for the individual has not been filed for a different property;
- (5) The occupant is not registered to vote at any other location;
- (6) All or most of the individual's personal possessions have been moved into the subject premises;
- (7) 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;
- (8) Other relevant factors demonstrating a residence is the person's Primary Residence.

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 unit 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.

PROPERTY. All rental units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

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.

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.

RENTAL HOUSING FEE. The fee described in section 5.55.070 of this Chapter.

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.

STABILIZED 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 (a) to a Tenant who has resided at the Property for more than thirty continuous days (b) a Tenant who has entered into an agreement to lease a Rental Unit for 30 days or more, or (c) 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 stabilization.
- (4) Rental Units exempt pursuant to the Costa-Hawkins Rental Housing Act

(Civil Code sections 1954.50—1954.535). If this subsection (4) is repealed by operation of law, new Rental Units shall be exempt per this subsection only if newly constructed within ten years prior to such repeal. In such case, pursuant to Government Code § 66300(d)(2)(A), all units built on the same parcel where any Stabilized Rental Unit was previously demolished shall not be exempt as new construction.

- (5) Private, for profit care homes, assisted care facilities, supportive housing.
- (6) Exemptions listed in Section 5.55.030(B) of this Chapter.

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.

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.

TOWN. The Town of Fairfax, California

TOWN MANAGER. The Town Manager of the Town of Fairfax, California or designee.

UTILITY CHARGES. Any charges for gas, electricity, water, hot water, sewer, refuse removal, cable or internet.

5.55.030 APPLICABILITY.

(A) Applicability. Except as provided herein, the provisions of this Chapter shall apply to all properties in Fairfax that are hired, rented, or leased to a household within the meaning of Cal. Civil Code section 1940, including properties that contain any of the following: (1) dwelling units which contain a separate bathroom, kitchen, and living area in a multifamily or multipurpose dwelling; (2) dwelling units in single room occupancy residential structures; or (3) units in a structure that is being used for residential uses whether or not the residential use is a conforming use permitted under the Fairfax Town Code. This definition applies to any dwelling space that is actually used for residential purposes, including live-work spaces, whether or not the residential use is legally permitted.

(B) Exemptions. The following Rental Units shall be exempt from the provisions of this Chapter:

- (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 (a) to a Tenant who has resided at the Property for more than thirty continuous

days (b) a Tenant who has entered into an agreement to lease a Rental Unit for 30 days or more, or (c) where a Landlord has violated California Civil Code 1940.1 with regard to the Tenant, or (d) a Rental Unit used exclusively as a Short-Term Rental as defined in Fairfax Town Code Section 17.008.020.

(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 stabilization.

(4) Any dwelling unit located in a development where the dwelling units are subject to legally binding restrictions enforceable against and/or governing such units that limit the rent to no more than an affordable rent, as such term is defined in Cal. Health & Safety Code section 50053 and as subsequently amended.

(5) Exemptions listed in the definition of Stabilized Rental Units in this Chapter.

5.55.040 Reserved

5.55.050 Reserved

5.55.060 Reserved

5.55.070 RENT STABILIZATION, JUST CAUSE, AND COMMUNITY STABILITY BOARD.

(A) Authority and Duties. The Town Manager or Town Council shall have the following authority and duties under this Chapter:

(1) Establish a Base Rent under section 5.55.080(A).

(2) Make adjustments in the Rent Increase and Decreases in accordance with section 5.55.080.

(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 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 Town Manager.

(7) Administer oaths and affirmations and subpoena witnesses.

(8) Establish rules and regulations for deducting penalties and settling civil claims under section 5.55.110.

(9) Seek authorization from the Town Council to seek injunctive and other civil relief under sections 5.55.110 and 5.55.120.

(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 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.

(B) Rules and Regulations. The Town Council may issue such rules and regulations, including those which are contained in this Chapter as will further the purposes of the Chapter. The Town Council shall publicize its rules and regulations prior to promulgation on the Town's website.

(C) Community Education. The Town Manager may publicize this Chapter and Chapter 5.54 so that all residents of Fairfax will have the opportunity to become informed about their legal rights and duties under this Chapter. The Town Manager will prepare a brochure which fully describes the legal rights and duties of Landlords and Tenants under Chapters 5.54 and 5.55 of this Code. 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 Town website and/or other appropriate technology. Information about the Rent Stabilization Program may be made available in other languages as requested by the community.

(D) Collection of Rental Housing Fee. All Landlords shall pay the business license fee required by the Town Code section 5.16.010, if applicable, in addition to the Rental Housing Fee. The Town may charge the Rental Housing Fee at the same time as the business license fee. The Rental Housing Fee will be set by resolution of the Town Council. Enforcement of this Chapter shall be funded by the Rental Housing Fee.

(E) Reporting and Fee Payment Requirements.

(1) Within sixty (60) days after the effective date of this Chapter, all Landlords shall file a copy of all rental increase notices, change of terms of tenancy and tenancy termination notices with the Town Manager 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 Manager.

(2) After proper notice and hearing, if it is determined 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 Town Manager 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 Town Manager 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 Town Manager allows such withholding, no Landlord who has failed to properly report or pay the fee shall at any time increase Rents for a Stabilized Rental Unit until such fee or notice is reported.

(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.

5.55.080 STABILIZATION OF RENTS; RIGHT OF REASONABLE RETURN FOR LANDLORDS.

(A) Establishment of Base Rent. Beginning on the effective date of this Chapter, no Landlord shall charge Rent for any Stabilized Rental Unit in an amount greater than the Rent in effect for that unit on February 2nd, 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 February 2nd, 2022 the Base Rent shall be the Rent that was charged on the first date that Rent was charged following February 2nd, 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 5.55.080(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 Stabilized Rental Units.

(C) Annual General Adjustment. No later than June 30 each year, the Town Manager shall announce the percentage by which Rent for eligible Rental Units will be adjusted, effective September 1 of that year.

(1) The Annual General Adjustment shall be equal to 60% 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) Paragraph 1 of this subsection notwithstanding, in no event shall the Annual General Adjustment be less than 0% not greater than 5%.

(3) For the period between the effective date of this Chapter and the first Annual General Adjustment announced September 1, 2023, the Landlord may submit a request to the Town Manager for an increase to the Maximum Allowable Rent. Guidelines for approving or denying such request shall be promulgated by the Town Council.

(D) Petitions. Upon receipt of a petition by a Landlord and/or a Tenant, the Maximum Allowable Rent of individual Stabilized 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 Town Manager 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 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 Town Council 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 Town Manager 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 Town Manager 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 may 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 Stabilized 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 Town offices. 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 Town Manager 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.

(8) Proof Required 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 be notified of their right to an appeal to the Town Council and/or to judicial review of the decision on appeal pursuant to this section and section 5.55.090 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) Time for Decision. Decisions decreasing Rents shall remain in effect until the Town Manager finds that the Landlord has corrected the defect warranting the decrease. 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.

(11) Appeal. Any person aggrieved by the decision of the hearing examiner may appeal to the Town Council acting as the Appeals Board. On appeal, the Town Council may affirm, reverse or modify the decision of the hearing examiner.

(12) Finality of Decision. The decision of the hearing examiner shall be the final decision in the event of no appeal to the Town Council. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the Town Council 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 Town Council.

(F) Individual Adjustment Rent Increase. In making individual adjustments of the Annual Adjustable Rent Increase, the hearing examiner shall consider the purposes of this Chapter and the requirements of law, including state law. In making an individual downward adjustment, the hearing examiner may consider decreases in Housing Services; substantial deterioration of the Stabilized 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) No Direct Charge for Utilities. 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' Right of Reasonable Return. In making individual adjustments of the Maximum Allowable Rent, the 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 under this section if the Landlord:
- (1) Has continued to fail to comply with any provisions of this Chapter and/or orders or regulations properly issued thereunder, 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 hearing examiner 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 for the downward adjustment.
- (K) No provision of this Chapter shall be applied so as to prohibit the hearing examiner 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.

Limits on the total increase per month and length of monthly increase may be promulgated by the Town Council through regulations.

5.55.090 NO WAIVER.

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.

5.55.100 JUDICIAL REVIEW.

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

5.55.110 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 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. 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 5.55.060 of this Chapter, a Tenant may file an administrative complaint. The Town Council may establish by resolution a hearing procedure similar to that set forth in section 5.55.080(E).

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 Town Manager. 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 Town Manager may settle the claim arising out of the violation or bring such action. Thereafter, the Tenant on whose behalf the Town Manager acted is barred from also bringing an action against the Landlord in regard to the same violation for which the Town Manager has made a settlement or brought action. In the event the Town Manager settles said claim, the Town 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.

5.55.120 INJUNCTIVE AND OTHER CIVIL RELIEF.

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.”

SECTION 3. Compliance with CEQA. 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 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The Town Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Effective Date and Posting. This Ordinance shall be effective _____ 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.

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:
ABSTAIN:

Stephanie Hellman, Mayor

Attest:

Michele Gardner, Town Clerk

Date