

ORDINANCE NO. ____

AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA
ESTABLISHING A TEMPORARY MORATORIUM ON CERTAIN RESIDENTIAL RENT
INCREASES IN THE CITY OF PACIFICA AND REQUIRING JUST CAUSE FOR TENANT
EVICTIONS WITHIN THE CITY

THE CITY COUNCIL OF THE CITY OF PACIFICA HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Authority. This Ordinance is adopted pursuant to Article XI, Section 7 of the California Constitution.

SECTION 2. Findings.

- A. Pursuant to Article XI, Section 7 of the California Constitution, the City of Pacifica ("City") may make and enforce all regulations and ordinances using its police powers.
- B. Since December 2015, community members have expressed concerns to the City Council relating to the state of the rental housing market in Pacifica, including increased rents and termination of tenancies without cause ("no-fault evictions"), leaving Pacifica residents vulnerable to immediate displacement from the community and homelessness.
- C. The community's concerns are well-supported by data. A March 2017 report by RealAnswers, a rental market data provider, stated that the inflation-adjusted average monthly asking rent in Pacifica has risen 51 percent from 2010 to 2015, while the U.S. Census Bureau 2011-2015 American Community Survey stated that the inflation-adjusted median household income for renter households in Pacifica has risen by 2.7 percent during that same period.
- D. Pacifica's population has increased by 5.4 percent from 2010 to 2015, while the number of total housing units available in Pacifica only increased by 1.6 percent during that same period.
- E. Additionally, Pacifica's low rental housing vacancy rate decreased to just 0.5 percent in 2015 according to the U.S. Census Bureau 2011-2015 American Community Survey, signaling increased competition for scarce numbers of rental units.
- F. According to U.S. Census Bureau 2011-2015 American Community Survey, in 2015, 32 percent of all housing in Pacifica is occupied by renter households, illustrating that rising rents impact a sizable portion of the community.
- G. Data from the U.S. Census Bureau 2011-2015 American Community Survey also shows that as of 2015, 33 percent of all renter households in Pacifica have children under 18 years old, demonstrating that rising rents and no-fault evictions can have detrimental impacts on school-aged children in Pacifica.
- H. The City of Pacifica currently does not regulate rental amounts, rent increases, or evictions from residential housing.

- I. In light of these concerns, it is the intent of the City Council to consider a just cause for eviction and rent stabilization policy, and initiate a ballot measure to go before the voters at a special election this November.
- J. The City Council finds and determines that a temporary moratorium on residential rent increases is necessary because landlords would have an immediate incentive to increase rents to even higher levels before the City could implement rent stabilization and other related regulations, should such a measure be approved by a majority of the voters. Rent increases in anticipation of the law would defeat the intent and purpose of any potential future regulation and substantially impair its effective implementation.
- K. The City Council also finds and determines that in light of the moratorium on rent increases, landlords will have an immediate incentive to serve notices to terminate certain tenancies without cause, thereby displacing many tenants in Pacifica who, because of a critically low vacancy rate, will be compelled to find housing elsewhere and at higher rents.
- L. This interim Ordinance allows up to a 3.4 percent annual increase in rent during the moratorium period, and such figure, which is based upon the percentage increase in the Consumer Price Index for the Bay Area of California for February 2017, is found and determined to provide a fair return.
- M. This interim Ordinance additionally requires that landlords have a just cause for terminating tenancies during the moratorium period.

SECTION 3. Definitions.

City Council. The term City Council refers to the City Council of Pacifica.

Housing Services. Housing Services include, but are not limited to, repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades, and screens, storage, kitchen, bath and laundry facilities, and privileges, janitor services, Utility Charges that are paid by the Landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, and any other benefit, privilege, or facility connected with the use or occupancy of any Rental Unit. Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building in which the Rental Unit is contained.

Landlord. An owner of record, lessor, sublessor, or any other person, entity or non-natural person entitled to receive Rent for the use and occupancy of any Rental Unit, or an agent, representative, predecessor, or successor of any of the foregoing.

Moratorium Period. Refers to the time period between the effective date this Ordinance, and the City Council's certification of the November 2017 election results, unless otherwise extended. However, if there is no just cause for eviction and rent stabilization measure placed on the ballot for November 2017, this Ordinance shall sunset on September 1, 2017.

Notice to Terminate a Tenancy. Refers to any notice required under state law or this Article for a Tenant to vacate a Rental Unit.

Notice to Quit. Refers to a notice specifically required by California Code of Civil Procedure section 1161 for a Tenant to vacate a Rental Unit.

Property. All Rental Units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

Rent. All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord for Housing Services under a Rental Housing Agreement.

Rental Housing Agreement. An oral, written, or implied agreement between a Landlord and a Tenant for use or occupancy of a Rental Unit and Housing Services.

Rental Unit. Describes a building, structure, or part thereof, or land appurtenances thereto, or any other rental property rented or offered for rent for residential purposes and Housing Services.

Tenant. A Tenant, subtenant, lessee, sublessee, or a person entitled under the terms of a Rental Housing Agreement to the use or occupancy of a Rental Unit.

Two-Family Dwelling. Refers to a building, or a portion thereof, used and designed as a residence for two (2) families living independently of each other and doing their own cooking in such building, including without limitation a duplex.

Written Notice to Cease. Refers to a written notice provided by a Landlord that gives a Tenant an opportunity to cure an alleged violation or problem, except that a Written Notice to Cease shall not be required for those grounds for eviction already addressed under state law. Any Written Notice to Cease must:

1. Provide the Tenant a reasonable time to cure alleged violation or problem;
2. Inform the Tenant that the failure to cure the alleged violation or problem may result in the initiation of eviction proceedings; and
3. Include sufficient details about the alleged violation or problem underlying the Written Notice to Cease.

SECTION 4. Imposition of Temporary Moratorium on Residential Rent Increases.

A. During the Moratorium Period, no Landlord shall increase Rent for any Rental Unit not otherwise exempted by this Ordinance or state law by more than 3.4 percent. This moratorium shall not apply to any rent increase for which a notice to the Tenant was properly given prior to April 10, 2017.

B. Exemptions. The following are exempt from the moratorium established under this Ordinance:

1. Units in hotels, motels, inns, tourist homes and rooming and boarding houses which are rented primarily to transient guests as the term transient may be defined in the Pacifica Municipal Code.

2. Units in a hospital, convent, monastery, extended medical care facility, asylum, non-profit home for the aged, or dormitory owned and operated by an accredited institution of higher education;

3. Units which a government entity owns, operates, or manages, or in which government-subsidized Tenants reside, and applicable federal or state law specifically exempt such units from municipal rent stabilization and eviction controls;

4. Single-Family Dwellings, as defined in Section 9-4.237 of Article 2 of Chapter 4 of Title 9 of this Code;

5. Any Two-Family Dwellings, including but not limited to duplexes;

6. Dwelling units, other than multiple dwelling units as defined in Section 9-4.235 of Article 2 of Chapter 4 of Title 9 of this Code;

7. Condominiums, as defined in Section 9-4.230 of Article 2 of Chapter 4 of Title 9 of this Code, including but not limited to townhouses;

8. Rental Units with an initial certificate of occupancy dated on or after February 1, 1995 pursuant to the Costa-Hawkins Rental Housing Act (Cal. Civ. Code § 1954.52), or any successor Act thereto; and

9. Accessory Dwelling Units, as defined in Government Code section 65852.2.

C. Initial Rents. This moratorium does not regulate the initial rent at which a unit is offered.

D. Enforcement. In any action by a Landlord to recover possession of a rental housing unit, the Tenant may raise as an affirmative defense any violation or noncompliance with the provisions of this Ordinance.

E. Fair Return Determinations. This moratorium, unless extended, is only effective for the Moratorium Period. Given that a Consumer Price Index-based 3.4 percent increase is allowed during the Moratorium Period, the City Council finds that this moratorium does not deny any owner a fair and reasonable return on their investment.

SECTION 5. Just Cause Eviction Protections During the Moratorium Period.

A. During the Moratorium Period, no Landlord shall take action to terminate any lawful tenancy evidenced by a Rental Housing Agreement, including but not limited to, making a demand for possession of a Rental Unit, threatening to terminate a tenancy verbally or in writing, serving any Notice to Quit or other Notice to Terminate a Tenancy, or bringing any action to recover possession, or be granted recovery of possession of a Rental Unit unless at least one of the following conditions exists:

1. Failure to Pay Rent. The Tenant has failed to pay the Rent to which the Landlord is legally entitled under the Rental Housing Agreement, this Ordinance, or any other state or local law.

2. Breach of Lease. The Tenant has continued, after the Landlord has served the Tenant with Written Notice to Cease, to substantially violate any of the material terms of the

Rental Housing Agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the Tenant.

a) Notwithstanding any contrary provision in this Ordinance, a Landlord shall not take any action to terminate a tenancy based on a Tenant's sublease of the Rental Unit if the following requirements are met:

- 1) The Rental Unit continues to constitute the Tenant's primary residence;
- 2) The sublessee replaces one or more departed Tenants under the Rental Housing Agreement on a one-for-one basis; and
- 3) The Landlord has unreasonably withheld the right to sublease following written request by the Tenant. If the Landlord fails to respond to the Tenant in writing within fourteen (14) days of receipt of the Tenant's written request, the Tenant's request shall be deemed approved by the Landlord. A Landlord's reasonable refusal of the Tenant's written request may not be based on the proposed additional person's lack of creditworthiness if the proposed occupant is not legally obligated to pay some or all of the Rent to the Landlord. A Landlord's reasonable refusal of the Tenant's written request may be based on, but is not limited to, the grounds that the Tenant has replaced one or more departed Tenants with short-term sublessors, or the grounds that the total number of occupants in a Rental Unit exceeds the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by Health & Safety Code Section 17922.

b) Notwithstanding any contrary provision of this Section, a Landlord shall not take any action to terminate a tenancy as a result of the addition to the Rental Unit of a Tenant's family member, such as a child, foster child, step-child, ward, parent, grandchild, grandparent, brother, sister, or spouse or partner, so long as the number of occupants does not exceed the maximum number of occupants specified in the Rental Housing Agreement, or as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health & Safety Code 17922, whichever is less.

3. Nuisance. The Tenant has continued to commit or expressly permit a nuisance in the Rental Unit.

4. Criminal Activity. The Tenant's conduct is so disorderly as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants at the Property. Such disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants at the Property.

5. Failure to Give Access. The Tenant has continued to refuse, after the Landlord has served the Tenant with a Written Notice to Cease, to grant the Landlord reasonable access to the Rental Unit as required by state or local law.

6. Necessary and Substantial Repairs Requiring Temporary Vacancy. The Landlord,

after having obtained any necessary permits from the City, and having provided written notice to the Tenant pursuant to state law, seeks to undertake substantial repairs that are necessary to bring the Rental Unit into compliance with applicable codes and laws affecting the health and safety of tenants of the building, provided that:

- a) The repairs necessitate that the Tenant vacate the Rental Unit because the work will render the rental unit uninhabitable for a period of not less than (30) days; and
- b) The Landlord gives advance notice to the Tenant of the Tenant's right of return to reoccupy the Rental Unit upon completion of the repairs at the same Rent charged to the Tenant before the Tenant temporarily vacated the Rental Unit, or Tenant's right of first refusal to any comparable vacant Rental Unit owned by the Landlord at the same Rent, if such comparable unit exists.

7. Owner Move-In. The Landlord seeks, after providing written notice to the Tenant pursuant to state law, to recover possession of the Rental Unit in good faith for use and occupancy as a primary residence by the Landlord, or the Landlord's relative, such as a child, foster child, step-child, ward, parent, grandchild, grandparent, brother, sister, or spouse or partner.

- a) This provision may be invoked only if the Landlord seeking to recover possession of the Rental Unit is a natural person and has at least a fifty (50) percent recorded ownership interest in the Property.
- b) No eviction may take place under this provision if the same Landlord or enumerated relative already occupies a unit on the Property, or a vacancy already exists on the Property.
- c) Any Notice to Terminate a Tenancy pursuant to this provision shall contain the name, address, and relationship to the Landlord of the person intended to occupy the Rental Unit.
- d) The Landlord or enumerated relative must intend in good faith, to move into the Rental Unit within sixty (60) days after the Tenant vacates the unit, and occupy the Rental Unit as a primary residence for at least thirty-six (36) consecutive months.
- e) If the Landlord or enumerated relative specified on the notice terminating the tenancy fails to occupy the Rental Unit within sixty (60) days after the Tenant vacates, the Landlord shall offer the Rental Unit to the Tenant who vacated it at the same Rent in effect when the Tenant vacated.
- f) A Landlord may not evict a Tenant under this provision if the Tenant:
 - 1) Has resided in the Rental Unit for at least five (5) years;
 - 2) The Tenant is at least sixty-two (62) years old, or is disabled pursuant to Government Code Section 12955.3, or is certified as being terminally ill by the Tenant's treating physician; and
 - 3) Notwithstanding the above, a Landlord may evict a Tenant who qualifies for the exemption herein if the Landlord or enumerated

relative who will occupy the Rental Unit also meets the criteria for this exemption and no other units are available.

8. Withdrawal of the Unit Permanently from the Rental Market. The Landlord seeks in good faith to recover possession to withdraw all Rental Units of an entire Property from the rental housing market.

- a) Tenants affected by this provision shall be entitled to a minimum of 120-day notice, or a notice of not less than one (1) year in the case of Tenants defined as seniors or disabled under Government Code Section 12955.3. Notice times may be increased by regulations if state law allows for additional time.

9. Demolition. The Landlord, having obtained all necessary permits from the City, and having provided written notice to the Tenant pursuant to state law, seeks in good faith to recover possession of the Rental Unit to remove the Rental Unit permanently from the rental housing market through demolition.

B. No Landlord shall take action to terminate a tenancy or otherwise recover possession of a Rental Unit in retaliation for a Tenant reporting violations of this Ordinance, or for exercising rights granted under this Ordinance.

C. Any notice purporting to terminate a tenancy on any of the bases specified in this Ordinance must state with specificity the basis on which the Landlord seeks to terminate the tenancy.

D. In any action brought to recover possession of a Rental Unit, the Landlord shall allege compliance with this Ordinance.

E. A Landlord's failure to comply with any requirements of this Ordinance, including without limitation, of the failure to serve any required notices, is a complete affirmative defense in an unlawful detainer or other action brought by the Landlord to recover possession of the Rental Unit.

SECTION 6. Civil Remedies. A Tenant may bring a civil suit in the courts of the state alleging that a Landlord has violated any of the provisions of this Ordinance or any regulations promulgated hereunder including that the Landlord has demanded, accepted, received, retained a payment or payments in excess of the lawful Rent, failed to maintain a Rental Unit in compliance with applicable health and safety and building codes, including but not limited to Civil Code Sections 1941.1 *et seq.* and Health and Safety Code Sections 17920.3 and 17920.10, or decreased Housing Services. In a civil suit, a Landlord found to violate this Ordinance shall be liable to the Tenant for all actual damages, including but not limited to the damages described in this Section. A prevailing Tenant in a civil action brought to enforce this Ordinance shall be awarded reasonable attorneys' fees and costs as determined by the court. Additionally, upon a showing that the Landlord has acted willfully or with oppression, fraud, or malice, the Tenant shall be awarded treble damages. No administrative remedy need be exhausted prior to filing suit pursuant to this Section.

SECTION 7. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 8. Effective Date. This ordinance shall take effect 30 days following its adoption and shall terminate upon the City Council's certification of election results for a Special Election in November 2017. If there is no just cause for eviction and rent stabilization measure or other similar measure placed on the ballot for November 2017, this Ordinance shall sunset on September 1, 2017.

SECTION 9. Environmental Determination. The City Council finds that the adoption and implementation of this Ordinance are exempt from the provisions of the California Environmental Quality Act under section 15061(b)(3) in that the City Council finds there is no possibility that the implementation of this Ordinance may have significant effects on the environment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica on April 10, 2017 by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

Mike O'Neill, Mayor

ATTEST:

Kathy O'Connell, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney