

ORDINANCE NO. 19-05

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD REQUIRING JUST CAUSE FOR TENANT EVICTIONS WITHIN THE CITY

WHEREAS, the laws of the State of California and the Housing Element of the General Plan of the City of Hayward prohibit arbitrary discrimination by landlords;

WHEREAS, the right to occupancy of safe, decent, and sanitary housing is a human right;

WHEREAS, the City of Hayward's prolonged affordable housing crisis disproportionately impacts low income and working-class households, senior citizens, and residents whose first language is not English, and thereby increases homelessness and crime, harms neighborhood stability and cohesion, and damages business prospects for small businesses;

WHEREAS, recent state laws that eliminate limits on rent increases upon the vacation of rental units provide added economic incentive to evict tenants, such that the number of evictions without just cause has increased markedly in recent years;

WHEREAS, residential tenants, who constitute approximately 49 percent of the residents of Hayward, suffer great and serious hardship when forced to move from their homes;

WHEREAS, basic fairness requires that a landlord must not terminate the tenancy of a residential tenant without good, just, non-arbitrary, non-discriminatory reasons;

WHEREAS, the good cause eviction protections enacted in San Francisco, Berkeley, Oakland, and other California cities, have aided community stability and reduced urban problems associated with arbitrary disruption of stable households;

WHEREAS, the general welfare of all residents Hayward would be enhanced if evictions without just cause were prohibited;

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and made a part of this ordinance.

Section 2. Title. This ordinance shall be known as the Just Cause for Eviction Ordinance ("Ordinance").

Section 3. Findings.

- A. Pursuant to Article XI, Section 7 of the California Constitution, the City of Hayward ("City") may make and enforce all regulations and ordinances using its police powers.
- B. A public emergency exists in the City due to the lack of adequate, safe, sanitary, and affordable housing. This emergency disproportionately impacts tenants of residential rental units, a majority of whom are people of color, working class families, the homeless, those of low income, and the elderly, and disabled.
- C. Renters occupy approximately 49 percent of the City's housing stock, and 57 percent of renters are cost burdened under the federal definition, meaning they spend more than 30 percent of their income on housing.
- D. City staff received input from a variety of stakeholders, including tenants, landlords, and community organizations, relating to exorbitant costs and scarcity of rental units.
- E. Hayward's Residential Rent Stabilization Ordinance provides just cause protections only for units that are currently rent controlled and were previously decontrolled.
- F. Hayward presently has no just cause protections for tenants whose units are not covered by the Residential Rent Stabilization Ordinance. These tenants may be subject to eviction at any time and without reason.
- G. Without just cause protections, many tenants are afraid to demand their right to a safe, inhabitable home.
- H. Furthermore, Hayward is experiencing extreme housing market pressures from neighboring Santa Clara and San Francisco counties, resulting in a decrease in the vacancy rate and an increase in residential rental prices.
- I. Without the institution of just cause protections, Hayward's housing emergency will continue, and will contribute to increases in homelessness, crime, and neighborhood instability.
- J. Many municipal jurisdictions in the San Francisco Bay Area, including Berkeley, Oakland, and San Francisco, have effectively utilized just cause protections to preserve affordable housing. Such protections have helped abate the urban problems associated with neighborhood instability, homelessness, and illegal activity in vacant units, providing concrete benefits for both landowners and tenants.
- K. Just cause eviction protections are consistent with the Housing Element of the Master Plan of the City of Hayward, which states that residents have the right to safe and decent housing.

Section 4. Definitions.

- A. "Landlord" means an owner of record, or lessor or sublessor of an owner of record, or any other person or entity entitled either to receive rent for the use or occupancy of any rental unit or to maintain an action for possession of a rental unit, or an agent, representative, or successor of any of the foregoing.
- B. "Owner of Record" means a natural person, who is an owner of record holding an interest equal to or greater than 33 percent in the property at the time of giving a notice terminating tenancy and at all times thereafter, until and including the earlier of the tenant's surrender of possession of the premises or the execution of a writ of possession pursuant to the judgment of a court of competent jurisdiction; but not including any lessor, sublessor, or agent of the owner of record.
- C. "Rent" means the consideration, including any deposit, bonus, benefit, or gratuity demanded or received for, or in connection with, the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, moneys and fair value of goods or services rendered to or for the benefit of the landlord under the rental agreement, or in exchange for a rental unit or housing services of any kind.
- D. "Rental Agreement" means an agreement, oral, written, or implied, between a landlord and a tenant for the use and/or occupancy of a rental unit.
- E. "Rental Unit" (aka Unit, aka Premises) means any unit in any real property, regardless of zoning status, including the land appurtenant thereto, that is rented or available for rent for residential use or occupancy (regardless of whether the unit is also used for other purposes), together with all housing services connected with use or occupancy of such property, such as common areas and recreational facilities held out for use by the tenant.
- F. "Property" means a parcel of real property, located in the City of Hayward, that is assessed and taxed as an undivided whole.
- G. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or any group of renters, tenants, subtenants, lessees, sublessees of a rental unit, or any other person entitled to the use or occupancy of such rental unit, or any successor of any of the foregoing.
- H. "Skilled Nursing Facility" means a health facility or a distinct part of a hospital that provides, at a minimum, skilled nursing care and supportive care to patients whose primary medical need is the availability of skilled nursing care on an extended basis. Such facility must provide 24 hour inpatient care, an activity program, and medical, nursing, dietary, pharmaceutical services. Additionally, the facility must provide effective arrangements, confirmed in writing, through which services required by the patients but not regularly provided within the facility can be obtained promptly when needed.

- I. "Health Facility" means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, and treatment of human illness, physical or mental, including convalescence and rehabilitation, and including care during and after pregnancy, or for any one or more of these purposes.
- J. "Business Tax Declaration" means the annual declaration required to be filed in connection with a landlord's obtaining or renewing a city business license for rental units. Any failure by a landlord to file such a declaration, whether pursuant to an exemption or otherwise, shall not relieve a rental unit from being subject to the provisions of this Ordinance.
- K. "Child/Parent" means a child/parent relationship is one in which a child is either a parent's biological child or adopted child, provided that such relationship was established prior to the child's eighteenth birthday and at least one year prior to the attempted eviction. At the time of attempted eviction, a child of an owner of record must be over the age of eighteen (18) or be emancipated.

Section 5. Applicability

The provisions of this Ordinance shall apply to all rental units in whole or in part, including where a notice to vacate/quit any such rental unit has been served as of the effective date of this Ordinance but where any such rental unit has not yet been vacated or an unlawful detainer judgment has not been issued as of the effective date of this Ordinance. However, this Ordinance shall not apply to the following types of rental units:

- A. Rental units exempted from Part 4, Title 4, Chapter 2 of the California Civil Code (CCC) by CCC § 1940(b), commonly known as, hotel, motel, residence club, or other facility when the transient occupancy is or would be subject to tax under Section 7280 of the Revenue and Taxation Code.
- B. Rental units in any hospital, skilled nursing facility, or health facility.
- C. Rental units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.
- D. Rental units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than 24 months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.

E. Rental units in a residential property where the owner of record occupies a unit in the same property as his or her principal residence and regularly shares in the use of kitchen or bath facilities with the tenants of such rental units. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the State of California.

F. A unit that is held in trust on behalf of a developmentally disabled individual who permanently occupies the unit, or a unit that is permanently occupied by a developmentally disabled parent, sibling, child, or grandparent of the owner of that unit.

Section 6. Just Cause Required for Eviction.

A. No landlord shall endeavor to recover possession, issue a notice terminating tenancy, or recover possession of a rental unit in the City of Hayward unless the landlord is able to prove the existence of one of the following grounds:

- (1) The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law.
- (2) The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental 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 or made part of the rental agreement.
- (3) The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.
- (4) The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state, and federal laws.

(5) The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises.

(6) The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

(7) The landlord, after having obtained all necessary permits from the City of Hayward, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises. Where the landlord recovers possession under this subsection, the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work.

(8) The landlord, after having obtained all necessary permits from the City of Hayward, seeks in good faith to recover possession of the rental units, in order to remove the rental unit from the market by demolition.

(9) The landlord seeks in good faith to recover possession for his or her own use or occupancy as his or her principal residence, or for the use and occupancy as a principal residential by the landlord's spouse or domestic partner or by the landlord's or the landlord's spouse's child, parents, brother, sister, grandparents, or grandchildren. For the purposes of this subsection, the term landlord shall be defined as the owner of record holding at least a fifty-one percent (51%) interest in the property and shall not include a lessor, sublessor, or agent of the owner of record. The landlord may not recover possession under this subsection if a comparable unit is already vacant and available in the property.

(10) A landlord or lessor seeks in good faith to recover possession of the rental unit for his or her occupancy as a principal residence and has the right to recover possession of the unit for his or her occupancy as a principal residence under an existing rental agreement with the current tenants.

(11) The tenant is convicted of using the rental unit for any illegal purpose.

(12) The tenant has used or allowed the use of the rental unit, or any other area owned or controlled by the landlord, for the manufacture, sale, distribution, possession, or use of a controlled substance as defined in state law.

(13) The tenant has continued, after written notice to cease, to violate legal and reasonable written rules and regulations generally applicable to all tenancies within the premises provided that such terms have been accepted in writing by the tenant.

(14) The lawful termination of the tenant's employment by the landlord, where such employment was an express condition of, or consideration for, the tenancy under a written rental agreement, the notice of termination is given as provided in Section 1946 of the California Civil Code.

(15) The tenant has threatened, either verbally or in writing, to commit a crime which would result in death or great bodily harm to a tenant, guest, manager, owner, or other person on the premises, for which a report has been filed with the Hayward Police Department.

B. Notice of Termination.

The landlord shall serve on the tenant a written notice setting forth the reasons for the termination with specific facts to permit a determination of the date, place and circumstances concerning the reason. This notice shall be given in the manner prescribed by California Code of Civil Procedure Section 1162 and may be combined with a written notice of termination of tenancy or as a separate written notice.

A landlord's failure to specify in the notice either one or more grounds for eviction authorized by state or federal law or good cause as listed above in subsections 1 through 15 in the written notice, notice of termination or the notice to quit, and in the complaint for possession shall be a defense of any action for possession of a rental unit covered by the terms of this Ordinance.

C. Notice of Ordinance.

In addition to Section (4)(a) of the Residential Rent Stabilization Ordinance, within 30 days after the effective date of this Ordinance and upon rerenting of each rental unit thereafter, the landlord shall supply the tenant either a copy of this Ordinance or a City prepared summary thereof. This notice shall be given in the manner prescribed by California Code of Civil Procedure Section 1162.

Section 7. Severability.

Should any part of this Ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this Ordinance, which shall continue in full force and effect, provided that the remainder of the Ordinance,

absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 8. Non-Waiverability.

The provisions of this Ordinance may not be waived, and any term of any lease, contract, or other agreement which purports to waive or limit a tenant's substantive or procedural rights under this Ordinance are contrary to public policy, unenforceable, and void.

Section 9. CEQA.

Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment.

Section 10. Effective Date.

In accordance with the provisions of Section 617 of the City Charter, this Ordinance shall become effective immediately upon adoption of five (5) or more votes.

Section 11. Publication.

In accordance with the provisions of Section 617 of the City Charter, a notice indicating its title; a subject matter index; the date of its introduction; and the date, time, and place it will be considered for final adoption; and that copies of the full text thereof are available for examination by the public in the office of the City Clerk, shall be published once in a newspaper of general circulation within the City at least three days before the final adoption meeting date.

Furthermore, a similar notice indicating the adoption of an emergency ordinance and the vote thereon shall be published once within one week after its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 5th day of March, 2019, by Council Member Márquez.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 5th day of March, 2019, by the following votes of members of said City Council.


AYES: COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Lamnin, Wahab, Salinas
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

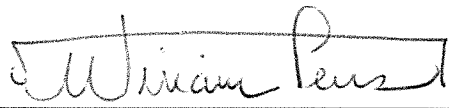
ABSENT: COUNCIL MEMBERS: None

APPROVED:



Mayor of the City of Hayward

DATE: March 6, 2019

ATTEST:


City Clerk of the City of Hayward

APPROVED AS TO FORM:


Deputy City Attorney
City Attorney of the City of Hayward