



Sandra Rivera
Agency Director

Agenda Item _____ January 10, 2023

December 27, 2022

224 West Winton Ave
Room 110

Hayward, California
94544-1215

phone
510.670.5333
fax
510.670.6374

www.acgov.org/cda

Honorable Board of Supervisors
Administration Building
1221 Oak Street, Suite 536
Oakland, California 94612

Dear Board Members:

SUBJECT: SECOND READING OF THREE (3) ORDINANCES TO PROVIDE TENANT PROTECTIONS IN THE UNINCORPORATED COUNTY

RECOMMENDATION:

- A. Adopt and approve the Rental Housing Registration Ordinance;
- B. Adopt and approve the Just Cause Ordinance; and
- C. Adopt and approve the Fair Chance Ordinance.

BACKGROUND:

On December 20, 2022, your Board approved the first reading of three tenant protection ordinances: the Rental Housing Registration ordinance, the Just Cause ordinance, and the Fair Chance ordinance.

The Rental Housing Registration ordinance (Exhibit A) was approved with no changes. The Just Cause ordinance (Exhibit B) was approved with five changes: (1) the exclusion of owner-occupied properties with 4 or fewer units was removed (3.70.040(B)(2)), (2) the Just Cause for Termination for Criminal Activity was removed (3.70.060(F)), (3) the Just Cause for Termination for Assignment was removed (3.70.060(G)) and (4) removal of the word "substantially" from 3.70.120(A), and (5) removal of the words "plus an increase of up to the amount required to provide the owner a reasonable rate of return" in 3.70.060(M)(2).

The only amendment to the Fair Chance ordinance (Exhibit C) was the change to the effective date: from thirty (30) days after passage to sixty (60) days after the expiration of the County state of emergency. The approved ordinances are attached.

On December 6, 2022, your Board heard a staff presentation and took public testimony on three Tenant Protection ordinances, Phase 1 of the Tenant Protection program. Your Board continued the item to December 20, allowing County Counsel additional time to review the ordinances. Your Board considered revised versions of the Rental Housing Registration and Just Cause ordinances, which included the removal of the anti-harassment and written lease requirement from the Rental Housing Registration

Ordinance and edits to the Just Cause Ordinance to clean up inconsistent references and duplication. The Fair Chance Ordinance had no changes from the December 6, 2022 version.

In 2018, your Board directed the Community Development Agency's (CDA) Housing and Community Development Department (HCD) to investigate tenant protections in the Unincorporated County. HCD applied for and received an award under the San Francisco Foundation's Partnership for the Bay's Future Challenge Grant in 2019 to staff and fund research and analyze options for possible protections, including the formation of a Steering Committee.

The Steering Committee recommended eight protections, including Rent Stabilization, expansion of Statewide Just Cause for Eviction (Just Cause), anti-harassment measures, anti-discrimination measures and pro-active rental inspection programs. The recommendations, which resulted from staff research and input from 19 stakeholder meetings, required a three-phased approach over multiple years to implement. The first phase would include Just Cause, Fair Chance and Rental Registration ordinances. Future phases could include review and development of Rent Stabilization Ordinance, the implementation of a Rent Board and revisions to the Mandatory Rent Mediation Notification Ordinance. To implement these programs, additional staffing and resources would be needed, and therefore the adoption of fees was included from the beginning of the process.

The three ordinances in the first phase of this Tenant Protection Program were brought to the Unincorporated Services Committee on September 22, 2021 and January 24, 2022, and to the Joint Health and Social Services Committee in January 2022. The program was also discussed at each of the Unincorporated Area Municipal Advisory Councils (MACs) in the Fall of 2021. Draft ordinances were taken to the Unincorporated Services Committee on June 22, 2022, and July 27, 2022, and the Transportation and Planning Committee on May 9, 2022 and July 13, 2022.

RENTAL HOUSING REGISTRY AND TENANT ANTI-HARASSMENT:

Originally proposed as a proactive rental inspection and rental registry ordinance in March 2022 at the Transportation and Planning Committee, this ordinance no longer includes proactive rental inspection based on the comments received at the Transportation and Planning Committee; staff will subsequently propose a pilot complaint-based rental inspection program. A rent registry is a database that allows a jurisdiction to compile key data on rental units and is used as an enforcement tool for Rent Stabilization and Just Cause for Eviction ordinances.

In September 2022, the Turner Center for Housing Innovation published a study that found rents had increased statewide more than allowed in the Tenant Protection Act of 2019 (AB 1482) and rent registries administered by local jurisdictions are necessary to determine where landlords are exceeding AB 1482 or local Rent Stabilization rent limits. In October 2022, University of California, Riverside published a rebuttal to the Turner Center's assertion regarding rents, but conceded that the most recent primary data available, the yearly U.S. Census's American Community Survey, "does not allow for tracking of individual households over time so we cannot perform a direct check on whether there are widespread violations of AB 1482."¹

A rental registry is also an evidence- backed tool for efficiently tracking and enforcing code violations in rental properties. Rental registration programs require that rental properties are registered with the local government by submitting basic information about the property, such as how to reach the property owners in the event of an emergency, the rents charged, and prior instances of code violations.

The current version of this ordinance, Exhibit A, removes Anti-Harassment and Written Lease requirements that had been added to the ordinance in response to tenant testimony at multiple community meetings. Instead, this language will be brought forward in a separate stand-alone ordinance as part of the second phase of tenant protection programs. The Rental Housing Registration Ordinance exists in Article 6, which relates to regulatory powers of the County. Instead, an Anti-Harassment Ordinance should be located in Article 3, relating to the County's police powers which requires additional time to re-write.

JUST CAUSE:

Just Cause for Eviction (Just Cause) ordinances provide a protective legal framework to govern when and how a landlord can evict a tenant. In jurisdictions with Just Cause ordinances, a tenant cannot be evicted unless a landlord can show one of the enumerated "just causes." Just Cause ordinances are enforced in court and provide a tenant with a defense against arbitrary eviction. Attorneys use the ordinance to protect tenants from unlawful evictions. Many jurisdictions in California fund legal services programs to assist tenants in obtaining legal representation in eviction matters, allowing them to fully access their rights under a local Just Cause ordinance. Your Board provides some of these services under its countywide AC Housing Secure Program and has funded an expanded short-term program in the Unincorporated County with American Rescue Act Plan (ARPA) funds, though those resources will end in December 2024.

In 2019, the State of California passed AB 1482. This law caps the amount that can be charged for annual rent increases annually and requires "just cause" for termination of the lease for tenants who live in some properties, not all.

The current version of this ordinance, Exhibit B, includes several key differences from State AB 1482. The State law does not include protections for tenants in single-family homes (with a difficult-to-implement exception for tenants living in Real Estate Investment Trust-owned single-family homes), in owner-occupied duplexes, in units built in the last 15 years, and for tenants who have lived in the unit for less than a year. Additionally, school year protections for educators and students are included in this proposed ordinance. The current version of the ordinance protects tenants in all these situations, which makes the ordinance more protective than State law and therefore allows the local ordinance to supplant AB 1482. Finally, AB 1482 includes just causes specifically for criminal activity and assignments or subleases, both of which are not included in this ordinance.

FAIR CHANCE:

Fair Chance legislation regulates when and how a landlord may ask about and use arrest and conviction records in evaluating a potential tenant. The legislation prohibits the use of criminal

histories for most offenses in determining access to housing and ban the use of advertising language that excludes or discriminates against individuals with criminal histories, including arrest and conviction records.

State law offers limited protection for renters with criminal histories. Landlords are banned from categorically denying housing to those who were formerly incarcerated but may deny housing to individuals convicted of a “specific crime that is a demonstratable risk to other residents or the property.” Under State law, local jurisdictions may create a more protective framework and many cities throughout California, including Berkeley, Oakland and Richmond, have adopted their own Fair Chance laws and regulations.

The purposes of the Fair Chance ordinance are to:

- Create local enforcement/recourse for tenants who have experienced discrimination based on past involvement with the criminal justice system.
- Increase housing access for formerly incarcerated individuals and their family.
- Reduce homelessness and family separation that results from blanket exclusion of housing applicants based solely on criminal background checks.
- Reduce recidivism by removing structural barriers to stable housing.
- Provide formerly incarcerated people a fair opportunity to reclaim their lives and effectively reintegrate into the Unincorporated County.

The key aspects of the draft Fair Chance ordinance are outlined below:

- **Disclosure of Criminal History.** Housing providers cannot ask about an applicant’s criminal history or require disclosure of criminal history.
- **State Lifetime Sex Offender Registry.** Housing providers can comply with federal or state laws that require automatic exclusion based on certain types of criminal history. Housing providers may review the State Registry of Lifetime Sex Offenders, only the provider informs the applicant of this review, has determined that the applicant is qualified to rent the housing based on all other criteria, provided the applicant a conditional rental agreement, and informed the applicant that the provider will be checking the registry.
- **Family Members.** Close family members of an occupying tenant must be allowed to occupy a rental unit, regardless of criminal history. Close family members who are residing with affected individuals in the same household and close family members who have financial responsibility for the affected individuals are allowed to bring actions under this ordinance.
- **Advertisements.** Housing providers cannot advertise that applicants with criminal history may not apply for housing.

The current version of this ordinance, Exhibit C, includes all of these protections.

Generally, there are two models of how to approach regulation of the property owner-tenant relationship: passive enforcement and active enforcement. The passive enforcement approach

enforces regulations only in response to complaints, which usually find their way to the regulatory agency only in egregious cases or where tenants have contact with an advocacy organization. The active enforcement approach uses extensive outreach to inform tenants and owners about their rights and obligations under the law and program regulations, maintains full and accurate records through reporting requirements for initial rents and eviction proceedings, provides mediation and dispute resolution services, and actively enforces the law and regulations when it finds violations.

Research has indicated that an active enforcement model is a best practice, especially for low-income communities and those with language barriers. Property owner comments have largely hinged on the County adopting a passive enforcement model, while tenants want the County to adopt an active enforcement model. The unincorporated county has a high proportion of low-income tenants with language barriers who are less likely to make complaints in fear of retaliation and who have difficulty navigating support systems. While staff have attempted to address property owner concerns where possible within this framework, the recommended approach remains an active enforcement model.

FINANCING:

The Just Cause and Rental Housing Registry Ordinances propose a fee be established after a Fee Study is conducted. At that point, staff will return to the Board with a proposed fee schedule for review and possible adoption. There is no Net County Cost as a result of this action.

VISION 2026 GOAL:

The approval of these Ordinances meets the 10X goal pathway of **Eliminate Homelessness** in support of our shared visions of **Thriving and Resilient Populations** and **Safe and Livable Communities**.

Very truly yours,

DocuSigned by:
Sandra Rivera

4C216765DCDF437...
Sandra Rivera, Director
Community Development Agency

cc: Susan S. Muranishi, County Administrator
Donna R. Ziegler, County Counsel
Melissa Wilk, Auditor-Controller
Laura Lloyd, County Administrator's Office
Andrea L. Weddle, Office of the County Counsel
Lucy Romo, Community Development Agency

Exhibit A - Rental Registration Ordinance

Exhibit B – Just Cause Ordinance

Exhibit C – Fair Chance Ordinance

ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 6.64 OF THE ALAMEDA COUNTY ORDINANCE CODE TO ESTABLISH A RENTAL HOUSING REGISTRY PROGRAM

The Board of Supervisors of the County of Alameda, State of California, does ordain as follows:

SECTION I

1. The Board of Supervisors of the County of Alameda recognizes that rental housing is of tremendous importance and that establishing a Rental Housing Registry Program is necessary to protect the health, safety and welfare of the public by requiring rental housing in the unincorporated area of Alameda County to be registered with the County.
2. Rental housing provides needed, affordable housing for more than 50% of the residents of unincorporated area of Alameda County and is a valuable asset that should be preserved and maintained.
3. According to the 2020 American Community Survey Census, there are almost 19,000 residential rental units within the unincorporated area of Alameda County. A rental registry is needed to ensure proper information is recorded regarding available rental housing resources. Establishing a Rental Housing Registry Program will provide important information for the County, including how to contact property owners or their agents, and ensure that all units are subject to the same standards, creating a level playing field for all property owners.
4. According to the Turner Center for Housing Innovation September 22, 2022 Collaborative Brief on Tenant Protection Act of 2019 (AB 1482), rent registries administered by local jurisdictions are necessary to determine if landlords are exceeding AB 1482 rent limits.

The Board of Supervisors recognizes there must be an adequate funding source to implement this program. To provide adequate funding for the program under this chapter, the Board of Supervisors intends to assess an annual fee.

SECTION II

Chapter 6.64 is hereby added to the Alameda County Ordinance Code and reads as follows:

Chapter 6.64 Rental Housing Registry

6.64.010 Purpose

The purpose of this Chapter is to establish a registry of all rental housing units in the unincorporated area of Alameda County, including, among other things, information about rental rates and eviction notices.

6.64.020 Authority to Establish Procedures, Implement and Enforce Program

Except as otherwise provided in this Chapter, the Director of the Housing and Community Development Department shall administer and enforce this Chapter. The

Director may adopt such rules, regulations, procedures, and forms as may be required to implement this Chapter.

6.64.030 Definitions

Unless otherwise defined by this code or clearly required by its context, the following terms when used by this code shall have the meanings set forth in this chapter.

“Bad Faith” means willful, reckless, or grossly negligent conduct in disregard for legal requirements. The scope and effect of the conduct will be taken into account in determining whether it is in Bad Faith.

“Contact Representative” means a representative of the Property Owner who will be the contact for the Rental Housing Registration Program, as detailed in Section 6.64.110.

“Director” means the Director of the Housing and Community Development Department, responsible for implementing and overseeing the Rental Housing Registration Program.

“Engage in the Business of Rental Housing” means renting or offering to rent a Rental Housing Unit or Mobile Home Park Space to a resident.

“Mobile Home” means a structure designed for human habitation and for being moved on a street or highway under permit pursuant to California Vehicle Code Section 35790, including but not limited to a manufactured home, as defined in the California Health and Safety Code, a recreational vehicle, as defined in California Civil Code Section 799.24, a commercial coach, as defined in California Health & Safety Code Section 18001.8, or factory-built housing as defined in California Health & Safety Code Section 19971.

“Mobile Home Park Space” is the property upon which a Mobile Home is parked and for which money or other consideration is charged to the occupant of that space.

“Property Owner” means the person, persons, or entity holding fee title to a Rental Housing Unit, Property, Mobile Home that is rented to a Tenant, or Mobile Home Park and their agent, representative, or successor.

“Person” means an individual, corporation, partnership, association, or other entity.

“Registration Fee” is the fee that is payable each year by Property Owners in the unincorporated area of Alameda County.

“Rental Housing Unit” means a single unit providing living facilities for one or more persons regardless of zoning or permitting status that is rented or available for rent to one or more persons, together with all Common Areas.

“Property” means any real property with one or more Rental Housing Units or Mobile Home Park Spaces. The term “Property” shall also include tracts, lots, easements or parcels of land and any and all improvements thereon.

“Tenant” means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to the use or occupancy of a Rental Housing Unit. Use of the singular “tenant” includes the plural “tenants”.

“Termination Notice” means the notice informing a tenant household of the termination of its tenancy which includes notices governed by California Civil Code Sections 1946, 1946.1, 1946.2, and 1954.535 and California Code of Civil Procedure Section 1161.

6.64.040 Applicability

All Rental Housing Units and Mobile Home Park Spaces in the unincorporated area of Alameda County are subject to the registration requirements of this Chapter, including transitory residential units in hotels, motels, inns, and vacation rentals and including individual rooms or portions of rooms in short-term or vacation rentals. Group homes, transitional living facilities, and other businesses that provide shared housing must also be registered. The space that a Mobile Home sits on, if that space is rented from the Property Owner in a Mobile Home park, must also be registered. A room or a portion of a room in an unlicensed facility or group home must also be registered.

6.64.050 Registration Required for all Rental Housing Units and Mobile Home Park Spaces

- A. It is unlawful for any Property Owner to Engage in the Business of Rental Housing, unless:
 - 1. Each Rental Housing Unit and Mobile Home Park Space is registered with the County;
 - 2. The Property Owner has paid the annual Registration Fee; and
 - 3. The Property Owner has obtained an annual business license, if required under Chapter 3.04.030 of this Code.

- B. A Rental Housing Unit or Mobile Home Park Space is registered with the County when the Property Owner submits to the County’s Community Development Agency a completed registration form, in a form determined by the Director, that is signed under penalty of perjury. The registration, which may be in electronic form and may be part of an online database system, must contain, at minimum, the following information:
 - 1. Description of the Property, including the street address and Assessor’s Parcel Number, and whether or not it is a Single Family, Multi-family or Mobile Home Park Space;
 - 2. Rental Housing Unit number and address or, if none, other description of all housing units and Mobile Home Park Spaces on the Property, including the size and amenities of the unit and the names and contact information of the tenants;

3. Name and current contact information for all Owners of the Rental Housing Unit or the Mobile Home park, which shall include the legal name of the beneficial owner or ownership entity for each property, including limited partners, general partners, limited liability company members and shareholders with ten percent (10%) or more ownership of the entity;
 4. Name and current contact information for the Contact Representative, as described in section 6.64.110, below;
 5. Name, address, email address, and telephone number of the person or entity that a Tenant is to contact when requesting repairs be made to their Rental Housing Unit and the contact person or entity's business relationship to the Property Owner;
 6. The month and year that the most current occupancy began for each Rental Housing unit or Mobile Home Park Space, the rent charged for each Rental Housing Unit or Mobile Home Park Space, which information is to be updated each year;
 7. Property Owner confirmation that it has provided all required written notices to tenants of their rights, including rights under this ordinance, other local ordinances, and any rights conveyed by California Civil Code section 1946.2 (the Tenant Protection Act of 2019).
 8. Any other information reasonably required by the Director to carry out the terms of this Chapter, which will be described on the registration form.
- C. The initial registration requirement established by this Chapter shall be effective as of January 1, 2024. After the initial registration, the Property Owner must update their registration for each Rental Housing Unit annually by January 1, or within 30 days of a change of ownership.
- D. A Landlord's failure to register a rental unit can be raised by a Tenant as a defense to an Unlawful Detainer action, until the Unit is registered. All termination notices shall include language to that effect.
- E. All contact information provided to the County is confidential and exempt from disclosure to the fullest extent allowable by law, including California Civil Code section 1947.7(g).

6.64.070 Fees

- A. Rental Housing Registration Program Fee. Each Property Owner subject to this Chapter must pay a registration fee for each Rental Housing Unit. The registration fee may be established by the board of supervisors to cover costs of the rental registration

enforcement program under this Chapter. After the fee is established by the Board of Supervisors, the registration fee must be paid annually by January 31st of each calendar year.

B. Payment of Rental Registration Fee.

1. The annual registration fee must be paid online, by mail, or in person, pursuant to such forms and procedures as may be established by the Director.
2. The registration fee is payable by the Property Owner to the County. The Property Owner may charge the Tenant up to one half (50%) of the annual fee on a reimbursement basis. The portion of the registration fee paid by the Tenant to the Property Owner is not “rent” and cannot form the basis of an eviction for non-payment.

6.64.080 Penalties for Late or Unpaid Fee

Penalties for late payment or nonpayment of the rental registration fee may be established by the Board of Supervisors. No portion of late payment penalties may be passed on to Tenants.

6.64.090 Registering Notice of Terminating Tenancy

- A. The notice of termination given to Tenant by the Property Owner or Agent must contain the reason for the termination of tenancy.
- B. The Property Owner must provide a copy of the notice of termination to the Housing and Community Development Department (HCD) within three (3) days of delivery to the Tenant. The Property Owner must attach a copy of the applicable rental agreement or contract to the notice of termination when submitting the notice of termination to HCD.

6.64.100 Contact Representative

- A. Each Property Owner must designate a Contact Representative with full authority to act on behalf of the Property Owner for all purposes under this Chapter, including the acceptance of service of notices from the County. The Property Owner of the Rental Housing Unit or Rental Housing Property may act as the Contact Representative.
- B. All official notices served on the Contact Representative shall be deemed to have been served on the Property Owner.

6.64.110 Enforcement

Nothing in this Chapter shall limit or prohibit the authority of County officers, agents or employees from enforcing any other provision of this Code or any state or federal law under their jurisdiction.

SECTION III

This ordinance shall take effect and be in force thirty (30) days after its adoption. Before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the ____ day of _____ 2023, by the following called vote:

AYES:

NOES:

EXCUSED:

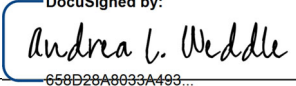
ABSTAINED:

President of the Board of Supervisors

ATTEST:
Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By: 

650D28A0033A493...
Andrea L. Weddle
Chief Assistant County Counsel

ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 3.70 TO THE ALAMEDA COUNTY ORDINANCE
CODE REGARDING JUST CAUSE FOR EVICTIONS IN THE
UNINCORPORATED AREAS OF ALAMEDA COUNTY

The Board of Supervisors of the County of Alameda, State of California, does ordain as follows:

SECTION I

The Board of Supervisors makes the following findings in support of this Ordinance:

- A. The State of California adopted AB 1482 enacting the Tenant Protection Act of 2019, effective January 2, 2020. This Tenant Protection Act provided just cause tenant protections to some, but not all, tenants in the state.
- B. The Tenant Protection Act does not apply to tenants residing in single family homes or tenants who have lived in their home for less than 12 months.
- C. Just cause protections should be expanded to ensure the County is extending protections equally to all tenants in the unincorporated area of Alameda County. The Tenant Protection Act, in California Civil Code Section 1946.2(g)(1)(B), authorizes a local ordinance requiring just cause for termination of a residential tenancy to supplant the provisions of the statute if the local ordinance is “more protective.” To qualify as “more protective” the local ordinance must be consistent with Section 1946.2; it must further limit the reasons for termination, provide for higher relocation assistance amounts, or provide additional tenant protections not prohibited by other provision of law; and the local government must make a binding finding within the local ordinance that it is more protective.
- D. There is a shortage of decent, safe, affordable, and sanitary housing in the unincorporated areas of Alameda County.
- E. The prolonged affordable housing crisis in the unincorporated areas of Alameda County impacts low income and working-class households, senior citizens, people of color, immigrants, and people with disabilities, and thereby has a disproportionate impact on certain classes of people, and evictions without cause increases homelessness, crime, and harms neighborhood stability and cohesion.
- F. Residential tenants, who constitute over 50% of the residents of unincorporated areas of Alameda County, often suffer great and serious hardship when forced to move from their homes.
- G. Protections against unjust evictions are needed in the unincorporated areas of the County of Alameda to protect residents from circumvention of rent stabilization laws.
- H. Given the increased housing cost burden faced by many residents of the

unincorporated areas of Alameda County, excessive rent increases threaten the public health, safety, and welfare of over 10,000 households, including seniors, people with disabilities, those on fixed incomes, those with low and moderate income levels, and those with other special needs, to the extent that such persons may be forced to choose between paying rent and providing food, clothing, and medical care for themselves and their families.

- I. According to the 2019 American Community Survey, 50% of tenant households are "rent-burdened households," meaning the household pays 30% or more of its income on housing costs and 27% of tenant household are "extremely rent-burdened households," meaning the household pays 50% or more of its income on housing costs.
- J. Without sufficient and long-term eviction protections, many tenants move out even without adequate replacement housing rather than face future legal eviction that could impact their ability to find new housing.
- K. Given these numerous concerns, including the current and immediate threat to the health, safety, and welfare of unincorporated areas of Alameda County residents and the adverse impacts that would result from a substantial decrease of affordable housing within the unincorporated areas of Alameda County, the Board of Supervisors determines that it is in the interest of immediately preserving the public health, safety and general welfare to enact this ordinance adopting just cause eviction protections.

SECTION II

Chapter 3.70 is hereby added to the Alameda County Ordinance Code and reads as follows:

Chapter 3.70 – JUST CAUSE EVICTION

3.70.010 Purpose and Statutory Findings

- A. The purpose of this Chapter is to promote neighborhood and community stability, healthy housing, and affordability for renters in the unincorporated areas of Alameda County by controlling arbitrary evictions to the greatest extent allowable under California law, while ensuring landlords a fair and reasonable return on their investment.
- B. The Board of Supervisors finds that: (i) the just cause for termination of a residential tenancy under this Chapter is consistent with Civil Code section 1946.2; (ii) this Chapter further limits the reasons for termination of a residential tenancy, provides for higher relocation assistance amounts, and provides additional tenant protections that are not prohibited by any other provision of law; and (iii) this Chapter is more protective than the provisions of Civil Code section 1946.2.

3.70.020 Director Authority to Establish Procedures, Implement and Enforce Program

Except as otherwise provided herein, the provisions of this Chapter shall be administered and enforced by the Director of the Housing and Community Development Department of the Community Development Agency or the Director's designee. The Director may adopt such rules, regulations, procedures, and forms as may be required to implement this Chapter.

3.70.030 Definitions

Unless the particular provision or the context otherwise requires, the following definitions shall govern the interpretation and application of this Chapter:

- A. "At-Fault Eviction" means evictions brought under paragraphs A through L of Section 3.70.060.
- B. "Elderly Tenant" means a tenant who is 62 years of age or older.
- C. "Housing Department" means the Housing and Community Development Department of the County of Alameda.
- D. "Housing Director" means the director of the Housing Department or the director's designated representative, acting either directly or through their assigned deputies and employees.
- E. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, and the agent, representative, or successor of any of the foregoing.
- F. "No-Fault Eviction" means evictions brought under paragraphs M (Substantial Rehabilitation), N (Owner Move In), and O (Ellis Act Removal) of Section 3.70.060.
- G. "Reasonable Time to Cure" means not less than fourteen (14) calendar days after receipt of Warning Notice.
- H. "Rental Unit" means any unit in any real property (regardless of zoning status), including the land appurtenant thereto and spaces for mobile home dwelling units, that is rented or available for rent for residential use or occupancy (regardless of whether the unit is also used for other purposes), together with all housing-related services connected with use or occupancy of such property, such as common areas and recreational facilities held out for use by the tenant, including parking facilities.
- I. "School Employee" means any person who works at a school in Alameda County as an employee of the school or the school district, including all teachers, classroom aides, administrators, administrative staff, counselors, social workers, school nurses, speech pathologists, custodians, security guards, cafeteria workers, community relations specialists, child welfare and attendance liaisons, and learning support consultants.

- J. "Tenant" means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to the use or occupancy of a Rental Unit.
- K. "Tenant Household" means one or more Tenants who occupy any individual Rental Unit, including each dependent of any Tenant whose primary residence is the Rental Unit.
- L. "Termination Notice" shall have the meaning provided in Section 3.70.080.
- M. "Unreasonably Withheld Consent to Subtenancy" means consent to subtenancy that is unreasonably withheld by a Landlord as set forth in Section 3.70.090.
- N. "Warning Notice" means the notice for an At-Fault Eviction described in Section 3.70.060. A Warning Notice must be delivered in writing to the Rental Unit. 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.

3.70.040 Applicability and Exemptions

- A. Applicability. The provisions of this Chapter shall apply to (1) all Tenants who have rented a subject Rental Unit in the unincorporated area of Alameda County, and (2) to all Rental Units, in whole or in part, located in the unincorporated area of Alameda County, subject to the exemptions in paragraph B below.
- B. Exemptions. This Chapter shall not apply to the following types of Rental Units:
 1. Rental Units described in California Civil Code Section 1940(b) (1) and (2).
 2. Rental Units in a residential property where the owner occupies a unit in the same property as their principal residence and regularly shares in the use of kitchen or bath facilities with the tenants of such Rental Units and has done so since the inception of the tenancy.
 3. Rental Units in any hospital, skilled nursing facility, or health facility.
 4. Rental Units in a facility that has the primary purpose of providing short term housing for treatment, assistance, or therapy; including for alcohol, drug or other substance abuse issues and the housing is provided incident to the services program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.
 5. Rental Units or housing provided by a nonprofit, a hospital or a church that is a licensed care facility for special needs populations.
- C. This Chapter shall not apply to an unlawful detainer action solely for nonpayment of rent originally due from March 1, 2020 through June 30, 2022, to the extent prohibited by California Code of Civil Procedure Section 1179.05 or any successor statute.

- D. If a Landlord claims the Rental Unit is exempt from this Chapter based upon the provisions in this Section, the Landlord must list the applicable exemption in the Termination Notice.

3.70.050 Just Cause Protections

- A. A Landlord may not take any action to terminate any tenancy, including 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, or 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 can demonstrate:
 - 1. That the Landlord served a Termination Notice to the Tenant and delivered a copy of the Termination Notice to the Housing and Community Development Department in accordance with Section 3.70.080; and
 - 2. That the termination qualifies as a just cause termination, whether At-Fault or No-Fault, in compliance with Section 3.70.060.
- B. In any action to recover possession of a Rental Unit pursuant to this Chapter, a Landlord must allege and prove that the Landlord seeks to recover possession of the unit with good faith.

3.70.060 Just Causes For Termination

The following constitute the only just causes for eviction pursuant to Section 3.70.050:

- A. *Non-Payment of Rent.* After being provided with the identity and mailing address of the Landlord, and the amount of rent due, and all other requirements in accordance with state law, the Tenant, following a Warning Notice setting forth the amount of rent then due and requiring it to be paid and Reasonable Time to Cure, has failed to pay rent to which the Landlord is legally entitled pursuant to any written or oral rental agreement and under the provisions of state or local law, unless the Tenant has withheld rent pursuant to applicable law.
 - 1. In any action to recover possession of a Rental Unit filed for non-payment of rent 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.
 - 2. 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. *Material Violation of the Lease.*

1. The Tenant, after receiving a Warning Notice and Reasonable Time to Cure, has failed to cure a violation of any material term of the rental agreement but only if either:
 - a. The Warning Notice is based on terms that are legal and have been accepted in writing by the Tenant at the inception of the tenancy; or
 - b. The Warning Notice is based on terms that were accepted by the Tenant in writing after the initial creation of the tenancy, so long as the Landlord first notified the Tenant in writing that they need not accept such terms or agree to their being made part of the rental agreement.
 2. The following potential violations of a tenancy can never be considered material violations of the lease:
 - a. An obligation to surrender possession on proper notice as required by law; or
 - b. Subletting or assignment, where the Landlord has unreasonably withheld consent to the subtenancy (as that term is defined in Section 3.70.090); the Tenant remains an actual occupant of the rental unit; and the number of Tenants and subtenants actually occupying the rental unit does not exceed the number of occupants allowed by the applicable State or County building, housing, or fire codes. This section shall apply regardless of any lease term to the contrary; or
 - c. Violation of Alameda County Code Chapter 6.65, Unincorporated Alameda County Real Property Nuisances, in the area surrounding the unit, where no other violation is alleged.
- C. *Substantial Damage to Rental Unit.* The Tenant, after a Warning Notice to cease and Reasonable Time to Cure, caused or allowed substantial damage to the premises or common areas shared by the premises beyond normal wear and tear and refused to pay the reasonable costs of repairing such damage and cease damaging the premises. Substantial damage caused during a domestic violence event brought about by a third party shall not be considered just cause under this paragraph.
- D. *Committing Waste.* Committing waste as described in paragraph (4) of Section 1161 (Unlawful Detainer defined) of the California Code of Civil Procedure.
- E. *Refusing to Execute a Written Lease Extension or Renewal.* The Tenant had a written lease that terminated on or after January 1, 2020, and after a written request or demand from the Landlord, the Tenant refused to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions, provided that those terms do not violate this section or any other provision of law.

- F. [Reserved.]
- G. [Reserved.]
- H. *Unlawful Purpose.* Using the premises for an unlawful purpose as described in paragraph (4) of Section 1161 of the California Code of Civil Procedure.
- I. *Failure to Vacate after Termination.* The employee, agent, or licensee's failure to vacate after their termination as an employee, agent, or a licensee as described in paragraph (1) of Section 1161 of the California Code of Civil Procedure.
- J. *Failure to Deliver Possession.* When the Tenant fails to deliver possession of the residential real property after providing the owner written notice of the Tenant's intention to terminate the rental or lease of the real property, or makes a written offer to surrender that is accepted in writing by the Landlord, but fails to deliver possession at the time specified in that written notice as described in paragraph (5) of Section 1161 of the California Code of Civil Procedure.
- K. *Nuisance.* The Tenant has continued, following a Warning Notice to cease and Reasonable Time to Cure, to be so disorderly as to destroy the peace and quiet of other tenants at the property or neighbors. The fact that a Landlord has received a complaint about a Tenant, or 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 paragraph. Nuisance caused during a domestic violence event brought about by a third party shall not be considered just cause under this paragraph.
- L. *Refusal to Grant Access to the Unit.* The Tenant, after a Warning Notice to cease and Reasonable Time to Cure, continues to refuse the Landlord reasonable access to the Rental Unit required by law and consistent with the Landlord right of access under California Civil Code section 1954.
- M. *Substantial Rehabilitation of the Unit.* The Landlord, after having obtained all necessary building, demolition, grading, and similar permits, seeks 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, provided that all of the conditions below exist and the actions below are taken:
1. The repairs necessitate the relocation of the Tenant Household because the work will render the rental unit uninhabitable for a period of sixty (60) calendar days or more.
 2. Upon completion of the needed repairs, the Landlord offers the Tenant the first right to return to the unit at the same rent.
 3. Upon recovery of possession of the Rental Unit, the owner of record shall proceed without unreasonable delay to affect the needed repairs.
 4. Upon recovery of possession of the Rental Unit, the Landlord shall make all

remaining relocation payments to the Tenant in the amounts specified in paragraph C of Section 3.70.070 within fifteen (15) calendar days.

5. Where the Landlord seeks in good faith to recover possession under this paragraph M, prior to the entry of an unlawful detainer judgment, the Landlord must give the Tenant the right of first refusal to re-occupy the Rental 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 thirty (30) days from the date the Tenant Household's Warning Notice of its intent to reoccupy the rental unit or room is received.

N. Owner Move-In. The Landlord seeks in good faith to recover possession for the Landlord's own use and occupancy as the Landlord's principal residence, or for the use and occupancy as a principal residence for not less than a five (5) year period by the Landlord's spouse, domestic partner, child, parent, or grandparent. Landlords eligible for an owner move-in eviction pursuant to this paragraph N are limited to (i) natural persons with at least a thirty-three percent (33%) ownership interest in the Rental Unit; (ii) for properties held in trust, natural persons with at least a thirty-three percent (33%) beneficial interest in the Rental Unit; or (iii) for properties owned by a corporation, company, or other similar entity, natural persons who have at least a thirty-three percent (33%) ownership or membership interest in the entity, or the assets of the entity, that holds title to the property. The conditions below must exist and the actions below must be taken for a valid owner move-in No-Fault Eviction:

1. The Landlord shall provide the Tenant Household not less than three (3) months' notice to vacate the Rental Unit.
2. The Landlord must move into the unit or commence rehabilitation or repair of the unit within ninety (90) days of the Tenant's vacation of the unit.
3. If the Landlord or the Landlord's relative specified on the notice terminating tenancy (a) fails to occupy the unit within ninety (90) days after the Tenant vacates or (b) fails to commence rehabilitation or repair of the unit within ninety (90) days after the Tenant vacates and has not occupied the unit as a primary residence within thirty-six (36) months, 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 that Tenant all reasonable expenses incurred in moving to and from the unit, include lease termination fees. This paragraph (4) does not limit any other remedies a Tenant may have under this Chapter or applicable law.
 - iii. The Landlord may request an extension to the ninety (90) day period from the Housing Director, if through no fault of their own, the time frame cannot be

met. The Housing Director may grant a reasonable extension.

O. *Ellis Act Removal*. The Landlord seeks in good faith to recover possession to withdraw all Rental Units of an entire property in compliance with the Ellis Act (Government Code sections 7060, *et seq.*).

3.70.070 Relocation Assistance Payments

- A. Each Tenant who receives a Termination Notice for a No-Fault Eviction, in addition to all rights under any other provision of law, shall be entitled to receive relocation assistance from the Landlord, in the amounts specified in paragraph C of Section 3.70.070.
- B. A Landlord who pays relocation assistance, as required by this Section, in conjunction with a Termination Notice, is not obligated to pay subsequent relocation expenses for the same No-Fault Eviction under Section 3.70.060 for the same Rental Unit within 180 days of the notice that included the required relocation payment. The relocation assistance required by this Section 3.70.070 are separate from any security or other refundable deposits as defined in California Civil Code Section 1950.5. Further, payment or acceptance of relocation assistance shall not operate as a waiver of any rights a Tenant may have under law.
- C. A Landlord shall pay relocation assistance as follows:
 - 1. Each Tenant receiving a No-Fault Eviction Notice shall receive a sum equal to the value of three (3) months of the current rent amount, or three (3) months of Fair Market Rent for the size of the Rental Unit as established by the U.S. Department of Housing and Urban Development for the Oakland Fremont Alameda County Statistical Area, whichever is higher, half of which shall be paid at the time of the service of the notice to quit, and half of which shall be paid when the unit is vacated. In no case, however, shall the Landlord be obligated to provide more than \$28,000 in relocation assistance to all Tenants and members of the Tenant Household in the same Rental Unit under this paragraph C.1 and under paragraph C.2 below. If any members of the Tenant Household fail to vacate the Rental Unit after the expiration of the notice to terminate the tenancy, all relocation assistance shall be repaid by the Tenant to the Landlord and the Landlord may take all actions necessary to recover any unpaid relocation assistance payment if not repaid within sixty (60) days, including recovery of relocation assistance payments as damages in an action to recover possession.
 - 2. In addition to the relocation assistance payment required by paragraph C.1, each Tenant Household with at least one Tenant and one or more child under the age of eighteen (18) years, person who is disabled, Elderly Tenant, or person who is lower income, as defined by Health and Safety Code section 50079.5, shall be entitled to receive an additional relocation assistance payment of one month of the current rent, half of which shall be paid within fifteen (15) calendar days of the Landlord's receipt of written notice from the Tenant of entitlement to the additional relocation assistance

payment along with supporting evidence of each claimed entitlement. Within thirty (30) days after notification to the Landlord of a claim of entitlement to additional relocation assistance payments because of disability, age, lower income status or having minor children in the household, the Landlord shall give a Warning Notice to the Tenant of the claim for additional relocation assistance payments indicating whether or not the Landlord disputes the claim. Either party may initiate a legal action to resolve the dispute.

3.70.080 Notice Terminating Tenancy

- A. A Termination Notice means the notice informing a Tenant Household of the termination of its tenancy in accordance with this Section and California Civil Code Section 1946.1 (term not specified) or California Code of Civil Procedure Section 1161 (unlawful detainer).
- B. Termination Notices provided to Tenants must contain the following:
1. The reason for the termination of tenancy in accordance with Section 3.70.060; and
 2. If the notice is for a No-Fault Eviction, an explanation of the right to and amount of relocation assistance payments pursuant to Section 3.70.070; and
 3. If the notice is for a No-Fault Eviction under paragraph M (Substantial Rehabilitation) of Section 3.70.060, this 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 similar terms as your original agreement, subject to an increase in rent if needed to afford the owner a reasonable rate of return”,

and a description of the right of first refusal, a description of all repairs to be performed, and an estimate of the time required to complete the repairs and the date upon which it is expected that the Rental Unit will be ready for habitation; and
 4. If the Termination Notice is for an At-Fault Eviction listed in Section 3.70.060, the notice must state specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reason for the eviction. All Warning Notices required for an At-Fault Eviction in Section 3.70.060, shall be attached to any corresponding Termination Notice.
- C. A copy of the Termination Notice issued to a Tenant shall be filed by the Landlord with the Housing Director within three (3) days after the service of the Termination Notice on the Tenant.

3.70.075 Rules, Regulations, Procedures and Forms

The Housing Director shall adopt reasonable rules, regulations, and forms as necessary to

implement the procedures required in this Chapter.

3.70.080 Rental Units Withdrawn from the Rental Market

The Ellis Act (Government Code sections 7060, *et seq.*) governs a Landlords withdrawal of Rental Units from the rental market. This Chapter shall be interpreted and applied in a manner that does not conflict or interfere with the Ellis Act.

3.70.090 Subtenancy

- A. *Unreasonably Withheld Consent to Subtenancy.* A Landlord's consent to subtenancy is unreasonably withheld for the purposes of an At-Fault Eviction under paragraph B (Material Violation of Lease) of Section 3.70.060 when:
1. The Tenant's written or verbal request for consent was approved by the Landlord and, absent changes justifying the withholding of consent, the Landlord subsequently withholds consent to the previously approved request; or
 2. The proposed new subtenant has agreed to the Landlord's request to be bound by the terms of the current rental agreement between the Landlord and the Tenant and upon the Landlord's written request, completed the Landlord's standard application process, which may include completing a form application or providing sufficient information to allow the Landlord to conduct their standard background check, including references and credit, income and other reasonable background information; or
 3. The Landlord has not articulated in writing a reasonable basis for refusing consent. 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 thirty (30) days of receipt of the Tenant's request, the Tenant's request shall be deemed approved by the Landlord.
- B. A Landlord's reasonable refusal of the Tenant's written request may not be based on the proposed additional subtenant's lack of creditworthiness or income if the subtenant will not be legally obligated to pay some or all rent directly to the Landlord.
- C. A Landlord's reasonable refusal may not be based on application requirements that are more stringent than those imposed by the Landlord on other applicants.

3.70.100 Additional Protections

- A. *Right of Return and First Right of Refusal.* All Tenants that are displaced based on termination of tenancy for a No-Fault Eviction under paragraph M (Substantial Rehabilitation) or N (Owner Move-In) of Section 3.70.060 shall have the first right of refusal to return to the unit if the Rental Unit should be returned to the rental market by the Landlord or a successor Landlord within five (5) years of displacement of the Tenant. All notices of termination of tenancy served under paragraphs M (Substantial Rehabilitation) or N (Owner Move-In) of Section 3.70.060 shall state the current rent in effect at the time of termination of tenancy.
- B. *School Year Protections for Students and School Employees.* It shall be a defense to a No-

Fault Eviction under paragraphs M (Substantial Rehabilitation) and N (Owner Move-In) of Section 3.70.060, if a child under the age of eighteen (18) resides in the Rental Unit, or a School Employee is a Tenant in the Rental Unit, and the expiration date of the Notice of Termination of tenancy falls during the regular school year (excluding any summer sessions).

- C. *Protections for Families.* Notwithstanding any contrary provision in this Section, a Landlord shall not be permitted 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, sibling, or spouse or domestic partner (as defined in California Family Code section 297) of such relatives, so long as the number of occupants does not exceed the maximum number of permitted occupants determined by applicable County building, housing or fire codes.
- D. *Retaliation is Barred.* It shall be an affirmative defense to an action to recover possession of the Rental Unit that the eviction is knowingly or intentionally in retaliation for the Tenant reporting violations of this Chapter or other law, for exercising rights granted under this Chapter or other law, or for forming or participating in a Tenant organization.
 - 1. *Retaliatory Eviction.* It shall be unlawful for a Landlord to recover possession of a Rental Unit in retaliation of a Tenant exercising the Tenant's right to file a complaint with the County advising that a building, housing, nuisance Code or ordinance violation, or permit violation may exist on the property.
 - 2. *Rent Increase or other Retaliatory Actions.* The Landlord shall not engage in retaliatory conduct, such as improperly depriving the Tenant of use of the premises, decreasing services, or increasing the rent, or otherwise improperly interfering with the Tenants' rights under the lease agreement.
- E. *Protections for the Elderly.* A Landlord shall not to refuse to rent or lease or otherwise deny to or withhold from any person any Rental Unit because the age of a prospective Elderly Tenant would result in the Tenant acquiring rights under this Chapter.

3.70.110 Fees

The Board of Supervisors may establish a fee for services under this Chapter for each Rental Unit to fund the reasonable regulatory and administrative enforcement costs of the Just Cause program. This fee may be established under a separate ordinance or resolution and may be assessed and collected with other similar fees (for example, a Rental Unit registration fee) from Landlords. The fee will be payable by the Landlord to the County. The Landlord may charge the Tenant up to one half (50%) of the fee on a reimbursement basis. While the Landlord may recover 50% of the fee from the Tenant, the fee is not "rent" and cannot form the basis of an eviction for non-payment.

3.70.120 Defenses and Remedies

- A. *Affirmative Defense.* Each Landlord that seeks to terminate a tenancy of a Tenant must comply with this Chapter. Failure to comply with an applicable provision of this Chapter may be asserted by a Tenant as a defense in an unlawful detainer action.

- B. *Civil Remedies.* Whenever a Landlord or anyone assisting a Landlord wrongfully recovers possession of a Rental Unit in violation of this Chapter, the Tenant or the County may institute a civil proceeding for injunctive relief, actual damages, and other relief deemed appropriate by the court. Nothing in this Chapter is intended to limit the damages recoverable by any party through a private action.
- C. *Landlord Rights.* Nothing in this Chapter 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 the Landlord's property.

3.70.130 No Waiver

The provisions of this Chapter may not be waived, and any term of any lease, contract, or other agreement which purports to waive or limit the substantive or procedural rights created under this Chapter are contrary to public policy, unenforceable, and void.

SECTION III

If any provision of this chapter is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this chapter which can be implemented without the invalid provisions, and to this end, the provisions of this chapter are declared to be severable, and the Board of Supervisors hereby declares that it would have adopted this chapter and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.

SECTION IV

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the ____ day of _____ 2023, by the following called vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

President of the Board of Supervisors

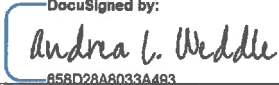
ATTEST:

Anika Campbell-Belton,
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By:  _____
Andrea L. Weddle
Chief Assistant County Counsel

ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 6.25 TO THE ALAMEDA COUNTY
ORDINANCE CODE PROHIBITING CONSIDERATION OF CRIMINAL HISTORIES IN
SCREENING APPLICATIONS FOR RENTAL HOUSING IN THE UNINCORPORATED
AREA OF ALAMEDA COUNTY

The Board of Supervisors of the County of Alameda, State of California, does ordain as follows:

SECTION I

1. The Board of Supervisors of the County recognizes that mass incarceration is a national and local crisis and restoring the rights of people affected by mass incarceration is a national priority and local priority.
2. The U.S. Department of Justice (DOJ) has estimated one in every three adults in the United States has either an arrest or conviction record.
3. Studies have found that private criminal databases source information from inadequate records and lack accountability procedures to ensure that the database records provided to Housing Providers are accurate. Housing Providers in conducting criminal background checks are relying on such inaccurate information in evaluating housing applications.
4. In 2006, the DOJ found that an estimated 50% of FBI arrest records, which are used by many background check companies, were missing information on the final disposition of the cases in question.
5. In 2016, the DOJ found that an estimated 32% of records in state criminal history repositories were missing final disposition data. This lack of final disposition data results in misleading reports because, for example, arrests are routinely listed even when the charges were eventually dropped, reduced, or disproven in court.
6. Formerly incarcerated persons face barriers to access to both private rental and publicly subsidized affordable housing. A 2019 Goldman School of Public Policy and Just Cities survey which interviewed formerly incarcerated persons in Alameda County found that many were denied rental housing due to their incarceration record and could not stay in public housing with a relative or family member due to public housing rules.
7. Homelessness is a critical issue in Alameda County and formerly incarcerated people are disproportionately affected by homelessness, which can prevent a formerly incarcerated person from getting a job, from visiting with their children, and from fulfilling other needs that are fundamental to reintegrating with the community after incarceration.
8. A local survey project co-led by Just Cities Institute, The Village in Oakland, and the Goldman School of Public Policy found that 73% of unhoused residents interviewed in Oakland encampments were formerly incarcerated. According to a

2018 Prison Policy Initiative report, at the national level, formerly incarcerated people are 10 times more likely to experience homelessness than the general public.

9. The unmet housing needs of formerly incarcerated people in Alameda County are an acute challenge to the dignity, public health and safety, and equal opportunity for this population and the broader community.
10. Research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration. A 2012 Urban Institute study in Ohio, and a 2017 study published in the Journal of Experimental Criminology in Maryland found that providing housing subsidies to recently released persons significantly reduced the chance of re-arrest during the first year after release in these jurisdictions. A 2002 government study conducted in the United Kingdom by the U.K Office of the Prime Minister found that stable housing was associated with a 20% reduction in the reconviction rate in the first year after release.
11. Reliance on criminal history to select tenants impedes formerly incarcerated persons from gaining access to housing in Alameda County, to the detriment of health, welfare, and public safety of the County's residents.

SECTION II

Chapter 6.25 is hereby added to the Alameda County Ordinance Code and reads as follows:

6.25.010 Title and Purpose

This chapter shall be known as the "Fair Chance Housing Ordinance".

The purpose of this chapter is to create a Fair Chance Housing Ordinance to serve the residents of the unincorporated areas of Alameda County by providing fair opportunity to formerly incarcerated people seeking housing.

6.25.020 Definitions

Unless the particular provision or the context otherwise requires, the following definitions shall govern the interpretation and application of this chapter:

"Adverse Action" means any one of the following:

1. Failing or refusing to rent or lease Housing to a Covered Individual;
2. Failing or refusing to continue to rent or lease Housing to a Covered Individual;
3. Reducing the amount or term of any Covered Individual subsidy for Housing;
4. Treating an Applicant or tenant differently from other applicants or tenants, including , for example, requiring a higher security deposit or rent;

5. Treating a Covered Individual as ineligible for a tenant-based rental assistance program, including the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f); or
6. Failing to permit a tenant's Close Family Member to occupy a rental unit while the occupying tenant remains in occupancy.

"Affordable Housing" means any Housing that (1) has received or is receiving County, State, or Federal funding, tax credits, or other subsidies connected in whole or in part to developing, rehabilitating, restricting rents, subsidizing ownership, or otherwise providing rental housing for extremely low income, very low income, low income, or moderate income households (Public Funding), with the exception of Housing where the only Public Funding received is in the form of a Local, State or Federal tenant-based voucher, such as through the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f); or (2) is subject to affordability and related requirements pursuant to any County below market-rate rental housing programs, including the State Density Bonuses law (California Government Code Sections 65915-65918).

"Affordable Housing Provider" means any Housing Provider that owns, master leases, manages, or develops Affordable Housing in the County. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Housing Providers."

"Aggrieved Person" means any of the following:

1. An Applicant who believes they were subject to a Noncompliant Action;
2. A tenant who believes they or their Close Family Member was subject to a Noncompliant Action based on the application of an Applicant to reside in such family member's rental unit;
3. A tenant who believes they were subject to a Noncompliant Action based on the failure or refusal to permit a person to reside in such tenant's rental unit to replace an existing tenant, or add a new tenant.
4. A Close Family Member who resides or intends to reside in an Applicant's or tenant's household.
5. A Close Family Member who would be materially financially impacted by a Noncompliant Action, including but not limited to, by sharing a household with the tenant or Applicant due to the Noncompliant Action.

"Applicant" means a person who seeks information about or applies or attempts to apply to rent or lease Housing; who applies for a tenant-based rental assistance program, including the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f); who seeks to be added as a household member to an existing lease for Housing; or, with respect to any Criminal History that occurred prior to the beginning of the person's tenancy, who currently rents or has a lease for Housing.

“Arrest” means an arrest record from any jurisdiction that does not result in a Conviction and includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency or charged with, indicted, or tried and acquitted for any felony, misdemeanor, or other criminal offense.

“Background Check Report” means any report regarding an Applicant’s Criminal History, including those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement agencies, courts, or any consumer reporting or tenant screening agency.

“Close Family Member” means a spouse, registered domestic partner, child, sibling, half-sibling, parent, stepparent, foster parent, grandparent, or grandchild.

“Conviction” means a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor or other criminal offense and for which the person was placed on probation, fined, imprisoned, or paroled.

“Covered Individual” means a residential tenant or an Applicant to become a residential tenant who has a Criminal History or who has a Close Family Member with a Criminal History who resides or intends to reside in the same residential unit.

“Criminal History” means information transmitted orally or in writing or by any other means, and obtained from any source, including the person to whom the information pertains, a government agency, a Background Check Report, or a reference from a former Housing Provider regarding one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute (for example, under California Penal Code Sections 1203.1 or 1203.4); a determination or adjudication in the juvenile justice system; a matter considered in or processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.

“Housing” means any residential rental housing, building, or unit, including permitted and unpermitted units, in the unincorporated areas of Alameda County, with the exception of the following:

1. Single family dwellings where one or more owners occupy the dwelling as their principal residence;
2. Single family dwellings with Accessory Dwelling Units, as defined in section 17.04.010 of the County Zoning Ordinance, where either the main or an accessory dwelling unit is occupied by one or more owners as their principal residence;
3. Properties with four units or fewer where at least one of the units is occupied by one or more owners as their principal residence;

4. A tenant-occupied unit where an occupying tenant seeks to replace an existing co-tenant, add an additional co-tenant, or sublet the unit, provided that the occupying tenant remains in occupancy.

“Housing Provider” means any Person that owns, master leases, manages, or develops Housing in the unincorporated area of Alameda County. In addition, any agent, such as a property management company, that makes tenancy decisions on behalf of the Housing Provider, including the Section 8 Housing Choice Voucher Program (42 U.S.C. Section 1437f), shall also be considered a Housing Provider.

“Noncompliant Action” means an Adverse Action taken in violation of this chapter.

“Person” means one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, and receivers..

6.25.030 Use of Criminal History in Housing Decisions

- A. Except as provided in Paragraphs B and C of this Section, a Housing Provider shall not, at any time or by any means, whether direct or indirect, inquire about an Applicant’s Criminal History, require an Applicant to disclose their Criminal History, require an Applicant to authorize the release of their Criminal History or, if such information is received, base an Adverse Action in whole or in part on an Applicant’s Criminal History.
- B. It shall not be a violation of this chapter for a Housing Provider to comply with federal or state laws that require the Housing Provider to automatically exclude tenants based on certain types of criminal history (for example Ineligibility of Dangerous Sex Offenders for Admission to Public Housing (42 U.S.C. Section 13663(a) or Ineligibility of Individuals Convicted for Manufacturing Methamphetamine on Premises of Federally Assisted Housing for Admission to Public Housing and Housing Choice Voucher Programs (24 C.F.R. Section 982.553)).
 1. However, if an automatic exclusion requirement applies, the Housing Provider shall not inquire about, require disclosure of, or, if such information is received, review an Applicant’s Criminal History until the Housing Provider first does the following: (a) informs the Applicant in advance that the Housing Provider will check for certain types of criminal history; (b) requests and obtains written consent, or if the Applicant objects, provides the applicant the opportunity to withdraw their application; and (c) complies with the requirements in subsections D and E of this Section.
 2. Any Adverse Action based on Criminal History obtained pursuant to this Paragraph B shall be limited to actions required to comply with state or federal law.
- C. In compliance with state law, to protect persons at risk pursuant to Penal Code Section 290.46(j)(1), the Housing Provider may review the State registry of lifetime sex offenders operated by the State of California Department of Justice; provided that (1) the

Housing Provider has listed the lifetime sex offender screening requirement in writing in the rental application; and (2) the Housing Provider may not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider has first:

1. Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants, except for any criteria related to Criminal History;
 2. Provided to the Applicant a conditional rental agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History and other qualifying criteria; and
 3. Informed the Applicant in advance that the Housing Provider will be checking the sex offender registry and obtained the written consent of the Applicant to obtain such information. The Applicant may elect to withhold such consent and thereby be deemed to have withdrawn their application. Any use of information obtained by a Housing Provider pursuant to this Paragraph C shall comply with California Penal Code Section 290.46(1).
- D. If any Adverse Action is based in whole or in part on the Applicant's Criminal History, the Housing Provider shall provide a written notice to the Applicant regarding the Adverse Action that includes, at a minimum, the reasons for the Adverse Action and a copy of any Background Check Report or other information related to the Applicant's Criminal History that served as a basis for the Adverse Action. The Housing Provider shall provide the Applicant a reasonable opportunity to respond with rebutting or mitigating information prior to the denial of the Applicant's housing application. The Housing Provider shall not require reimbursement or payment from the Applicant for the cost of providing any information required under this Paragraph D.

6.25.040 Requirements for Housing Providers

- A. Except as required by state or federal law, it shall be unlawful for any Housing Provider, subject to the requirements of this chapter, to produce or disseminate any advertisement related to Housing that expresses, directly or indirectly, that any person with a Criminal History will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property,.
- B. The County shall publish and make available to Housing Providers, in English, Spanish, and all languages spoken by more than five percent (5%) of the current population of the unincorporated area of Alameda County, a notice that informs Applicants for Housing of their rights under this chapter. The notice shall contain the following information:
 1. A brief description of the restrictions and requirements of this chapter; and
 2. Information about community resources available to assist an Applicant in connection with a violation of this chapter.

- C. Housing Providers subject to the requirements of this chapter shall prominently display the notice made available pursuant to Section 6.25.040 (B) in their application materials, on their websites, if any, and at any rental or leasing offices.
- D. In addition to the requirements in Paragraphs A and C of this section, Affordable Housing Providers shall:
 - 1. Provide any Applicant subject to an Adverse Action a written notice regarding the Adverse Action that includes, at a minimum, the reasons for the Adverse Action; a list of local low or no-cost legal services providers, including contact information as listed on the County HCD website; and a copy of any Background Check Report or other Criminal History obtained by the Affordable Housing Provider; and
 - 2. Submit to the County an annual certificate of compliance with the requirements of this chapter in the form provided by the County.

6.25.050 Retaliation Prohibited

It shall be a violation of this chapter for any Housing Provider to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter, or to take any Adverse Action against any Person because the Person exercised or attempted in good faith to exercise any right protected under this chapter.

6.25.060 Recordkeeping and Confidentiality

- A. Housing Providers shall maintain a record of any Criminal History obtained for any Applicant for Housing for a period of three (3) years. To the maximum extent permitted by law, any information obtained regarding an Applicant's Criminal History shall remain confidential.
- B. Nothing in this section shall prohibit a Housing Provider from complying with a request by the County to provide records for purposes of enforcing the requirements of this chapter.

6.25.070 Implementation

The County Housing and Community Development Department is authorized to take all necessary steps to implement this chapter, including the following:

- A. Developing any notice required for purposes of implementing the requirements of this chapter, the annual compliance certification form, and other implementation documents, including written materials for Housing Providers and Applicants.
- B. Conducting outreach to and preparing a plan to provide training about the requirements chapter for Housing Providers.
- C. Adopting administrative procedures and forms to implement the requirements of this chapter.

6.25.080 Enforcement

- A. The County Counsel may bring an action on behalf of the County seeking injunctive relief to restrain or enjoin any violation of this chapter.
- B. Any Aggrieved Person who believes that the provisions of this chapter have been violated shall have a private right of action for injunctive relief, and general or special damages, or statutory damages up to three times the amount of one month's rent that the Housing Provider charged for the unit in question at the time of the violation.. In any action brought under this chapter, the court may award reasonable attorneys' fees and cost of action to the prevailing party.
- C. In an action brought by the County Counsel pursuant to this Section, a court of competent jurisdiction may order that a civil penalty be assessed against the Housing Provider to vindicate the public interest, which penalty shall be payable to the County. The civil penalty assessed against a Housing Provider shall be up to one thousand dollars (\$1,000) for each violation of this chapter. Each day a violation continues uncorrected is a separate violation to a maximum of ten days. A defendant shall be liable for an additional civil penalty of up to one thousand (\$1,000) for each violation of this chapter committed against a person who is disabled within the meaning of California Government Code section 12926 et seq., or is aged sixty-five (65) or over.
- D. An attorney who represents an Applicant in litigation against a Housing Provider brought under this chapter shall provide notice to the County Housing Director within ten (10) days of filing court action against the Housing Provider and inform the Housing Director of the outcome of the court action within ten (10) days of any final judgment.

6.25.090 No Conflict with State or Federal Law

This chapter is not intended to conflict with state or federal law. If there is a conflict between the provisions of federal or state law and this chapter, federal or state law shall control.

6.25.100 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The County of Alameda Board of Supervisors hereby declares that it would have passed this chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

6.25.110 Enforcement Date

A Housing Provider shall not be liable for a violation of this chapter that occurs within the first 180 days after final adoption of this chapter unless the Housing Provider has first received a warning letter from the County regarding a violation of the Ordinance.

6.25.120 Notice to Housing Providers

The Housing Director is directed to cause notice of this Ordinance to be mailed to all residential rental property owners subject to this chapter within 90 days of final adoption of this Ordinance. Not receiving a notice does not constitute a defense against violation of this chapter.

SECTION III

This ordinance shall not be effective until sixty (60) days after the expiration of the local state of emergency declared by the County of Alameda or its authorized officer, including the public health officer, related to Covid-19, but no sooner than thirty (30) days after its passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the ____ day of _____, 2023 by the following called vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

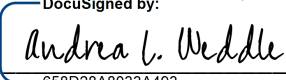
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By: 
DocuSigned by: 658D28A8033A493
Andrea L. Weddle
Chief Assistant County Counsel