

CITY OF ALAMEDA ORDINANCE NO. _____

New Series

ESTABLISHING AN ANNUAL GENERAL ADJUSTMENT IN RENT, A
RENT REGISTRY, BANKING, AND A PETITION PROCESS FOR AN
UPWARD OR DOWNWARD ADJUSTMENT OF RENTS

WHEREAS, there is a shortage of decent, safe, affordable and sanitary housing in the City of Alameda (City); and

WHEREAS, given the increased housing cost burden faced by many Alameda residents, excessive rent increases threaten the public health, safety, and welfare of Alameda residents, including seniors, those on fixed incomes, those with very low, low, and moderate income levels, and those with other special needs, to the extent that such persons may be forced to choose between paying rent and providing food, clothing, and medical care for themselves and their families; and

WHEREAS, according to American Community Survey Data, between 2008 and 2017, rents have increased 34% while tenant households have experienced only a 12% increase in median household income in this same time period; and

WHEREAS, according to 2017 American Community Survey One-Year Estimates, tenant households make up more than half of the community and 49% of Alameda tenant households are “overpaying”, meaning the household pays 30% or more of its income on housing costs; and

WHEREAS, the City of Alameda currently does not restrict the amount of any given rental increase and the compounding effect of annual rent increases of 5% that, as a practical matter are not reviewed under current regulations, may price many residents, especially those on fixed income or low- or lower-income households, out of the Alameda rental housing market; and

WHEREAS, data from the 2017 American Community Survey One-Year Estimates indicates that at least 36% of tenants have lived in their units less than four years and at least 71% of tenants have lived in their units less than nine years, thereby demonstrating that in general tenants do not remain in their units for many years, providing landlords with opportunities to re-set rents to market; and

WHEREAS, in light of the numerous concerns noted herein, including, but not limited to, the current and immediate threat to the health, safety, and welfare of the City’s residents and the adverse impacts that would result from a substantial decrease of affordable housing within the City, it is in the interest of immediately preserving the public health, safety and general welfare to adopt this Ordinance in order to put into place among other things, regulations concerning rent stabilization and providing a process to ensure that landlords continue to receive a reasonable return on their properties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Definitions

Unless the context requires otherwise, the terms defined in this Ordinance shall have the following meanings. Capitalized terms shall have the same meaning as capitalized terms in Ordinance No. 3148.

- A. *Annual General Adjustment* means the percentage increase in the Consumer Price Index for the 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 percent nor less than one percent.
- B. *Base Rent* shall mean for those Rental Units that not are not exempt under Section 6-58.135 of the Alameda Municipal Code the Rent that the Program Administrator determines, as set forth in subsection B of Section 2 of this Ordinance, to be in effect on September 1, 2019 (or as otherwise established at a later date as provided in subsection A of Section 3 of this Ordinance) and shall be the reference point from which the Maximum Allowable Rent shall be adjusted upward or downward in accordance with this Ordinance.
- C. *Maximum Allowable Rent* means the maximum Rent that may be charged on any Rental Unit covered by this Ordinance and not exempt under Alameda Municipal Code Section 6-58.135.

Section 2. Rent Registry

- A. The Landlord shall complete and submit to the Rent Program ~~by October 31, 2019~~ a registration statement for each Rental Unit on a form approved by the Program Administrator as set forth by regulation. Thereafter, the Landlord shall complete and submit to the Rent Program a registration statement for each Rental Unit ~~(i) upon any change in the tenancy, (ii) by July 31, 2020 reflecting the Rent as of June 30, 2020 and (iii) by July 31 of each year after 2020 reflecting the Rent that was in effect as of June 30 of that year.~~
- B. The Program Administrator shall determine the Maximum Allowable Rent for each Rental Unit registered with the Rent Program and prepare a certification of such Rent. The Program Administrator shall annually provide such certification to Landlords and Tenants. A Landlord or Tenant may appeal the determination of the Maximum Allowable Rent as set forth in California Civil Code section 1947.8 and the City's implementing regulations.
- C. It shall be unlawful to report to the Rent Program an amount of Rent for a Rental Unit other than the actual amount paid by the Tenant for the use and occupancy of the Rental Unit.

Section 3. Establishment of Base Rent, Annual General Adjustment

- A. Beginning September 1, 2019, no Landlord shall charge Rent for any Rental Unit not exempt under Alameda Municipal Code Section 6-58.135 in an amount greater than the Base Rent plus increases expressly allowed under this Ordinance. 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 Ordinance, the Base Rent is the initial Rent in effect on the date the tenancy commences.
- B. No later than May 31 each year the Program Administrator shall announce the percentage increase by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year. The Annual General Adjustment for September 1, 2019 shall be 4%.

Section 4. Conditions for Taking the Annual General Adjustment

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

- A. Serves the Tenant with a legally required notice of a rent increase under State law and, if the Landlord has served the Tenant with a notice of a rent increase that includes a banked Annual General Adjustment, files within five days a copy of the notice of the rent increase with the Program Administrator to which is attached a copy of the proof of service that the Tenant has been served;
- B. Has complied with all other provisions of the City's Rent Review, Rent Stabilization and Limitations on Eviction Ordinances, including but not limited to Ordinance No. 3148 and 3244, as those Ordinances 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 Council's Fee Resolution.

Section 5. Banking

- A. A Landlord may, but is not required to, increase Rent by the Annual General Adjustment as provided in Section 3. Any unused Rent increase may be banked pursuant to the formula set forth in subsection B below for future imposition concurrent with a future Annual General Adjustment.
- B. Banking of Annual General Adjustments shall be calculated based on compound addition. For example, an unused Annual General Adjustment of three percent (3%) in one year plus three point four percent (3.4%) in the following year is equal to a combined Annual General Adjustment of six point five six percent (6.56%), not six point four percent (6.4%).

C. If a Landlord has not increased Rent to the Maximum Allowable Rent, the Landlord may, as part of a subsequent annual rent increase, increase Rent by the previously banked Annual General Adjustment; provided, however, in no event shall the combined rent increase exceed the current year Annual General Adjustment plus five percent of the Rent charged to the Tenant at any time during the 12 months prior to the effective date of the proposed rent increase.

D. Any banked Annual General Adjustments expire when a new tenancy is created or the Landlord transfers the property in which or on which the Rental Unit is located.

Section 6. Petition Process

- A. A Landlord or a Tenant may file a petition with the Rent Stabilization Program to request an upward or downward adjustment of the Maximum Allowable Rent.
- B. Upon filing the petition, the Program Administrator shall notify the petitioner of the acceptance or denial of the petition based on the completeness of the submission. The Program Administrator shall not assess the merits of the petition, but shall only refuse acceptance of a petition that does not include required information or documentation.
- C. Upon acceptance of a petition, the Program Administrator shall provide written notice to the parties affected by the petition. The written notice shall inform parties of the petition process, right to respond, and include a copy of the completed petition with the supportive documents available upon request. Any response submitted by the responding party will be made available to the petitioning party. Each accepted petition shall be scheduled for a hearing by the Hearing Officer to be held within thirty (30) calendar days from the date the Program Administrator accepts the petition. With agreement of the parties, the Hearing Examiner may hold the hearing beyond the 30 days. Before the hearing, the Program Administrator may attempt, with the parties concurrence, to mediate a resolution of the petition. Notwithstanding any other provision of this Ordinance, the Hearing Office may refuse to hold a hearing or grant a Rent adjustment if a Hearing Officer has held a hearing and made a decision with regard to the Maximum Allowable Rent within the previous six months based on the same or substantially the same grounds for an upward or downward Rent adjustment.
- D. The Hearing Officer shall conduct the hearing employing the usual procedures in administrative hearing matters, i.e., the proceeding will not be governed by the technical rules of evidence and any relevant evidence will be admitted.
- E. Any party may appear and offer such documents, testimony, written declarations, or other evidence as may be pertinent to the proceeding. Each party shall comply with the Hearing Officer's request for documents and information and shall comply

with the other party's reasonable requests for documents and information. The Hearing Officer may proceed with the hearing notwithstanding that a party has failed to provide the documents or information requested by the Hearing Officer or a party has failed to provide documents or information requested by the other party. The Hearing Officer may take into consideration, however, the failure of a party to provide such documents or information.

- F. The party who files the petition shall have the burden of proof. As to the burden of proof, the Hearing Officer shall use the preponderance of evidence test, i.e., that what the petitioner is required to prove is more likely to be true than not and, after weighing all the evidence, if the Hearing Officer cannot decide that something is more likely to be true than not, the Hearing Officer must conclude that the petitioner did not prove it.
- G. The hearing will be reported by a certified court reporter or otherwise recorded for purposes of judicial review. The Hearing Officer may request a copy of the transcript prior to making a decision.
- H. In making an individual upward adjustment of Rent, the Hearing Officer shall grant an upward adjustment only if such an adjustment is necessary in order to provide the Landlord with a constitutionally required fair return on property. The Hearing officer shall not determine a fair return solely by the application of a fixed or mechanical accounting formula but there is a rebuttable presumption that maintenance of Net Operating Income for the Base Year, as adjusted by inflation over time, provided a Landlord with a fair return on property.
- I. In making an individual downward adjustment of Rent, the Hearing Officer may consider decreases in Housing Services, living space, or amenities; substantial deterioration of the Rental Unit other than as a result of ordinary wear and tear; the Landlord's failure to comply substantially with applicable housing, health and safety codes; or the Landlord's failure to comply with applicable law, including Ordinance No. 3148.
- J. Within 30 days of the close of the hearing, the Hearing Officer shall make a determination, based on the preponderance of evidence, whether there should be an upward or downward adjustment of Rent, and shall make a written statement of decision upon which such determination is based. The Hearing Officer's allowance or disallowance of any upward or downward adjustment of Rent may be reasonably conditioned in any manner necessary to effectuate the purposes of this Ordinance. The Hearing Officer shall provide the statement of decision to the Program Administrator who shall provide copies to the parties.

- K. The Hearing Officer's decision shall be final unless judicial review is sought within 60 days of the date of the Hearing Officer's decision. An upward or downward adjustment of Rent shall take effect immediately upon the Hearing Officer's decision unless provided otherwise in the decision

Section 7. Implementing Policies and Regulations

The City Manager or the City Manager's designee shall have the authority to promulgate all necessary policies, procedures, and regulations to implement the requirements and fulfill the policies and purposes of this Ordinance.

Section 8. Implied Repeal

Any provision of the Alameda Municipal Code inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

Section 9. 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 10. 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 11. 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.

Presiding Officer of the City Council

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 _____, 2019, 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 _____, 2019.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda