

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

New Series

AN ORDINANCE OF THE CITY OF ALAMEDA AMENDING ARTICLE XIV OF CHAPTER VI OF THE ALAMEDA MUNICIPAL CODE CONCERNING AS TO ALL RENTAL UNTIS THE REVIEW OF RENT INCREASES, LIMITING THE GROUNDS FOR EVICTIONS AND REQUIRING RELOCATION ASSISTANCE FOR CERTAIN EVICTIONS

WHEREAS, there is a strong demand for rental housing in the City of Alameda which may result in a shortage of rental housing for more than a year community members have reported (a) to the City Council at City Council meetings, (b) to the City Council in written communications, (c) to the Rent Review Advisory Committee and (d) to and through the press that there have been a substantial increases in rent and that there has been a substantial number of evictions without cause; and

WHEREAS, in response the City Council directed City staff to present to the Council various tenant protection policy options, including strengthening the City's rent review procedures using the Rent Review Advisory Committee, or adopting rent control/stabilization and/or just cause eviction policies; and

WHEREAS, community members also reported that the City Council's discussion and direction to study rent control and just cause policy options have created market uncertainty and concern among some property owners that if they did not immediately raise rents and/or take action to terminate tenancies without just cause, they could face a loss of income and property values; and

WHEREAS, the City has in place rent review procedures such that when a housing provider has informed a tenant about a rent increase which the tenant asserts is and/or poses an unreasonable financial hardship on the tenant and when the tenant and his/her housing provider have been unable to work out a satisfactory arrangement concerning the rent increase, there is a City appointed committee of residents representing housing providers and tenants (the Rent Review Advisory Committee) that provides a venue and a process in a neutral forum for a tenant to voice a concern about the rent increase and for a housing provider to respond, and through which process the Committee may make a non-binding recommendation to the housing provider and the tenant concerning the rent increase; and

WHEREAS, the availability of this process has become, and will continue to be, better known in the tenant community because housing providers are now required under the Alameda Municipal Code (Article XIV of Chapter VI) to inform tenants about the availability of this rent review process; and

WHEREAS, on November 5, 2015, the City Council directed staff to present to it at its January 5, 2016 meeting proposed ordinances that would (as) revise and

strengthen further the City's current rent review procedures using the Rent Review Advisory Committee but include limitations on evictions and requiring relocation assistance for certain evictions and (b) impose rent stabilization regulations, limit evictions and require relocation assistance for certain evictions; and

WHEREAS, the City Clerk published and posted a notice of public hearing for the City Council's regular meeting on January 5, 2016 for the purposes of considering these ordinances or other tenant protection measures; and

WHEREAS, the City Council has considered the information and reports in its agenda reports dated November 4, 2015, December 1, 2015 and January 5, 2016, and the public testimony received at its meetings on November 4, 2015, December 1, 2015 and January 5, 2016; and

WHEREAS, the City Council finds and determines that the City's current review procedures utilizing the Rent Review Advisory Board, as strengthened by this Ordinance, provides a fair and reliable process to resolve disputes concerning rent increases; and

WHEREAS, in order for the process to be effective, it is essential not only that a housing provider provide written notice of this process to the tenant and, in some instances, to initiate the process but also that the housing provider and the tenant both participate in the process; and

WHEREAS, it is important that housing providers provide the requisite notices and otherwise follow the requirements of this Ordinance or else be precluded from imposing rent increases; and

WHEREAS, the City Council finds and determines that if an ordinance limiting the grounds for evictions without cause were not enacted now, the public peace, health or safety will be threatened because housing providers will have an immediate incentive to serve eviction without cause notices thereby displacing many tenants in the City who, because of a critically low vacancy factor in the City, will be compelled to find housing elsewhere and at a higher rent; and

WHEREAS, the City Council finds and determines that if an ordinance compelling the payment of relocation assistance to certain displaced tenants were not enacted now, the public peace, health or safety will be threatened because tenants who are displaced through no fault of their own may not have the financial wherewithal to pay for relocation costs, such as a first and last month's rent at a different rental unit and for moving expenses, thereby causing significant economic hardship to those tenants; and

WHEREAS, it is important that a tenant be protected from retaliation for utilizing and/or participating in this process and this Ordinance continues to provide that protection; and

WHEREAS, it is critical to the success of this rent review process that if housing providers do not follow the requirements of the Ordinance, such violations may be used as evidence in a tenant's defense to an unlawful detainer action based on the tenant's failure to pay any rent increase established in violation of the Ordinance and this Ordinance continues to provide that protection; and

WHEREAS, it is also the purpose and intent of this Ordinance to prohibit any unlawful acts concerning rental housing because of a person's actual or perceived race, color, ancestry, national origin, place of birth, sex, age, religion, creed, disability, gender identity, source of income, weight or height; and

WHEREAS, adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent ground: CEQA Guidelines, Section 15183 (action consistent with the General Plan and zoning); Section 15378; and Section 15061 (b)(3) [no significant environmental impact].

WHEREAS, it is important to monitor and improve on a periodic basis the processes established in this Ordinance and this Ordinance continues to provide for an annual review process; and

WHEREAS, the City Council finds and determines for all the reasons set forth above that the health, safety and general welfare of Alameda will be served by adoption of this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Alameda as follows:

Section 1. Article XIV ~~of is hereby added to~~ Chapter VI of the Alameda Municipal Code is hereby amended to read as follows:

**“Article XIV. Rent Review and Tenant Protection”**

**6-57.1 Short title and Applicability of the Ordinance.**

This ordinance shall be known as the Rent Review and Tenant Protection Ordinance. It shall apply to all Residential Property in the City except those housing units exempt under subsection (s) of Section 6-57.2.(i) housing units the rents of which are regulated by federal law or by regulatory agreements between a Housing Provider and the City, the Housing Authority of the City of Alameda or any agency of the State of California or (ii) housing units that are rented or leased for 30 days or less.

**6-57.2 Definitions**

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

- (a) Article XIV. “Article XIV” means Article XIV of Chapter VI of the Alameda Municipal Code, as said Article may be amended from time to time.
- (b) Base Rent. “Base rent” means the rental amount, including any amount paid directly to the Housing Provider for utilities, parking, storage, pets or any other fee or charge associated with the tenancy ~~(other than fees or charges for utilities paid directly to the housing provider)~~, that the Tenant is required to pay to the Housing Provider in the month immediately preceding the effective date of the rent increase.
- (c) Capital Improvement. “Capital improvement” means any improvement or repair to a rental unit or property that materially adds to the value of the property, appreciably prolongs its useful life or adapts it to a new use, and has a useful life of more than one year and that is required to be amortized over the useful life of the improvement under the straight line depreciation provisions of the Internal Revenue Code and the regulations issued pursuant thereto.
- ~~(a)~~(d) Capital Improvement Plan. “Capital Improvement Plan” means a plan submitted by a housing provider, either on the housing provider’s own initiative, as a result of the housing provider’s obligation to comply with an order of a local, state or federal regulatory agency, such as the City’s building or fire department, or was necessary in order to repair damage as a result of fire, flood, earthquake or other natural disaster, that meets the criteria of a capital improvement as defined above and (i) the cost of which improvements is not less than the product of eight times the amount of the monthly rent times the number of rental units to be improved, (ii) the implementation of which renders the rental unit uninhabitable for 30 or more consecutive days and (iii) is approved by the City.
- ~~(b)~~(e) City. “City means the City of Alameda.
- ~~(e)~~(f) Committee. “Committee” means the Rent Review Advisory Committee created in Article 12 of Chapter II of the Alameda Municipal Code, as defined below.
- (g) Community Development Director. “Community Development Director” means the Director of the Community Development Department of the City of Alameda, or his/her designated representative.
- ~~(d)~~(h) Consumer Price Index. “Consumer Price Index” means the Consumer Price Index for All Urban Consumers (“CPI-U”) for the San Francisco-Oakland-San Jose Region, published by the U.S. Department of Labor, Bureau of Labor Statistics.
- ~~(e)~~(i) Council. “Council” means the City Council of the City of Alameda.
- ~~(f)~~(j) Executive Director. “Executive Director shall mean the Executive Director of the Housing Authority of the City of Alameda, or his/her designated representative.

- ~~(g)~~(k) Housing Authority. “Housing Authority” shall mean the Housing Authority of the City of Alameda or other entity as determined by the Council.
- ~~(h)~~(l) Housing Provider. “Housing Provider” means any person, partnership, corporation or other business entity offering for rent or lease any residential property in the City and shall include the agent or representative of the Housing Provider if such agent or representative has the full authority to answer for the Housing Provider and enter into binding agreements on the Housing Provider’s behalf.
- ~~(m)~~ Housing Unit. “Housing Unit” means a room or group of rooms that includes a kitchen, bath and sleeping quarters, designed and intended for occupancy by one or more persons as separate living quarters except a room or rooms in a single family residence.
- ~~(n)~~ Maximum Allowable Increase. “Maximum allowable increase” means a rent increase that on a cumulative basis over the 12 months preceding the effective date of a proposed rent increase is more than 8%.
- ~~(i)~~(o) Notice to Vacate. “Notice to vacate” means a notice to vacate that a housing provider serves on a tenant under Section 1946.1 of the California Civil Code and Section 1162 of the California Code of Civil Procedure.
- ~~(j)~~(p) Party. “Party” means a Housing Provider or Tenant who participates in the rent review program of this Chapter.
- ~~(k)~~(q) Rent. “Rent” means a fixed periodic compensation including any amount paid directly for utilities, parking, storage, pets or any other fee or charge associated with the tenancy ~~(other than utilities)~~ that a Tenant pays at fixed intervals to a Housing Provider for the possession and use of property; as to any housing provider whose unit was exempt under this Article under the subsection (s)(i), rent shall include the subsidy amount, if any, received as part of the base rent.
- ~~(l)~~(r) Rent Increase. “Rent increase” means any upward adjustment of the Rent from the Base Rent.
- ~~(m)~~ Rent Review Advisory Committee. ~~“Rent Review Advisory Committee” means the Committee established under Article II of Chapter II of the Alameda Municipal Code.~~
- ~~(n)~~(s) Rental Unit or Residential Property. “Rental unit” or “residential property” shall be used interchangeably and means any housing unit, including a room or group of rooms designed and intended for occupancy by one (1) or more persons, or a mobile home, offered for rent or lease in the City except for (i) housing units the rents of which are regulated by federal or state law or by regulatory agreements between a Housing Provider and the City, the Housing Authority of the City of Alameda or any agency of the State of California or (ii) housing units that are rented or leased for 30 days or less, (iii) accommodations in hotels, motels, inns, tourist homes, rooming or boarding houses, provided that such

accommodations are not occupied by the same occupant or occupants for more than 30 consecutive days, (iv) commercial units, such as storage units or office space, (v) housing accommodations in any hospital, convent, monastery, extended day facility, convalescent home, non-profit home for the aged or dormitory operated by an educational institution..

(t) Tenant. "Tenant" means any person having the legal responsibility for the payment of Rent for Residential Property in the City and shall include the agent or representative of the Tenant if such agent or representative has the full authority to answer for the Tenant and enter into binding agreements on the Tenant's behalf.

### **6-57.3 Offer of a One Year Lease**

A housing provider shall offer one time a one year lease to any prospective tenant and one time to any tenant with a lease at the expiration of that lease. As to any tenant on a month to month tenancy, the housing provider must within a six month period of the effective date of this Ordinance offer one time such tenant a one year lease.

### **6-57.4 Frequency of Rent Increases**

A housing provider shall not serve a tenant with a notice of a rent increase more than once every 12 months.

### **6-57.53 Notice of Availability of Review of a Rent Increase**

In addition to the notice of rent increase required by Civil Code, section 827(b) and, at the time when a Housing Provider provides such notice to the Tenant, the Housing Provider shall also provide to the Tenant a notice of ~~availability of~~ the rent review procedures established by ~~Article XIV~~~~this Chapter~~ regardless of the percentage Rent Increase over the Base Rent ~~or if the Rent Increase is within 12 months of the immediately preceding Rent Increase.~~ Any ~~R~~rent ~~I~~increase accomplished in violation of this section of the Ordinance shall be void and no Housing Provider shall take any action to enforce such an invalid ~~R~~rent ~~I~~increase. Any ~~R~~rent ~~I~~increase in violation of this section of the Article may be used as evidence in a Tenant's defense to an unlawful detainer action based on a Tenant's failure to pay an illegal ~~R~~rent ~~I~~increase.

### **6-57.64 Form and Contents of Notice**

All notices of the availability of rent review procedures shall be in writing and shall provide the name, address, phone number and email address of the Housing Provider. The Housing Provider shall either personally deliver the notice to the Tenant or shall mail to the Tenant by first class mail, postage pre-paid, the notice, addressed to the Tenant's Residential Property. Service by mail shall be presumed complete within five days of mailing but the Tenant may rebut that presumption.

**6-57.75 Text of Notice When Rent Increase is Less Than the Maximum Allowable Increase**

In addition to all other information provided in the notice of availability of rent review established by this Chapter, when the Rent Increase is less than the maximum allowable increase, each such notice shall state:

**NOTICE:** Under Civil Code, section 827(b), a Housing Provider must provide a Tenant with 30 days' notice prior to a rent increase of 10% or less and must provide a tenant with 60 days' notice of a rent increase of greater than 10%. Because the Housing Provider proposes a Rent Increase of less than 8% ~~or because the Housing Provider proposes a Rent Increase within 12 months of the immediately preceding Rent Increase~~, under Article XIV of Chapter VI of the Alameda Municipal Code, a Housing Provider must at the same time provide this Notice of the availability of the City's rent review procedures before imposing any such Rent Increase.

You may request the Rent Review Advisory Committee to review the increase by submitting the request for review in writing within **fifteenseven** calendar days of your receipt of the notice of Rent Increase by personally delivering or mailing the request to the Housing Authority of the City of Alameda, 701 Atlantic Avenue, Alameda, CA 94501, or emailing the request to the Housing Authority of the City of Alameda at [rrac@alamedahsg.org](mailto:rrac@alamedahsg.org). You must submit along with your request a copy of the Notice of Rent Increase.

You and your Housing Provider will be required to appear before the Committee for a hearing concerning the Rent Increase. Following the hearing, the Committee will make a non-binding recommendation to you and your Housing Provider concerning your request.

It is illegal for a Housing Provider to retaliate against a Tenant for lawfully and peacefully exercising his or her legal rights including your request for the Committee to review the Rent Increase. Civil Code, Section 1942.5. A Housing Provider's efforts to evict a Tenant within six months of a Tenant's requesting a hearing may be used as evidence of a retaliatory eviction.

**6-57.8 Text of Notice When Rent Increase is More Than the Maximum Allowable Increase**

In addition to all other information provided in the notice of rent review procedures established by this Chapter, when the Rent Increase is more than the maximum allowable increase, each such notice shall state:

**NOTICE:** Under Civil Code, section 827(b), a Housing Provider must provide a Tenant with 30 days' notice prior to a rent increase of 10% or less and must provide a tenant with 60 days' notice of a rent increase of greater than 10%. Because the Housing Provider proposes a Rent Increase of 8%

or more, under Article XIV of Chapter VI of the Alameda Municipal Code, a Housing Provider must at the same time inform you that the Housing Provider has filed an application with the Rent Review Advisory Committee to review the Rent Increase and that the Rent Increase will not go into effect into the Committee reviews the Rent Increase

You and your Housing Provider will be required to appear before the Committee for a hearing concerning the Rent Increase. Following the hearing, the Committee will make a non-binding recommendation to you and your Housing Provider concerning the Rent Increase.

It is illegal for a Housing Provider to retaliate against a Tenant for lawfully and peacefully exercising his or her legal rights including your attendance at the Committee's hearing to review the Rent Increase. Civil Code, Section 1942.5. A Housing Provider's efforts to evict a Tenant within six months of a Tenant's attending the hearing may be used as evidence of a retaliatory eviction.

#### **6-57.96 Tenant's Request for Rent Review**

- A. A Tenant may request the Committee to hear a proposed Rent Increase when the Housing Provider proposes to increase the Base Rent by less than the maximum allowable increase~~or proposes to increase the Base Rent within 12 months of the immediately preceding Rent Increase.~~
- B. The Tenant requesting review must within ~~fifteen~~seven calendar days of the Tenant's receipt of the notice of Rent Increase either (a) deliver, mail or e-mail the written request for review to the Housing Authority or (b) call the Housing Authority and request a review. In either event, the Tenant must submit a copy of the Notice of Rent Increase.

#### **6-57.10 Housing Provider's Request for Rent Review**

- A. A Housing Provider must request the Committee to hear a proposed Rent Increase when the Housing Provider proposes to increase the Base Rent by more than the maximum allowable increase.
- B. A Housing Provider must within 15 days from the date the Housing Provider serves on the Tenant the notice of Rent Increase either (a) deliver, mail or e-mail the written request for review to the Housing Authority or (b) call the Housing Authority and request a review. In either event, the Housing Provider must submit to the Housing Authority a copy of the Notice of Rent Increase.
- C. A Housing Provider's failure to comply with subsections A and B shall render the Rent Increase null and void and the Housing Provider shall neither take any action to enforce such Rent Increase nor notice another Rent Increase



for twelve months from the date the proposed Rent Increase was to become effective.

#### **6-57.117 Notice to Parties**

After determining a proposed Rent Increase meets the criteria for the Committee to review the Rent Increase, the Executive Director shall schedule a hearing and provide notice to the Housing Provider and the Tenant of the hearing date, time and location at least seven calendar days prior to the hearing date. The hearing date shall be scheduled at the next regularly scheduled meeting of the Committee (which shall schedule meetings monthly) unless the Housing Provider and Tenant consent to a later date. The notice shall encourage the Housing Provider to contact the Tenant directly to seek a mutually satisfactory resolution of the request prior to the hearing and shall encourage the Housing Provider and Tenant to consider using a neutral third party mediator to arrive at a satisfactory resolution of the request prior to the hearing.

#### **6-57.128 Rent Increase Pending the Hearing**

If the Rent Increase is less than the maximum allowable increase and the effective date of the Rent Increase occurs before the Committee's hearing, unless the Housing Provider otherwise agrees, the Rent Increase will become effective. If the Rent Increase is more than the maximum allowable increase and the effective date of the Rent Increase is before the Committee's hearing, the Rent Increase will not be effective until the day following the Committee's hearing.

#### **6-57.139 Hearing and Recommendation**

A. At the hearing, the Committee will afford the Housing Provider and the Tenant the opportunity to explain their respective positions. Neither the Committee as a whole nor any individual member of the Committee will act as an advocate for either the Housing Provider or the Tenant. The Committee will take into consideration such factors as the financial hardship to the Tenant, the frequency and amount of prior Rent Increases, the Housing Provider's costs associated with owning and maintaining the Residential Property, the Housing Provider's interest in earning a reasonable rate of return on the Housing Provider's investment and any other factors that may assist the Committee in determining a fair resolution to the request. The Committee will make a recommendation to the Parties concerning the Rent Increase. If the Parties agree to the recommendation made by the Committee, they ~~shall~~ may formalize the agreement in a standard form signed by both Parties. Neither the City nor the Committee shall be a signatory to such an agreement and neither the City nor the Committee shall assume any obligation or responsibility to enforce the terms of the agreement.

- B. If the parties do not concur with the Committee's recommendation, either may request the City Council to review the Committee's recommendation as set forth in Section 6-57-154.

**6-57.140 A Party's Failure to Appear for the Hearing**

A. When a Tenant has requested a review of the Rent Increase, if a Tenant appears at a noticed Committee hearing and the Committee finds the Housing Provider either failed to appear without notifying the Executive Director prior to the hearing and providing a good reason for not appearing or appears at the hearing but does not have the full authority to answer for the Housing Provider or enter into binding agreements on behalf of the Housing Provider, the Rent Increase shall be void and the Housing Provider shall neither take any action to enforce such Rent Increase nor notice another Rent Increase for one year from the date that the proposed Rent Increase was to become effective.

B. When a Housing Provider has requested a review of the Rent Increase, if a Tenant appears at a noticed Committee hearing and Committee find the Housing Provider either failed to appear without notifying the Executive Director prior to the hearing and providing a good reason for not appearing, the Rent Increase shall be void and the Housing Provider shall neither take any action to enforce such Rent Increase nor notice another Rent Increase for one year from the date the proposed Rent Increase was to become effective. For purposes of this subsection "Housing Provider" shall mean a person who has an ownership interest in the Residential Property or, if an entity owns the Residential Property, then a person from that entity who has the lawful authority to bind the entity and not just a property manager.

C. If the Tenant fails to appear at a noticed Committee hearing without notifying the Executive Director prior to the hearing and providing a good reason for not appearing and the Housing Provider appears, or if both the Tenant and the Housing Provider fail to appear without providing notice to the Executive Director and providing a good reason for not appearing, the Committee shall take no action on the request and the Tenant will be precluded from subsequently seeking further or additional review of the particular Rent Increase.

**6-57.154. City Council Review of the Committee's Recommendation**

- A. After the Committee has issued its recommendation, if the parties do not concur, either the Housing Provider or the Tenant may within seven calendar days following the Commission's recommendation request the City Council to review the recommendation by filing such request with the Community Development Director.

- B. The City Council's review will occur as soon as practicable and be limited to reviewing the Committee's recommendation and then issuing a letter, under the Mayor's signature, ~~as to the Council's encouraging both parties to agree to the Committee's recommendation as to the rent increase.~~

### **Section 6-57.16 Evictions**

No housing provider 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 eviction notice, bringing any action to recover possession or be granted possession of a rental unit except on one of the following grounds:

- A. Notice to vacate under California Civil Code, section 1946.1. Except as provided in Section 6-57.18, a tenant upon proper notice under California Civil Code, section 1946.1 has failed to vacate the rental unit, provided, however, the following shall apply as to any tenant who vacates the rental unit as provided in the notice under this subsection:
1. The housing provider shall pay the tenant relocation assistance as provided in Section 6-57.18; and
  2. As to the new tenant, without complying with the requirements of Sections 6-57.10 through 6-57.15, the housing provider shall not impose on the new tenant rent that exceeds the amount of the base rent the prior tenant was paying plus no more than the maximum allowable increase and shall inform in writing the new tenant the base rent the prior tenant was paying and the amount of the rent increase, if any, up to the maximum allowable increase; and
  3. The housing provider must provide the Housing Authority within five business days a copy of the notice to vacate served on the tenant under California Civil Code, section 1946.1, and the amount of the base rent the tenant was paying at the time the notice was served; and
  4. The housing provider must provide to the Housing Authority at the start of the new tenancy the name and contact information of the new tenant, a copy of the lease (if applicable) and the amount of the rent the new tenant will be paying; and
  5. If it is determined that the housing provider at any time imposes rent on the new tenant that exceeds that allowable under this section, in addition to any other penalties or remedies available to the existing tenant, the City or the previous tenant, the housing provider shall reduce the rent to that allowable under this section and shall reimburse the existing tenant, plus interest as provided by law, the difference between the amount of the rent that exceeded the allowable rent under this section and the rent the existing tenant has paid, retroactive to the date when the excessive rent was first paid.

- B. B-Failure to pay rent. The tenant upon proper notice, has failed to pay the rent to which the housing provider is entitled under a written or oral agreement.
- C. C-Breach of lease. The tenant has continued, after the housing provider 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.
  - 1. Notwithstanding any contrary provision in Section 6-57.16, a housing provider shall not take action to terminate a tenancy based on a tenant's sublease of the rental unit if the following requirements are met:
    - a. The tenant continues to reside in the rental unit.
    - b. The sublease replaces one or more tenants who are departing the rental unit on a one for one basis.
    - c. The housing provider has unreasonably withheld the right to sublease following written request by the tenant. If the housing provider fails to respond to the tenant in writing within 21 days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the housing provider. A housing provider's reasonable refusal of the tenant's written request may not be based on the proposed additional occupant's lack of creditworthiness if that occupant will not be obligated to pay some or all of the rent to the housing provider. A housing provider's reasonable refusal of the tenant's written request may be based on, but is not limited to, the ground that the total number of occupants in a rental unit 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. Notwithstanding any contrary provision in Section 6-57.16, a housing provider shall not take action to terminate a tenancy as a result of the addition to the rental unit of a tenant's child, parent, grandchild, grandparent or spouse or domestic partner (as defined in California Family Code, section 297) of such relatives, or as a result of the addition of a spouse or domestic partner of the tenant, so long as the number of occupants does not exceed the maximum number of occupants as determined under Section 503 (b) of the Uniform Housing Code as incorporated by California Health and Safety Code, section 17922.
  - 3. 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 housing provider shall serve the tenant a written notice of the violation that provides the tenant with the opportunity to cure the violation in 14 or more days. The tenant may cure the violation by making a written request to add occupants as provided in this section or by using other reasonable means to cure the violation

including, but not limited to, causing the removal of any additional or unapproved occupant.

D. Nuisance. The tenant has continued, after the housing provider has served the tenant with a written notice to cease, to commit or expressly permit a nuisance or illegal activity in, or cause substantial damage to, 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 housing provider, other occupants or neighbors..

E. Failure to give access. The tenant has continued to refuse, after the housing provider has served the tenant with a written notice, to grant the housing provider 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..

F. Owner move-in. The housing provider seeks in good faith to recover possession of the rental unit for use and occupancy as a primary resident by the housing provider, or the housing provider's spouse, domestic partner, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

1. For purposes of this section a "housing provider" shall only include a housing provider that is a natural person who has at least a 50% ownership interest in the property.

2. No action to terminate a tenancy based on an "owner move-in" may take place if a vacancy already exists on the property and the vacant unit 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 and relationship to the housing provider of the person intended to occupy the rental unit.

4. The housing provider or the enumerated relative must intend in good faith to move into the rental unit within 60 days after the tenant vacates and to occupy the rental unit as a primary residence for at least one year.

5. If the housing provider or enumerated relative specified on the notice terminating the tenancy fails to occupy the rental unit within 60 days after the tenant vacates, the housing provider shall:

a. Offer the rental unit to the tenant who vacated it and at the

same rent as the tenant was paying prior to eviction; and

b. Pay to the tenant all reasonable expenses incurred in moving to and from the unit, to the extent such expenses exceed the relocation assistance the housing provider has already paid to the tenant as provided in Section 6-57.17.

G. Demolition. The housing provider seeks in good faith to take action to terminate a tenancy to demolish and remove the rental unit permanently from residential rental housing use; provided, however, the housing provider shall not take any action to terminate such tenancy until the housing provider has obtained all necessary and proper permits from the City.

H. Capital Improvement Plan. The housing provider seeks in good faith to take action to terminate a tenancy in order to carry out a Capital Improvement Plan provided, however, that until the City adopts regulations concerning the elements of a Capital Improvement Plan, a Capital Improvement Plan shall not be grounds to take any action to terminate any tenancy.

I. Withdrawal from the rental market. The housing provider seeks in good faith to take action to terminate a tenancy in order to remove the rental unit permanently from residential rental housing use pursuant to State law.

J. Compliance with a governmental order. The housing provider seeks in good faith to take action to terminate a tenancy to comply with a government agency's order to vacate, or any other order that necessitates the vacating of the building, housing or rental unit as a result of a violation of the City of Alameda's Municipal Code or any other provision of law.

a. The housing provider shall offer the rental unit to the tenant who vacated the unit when the housing provider has satisfied the conditions of the governmental agency that caused the governmental agency to order the unit vacated and at the same rent the tenant was paying at the time of the eviction.

b. The housing provider shall pay to the tenant all reasonable expenses incurred in moving out of the unit, as provided in Section 6-57.17 and all reasonable expenses incurred in moving into the unit should the tenant do so.

**6-57.17 Required Payment of Relocation Fee.**

A. If the housing provider has taken any action to terminate a tenancy on the grounds set forth in subsections A, F, G, H, I or J of Section 6-57.16, the housing provider shall pay a relocation fee in an amount of one

month's rent that the tenant was paying (as averaged over the twelve months preceding the serving of the notice to vacate) for each year, or portion thereof, to a maximum of four months' rent, that a tenant has lived in the rental unit, plus \$1500. The \$1500 will be adjusted on January 1 of each year based in the change of the Consumer Price Index from the previous January 1.

- B. The housing provider shall pay the relocation fee as follows:
1. The entire fee shall be paid to a tenant who is the only tenant in the rental unit and if the rental unit is occupied by two or more tenants, then each tenant who is on a lease or has financial responsibility to pay the rent shall be paid a pro-rata share of the relocation fee; provided, however, if a tenant or tenants receive, as part of the eviction, relocation assistance from a governmental agency, then the amount of relocation assistance shall operate as a credit against any relocation fee to be paid to the tenant under this subsection.
  2. One half of the relocation fee within 15 days of service of a written notice to terminate the tenancy and the other half upon certification that the tenant has vacated the rental unit.
- C. Notwithstanding subsection A, as to any rental unit to be vacated under subsection A, G or H of Section 6-57.16, the tenant has the choice to remain in the rental unit, from the eviction date in the notice to vacate, an additional month for every year, or portion thereof, that a tenant has lived in the rental unit but the housing provider's requirement to pay relocation assistance will be reduced by one month's rent for every month, or portion thereof, the tenant remains in the rental unit after the date on which the tenant was required to vacate. Nothing provided herein prohibits a housing provider and a tenant from agreeing to relocation assistance different than as provided in this section.

**6-57.18 Limitations as the Use of a Notice to Vacate Under California Civil Code, section 1946.1**

As to a housing provider taking any action to terminate any tenancy utilizing a notice to vacate under California Civil Code, section 1946.1, a housing provider shall not take any such action:

- A. As to more than 10% of all rental units in any month nor to more than 50% of all rental units in any consecutive twelve month period (rounded up to the nearest whole number if .5 or more and down if .4 or less), as to any building or buildings housing more than 15 rental units.
- B. As to more than 20% of all rental units in any month nor to more than 50% of all rental units in any consecutive twelve month period (rounded up to the nearest whole number if .5 or more and down if .4

or less) as to any building or buildings housing more than four but less than 15 rental units.

- C. As to no more than one rental unit in any month nor to more than two rental units in any consecutive twelve month period, as to any building or buildings housing four or fewer units.

**6-57.19 Service and Contents of the Written Notices to Terminate a Tenancy**

- A. In any notice purporting to terminate a tenancy the housing provider shall state in the notice the cause for the termination, if any.
- B. If the cause for terminating the tenancy is for the grounds in subsections C, D or E of Section 6-57.16, the notice shall also inform the tenant that the failure to cure may result in the initiation of an action to terminate the tenancy; such notice shall also include sufficient details allowing a reasonable person to comply and defend against the accusation.
- C. If the cause for terminating the tenancy is for the ground in subsections A, F, G, H, I or J of Section 6-57.16, the notice shall also inform the tenant that the tenant is entitled to a relocation fee in the amount then in effect.
- D. The housing provider shall file with the Housing Authority within five business days after having served any notice required by Section 6-57.16 a copy of such notice, except a three day notice to pay rent or vacate.

**6-57.20 Retaliation Prohibited.**

No housing provider shall take any action to terminate a tenancy, reduce any housing services or increase the rent where the housing provider's intent is to retaliate against the tenant (i) for the tenant's assertion or exercise of rights under this Article or under state or federal law, (ii) for the tenant's request to initiate, or the tenant's participation in, the rent review procedures under Article XIV or (iii) for the tenant's participation in litigation arising out of this Article of Article XIV. Such retaliation may be a defense to an action to recover the possession of a rental unit and/or may serve as the basis for an affirmative action by the tenant for actual and punitive damages and/or injunctive relief as provided herein. In an action against the tenant to recover possession of a rental unit, evidence of the assertion or exercise by the tenant of rights under this Article, Article XIV or under state or federal law within 180 days prior to the alleged act or retaliation shall create a rebuttable presumption that the Housing Provider's act was retaliatory; provided, however, a tenant may assert retaliation affirmatively or as a defense to the housing provider's action without the presumption regardless of the period of time



that has elapsed between the tenant's assertion of exercise of rights under this Article or Article XIV and the alleged action of retaliation.

#### **6-57.21 Program Fee**

- A. There is hereby imposed on each rental unit in the City a program fee. The program fee shall be paid once annually either at the time at which the business license tax for the rental unit, if applicable, is due and paid under Chapter 5 of this code or on July 1 of each year for those rental units for which no business license tax is paid. The program fee may be included as a cost of operation.
  
- B. The Community Development Director shall report to the City Council no less than once each year a recommendation as to the amount of the program fee necessary to recover the costs of administering this Article and Article XIV. The amount of the fee shall be determined by resolution of the City Council adopted from time to time. The fee shall not exceed the amount found by the City Council to be necessary to administer the costs of this Article and Article XIV, and the City Council's finding in this regard shall be final.
  
- C. Any housing provider who fails, for more than thirty days after the due date to pay the program fee, to pay the program fee shall, in addition to the program fee, pay an additional penalty assessment as determined by resolution of the City Council adopted from time to time.

#### **6-57.22 Actions to Recover Possession**

In any action brought to recover possession of a rental unit, the housing provider shall allege and prove compliance with this Article.

#### **6-57.23 Housing Provider's Failure to Comply.**

A housing provider's failure to comply with any requirement of this Article may be asserted as an affirmative defense in an action brought by the housing provider to recover possession of the rental unit. Additionally, any attempt to recover possession of a rental unit in violation of this Article shall render the housing provider liable to the tenant for actual and punitive damages, including damages for emotional distress, in a civil action for wrongful eviction. The tenant may seek injunctive relief and money damages for wrongful eviction. The prevailing party in an action for wrongful eviction shall recover costs and reasonable attorneys' fees.

#### **6-57.24 Penalties for Violations.**

- A. The City may issue an administrative citation to any housing provider

and to the housing provider's agent for a violation of this Article. The fine for such violations shall be \$250 for the first offense, a fine of \$500 for a second offense within a one year period and a fine of \$1000 for a third offense within a one year period. In addition, the first two violations of this Article shall be deemed infractions and the fines therefor for the first and second offenses shall be as set forth in the previous sentence. A third violation in any one year period shall constitute a misdemeanor, punishable as set forth in Chapter I of this Code.

- B. Notwithstanding subsection A, any housing provider found to have demanded, accepted, received or retained any rent in excess of the maximum rent allowed by a decision of a rent dispute hearing officer under this Article, or by a final judgment of a court of competent jurisdiction should the hearing officer's decision be challenged in court, shall be guilty of a misdemeanor
- C. In addition to all other remedies provided by law, including those set forth above, as part of any civil action brought by the City to enforce this Article, a court may assess a civil penalty in an amount up to the greater of \$2500 per violation per day or \$10,000 per violation, payable to the City, against any person who commits, continues to commit, operates, allows or maintains any violation of this Article. The prevailing party in any such civil action shall be entitled to its costs and attorneys fees.

#### **6-57.25 Waiver**

- A. Any waiver or purported waiver of a tenant of rights granted under this Article prior to the time when such rights may be exercised shall be void as contrary to public policy.
- B. It shall be unlawful for a housing provider to attempt to waive or waive, in a rental agreement or lease, the rights granted a tenant under this Article prior to the time when such rights may be exercised.

#### **6-57.12. Violations**

Any Rent Increase accomplished in violation of this Ordinance shall be void, and no Housing Provider shall take any action to enforce such an invalid Rent Increase. A violation of this Ordinance may be used as evidence in a Tenant's defense to an unlawful detainer action based on a Tenant's failure to pay any Rent Increase accomplished in violation of this Article.

#### **6-57.26 Annual Review**

The Community Development Director shall annually prepare a report to the Council assessing the effectiveness of the rent review program established under this Article and recommending changes as appropriate.

**6-57.27 Repeal of Ordinance.**

By operation of law, this Ordinance shall be repealed in its entirety unless by December 31, 2019, the City Council by an affirmative vote has taken action to retain the Ordinance and any amendments thereto, or portions thereof."

Section 2. 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 or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, regardless of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 3. This Ordinance shall be in full force and effect from and after the expiration of 30 days from the date of its final passage.

\_\_\_\_\_  
Mayor of the City of Alameda

Attest:

\_\_\_\_\_  
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 \_\_\_\_\_, 2016, 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 \_\_\_\_\_, 2016.

\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

Approved as to form:

\_\_\_\_\_  
Janet C. Kern, City Attorney  
City of Alameda