

CITY OF ALAMEDA ORDINANCE NO. \_\_\_\_\_  
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING ARTICLE XV (RENT CONTROL, LIMITATIONS ON EVICTIONS AND RELOCATION PAYMENTS TO CERTAIN DISPLACED TENANTS ORDINANCE) TO ADOPT AND INCORPORATE THEREIN PROVISIONS CONCERNING CAPITAL IMPROVEMENT PLANS AND MARITIME RESIDENTIAL TENANCIES FOR RENTAL UNITS IN THE CITY OF ALAMEDA

WHEREAS, on April 5, 2016, City staff presented to the City Council, and the Council adopted, a Policy Concerning Capital Improvement Plans, which Policy identifies major long term repairs that could qualify as a Capital Improvement, provides a method by which a Landlord may receive a Rent Increase by undertaking such Capital Improvements, and requires the Landlord to provide relocation assistance to displaced Tenants when work associated with the Capital Improvements cannot be accomplished safely and reasonably with the Tenants remaining in their Rental Units, after hearing from the public concerning the Policy and thereafter discussed the Policy among themselves; consequently, the Council adopted Resolution No. 15138; and

WHEREAS, on July 5, 2022, City staff presented to the City Council amendments to Ordinance No. 3250, codified at Alameda Municipal Code 6-58.10 et seq., concerning Capital Improvement Plans and maritime residential tenancies, the purpose of which was to further encourage Landlords to improve the quality of the City's rental housing stock, to ensure Landlords receive a fair return on their Capital Improvement expenditures, and that Tenants are not unreasonably displaced as a result of Capital Improvements to their Rental Units; and

WHEREAS, with the effective date of this Ordinance, Resolution No. 15138 (Policy Concerning Capital Improvement Plans) will no longer be necessary and will be repealed; and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, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALAMEDA as follows:

Section 1: Alameda Municipal Code ARTICLE XV (RENT CONTROL, LIMITATIONS ON EVICTIONS AND RELOCATION PAYMENTS TO CERTAIN DISPLACED TENANTS ORDINANCE) is hereby amended as follows (in redline; otherwise, no change):

**6-58.15 – Definitions.**

Unless the context requires otherwise, the terms defined in this Article shall have the following meanings:

*Annual General Adjustment* means seventy (70%) percent of the percentage change in the Consumer Price Index for the twelve (12) month period ending April of each year and rounded to the nearest one-tenth of a percent; provided, however, in no event shall the Annual General Adjustment be more than five (5%) percent nor less than one (1) percent.

*Base Rent* means for all Rental Units, other than a Floating Home or a vessel/boat for which there is a maritime residential tenancy, that State Law does not exempt from rent control, the Rent in effect on September 1, 2019 or the Rent in effect on a later date (as established in subsection A of Section 6-58.60) and shall be the reference point from which the Maximum Allowable Rent shall be adjusted upward or downward in accordance with this Article. For all Rental Units that are Floating Homes or vessels/boats for which there is a maritime residential tenancy, Base Rent shall mean the Rent that a Tenant paid for the Rental Unit on or before April 14, 2022 but not Rent paid thereafter and shall be the reference point from which Maximum Allowable Rent shall be adjusted upward or downward in accordance with this Article. For Tenancies for Floating Homes or vessels/boats for which there will be a maritime residential tenancy, commencing after April 14, 2022, the Base Rent is the initial Rent in effect on the date the Tenancy commences.

*Base Rent Year* for all Rental Units other than Floating Homes or vessels/boats for which there is maritime residential tenancy, Base Rent Year means 2015. Base Rent Year for all Rental Units that are Floating Homes or vessels/boats for which there is a maritime residential tenancy means 2021.

*Buyout Agreement* means a written agreement between a Landlord and a Tenant as provided in Section 6-58.115 by which a Tenant, typically in consideration for monetary payment, agrees to vacate a Rental Unit.

*Capital Improvement* means an improvement or repair to a Rental Unit or property that materially adds to the value of the property, appreciably prolongs the property's useful life or adapts the property to a new use, becomes part of the real property or is permanently affixed to the real property such that its removal would result in

material damage to the real property or to the improvement itself, and has a useful life of more than one (1) year and that is required to be amortized and depreciated over the useful life of the improvement under the provisions of the Internal Revenue Code and related regulations.

*Capital Improvement Plan* means a detailed proposal submitted to the Program Administrator by a Landlord in order to proceed with one or more Capital Improvements and receive a Pass Through and/or temporarily relocate a Tenant in conjunction with the Capital Improvement work.

*Certified Rent* means the Rent, less than the Maximum Allowable Rent, that the Program Administrator determines is the allowable rent when the Landlord has chosen not to impose the Annual General Adjustment and has banked the difference as provided in Section 6-58.70.

*City* means the City of Alameda.

*Community Development Director* means the Director of the Community Development Department of the City of Alameda, or the Community Development Director's designated representative.

*Comparable* as applied to a Rental Unit means any Rental Unit that the Landlord owns in the City of Alameda, is similar in square footage, has the same number of or additional bedroom(s), has similar amenities, such as cable television or a washer/dryer, allows pets if the Tenant had a pet, as to a Tenant who is disabled, is disability accessible and ADA compliant and, if not currently habitable, can be made habitable without requiring the Landlord to obtain a building permit in order for the Rental Unit to be habitable. For purposes of paragraph 2 of subsection E of Section 6-58.80, the Comparable Rental Unit must be on the same property.

*Condominium* means the same as defined in Section 783 and 1351(f) of the California Civil Code.

*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.

*Costs of Operation* mean all reasonable expenses incurred in the operation and maintenance of a Rental Unit not exempt from rent control under State Law and the building(s) or complex of buildings of which it is a part, together with the common area, if any, and include but are not limited to property taxes, insurance, utilities, professional property management fees, pool and exterior building maintenance, supplies, refuse removal, elevator service, security services or system and the amortized cost of Capital Improvements for which a Landlord has not received an approved Pass Through for such Improvements, but Costs of Operation exclude

Debt Service, depreciation and the cost of Capital Improvements for which a Landlord has received an approved Pass Through for such Improvements.

*Council* means the City Council of the City of Alameda.

*Debt Service* means the periodic payment or payments due under any security financing device that is applicable to a Rental Unit not exempt from rent control under State Law or building or complex of which it is a part, including any fees, commissions or other charges incurred in obtaining such financing.

*Disabled* means disabled as defined in Section 12955.3 of the California Government Code.

*Dwelling Unit* means a room or group of rooms, designed and intended for occupancy and/or use by one (1) or more persons, that includes in the room or group of rooms sleeping quarters and one (1) or more of the following: the existence or capability for cooking facilities, e.g., refrigerator, stove, oven, microwave oven, etc.; and/or bath facilities, e.g., toilet, sink, shower, tub, etc.

*Eligible Tenant* means any Tenant entitled to be paid a Relocation Payment under this Article because the Landlord terminated the Tenant's tenancy for any of the reasons set forth in subsections E, F, G, H or I of Section 6-58.80, the Tenant has vacated a Rental Unit pursuant to a governmental agency's order to vacate or due to Health or Safety Conditions and for which in either case the Landlord did not serve a notice to terminate the tenancy, or the Tenant has vacated a Rental Unit following the Tenant's receipt of a Relocation Rent Increase.

*Floating Home* means the same as the term is defined in Health and Safety Code, section 18075.55.

*Governmental Agency* means any City, County, or State, and divisions or departments thereof, including those that are authorized to enforce the Uniform Codes that the City has adopted, except that Governmental Agency shall not include the Housing Authority.

*Health or Safety Conditions* mean conditions in a Rental Unit resulting from, or expected to result from, among other events, construction activities, flooding, fire or smoke, lack of proper maintenance, or facilities failures and not caused by a Tenant, the occupants of the Rental Unit or the invitees/guests of the Tenant that, in the determination of a Governmental Agency or a court of competent jurisdiction (i) have or will have an adverse effect on the health or safety of the Tenant or occupant if the Tenant/occupant were to occupy the Rental Unit while the conditions exist, (ii) render or will render the Rental Unit uninhabitable, or (iii) as to Rental Units in the Housing Choice Voucher Section 8 Program, fail to pass Housing Quality Standards as such Standards are determined by the U.S. Department of Housing and Urban Development.

*Housing Authority* means the Housing Authority of the City of Alameda.

*Housing Services* means those services provided and associated with the use or occupancy of a Rental Unit not exempt from rent control under State Law including, but not limited to, repairs, replacement, maintenance, effective waterproofing and weather protection, painting, providing light, heat, hot and cold water, elevator service, window shades and screens, laundry facilities and privileges, janitorial services, utilities that are paid by the Landlord, refuse removal, allowing pets, telephone, parking, storage, the right to have a specified number of Tenants or occupants, computer technologies, entertainment technologies, including cable or satellite television services, and any other benefits, privileges or facilities connected with the use or occupancy of such Rental Unit including a proportionate share of the services provided to common facilities of the building in which such Rental Unit is located and/or of the property on which such Rental Unit is located.

*Landlord* means any person, partnership, corporation or other business entity, or any successor in interest thereto, offering for rent or lease any Rental Unit in the City and shall include the agent or representative of the Landlord if the agent or representative has the full authority to answer for the Landlord and enter into binding agreements on behalf of the Landlord.

*Maximum Allowable Rent* means the maximum Rent the Landlord may charge for the use or occupancy of any Rental Unit not exempt from rent control under State Law.

*Maximum Increase* means a Rent Increase that on a cumulative basis over the twelve (12) months preceding the effective date of a proposed Rent Increase is more than ten (10%) percent.

*Net Operating Income* means the gross revenues that a Landlord has received in Rent or any rental subsidy in the twelve (12) months prior to serving a Tenant with a notice of a Rent Increase less the Costs of Operation in that same twelve (12) month period.

*Party* means a Landlord or Tenant.

*Pass Through* means any monetary amount a Landlord is authorized to pass through to, and recover from, one or more Tenants in the form of a surcharge or in addition to Base Rent, as authorized by an approved Capital Improvement Plan or any other lawful authorization.

*Permanent Relocation Payment* means the payment the Landlord is required to make to a Tenant when (i) the Landlord takes action to terminate a tenancy under subsections E, F, G, H or I of Section 6-58.80, (ii) the Landlord did not serve a notice of termination of tenancy but the Tenant has permanently vacated a Rental Unit

pursuant to a governmental agency's order to vacate the Rental Unit or due to Health or Safety Conditions, or (iii) the Landlord has served the Tenant with a Relocation Rent Increase and the Tenant has vacated the Rental Unit within ninety (90) days thereafter.

*Primary Residence* means a Single Dwelling Unit, Condominium, Stock Cooperative or other Dwelling Unit for which the Landlord is the property owner and the residence is one in which the Landlord carries on basic living activities for at least six (6) months of the year, the indicia of which include, but are not limited to: (i) the Landlord has identified the residence address for purposes of the Landlord's driver's license, voter registration or filing tax returns, (ii) utilities in the name of the Landlord are billed to the residence address and (iii) the residence address has a homeowner's property tax exemption in the name of the Landlord.

*Programs* mean the programs created by this Article.

*Program Administrator* is a person designated by the City or the Housing Authority to administer one (1) or more of the Programs.

*Program Fee* means the fee the City imposes on each Landlord to cover the costs to provide and administer the Programs.

*Qualified Tenant Household* means a household with a Tenant who is displaced for any reason other than under subsections A, B, C or D of Section 6-68.80 and who: (i) is a Senior Adult, (ii) is a person with a Disability or (iii) has at least one (1) child under the age of eighteen (18) residing in the household.

*Relocation Payment* means the payment a Landlord is required to make for any of the reasons set forth in Section 6-58.85.

*Relocation Rent Increase* means a rent increase that exceeds the Maximum Increase.

*Rent* means periodic compensation, including all non-monetary compensation, that a Tenant provides to a Landlord concerning the use or occupancy of a Rental Unit, including any amount included in the Rent for utilities, parking, storage, pets or for any other fee or charge associated with the tenancy for the use or occupancy of a Rental Unit and related Housing Services.

*Rent Differential Payment* means the difference between the lawful Rent that the Tenant was paying at the time of displacement and the Fair Market Rent as established from time to time by the U.S. Department of Housing and Urban Development, for a Comparable Rental Unit in Alameda, based on the number of bedrooms.

*Rent Hearing Officer or Hearing Officer* means a person designated by the City Attorney to hear and decide petitions under this Article and to hear and decide appeals as provided in this Article, which decisions are binding subject only to judicial review.

*Rent Increase* means any upward adjustment of the Rent from the Base Rent.

*Rental Agreement* means an agreement, written, oral or implied between a Landlord and a Tenant for the use and/or occupancy of a Rental Unit.

*Rental Unit* means a Dwelling Unit, a Floating Home, a vessel/boat for which there is a maritime residential tenancy, or other real property offered or available for Rent in the City of Alameda, and all Housing Services in connection with the use or occupancy thereof, other than the exemptions set forth in Section 6-58.20.

*Senior Adult* means any person sixty-two (62) years of age or older at the time the Landlord serves a notice of termination of tenancy or, if no notice of termination of tenancy was served, at the time the person vacated the Rental Unit.

*Single Dwelling Unit* means a single detached structure containing one dwelling unit for human habitation, any accessory buildings appurtenant thereto, and any accessory dwelling unit as defined in State Government Code, section 65852.2 (formerly a "second unit") and permitted by the City, when the Single Dwelling Unit is located on a single legal lot of record.

*State Law* means any California law, whether constitutional, statutory or executive order, that pre-empts local rent control such as, at the time this Ordinance is adopted, the Costa Hawkins Residential Rental Act (California Civil Code section 1954.50 and following, which Act exempts Rental Units for which a certificate of occupancy was issued after February 1, 1995 and Dwelling Units the title of which are separately alienable from the title of any other Dwelling Unit, (e.g., Single Dwelling Units and Condominiums)).

*Stock Cooperative* means the same as defined in section 4190 of the California Civil Code.

*Temporary Relocation Payment* means the payment that a Landlord is required to make to a Tenant when the Tenant has temporarily vacated the Rental Unit in compliance with a governmental agency's order to vacate, due to Health or Safety Conditions, or as part of an approved Capital Improvement Plan, regardless of whether the Tenant was served with a notice to terminate the tenancy.

*Temporary Tenancy* means a Tenancy in a Dwelling Unit which has been the Landlord's Primary Residence for at least three (3) months prior to the inception of the Temporary Tenancy, which Tenancy has a fixed term at the end of which the Landlord within sixty (60) days of the Tenant's vacating the Dwelling Unit re-

occupies the Dwelling Unit as the Landlord's Primary Residence, and thereafter the Landlord resides continually in the Dwelling Unit as the Landlord's Primary Residence for at least twelve (12) consecutive months.

*Tenancy* means the right or entitlement of a Tenant to use or occupy a Rental Unit.

*Tenant* means a tenant, subtenant, lessee, sub-lessee, roommate with Landlord's consent or any other person or entity entitled under the terms of a Rental Agreement for the use or occupancy of any Rental Unit and (i) has the legal responsibility for the payment of Rent for a Rental Unit or (ii) has agreed to pay the Rent for a Rental Unit; "Tenant" includes a resident as defined in Civil Code, section 800.8, a person who occupies a vessel/boat for which there is a maritime residential tenancy, or a duly appointed conservator or legal guardian of a Tenant as defined in this section, but excludes a property manager who occupies a Dwelling Unit on the property and has a written agreement with the Landlord under which the property manager does not pay the full amount of Rent that would otherwise be paid for a Comparable Rental Unit on the property.

#### **6.58.20 --Exemptions**

The following are exempt from the provisions of this Article.

- A. Dwelling Units, regardless of ownership, for which Rents are subsidized or regulated by federal law or by regulatory agreements between a Landlord and (1) the City, (ii) the Housing Authority or(iii) any agency of the State of California or the Federal Government; provided, however, if the Dwelling Unit is in the Housing Choice Voucher Section 8 Program and is not owned by a public entity or a bona fide not for profit organization dedicated to the provision of affordable housing, as further defined by Rent Program Regulations, the Dwelling Unit is exempt only as the rent control provisions of this Article. If a Dwelling Unit no longer qualifies for the full or partial exemption under this subsection A, for example, the Landlord withdraws the Dwelling Unit from a subsidy program or a regulatory agreement expires and/or is not renewed, the Dwelling Unit will immediately be subject to all provisions of this Article. In order to qualify for an exemption under this Section A, any regulatory agreement must ensure that (1) all Dwelling Units covered by the regulatory agreement, excluding managers' units, pay an affordable rent, as defined by Health and Safety Code, section 50053, or its successor legislation, and (2) all Dwelling Units covered by the regulatory agreement, excluding managers' units, only accept persons and families of low or moderate income, as defined by Health and Safety Code, section 50053 or its successor legislation;
- B. Dwelling Units owned by the Housing Authority;



- C. Dwelling Units that are rented or leased to transient guests for thirty (30) consecutive days or less;
- D. Rooms in hotels, motels, inns, tourist homes, short term rentals, rooming or boarding houses, provided that such rooms are not occupied by the same occupant or occupants for more than thirty (30) consecutive days;
- E. Commercial units, such as office condominiums, commercial storage units, or units subject to Section 30-15 of the Alameda Municipal Code (Work Live Studios);
- F. Rooms in any hospital or in a facility for assisted living, skilled nursery, convalescence or extended care;
- G. Rooms in a facility that provide a menu of services including, but not limited to, meals, continuing care, medication management, case management, counseling, transportation, and/or a wellness clinic, and for which services an occupancy agreement is typically required and regardless of whether the occupant must pay for some services;
- H. Rooms in a convent, monastery, fraternity or sorority house, or in a building owned, occupied or managed by a bona fide education institution for occupancy by students;
- I. Rooms in a building in a Dwelling Unit where the primary use is providing short-term treatment, assistance or therapy for alcohol, drug or other substance abuse and the room is provided incident to the recovery program and where the occupant has been informed in writing of the temporary or transitional nature of the arrangement at the inception of the occupancy;
- J. Rooms in a building or in a Dwelling Unit that provide a structured living environment that has the primary purpose of helping formerly homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is limited to a specific period of time and where the occupant has been informed in writing of the temporary nature of the arrangement at the inception of the occupancy;
- K. Mobile homes or mobile home lots;
- L.
- L Community cabins;
- M. Rooms in a facility that require, as part of the person's occupancy and use of the room and the facility, some or all of the following: intake, case management, counseling, and an occupancy agreement;

- N. Dwelling Units in which the Landlord owns the Rental Unit, occupies the Rental Unit as the Landlord's Primary Residence and shares kitchen or bath facilities with one or more Tenants; or
- O. Any part of a Dwelling Unit in which a Tenant has allowed or permitted a person to use or occupy such part of the Dwelling Unit but that person does not meet the definition of Tenant as defined in this Article.

**6-58.35 – Documents That the Landlord Must File with the Program Administrator.**

In addition to any other notice required to be filed with the Program Administrator by law or this Article, a Landlord shall file with the Program Administrator a copy of the following:

- A. Certain notices to terminate a tenancy (Section 6-58.80, E, F, G, H, and I; Section 6-58.110);
- B. The amount of the Rent for the new Tenant when the prior tenancy was terminated for no cause;
- C. The name and relationship of the person who is moving into the Rental Unit when the current tenancy is terminated due to an "owner move in" and documentation that the Landlord is a "natural person" (Section 6-58.80 E);
- D. Written notice that the Landlord or the enumerated relative who was intended to move into a Rental Unit did not move into the Rental Unit within sixty (60) days after the Tenant vacated the Rental Unit or that the Landlord or the enumerated relative who moved into the Rental Unit did not remain in the Rental Unit for three (3) years (Section 6-58.80 E.5(c).);
- E. Written notice and supporting documentation that the Landlord or the enumerated relative did move into the Rental Unit as the Landlord's or enumerated relative's Primary Residence. (Section 6-58.80 E.4.);
- F. The requisite documents initiating the process to demolish or withdraw the Rental Unit from rent or lease permanently under Government Code, section 7060 et seq. and the City of Alameda's Ellis Act Policy Resolution No. 15517 (Section 6-58.80 F and H);
- G. Written proof of the relocation payment provided to the Tenant if different than as provided in Section 6-58.95 (Section 6-58.95 G);
- H. A fully executed Buyout Agreement (Section 6-58.115 D);

- I. For all Rental Units, an annual registration statement for each Rental Unit (Section 6-58.55 A);
- J. For Rental Units that are not exempt from rent control under State Law, written notice within thirty (30) days of the close of escrow that the Rental Unit has been transferred, the Rent at close of escrow, and the name and contact information of the new Landlord (Section 6-58.55 A);
- K. For Rental Units that are not exempt from rent control under State Law, a registration statement within thirty (30) days of the inception of a new tenancy (Section 6-58.55 A);
- L. Written notice that a Landlord has entered into a Temporary Tenancy and copy of the Rental Agreement within thirty (30) days of the inception of the Temporary Tenancy (Section 6-58.40 A);
- M. Written notice and supporting documentation that the Landlord has moved into the Primary Residence within sixty (60) days of the termination of a Temporary Tenancy (as defined herein);
- N. Proof of a military assignment where a Temporary Tenancy for that purpose has been created, if the Program Administrator requires such proof (Section 6-58.40 A);
- O. Requests for a Pass Through in conjunction with an application for a Capital Improvement Plan;
- P. Requests for a hearing when a Tenant has filed a Tenant Financial Hardship Application concerning the payment of a Pass Through and/or when a Landlord has information that a Tenant is no longer eligible for a financial hardship previously granted.
- Q. A copy of any notice of a rent increase that is a Relocation Rent Increase within three (3) days of serving a Tenant with such Increase (Section 6-58.110 G);
- R. The judicial filing and related court papers if the Landlord is seeking judicial review of a decision of a Hearing Officer (Section 6-58.75 K); and
- S. Any other information or document that the Program Administrator reasonably requests to carry out the purposes and intent of this Article to the extent such request does not unreasonably infringe on the privacy interests of the Landlord.

**6-58.50 - Limitations on the Frequency of Rent Increases, the Use of Banked Annual General Adjustments, and Rent Increases in Combination with Pass Throughs.**

- A. No Landlord shall increase the Rent of any Rental Unit: (a) more than once in any twelve (12) month period or (b) earlier than twelve (12) months after the inception of the tenancy. Imposition of any lawful Pass Through shall not constitute a Rent Increase.
- B. For Rental Units that are not exempt from rent control under State Law, no Landlord shall increase Rent by utilizing any banked Annual General Adjustments in consecutive years nor increase Rent using any banked Annual General Adjustments more than three (3) times during any tenancy.
- C. Imposition of any lawful Pass Through shall not constitute a Rent Increase, provided however, no Landlord who has been granted a Pass Through shall impose a Rent Increase that, in combination with the Pass Through, is more than 8% of a Tenant's Maximum Allowable Rent.

**6-58.60 - Establishment of Base Rent, Annual General Adjustment.**

- A. Beginning September 1, 2019, except as provided in subsection B of this Section 6-58.60, no Landlord shall charge Rent for any Rental Unit not exempt under State Law in an amount greater than the Base Rent plus increases expressly allowed under this Article. If there were no Rent in effect on September 1, 2019, the Base Rent shall be the Rent that was charged on the first date that Rent was charged following September 1, 2019. For tenancies commencing after the adoption of this Article, the Base Rent is the initial Rent in effect on the date the tenancy commences.
- B. No Landlord shall charge Rent for any Rental Unit that is a Floating Home or a vessel/boat for which there is a maritime residential tenancy in an amount greater than the Base Rent for such Floating Home or vessel/boat for which there is a maritime residential tenancy, plus increases expressly allowed under this Article.
- C. No later than May 31 of each year, the Program Administrator shall announce the percentage increase by which Rent for eligible Rental Units will be adjusted effective September 1 of that year. .

**6-58.65 - Conditions for Taking the Annual General Adjustment.**

A Landlord may increase Rent by the Annual General Adjustment only if the Landlord:

- 1. Serves the Tenant with a legally required notice of a rent increase under State law.

2. Has complied with all other provisions of the City's Rent Control Ordinance, as that Ordinance may be amended from time to time, and with any other applicable policies, regulations or resolutions concerning Rent, including without limitation the payment of all Rent Program Fees set forth in the City's Master Fee Schedule and the registration of all Rental Units.

#### **6-58.77 – Capital Improvements.**

In addition to the Petition process set forth above, a Landlord may file with the Program Administrator an application for a Capital Improvement Plan, with or without a request for a Pass Through of certain Capital Improvement costs to Tenants of Rental Units not exempt from rent control by State Law, subject to the provisions and limitations set forth in this Article and the Rent Program Regulations

- A. The following Capital Improvements may qualify for a Pass Through, provided that the costs for such improvements are no less than \$7500 for all Capital Improvements referenced in the application and provided further that the direct cost is not less than \$750 per Rental Unit affected. These dollar amounts shall be adjusted annually based on the percentage change in the Consumer Price Index for the twelve (12) month period ending April of each year.
  1. A new roof covering all or substantially all of a building or a structurally independent portion of a building.
  2. A significant upgrade of a foundation, including seismic retrofits, of all or substantially all of a building or a structurally independent portion of a building.
  3. A new or substantially new plumbing, electrical, or heating, ventilation, and air conditioning (HVAC) system for all or substantially all of a building.
  4. Exterior painting or installation/replacement of siding or stucco on all or substantially all of a building.
  5. Repairs reasonably related to correcting or preventing the spread of defects that are noted in findings in a Wood Destroying Pest and Organisms Report issued by a pest control company registered in Branch 3 of the State of California Structural Pest Control Board.
  6. The installation of water conservation devices that are intended to reduce the use of water, or the installation of energy efficient devices, such as a solar roof system, or converting utilities from gas to electric, that are intended to save energy or reduce greenhouse gases.
  7. Improvements or upgrades to the Rental Unit or the building/complex that meet or exceed disability/accessibility standards as required by law.
  8. A fire sprinkler or fire alarm system covering all or substantially all of a building.

9. Replacement of stairs and/or railings in all or substantially all of a building.
10. Improvements or repairs to any marina that has berths for Floating Homes or vessels/boats for which there are maritime residential tenancies.

B. The Program Administrator shall determine the amount of the Pass Through by amortizing the cost of the authorized Capital Improvement, including an assumed interest rate as provided in Rent Program Regulations, over 15 years (except as otherwise noted below), and dividing that cost by each Rental Unit and any other Dwelling Unit on the property that benefits from the improvement.

In determining such cost that may be included in the calculation of the Pass Through, the Program Administrator shall give no consideration (a) to any additional cost the Landlord incurs for property damage and/or deterioration due to an unreasonable delay in the undertaking or completing of any improvement or repair, or (b) for improvements or repairs for which the Landlord receives insurance proceeds. The Program Administrator shall also give no consideration to any cost the Landlord incurs for any of the items set forth in paragraphs 1 through 10 of subsection A of this Section 6-58.77 if such items have been repaired, replaced or painted within 15 years of an application that seeks a Pass Through for those items except when necessary because a fire, flood, earthquake or other natural disaster requires such repairs, replacement or painting.

C. Except as provided in subsection D of this Section 6-58.77, the Program Administrator shall not approve an application for a Capital Improvement Plan if any of the following apply:

1. The approval of the application results in a cumulative Capital Improvement Pass Through exceeding 5% of a Tenant's Maximum Allowable Rent as such Rent is determined at the time the application is filed.
2. The Pass Through, in combination with any allowable Rent Increase that a Landlord could impose, would result in the Tenant's paying more than 8% of the Tenant's Maximum Allowable Rent as such Rent is determined as the time the application is filed.
3. The Capital Improvements for which the application has been filed have been completed more than 12 months prior to the filing of the application.
4. As to the Capital Improvements for which an application has been filed, the Landlord previously received an upward adjustment of Rent through the petition process under Section 6-58.75.

D. If an application for a Capital Improvement Plan, if approved, would result in a cumulative Pass Through exceeding 5% of a Tenant's Maximum Allowable

Rent as such Rent is determined at the time the application is filed, the Program Administrator may approve the application subject to the following:

1. The Pass Through (for that Tenant) is permanently capped at 5% of the Tenant's Maximum Allowable Rent as such Rent is determined at the time the application is filed.
  2. The Program Administrator's approval of the application shall provide for the full recovery the cost of the Capital Improvements including extending beyond 15 years the amortization period of the Capital Improvement.
- E. Notwithstanding subsections C and D of this Section 6-58.77, no Landlord shall impose a Pass Through and a Rent Increase, including a Rent Increase based on banking, where the combination of the Pass Through and the Rent Increase exceeds 8% of a Tenant's Maximum Allowable Rent.
- F. The Program Administrator shall determine the amount of the Pass Through based on the cost of the authorized Capital Improvement at the time the Program Administrator approves the application, using the best available information, as provided by the Landlord along with any other relevant information. The Program Administrator's determination of the amount of the Pass Through shall not be subject to future revision, including revisions based on actual construction costs.
- G. Prior to approving an application for a Pass Through, the Program Administrator shall inform Tenants of the amount of the Pass Through and inform Tenants of the Tenant Financial Hardship Application procedures. A Tenant may file with the Program Administrator a hardship application with respect to the amount of the Pass Through as provided in Rent Program Regulations. A Tenant will qualify for relief from payment of the Pass Through as provided in Rent Program Regulations.
- H. Landlords shall provide notice to Tenants of the authorized Pass Through, as determined by the Program Administrator. Upon receiving such notice, any affected Tenant shall have the right to provide a notice to the Landlord that the Landlord must choose between irrevocably forgoing the applicable Pass Through (as to that Tenant) or terminating the Tenancy and making the required permanent Relocation Payment to the Tenant.
- I. All Pass Throughs authorized pursuant to a Capital Improvement Plan shall immediately terminate for any Rental Unit that becomes vacant.
- J. Except as provided in subsection C of this Section 6-58.77, this Section does not preclude a Landlord from filing a petition for an upward adjustment of Rent under subsection G of Section 6-58.75 to the extent full recovery of the cost of Capital Improvements is necessary in order to provide the Landlord with a constitutionally required fair return on property. A Landlord, however, must

disclose in such petition any Capital Improvement Pass Through previously awarded under this Section 6-58.77.

- K. A Landlord or Tenant may file an appeal with the Program Administrator, with the appeal decided by a Hearing Officer, to any determination of the Program Administrator under this Section 6-58.77 as established in Rent Program Regulations.

### **6-58.80 - Evictions and Terminations of Tenancies.**

No Landlord shall take action to terminate any Tenancy including, but not limited to, making a demand for possession of a Rental Unit, threatening to terminate a Tenancy, serving any notice to quit or other notice to terminate a Tenancy, e.g. an eviction notice, bringing any action to recover possession or be granted possession of a Rental Unit except on one (1) of the following grounds:

- A. *Failure to pay rent.* The Tenant upon proper notice has failed to pay the Rent to which the Landlord is entitled under a Rental Agreement; provided, however, that the "failure to pay rent" shall not be cause for eviction if (i) the Tenant cures the failure to pay rent by tendering the full amount of the Rent due within the time frame in the notice but the Landlord refuses or fails to accept the Rent or (ii) the Tenant tenders some or all of the Rent due and the Landlord accepts some or all of the Rent.
- B. *Breach of Rental Agreement.* The Tenant has continued, after the Landlord has served the Tenant with a written notice to cease, to commit a material and substantial breach of an obligation or covenant of the Tenancy other than the obligation to surrender possession upon proper notice, provided, however, that a Landlord need not serve a written notice to cease if the breach is for conduct that is violent or physically threatening to the Landlord, other Tenants or members of the Tenant's household or neighbors.
  - 1. Notwithstanding any contrary provision in this Section 6-58.80, a Landlord shall not take action to terminate a Tenancy as a result of the addition to the Rental Unit of: (a) a Tenant's spouse or registered domestic partner, (b) a Tenant's parent, grandparent, child or grandchild, regardless of whether that child or grandchild is related to the Tenant by blood, birth, adoption, marriage or registered domestic partnership, (c) the foster child or grandchild of the Tenant or any of the individuals described in subparagraphs (a) or (b) of this paragraph, (d) any other person that federal or state fair housing laws may in the future protect, or (e) a person necessary to reasonably accommodate the needs of a Tenant or any of the individuals described in subparagraphs (a), (b), (c) or (d) of this paragraph, 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 and Safety Code, section 17922.



2. Before taking any action to terminate a Tenancy based on the violation of a lawful obligation or covenant of Tenancy regarding subletting or limits on the number of occupants in the Rental Unit, the Landlord shall serve the Tenant a written notice of the violation that provides the Tenant with the opportunity to cure the violation within fourteen (14) calendar days. The Tenant may cure the violation by making a written request to add occupants to which request the Landlord reasonably concurs or by using other reasonable means, to which the Landlord reasonably concurs, to cure the violation including, but not limited to, causing the removal of any additional or unapproved occupant.
- C. *Nuisance*. The Tenant has continued, after the Landlord has served the Tenant with a written notice to cease, to commit or expressly permit a nuisance on the Rental Unit or to the common area of the rental complex, or to create a substantial interference with the comfort, safety or enjoyment of the Landlord, other Tenants or members of a Tenant's household or neighbors, provided, however, a Landlord need not serve a notice to cease if the Tenant's conduct is illegal activity, has caused substantial damage to the Rental Unit or the common area of the rental complex, or poses an immediate threat to public health or safety.
  - D. *Failure to give access*. The Tenant has continued to refuse, after the Landlord has served the Tenant with a written notice, to grant the Landlord reasonable access to the Rental Unit for the purpose of inspection or of making necessary repairs or improvements required by law, for the purpose of showing the Rental Unit to any prospective purchaser or mortgagee, or for any other reasonable purpose as permitted or required by the lease or by law.
  - E. *Owner move-in*. The Landlord seeks in good faith to recover possession of the Rental Unit for use and occupancy as a Primary Residence by: (1) the Landlord, (2) the Landlord's spouse or registered domestic partner, or (3) the Landlord's parent, grandparent, child, grandchild, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law, whether that person is related to the Landlord by blood, birth, adoption, marriage or registered domestic partnership. Persons in paragraphs (2) and (3) above shall be deemed "enumerated relatives".
1. For purposes of this section a "Landlord" shall only include a Landlord that is a natural person who has at least a fifty (50%) percent ownership interest in the property and the Landlord shall provide to the Program Administrator documentation that the Landlord meets the definition of Landlord as provided in this paragraph. For purposes of this paragraph, a "natural person" means a human being but may also include a living, family or similar trust where the natural person is identified in the title of the trust.

2. No action to terminate a Tenancy based on an "owner move-in" may take place if there is a vacant Rental Unit on the property that is Comparable to the Rental Unit for which the action to terminate the Tenancy is sought.
3. The notice terminating the Tenancy shall set forth the name of the Landlord and, if applicable, the name and relationship to the Landlord of the enumerated relative intending to occupy the Rental Unit.
4. The Landlord or the enumerated relative must intend in good faith to move into the Rental Unit within sixty (60) days after the Tenant vacates and to occupy the Rental Unit as a Primary Residence for at least three (3) years. The Landlord or the enumerated relative must within seven (7) days after the Landlord or the enumerated relative has moved into the Rental Unit inform the Program Administrator in writing that the Landlord or enumerated relative has in fact moved into the Rental Unit and provide sufficient documentation, as determined by the Program Administrator, to demonstrate the Rental Unit is the Landlord's or enumerated relative's Primary Residence.
5. If the Landlord or enumerated relative fails to occupy the Rental Unit within sixty (60) days after the Tenant vacates or if the Landlord or enumerated relative vacates the Rental Unit without good cause before occupying the Rental Unit as a Primary Residence for three (3) years, the Landlord shall:
  - (a) Offer the Rental Unit to the Tenant who vacated the Rental Unit and at the same Rent that was in effect at the time the Tenant vacated the Rental Unit;
  - (b) Pay to the Tenant all reasonable and documented expenses incurred in moving to the Rental Unit; and
  - (c) Inform the Program Administrator in writing.
6. If (a) the Landlord or enumerated relative fails to occupy the Rental Unit within sixty (60) days after the Tenant vacates or if the Landlord or enumerated relative vacates the Rental Unit without good cause before occupying the Rental Unit as a Primary Residence for three (3) years, and (b) the displaced Tenant does not accept the Landlord's offer to return to the Rental Unit, the Landlord shall not charge Rent to a new Tenant that exceeds the lawful Rent charged to the displaced Tenant at the time the Landlord served the notice to terminate the tenancy. Nothing in this paragraph shall preclude other penalties or remedies provided to the displaced Tenant or the City under Section 6-58.155.
7. Where the Landlord has terminated a tenancy based on an owner move-in and there are other Rental Units on the property, a Landlord shall not

terminate a tenancy of any other Tenant based on an owner move-in until twenty-four (24) months have elapsed since the Landlord or an enumerated relative has moved into the Rental Unit which was the subject of the prior owner move-in.

8. It shall be evidence that the Landlord has not sought in good faith to recover possession of a Rental Unit based on an owner move-in if the Landlord or the enumerated relative does not occupy the Rental Unit within sixty (60) days of the displaced Tenant's vacating the Rental Unit and/or if the Landlord or the enumerated relative does not occupy the Rental Unit as a Primary Residence for at least three (3) years.
- F. *Demolition.* The Landlord seeks in good faith and in compliance with the City's Ellis Act Policy to take action to terminate a Tenancy to demolish the Rental Unit and remove the property permanently from residential rental housing use; provided, however, the Landlord shall not take any action to terminate such Tenancy until the Landlord has obtained all necessary and proper demolition and related permits from the City.
  - G. *Capital Improvement Plan.* The Landlord seeks in good faith to take action to terminate a Tenancy in order to carry out an approved Capital Improvement Plan but only as set forth in subsection H of Section 6-58.77.
  - H. *Withdrawal from the rental market.* The Landlord seeks in good faith and in compliance with the City's Ellis Act Policy to take action to terminate a Tenancy by withdrawing the Rental Unit from rent or lease with the intent of going out of the residential rental business permanently as to the Rental Unit(s) on the property.
  - I. *Compliance with a governmental order.* If a Tenant has vacated the Rental Unit in compliance with a government agency's order to vacate, in response to a Landlord's taking action in good faith to terminate a Tenancy to comply with a government agency's order to vacate, in response to a Health or Safety Condition, or in connection with any other order that necessitates the vacating of the building or Rental Unit as a result of a violation of the City of Alameda's Municipal Code or any other provision of law:
    1. The Landlord shall offer the Rental Unit to the Tenant who vacated the Rental Unit when the Landlord has satisfied the conditions of the governmental agency that caused the governmental agency to order the Rental Unit vacated and at the same Rent that was in effect at the time the Tenant vacated the Rental Unit.
    2. The Landlord shall provide to the Tenant Relocation Payments as provided in Section 6-58.85 or as provided in Article 2.5, Chapter 5, Part 1.5, Division 13, California Health and Safety Code, beginning at section

17975, whichever is greater, and all reasonable and documented expenses incurred in returning to the Rental Unit should the Landlord be required to offer the Rental Unit to the Tenant once the conditions have been satisfied and the Tenant does so.

#### **6-58.85 - Relocation Payments.**

- A. *Permanent Relocation Payments.* A Landlord who: (i) takes action to terminate a Tenancy permanently for the reasons specified in subsections E, F, H, or I of Section 6-58.80, (ii) serves a notice of a Rent Increase that is a Relocation Rent Increase as defined in this Article and the Tenant vacates the Rental Unit within ninety (90) days of receiving the Relocation Rent Increase, (iii) after receiving notice from the Tenant as provided in subsection H of Section 6-58.77, refuses either to forgo the approved Capital Improvement work or to withdraw its related Pass Through to a Tenant, or (iv) fails to correct deficient Housing Quality Standards in Housing Choice Voucher Section 8 Rental Units resulting in the Tenant's vacating the Rental Unit, shall provide to an Eligible Tenant a Permanent Relocation Payment.
- B. *Other Relocation Payments* If a Tenant (i) has vacated or is ordered to vacate a Rental Unit in compliance with an order from a governmental agency or from a court of competent jurisdiction, or (ii) vacates a Rental Unit temporarily in compliance with an approved Capital Improvement Plan, due to Health or Safety Conditions:
1. For the first sixty (60) days from the date the Tenant vacates the Rental Unit, the Landlord shall make Temporary Relocation Payments to the Tenant until the Tenant re-occupies the Rental Unit and the Tenant, upon receipt of the Temporary Relocation Payment, shall be obligated to pay the Rent that was in effect at the time the Tenant vacated the Rental Unit, plus any adjustments as permitted under this Article and Rent Program Regulations.
  2. If the work necessary to comply with the order to vacate, or to complete the Capital Improvement work, takes longer than sixty (60) days to complete, the Landlord shall make Rent Differential Payments to the Tenant until either the work is completed and the Tenant re-occupies the Rental Unit or the Tenant finds alternative, permanent housing. A Tenant shall have no obligation to pay Rent to the Landlord when receiving Rent Differential Payments. If the Tenant re-occupies the Rental Unit, the Tenant shall pay the Rent in effect when the Tenant vacated the Rental Unit, plus any Rent adjustments as permitted under this Article and the Rent Program Regulations.
  3. If a Tenant who has been temporarily relocated or who has been informed that the Tenant will be temporarily relocated, and the Tenant, in the sole discretion of the Tenant, elects to find alternative permanent housing and elects to terminate

the Tenancy, the Landlord shall provide to the Tenant a Permanent Relocation Payment, in addition to other Relocation Payments.

4. If the Tenant has vacated the Rental Unit based on Health or Safety Conditions, and there is a dispute concerning whether there are Health or Safety Conditions and/or whether such Conditions were caused by the Landlord or by the Tenant, or the guests/invitees of the Tenant, a Hearing Officer shall hear and decide the issue pursuant to procedures set forth in Rent Program Regulations.

C. *Natural Disasters and Other Exceptions.*

1. Notwithstanding subsection B of this Section 6-58.85, a Landlord shall not be liable for a Temporary Relocation Payment, a Rent Differential Payment, or a Permanent Relocation Payment if the Governmental Agency that ordered the Rental Unit, or the building in which the Rental Unit is located, to be vacated, determines the Rental Unit or the building in which the Rental Unit is located must be vacated as a result of:
  - (a) A fire, flood, earthquake or other natural disaster, or other event beyond the control of the Landlord and the Landlord did not cause or contribute to the condition giving rise to the governmental agency's order to vacate; or
  - (b) Any Tenant, occupant of the Rental Unit, or the guest or invitee of any Tenant, has caused or materially contributed to the condition giving rise to the order to vacate.
2. If the Governmental Agency that ordered the Rental Unit, or the building in which the Rental Unit is located, to be vacated, makes no determination as to subparagraphs (a) or (b) of paragraph 1 of subsection C, a Landlord shall be liable for Relocation Payments.
3. The Program Administrator shall inform the Landlord and the Tenant of any determination under paragraph 1 of this subsection C and that the Landlord is not liable for Relocation Payments or if no determination has been made under paragraph 2 of this subsection C that the Landlord is liable for Relocation Payments.. Either the Landlord or the Tenant may file an appeal with the Program Administrator concerning such determination, and a Hearing Officer shall hear and decide the appeal, pursuant to procedures set forth in Rent Program Regulations.

- D. *Offer of a Comparable Unit.* Notwithstanding subsection B of this Section 6-58.85, a Landlord, in lieu of making Temporary Relocation Payments or Rent Differential Payments, may offer the Tenant a Comparable Rental Unit in Alameda while the work on the displaced Tenant's Rental Unit is being completed. The Tenant, in the Tenant's sole discretion, may waive, in writing, any of the Comparable factors in deciding whether the Rental Unit is Comparable.

1. If the Tenant accepts the offer and occupies the Comparable Rental Unit, the Tenant shall pay no more than the Rent the Tenant was paying at the time the Tenant vacated the Rental Unit, or the Tenant shall pay some other amount agreeable to the Landlord and Tenant that does not exceed the Rent at the time the tenant vacated the Rental Unit.
2. If the Tenant accepts the offer, the Landlord shall (i) pay the Tenant's reasonable and documented moving expenses to the Comparable Rental Unit and from the Comparable Rental Unit to the Tenant's Rental Unit and (ii) continue to make Temporary Relocation Payments or Rent Differential Payments until the Tenant has occupied the Comparable Rental Unit.
3. If Tenant does not agree that a particular Rental Unit is Comparable, the Tenant must so inform the Landlord in writing. A Landlord may file an appeal with the Program Administrator within ten (10) days of the Landlord's receipt of the Tenant's written decision. A Hearing Officer shall hear and decide the appeal pursuant to procedures set forth in Rent Program Regulations. If the Hearing Officer has determined the Rental Unit is Comparable but the Tenant chooses not to occupy the Comparable Rental Unit, the Landlord shall have no further obligation to make Temporary Relocation Payments or Rent Differential Payments and the Tenant shall have no further obligation to pay Rent until the Tenant has re-occupied the Rental Unit from which the Tenant was displaced.
4. If a Tenant has occupied a Comparable Rental Unit for at least one hundred twenty (120) days, a Tenant for good cause may vacate the Comparable Rental Unit and thereafter receive from the Landlord Rent Differential Payments until the Tenant has re-occupied the Rental Unit from which the Tenant was displaced or, if the Tenant has found alternative, permanent housing, has received from the Landlord a Permanent Relocation Payment. Good cause shall be established in Rent Program regulations.

## Section 2: REPEAL

- (a) Any provision of the Alameda Municipal Code inconsistent with this Ordinance, including but not limited to subsection A of Section 2 of uncodified Ordinances Numbers 3317 and 3321, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.
- (b) Resolution No. 15138 is hereby repealed in its entirety.

## Section 3: DELAY OF APPROVED PASS-THROUGHS

No Landlord shall impose a Pass-through approved under this Ordinance and implementing Rent Program Regulations until 12 months after the City Council's rescission of the declaration of local emergency caused by the COVID-19 pandemic;

provided, however, such delay shall not reduce the amount of the Pass-through to which the Landlord is entitled. If a Tenant vacates a Rental Unit before a Landlord may impose a Pass-through, the Pass-through as to that Rental Unit shall terminate and any new Tenant shall not be liable for any Pass-through amount that was not imposed.

Section 4: CEQA DETERMINATION

The City Council finds and determines that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).

Section 5: SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 6: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

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Presiding Officer of the City Council

Attest:

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Lara Weisiger, City Clerk

\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the \_\_\_ day of \_\_\_\_\_ 2022, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this \_\_\_ day of \_\_\_\_\_ 2022.

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Lara Weisiger, City Clerk  
City of Alameda

Approved as to form:

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Yibin Shen, City Attorney  
City of Alameda