

CITY OF ALAMEDA ORDINANCE NO. ____
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING ARTICLE
XVIII TO CHAPTER VI CONCERNING FAIR HOUSING AND TENANT
PROTECTIONS BY PROHIBITING UNLAWFUL TENANT
HARASSMENT, DISRUPTION OF HOUSING SERVICES AND
HOUSING DISCRIMINATION INCLUDING SOURCE OF INCOME

WHEREAS, California State law has long recognized that the availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian is a priority of the highest order; and

WHEREAS, State law further recognizes that local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community; and

WHEREAS, a longstanding and significant goal for the City is preservation of its housing stock, especially affordable housing stock, and protection of the quality, stability, diversity and character of its neighborhoods; and

WHEREAS, Alameda places a high value on cohesive and active residential neighborhoods and the diverse population which resides therein; and

WHEREAS, it is similarly paramount for the City to preserve the public health, safety, and welfare, and to advance the housing and land use policies of the City, especially with regard to low and fixed income persons, and those needing special protections, such as the elderly or disabled; and

WHEREAS, adoption of regulations that limit tenant harassment, unlawful disruption of housing services and housing discrimination, including source of income discrimination, serves these important state and local goals, and is consistent with the City's constitutionally authorized Charter City police powers to regulate development and use of real property within its jurisdiction to promote the general welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA ORDAINS AS FOLLOWS:

Section 1. Article XVIII of Chapter VI is added to the Alameda Municipal Code to read as follows:

“ARTICLE XVIII FAIR HOUSING AND TENANT PROTECTIONS

6-61.10. Title

This Article shall be known as the City of Alameda Fair Housing and Tenant Protection Ordinance.

6-61.15. Definitions

The Definitions set forth in Article XV of Chapter VI of this Code shall apply to this Article; except that the term "Housing Accommodation" shall mean any Dwelling Unit, mobile home, or houseboat offered or available for Rent in the City of Alameda, and all Housing Services in connection with the use or occupancy thereof.

6.61.20. Exemptions and Exclusions

A. Nothing in this Article shall be construed as to:

1. prevent the lawful eviction of a Tenant by appropriate legal means;
2. force a person to rent a Housing Accommodation to a family whose total number of persons exceeds the reasonable living space available in a Housing Accommodation;
3. waive any Federal, State, or local law relating to occupancy or density; or
4. regulate in any manner preempted by state or federal laws.

B. The following are exempt from the provisions of this Article:

1. 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 30 consecutive days;
2. Commercial units, such as office condominiums, commercial storage units or units subject to Section 30-15 of the Alameda Municipal Code (Work Live Studios);
3. Rooms in any hospital or in a facility for assisted living, skilled nursing, convalescence or extended care;
4. 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 additionally for some services;
5. Rooms in a convent, monastery, fraternity or sorority house or in a building owned, operated or managed by a bona fide education institution for occupancy by students;
6. Rooms in a building or 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.
7. Community cabins.

6.61.30 Disruption of Housing Services.

A. No Landlord shall, with respect to property used as a Housing Accommodation under any Rental Agreement, other tenancy or estate at will, or occupancy agreement, however created, do any of the following:

1. Interrupt or terminate any utility service furnished to the Housing Accommodation by any means whatsoever including, but not limited to, the cutting of wires, removing fuses, switching of breakers, or not paying the utility bills when the utility bills are in the name of the Landlord.
2. Prevent the Tenant from gaining reasonable access to the Housing Accommodation by changing the locks or using a bootlock or by any other similar method or device.
3. Removal without replacement within a reasonable time period, doors or windows of the Housing Accommodation.
4. Remove from the Housing Accommodation personal property, the furnishings, or any other items without the prior written consent of the Tenant, except when done pursuant to the procedures set forth in Chapter 5 (commencing with Section 1980) of Title 5 of Part 4 of Division 3 of the Civil Code.
5. This Section 6-61.30 shall not be construed to prevent construction, maintenance, or repair activities undertaken in good faith and in compliance with all applicable laws.

6.61.40 Prohibition Against Harassment.

No Landlord shall, with respect to property used as a Housing Accommodation under any Rental Agreement, other tenancy or estate at will, occupancy agreement, however created, do any of the following in bad faith:

A. Interrupt, terminate or fail to provide Housing Services required by contract or by State, County or local housing, health or safety laws;

B. Fail to perform repairs and maintenance required by contract or by State, County or local housing, health or safety laws;

C. Fail to exercise due diligence in completing repairs and maintenance once undertaken;

D. Abuse the Landlord's right of access into a Housing Accommodation as that right is specified in California Civil Code Section 1954. This includes entries for "inspections" that are not related to necessary repairs or services; entries excessive in number; entries that improperly target certain Tenants or are used to collect

evidence against the occupant or otherwise beyond the scope of an otherwise lawful entry;

E. Abuse the Tenant with words or conduct which are offensive and inherently likely to provoke an immediate violent reaction;

F. Influence or attempt to influence a Tenant to vacate a Housing Accommodation through fraud, intimidation or coercion;

G. Threaten the Tenant, by word or gesture, with physical harm;

H. Violate any law which prohibits discrimination based on race, gender, gender identity, sexual preference, sexual orientation, ethnic background, nationality, religion, age, parenthood, marriage, pregnancy, disability, AIDS or occupancy by a minor child;

I. Interfere with a Tenant's right to quiet use and enjoyment of a Housing Accommodation as that right is defined by California law;

J. Refuse to acknowledge receipt of a Tenant's lawful rent payment;

K. Interfere with a Tenant's right to privacy, including, but not limited to, entering or photographing portions of a Housing Accommodation that are beyond the scope of a lawful entry or inspection.

6.61.50 Prohibition Against Housing Discrimination.

It shall be unlawful for any Landlord to do or attempt to do any of the following:

A. Refuse to rent or lease a Housing Accommodation or access to or use of the common areas and facilities of the Housing Accommodation, serve a notice of termination of tenancy, commence an unlawful detainer action, or otherwise deny to or withhold from any person or persons, a Housing Accommodation on the basis of disability, age, source of income, parenthood, pregnancy, or the potential or actual occupancy of a minor child.

B. Represent to any person, on the basis of disability, age, source of income, parenthood, pregnancy, or the potential or actual occupancy of the minor child that a Housing Accommodation is not available for inspection or rental when such Housing Accommodation is in fact available for inspection or rental.

C. Make, print, advertise or publish, or cause to be made, printed, advertised or published any notice, statement, sign, advertisement, application, or contract with regard to a Housing Accommodation offered by that person that indicates any preference, limitation, or discrimination with respect to disability, age, source of income, parenthood, pregnancy, or the potential or actual occupancy of a minor child.

D. Include in any Rental Agreement for a Housing Accommodation a clause providing that as a condition of continued occupancy, the Tenant shall remain childless or shall not bear children or otherwise not maintain a household with a person or persons of a certain age.

E. Threaten to commence or commence eviction proceedings against any Tenant on the grounds that the Tenant has breached a Rental Agreement if the alleged breach arises out of an increase in the number of occupants due to the marriage of the Tenant, provided that the occupancy of the spouse and children of the spouse is otherwise lawful.

F. Threaten to commence or commence eviction proceedings against any Tenant head of household on the grounds that the Tenant has violated the provisions of a Rental Agreement where the violation consists of an increase in the number of occupants arising out of the birth, adoption, or change of legal custody of a minor child of whom the Tenant head of household or the Tenant's spouse is the parent or legal guardian, and provided that the occupancy of the minor child is otherwise lawful.

G. Refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy any Housing Accommodation

H. Refuse to allow a person to make reasonable modifications, alterations or additions to existing Housing Accommodation occupied or to be occupied by a person with a disability that are necessary to make the Housing Accommodation accessible by persons with disabilities, under the following conditions:

1. The Landlord is not required to pay for the alterations, additions, or restoration unless otherwise required by State or Federal law;
2. The Landlord has the right to demand assurances that all modifications will be performed in a professional manner, and in accordance with applicable building codes, permitting requirements and other applicable laws;
3. The Landlord may, where it is reasonable to do so, condition permission for modification on the Tenant's agreement to restore the interior of the Housing Accommodation to its preexisting condition, reasonable wear and tear excepted.

I. For purposes of this Section 6-61.50, "source of income" includes any lawful source of income or rental assistance from any federal, State, local or non-profit-administered benefit or subsidy program including, but not limited to, the Section 8 voucher program.

J. This Section 6-61.50 shall not apply to or be construed to affect:

1. any Housing Accommodation designed and operated exclusively for senior adults, and their spouses, or any nursing home, convalescent home, or retirement home;

2. any Housing Accommodation where the landlord owns and lives on the property and shares private living quarters, such as kitchens, bathrooms bedrooms or living rooms, with tenant(s).

6.61.60. Penalties for Violations

A. The City may issue an administrative citation to any Landlord 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.

B. Any person violating any provision of this Article shall be guilty of an infraction which shall be punishable by a fine not exceeding \$250, or a misdemeanor, which shall be punishable by a fine not exceeding \$1,000 per violation, or by imprisonment in the County jail for a period not exceeding 6 months, or by both such fine and imprisonment..

C. Any aggrieved person, including the City and the People of the State of California, may enforce and seek to enjoin against any violation of this Article by means of a civil action. The burden of proof in such cases shall be preponderance of the evidence. As part of any civil action brought by the People of the State of California or the City to enforce this Article, a court shall assess a civil penalty in an amount up to the greater of \$2500 per violation per day or \$10,000 per violation, 50% payable to the City and 50% payable to the victims, against any person who commits, continues to commit, operates, allows or maintains any violation of this Article, and against any person who aids or incites another person to violate the provisions of this Article. Any violator shall be liable for an additional civil penalty of up to five thousand dollars for each offense committed against a person who is Disabled or is a Senior Adult, payable to the victims. The court may also award punitive damages to any plaintiff, including the City and the People of the State of California, in a proper case as defined by Civil Code Section 3294. The burden of proof for purposes of punitive damages shall be clear and convincing evidence.

D. Any Housing Accommodation business conducted or maintained contrary to this Article shall constitute a public nuisance.

E. The remedies provided in this Article are not exclusive, and nothing in this Article shall preclude any person from seeking any other remedies, penalties or procedures provided by law.”

Section 2: 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 3: 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 4: Any provision of the Alameda Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 5: 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