

ORDINANCE NO. 871

**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 TOWN 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, Chapter 17.

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.

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.

(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 required 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 implementation 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 2, 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 2, 2022 the Base Rent shall be the Rent that was charged on the first date that Rent was charged following February 2, 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 5.55.100 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 5.55.070 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. Implementation Date. The provisions of this Chapter shall not be implemented by the Town of Fairfax until such time as sufficient agreements for implementation support, including, but not limited to, staffing, hearings, software and outreach, have been approved by the Town Council. Upon approval of said support agreements, the Town Council will set an implementation date by resolution.

SECTION 6. Effective Date and Posting. This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club.

The foregoing Ordinance was introduced at a special meeting of the Town Council on the 11th day of October, 2022, and duly adopted at the next regular meeting of the Town Council on the 2nd day of November, 2022, by the following vote, to wit:

AYES: ACKERMAN, COLER, CUTRANO, GODDARD, HELLMAN
NOES: None
ABSENT: None
ABSTAIN: None

/s/

Stephanie Hellman, Mayor

Attest:

/s/

11-04-22

Michele Gardner, Town Clerk

Date