

Board of Supervisors Unincorporated Services Committee
Staff Report

Just Cause Ordinance

June 22, 2022

Background

In 2020, the Community Development Agency's (CDA) Housing and Community Development Department (HCD) began its work to explore possible tenant protection ordinances in the Unincorporated County when it received the Partnership for the Bay's Future Challenge Grant.

The proposed Just Cause Ordinance (proposed Ordinance) before your Committee today is the third in a series of tenant protection ordinances that will be brought for consideration and recommendation to the full Board of Supervisors. The first was the Proactive Rental Inspection and Rental Registry Ordinance that was considered by your Committee on March 23, 2022. The second was the Fair Chance Ordinance that was considered by your Committee on May 25, 2022.

AB 1482

In 2019, the State of California passed AB 1482, known as the Tenant Protection Act of 2019. 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 have lived in multifamily housing for more than twelve months if the housing was built more than 15 years ago.

The following are the only permitted "just cause" reasons for termination under AB 1482:

1. Assigning or subletting in violation of the lease terms
2. Breach of material term of the lease
3. Criminal activity or use of premises for an unlawful purpose
4. Default on rental payment
5. Employee, agent, or licensee's failure to vacate after termination as an employee, agent or licensee
6. Failed to enter into a landlord-requested renewal or extension of a lease which terminated on or after January 1, 2020
7. Intent to demolish or substantially remodel the unit
8. Maintaining, committing, or permitting a nuisance or waste to occur on the property
9. Property owner or owner's family intent to occupy the property as their primary residence
10. Refusal to allow landlord's authorized entry into the premises
11. Tenant failure to vacate and surrender possession after giving the landlord written notice of tenant's intention to terminate the tenancy
12. The property is unfit for habitation as determined by a government agency
13. Withdrawal of the property from the rental market.

Draft Proposed Ordinance

The proposed Ordinance seeks to expand the statewide Just Cause protections in the Unincorporated County to include:

1. Single-family homes in which the owner does not live,
2. Units built in the last 15 years, and
3. Renters who have resided in their units for less than twelve months.

The proposed Ordinance also contains the following provisions not included in AB 1482:

1. A prohibition against unreasonable withholding of consent to a subtenancy request;
2. Additional guardrails for Ellis Act evictions of residents with disabilities or those 62 years of age or older;
3. Notification requirements to HCD and the County Recorder;
4. Protections against eviction during the school year for educators' and students' families;
5. Right of return and first right of refusal for tenants;
6. Specific parameters delineated with regard to owner move-in beyond State requirement of solely owner intent to move into the unit; and
7. Specific prohibitions against landlord retaliation.

The proposed Ordinance is attached as Appendix A.

Recommendation

Staff recommends the Unincorporated Services Committee:

1. Take public testimony, and
2. Recommend approval of the draft proposed Ordinance to the Board of Supervisors.

APPENDIX A: Proposed Ordinance.

ORDINANCE NO. 2022 ____

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

1. The State of California adopted AB 1482 enacting the Tenant Protection Act of 2019. This Tenant Protection Act provided just cause tenant protections to some, but not all, tenants in the state.
2. 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.
3. Just cause protections should be expanded to ensure the County is extending protections to all tenants in the unincorporated area of Alameda County.
4. There is a shortage of decent, safe, affordable, and sanitary housing in the unincorporated areas of the County of Alameda.
5. 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 increases homelessness, crime, and harms neighborhood stability and cohesion.
6. Residential tenants, who constitute over 50% of the residents of unincorporated areas of the County of Alameda, suffer great and serious hardship when forced to move from their homes.
7. State laws without limits on rent increases when tenants move out provide added economic incentive for landlords to evict tenants.
8. Protections against unfair evictions are needed in the unincorporated areas of the County of Alameda to protect residents from circumvention of rent stabilization laws..
9. Given the increased housing cost burden and poverty faced by many residents of the unincorporated areas of the County of Alameda, excessive rent increases threaten the public health, safety, and welfare of over 10,000 households,

APPENDIX A

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.

10. 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.
11. 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.
12. The unincorporated area of the County of Alameda currently does not restrict rental increases or grounds for eviction. State protections have not sufficiently protected tenants. Many tenants are not covered by existing tenant protections or are left unprotected due to existing loopholes in the law that leave them vulnerable to evictions or rent increases that outpace inflation. Residents have been unfairly evicted so that landlords can take advantage of the current Bay Area housing shortage and raise rents.
13. In light of the numerous concerns noted herein, including, but not limited to, the current and immediate threat to the health, safety, and welfare of unincorporated areas of the County of Alameda residents and the adverse impacts that would result from a substantial decrease of affordable housing within the unincorporated areas of the County of Alameda, the Board of Supervisors determine that it is in the interest of immediately preserving the public health, safety and general welfare to adopt this Ordinance in order to put into place just cause for eviction protections.
14. In accordance with Civil Code section 1946.2(g)(1)(B), the Board of Supervisors of Alameda County finds that this ordinance is more protective than the provisions of Civil Code section 1946.2 for the following reasons:
 - (1) The just cause for termination of a residential tenancy under this Chapter is consistent with Civil Code section 1946.2; and
 - (2) This Chapter further limits the reasons for termination of a residential tenancy and provides additional tenant protections that are not prohibited by any other provision of law.

SECTION II

Chapter 3.70 – JUST CAUSE EVICTION

3.70.10 Findings and Purpose

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.

This Ordinance is administered by the Community Development Agency’s Housing and Community Development Department.

The Board of Supervisors of Alameda County finds that: i) the just cause for termination of a residential tenancy under this ordinance is consistent with Civil Code section 1946.2; ii) this ordinance further limits the reasons for termination of a residential tenancy, and/or provides additional tenant protections that are not prohibited by any other provision of law; and iii) this ordinance is more protective than the provisions of Civil Code section 1946.2.

3.70.20 Definitions

- A. “Eligible Tenant” means any authorized occupant of a rental unit, regardless of age.
- B. “Housing Department” means the Housing and Community Development Department of the County of Alameda.
- C. “Housing Director” means the housing director of the County of Alameda or their designated representative, acting either directly or through their assigned deputies and employees.
- D. “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.
- E. “No-Fault Eviction” means evictions brought under sections 3.70.50F–H.
- F. “Reasonable Time to Cure” means not less than fourteen days after receipt of Warning Notice.
- G. “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 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.

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- H. “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.
- I. “Tenant Household” means one or more Tenant(s) who occupy any individual Rental Unit, including each dependent of any Tenant whose primary residence is the Rental Unit.
- J. “Termination Notice” shall have the meaning provided in Section 3.70.70.
- K. “Unreasonably Withheld Consent to Subtenancy” means consent to subtenancy that is unreasonably withheld by a Landlord as set forth in Section 3.70.90.
- L. “Warning Notice” means the notice described in Subsections 3.70.50.A, B, C, D, or E. 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.

3.70.30 Applicability and Exemptions

- A. The provisions of this Chapter shall apply to all Rental Units, in whole or in part, located in the unincorporated area of Alameda County.
- B. It shall apply where a notice to vacate/terminate any such Rental Unit has been served as of the effective date of this Chapter but where any such Rental Unit has not yet been vacated or an unlawful detainer judgment has not been issued as of the effective date of this Chapter.
- C. Section 3.70.40 shall not apply to the following types of Rental Units:
 - (1) Transient and tourist hotel occupancy as defined in subdivision (b) of California Civil Code §1940.
 - (2) Rental units in any hospital, skilled nursing facility, or health facility.
 - (3) Rental units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.
 - (4) Rental units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than twenty-four (24) months and where the client has been

informed in writing of the temporary or transitional nature of the housing at its inception.

- (5) Rental units in a residential property where the owner of record 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. For purposes of this Section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the State of California.

3.70.40 Just Cause Protections

- A. A Landlord may not take any action to terminate any tenancy, including but not limited to making a demand for possession of a Rental Unit, threatening to terminate a tenancy verbally or in writing, serving any notice to quit or other eviction notice, bringing any action to recover possession or be granted recovery of possession of a Rental Unit, including by seeking the entry of an eviction judgment or by causing or permitting a writ of possession to be entered unless the Landlord can demonstrate:
 - (1) That the Landlord served a Termination Notice to the Tenant Household and delivered a copy of the termination notice to the Housing Director in accordance with Section 3.70.70; and
 - (2) That the termination qualifies as a just cause termination in compliance with Section 3.70.50.
- 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, honest intent and with no ulterior motive for the reason stated in the Termination Notice.

3.70.50 Just Causes For Termination

The following constitute the sole just causes for eviction pursuant to Section 3.70.040:

- 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 under this Subsection it shall be a defense if the Landlord impeded the Tenant's effort to pay rent by refusing to accept rent paid on behalf of the Tenant

from a third party or refusing to provide a W-9 form or other necessary documentation for the Tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the Landlord and the third party as long as either the Landlord or the tenant provide written notice that no new tenancy is intended.

- (2) *COVID-19 State Law Preemption.* This Chapter shall not apply to an unlawful detainer action solely for nonpayment of rent originally due from March 1, 2021, through March 31, 2022, to the extent prohibited by Code of Civil Procedure Section 1179.05 or successor statute.

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 clause (i) or (ii) in this Subsection apply:
 - i. The Warning Notice to comply with the terms of the lease is based on terms that are legal and have been accepted in writing by the Tenant at the inception of the tenancy; or
 - ii. The Warning Notice to comply with the terms of the lease 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:
 - i. An obligation to surrender possession on proper notice as required by law; or
 - ii. Subletting or assignment, where the Landlord has unreasonably withheld consent to the subtenancy as defined in Section 3.70.90; 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 California Health & Safety Code Section 17922ⁱ, except when prohibited by law. This section shall apply regardless of any lease term to the contrary; or
 - iii. Violation of Alameda County Code Chapter 6.65 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, has caused or allowed substantial damage to the premises or common areas shared by the premises beyond normal wear and tear and has refused to pay the reasonable costs of repairing such damage and cease damaging said premises. Substantial damage caused as a result of Tenant being a victim of domestic violence shall not be considered just cause under this paragraph.

- D. *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. 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 Subsection. Nuisance caused as a result of a Tenant being a victim of domestic violence shall not be considered just cause under this paragraph.
- E. *Refusal to Grant Access to the Unit.* The Tenant, after a Warning Notice to cease and a Reasonable Time to Cure, continues to refuse the Landlord reasonable access to the Rental Unit required by law, so long the violation is not based on events constituting the Landlord's abuse of the right of access under California Civil Code section 1954 and or the Landlord's denial of the tenant's requests for reasonable accommodation due to disability (e.g., re-scheduling due to illness or environmental factors).
- F. *Substantial Rehabilitation of the Unit.* The Landlord, after having obtained all necessary permits from the County, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building, 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 shall offer Tenant the first right to return to the unit or another comparable vacant unit owned by the Landlord possessed by the owner pursuant to a rental agreement of the same terms, subject to the owner of record's right to rent increase for a fair return with the terms of Chapter 3.68 of the County Code or any lawfully noticed rent increases.
 - (3) Upon recovery of possession of the Rental Unit, 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 immediately make all remaining relocation payments to the Tenant in the amounts specified in 3.70.60C.

- (5) Where the Landlord recovers possession under this Subsection either prior to or after an unlawful detainer judgment, the Tenant must be given the right of first refusal to re-occupy the unit. The Landlord shall notify the Tenant Household at least sixty (60) days in advance of the availability of the unit or room. Within thirty (30) days of receipt of the notice of availability, a Tenant Household must notify the Landlord if it wishes to reoccupy the unit or room. The Landlord must hold the unit or room vacant at no cost to the Tenant for sixty (60) days from the date the Tenant Household's Warning Notice of its intent to reoccupy the rental unit or room is received.

G. *Owner Move-In.* The Landlord, who for the purposes of this Subsection is a natural person who has at least a fifty-one (51) percent recorded ownership or beneficial interest in the property, seeks in good faith, without ulterior reasons and with honest intent, to recover possession for his or her own use and occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the Landlord's spouse, domestic partner, child, parent, or grandparent for not less than a five (5) years period.

- (1) The Landlord shall not recover possession pursuant to this Subsection more than once in any thirty-six (36)-month period.
- (2) The Landlord shall provide the Tenant Household not less than three (3) months to vacate the Rental Unit.
- (3) The Landlord must move into the unit without unreasonable delay after the Tenant's vacation of the unit.
- (4) A Termination Notice under this Subsection shall also include the following:
 - i. A listing of all property owned by the intended future occupant(s); and
 - ii. The address of the real property, if any, on which the intended future occupant(s) claims a homeowner's property tax exemption.
- (5) If the Landlord or relative specified on the notice terminating tenancy fails to occupy the Rental Unit within ninety (90) days after the Tenant vacates, the Landlord shall:
 - i. Offer the unit to the Tenant who vacated it at the same rent in effect at the time the Tenant vacated; and
 - ii. Pay to said Tenant all reasonable expenses incurred in moving to and from the unit, include lease termination fees. This Subsection does not limit any other remedies a Tenant may have under this Chapter or applicable law.

- (6) If the Landlord or enumerated relative fails to occupy the Rental Unit within ninety (90) days after the Tenant vacates or does not occupy the Rental Unit as a primary residence for at least five (5) years, the Landlord shall have the burden of producing evidence that the failure to occupy did not occur in bad faith. The Housing Department may adopt regulations governing the determination of good faith.

H. *Ellis Act Removal.* The Landlord seeks in good faith to recover possession to withdraw all Rental Units of an entire property. The Landlord has filed the documents with the Housing and Community Development Department initiating the procedure for withdrawing units from rent or lease under Government Code section 7060 *et. seq.* and all regulations passed by the Housing and Community Development Department, with the intention of completing the withdrawal process and going out of the rental business or demolition of the property. If demolition is the purpose of the withdrawal, then the Landlord must have received all required County permits before serving any termination notices. Tenants shall be entitled to a 120-day notice or one (1) year in the case Tenants are defined as senior or disabled under Government Code section 7060.4(6). Tenants will also have a right of return if the unit is placed back on the market pursuant to Government Code section 7060.2.

3.70.60 Relocation Assistance

- A. Each Eligible 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 reasonable relocation expenses from the Landlord
- B. A Landlord who pays relocation expenses as required by this Section in conjunction with a Termination Notice need not pay relocation expenses with any further Termination Notices based upon the same just cause under 3.70.50 for the same unit that are served within 180 days of the notice that included the required relocation payment. The relocation expenses contained herein are separate from any security or other refundable deposits as defined in California Code Section 1950.5. Further, payment or acceptance of relocation expenses shall not operate as a waiver of any rights a Tenant may have under law.

3.70.70 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 with California Civil Code Section 1946.1 or California Code of Civil Procedure Section 1161.
- B. Termination Notices provided to Tenants must contain the following:
 - i. The reason for the termination of tenancy in accordance with 3.70.50; and

- ii. If the notice is for a no-fault eviction, an explanation of the right to and amount of relocation payments pursuant to section 3.70.60; and
 - iii. If the notice is for an eviction under 3.70.50F, the statement, “When the needed repairs are completed on your unit, the Landlord must offer you the opportunity to return to your unit with a rental agreement containing the same terms as your original one and with the same rent,” 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 unit will be ready for habitation; and
 - iv. If the Termination Notice is for an eviction under Subsections 3.70.50A–E, the notice must state specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the eviction reason. All Warning Notices described in 3.70.50 A, B, C, D, or E, shall be attached to any Termination Notice for which they correspond.
- C. A copy of each and every Termination Notice issued to a Tenant shall be filed with the Housing Director within three (3) days after the service thereof on the Tenant.
- D. The Housing Director shall adopt rules and regulations to implement the procedures required herein including the use of standardized forms for a Termination Notice.

3.70.80 Units Withdrawn from the Rental Market Pursuant to the Ellis Act

The following shall apply to a rental unit where the Landlord terminates tenancy pursuant to Section 3.70.050.H of this Chapter:

- A. *Re-rental within two years.* If the Rental Unit is offered again for rent or lease for residential purposes within two (2) years of the date the Rental Unit was withdrawn from rent or lease, the following provisions shall govern:
- (1) The Landlord of the Rental Unit shall be liable to any Tenant who was displaced from the property by that action for actual and exemplary damages. Any action by a Tenant pursuant to this paragraph shall be brought within three (3) years of the withdrawal of the Rental Unit from rent or lease. However, nothing in this paragraph precludes a Tenant from pursuing any alternative remedy available under the law.
 - (2) The County may institute a civil proceeding against any Landlord who has re-offered a Rental Unit for rent or lease subject to this Subdivision, for exemplary damages for displacement of Tenants. Any action pursuant to this paragraph shall be brought within three (3) years of the withdrawal of the Rental Unit from rent or lease.

- (3) Any Landlord who offers a Rental Unit again for rent or lease shall first offer the unit for rent or lease to the Tenant displaced from that unit by the withdrawal pursuant to this Chapter, if the Tenant has advised the Landlord in writing within thirty (30) days of the displacement of the Tenant's desire to consider an offer to renew the tenancy and has furnished the Landlord with an address to which that offer is to be directed. That Tenant or former Tenant may advise the Landlord at any time during the eligibility of a change of address to which an offer is to be directed.
- (4) If the Landlord re-offers the Rental Unit for rent or lease pursuant to this Subdivision, and the Tenant has advised the Landlord pursuant to this Subdivision of a desire to consider an offer to renew the tenancy, then the Landlord shall offer to reinstate a rental agreement or lease on terms permitted by law to that displaced Tenant.
- (5) This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced Tenant at the address furnished to the Landlord as provided in this Subdivision, and shall describe the terms of the offer. The displaced Tenant shall have thirty (30) days from the deposit of the offer in the mail to accept the offer by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid.

B. *Re-rental of Rental Units Within Five Years.*

- (1) For all tenancies commenced during the time periods described in Section 3.70.080(B)(2), below, the Rental Unit shall be offered and rented or leased at the lawful rent in effect at the time any notice of intent to withdraw the Rental Unit is filed with the Housing Department, plus annual adjustments available by law.
- (2) The provisions of paragraph (1) shall apply to all tenancies commenced during either of the following time periods:
 - i. The five (5)-year period after any notice of intent to withdraw the Rental Unit is filed with the Housing Department, whether or not the notice of intent is rescinded, or the withdrawal of the Rental Unit is completed pursuant to the notice of intent.
 - ii. The five (5)-year period after the Rental Unit is withdrawn.
- (3) This Subdivision shall prevail over any conflicting provision of law authorizing the Landlord to establish the rental rate upon the initial hiring of the Rental Unit.

C. *Re-rental Within Ten Years.* A Landlord who offers a Rental Unit again for rent or lease within ten (10) years from the date on which it is withdrawn, and which is

subject to this Subdivision, shall first offer the unit to the Tenant displaced from that unit by the withdrawal, if that Tenant requests the offer in writing within thirty (30) days after the Landlord has notified the Housing Department of an intention to offer the Rental Unit again for residential rent or lease. The Landlord of the Rental Unit shall be liable to any Tenant who was displaced by that action for failure to comply with this paragraph, for punitive damages in an amount which does not exceed the contract rent for six (6) months, and the payment of which shall not be construed to extinguish the Landlord's obligation to comply with this Subdivision.

- D. *Demolition Restrictions.* If the Rental Unit(s) are demolished, and new Rental Unit(s) are constructed on the same property, and offered for rent or lease within five (5) years of the date the Rental Unit(s) were withdrawn from rent or lease, the newly constructed Rental Unit(s) shall be subject to a system of control at which they would be offered on the basis of a fair and reasonable return on the newly constructed Rental Unit(s), notwithstanding any exemption from the system of controls for newly constructed Rental Unit(s).
- E. *Applicability to Successors in Interest.*
- (1) This Section shall apply to all successors in interest of a Landlord who has withdrawn Rental Units from rent or lease. The Housing Department shall record a notice with the county recorder which shall specifically describe the real property where the Rental Unit is located, the dates applicable to the constraints, and the name of the Landlord of record of the real property. The notice shall be indexed in the grantor-grantee index.
 - (2) A person who acquires title to the real property subsequent to the date upon which the Rental Unit thereon have been withdrawn from rent or lease, as a bona fide purchaser for value, shall not be a successor in interest for the purposes of this Chapter if the notice prescribed by this Section has not been recorded with the county recorder at least one day before the transfer of title.
- F. *Notice of Withdrawal.*
- (1) A Landlord who seeks to demolish or withdraw a Rental Unit from the rental market under Section 3.70.050H of this Chapter must provide the Housing Department with a notice, that states under the penalty of perjury:
 - i. The number of Rental Units withdrawn; and
 - ii. The address or location of those Rental Units; and
 - iii. The name or names of the Tenants of the Rental Units; and
 - iv. The lawful rent applicable to each Rental Unit.

- (2) The name or names of the Tenants, the rent applicable to any residential Rental Unit, and the total number of Rental Units, is confidential information and for purposes of this Chapter shall be treated as confidential information for purposes of the Information Practices Act of 1977 Article 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code.
- (3) The Landlord must record with the County Recorder a memorandum summarizing the provisions, other than the confidential provisions, of the notice in a form which shall be prescribed by the regulation from the Housing Department and will require a certification with that notice that actions have been initiated as required by law to terminate any existing tenancies.
- (4) The Landlord must notify the Housing Department in writing of their intention to re-offer the Rental Unit for rent or lease.
- (5) The date on which the Rental Unit is withdrawn from rent or lease for purposes of this Section is 120 days from the delivery in person or by first-class mail of the notice of withdrawal to the Housing Department. However, if the Tenant is at least sixty-two (62) years of age or disabled under Government Code section 7060.4, and has lived in their rental unit for at least one (1) year prior to the date of delivery to the Housing Department of the notice of intent to withdraw, then the date of withdrawal of the Rental Unit of that Tenant shall be extended to one (1) year after the date of delivery of that notice to the Housing Department, provided that the Tenant gives Warning Notice of their entitlement to an extension to the Landlord within sixty (60) days of the date of delivery to the Housing Department of the notice of intent to withdraw.

G. *Extension of Tenancy for Elderly or Disabled Tenants.* If a Tenant notifies a Landlord in writing of elderly or disabled status within sixty (60) days of the Housing Department receiving the notice of intent to withdraw the Rental Unit, the following provisions shall apply:

- (1) The tenancy shall be continued on the same terms and conditions as existed on the date of delivery to the Housing Department of the notice of intent to withdraw, subject to any adjustments otherwise available under this Chapter.
- (2) No party shall be relieved of the duty to perform any obligation under the lease or rental agreement.
- (3) The Landlord may elect to extend the tenancy on any other Rental Unit within the rental property up to one (1) year after date of delivery to the Housing Department of the notice of intent to withdraw, subject to paragraphs (1) and (2) of this Subsection.
- (4) Within thirty (30) days of the notification by the Tenant to the Landlord of their entitlement to an extension, the Landlord shall give Warning Notice

to the Housing Department of the claim that the Tenant is entitled to stay in their Rental Unit for one (1) year after date of delivery to the Housing Department of the notice of intent to withdraw.

- (5) Within ninety (90) days of date of delivery to the Housing Department of the notice of intent to withdraw, the Landlord shall give Warning Notice of the Landlord's election to extend a tenancy under paragraph (3) and the revised date of withdrawal to the Housing Department and any Tenant whose tenancy is extended.
- (6) The date of withdrawal for the Rental Unit as a whole, for purposes of calculating any time-periods in this Chapter, shall be the latest termination date among all Tenants within the Rental Unit, as stated in the notices required by paragraphs (4) and (5). A Landlord's further voluntary extension of a tenancy beyond the date stated in the notices required by paragraphs (4) and (5) shall not extend the date of withdrawal.

H. The Landlord must notify any Tenant displaced pursuant to Section 3.70.050.H of this Chapter of the following:

- (1) That the Housing Department has been notified pursuant to Subdivision (F) of this Section.
- (2) That the notice to the Housing Department specified the name and the amount of rent paid by the Tenant as an occupant of the Rental Unit.
- (3) The amount of rent the Landlord specified in the notice to the Housing Department.
- (4) Notice to the Tenant of their rights under paragraph (3) of Subdivision (A) of this Section.
- (5) Notice to the Tenant of the following:
 - i. If the Tenant is at least sixty-two (62) years of age or disabled, and has lived in their Rental Unit for at least one (1) year prior to the date of delivery to the Housing Department of the notice of intent to withdraw, then tenancy shall be extended to one (1) year after date of delivery to the Housing Department of the notice of intent to withdraw, provided that the Tenant gives Warning Notice of their entitlement to the Landlord within sixty (60) days of date of delivery to the Housing Department of the notice of intent to withdraw.
 - ii. The extended tenancy shall be continued on the same terms and conditions as existed on date of delivery to the Housing Department of the notice of intent to withdraw, subject to any annual adjustments otherwise available by law.

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

I. Not later than the last day of the third (3rd) and sixth (6th) calendar months following the month in which notice is given to the Housing Department, and thereafter not later than December 31 of each calendar year for a period of five (5) years, beginning with the year in which the six (6)-month notice is given, the Landlord of any property which contains or formerly contained one or more Rental Units which a Tenant vacated pursuant to Section 3.70.050.H of this Chapter shall notify the Housing Department, in writing, under penalty of perjury, for each such Rental Unit:

- (1) Whether the unit has been demolished; or
- (2) If the unit has not been demolished, whether it is in use; and
- (3) If it is in use, whether it is in residential use; and
- (4) If it is in residential use, the date the tenancy began, the name of the Tenant(s), and the amount of rent charged.

If the Rental Unit has been demolished, and one (1) or more new units have been constructed on the lot, the Landlord shall furnish the information required by items (2), (3) and (4) for each new unit. The Housing Department shall maintain a record of the notices received under this Section and all notices received under this Section for each Rental Unit withdrawn from the rental market pursuant to Section 3.70.050H of this Chapter.

J. The Housing Department shall notify each person who is reported as having become a Tenant in a vacated or new Rental Unit subject to the reporting requirements of Subsection (I) of this Section that it maintains the records described in Subsection (I), and that the rent of the Rental Unit may be restricted pursuant to Section 3.70.080 of this Chapter.

K. The Housing Department shall maintain a register of all Rental Units withdrawn from rent or lease under Section 3.70.050.H and the Tenant applicable to each unit at the time of withdrawal. The Housing Department shall inform Tenants displaced from units withdrawn from rent or lease at the address provided by the Tenant when the Landlord notifies the Housing Department that the Rental Unit or replacement unit will again be offered for rent or lease within ten (10) years of the date of withdrawal.

L. The County may investigate whether a Rental Unit that was withdrawn from rent or lease has been again offered for rent or lease, and whether the Landlord has complied with the provisions of this Section.

3.70.90 Subtenancy

A. *Unreasonably Withheld Consent to Subtenancy.* A Landlord's consent to subtenancy is unreasonably withheld when:

- (1) The Tenant's written or verbal request for consent was approved by the Landlord; or
- (2) The proposed new subtenant has not refused 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 and substantiated reason 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 fourteen (14) 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 occupant's lack of creditworthiness or income if the occupant will not be legally obligated to pay some or all of the 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, including on the existing Tenant at the inception of the tenancy.

3.70.100 Additional Protections

A. *Right of Return and First Right of Refusal.* All Tenants that are displaced based on Sections 3.70.50.F or 3.70.50.G shall have the first right of refusal to return to the unit if it should ever be returned to the market by the Landlord or successor Landlord. All notices of termination of tenancy served under Sections 3.70.50.F or 3.70.50.G shall state the lawful rent in effect at the time of termination of tenancy.

B. *School Year Protections for Educators and Students.* It shall be a defense to an eviction under Sections 3.70.50.F or 3.70.50.G if a child under the age of eighteen (18) or any educator resides in the unit, the child or educator is a Tenant in the unit or the child has a custodial or family relationship with a Tenant in the unit, the Tenant has resided in the unit for twelve (12) months or more, and the expiration date of the Notice of Termination of tenancy falls during the school year for the district that the child attends or in which the educator works. For purposes of this subsection, "educator" means any person who works at a school in Alameda County as an employee or independent contractor of the school or of

the governing body that has jurisdiction over the school, including, without limitation, all teachers, classroom aides, administrators, administrative staff, counselors, social workers, psychologists, school nurses, speech pathologists, custodians, security guards, cafeteria workers, community relations specialists, child welfare and attendance liaisons, and learning support consultants.

- C. *Protections for Families.* Notwithstanding any contrary provision in this Section, a Landlord shall not endeavor to recover possession of a Rental Unit as a result of the addition to the Rental Unit of a Tenant's child, parent, grandchild, grandparent, brother or sister, or the spouse or domestic partner (as defined in California Family Code section 297) of such relatives, or as a result of the addition of the spouse or domestic partner of a Tenant, so long as the number of occupants does not exceed the maximum number of occupants as determined under section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code section 17922. The Housing Department shall promulgate regulations that will further protect families and promote stability for school-aged children.
- D. *Retaliation is Barred.* Notwithstanding the above provisions, possession shall not be granted if it is determined that the eviction is knowingly in retaliation for the Tenant reporting violations of this Chapter 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 for exercising his or her right to file a complaint with the County advising that a building, housing, sanitation Code or ordinance violation or permit violation may exist on the property.
 2. *Retaliatory Actions.* The Landlord shall not engage in other types of retaliatory conduct, including, but not limited to, depriving the Tenants of use of the premises, decreasing services, or otherwise interfering with the Tenants' rights under the lease.
- 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 Tenant would result in the Tenant acquiring rights under this Chapter.

3.70.110 Defenses, Penalties, and Remedies

- A. *Affirmative Defense.* Each Landlord that seeks to terminate a tenancy of a Tenant must comply with this Chapter in its entirety. Non-compliance with any applicable component of this Chapter shall constitute a complete defense for a Tenant against any unlawful detainer action.
- B. *Exemption.* If a Landlord claims the Rental Unit is exempt from this ordinance, the Landlord must allege and prove that the unit is covered by one of the

exceptions enumerated in Section 3.70.030 of this Chapter. Such allegations must appear in the Termination Notice. Failure to make such allegations in the notice shall be a defense to any unlawful detainer action.

- C. *Criminal Penalties.* Any Landlord found by a court of competent jurisdiction to be guilty of violating any provision or failing to comply with any requirements of this Chapter shall be guilty of a misdemeanor punishable by up to a \$500 fine for a first offense and up to a \$1000 fine for any subsequent offenses.
- D. *Civil Remedies.* Whenever a Landlord or anyone assisting a Landlord wrongfully endeavors to recover possession or recovers possession of a Rental Unit in violation of this Chapter, the Tenant or the County may institute a civil proceeding for injunctive relief, money damages of not less than three (3) times actual damages (including damages for mental or emotional distress), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the Landlord acted in knowing violation of or in reckless disregard of this ordinance. The prevailing Tenant shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.
- E. *Landlord Rights.* Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

3.70.120 Non-Waiverability

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 a Tenant's substantive or procedural rights under this ordinance are contrary to public policy, unenforceable, and void.

3.70.120 Severability

If any provision of this article 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, 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 III

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.

ⁱ § 17922. Administrative code rules and regulations; international or uniform housing code requirements; local requirements

(a) Except as otherwise specifically provided by law, the building standards adopted and submitted by the department for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5, and the other rules and regulations that are contained in Title 24 of the California Code of Regulations, as adopted, amended, or repealed from time to time pursuant to this chapter shall be adopted by reference, except that the building standards and rules and regulations shall include any additions or deletions made by the department. The building standards and rules and regulations shall impose substantially the same requirements as are contained in the most recent editions of the following international or uniform industry codes as adopted by the organizations specified:

(1) The Uniform Housing Code of the International Conference of Building Officials, except its definition of “substandard building.”

(2) The International Building Code of the International Code Council.

(3) The International Residential Code of the International Code Council.

(4) The Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials.

(5) The Uniform Mechanical Code of the International Association of Plumbing and Mechanical Officials.

(6) The National Electrical Code of the National Fire Protection Association.

(7) The International Existing Building Code of the International Code Council.

(b) In adopting building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 for publication in the California Building Standards Code and in adopting other regulations, the department shall consider local conditions and any amendments to the international or uniform codes referred to in this section. Except as provided in Part 2.5 (commencing with Section 18901), in the absence of adoption by regulation, the most recent editions of the international or uniform codes referred to in this section shall be considered to be adopted one year after the date of publication of the applicable international or uniform codes.

(c) Except as provided in Section 17959.5, local use zone requirements, local fire zones, building setback, side and rear yard requirements, and property line requirements are hereby specifically and entirely reserved to the local jurisdictions notwithstanding any requirements found or set forth in this part.

(d) Regulations other than building standards which are adopted, amended, or repealed by the department, and building standards adopted and submitted by the department for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5, governing alteration and repair of existing buildings and moving of apartment houses and dwellings shall permit the replacement, retention, and extension of original materials and the continued use of original methods of construction as long as the hotel, lodginghouse, motel, apartment house, or dwelling, or portions thereof, or building and structure accessory thereto, complies with the provisions published in the California Building Standards Code and the other rules and regulations of the department or alternative local standards adopted pursuant to subdivision (b) of Section 13143.2 or Section 17958.5 and does not become or continue to be a substandard building. Building additions or alterations which increase the area, volume, or size of an existing building, and foundations for apartment houses and dwellings moved, shall comply with the requirements for new buildings or structures specified in this part, or in building standards published in the California Building Standards Code, or in the other rules and regulations adopted pursuant to this part. However, the additions and alterations shall not cause the building to exceed area or height limitations applicable to new construction.

(e) Regulations other than building standards which are adopted by the department and building standards adopted and submitted by the department for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 governing alteration and repair of existing buildings shall permit the use of alternate materials, appliances, installations, devices, arrangements, or methods of construction if the material, appliance, installation, device, arrangement, or method is, for the purpose intended, at least the equivalent of that prescribed in this part, the building standards published in the California Building Standards Code, and the rules and regulations promulgated pursuant to the provisions of this part in performance, safety, and for the protection of life and health. Regulations governing abatement of substandard buildings shall permit those conditions prescribed by Section 17920.3 which do not endanger the life, limb, health, property, safety, or welfare of the public or the occupant thereof.

(f) A local enforcement agency may not prohibit the use of materials, appliances, installations, devices, arrangements, or methods of construction specifically permitted by the department to be used in the alteration or repair of existing buildings, but those materials, appliances, installations, devices, arrangements, or methods of construction may be specifically prohibited by local ordinance as provided pursuant to Section 17958.5.

(g) A local ordinance may not permit any action or proceeding to abate violations of regulations governing maintenance of existing buildings, unless the building is a substandard building or the violation is a misdemeanor.