CITY OF ALAMEDA ORDINANCE NO. 3143
New Series

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALAMEDA AMENDING ORDINANCE NO. 3140 AND IMPOSING WITHIN THE CITY OF ALAMEDA A TEMPORARY (65 DAY) MORATORIUM ON CERTAIN RESIDENTIAL RENT INCREASES AND ON EVICTIONS FROM ALL RESIDENTIAL RENTAL UNITS EXCEPT FOR JUST CAUSE EVICTIONS

WHEREAS, Government Code Section 36937 allows a city, including a charter city, to adopt an urgency ordinance to take effect immediately upon its adoption for the preservation of the public peace, health or safety upon a finding of facts constituting the urgency thereof; and

WHEREAS, Section 3-12 of the Alameda City Charter allows the City to adopt an urgency ordinance to take effect immediately upon its adoption for the preservation of the public peace, health or safety upon a finding of facts constituting the urgency therefor; and

WHEREAS, such an urgency measure requires a four-fifths vote (4 votes) of the City Council for adoption and, as provided further herein, this Ordinance shall be in effect for 65 days (unless extended further by the City Council); and

WHEREAS, the City Council directed City staff to present to the Council tenant protection policy options, including rent control/stabilization and/or just cause eviction policy alternatives, in order for the City Council to consider such policy options on November 4, 2015; and

WHEREAS, the City Clerk published and posted a notice of a City Council special meeting to be held on November 4, 2015, for the purpose of discussing these policy options; and

WHEREAS, on November 4, 2015, City staff presented to the City Council policy alternatives regarding various tenant protection policies including rent control and/or just cause eviction regulations, and the City Council considered an urgency ordinance regarding rent control, just cause eviction and other tenant protections; and

WHEREAS, community members have reported that the City Council's discussion and direction to study rent control, related tenant protections, and just cause eviction policies have created market uncertainty and concern among some landlords that if they do not increase rents now, they could face income and property value losses; and

WHEREAS, City residents have reported to (a) the City Council at City Council meetings and in Council communications, (b) the Rent Review Advisory Committee at its meetings and (c) the press that there have been substantial rent increases and a substantial increase in the number of evictions without cause; and

WHEREAS, according to the 2008-2012 Comprehensive Housing Affordability Strategy (CHAS) data, 2,975 very low-income renter households in Alameda pay more than half of their incomes for housing and are at risk of displacement; and

WHEREAS, according to Real–Answers (Third Quarter, 2015), the average monthly rent for market-rate units of apartment buildings with fifty or more units in the City of Alameda has increased by 52% between 2011 and 2015; and

WHEREAS, the City's rental units are almost fully occupied with a 1.4% average vacancy rate (as of 2013) compared to a Countywide average of 3.8% vacancy rate, and is so low that there is not enough available supply to offer meaningful choice in the rental market; and

WHEREAS, between 2000 and 2013, median household income for those who rent in Alameda increased by 29%, which has not kept pace with rising rents that increased by 54% over the same 13-year period, and has created a growing "affordability gap" between incomes and rents; and

WHEREAS, given this increased housing cost burden faced by many Alameda residents, excessive rental 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, excessive rental increases could result in the displacement of low-income families; and

WHEREAS, prior to November 5, 2015, the City of Alameda did not restrict rental increases nor just cause evictions; and

WHEREAS, on November 5, 2015, the City Council adopted Ordinance No. 3140 as an urgency ordinance imposing within the City a temporary moratorium (65 days) on rent increases of 8% or more (on a cumulative basis over a twelve month period) for certain residential rental units and imposing within the City a temporary moratorium (65 days) on any action to terminate a tenancy except for "just cause", the grounds of which were identified in Exhibit A to Ordinance 3140; and

WHEREAS, certain aspects of public peace, health, or safety are not adequately protected by the rent control and other rent stabilization measures that the City Council adopted in Ordinance 3140 (including Exhibit A), such as ambiguity and uncertainty in certain of the grounds for just cause evictions, and it is in the interest of the City, of owners and residents of rental units, and of the community as a whole that City Council amend Ordinance 3140 to protect affordable housing within the City including but not limited to rent stabilization and just cause for eviction regulations; and

WHEREAS, in light of the numerous concerns noted herein, including but not limited to the current and immediate threat to public peace, health, or safety of the City's residents and the adverse impacts that would result from a substantial decrease of affordable housing within the City, the City Council determines it is in the interest of immediately preserving the public peace, health, or safety to adopt this urgency Ordinance that would amend in certain respects Ordinance 3140 in order to allow staff to, among other related tasks, bring forward proposed regulations related to rent control and/or just cause for eviction policies; and

WHEREAS, the City Council finds and determines that, if the temporary moratorium on residential rental increases and evictions without cause were not amended now, the public peace, health, or safety will be immediately threatened because "Housing Providers" (as defined in Section 6-57.2, Alameda Municipal Code) would have an immediate incentive to increase rents to even higher levels and/or serve eviction without cause notices before the City of Alameda could consider rent stabilization, just cause eviction or other such related tenant protection regulations; and such increases and evictions would defeat the intent and purpose of any potential future regulation and substantially impair its effective implementation; and

WHEREAS, it is the intent of the City Council to consider and possibly to adopt rent control, just cause for eviction or other tenant protection policies as soon as reasonably possible; and

WHEREAS, the City Clerk published and posted a notice of this agenda item for the City Council's regular meeting on December 1, 2015 for the purpose of considering an Ordinance, to be adopted on an urgency basis, amending Ordinance No. 3140; and

WHEREAS, for reasons set forth above, this Ordinance is declared by the City Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the public peace, health, or safety of the community, and the recitals above, as well as information in the agenda reports dated November 4, 2015, and December 1, 2015, and public testimony received at the City Council's meetings of November 4, 2015, November 17, 2015 and December 1, 2015, constitute the City Council's statements of the reasons constituting such necessity and urgency; 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 basis: CEQA Guideline Section 15183 (action consistent with the general plan and zoning); Section 15378; and Section 15061(b)(3) (no significant environmental impact); and

WHEREAS, by the staff report, testimony, and documentary evidence presented at the November 4, 2015, November 17, 2015 and December 1, 2015 City Council meetings, the City Council has been provided with additional information upon which the findings and actions set forth in this Ordinance are based.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby incorporates them into this Ordinance.

SECTION 2. From November 5, 2015 (the effective date of Ordinance No, 3140), and continuing for a period of sixty-five (65) days (unless extended), or until the effective date of any City adopted regulations relating to rent control, just cause for eviction, and/or other tenant protection policies, whichever occurs first, no Housing Provider shall (a) serve or give notice of a rent increase that, on a cumulative basis over the 12 months preceding the effective date of the proposed rent increase, amounts to 8% or greater, (b) increase rent that, on a cumulative basis over the 12 months preceding the effective date of the rent increase, amounts to 8% or greater or (c) 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 or bringing any action to recover possession of a rental unit except for cause as set forth in Exhibit A to this Ordinance.

For purposes of this Ordinance rent means the rental amount, including any amount paid directly to the Housing Provider for 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.

SECTION 3. Exceptions and Exemptions as to all provisions of Section 2, including Exhibit A, of this Ordinance. The following are exempt from the moratorium established under Section 2, including Exhibit A, of this urgency Ordinance: 1) government-owned housing units; 2) housing units whose rents are controlled, regulated (other than by this Ordinance), or subsidized by any governmental unit, agency or authority; 3) accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for thirty (30) or more days; 4) commercial units; and 5) housing accommodation

in any hospital, convent, monastery, extended care facility, convalescent home, nonprofit home for the aged, or dormitory operated by an educational institution

SECTION 4. Exceptions and Exemptions as to certain provisions of Section 2 of this Ordinance. The following are exempt from the moratorium as to serving or giving notices of rent increases or rent increases under Section 2 of this urgency Ordinance but are not exempt from the moratorium as to taking any action to terminate any tenancy except for cause as set forth in Exhibit A of this urgency Ordinance: 1) units constructed after February 1, 1995; 2) units that are separately alienable from the title of any other dwelling (e.g., single family homes, condominiums, etc.); and 3) any other units exempt under the Costa-Hawkins Rental Housing Act (California Civil Code, Section 1954.50 and following) or any other applicable state or federal law.

SECTION 5. Effect of this Ordinance. Notwithstanding any other provision of this Ordinance, the effect of this Ordinance shall render null and void any action that a Housing Provider has taken between November 5, 2015 and December 1, 2015 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 or bringing any action to recover possession of a rental unit based on the Housing Provider seeking in good faith to recover possession of a rental unit so as to (1) demolish the rental unit or (2) perform work on the building or buildings housing the rental unit or units and (a) such work costs not less than the product of eight (8) times the amount of the monthly rent times the number of rental units upon which such work is performed and (b) the work necessitates the eviction of the tenant because such work will render the rentable unit uninhabitable for a period of not less than thirty (30) calendar days. For purposes of this section, the monthly rent shall be the average of the preceding twelve (12) month period.

SECTION 6. Enforcement. In any action by a Housing Provider to recover possession of a rental unit, the tenant may raise as an affirmative defense any violation or noncompliance with the provisions of this Ordinance.

SECTION 7. Petition for Relief from Moratorium. This moratorium, without extension, shall only be effective for a period of sixty-five (65) days, i.e., to January 9, 2016. If this moratorium as to prohibiting rent increases is extended beyond the sixty-five day period, the City Council shall consider and adopt a procedure allowing any Housing Provider who claims that the moratorium's permitted rent is insufficient to provide a just and reasonable return to file a petition requesting relief from the extended moratorium by way of an additional rental increase, as well as procedures for hearings and appeals of such petitions.

SECTION 8. Authority for Enacting this Urgency Ordinance. This urgency Ordinance is enacted pursuant to the City of Alameda's general police powers, Section

3-12 of the Charter of the City of Alameda, Article XI of the California Constitution, and Government Code Section 36937.

SECTION 9. Severability. 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, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

SECTION 10. Effective Date. Rents within the City of Alameda and all actions taken to terminate a tenancy on or after the date of final passage and adoption of Ordinance No. 3140, as amended by this Ordinance, shall be subject to this Ordinance including Exhibit A. As an urgency ordinance, this Ordinance becomes effective immediately upon its adoption at a first reading by a four-fifths vote of the City Council.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

EXHIBIT A

A. 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 or bringing any action to recover possession of a rental unit except on one of the following grounds:

1. The tenant, after being provided with the written notice required by Sections 1161 and 1162 of the California Code of Civil Procedure of the identity and mailing address of the person to whom rent is due, and the amount of rent due, has failed to pay the rent to which the Housing Provider is entitled within three calendar days of after receiving such notice. Notice shall be given to the tenant in manner prescribed by California Code of Civil Procedure Section 1162.

2. The tenant has violated a lawful obligation or covenant of the tenancy and has failed to cure such violation after notice, as provided for in Sections 1161 and 1162 of the California Code of Civil Procedure, within seven calendar days after having received written notice thereof from the Housing Provider, other than a violation based on:

   i. The obligation to surrender possession upon proper notice; or

   ii. The obligation to limit occupancy when the additional tenant who joins the occupants is a dependent child who joins the existing tenancy of a tenant of record or the sole adult tenant; provided, however, the Housing Provider has the right to approve or disapprove a prospective additional tenant who is not a minor dependent child, and provided further that the approval is not unreasonably upheld. Notice shall be given to the tenant in the manner prescribed by California Code of Civil Procedure Section 1162.

3. The tenant is committing a nuisance in, or permitting a nuisance to exist in, or is causing substantial damage to, the rental unit, or the appurtenances thereof, or to the common areas of the rental complex, or is creating a substantial interference with the comfort, safety or enjoyment of the Housing Provider, a tenant or tenants in the building.

4. The tenant is using, or permitting a rental unit, the common areas of the rental unit or rental complex containing the rental unit, to be used for any illegal purpose.

5. [Intentionally Omitted]

6. The tenant has, after written notice to cease, refused the Housing Provider access to the rental unit as required by State or local law.

7. A person in possession of the rental unit at the end of a lease term, or upon the sale under the power of sale contained in a deed of trust, or foreclosure

of a rental unit or the building in which the rental unit is located, is a subtenant not approved by the Housing Provider.

8. The Housing Provider seeks in good faith to recover possession of the rental unit for use and occupancy by:

   i. A resident manager, provided that no alternative, comparable vacant unit is available for occupancy by a resident manager; except that where a building has an existing resident manager, the Housing Provider may only evict the existing resident manager in order to replace him or her with a new manager.

   ii. The Housing Provider, or the Housing Provider's spouse, domestic partner, grandparents, brother, sister, father-in-law, mother-in-law, son-in- law, daughter-in-law, children, or parents, provided the Housing Provider is a natural person; provider, however, a Housing Provider may use this ground to recover possession for use and occupancy by the Housing Provider, the Housing Provider's spouse, domestic partner, child, parent, in laws or grandparents only once for that person in each rental complex of the Housing Provider. For purposes of evictions under this paragraph, a "Housing Provider" shall be defined as a natural person who has at least a fifty (50) percent ownership interest in the property.

9. The Housing Provider seeks in good faith to recover possession to remove the rental unit permanently from rental housing use pursuant to State law.

10. [Intentionally Omitted]

11. The Housing Provider seeks in good faith to recover possession of the rental unit 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.

12. The Housing Provider seeks in good faith to recover possession of the rental unit to comply with a contractual agreement or government regulation relating to the qualifications of tenancy with a governmental entity, where the tenant is no longer qualified.

B. In any notice purporting to terminate tenancy the Housing Provider shall state the cause for the termination, and in any action brought to recover possession of a controlled rental unit, the Housing Provider shall allege and prove compliance with this Ordinance. The Housing Provider shall file with the Housing Authority of the City of Alameda a copy of any notice terminating tenancy, except a three day notice to pay rent or vacate, within three days after serving the notice on the

tenant.

C. Failure to comply with any requirement of this Ordinance may be asserted as an affirmative defense in an action brought by the Housing Provider to recover possession of the unit. Additionally, any attempt to recover possession of a unit in violation of this Ordinance 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.

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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 meeting assembled on the 1st day of December, 2015, by the following vote to wit:

AYES:	Councilmembers Daysog, Ezzy Ashcraft, Matarrese, Oddie and Mayor Spencer – 5.
NOES:	None.
ABSENT:	None.
ABSTENTIONS:	None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 2nd day of December, 2015.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Janet C. Kern, City Attorney
City of Alameda