

ORDINANCE NO. 2022•_

AN ORDINANCE ADDING CHAPTER 3.71 OF THE ALAMEDA COUNTY GENERAL
ORDINANCE CODE REGARDING RENT STABILIZATION

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. There is a shortage of decent, safe, affordable, and sanitary housing in the unincorporated areas of Alameda County; and
2. Housing prices in the County of Alameda and throughout the Bay Area rose rapidly for several years and are still very high; and
3. The Board of Supervisors is concerned that high rents have dislocated residents of Alameda County and threaten additional dislocation in the future; and
4. The Board of Supervisors is eager to ensure that tenants in the unincorporated areas of Alameda County have the same protections as those residents in incorporated areas of the County.
5. 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, and
6. State laws that eliminate limits on rent increases upon the vacation of rental units provide added economic incentive for landlords to evict tenants.
7. 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, 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.
8. According to the 2019 American Community Survey 50% 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.

9. The unincorporated area of the County of Alameda currently does not restrict rental increases or grounds for eviction. State protections have been insufficiently protective of 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.
10. 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 rent stabilization.

SECTION II

Chapter 3.71 of the Alameda County General Ordinance Code is hereby added and reads as follows:

Chapter 3.71 – RENT STABILIZATION

3.71.10 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 excessive rent increases to the greatest extent allowable under the law, while ensuring landlords a fair and reasonable return on their investment.

3.71.20 Definitions

- A. “Annual Permissible Rent Adjustment” means to the limit on the Maximum Allowable Rent increase set forth in Section 3.71.40C, which a Landlord may charge annually on a Rent-Stabilized Unit without order of the Rent Review Officer.
- B. “Base Rent” means the rent in effect on [rollback date]. If there was no Rent in effect on [rollback date] the Base Rent shall be the rent that was charged on the first date that rent was charged following [rollback date]. For tenancies commencing after the adoption of this Chapter, the Base Rent is the initial rental rate in effect on the date the tenancy commences. The Base Rent is the reference point from which the Maximum Allowable Rent shall be adjusted upward or downward in accordance with Section 3.71.40C–E.

- C. “Consumer Price Index” means the Consumer Price Index for All Urban Consumers (“CPI-U”) for the San Francisco-Oakland-Hayward, CA Region, published by the U.S. Department of Labor, Bureau of Labor Statistics.
- D. “Hearing Officer” means the person serving or designated pursuant to Section 3.71.60.
- E. “Housing Director” means the housing director of the County of Alameda or his or her designated representative, acting either directly or through his or her assigned deputies and employees.
- F. “Landlord” means any person, partnership, corporation, or other business entity offering for rent or lease any residential property in the unincorporated areas of Alameda County. Landlord shall include the agent or representative of the Landlord, provided that such agent or representative has full authority to answer for the Landlord and enter into binding agreements on the Landlord's behalf.
- G. “Rent” means all periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord under a Rental Housing Agreement, as defined in this Section, concerning the use or occupancy of a Rental Unit and premises, including all payment and consideration demanded or paid for parking, utilities, pets, furniture, subletting and security deposits for damages and cleaning.
- H. “Rental Unit” means any unit in any real property (regardless of zoning status) units, 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, located in the unincorporated area of the County of Alameda.
- I. “Rent-Stabilized Unit” means any Rental Unit for which state and federal law permit Alameda County to regulate increases in Rent, as set forth in Section 3.71.40 below.
- J. “Maximum Allowable Rent” means the maximum Rent the Landlord may charge for the use or occupancy of any Rent-Stabilized Unit.
- K. “Rent Review Officer” means the person serving or designated pursuant to Section 3.71.50.
- L. “Rent Review Regulations” means the written policies, procedures, and forms adopted by the Housing Director pursuant Section 3.71.90.

3.71.30 Effective Date

The provisions of this ordinance shall have no force or effect until, and shall become operative upon, the expiration or repeat of the moratorium stated in Sections 6.120.030(A) and 6.120.040(A) of Chapter 6.120 of this Code (Temporary Residential Eviction Moratorium for the Incorporated and Unincorporated Areas of the County due to COVID-19), whichever comes first. HCD shall publish on its website the operative date of this ordinance.

3.71.40 Exemptions

The provisions of this Chapter shall not apply to the following types of Rental Units:

- A. Rental Units exempted from Part 4, Title 4, Chapter 2 of the California Civil Code § 1940(b).
- B. Rental Units in any hospital, skilled nursing facility, or health facility.
- C. 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.
- D. Rental Units in a nonprofit facility that 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.
- E. Rental Units in a residential property for which the owner of record occupies a unit in the same property as his or her 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 or entity who claims a homeowner’s property tax exemption on any other real property in the State of California.
- F. Rental Units restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the California Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the California Health and Safety Code or comparable federal statutes.
- G. Rental Units that have been issued a certificate of occupancy within the previous 15 years.

- H. Residential real property that is alienable separate from the title to any other dwelling unit, provided that both of the following apply:
1. The owner is not any of the following:
 - a. A real estate investment trust, as defined in Section 956 of the Internal Revenue Code.
 - b. A corporation.
 - c. A limited liability company in which at least one member is a corporation.
 2. The tenants have been provided written notice that the residential real property is exempt from this section using the following statement:

“This property is not subject to the rent limits imposed by Section XXX. This property meets the requirements of Section XXX and the owner is not any of the following: (1) a real estate investment trust, as defined by Section 856 of the Internal Revenue Code; (2) a corporation; of (3) a limited liability company in which at least one member is a corporation.”

3.71.50 Rent Increases

- A. No Landlord shall increase the Rent of any Rental Unit more than once in any twelve-month period or earlier than twelve months after the inception of the tenancy.
- B. No Landlord shall charge Rent for any Rent-Stabilized Unit in an amount greater than the Base Rent plus increases expressly allowed under this Chapter.
- C. The Annual Permissible Rent Adjustment shall be four percent.
- D. A Landlord may increase Rent by an amount up to the Annual Permissible Rent Adjustment only if the Landlord:
 1. Serves the Tenant with a legally required notice of a rent increase under State Law and as required by the Housing Director in the Rent Review Regulations; and
 2. Has complied with all other provisions of this Chapter, and with any other applicable County policies, regulations or resolutions concerning this Chapter.
- E. Any increase in Rent for a Rent-Stabilized Unit beyond the Annual Permissible Rent Adjustment authorized in Section 3.71.40D, must be authorized by the Rent Review Officer upon approval of valid petition as set forth in Section 3.71.70.

3.71.60 Rent Review Officer

The Housing Director, or a person or persons designated by the Housing Director, shall serve as the Rent Review Officer to administer and enforce the provisions of this Chapter. The Rent Review Officer shall have the power and duty to receive, investigate, hold hearings on, and make findings and decisions regarding petitions for rent adjustment and other actions that may be required under this Chapter.

3.71.70 Hearing Officer

The Rent Review Officer shall designate a Hearing Officer(s) to conduct a hearing or hearings pursuant to this Chapter. The minimum qualifications of the Hearing Officer shall be as established by the Rent Review Regulations. A person shall not be appointed as a Hearing Officer if the Rent Review Officer determines that the person has an actual or potential conflict of interest in the matter or if such appointment would have the appearance of a conflict of interest in the matter.

3.71.80 Petitions for Rent Adjustments

A Landlord or a tenant may file a petition with the Rent Review Officer to request an upward or downward adjustment of the Maximum Allowable Rent for a Rent-Stabilized Unit owned by that Landlord or occupied by that tenant.

- A. Upon the filing of a petition, the Rent Review Officer shall notify the petitioner of the acceptance or refusal of the petition based on the completeness of the submission. The Rent Review Officer shall not assess the merits of the petition and shall only refuse a petition if the petition does not include required information or documentation. Upon acceptance of a petition, the Rent Review Officer shall provide written notice to the parties affected by the petition. The written notice shall inform parties of the petition process, the right to respond, and include a copy of the completed petition with the supportive documents available upon request. Any response submitted by the responding party will be made available to the petitioning party. Each accepted petition shall be scheduled for a hearing by the Hearing Officer to be held within thirty calendar days after the date the Rent Review Officer accepted the petition. With agreement of the parties, the Hearing Officer may hold the hearing beyond the thirty days. Before the hearing, the Rent Review Officer may attempt, with the parties' concurrence, to mediate a resolution of the petition. Notwithstanding any other provision of this Chapter, the Hearing Officer may refuse to hold a hearing or grant an adjustment to Maximum Allowable Rent if a Hearing Officer has held a hearing and made a decision regarding the Maximum Allowable Rent for the Rent-Stabilized Unit in question within the previous six months based on the same or substantially the same grounds as are presented in the current petition.
- B. All Landlord petitions pertaining to tenants of the same property shall be consolidated for hearing, and all petitions filed by tenants occupying the same

property shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.

- C. The Hearing Officer shall conduct the hearing according to the procedures set for by the Housing Director in the Rent Review Regulations. The Hearing Officer shall have the power to issue subpoenas. The Hearing Officer shall have no authority to consider the constitutionality of any Federal, State or local law or regulation.
- D. Any party may appear and offer such documents, testimony, written declarations, or other evidence as may be pertinent to the proceeding. Each party shall comply with the Hearing Officer's request for documents and information and shall comply with the other party's reasonable requests for documents and information. The Hearing Officer may proceed with the hearing notwithstanding that a party has failed to appear, failed to provide the documents or information requested by the Hearing Officer, or failed to provide documents or information requested by the other party. The Hearing Officer may take into consideration, however, the failure of a party to provide such documents and information or to appear.
- E. No petition for an adjustment of Maximum Allowable Rent shall be granted unless supported by the preponderance of the evidence submitted at the hearing. The party who files the petition shall have the burden of proof.
- F. Hearings on petitions under this subdivision shall be open to the public.
- G. All parties to the proceeding shall be entitled to appeal the Hearing Officer's decision to the Rent Review Officer. The Housing Director shall establish a procedure for such appeals in the Rent Review Regulations.
- H. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceeding shall be notified of their right to appeal to the Rent Review Officer and to judicial review pursuant to this Section and Section 3.71.130 of this Chapter.
- I. In the event that a timely appeal is not filed, the decision of the Hearing Officer shall be the final decision of the Rent Review Officer. The decision of the Hearing Officer shall not be stayed pending appeal; however, in the event that the Rent Review Officer on appeal reverses or modifies the decision of the Hearing Officer, the Landlord, in the case of an upward adjustment in Rent, or the Tenant, in the case of a downward adjustment of Rent, shall be ordered to make retroactive payments to restore the parties to the position they would have occupied had the Hearing Officer's decision been the same as that of the Rent Review Officer.
- J. The Rent Review Regulations promulgated by the Housing Director shall provide for final action on any individual Maximum Allowable Rent adjustment petition within a reasonable time.

- K. Rent increases pursuant to an individual upward-adjusted Maximum Allowable Rent shall become effective only after the Landlord gives the Tenant at least thirty days written notice of such Rent increase and the notice period expires. If the Rent Review Officer makes a downward individual adjustment of the Maximum Allowable Rent, the decrease shall take effect no sooner than thirty days after the effective date set by the Rent Review Officer for the downward adjustment.
- L. Decisions decreasing the Maximum Allowable Rent that are based on a defect in property maintenance shall remain in effect until the Rent Review Officer finds that the Landlord has corrected the defect warranting the decrease. The Housing Director shall, by regulation, establish procedures for making prompt compliance determinations. Upon a determination of compliance, the Landlord shall be entitled to reinstatement of the prior Maximum Allowable Rent, retroactive to the date that the Landlord corrected the defect which warranted the decrease. This shall comply with California Civil Procedure Section 1942.4. If the Landlord is found to be in violation of California Civil Procedure Section 1942.4 then no Rent shall be charged for the period during which the Landlord was in violation.

3.71.90 Evaluating Individual Petitions for Adjustments of Rent

- A. In evaluating petitions for adjustments of Maximum Allowable Rent, the Hearing Officer and the Rent Review Officer shall consider the purposes of this Chapter and the requirements of law, including state law.
- B. In making an individual downward adjustment, the Rent Review Officer may consider decreases in housing services; substantial deterioration of the Rent-Stabilized Unit other than as a result of ordinary wear and tear; or failure on the part of the Landlord to provide adequate Housing Services or to comply substantially with applicable housing, health and safety codes.
- C. Landlords have the right to a reasonable return on their investment. Such increases shall only be made upon showing that without increase the landlord is not receiving a reasonable return on the rental payments of the entire property. Landlords may not petition on the basis that they are not receiving a reasonable return on their investment in one unit. In evaluating petitions of adjustments of Rent, the Hearing Officer and Rent Review Officer shall specifically consider all relevant factors, including, but not limited to the following:
 1. Increases or decreases in property taxes;
 2. Unavoidable increases or any decreases in maintenance and operating expenses;
 3. The cost of planned or completed capital improvements to the Rental Unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital

improvement costs are properly amortized over the life of the improvement;

4. Increases or decreases in the number of Tenants occupying the Rental Unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules;
 5. Failure to make repairs or only making repairs after government notification or tenant notification;
 6. Substantial deterioration of the Rental Unit other than as a result of normal wear and tear;
 7. Failure on the part of the Landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement; and
 8. The pattern of recent rent increases or decreases.
- D. No provision of this Chapter shall be applied so as to prohibit the Rent Review Officer from granting an individual Rent adjustment that is demonstrated by the Landlord to be necessary to provide the Landlord with a fair return on investment. Necessity shall be defined in the Rent Review Regulations promulgated by the Housing Director.
- E. No petition for upward adjustment of Maximum Allowable Rent shall be granted if the Landlord:
1. Has continued to fail to comply with any provisions of this Chapter or the Rent Review Regulations, after order to do so, by Housing Director, Rent Review Officer, or Hearing Officer; or
 2. Has failed to bring the Rental Unit into compliance with the implied warranty of habitability.

3.71.100 Notices

In addition to any other notice required to be given by law or this Chapter, a Landlord shall provide to a prospective Tenant:

- A. a written notice that the Rental Unit is subject to this Chapter; said notice shall be provided both in English and in the language in which the lease was negotiated.
- B. a copy of this Chapter as such Chapter exists at the time such notice is provided; and

- C. a copy of the then current County regulations promulgated by the Housing Director to implement this Chapter and a pamphlet explaining the ordinance in plain language; and
- D. any other notice mandated by the Housing Director in the Rent Review Regulations.

3.71.110 Implementation of this Chapter

The Housing Director shall establish written Rent Review Regulations consistent with this Chapter to effectuate the purposes of this Chapter, including but not limited to, hearing procedures, timelines, notices, and requirements for written submissions for the actions described herein.

3.71.120 Remedies

- A. Any Landlord who demands, accepts, receives, or retains any payment of Rent in excess of the Maximum Allowable Rent, in violation of the provisions of this Chapter or any rule, regulation or order hereunder promulgated, including the provisions ensuring compliance with habitability standards, shall be liable in a civil action to the tenant from whom such payments are demanded, accepted, received or retained, for reasonable attorney's fees and costs as determined by the court or administrative venue, plus damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the Maximum Allowable Rent. A civil penalty of treble the amount by which the payment or payments demanded, accepted, received or retained exceeds the Maximum Allowable Rent shall be awarded against the Landlord upon a showing that the Landlord has acted willfully or with oppression, fraud or malice. No administrative remedy need be exhausted prior to filing suit pursuant to this subsection. The statute of limitations for all remedies in this subsection shall be three years. The remedies of this subsection are cumulative and may be used in addition to any other remedy in this Chapter, at law, statute or ordinance.
- B. In lieu of filing a civil action, a tenant may file an administrative complaint. The Housing Director shall establish by rule and regulation a hearing procedure similar to that set forth in Section 3.71.70.
 - 1. The rules and regulations adopted by the Housing Director shall provide for final action on any complaint for excess Rent within one-hundred twenty days following the date of filing of the complaint.
 - 2. In any administrative hearing under this Section, a Landlord who demands, accepts, receives or retains any payment of Rent in excess of the Maximum Allowable Rent shall be liable for damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the Maximum Allowable Rent and may be liable for an additional amount not to exceed \$500, for costs, expenses incurred in pursuing the hearing remedy, and damages. The tenant shall bear the burden of proving

entitlement to this amount. The tenant may deduct the \$500 costs payment and award of damages from future Rent payments in the manner provided by the Housing Director. An order authorizing Rent withholding under this Chapter shall survive the sale or other transfer of the Property and shall be binding upon successors of the Landlord against whom the order was made. If a tenant authorized to withhold Rent under this Chapter vacates the Rental Unit, the Landlord shall pay to such tenant a sum equal to the balance of the Rent that the tenant could have withheld.

- C. If the tenant from whom excessive payment is demanded, accepted, received or retained in violation of the foregoing provisions of this Chapter or any rule or regulation or order hereunder promulgated fails to bring a civil or administrative action as provided for in this Section within one hundred twenty days from the date of occurrence of the violation, the Rent Review Officer may settle the claim arising out of the violation or bring such action. Thereafter, the tenant on whose behalf the Rent Review Officer acted is barred from also bringing an action against the Landlord in regard to the same violation for which the Rent Review Officer has made a settlement or brought action. In the event the Rent Review Officer settles said claim, it shall be entitled to retain the costs it incurred in settlement thereof, and the tenant against whom the violation has been committed shall be entitled to the remainder.
- D. The appropriate court in the jurisdiction in which the affected Rental Unit is located shall have jurisdiction over all actions brought under this Chapter.

3.71.130 Judicial Review

A Landlord or tenant aggrieved by any action or decision of the Rent Review Officer may seek judicial review by appealing to the appropriate court within the jurisdiction. No action or decision by the Rent Review Officer shall go into effect until thirty days have expired to allow for such appeal to be filed.

3.71.140 Injunctive and Other Civil Relief

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

3.71.150 Severability

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

SECTION III

This ordinance shall take effect and be in force thirty days from and after the date of passage and before the expiration of fifteen 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.

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