

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AN UNCODIFIED URGENCY ORDINANCE TO IMPOSE A
TEMPORARY MORATORIUM ON SUBMITTING OR APPROVING
CAPITAL IMPROVEMENT PLAN APPLICATIONS FOR PROPERTIES
THAT HAVE 25 OR MORE RENTAL UNITS, DIRECTING THE RENT
PROGRAM ADMINISTRATOR TO REJECT ALL CAPITAL
IMPROVEMENT PLAN APPLICATIONS FILED ON OR AFTER APRIL
27, 2023

WHEREAS, Government Code, section 36937 allows a city, including a charter city, to adopt an urgency ordinance to take effect immediately upon its adoption for the preservation of the public peace, health or safety upon a finding of facts constituting the urgency thereof; and

WHEREAS, Section 3.12 of the Alameda City Charter allows the City to adopt an urgency ordinance to take effect immediately upon its adoption for the preservation of the public peace, health, or safety upon a finding of facts constituting the urgency thereof; and

WHEREAS, the City has adopted an Ordinance entitled the City of Alameda Rent Control, Limitations on Evictions, and Relocation Payments to Certain Displaced Tenants Ordinance ("the Rent Control Ordinance"); and

WHEREAS, the City has also adopted Resolution No. 15138 that adopted a Policy concerning Capital Improvement Plans for rental units within the City ("the CIP Policy"); and

WHEREAS, as provided by the Rent Control Ordinance, the Rent Program Administrator has issued a Regulation (Regulation 23-01) to implement the CIP Policy; and

WHEREAS, under the CIP Policy and Regulation 23-01, landlords may apply for a Capital Improvement Plan which Plan, if approved by the Rent Program Administrator, permits a landlord to impose on tenants, in addition to rent, a pass through of the amortized costs of certain capital improvements constructed, or to be constructed, on the property; and

WHEREAS, the Rent Program Administrator, regardless of the number of rental units on the property, may approve a Capital Improvement Plan, assuming the application for such Plan satisfies the requirements of the Rent Control Ordinance, the CIP Policy, and the Regulations; and

WHEREAS, unlike annual rent increases generally that are limited to 70% of the percentage change in the Consumers Price Index, and an overall maximum annual rent

increase cap of 8% if banked rent increases are imposed, there are no limits on the pass through amount as expressed as a percentage of a tenant's current rent; and

WHEREAS, during the City's declaration of a local emergency due to the COVID-19 pandemic, the City Council imposed a moratorium on rent increases, including any rent increases/pass throughs for an approved Capital Improvement Plan; and

WHEREAS, City Council in April 2022 lifted the moratorium on rent increases and in November 2022 rescinded the declaration of the local emergency due to the COVID-19 pandemic, thereby no longer prohibiting a landlord from imposing on tenants rent increases, including banked rent increases, and a pass through of the amortized cost of certain capital improvements under an approved Capital Improvement Plan; and

WHEREAS, on several occasions since the adoption of the CIP Policy in 2016, City Council has considered various amendments to the CIP Policy but has not made any amendments to the CIP Policy; and

WHEREAS, when the City Council last considered amendments to the CIP Policy (in 2022) it directed City staff to meet with affected stakeholders concerning the CIP Policy and return the item to City Council for further consideration and City staff intends to do so later this year; and

WHEREAS, there exists within the City a number of rental properties housing 25 or more rental units and many of the tenants within those rental units are older residents, are on fixed incomes, and/or are still experiencing the financial hardship caused by the COVID-19 pandemic, thereby rendering those tenants as an extremely vulnerable population who, as a result of rent increases, including banked rent increases, and pass throughs, may not be able to pay rent and could be displaced from their homes; and

WHEREAS, The State of California and the Bay Area are facing a serious and prolonged housing and homelessness crisis. The State Legislature has declared that "the lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California. California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives." In addition, the State Legislature has called upon all local governments to take all necessary actions to alleviate the ongoing housing shortage and prevent homelessness; and

WHEREAS, notwithstanding that the City has taken significant steps in response to the State's call for action, including adoption of its Rent Control Ordinance, the City faces a similar housing shortage; and

WHEREAS, the present shortage of rental units in the City and the prevailing rent levels for such rental units have a detrimental effect on the health, safety and welfare of a substantial number of Alameda tenants, particular older residents, persons in low and moderate income households, and persons on fixed incomes and therefore it is necessary that these tenants be provided with protection from actual or constructive eviction; and

WHEREAS, recently the Rent Program Administrator reviewed an application for a capital improvement plan for a property housing 450 Rental Units, which application had the potential to increase by several hundred dollars the overall monthly amount a tenant would pay for the tenant's rental unit; many of those tenants in that property have stated that this increase in the overall amount of money they would pay for the use and occupancy of their Rental Unit would create a severe and significant financial hardship for them; and

WHEREAS, the purpose of the City's Rent Ordinance is to stabilize rents in the City, prevent the displacement of tenants from their homes due to significant rent increases, and to ensure that landlords receive a fair return on their property; and

WHEREAS, the principal salutary purpose of the CIP Policy, namely to encourage maintenance and upkeep of existing affordable residential housing supply, especially for landlords of limited means, is less applicable to landlords owning and operating rental complexes with a large number of rental units and receiving commensurate income therefrom; and

WHEREAS, Rent Program data indicates that properties with 25 or more units—which house about 35% of all fully regulated rental units in the City—when compared to properties with fewer rental units, have, on average, more of the rents are at or above fair market; hence, those property owners are more likely to be in a better position financially to absorb any necessary capital improvement costs; and

WHEREAS, the fair return process under the Rent Control Ordinance remains available to all landlords regardless of the number of rental units; and

WHEREAS, if the tenants in the properties with 25 or more rental units are not protected, there will be an immediate and unacceptable disruption to the peace, health, and safety of the City, as vulnerable tenants could be immediately and permanently displaced; and

WHEREAS, such outcomes would not only endanger the health and safety of the displaced tenants but create severe harm to the City as a whole and exacerbate the serious local, regional and state wide homelessness crisis; and

WHEREAS, for these reasons, the public health, safety and welfare of these tenants are not adequately protected from the possibility of eviction and it is in the interest of the City and of the community as a whole that the City adopt an ordinance to protect these tenants who might otherwise face eviction; and

WHEREAS, due to the number of rental units in the properties affected by this ordinance, landlords who choose to make capital improvements at this time, when compared to landlords with a smaller number of rental units, are better able to absorb the cost, have available to them the fair return process under the Rent Control Ordinance, and may seek approval of a capital improvement plan once the temporary moratorium is lifted; and

WHEREAS, in light of the serious concerns set forth herein, including but not limited to the current and immediate threat to health, safety, and welfare of certain residential tenants, and the adverse impacts that would result from evictions, the City Council determines that it is in the interest of immediately preserving the public health, safety and general welfare to adopt this urgency ordinance; and

WHEREAS, the City Council finds and determines that if a temporary moratorium on submitting capital improvement plans for properties housing 25 or more rental units were not imposed now, the public health, safety, and welfare would be immediately threatened because many tenants in these properties could be displaced; and

WHEREAS, for the reasons set forth above, this ordinance is declared by the City Council to be necessary for preserving the public health, safety, or welfare of the community, and the recitals above, taken together, constitute the City Council's statements of reasons constituting such necessity and urgency; and

WHEREAS, based on the foregoing findings, evidence presented to the City, other evidence of record, and testimony/evidence presented to the City Council at its meeting on May 11, 2023, the City Council finds and determines that this ordinance is urgently needed for the immediate preservation of public peace, health, or safety, and to avoid a current, immediate and direct threat to the safety, health, or welfare of the community; and

WHEREAS, this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") under CEQA Guidelines Sections 15378 (not a project) and 15061(b)(3) (no significant environmental impact).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA does ordain as follows:

Section 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby incorporates them into this ordinance.

Section 2. The Rent Program Administrator shall reject all Capital Improvement Plan applications filed on or after April 27, 2023, for properties that have 25 or more Rental Units.

Section 3. The Rent Program Administrator may adopt administrative regulations to effectuate and implement this Ordinance.

Section 4. This ordinance is enacted pursuant to the City of Alameda's general police powers, Section 3-12 of the Charter of the City of Alameda, Article XI of the California Constitution, and Government Code, section 36937.

Section 5. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 6. As an emergency ordinance, this Ordinance becomes effective immediately upon its adoption at a first reading by a four-fifths vote of the City Council.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

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I hereby certify that the foregoing Ordinance was passed and adopted by the City Council of the City of Alameda at a special meeting thereof held on this 11th day of May 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 12th day of May 2023.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda